



Reforming the Energy Industry Codes - response form

The consultation is available at: www.gov.uk/government/consultations/reforming-the-energy-industry-codes

The closing date for responses is: 16 September (23.45)

Please return your completed form to the following email addresses. As this is a joint review, please ensure you respond to **both** email addresses below.

Email to: codereform@beis.gov.uk & industrycodes@ofgem.gov.uk

If you would like to send a hard copy then please send copies to the following. As this is a joint review, please ensure you send copies to **both** postal addresses below.

Write to:

Code Reform - Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor,
1 Victoria Street
London
SW1H 0ET

Ofgem
Industry Code and Licensing Team
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf
London, E14 4PU

BEIS and Ofgem will share with each other all responses that are received.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please be aware that we intend to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the

access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments: [Click here to enter text.](#)

Questions

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Please select a box from the list of options below that best describes you as a respondent. This allows views to be presented by group type.

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Question 1 [page 17 in consultation document]

Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s?

☒ Yes ☐ No ☐ Don't know

Please explain.

Comments:

SSE agree that there is merit in reviewing the Energy Codes arrangements to ensure that they are fit for purpose and enable the whole energy system to meet decarbonisation targets.

SSE agree that the four desired outcomes set out a sensible package of aims to be delivered by reform.

We caution however, that there must be a sensible balance struck between the need to set out the current day needs, roles and responsibilities to support industry arrangements; and the forward-looking needs of policy objectives.

SSE are mindful that the Energy Codes are multilateral Commercial Agreements that provide layers of detail and context supporting the efficient operation of industry trading arrangements; as well as assigning rights and responsibilities of those actors taking part. They are a crucial element required to ensure that legislation and license requirements can be supported through the detailed operation of commercial processes and information systems, by both industry participants and central service providers alike. They allow the establishment of a workable set of rules that facilitate the running of orderly competitive markets to the benefit of consumers. They are necessary because in many cases it is either too complex or hugely inefficient to consider a bilateral contracting alternative, especially where the application/outcome is multilateral in nature (e.g. parties A and B need to be certain that party C is performing its obligations in order that they can discharge their obligations to party D).

The primary function of the Industry Codes in our view is to set out the detailed rulebook required to describe how things are done on a day to day (or periodic) basis in order to achieve an efficient and equitable outcome; detailing who is required to do what, and by when. In some circumstances it will be also be necessary to describe how things are done. In doing this the Codes should not pick winners (and by implication losers), but instead should provide a level playing field for all to be able to participate and compete in a fair and transparent manner.

Whilst opportunities to rationalise redundant or duplicate process obligations across Codes are welcomed, there is a limit to what can be achieved without causing significant extra uncertainty, risk and cost; in particular when translating Code requirements into a set of system requirements against which information systems can be engineered.

Additionally, any proposed reform is likely to take a high degree of effort, time and cost to deliver and therefore must in our view provide a demonstrably better mechanism for co-ordinating policy driven change than allowed by the current Significant Code Review (SCR) process. A quantitative assessment of the cost/benefit should be outlined, identifying the incremental benefits when compared to an SCR-led process (as currently set out and as enhanced to deliver more efficient outcomes).

1. Ease of participation.

SSE agree that any market participant, whether an incumbent of any size or a prospective new entrant/innovator should be able to quickly identify (within reason) which rules apply to them and what they mean. They should not prevent disruptors from entering the market (however this should not be detrimental to the continued orderly functioning of critical systems and processes for all market participants).

Quick wins to achieve this (as an alternative or complementary to the proposed reforms set out in this consultation), could be to develop: -

- i) an overarching roadmap and flow charts to set out the Codes landscape;
- ii) creation of an industry Single Point of Contact for new entrants to approach to better understand the Codes landscape;
- iii) creation of a Single Point of Contact to enable change to be proposed and progressed;
- iv) standardisation of forms/means to engage the change process itself;
- v) alignment of objectives across Code Administrators;
- vi) enhancement and funding of CACOP (plus more direct involvement of market participants in CACOP arrangements¹) to support the above with credible incentives and remedies for failure to engage by Code Administrators;
- vii) enhance the use of plain English Guidance Notes, as currently provided by some Code Administrators;
- viii) develop an Energy Industry wiki to help inform new entrants in particular;
- ix) Introduce Net Zero Carbon Code objectives;
- x) Introduce Cross-Code co-ordination objectives.

2. Forward-looking, in line with Govt objectives.

SSE agree that industry needs to be informed by overall Government policy objectives for the sector in setting out its current and future roadmap for development of rulebooks; and that there is room for greater co-ordination in delivering this.

In doing so however, current needs, particularly urgent needs, should not be crowded out from development. The current SCR process supports continued development of the Industry Code rules, where they do not interact with an ongoing SCR. Future arrangements should retain this flexibility - otherwise there is a risk that necessary incremental change, that is unrelated to longer-term strategic change arising from Government policy, cannot be progressed in an appropriate timescale.

¹ Meetings associated with CACOP should not be limited to Code Administrators only, but should be opened up to market participants, particularly if funded by and accountable to market participants

Additionally, it should be recognised that there are risks of introducing additional costs through putting emphasis on evolving Codes to focus on forward-looking requirements:-

- i) Reputational risk – false expectation of pace of change may be set if Code change is linked to longer-term forward-looking policy, unless the policy is described to a level of detail that allows processes and systems to be engineered. In the absence of clear and decisive policy steers, it may be worse or no better than the current framework.
 - ii) Increased cost of delivery – where requirements are not specified adequately when translating policy steers, or almost infinite flexibility is required to future proof arrangements, then overall systems costs are likely to rise.
 - iii) Increased cost of nugatory work – where policy objectives change, e.g. change of Government, then there is much greater risk of incurring nugatory costs on behalf of the consumer when driven proactively by policy-driven future needs rather than reactively to market-driven current needs. Changes in progress, which are likely to be substantial, would have to be shelved. Costs for this nugatory work would still need to be recovered.
 - iv) Increased risk that change will stall without clear interpretation of policy objectives to a set of required changes.
3. Is agile and responsive to change, whilst able to reflect the commercial interests of different participants.

SSE agree that Industry Codes should be agile and responsive to change. Arrangements should ensure that those benefitting from change should also contribute to the development and costs of delivering that change.

SSE agree that the Codes should not pick winners and should reflect the commercial interests of different participants. The extent to which participation of different business models benefits competition and consumers should be driven out by market forces, not conscious or unconscious choices to exclude certain types of participant in our view. With this in mind, we note that a number of Industry Codes (e.g. CUSC, BSC) have a more inclusive approach to their development compared to others, as well being more accessible to industry stakeholders. SSE encourage this approach for all Codes moving forward.

In providing agile arrangements however, SSE believe that an appropriate trade off must be struck that retains a degree of stability for industry by ensuring that implementation dates are well signposted and signalled. This will allow all market participants to plan and prepare for change accordingly.

4. Accommodate a large and growing number of market participants, with effective compliance.

SSE agree that Industry Codes should be scalable to allow a large and diverse number of participants to operate in the market. However, it should be recognised that this comes with certain downsides: -

- i) The more scalable the Codes, the more capacity (and potential redundancy) required to accommodate it within people, systems and processes which will increase costs to consumers;
- ii) It creates a paradox – supporting increasingly large and diverse numbers of participants and business models at the rulebook level, will by necessity increase complexity and costs; and thus, potentially exacerbate one of the criticisms described in this consultation that is driving the proposed reforms. This is particularly true if continuing to develop current systems and processes on an incremental basis rather than redesigning from new.

Finally, SSE would urge BEIS/Ofgem to consider whether the above objectives can be achieved through adoption of quick wins and incremental reform of the current SCR arrangements earlier than set out, rather than proceeding with the more extensive set of reforms proposed which will take greater time and effort to deliver. Time is of the essence in the context of the global climate change emergency and quick wins need to be prioritised in order to allow all potential technologies and solution providers to participate in the market at the earliest opportunity.

If you disagree, please explain what you consider the outcomes should be.

Comments: Given our comments above, SSE would recommend that an additional outcome be added; namely, that the Industry Codes and related systems need to maintain the orderly functioning of the market both on a transitional and enduring basis. Transition needs to harness effectively the experience of incumbent operators with the challenge of new innovators to ensure an effective transition, rather than jettison one in favour of the other. This approach should best minimise the risk of unintended consequences that could otherwise disrupt the continued delivery of market services. This would imply that the least disruptive path to change be chosen, with quick wins and enhancement of existing powers taking priority; with review points prior to proceeding with more extensive reform.

Question 2 [page 17 in consultation document]

Do you agree with the problems we have identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments:

Partly. SSE recognise a number of the problems identified, but not all.

1. Fragmentation and lack of co-ordination – slow to implement change

SSE agree that some change has been slow to implement, particularly change that first challenged the industry's ability to deliver on a cross-code basis. There is a clear need to better align objectives and incentives of the Industry Codes, as well as the toolkit of Code Administrators, to allow better cross Code co-ordination (e.g. through enhancement of better funded and more inclusive CACOP provisions).

Slow progress of modifications could be the result of several different factors some within the control of industry, some less so. A more informed analysis is required of the changes that were deemed to be too slow in their progress, in order to understand at what point in the process the delay occurred and why. This will provide greater surety that any proposed intervention will address the actual root causes, rather than the perceived root causes or symptoms.

There is a danger that all delay becomes characterized as filibustering by vested interests within the industry. This is not the case in our view. Seemingly simple change may be delayed because those engaging in the process present a perspective, opinion or evidence (or indeed lack of evidence) that needs further consideration in order to allow a robust solution to be delivered. This challenge is healthy if we wish to arrive at an optimum solution and limit the risk of ill-thought through change creating unintended consequences and unnecessary costs for all concerned.

Equally, some change takes longer because the decision-making process takes longer than envisaged, no doubt for important reasons to ensure that a balanced reasoning is applied to divisive decisions in particular.

Some change may be dependent upon delivery of critical central systems infrastructure, which may be impacted by complex change programmes and resource availability.

Some change (e.g. network tariff changes) may be restricted by license requirements as to when they can be implemented.

2. Fragmentation and lack of co-ordination – lacking co-ordination between different Code bodies

SSE agree that there is an opportunity to strengthen the co-ordination of change across the Industry Codes and Code administrators, at all levels of the process (gatekeeping and control of change, industry engagement and participation, development of holistic solutions, alignment of implementation).

We believe that there is an opportunity to strengthen the provisions and funding of CACOP, whilst ensuring greater stakeholder participation, that could go some way to mitigating this challenge.

3. Fragmentation and lack of co-ordination – fragmented with a large number of code panels and bodies, which provides for a complex institutional landscape

SSE agree that there is an opportunity to review the number of Industry Codes, Code Panels and other Code bodies to determine if there is scope for rationalisation or a more efficient organisation of responsibilities.

However, the size of the challenge in achieving this within a sensible timescale should not be underestimated, particularly where it involves organisation consolidation.

Whether rules are organised into a single rulebook, 3 rulebooks, 6 rulebooks or 11 rulebooks; the rules and a means of changing them will still be required at a sufficiently detailed level to allow commercial operators in the market to clearly and unambiguously understand their responsibilities and build their information systems and internal processes to deliver those responsibilities.

If they are not contained within the Industry Codes themselves, then they will most likely need to be contained within subsidiary documents (that are legally binding) to enable remedies for non-compliance. Otherwise central market arrangements are unlikely to be able to function well, if at all, and cross-subsidies are likely to be introduced where the many end up paying for the poor behaviour of the few.

It is likely therefore, that a similar degree of effort will be required by actors engaging in the market to understand what those consolidate Industry Code rules and subsidiary rules are, whether in a single, large document or 11 separate, smaller documents. It is not clear that the need for participants to understand a large and complex rulebook will reduce significantly – responsibilities will just move from one document (or one part of a document) to another.

The focus should be to ensure that redundant aspects of Codes are removed and that duplication of provisions across Codes are rationalised and avoided.

4. Lack of incentive for change – reactive to existing problems, rather than forward-looking in preparing the energy system for future changes

SSE believes that the incentive for change should be driven by the needs of the market. If the market values the idea and customers want it, commercial operators will invest the time and capital to develop it and bring forward proposals to change the Industry Codes where beneficial to developing that proposition. Decision makers can then determine the wider competition and consumer benefits of the proposal. SSE do not agree that there is a presumption in the rules that change should only be brought forward reactively to existing problems. It is equally plausible to bring forward change that prepares for future market arrangements (e.g. BSC modification P344), where a party is prepared to promote and justify it. The industry process then allows for collective development of a solution.

We do not believe that the Industry Codes inherently disincentivise change. If the market and customers want change in a particular direction, then traditional business models will need to adapt to those requirements or fail. Market and

customer needs provide (and should provide) the best incentive to drive change, whether for existing or new participants.

The failure for this to happen for new market models seems more a symptom of either an unwillingness to become a party to the contract to promote the change; or a failure of the gatekeeping process to properly engage with potential new entrants.

Barriers to engagement and participation clearly need to be reviewed in this context, to ensure that new actors in the market can bring forward their change ideas through, for example, the use of a Single Point of Contact across the Industry Codes that can provide a critical friend function; and better alignment of objectives across the Codes to avoid conflicts of interest arising between Codes.

The criticism of over-reliance on SCR initiatives to promote change, seems more a reflection of the scale and rate of big-ticket issues needing to be addressed at a common point in time, rather than a fundamental problem with using the SCR as a strategic change tool. It is not clear to us that replacing the SCR process with a Strategic Function alleviates this problem – if we want to juggle 100 different balls at the same time, then central programme management is still likely to be required at an equivalent level.

5. Complexity – overly complex

SSE agree that the Industry Codes are lengthy and complex documents that have developed organically over many years to meet evolving market needs. They are complex because of the incremental nature of change over time and because the industry itself is complex, particularly given the physical characteristics of the commodity and the multitude of technology providers and business models operating within the sector. The complexity is necessary to maintain the continued inter-operability of the many actors and roles within the market to ensure that commercial arrangements can be mapped to the physical characteristics and requirements of the commodities and networks that transport them.

A clear, harmonised rulebook is required that sets out who must do what and when (and in some instances how), to enable an efficient end to end process to be developed that allocates rights and responsibilities, benefits and liabilities to those parties that are best able to manage them and the commensurate risk. In particular, the Industry Code requirements must describe a level of detail that provides sufficient clarity for stakeholders to translate, specify and build business process and information system requirements, in order to ensure the most efficient outcome for the consumer. Loosely specified requirements will increase the degree of uncertainty about what is required and/or the degree of flexibility in meeting a multitude of interpretations of the requirements, which will increase costs as a result. For the avoidance of doubt, this does not imply that implementation of specified change proceeds at the speed of the least agile to respond.

The Industry Codes must provide this clarity for both existing Code signatories as well as new entrants/new business models. The aim should be to provide a harmonised level playing field approach which does not penalise one to promote the other. Depending upon the type and number of new business models, this does not

necessarily solve the perceived complexity, as new or augmented rules would be required for those models to ensure that rights and obligations are assigned and enforced.

Notwithstanding the comments above, the Industry Codes are multilateral Commercial Agreements, stemming from wider legal requirements. SSE welcomes any opportunity to review and simplify redundant or duplicate provisions of the Codes – they should reflect only what is necessary. In doing so however, the Codes must remain legally enforceable under the presiding legal jurisdiction. Any initiatives to radically simplify the legal drafting of the Codes should proceed with extreme caution to avoid potentially disastrous unintended consequences (if there was insufficient legal basis to enforce compliance or inadvertent failure to comply with wider legal requirements); and potential legal challenge as a result.

A Codes model that relies on principles and guidance, rather than detailed rules assigning roles and responsibilities, risks creating frequent and/or substantial regulatory interpretation issues, be difficult to enforce compliance and increase the risk of increased legal challenge and costs.

6. Complexity – resource-intensive to engage in the process

SSE agree that resource is required to ensure proper engagement with the process and that it can be as resource intensive as an entity chooses it to be. The level of resource committed remains a conscious choice however that each business in the market has to make – how much do they wish to engage in the change process and what might be the benefit. A change raised by a particular party for example might imply the need for greater resource and effort to be expended in promoting and progressing it, as the expected benefits are greater. Likeminded market participants are also able to co-operate and rely upon critical friend support from Code Administrators in engaging with and progressing change proposals.

Notwithstanding the above, SSE certainly agrees that there is scope to improve the standard and level of information and feedback provided to industry on change progression, to a common standard, particularly with smaller players in mind. This would include simple quick wins such as ensuring that all meeting documents and summary notes are accessible on-line, maintaining up to date and co-ordinated change progression logs. We see an opportunity through CACOP to allow an enhanced service to be developed and delivered to a best practice standard, that would better engage with stakeholders and allow parties to keep fully informed on the scope, impact and progress status of the change pipeline across all Codes.

Question 3 [page 18 in consultation document]

Do you have additional evidence on the performance of the current framework?

Comments:

Please see comments above in answer to Q2.

A more thorough evidential review of the criticisms of the current process, particularly with regard to the speed of change, is required to ensure that root causes are fully understood and that any proposed interventions are addressing substantive issues that are solvable.

For example, if delays are a result of slow decision-making by either a Panel or GEMA, then do we understand how this impacts average performance metrics and would an alternative model solve the problem? What are the drivers for any Panel/GEMA delay – there may be very pertinent reasons to challenge a solution and seek further advice in order to develop a workable outcome (including, if relevant, alternative solutions).

A breakdown is required for Panel determined self-governance modifications and GEMA determined modifications. A breakdown is required of those workgroups attended and supported by Ofgem, and those workgroups where Ofgem were not in attendance. What are the levels of send-back modifications and are there any correlations with engagement levels and/or composition of workgroups.

A breakdown is required for each modification to categorize the reasons why steps in the process may have been delayed (e.g. RIA required, legal opinion required, systems delivery lead time due to complexity, delay to systems delivery (split internally driven and externally driven), workgroup delay to address challenges to solution details, were challenges substantiated or not).

Question 4 [page 18 in consultation document]

Do you agree with our proposed scope of reform?

☒ **Yes**

☐ **No**

☐ **Don't know**

Please explain.

Comments:

SSE broadly agrees with the scope of the reforms. Certain ancillary and subsidy documents to Industry Codes should also be considered within the scope of this reform to reduce and minimise proliferation of documents that needs to be understood supplementary to Codes. It may be more appropriate to include these within Codes to the extent that they create any new obligations or rights.

Much more information is required on the detailed scope of the reforms to inform a full cost/benefit analysis, including: -

- i) Estimate of projected costs;
- ii) More detailed forensic review of opportunities arising, and costs required to deliver change on a Section by Section basis for each Code;
- iii) Estimate of incremental benefits compared to continued use of SCR toolkit;
- iv) Changes required to overarching legislation and licenses;

- v) Is the focus limited to Code governance framework or is the intent to look deeper into content and processes;
- vi) Transitional arrangements.

The scale of the review is substantial, in the face of other high-profile change initiatives in the industry. SSE therefore believe it is crucial to phase in changes over time to ensure an orderly transition.

Any reform also needs to consider how Codes remain relevant and consistent with the principles established for future needs, as market and customer requirements evolve, in order to avoid repeat criticisms 10-20 years in the future.

If not, which additional codes or systems do you think should be included/excluded?

Comments: [Click here to enter text.](#)

Question 5 [page 18 in consultation document]

Are there any codes or systems that we should only apply a limited set of reforms to?

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments:

All Industry Codes and systems should be considered. It is critical to ensure that reforms are implemented in a manageable way however, particularly systems' changes where they are also required. This will provide assurance that the market will continue to operate in an orderly manner throughout the transition process.

Question 6 [page 21 in consultation document]

Do you agree that the four areas for reform are required? Please provide reasons for your position and evidence where possible.

Comments:

1. Strategic direction

SSE agree that there is a case to provide better strategic direction, in order to provide sufficient steer to industry to progress and deliver change. Experience to date suggests that scrutiny is required to deliver large, complex change initiatives.

SSE are not clear however why this cannot be provided through existing or augmented SCR powers and processes. Any new model needs to be better than existing or tweaked SCR process to justify the cost/benefit case for making reform.

SSE would prefer that the review properly considers the current gaps and weaknesses in the SCR process. Why is it considered an inappropriate mechanism to provide strategic direction and deliver strategic change and how can it be tweaked to do so. Would it be helpful to provide increased powers to a ringfenced arm of Ofgem that is not conflicted with its economic regulator duties? This is likely to provide a quicker win at significantly less cost than creating a new body or function from scratch.

The review should also consider some of the practical difficulties in translating Government policy vision into a set of strategic requirements and how this might impact participants' perception of how efficient any revised approach might be. For example, does it simply result in a shift in participants' efforts to engage the process away from the detailed development of change proposals by stakeholder process experts, to the use of effective lobbyists in order to advocate for or against strategic change. Is there a risk of the change pipe stalling if decisions are delayed or not fully established? Is there still room for more mundane day to day change to progress and not be frustrated whilst awaiting strategic change to be directed?

2. Empowered and accountable code management

SSE agree that there is scope for improvement of Industry Code management arrangements, particularly with respect to standardisation of processes, governance, accountability, funding and cost recovery.

We agree that there may be room for an augmented role for Code Administrators to act as Code Managers to ensure delivery of Code requirements and monitor and report on compliance. There may also be a role to apply a level of sanctions and remedies to ensure compliance with obligations - however we do not believe the Code Managers should wield these powers in isolation. They should remain fully accountable to industry parties, with ultimate enforcement action arising from Panel and/or Authority recommendations.

We do not agree that Code Managers should be able to raise change to Codes themselves, other than in a very limited set of circumstances, e.g. housekeeping modifications. It is not enough for Code Managers to be operated in an independent way – they must be seen to be impartial and acting as neutrals in developing solutions to any change brought forward by market actors. They do not have a direct exposure to nor bear any of the risk accruing from operating in the market, so have no moral hazard when considering the consequences of change that they as Code Managers might bring forward. This is a dangerous position to be in when providing the powers to Code Managers as envisaged, as there is a risk that the power will be exercised without due process, oversight and consideration.

Equally it creates a substantial conflict of interest when changes are proposed by itself; to the benefit of itself (e.g. reducing its role and responsibilities or allowing expanded commercial activities or financing new systems at the expense of parties); and determined upon by itself as final arbiter. This is particularly

concerning where funding models are utilised for Code Managers that effectively leave funding Parties at the end of an unlimited liability (e.g. BSC), were the management team of that Code Manager to turn rogue and pursue inopportune or risky business development opportunities with little or no exposure to the consequences of failure. This would potentially allow Code Managers to raise changes that allow them to pursue revenue opportunities for their own benefit/profit (which may be high risk), whilst socialising and underwriting the costs and risks via Code parties, who would have little or no control over the financial consequences.

It may also be possible for Code Managers to frustrate change in this model, where change is brought forward by stakeholders that impacts the Code Managers but that a Code Manager disagrees with and therefore blocks or delays its progress.

Full accountability of the Code Manager must ultimately reside with those who have direct funding obligations.

Were this model to be pursued then much stronger challenge and appeal rights than currently afforded would be required, allowing pursuit of grievances through courts rather than limiting to self-arbitration; and a different funding model that does not directly expose parties to the Codes to an unlimited liability.

SSE agree that there is room for an appropriate prioritisation of change proposals to ensure that key change is brought to the fore and developed more quickly than less critical change. However, this should not imply that less critical change is constantly delayed with seemingly little chance or impetus of progressing – as appears to have been our recent experience with the application of prioritisation within the Grid Code and CUSC. There should be reasonable backstop provisions to ensure that less critical change is pursued periodically or when opportune.

Prioritisation must be assessed against a clear set of criteria. However, we do not believe that this should be at the discretion of the Code Manager for the same reasons as stated above. The Strategic Function should set priorities and provide direction to Code Managers.

Code Managers should remain independent experts, delivering value for money in the governance and operation of the rules encompassed by Codes and not attempt to pick winners (in terms of Code changes); nor second guess the needs of the market, which they do not participate in themselves.

Were the idea to continue to be pursued, there may be a model that mitigates some of the concerns raised above, whereby Code Management is completely separated legally and organisationally from Code Administration. This would likely resolve a number of the conflicts of interest and funding concerns by assuring the independence of the Code Manager when bringing forward change. However, it is not clear that this option would be any more effective than providing the Strategic Function with powers to raise Code changes. Furthermore, this model is still likely to impose significant additional cost (as well as debate as to who should pay) to deliver the separation required.

3. Independent decision making

SSE consider that industry have an important but ultimately limited role in decision making currently and believe some of the concerns raised have either been done so without a full understanding of the current arrangements or reflect commentators' frustration at a perceived inability to engage the process at a working group level to help shape the solution.

SSE believe that GEMA is the existing independent decision-making body; established as such by Statute and EU law, with associated legal obligations that flow from their performance of their role. GEMA is responsible for making decisions on the majority of modification proposals, certainly those with significant commercial, competition or customer impacts. SSE do not believe it is necessary to provide a further decision-making body given that one already exists. It is also not clear how a further decision-making body would function within the Statute and EU law framework that GEMA currently functions within.

Industry's role in decision making on Industry Code modifications is limited to self-governance modifications (which are subject to meeting specified criteria, and by design therefore are less material in their impacts); and in making recommendations on more substantial proposals to GEMA for consideration in their decision making process. Important checks and balances are provided as part of the process that provide appeal rights where parties feel a flawed decision has been reached.

Furthermore, there is limited scope for a single party to unduly influence decisions where change panels are operated to consider and recommend change collectively. SSE fully support the adoption of best practice across Codes to ensure that all change panels operate independently and openly with aligned objectives.

SSE are opposed to removing decision making from industry fully; indeed, it seems to completely reverse the recent direction of travel through three successive Code Governance Reviews undertaken by GEMA, to increase the levels of industry self-governance. It would be a step backwards and increase the burden and costs on the decision-making body unnecessarily for routine decisions.

Additionally, it would leave those taking the commercial risks in the market with little or no influence in the decision-making process, increasing regulatory risk and potentially risk premia within product pricing. SSE believe that industry needs to retain a role in its own destiny.

Notwithstanding the above, were a further decision-making body to be introduced that did not include industry, then appropriate checks and balances would need to be introduced to ensure suitable appeal and challenge rights are provided.

4. Code simplification and consolidation

SSE agree that there is scope to simplify and consolidate Codes, but as responded in Q2, the complexity of the Codes reflects the complexity of the industry coupled with incremental development of solutions over a long period of time.

SSE fully support the removal of redundant or unused provisions and the rationalisation of duplication as quick wins to focus on in simplifying Codes.

SSE also believe that it may be worth exploring at a later point the consolidation of electricity Codes into Retail (dual-fuel with gas), Wholesale and Networks codes. We do not consider that there is a strong case to consolidate gas and electricity Wholesale and Networks arrangements as there is very limited synergy to standardise rules given the fundamental differences in these two commodities, the supporting Wholesale arrangements and how they are transported over their respective Networks.

In terms of consolidation more generally, thought needs to be put into who would have the necessary expertise to lead this task as it will be hugely time consuming, resource intensive and fraught with risk; and who will fund the costs of delivering such a sizeable change.

Any process to rationalise and consolidate Codes should be informed by the lessons learned in setting up the REC for the dual-fuel Retail market.

The remaining set of rules must continue to provide a set of workable processes across multiple industry players that supports competitive market needs, whilst allocating benefits and costs equitably. The remaining set of rules must maintain a legally enforceable Commercial Agreement that clearly assigns roles and responsibilities, setting out who is required to do what and by when.

SSE believe that organisation consolidation should be considered with caution due to the potential significant costs and complexities that could arise to achieve it (e.g. TUPE costs; redundancy costs; IPR issues; pensions and so forth).

Question 7 [page 21 in consultation document]

Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible.

Comments:

SSE welcomes the recognition that industry engagement continues to remain vital in delivering detailed solutions in both models. The energy, enthusiasm and expertise of industry must continue to be harnessed to ensure that robust and workable solutions continue to be developed.

SSE do not support Model 2 at first consideration, as it seems to amalgamate too many roles and responsibilities into one entity. It is not clear to us how this model can work without the introduction of suitable Chinese Walls to ensure that appropriate checks and balances are retained in setting strategic direction and delivering the detailed change required to fulfil the required direction.

Model 1 seems more appropriate as it maintains checks and balances in the process that will support increased scrutiny and challenge to deliver more informed outcomes.

Given the existing statutory framework (in terms of powers and functions of GEMA at both national and European level), any Strategic Direction body must be on a clear statutory footing, including what functions are retained by GEMA and what are

transferred to the new body; and receive direction from Parliament, in order to avoid Industry Codes from becoming overly politicised and used as a tool to change key market rules according to the Government of the day, which would undermine the integrity of the arrangements and reduce investor confidence.

There is also a further Model that should be considered, which is to better utilise existing bodies with augmented powers to set a strategic direction (e.g. augmented use of SCR powers); and enhance the CACOP with reinforced obligations and improved funding to deliver improved cross-code co-ordination and delivery of strategic change, whilst ensuring active stakeholder involvement.

Question 8 [page 21 in consultation document]

**Which model do you believe will best deliver on our desired outcomes?
Please explain.**

Comments:

Model 1 or better utilisation of existing bodies and processes (e.g. SCR) using existing or augmented powers.

Question 9 [page 21 in consultation document]

Do you agree with the changes to the role of code signatories we are proposing?

Comments:

No. See answer to Q6 above.

SSE do not agree that the Code Manager should be able to raise or prioritise modifications of its own volition and without direction from a body representing Code parties and consumers (e.g. such as Code Panels), other than for self-evident housekeeping changes. We do not believe that there is any circumstance where a Code Manager should be approving a modification by itself and without direction from an appropriate body (such as a Code Panel). Sometimes what appears to be an innocuous change can turn out to have wider unintended consequences and therefore an appropriate check and balance should be retained (through Code Panel review) to mitigate this risk.

SSE do not agree that Code Signatories, through elected Panels, should have its decision-making role removed for appropriate self-governance modifications.

We welcome the retention of Code Signatories' role in proposing, developing and recommending modifications for approval.

It is not clear what the revised roles and responsibilities for Panels would be, or if indeed they would continue to be required.

Question 10 [page 29 in consultation document]

Do you agree there is a missing strategic function for codes development in the energy sector and that introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments:

Please see Q6 above.

SSE agree that there is scope to enhance the provision of strategic planning of Industry Code change to facilitate wide-ranging reform across the market and support evolving market needs. SSE consider however, that this may best be achieved by improving and utilising existing SCR provisions. However, the framework needs to include appropriate checks and balances to afford parties a degree of protection against poor decision making; and could create the risk of picking winners if there is a single interpretation of policy and a single interpretation of how to deliver a solution, to the detriment of other actors in the market. It needs to be more effective than the current or augmented SCR process to deliver benefits.

Given the nature of the Codes in helping to deliver detailed processes and systems, they should remain technology neutral and ensure accessibility for all. They should avoid becoming an extension of Government policy, as much more detail is required within Codes to set out what is required of who, by when and on occasion how in order to deliver efficient outcomes.

Who is best placed to fulfil the strategic function and why?

Comments:

SSE believe that Ofgem are best placed to fulfil the strategic function, ideally through use of existing SCR provisions. This may need to be a ringfenced arm of Ofgem to ensure suitable independence and allow strategic decisions to be set out independently to the economic regulator's role. It should be independent to GEMA to ensure a suitable check and balance between those initiating strategic change and those deciding upon it to ensure a robust solution is arrived at.

Question 11 [page 29 in consultation document]

Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?

Comments:

These seem reasonable at a high level; however, levels of detail still need to be added to understand how it will fully operate. Interactions with existing industry objectives, particularly those set out in licenses needs to be carefully considered.

It would be beneficial to better align objectives across Industry Codes and Code Administrators to allow a more consistent approach to Code development, which may better facilitate co-ordinated delivery of strategic change,

Question 12 [page 29 in consultation document]

How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?

Comments:

In bringing forward and prioritising strategic change, the new strategic function must leave room for and not crowd out the ability for Parties to the Industry Codes to be able to propose and develop more mundane, day to day changes that require to be progressed. Care must be taken to ensure that such change does not have to wait an unreasonable period to be implemented, waiting for a suitable strategic change to be directed.

Question 13 [page 29 in consultation document]

What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)?

Comments:

SSE would prefer to see Ofgem use existing or augmented SCR powers to develop strategic direction and propose strategic change.

Were a new Strategic Function body to be introduced, then a high level of engagement with and involvement of industry will be crucial to ensure delivery of optimum outcomes. A Strategy Board would be a helpful medium for engagement but would need appropriate support and communication tools to ensure that effective engagement with industry is achieved. A Strategy Board that meets infrequently for a limited duration would not be sufficient in our view to provide appropriate stakeholder scrutiny and assurance that the Strategic Function is discharging its functions efficiently.

Question 14 [page 29 in consultation document]

Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address (for example, impact on vulnerable consumers)?

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments:

The strategic function needs to take a whole systems approach to delivering strategic change for the benefit of energy consumers and society, to ensure consistency between Government's vision and the low-level detailed requirements needed to make the industry Codes and associated systems function effectively. The Strategic Body should not hinder or block organic change that is driven by the market simply because it has not initiated the proposal – there must remain room to accommodate industry driven improvement to the rules.

Question 15 [page 36 in consultation document]

Do you agree that in addition to the current responsibilities that code administrators have, that the code manager function should also have the following responsibilities?

a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;

☐ Yes

☒ No

☐ Don't know

b. making decisions on some changes, or making recommendations to the strategic body; and

☐ Yes

☒ No

☐ Don't know

c. prioritising which changes are progressed.

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments:

Please see our response to Q6 above.

SSE agree that there is scope to apply common standards across Code Administrators, so that Parties can better know what to expect from service providers. Consideration should be given to determining best practice across Administrators and ensuring consistent delivery of the best standard. Therefore, it would be helpful to ensure that all Codes provide a suitable Secretariat to help develop, analyse, draft, publicise and deliver change, with commensurate funding.

SSE believe however that it is crucial that Code Administrators remain and are perceived by all stakeholders to be impartial and neutral experts in managing and delivering Code requirements and change. It is inappropriate that they themselves be allowed to bring forward, prioritise, develop and decide upon change (other than for self-evident housekeeping changes), and any move to do so will seriously challenge their perceived independence within industry, whilst likely introducing conflicts of interest.

Should Code Administrators be provided with these powers, then enhanced rights of legal challenge and appeal must be introduced to give Parties the right to challenge poor, unreasonable or self-interested decision making.

There is also a suggestion that industry parties may no longer be able to raise change proposals themselves. This would be a most unfortunate and unnecessarily disruptive aspect of reform to implement and would certainly increase regulatory risk premia, resulting in higher costs to consumers. This approach assumes that those who do not operate in the market and take no commercial exposure (such as Code Managers or Code Administrators) have a better knowledge of how to develop the arrangements than those who do operate in the market, have a direct commercial exposure and have an understanding of customer needs. This will never be the case with those who do not operate in the market, particularly over time as bought in knowledge becomes increasingly less relevant and out of tune with the developing market needs.

Question 16 [page 36 in consultation document]

What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?

Comments:

SSE are not convinced that having end-to-end Code and System Managers is a panacea to the issues considered to be holding back co-ordinated change. This proposal needs further thought as it could result in unintended consequences and increased costs if the ability to test the market for efficient price discovery on systems delivery is in any way compromised (e.g. through creation of a monopoly service provider).

SSE believe that more effort and expense could be deployed in delivering the consistency of approach and delivery of co-ordinated effort envisaged through the CACOP to help deliver coherent end-to-end change.

Question 17 [page 36 in consultation document]

Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)?

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments:

SSE believe that the lack of a standard approach across all Industry Codes adds to the feeling of complexity within the industry; and that application of best practice (backed with suitable funding) processes across Code Administrators will help to simplify parties understanding on how to engage in the process, regardless of the Code.

Standardisation and deployment of best practice across all Industry Codes should be delivered and monitored through CACOP provisions, with greater stakeholder involvement in the CACOP arrangements.

Question 18 [page 36 in consultation document]

Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract?

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments:

The Code Manager should be fully accountable to the Code signatories (for example, in a similar way to Elexon as Code Administrator of the BSC).

Please note questions 19- 26 only apply in respect of Model 1 (code managers and a strategic body).

Question 19 [page 36 in consultation document]

Are there more effective ways that the code manager function's accountability to the strategic body could be enshrined other than in a licence or contract?

Comments:

The Code Manager should be fully accountable to the Code signatories.

Question 20 [page 36 in consultation document]

Do you agree that we should not consider further a model whereby the code manager function is accountable to industry?

☐ Yes

☒ No

☐ Don't know

Comments: See answers to Q18 and Q19.

Question 21 [page 37 in consultation document]

Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments:

SSE agree that a competitive process would be required to ensure an efficient procurement that delivers a competent service provider that offers value for money. Any service provider appointed should be judged on expertise, competency and track record as much as price.

The contract must be able to be retendered on a periodic basis to test the market and ensure that continued competitive pressures derive an efficient price discovery.

Further to comments previously made, this is an area potentially open to abuse were a Code Manager able to raise, prioritise and self-determine on modification proposals. For example, introducing information systems change shortly prior to retendering that favours its own business model and systems and makes it difficult for potential competitors to accommodate meaningfully in its tender.

Question 22 [page 37 in consultation document]

Do you think the code manager function should be established by the strategic body creating a body or bodies?

☐ Yes ☒ No ☐ Don't know

Please explain.

Comments:

The function of the Code Manager should be clearly defined by the Strategic Body. However, we do not believe that the Strategic Body should establish a body to fulfil the role through direct appointment. The role should be tendered and subject to competitive procurement.

If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability?

☒ Yes ☐ No ☐ Don't know

Please explain.

Comments:

It is likely that an entity directly appointed by the Strategic Body and not subjected to competitive market forces, should have greater scrutiny applied to its funding and cost recovery model. It may be necessary to fund from Government resources and recover costs through regulated prices, if the Code Manager effectively becomes an extension of the State, i.e. a public authority.

Question 23 [page 37 in consultation document]

In terms of establishing/choosing the code manager function, do you agree that we should not consider further:

a. requiring an existing licensee to become the code manager; and/or

☐ Yes ☒ No ☐ Don't know

b. requiring a licensee (or group of licensees) to create the code manager?

☒ Yes ☐ No ☐ Don't know

Please explain.

Comments:

There is no reason why a price-controlled licensee could not be required to establish the Code Manager (as per today).

Existing service providers should be allowed to tender for the Code Manager role, provided that they do not have a vested interest in the Codes or the markets that they would be managing.

Question 24 [page 37 in consultation document]

What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function?

Please explain.

Comments:

The most effective means to ensure delivery of value for money will vary depending upon the final model chosen.

For example, establishment of a single Code Manager, appointed rather than procured through tender, would imply the need to fund and manage the business through price control, as such an entity is likely to display monopolistic characteristics.

A suite of tendered Code Managers would benefit from competitive forces in discovering an initial price and providing ongoing benchmarks; and therefore, could be held to account through budget scrutiny, provided that effective sanctions and remedies are in place to ensure delivery against prescribed service standards.

Question 25 [page 37 in consultation document]

Are there any factors that:

a. would stop parties (including code administrators) from becoming a code manager?

☒ Yes

☐ No

☐ Don't know

b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers)?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments:

- a) existing Code Administrators may not have the skills, resource, funding or desire to take on the role of Code Manager.
- b) the Code Managers should not have a vested interest in the Codes or the markets they manage as that could create a conflict of interest; and they should remain fully accountable to Code signatories.

Question 26 [page 37 in consultation document]

How should the code manager function be funded (for example through licence fees or by parties to the code(s))?

Please explain.

Comments:

Please see answer to Q24 above.

The funding model will depend upon the chosen delivery model, number of Code Managers appointed or procured and to whom they would be accountable.

The greater the level of consolidation, the more likely that price control funding will be required to ensure appropriate scrutiny is applied to a monopolistic service provider.

SSE would prefer to see Code Managers remain fully accountable to Code signatories, which would imply that funding should be sourced through Parties to the Code. Accountability must provide credible remedies for failure of the Code Manager to perform to drive through efficiency; as well as for inappropriate spending of funds.

Question 27 [page 44 in consultation document]

Are there any quick wins that could be realised in terms of code consolidation and simplification?

Comments:

SSE believe that several quick wins could be explored and developed as a priority which may defer to need to make more radical reform. Answers to previous questions have highlighted those quick wins, including: -

1. Cement or augment SCR powers to deliver Strategic Direction;
2. Enhance and enforce CACOP provisions to support more efficient co-ordination of cross-code working;
3. Align Code objectives and standardise processes to engage with and develop change to the Codes;

4. Ensure that best practice is identified and applied to a common standard across all Code Administrators;
5. Appropriately fund Code Administrators and CACOP to deliver a better standard of and more efficient service; particularly for those Code Administrators constrained by price control as to how much money they can commit to Code Administration;
6. Establish Single Points of Contact to improve ease of industry engagement (who would be responsible for subsequent liaison with each individual Code Administrator);
7. Establish Single Points of Contact to allow co-ordinated change to be raised;
8. Establish streamlined processes for participant engagement with the Codes and the change process;
9. Establish overarching roadmap tools that sets out the Industry Codes landscape and signals what Codes apply to given business models;
10. Enhance the use of plain English guidelines for all Codes (as per Elexon Guidance Notes);
11. Establish an energy industry wiki or other digital platform to support better cross-referencing of Codes and aid understanding of and engagement in Industry Codes processes;
12. Introduce Net Zero Carbon Code objectives;
13. Introduce Cross-Code co-ordination objectives.

Question 28 [page 44 in consultation document]

How many codes would best deliver on the outcomes we are seeking under these reforms?

Comments:

SSE do not believe that there is a compelling case to merge gas and electricity Codes given the fundamentally different nature of the commodity and transportation arrangements within Wholesale and Networks.

Within fuel Codes, there is merit in considering further rationalisation and consolidation.

Option C, partially consolidated by industry activity type, partially consolidated by fuel, is our preferred option.

Question 29 [page 44 in consultation document]

Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?

Comments:

This will depend upon the number of Codes deemed to be optimal. SSE would prefer that each Code should have its own Code Manager/Administrator.

Question 30 [page 44 in consultation document]

Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.

Comments:

Option c)

Question 31 [page 44 in consultation document]

Do you agree that the codes should be digitalised?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments:

More detail is required as to what exactly this would entail and at what cost, but in principle SSE support initiatives to digitise Codes (having first promoted the idea via ECCAF a number of years ago) that will aid stakeholders understanding of how to navigate the Codes.

Question 32 [page 47 in consultation document]

What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?

Comments:

Industry should have a clear role in establishing a framework to effectively monitor compliance and report on non-compliance with Industry Code obligations. It may also be appropriate for industry to apply appropriate incentives to help resolve non-compliances, such as the calculation and charging of liquidated damages.

More substantive sanctions and remedies for serial non-compliance and/or significant non-compliance should be escalated to the Regulator to determine.

Question 33 [page 47 in consultation document]

Which of the two models we propose would better facilitate effective monitoring and compliance arrangements?

Please explain.

Comments: [Click here to enter text.](#)

Which model is chosen seems less important than establishing an effective performance assurance framework to monitor, identify and report on non-compliance.

Please note this question only applies in respect of Model 2 (integrated rule-making body).

Question 34 [page 47 in consultation document]

With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation?

Please explain.

Comments:

Given the potential impact on a participants businesses and ability to continue to trade, GEMA should be responsible for imposing sanctions and remedies for serial or serious non-compliance.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No