Department for Business, Energy & Industrial Strategy

ofgem
Making a positive difference for energy consumers

CONSULTATION ON REFORMING THE ENERGY INDUSTRY CODES

Closing date: 16 September 2019

July 2019

Any enquiries regarding this publication should be sent to us at:
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industrycodes@ofgem.gov.uk

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General information

Why we are consulting

BEIS and Ofgem are seeking the views of interested parties, including existing code parties, wider industry players, consumer groups, academics and existing code administrators on issues with code governance and proposals for what improvements could be made and how. We are particularly interested in evidence on potential costs of different approaches.

Consultation details

Issued: 22 July 2019

Respond by: 16 September 2019

Enquiries to:

Electricity Systems Team
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Abbey 1, 3rd Floor,
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Email: industrycodes@ofgem.gov.uk

Consultation reference: Consultation on reforming the energy industry codes

Audiences:

Code parties, code administrators, consumer groups, energy sector research groups and any other organisations with a direct interest.

Territorial extent:

Great Britain

How to respond

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

Please email your response 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 addresses below.

Write to:

Code Reform - Electricity Systems Team
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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.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

BEIS and Ofgem will process your personal data in accordance with all applicable data protection laws. BEIS and Ofgem are joint controllers in relation to the personal data received in response to this consultation. See our privacy policy. If you change your mind about us

using your personal information you have a right to have the relevant information deleted. If this is the case, please email codereform@beis.gov.uk.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Executive Summary

The energy sector is experiencing a period of unprecedented change. New technologies and business models are changing the way that the electricity system operates; with new types of demand, a significant growth in low carbon generation, and the potential for smarter, more flexible approaches to balance between them. The transition to a low carbon heating future will be complex and challenging, with major implications for the gas system.

It is imperative that the electricity and gas systems are governed in a way that allow them to respond quickly to the challenges and opportunities they face, while enabling new entrants and innovation to be part of the solution – a requirement that has become only more important following the Government's legislative commitment to reach net zero emissions by 2050 in a cost-effective way. Ensuring that there is effective and agile governance of the technical and commercial rules of the system is a vital part of delivering this in a way that ensures costs are efficient, customer choice is maximised, and consumers are protected.

Many of the detailed rules that facilitate the gas and electricity markets are set out in 'codes' or rules governed by industry-led processes and overseen by Ofgem. These codes have done a remarkable job of setting the rules of the industry post-privatisation, drawing on the expertise and engagement of industry parties to play a vital role in keeping the lights on, our businesses running, and our homes warm, for in some cases over 20 years.

But over that time, the gradual evolution of code governance has left the overall framework fragmented, complex and poorly co-ordinated, with weak incentives to drive timely change. Processes and accountabilities that may have been appropriate when individual codes were established over the last couple of decades, may no longer be best suited. The rules governing the energy system need to adapt much more rapidly to enable the transition towards a more flexible energy system with net zero emissions, while minimising costs and protecting consumers. Reforming the code governance framework could, therefore better facilitate strategic changes in the sector, unlocking innovation and significant benefits to consumers.

Our desired outcome is an energy code framework that:

1. makes it easier for any market participant to identify the rules that apply to them and understand what they mean; making it easier for new and existing industry parties to innovate to the benefit of energy consumers;

2. is forward-looking, informed by and in line with the Government's ambition and the path to net zero emissions; and ensures that codes develop in a way that benefits existing and future energy consumers;

3. is agile and responsive to change that benefits energy consumers, while able to reflect the commercial interests of different market participants, to the extent that this benefits competition and consumers; and

4. can accommodate a large and growing number of market participants, with effective compliance in an inter-dependent system.

Recognising the depth of knowledge about the energy codes that exists in the sector, and the importance of drawing on this as we ensure a robust governing framework for the 2020s and beyond, this consultation outlines our thinking on each of the desired outcomes and the changes that might be necessary to meet them, and seeks stakeholder views in each area.

This document is a product of a joint review of the code governance arrangements undertaken by teams in BEIS and Ofgem. BEIS and Ofgem are publishing this document together because we both recognise that the potential consumer benefits of an agile system that supports innovation are significant, and that there is a need for both of us to act to deliver this. To make the necessary changes successfully we will both need to exercise our independent responsibilities, co-ordinating changes where appropriate.

Building on the positive steps taken in the Retail Energy Code (REC) this consultation sets out options for a fundamentally different approach to the governance of the detailed rules on which the GB energy market operates. In the light of feedback, we will refine our proposals and recognise that there is further work necessary to consider more detailed points about the operation of a new regime.

Background and scope of this review

In developing this consultation, we have built on previous work on code governance[1], by engaging with industry, consumer groups and regulators across a range of sectors and jurisdictions as well as conducting internal analysis.

This work suggests that the existing industry code arrangements have a number of characteristics which mean they do not respond to changes in a timely manner:

- *Fragmentation and lack of co-ordination*: No single organisation under the existing framework is responsible for looking at the opportunities the energy transition might create for consumers. Oversight of what changes will be needed, and when, is fragmented which could delay implementation of changes that benefit consumers. The rapid pace of developments and their impacts across the whole system means these changes will need to be timely, co-ordinated and effective. Increased consolidation of code bodies and strategic leadership may be appropriate to address this issue.

- *Lack of incentive for change*: The existing governance framework is primarily industry led, which can result in conflicting interests or a lack of incentives on industry to make changes that are in the interests of consumers. These conflicting interests can mean that change is slow to progress. The pace of change can also be seen as a barrier to innovators looking to quickly launch new products to the market. To address this, it may be appropriate for the responsibility for code changes to sit within one or more organisations with a specific remit for driving change in line with the Government's vision for energy.

- *Complexity*: The codes are lengthy and difficult to understand; there are multiple codes and a large number of code modification proposals being progressed at any given time. There are also a large number of different institutions, each with different governance, ownership structures and incentives, responsible for these codes and running

[1] Energy markets investigation, Final Report, Competition & Markets Authority, June 2016 https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf
Code Governance Review, Ofgem https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review
Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations, Ofgem, November 2016 https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf

associated IT systems and networks. It is a complex environment, difficult for new parties to navigate, with the potential for duplication of effort and inefficiencies. It may be appropriate to simplify and streamline the existing code arrangements to address this issue.

Proposed reforms

We have identified four areas for reform that we consider will improve the existing arrangements:

1. **Providing strategic direction**: ensuring the regulatory framework is forward looking and is informed by the Government's vision for the energy system. We propose creating a new function that can take account of that high-level vision and translate it into a strategic direction for codes that promotes the interests of consumers. This is intended to address the current fragmentation and lack of co-ordination between the codes.

2. **Empowered and accountable code management**: a mechanism for ensuring that the strategic direction is delivered through appropriate changes to codes and that these changes are progressed in a clear and logical manner across codes. We consider this could be achieved through the creation of an empowered code manager function that has the right expertise, resources and powers to oversee the change process; monitor compliance with code obligations and decide on appropriate measures in the event of non-compliance.

3. **Independent decision-making**: rebalancing decision-making away from industry control, to arrangements that are agile and responsive to change and work in the interests of existing and future customers, where the right incentives drive the design of rules and systems, while continuing to draw on industry input and expertise.

4. **Code simplification and consolidation**: to improve accessibility: simplify and consolidate codes, removing unnecessary content, and ensuring codes are suitably adaptive to a changing industry. This could enable innovation and lower barriers to entry by making codes clearer, more transparent, and accessible. Fewer and simpler codes would also be easier to rapidly change in response to strategic priorities.

Proposed new institutional framework

We have identified two potential models, which we consider could meet our above outcomes and solve the problems identified above of fragmentation and lack of co-ordination; lack of incentives creating delays to change and complexity.

These potential models are:

- **Model 1** - a code manager function and separate ‘strategic body’; or
- **Model 2** - an ‘Integrated Rule Making Body’ (IRMB) (a combined code manager function and strategic body).

For both proposed models, the Government would be responsible for articulating the vision and policy direction for the energy system, and this policy framework would help to shape the

decision-making and prioritisation of code change. This could either be via government energy policy announcements and publications, or through a formal mechanism providing specific guidance to the body. The strategic body under Model 1 or the IRMB under Model 2 would be required to take account of the Government's vision for energy and to translate it into a strategic direction for the development of codes.

For both models, there are important further choices over the number of codes – whether it makes sense to consolidate the body of rules into, for example, three or even one unified code. Under Model 1, these would then be overseen by one or more code managers, who would consider the direction set by the strategic body and interpret this for their own code or codes. Code managers would also oversee the change process, potentially making decisions on some changes, consulting and working with industry on more material changes, and proposing solutions to the strategic body for approval. The code manager function would also potentially have a role to ensure that codes are complied with. Under Model 2, each of these activities would be undertaken by the IRMB.

Both models retain important roles for industry parties, working with code managers on the details of code changes. Drawing on industry expertise and experience to help develop change across the sector will remain an important part of the code development process.

This consultation is aimed at establishing a potential framework for reforms. Developing these proposed arrangements would require further consultation, and noting that we would consider how reforms could be made, including through primary legislation if necessary.

The structure of the remainder of this document is as follows:

- *chapter 1* provides **background** to the issues with codes and work in this area to date, and the scope of the consultation;
- *chapter 2* articulates a **vision for code reform**, and discusses the main options in more detail, articulating some of the trade-offs and benefits of different institutional arrangements;
- *chapter 3* considers **providing strategic direction**, outlining the case for a strategic body, what its main functions would be, and possible options on who might perform the role;
- *chapter 4* considering **empowered and accountable code management, and independent decision making,** discussing the proposed new 'code manager' function, its potential governance arrangements, and possible options for the scope of its duties;
- *chapter 5* considers **simplification and consolidation,** outlining the challenges and benefits of different approaches;
- *chapter* 6 covers compliance **monitoring and compliance** within the context of this review; and
- *chapter 7* sets out the **next steps** for proposing changes to the industry codes.

1 Background

This section presents the context, work to date, and a high-level overview of desired outcomes of the reforms.

1.1 Setting the scene

The energy sector is experiencing a period of unprecedented change, with significant growth in low carbon technologies and smarter, more flexible approaches. The UK is one of the first major economies to legislate to reach net zero emissions by 2050, which will end our contribution to global warming, and achieving this will require us to embed the principle of reducing carbon emissions in every layer of energy regulation. The scale and pace of change in the energy system needed to meet the Government's targets will require agile regulation, with proactive governance of the technical and commercial rules of the system. Effective code management with appropriate strategic oversight could help unlock innovation and help to ensure we have a secure, affordable and clean energy system now and in the future.

Ofgem is an independent regulator and National Competition Authority, with its statutory duties established in law. Its priority is to protect and make a positive difference for all energy consumers.

Government and Ofgem are committed to ensuring the energy system works for consumers and business, to the extent that this benefits competition and consumers. This means updating many of the rules and practices[2] governing the sector that have evolved piecemeal, and that were designed during times when the energy system was very different, where there were fewer and larger generators and suppliers dominating the market.

The codes set out much of the detail underpinning the operation of the electricity and gas networks, and the wholesale and retail markets. Each of the codes has a different set of administrative arrangements. Some are owned by network companies and some by parties to the code; some are administered by the network companies, some by bodies set up by the owners for the purpose (of code administration) and some under contract by profit making entities; and there are different arrangements for how modifications are raised, developed and agreed. These differences and complexities result in a lack of co-ordination between the different codes. A non-exhaustive representation of relationships between code parties, codes and related systems, services and networks can be seen in Annex A and Annex B.

For many years the existing framework served as a workable model that allowed industry to take responsibility for the detailed technical and commercial rules that applied to the energy sector, and some incremental reform of the governing arrangements has been possible to date. By building on the expert input of industry, the codes framework has allowed the rules of the system to evolve and enable the gradual changes we have seen in the energy system since privatisation. However, in recent years, particularly as the scale and materiality of proposed code changes has increased, there has been a growing body of evidence that the governance and content of these codes may no longer be fit for purpose as the energy system continues to evolve.

[2] Overview of Industry Codes, Ofgem
https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-codes

1.2 Past developments

In June 2016, the Competition and Markets Authority (CMA) published its 'Energy Market Investigation Final Report'[3]. This report found "*a combination of features of the wholesale and retail gas and electricity markets in Great Britain that are related to industry code governance and which give rise to an Adverse Effect on Competition*". In particular, it highlighted as features of concern "*Ofgem's insufficient ability to influence…the process*", and that parties to the codes faced "*conflicts of interest and/or limited incentives to promote and deliver policy changes*". The report also proposed a broad range of remedies aimed at addressing these issues.

Following the CMA's report, Ofgem started a programme of engagement with industry to develop reforms to code governance. In November 2016, Ofgem published an initial consultation on implementing the CMA's recommendations for industry code governance[4]. This consultation proposed licencing of code managers and delivery bodies, setting a strategic direction for code development and establishing and running a consultative board to co-ordinate cross-code change. Following this publication, Ofgem held several industry workshops on these proposals. However, they noted at the time that legislative change would be required to implement the full programme of work proposed.

In June 2019, the Government published 'Regulation for the Fourth Industrial Revolution', a White Paper setting out plans to transform the UK's regulatory system to support innovation while protecting citizens and the environment[5]. It includes plans to ensure that we are on the front foot in reforming regulation in response to technological innovation, and support innovators to navigate the regulatory landscape. These are important challenges for the energy sector and are therefore a focus of the joint Ofgem-BEIS review which has led to the proposals set out in this consultation.

1.3 This review

While the changes in past code governance reviews have delivered improvements, we believe that many of the fundamental issues identified by the CMA and Ofgem still remain (see Table 1). This is supported by the Energy Systems Catapult and Institution of Engineering and Technology's Future Power System Architecture project, which has identified the fragmentary codes landscape as a major barrier to ensuring the energy system is technically capable to meet the challenges of the energy transition[6]. The work of the iGov project at Exeter University, which has looked systematically at the capacity of the GB energy system to adapt to fundamental change, also supports this assessment[7]. Further, there is growing industry consensus that action is necessary to create a regulatory framework capable of delivering the changes required to move to a clean, smart and consumer-led energy system, in line with the Industrial and Clean Growth Strategies.

[3] Energy market investigation: Final Report, CMA https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf

[4] https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf

[5] https://www.gov.uk/government/publications/regulation-for-the-fourth-industrial-revolution

[6] https://www.theiet.org/media/2620/fpsa-3.pdf

[7] https://projects.exeter.ac.uk/igov/

In November 2018, the Government and Ofgem launched a joint comprehensive review aimed at developing options for improving the codes and their governance. As part of the launch, we published the Terms of Reference of the review,[8] noting that we would consider how reforms could be made, including through primary legislation if necessary. As part of our review, we have been engaging with a broad range of stakeholders, including holding workshops in February 2019[9].

Our desired outcome is an energy code framework that:

1. makes it easier for any market participant to identify the rules that apply to them and understand what they mean, making it easier for new and existing industry parties to innovate to the benefit of energy consumers;
2. is forward-looking, informed by and in line with the Government's ambition and the path to net zero emissions; and ensures that codes develop in a way that benefits existing and future energy consumers;
3. is agile and responsive to change that benefits energy consumers, while able to reflect the commercial interests of different market participants; and
4. can accommodate a large - and growing - number of market participants, with effective compliance in an inter-dependent system.

There are a number of ongoing or recent reviews that interact with our work on code governance. BEIS is taking forward work with Ofgem on the future of the retail market. We are currently considering the recommendations of the Energy Data Taskforce, run by the Energy Systems Catapult and chaired by Laura Sandys.[10] We have also launched a panel to review the engineering standards to which the electricity system is planned and designed, chaired by Simon Harrison.

1.4 Evidence of challenges

In the Terms of Reference for the review, we identified several challenges in the current framework. Table 1 summaries these challenges, together with evidence of how they may have manifested in the past. While no individual metric or case study can be used to measure the overall functioning of the codes, we believe that taken as a whole these examples make a powerful case for change if we are to avoid similar outcomes, stifling innovation and competition as the energy system adapts to the challenges of the coming decades.

Table 1: Evidence of challenges

Challenge		**Evidence**
Fragmentation and lack of co-ordination	**Slow to implement change** Changes are slow to progress, with some straightforward modifications	Broadly, it took an average of between 200 and 250 calendar days to make a change to the Balancing

[8] https://www.ofgem.gov.uk/system/files/docs/2018/12/tor_revised_final_301118.pdf
[9] https://www.ofgem.gov.uk/publications-and-updates/energy-industry-code-review-workshop-agenda
[10] https://es.catapult.org.uk/news/energy-data-taskforce-report/

	taking considerable time to go through the modification process.	and Settlement Code (BSC), Distribution Connection Use of System Agreement (DCUSA) and Uniform Network Code (UNC)[11]
	Lacking co-ordination between different code bodies Changes are typically reactive to existing problems rather than forward-looking in preparing the energy system for future changes. This is partly due to the lack of a single organisation providing a strategic direction to the development of codes and industry systems.	Major changes often cut across multiple bodies – e.g. meter splitting to enable peer-to-peer trading, local energy schemes, vehicle to grid
	Fragmented with a large number of code panels and bodies, which provides for a complex institutional landscape There is fragmentation and lack of co-ordination between the different code panels and bodies, making it difficult to take forward strategic changes to the rules for example on faster switching (where Ofgem has had to step in as a result to implement a policy decision).	11 different codes with 6 code bodies and varying governance and ownership arrangements
Lack of incentive for change	**Reactive to existing problems, rather than forward-looking in preparing the energy system for future changes**.	There has been increasing need for intervention from Ofgem in response to changes in the energy system (e.g. Significant Code Reviews (SCRs) on charging, access, switching, time-limited, purpose-specific primary legislation to implement cross code changes, e.g. half-hourly settlement, and balancing)
Complexity	**Overly complex** The complexity and length of the current codes could act as a barrier	Current codes are over 10,000 pages[12] (over 50kg when printed), while a significant proportion of parties eligible to propose changes

11 This is based on the date of a change entering the change process through to either an Authority or panel decision, but does not include timings of any pre-change process or implementation. This is based on a two- year period ending 31 May 2019.
12 Good Energy, 2015. Response to Ofgem Open Letter on Further Review of Code Governance

	to new entrants and to innovation. The current codes are complex and code administrators have limited incentives or powers to monitor and undertake compliance activities ensure compliance or enforce.	have never done so (e.g. only 4% of CUSC signatories have proposed changes since 2010[13], and as of summer 2019, around 5% of those eligible to raise a BSC change have taken up the opportunity since 2016 and around 17% historically[14].
	Resource-intensive to engage in the process	Average of 16 full day workshops for each modification[15]

1.5 Desired outcomes

To address the challenges noted above, we have identified four desired outcomes of a well-functioning code system. Table 2 is a description of these outcomes, together with a high-level assessment of the issues we see in the current framework.

Table 2: The desired outcome in relation to the current challenges faced by industry codes

Challenge	Proposed reform	Desired outcome
Fragmentation and lack of co-ordination • Slow to implement change. • Lacking co-ordination between different code bodies. • Fragmented with a large number of code panels and bodies which provides for a complex institutional landscape.	**Providing strategic direction** • Regulatory framework facilitates timely change –both ad-hoc and strategic – and enables innovation and co-ordination across codes and industry systems.	**Forward-looking, informed by, and in line with wider industry/government strategic direction and the path to net zero emissions** • Energy sector rules are important and complex, and change must be carefully considered. • At the same time, the unprecedented pace of change in the industry driven in part by a greater role for public policy questions, such as decarbonisation, requires a regulatory framework that is streamlined and co-ordinated, to enable transition in line with the Industrial and Clean Growth Strategies.

[13] CUSC, source: Electricity System Operator
[14] Source: email communication with ELEXON
[15] CUSC, source: Electricity System Operator. Please note that previously we incorrectly stated that this statistic related to the BSC, with ELEXON as the source.

		• Ensure that the industry arrangements respond to these challenges in a way that works for consumers and the industry.
Lack of incentive for change • Reactive to existing problems, rather than forward-looking in preparing the energy system for future changes.	**Empowered and accountable code management** • Robust monitoring and compliance.	**Can accommodate a large and growing number of market participants, with effective compliance in an inter-dependent system** • With more and more diverse market participants joining an extremely inter-dependent system, compliance will remain as important.
	Independent decision making • Right expertise and incentives driving rule design and change process.	**Agile and responsive to change, while able to reflect the commercial interests of different market participants** • The regulatory framework needs to accommodate a large - and growing - number of market participants. • An increasingly diverse mix of market participants, often without dedicated regulatory function resource to propose and take through rule change (e.g. 'prosumers', local energy technology firms etc.).
Complexity • Overly complex. • Resource-intensive.	**Code simplification and consolidation** • Rules are clear and accessible. Robust compliance monitoring and compliance enforcement	**Easier for any market participant to understand the rules that apply to them and understand what these mean** • The energy sector is, by its nature, complex. However, clear rules should make it easier for any market participant to:

		a. understand which rules apply to them; b. understand what the rules mean

1.6 Scope

The scope of the challenges, reforms and outcomes considered by our current review is broader than those considered by Ofgem in its 2016 consultation on delivering the CMA's code governance remedies[16]. For example, we are explicitly considering consolidation and simplification of the codes, as well as a more fundamental restructuring of the institutional framework (e.g. potentially consolidating code management).

Nevertheless, we consider that it is the same codes and systems that are most affected by the challenges we have identified, and we therefore propose that the same codes and systems should be in scope of our proposed reforms. These are:

- National Grid Electricity System Operator (NGESO) codes (CUSC, GC, STC) and the non-NGESO codes (BSC, MRA, DCUSA, DC, SEC, UNC, SPAA, iGTUNC). This would also, in future, include the REC[17]; and
- Smart metering (delivered by data and communications company - DCC), gas (delivered by Xoserve) and electricity (delivered by ELEXON) central systems delivery functions.

In addition to these codes and systems, we also propose that the Data Transfer Service (DTS) should be in scope of our proposed reforms. Further consideration on the potential scope can be found at Annex D.

1.7 Questions

1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? Yes/No/Don't know. Please explain.

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

2. Do you agree with the problems we've 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.

[16] https://www.ofgem.gov.uk/publications-and-updates/industry-code-governance-initial-consultation-implementing-competition-and-markets-authority-s-recommendations

[17] Connection and use of system code (CUSC); grid code (GC); system operator – transmission owner code (STC), balancing and settlement code (BSC), meter registration agreement (MRA); distribution connection and use of system agreement (DCUSA); distribution code (DC); smart energy code (SEC); uniform network code (UNC); supply point administration agreement (SPAA); independent gas transporter uniform network code (igtUNC); retail energy code (REC).

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

4. Do you agree with our proposed scope of reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?

5. Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.

2 Vision & options

This section looks at the future of regulation, our proposed elements of reform, and two possible governance models.

2.1 The future of regulation

Regulation will need to be able to facilitate rapid and forward-looking strategic change to keep pace with our changing energy system and enable future innovation. This change will need to be co-ordinated across the whole system, spanning retail, wholesale and networks, and across both gas and electricity. Crucially the rules need to be simple to understand, and clear in their relevance to different parties.

Ofgem is an independent regulator and National Competition Authority, with its statutory duties established in law. Its priority is to protect and make a positive difference for all energy consumers. It works to promote value for money, security of supply and sustainability for present and future generations. It does this through, for example, the supervision and development of markets and through regulation. It works effectively with, but independently of, Government, the energy industry and other stakeholders. In seeking to deliver better functioning codes and governance, Ofgem is exercising its functions independent and working effectively with BEIS as appropriate.

2.2 Elements of reform

Government and Ofgem have identified four areas in which reform of code governance and processes is needed to better facilitate our desired outcomes:

1. **Providing strategic direction**: ensuring the regulatory framework is forward looking and is informed by the Government's vision for the energy system. We propose creating a new function that can take account of that high-level vision and translate it into a strategic direction for codes that promotes the interests of consumers. This is intended to address the current fragmentation and lack of co-ordination between the codes.

2. **Empowered and accountable code management**: a mechanism for ensuring that the strategic direction is delivered through appropriate changes to codes and that these changes are progressed in a clear and logical manner across codes. We consider this could be achieved through the creation of an empowered code manager function which has the right expertise, resources and powers to oversee the change process; monitor compliance with code obligations and decide on appropriate measures in the event of non-compliance.

3. **Independent decision-making**: rebalancing decision-making away from industry control, to arrangements that are agile and responsive to change and work in the interests of existing and future customers, where the right incentives drive the design of rules and systems, while continuing to draw on industry input and expertise.

4. **Code simplification and consolidation**: to improve accessibility: simplify and consolidate codes, removing unnecessary content, and ensuring codes are suitably adaptive to a changing industry. This could enable innovation and lower barriers to entry by making codes clearer, more transparent, and accessible. Fewer and simpler codes would also be easier to rapidly change in response to strategic priorities.

An illustration of how these elements of reform could improve the process of changing the codes and systems can be seen in Annex C. This consultation seeks stakeholders' views on these four elements of reform, and on our proposals for each of them set out in the following chapters.

2.3 Governance models

To achieve the outcomes set out in chapter 1, we believe that significant change will be needed to the codes landscape, but there are different ways in which these reforms could be realised. We have identified two broad models (Figure 1), which we consider could meet our outcomes and solve the challenges identified above of fragmentation, lack of co-ordination; lack of incentives to change; and complexity. These potential models are:

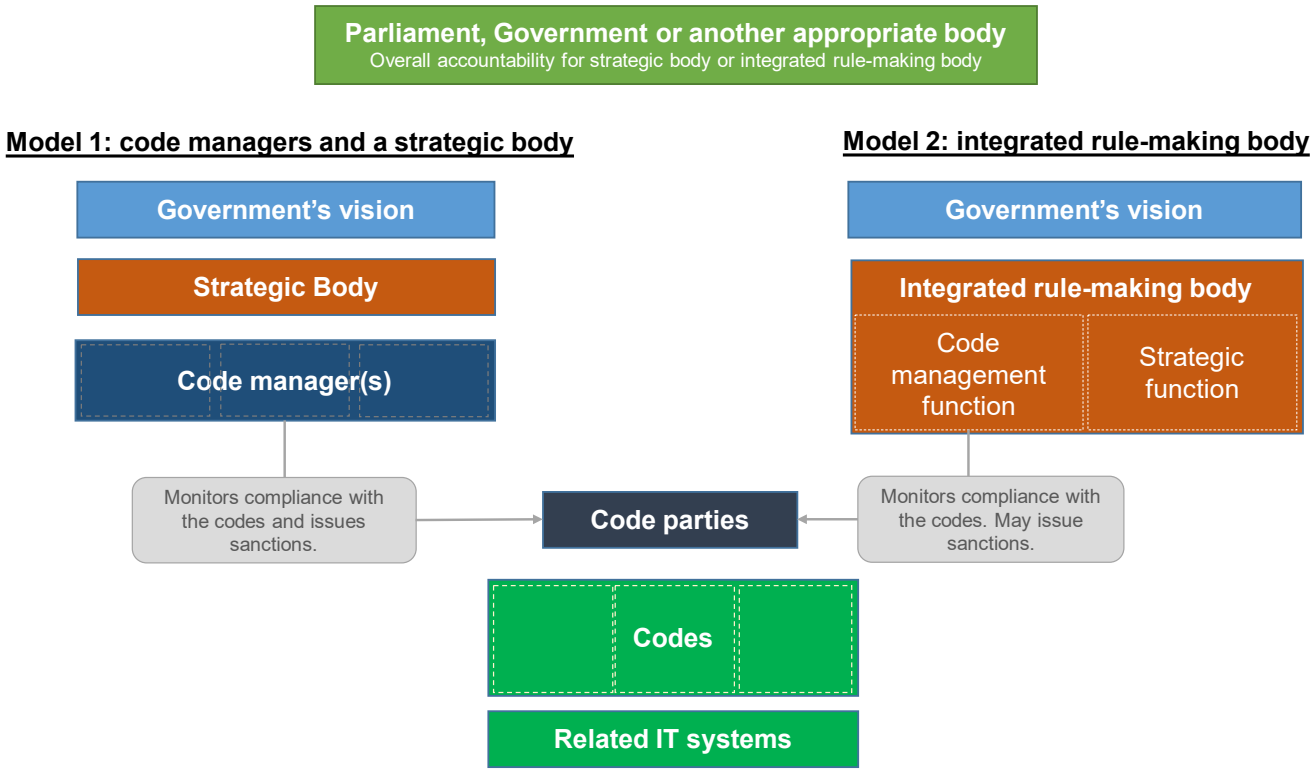


Figure 1: Governance models - Model 1: code manager function and a strategic body and Model 2: Integrated rule-making body.

Model 1: Code manager function[18] and a separate strategic body: In this option the strategic body is a separate organisation from the code manager function. The code manager function is held accountable for delivering on the strategic steer, which is outlined by the strategic body,

[18] NB: – the number of code managers in the diagram is illustrative only. This model could work with a single code manager or several.

which would be accountable in turn to Parliament, the Government or another appropriate body (such as Ofgem).

Model 2: Integrated Rule Making Body (IRMB): In this option the strategic function and the code manager function are held in one single organisation, known as the Integrated Rule Making Body. This could allow scope for greater co-ordination between the strategic function and the code mangers. This body could be accountable to Parliament, the Government or another appropriate body (such as Ofgem).

There are a range of other elements to be considered within these models, including the scope of the strategic direction, the governance of the framework and specific responsibilities of each function, and the potential changes and consolidation of the codes themselves. These issues are explored in greater depth in the chapters that follow.

Engagement with industry participants would remain vital to both models, for example providing expertise to help identify and develop code modifications. However, we are also proposing to increase the independence of decision making and therefore ensure that the new bodies are incentivised to deliver in the interests of consumers.

Our proposals for how these models would impact roles and responsibilities of relevant persons are summarised in Table 3 and Table 4. These are high level suggestions and the precise division of responsibilities will depend on the outcome of our consultations and policy development. This consultation considers a range of permutations of roles and responsibilities in addition to this proposal.

2.4 Questions

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

7. **Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible. –** ***further detail can be found on each model in the chapters that follow.***

8. **Which model do you believe will best deliver on our desired outcomes? Please explain.** ***NB: – further detail can be found on each model in the chapters that follow.***

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

Table 3: Status quo (precise division of responsibilities varies by code). 'Mod' = modification to an energy code.

	Who the code administrator is accountable to	Organise mod process	Propose mods	Develop mods	Recommend mods for approval	Prioritise mods	Approve mods	Lead significant code change
Code signatories	X	-	X	X	X	-	X	-
Code administrators	-	X	-	-	-	-	-	-
Ofgem	-	-	X*	-	-	-	X**	X

*Ofgem can raise modifications in limited circumstances, such as for changes to EU law or during an SCR

**Ofgem only has a role approving modifications where self-governance criteria are not fulfilled. In practice, this means complex, controversial or significant changes.

Table 4: Possible roles and responsibilities of different parties following proposed reform. Mod = modification to an energy code.

	Who the code manager is accountable to	**Organise mod process**	**Propose mods**	**Develop mods**	**Recommend mods for approval**	**Prioritise mods**	**Approve mods**	**Lead significant code change**
Code signatories	-	-	X	X	X	-	-	-
Code manager**	-	X	X	X*	X*	X	X	-
Strategic Body**	X	-	-	-	-	-	X	X
Economic Regulator	-	-	-	-	-	-	-	-

*development and decisions on modifications by the code manager would be undertaken in consultation with industry

**code manager function and strategic body might be a single integrated rule making body

3 Providing strategic direction

Energy market codes need to reflect wider, strategic changes to energy policy. This chapter sets out options for establishing a new strategic function to provide strategic direction for the development of codes and take on an important role in ensuring the necessary changes are delivered.

3.1 The vision

In chapter 1 (Background) we outlined our desired outcome of a regulatory framework that facilitates timely change – both ad-hoc and systemic - and enables innovation. We believe that establishing a new strategic function with the ability to oversee code changes across the sector and related IT systems will better achieve this aim. It will also enable the codes governance framework to take a forward-looking approach to code reform, allowing the space to take account of wider industry developments and government policy, including the path to net zero emissions. Allowing for keeping pace with technological advances and evolving in a way that ensures costs are efficient, customer choice is maximised and consumers are protected.

3.2 Current position and issues

At present, there is a disconnect between the development of energy policy and wider developments in the sector on the one hand, and the development of the industry codes on the other. There is no single organisation responsible for ensuring the codes are updated to take account of government policy or wider changes, or that the various codes and related IT systems evolve in a consistent and joined up manner, that is in the interests of existing and future customers.

The code administrators act on behalf of the code participants to deliver the modifications required to ensure the energy market operates safely and effectively. They do not have the resources or remit to put forward a far-reaching programme of modifications to transform the market to meet net zero emission targets or to keep pace with technological development, innovation and improvements to customer service. While customers views are represented on the code panels, the code modification process is not designed specifically with customer requirements in mind. Further, code administrators do not have the power to ensure that the modifications are subsequently implemented by participants in a timely manner.

The disconnect mentioned above is further hampered by having 11 separate codes covering different aspects of the market each with different code administrators with a variety of ownership and governance structures. This makes changes that require modifications across multiple codes difficult to implement. Increasingly, Ofgem has had to instigate Significant Code Reviews (SCRs) to bring forward changes that would otherwise have been challenging to implement. It has also had to run cross-industry implementation programmes to update IT systems e.g. project Nexus[19], as there has not been an organisation with the remit, powers or

[19] Ofgem had a sponsorship role in project Nexus, which was a gas infrastructure upgrade project.

capabilities to run such programmes. SCRs[20] and direct intervention by the regulator are ad hoc approaches to the problems that exist rather than a long-term solution. They are not a way to deliver wide-ranging, strategic reforms. Consolidating code content and governance (see chapter 5) and empowered code management (see chapter 4) should help, but there are issues that they alone are unlikely to overcome:

- No organisation is tasked with ensuring that the codes are adapting to change (in technology or policy, for example), enabling innovation or facilitating the energy transition, including decarbonisation. With the rapid pace of these developments and their impacts across the whole system, these changes need to be timely, co-ordinated and effective and designed in a way that protects the interests of consumers.
- While empowering the code manager function is intended to facilitate proactive change, there is still a need to ensure that these code managers are held to account and deliver in the best interests of consumers.

3.3 Options

We propose to create a new strategic function for energy codes. This function could either sit separate to the code manager function in a strategic body (in Model 1) or bundled with the code management in one organisation as an Integrated Rule Making Body (in Model 2). We believe that to ensure accountability for this strategic function, its objectives should be outlined in legislation, and it should be accountable to Parliament, government or another appropriate body (such as Ofgem). Broadly, we anticipate that its responsibilities could include the areas below.

Responsibilities proposed for the strategic function

Building on these aims, the strategic function could cover the following responsibilities:

1. Setting the strategic direction for codes, **steering changes to the codes to deliver a smarter, more sustainable energy system that best protects the interest of consumers**, by:

- taking account of the Government's policy direction and wider market developments and translating this into a programme of necessary changes to industry codes;
- making non-binding recommendations to Ofgem/BEIS on changes to licences/legislation needed to facilitate code change[21];
- overseeing the business planning process to facilitate delivery of the strategic direction, ensuring consistency across the sector;
- overseeing the code manager function, including the responsibility for appointing code managers and accountability for their performance; and

[20] SCRs are a tool for Ofgem to initiate wide ranging and holistic change and to implement reform to a code-based issue. They are only used where the work could not be progressed through the standard code governance processes.
[21] Depending upon whether Model 1 or Model 2.

- approval of all significant modifications, and a route of appeal for decisions made solely by the code manager function (under Model 1).

2. **Ensuring codes and code governance remain agile** and adapt as the sector transforms, including proactively identifying changes required to ensure a low cost, robust, effective energy system. This could include:

- taking forward cross-cutting and complex code change programmes (similar to current SCRs), including the ability to propose modifications;
- maintaining a holistic market-wide perspective on codes and related IT systems so they remain coherent and identifying opportunities for simplification and streamlining; and
- keeping under review the scope of reforms to consolidate the industry codes.

3. Working with the code manager function to **unlock innovation** by:

- streamlining and simplifying codes (by considering, for example, where outcome-based regulation may be appropriate);
- overseeing significant projects such as creation of a single interactive regulatory on-line portal for all energy rules; and
- establishing and overseeing the framework for transitioning innovative sandbox proposals into business as usual.

To succeed in this role, the body fulfilling the strategic function would need to engage with a broad range of stakeholders. This would include working closely with industry, for example consulting on its strategic direction.

Where could this function sit?

To be effective, we believe the body performing this function (whether in Model 1 or Model 2) needs to have credible incentives and powers to deliver strategic rule changes, that are likely to have to go further than the SCR powers currently held by Ofgem. No single body currently fulfils this role, and given the volume of significant change the industry is set to face in the 2020s, this function will be increasingly important. Because of the impact of its remit on consumers, this body will need to be held accountable, whether to Parliament, Government or another appropriate body (such as Ofgem). It will also need to be impartial, engaging with - but not beholden to – industry, and appropriately reflecting views from the Government, Ofgem, code managers and input from the wider sector. Finally, it will need to be sufficiently resourced, with the appropriate skills and capabilities (e.g. complex programme delivery and energy sector-specific expertise). It is Government policy that new arm's-length bodies (ALBs) should only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted.

We have identified several potential options for where this function could sit. We welcome your views on their suitability:

- **Ofgem:** Ofgem already has some relevant powers, duties and accountabilities and so this option would avoid the creation of an additional institution. However, it would need to develop the necessary capabilities to perform these functions, in particular in relation to technical expertise, programme management and delivery capability. Similarly, if Ofgem were to be an integrated rule making body (i.e. under Model 2), this would also

entail taking on a more extensive role in detailed code development than it currently has.

- As such, if Ofgem were to carry out some or all of these roles, it may be advantageous to establish separate governance and funding arrangements within the organisation.
- **Electricity System Operator:** Taking on oversight of all codes would be a significant expansion of remit (e.g. retail, generation, distribution etc.) and would require structural change to accommodate gas codes. This new function would also need to be designed to mitigate potential conflicts of interest and would need a structure in place to ensure the correct accountability to consumers. It would require consideration of the separations put in place between National Grid and their Electricity System Operator functions.
- **A new independent body:** A new body could be established that could be accountable to Parliament, Government or another appropriate body (such as Ofgem). Creating a new body would come with challenges, such as implementation and establishing appropriate governance arrangements. It may also make the energy governance landscape more complex compared to other options that place the strategic function in an existing body, although it is worth noting that our reform package as a whole would still significantly simplify the institutional landscape, given we propose that a smaller number of code managers would replace the current set of code administrators. In establishing this body, we would seek to ensure that it had:

    a. the right culture and capabilities (strategic, whole-system outlook, embracing innovation and change);

    b. a mission focus, mitigating the risk of competing priorities inherent under other options; and

    c. sufficient resources.

All these options for where the strategic function could sit are likely to require legislative change to provide the body with the appropriate powers over the codes process. All options are compatible with both the two broad models outlined in chapter 2 (Vision & options).

What do we mean by setting the strategic direction?

We envisage that the organisation with the strategic function would publish a plan on a regular (e.g. 1-3 years) basis that sets out how the organisation, the code managers and the energy code framework more generally will take account of the Government's vision for the energy system and translate into a plan for developing the codes framework. In particular, it will set out how the codes framework will support the UK's 2050 decarbonisation targets and the Carbon Budget process and how it will protect the interests of existing and future consumers.

There are different options for how the Government's vision could be communicated to the body with the strategic function. It could be done relatively informally via government energy policy announcements and publications, with the strategic function monitoring these and assessing what they mean for the body of energy codes on an ad hoc basis. Or this mechanism could be more formal, either through a role for Government in the governance of the strategic function, or through the publication of a document designed to provide the body with the strategic function with the specific information it needs.

To ensure the robustness of the strategic plan, it would be developed with appropriate consultation with stakeholders across the sector (including consumer groups), BEIS and Ofgem. There could also be a role for more targeted forms of engagement, for example a strategy board with representation from relevant bodies such as BEIS, Ofgem and academia. We are considering whether there should be a process for approval of the plan, for example by the Secretary of State.

Delivering the strategic direction

Industry, code managers and the organisation with the strategic function would all have a role in delivering changes to the energy codes in line with this strategic direction. For instance:

- in Model 1, where there is a separate code manager function, it would be required to work with the strategic body to develop a delivery plan to deliver the strategic direction and propose and prioritise code modifications to ensure the timely delivery of strategic code changes;
- code parties raising code modifications would need to highlight to code managers the modifications they consider to be linked to the priorities set out in the strategic direction;
- the body with the strategic function would need to engage with parties directly to understand the impacts of its proposals.

We recognise there are many areas that require more detailed consideration as our proposals for the strategic function are developed, such as further developing the roles and responsibilities that each code party is required to deliver and understanding the exact tools that should be used to bring it into effect. Table 5 outlines important policy questions to be considered in future policy development to develop this strategic function.

Table 5: A summary of important areas for further work on the strategic function

	Important questions
Scope of the strategic function	What should be the statutory underpinning of the strategic function? Should the body with the strategic function have responsibilities for the development of the system that are wider than codes?
Communicating the strategic direction	How should the strategic direction be communicated – e.g. how regularly should a strategic plan or similar be published How much detail should any vision or work programme contain?
Roles and responsibilities	Should the body with the strategic function have sole responsibility for setting the strategic direction or should other parties have powers in this area?

	How should code parties, code manager function and Government / Ofgem feed into this process? Could a strategy board with external representation help steer the process and ensure the buy-in of different parties?
Implementation	What mechanisms (e.g. code modifications, licence modifications, or voluntary agreements) should be used to ensure the strategic direction is implemented and followed? Should the statutory framework impose an obligation on relevant parties (such as code managers, or industry participants) to act consistently with the strategic direction? Would the mechanisms differ once the full package of reforms are in place?

3.4 Questions

10. 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.

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

11. 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?

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

13. 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)?

14. 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.

4 Empowered and accountable code management & independent decision making

This chapter presents our vision for the introduction of a code management function with sufficient powers, responsibilities and accountability to help support an effective new code framework and seeks views on options to achieve this. In our two models of reform, this could be a freestanding code manager or managers (in Model 1), or a code management function within an integrated body (Model 2).

4.1 The vision

In our desired outcomes (chapter 1 – Background), we identified that a successful code governance framework should facilitate timely changes and enable innovation, and that the right incentives and expertise are vital to driving these changes. We believe that the introduction of a new code management function with greater responsibilities, powers and accountability would help to facilitate change more effectively. This function could either be performed by a freestanding code manager function separate to a strategic body (in Model 1), or by a code management function within an integrated rule making body or IRMB (Model 2)

4.2 Current position and issues

Each code currently has a code administrator, which acts as an administrative or secretariat body appointed by industry to manage the processes and functions set out within the code. This includes administering the process for changing the codes and acting as a 'critical friend' and providing support and advice to code parties on the change processes, as required by the Code Administration Code of Practice (CACoP)[22].

While the high-level aims of the code administrators are common across codes, there are currently many differences between the bodies. For example, the roles, ownership, funding, accountability and contracts often differ from one code to another.

Previous reviews by Ofgem[23] and the CMA[24] have identified issues with code administration that may lead to sub-optimal outcomes. These include:

[22] The CACoP was developed by industry under Ofgem's Code Governance Review project, with the aim of making code modification processes more convergent and transparent, and to help protect the interests of smaller market participants and consumers through adopting important code administration principles. There are licence conditions on the code owners to have a code administrator in place that has regard to these principles. It is available at https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-administration-code-practice-cacop

[23] https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review

[24] https://www.gov.uk/cma-cases/energy-market-investigation#final-report

- The current code administration model is unable to manage the pace and breadth of change resulting in necessary code modifications being delayed or not progressed.
- There is not sufficient accountability to ensure that codes are being managed effectively and delivering change in line with the interests of consumers.
- There is insufficient co-ordination between codes, which can undermine or delay changes.

We believe that these issues continue to exist and will need to be addressed if energy codes are to adapt to the pace of anticipated change in the 2020s.

Responsibilities of the code manager function

An important feature of our proposals is the enhanced responsibilities of code managers. In addition to the current tasks of code administrators, code managers or the IRMB could also be responsible for:

- Identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts
- Making decisions on some changes, or making recommendations to the strategic body
- Prioritising which changes are progressed.

If a new code management function were to have these responsibilities, this would entail fewer responsibilities for the industry in respect of making changes to the codes. This would help fulfil one of main elements of our proposed reforms (set out in chapter 2 - Vision & options), greater independence of decision making. We believe that this is an important step in overcoming the lack of incentive to take forward certain changes among existing code parties, and moving to a code governance framework that is agile and responsive to change, and able to reflect the commercial interests of a wider range of different market players.

Currently, industry is often involved in identifying and developing code changes, and in many cases for deciding whether to implement those changes. Ofgem has a role in initiating SCRs[25]. We consider that creating an empowered code manager function (or an IRMB) with the enhanced responsibilities above would help to facilitate change more effectively. It would remove the reliance on industry or on Ofgem initiating ad-hoc SCRs to deliver the changes necessary to deliver the energy transition. We propose giving the code manager function or IRMB an explicit role in prioritisation, ensuring a focus on the changes most likely to deliver on the Government's policy or vision for the energy system.

However, while we see benefits to a strengthened code manage function independent from the industry, we believe that it is essential that stakeholders can continue to play an active role in shaping changes in the sector. There is nevertheless a spectrum of options for how this continued active role could be fulfilled. For example, industry could retain power and flexibility to propose, progress and implement code changes alongside the code manager function or IRMB. Or alternatively, the growth in the responsibility of the code manager function could mean that industry no longer have any formal powers to raise modifications or take decisions on whether to change a code.

[25] SCRs are a tool for Ofgem to initiate wide ranging and holistic change and to implement reform to a code-based issue. They are only used where the work could not be progressed through the standard code governance processes.

We intend to consider this range further as we develop and design any new framework, as well as how to ensure that stakeholders are engaged at every stage of the change process. However, our initial view is that industry would continue to be able to propose code changes, but that the code manager function or IRMB would have responsibility for prioritising whether and how those proposed changes are progressed, as well as for deciding on the changes to adopt. However, we also believe that there would be benefits in the code manager function having the flexibility to delegate some decisions to industry (perhaps in the form of a panel, with an appropriate balance of industry and independent members) e.g. where the issue is of a particularly technical nature. This would help ensure timely decision making and industry input but allow the code manager to retain oversight and accountability for the decisions.

We also expect code parties to have appropriate rights of appeal for decisions made by the code management function. For example, under Model 1, where the code manager function for a code or codes is the sole decision maker on a code change, we expect the strategic body would provide a route of appeal for that decision.

We also expect the code manager function to take steps to ensure that all interested stakeholders can help inform the development of modifications, by ensuring that all those affected by any change are able to be participate in any consultation. This could involve, for example, producing notes from relevant meetings, or funding access for smaller players to relevant discussions.

Code management and system delivery

Bringing about change in the energy industry often requires changes to both the industry codes and related IT systems. Currently, there are different models in terms of managing the delivery of code changes and any related system changes. For example, for the BSC, ELEXON manage and coordinate both the code and related system changes. For the UNC, the Joint Office of gas transporters ('joint office') manages the code changes, while Xoserve manages the related system changes.

The major concern around code management and system delivery is ensuring that where changes to systems are required (for example as a result of the strategic direction), that these are delivered in a timely and efficient way. This section considers whether combining code and system management is the best way to deliver this. This question applies to Model 1 (code manager function and strategic body) and Model 2 (integrated rule making body).

Previous consideration of end-to-end code and system management

Ofgem's 2016 consultation[26] considered the case for combining code and system management. For any given code and related system, Ofgem considered that the synergies between code management and system delivery are sufficiently strong that a single licence could cover the end-to-end delivery. Most respondents to the consultation supported this view, so long as the issue is approached on a case-by-case basis to take into consideration existing business models. However, some respondents were against the proposal, voicing concerns relating to the licensing proposal in general, and around the consistency with current industry governance arrangements and disruption to existing organisations.

[26] https://www.ofgem.gov.uk/publications-and-updates/industry-code-governance-initial-consultation-implementing-competition-and-markets-authority-s-recommendations

Options

We believe there are still strong arguments in aligning with Ofgem's 2016 consultation position, which is that in principle the code manager function (or the integrated rule making body under Model 2) should be responsible for the end-to-end delivery of code change (both codes and related systems). Further, we believe that the process of consolidation may also present an opportunity to consider these changes in the round from both a codes and systems perspective. Indeed, we would expect the strategic function to consider the merits of simplification and streamlining of industry IT systems which would help to meet our desired outcome of having a regulatory framework that facilitates timely change – both ad-hoc and strategic, and enables innovation and co-ordination across codes and industry systems.

However, in light of the complexities raised in previous consultations, we are open to views on the best way to achieve coherent and efficient end-to-end change. We note that the strength of the argument for having an end-to-end code manager could differ depending on:

- The level of consolidation of codes (e.g. if we consolidate down to three codes, some codes may be more suited to end-to-end code managers).
- Whether we adopt Model 1 (code manager function and a strategic body) or Model 2 (integrated rule making body).

Governance of the code manager function

In this section, we set out areas for further consideration on how the code manager function should be established, held to account and funded.

These considerations only apply to Model 1 (codes manager function and a strategic body), as under Model 2 (integrated rule making body) these questions apply to that broader body, and as such would be considered as part of establishing that body.

We also note that it may be more challenging for Ofgem to be an IRMB (Model 2) than to be a stand-alone strategic body under Model 1. Giving Ofgem a role in code management would represent a significant extension of its role into the detailed management of technical processes.

Options

Table 6 summarises the choices we propose to consider for each of these areas:

Table 6: Possible choices for the governance of the code manager function

	Considerations
Who should the code manager function be accountable to?[27]	Accountable to the strategic body, either via: • A licence • A contract

[27] By accountability, we mean the body or bodies that: set and maintain the requirements that apply to the code manager; track if the code manager is meeting its requirements and take action when it isn't.

How should the code manager function be appointed?	Established by the strategic body, Ofgem or BEIS: • running a competitive tender process or other competition and appointing the most suitable bidder(s) • creating a body or bodies with appropriate skills and incentives. We would expect the newly created code managers to be separate from the strategic body and with a level of independence, such as in terms of having its own source of funding
How can we ensure the code manager function offers value for money?	Cost-efficiency could be incentivised by: • competition: appoint the code manager following a competitive tender process; • price controls: restrict the revenues of the code manager function through a price control; • budget scrutiny: require the code manager to set budgets on a regular basis; with these being justified, scrutinised and ultimately approved or rejected by the strategic body or Ofgem. These options are not mutually exclusive. For example, the strategic body could run a tender process to appoint a code manager, with the price that is bid forming the basis of either a price control or budget scrutiny process.
How should the code manager function be funded?	• Licence fees (e.g. establish a mechanism similar to Ofgem's funding, whereby the strategic body would charge a licence fee to some or all licensees, with a portion of the fee provided to the code manager) • Parties to the code (i.e. the industry) fund the code manager function.

Under some of the areas above, for Model 1 (code manager function and a strategic body) there are potential options that we propose to not consider further. For Model 2 (integrated rule

making body - IRMB) accountability, establishment and incentives would be considered when creating the IRMB itself and are not separate issues for code management.

Accountability

We considered whether the code manager function should be accountable to the industry. We want to move towards a model where code change is more strategic, proactive and driven by Government priorities, and a central element of our proposed reforms is increased independence of decision making complete accountability to industry, as is the case for many of today's code administrators, would be very challenging to reconcile with such independence. However, given that the industry and other stakeholders will have more direct experience of certain aspects of the code manager's performance (e.g. day to day matters such as managing the change process), we would expect the views of industry stakeholders on the performance of the code manager to be reflected when holding it to account.

Instead of accountability to industry, we propose the code manager function would be accountable to the strategic body. This relationship could be governed by either a contract or a licence. Each of these approaches has advantages and potential drawbacks. On balance, our initial view is that licencing would provide a greater degree of accountability to the strategic body and allow for more flexibility in an evolving energy system. However, we remain open to stakeholders' views on which approach would be most suitable. In either case the right incentives would need to be in place to deliver timely change and facilitate innovation.

Establishing/choosing the code manager function

Our initial preferred model for establishing the code manager function would be to tender for the role, although we are also considering whether a new body could be created, and further policy development is needed on these options. In addition to these options, we also considered whether to:

- require an existing licensee to become the code manager function;
- require a licensee (or group of licensees) to create the code manager function, with the newly created company being licensed or entering into contracts as appropriate.

However, while requiring existing licensees to become the code manager function may expedite the reforms, we would prefer a competitive process where practicable if a bespoke body is not created. Given the potential scope of consolidation and benefits of competition, we believe this would deliver better outcomes for consumers in the long run.

Likewise, we do not currently see clear benefits to requiring a licensee or group of licensees to create a code manager. We believe that there is already a wide pool of code administrators who may be able to bid to become code managers, including some who were established via requirements on licensees. However, we remain open to how any reforms could be implemented, for example in a transition phase.

Code manager incentives and independence

Currently, different code administrators face different incentives, depending on the contract or governing framework under which they operate. When designing our reforms, our primary concern is the delivery of effective change and value for consumers, and care will be needed in designing an appropriate incentive framework. We welcome views from stakeholders on how this could best be achieved.

In terms of our preferred approach of tendering, we note that some industry parties (such as the current code administrators) could bring a wealth of experience and expertise to the code manager role, but many are affiliated with licensed parties.

If we decide that the code manager function would be appointed through a competitive tender process, the tendering body would need to set criteria against which bidders would be assessed. One criterion could be in respect of independence and could, for example, require that the bidder has no affiliation with an existing party to the industry codes. This would, for example mean that a licensed party or group of licensed parties would not be permitted to exercise control of the code manager. We recognise that there are various ways to provide a level of independence between a company and its shareholders or parent company. We welcome views on our suggested approach and on any other steps that could be taken to mitigate any perceived conflicts of interest.

4.3 Questions

15. 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;

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

c. prioritising which changes are progressed.

Yes/No/Don't know. Please explain.

16. 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?

17. 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.

18. 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.

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

19. 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? Please explain.

20. 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. Please explain.

21. 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.

22. 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. 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.

23. 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

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

Yes/No/Don't know. Please explain.

24. 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.

25. Are there any factors that:

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

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)?

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

5 Code simplification & consolidation

This chapter considers whether the rules contained in the energy codes could be arranged to better enable innovation and sustainably adapt to the needs of our changing energy system to drive overall efficiency and cost for consumers. It focuses on key areas to achieve this through i) consolidation of the separate codes & their administrative bodies and ii) simplification of the content held in codes.

5.1 Vision

Our vision is to deliver a framework of codes that is comprehensible, co-ordinated and agile. We believe that consolidation of the codes (and their administrative bodies) to reduce fragmentation would create a forward-looking framework that is responsive to change. Simplification of content within the codes would make it easier for market players to understand which rules apply to them, as well as help accommodate a large and growing number of participants. However, it may be appropriate for many of the detailed design questions on the simplification and consolidation of codes to be led by the body with the strategic function (see chapter 4) (in coordination with code managers in Model 1, whether the code management and strategic functions are separate), rather than Government or Ofgem.

5.2 Current position and issues

We believe fundamental reform of the arrangement of the content of codes is required to achieve this vision and allow us to address the following problems that exist within the current framework:

- **Fragmentation and lack of co-ordination**: The number of separate codes (and administrative bodies) makes it difficult to embed cross code change effectively. If a change is made in one code, there is no formal mechanism to understand the impacts on the wider codes landscape and whether further changes are required elsewhere. This lack of co-ordination makes it difficult to facilitate the level of strategic change that will be required to deliver a smart, flexible energy system.
- **Complexity**: The energy codes represent over 10,000 pages worth of documentation. This makes it difficult for any participant to understand which rules apply to them and consequentially presents challenges when enforcing compliance. This lack of understanding of which rules apply to whom is also a particular barrier for new entrants and may adversely hamper any company's ability to bring innovative new business models to market. Furthermore, the sheer volume of documentation not only makes it difficult to embed any new changes, but to also housekeep existing content and remove outdated material.

5.3 Options

We have identified a range of options to address these challenges and deliver our desired outcomes. This chapter is split into three sections to explore these proposals in more detail:

- How many codes should there be?
- How many code managers should there be?
- How can we simplify the codes?

How many codes should there be?

Reducing the number of codes through consolidation may make them easier to engage with and facilitate coordinated change. There are many ways the codes could be merged; whether this is into a unified single code, or whether the industry market activity dictates certain categories with which to align these. For example, NGESO is the administrator of the CUSC, GC and STC codes – all of which underpin electricity transmission in the GB energy market. This chapter explores whether any commonality between groups of codes suggests that they should be consolidated, and the various approaches to doing so.

Recently, Ofgem has led significant developments in this space, which lay the foundations for code consolidation; most notably in the designation of the Retail Energy Code (REC)[28] earlier this year. This activity was instigated as part of Ofgem's work to deliver the Faster Switching Programme[29]. See Breakout Box 1 for a more detailed overview of this work.

We want to ensure that the positive developments from this initiative are built on and taken forward as part of this wider review and that lessons regarding code consolidation that are learned in developing the REC are applied in the implementation of this review. However, we recognise that aspects of the REC may need to be updated in the light of the conclusions of this more fundamental review.

When considering approaches to consolidate the codes and their governance frameworks, there are a range of configurations possible; from merging all codes into one, through to consolidating on a thematic basis (e.g. wholesale/retail/networks, or gas/electricity).

At this initial stage, we do not have a firm view on the most efficient arrangements. However, below we outline some illustrative examples and welcome stakeholder views to feed into later detailed design phases.

We recognise that any attempts to simplify, harmonise or consolidate the codes will be a significant undertaking and that the project is likely to take many years from start to finish. Further, it may be more appropriate for the strategic body to lead this exercise rather than Government or Ofgem as the regulator, given the relative level of expertise. We will use the evidence base gathered from this consultation to inform our longer-term planning in this area. However, it is possible that there may be some quick wins, identified as a result of this consultation, which may be realised sooner should the transition allow.

Breakout Box 1: Case study – development of the Retail Energy Code (REC)

The REC is a new code designed under the vision to be a "*best-in-class industry code, putting consumer outcomes at the heart of everything it does and providing market participants with an accessible and comprehensible set of rules that are as easy as possible to understand and comply with*". One of the ways in which the REC has been

[28] https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-designation
[29] https://www.ofgem.gov.uk/publications-and-updates/way-forward-development-retail-energy-code-and-retail-code-consolidation

designed to achieve this is by having the potential to centralise all code requirements relating to the retail of electricity and gas under a single code and governance framework. This new code will merge the two existing codes which encompass the end to end mechanisms for enabling the transfer of electricity and gas customers. Previously, they were governed separately as the Meter Registration Agreement (MRA) for electricity and Supply Point Administration Agreement (SPAA) for gas. Merging these into a single code not only reduces the number of codes to which relevant parties are expected to accede and comply, it also reduces the regulatory burden by harmonising the current gas and electricity requirements into simplified dual-fuel requirements (wherever practicable). The REC will provide greater clarity to market participants by bringing together requirements relevant to the retail of electricity and gas are covered under a single code.

Indicative options: how many codes should there be?

Option A: consolidated into one - unified single code

A unified single code (USC) would see all industry codes brought together under a single document and governance framework. This means the USC would encompass all elements of transmission, distribution and retail within the GB energy market. This approach could streamline entry requirements for new players by consolidating these areas into a simplified view. Code content would be significantly harmonised to remove duplication and streamline text. This approach could also realise further benefits in terms of governance & market structure; in that there would only be a single process for modification proposals, simplifying how parties may engage with the codes.

Option B: consolidated by industry activity type – dual fuel, retail, wholesale and networks

This approach would build on the precedent set by REC and combine all separate electricity and gas codes into three standalone dual fuel codes. These codes would then stretch beyond retail to cover both wholesale and network activity areas. Potential benefits here are that the governance within each area would be consolidated and ensure the relevant expertise is maintained within each code as appropriate. Code content may also be rationalised to remove redundant text. A reduced number of codes within the landscape would make it easier for parties to navigate. Furthermore, as these codes are split by activity type, parties should be clearer in understanding which rules apply to them.

This framework matches the recent proposal put forward by ELEXON[30] and presented at the industry engagement events we held earlier this year[31].

Option C: partially consolidated by industry activity type, partially consolidated by fuel

This approach would build on the precedent set by REC and maintain a dual fuel code for all retail elements. However, remaining codes would then be split across gas and electricity respectively.

Potential benefits here are that the governance within each area would be consolidated and ensure the relevant expertise is maintained within each code as appropriate. We felt it was important to include this consolidation option as some stakeholders have highlighted that the

[30] https://www.elexon.co.uk/about/about-elexon/elexon-insights-code-governance-reform-june-2017/
[31] https://www.ofgem.gov.uk/publications-and-updates/energy-industry-code-review-workshop-agenda

esoteric nature of rules governing both gas and electricity would require the requisite expertise at a code management level. A reduced number of codes within the landscape would make it easier for parties to navigate.

How many code managers should there be?

This question only applies to Model 1 (code manager function and a code body). By design, Model 2 (integrated rule making body) envisages a single body (although in reality, if there are multiple codes, the integrated rule making body may decide to have separate code management divisions or sub-contractors). This question needs to be considered alongside the question of code consolidation. If we decide that there should be a single code, then we consider there must be a single code manager. However, if we decide to have two or three codes, then there is a question of whether it would be preferable to have a single code manager across all codes, or to provide for having a different code manager per code. Below we consider merits of each approach.

Indicative options: how many code managers should there be?

Option A: one code manager across all codes

Appointing one code manager would create a single source of information on all industry codes. Requests for guidance and information on any industry code would go to this single source and we would expect users to receive a consistent standard of delivery across codes. The code manager would also be able to transfer skills and knowledge across codes. Economies of scale are maximised in the delivery of central functions such as HR. A single code manager would also be able to take a whole market view of user compliance.

We recognise that a single body taking on this role would be challenging in the short term. It would also result in no direct comparator in the market to assess their performance against and may also require more oversight from the strategic body or Ofgem.

Option B: different code manager per code

Depending on the model for code consolidation, having multiple code managers could better align the organisational structure with the regulatory framework. Further, having more than one code manager would retain the ability to benchmark code manager performance. Also, if code managers were appointed for set terms, it would mean that at the end of each term, when retendering there may be a bigger and better pool of code managers to choose from.

However, having more than one code manager could increase risk that some of the perceived issues with the current framework are not addressed. For example, multiple code managers could result in inconsistencies and inefficiencies between the codes. However, there may be ways of mitigating these concerns, for example through increased coordination or establishing a single point of contact for multiple codes.

How can we simplify the codes?

The sheer length of documentation contained within the codes can be a particular barrier for any party to navigate. We want to use this opportunity to explore means to remove this barrier by streamlining code content. We see this potentially occurring in a range of ways:

- rationalisation: streamlining undue detailed prescription and removing any irrelevant or outdated information;

- simplification: translating code requirements (where possible) from technical prescriptions and legalese into plain English and establishing outcome-based regulation into new rule design; and
- digitalisation: we also believe that the use of new technologies can play an important role here, such as the implementation of a fully digitised codes portal.

These options are not mutually exclusive and can be implemented on their own or as a suite of reforms. The indicative options section below explores these areas further.

Indicative options: how can we simplify the codes?

Rationalisation

As code administrator for the NETSO codes, NGESO recently completed a case study to understand the impact of harmonisation, rationalisation and simplification of content in three related products detailed in section 6 of the CUSC[32].

This exercise was focused on streamlining code content whilst maintaining the same outcomes for parties. NGESO have worked through the CUSC in detail and believe they have identified a number of ways to distil information and harmonise wording to significantly reduce code content.

NGESO state that this simplification exercise achieved a 76% reduction in the total length and size of sections covered. If extrapolated to the whole of the CUSC, this approach would have the potential to rationalise content within this code from 1,275 to 306 pages (noting that the scope and extent if rationalisation is possible within sections will vary depending on the nature of the content). Other important benefits claimed in the NGESO exercise are outlined below (Table 7).

The NGESO case study claims that by focusing on plain language editing and the harmonisation of processes, it is possible to reduce the length of documentation significantly whilst ensuring the code still encompasses the same content and obligations.

Table 7: NGESO CUSC case study benefits overview

Current legal text (in NGESO case study)	Simplified legal text (in NGESO case study)
15 pages	2 pages
5,050 words	1,204 words
115 clauses	16 clauses

Simplification

The energy codes are currently detailed and prescriptive, totalling 10,000 pages when placed back-to-back. We recognise that in many cases this volume of information can act as a barrier to innovation. For example, smaller parties or new entrants to the market may not be able to

[32] https://www.nationalgrideso.com/sites/eso/files/documents/ESO%20Reforming%20Code%20Content.pdf

allocate resource to fully digest all the detail in the codes or indeed the prescriptive nature of the codes, may not align with or may inhibit new business models.

We are aware that some other sectors take a less prescriptive approach to the 'rules' that govern the industry, for example breakout box 2, which outlines how the general condition guidelines operate within the telecommunications sector. This approach means using a simplified set of rules, which then enable regulated parties to determine how to most appropriately implement them. These rules are often outcome-focused rather than detailed prescriptions, providing flexibility in the delivery of outcomes. We recognise that there are some fundamental characteristics of the energy sector that lend itself to a more prescriptive approach, for example the nature and extent of a catastrophic failure, and the level of interaction between parties at all levels. Despite this, whilst a more generalised approach may not be appropriate for all elements of the code (given the characteristics of the energy system), there may be some areas that do lend itself to this model and that will help to facilitate innovation. For example, Ofgem is already looking to implement aspects of this through the review of the REC and there may be other areas like this.

We consider that it would be appropriate for the new strategic function to explore further whether and which areas of the codes should be moved to principle based, and that this could be carried out as part of the code consolidation exercise.

Breakout Box 2: Case study – general authorisation regime in telecommunications

Many of the rules that govern the telecoms sector come directly from European regulations which are then anchored in the statutory framework primarily created by the Communications Act 2003. The Office for Communications (Ofcom), the independent regulator for this sector, sets out the General Conditions of Entitlement that companies within the sector must comply with. These general conditions apply to both the retail and wholesale side of the market. A company does not need to notify Ofcom that they are operating within this market, they just need to adhere to the General Conditions, therefore in the main there is no licensing requirement.

In 2016-18 Ofcom undertook a comprehensive review of the General Conditions, to produce a revised set of up to date conditions to make them simpler and clearer for industry to comply with, as well as make it easier for the regulator to enforce the rules in the interests of citizens and consumers.

Digitalisation

Presently, all codes are available online and accessed via each code administrator's website. This means that the code documents (and any associated annexes) are provided as a downloadable PDF file. This approach affords some benefits to users, in that a 'search' function can be used on a PDF to identify the sections most relevant to them. Accessing code documents via the administrator's website also ensures users are signposted to the most recent and up to date version. However, many of the issues explored throughout this consultation are evident in this current set up:

- **fragmentation:** as each code is only available on the relevant administrator's online services, users must access these documents by visiting up to six different websites – each with a different format and structure;
- **complexity:** using PDF replicates the same number of pages, meaning users are still subject to up to 10,000 pages of electronic information to encompass all codes; and

- **slow pace of change:** PDF format simply replicates the physical documents electronically – these documents are still treated as 'static' pages, rather than taking advantage of web based dynamic editing & change management.

We are aware that many of the code administrators are reviewing future plans to enhance code access on their websites by 'digitalising' these documents within their own web portals. Digitalisation means more than just uploading an electronic PDF copy of the document to website – it concerns building the supporting network of code in such a way that users can do 'smart search' and a golden thread will link all relevant sections of code documentation. This means that the web portal is able to present only the information that is relevant to a certain user. Furthermore, the use of golden thread within technology can highlight all other areas which are impacted when a change is made to a single section. This can bring significant benefits to the code framework – in that the pace of change can be greatly expedited by managing all edits and control gates electronically.

We consider that it may be a simpler experience for users if these codes were accessed via a single web portal, rather than five separate websites. This may also offer some benefits in terms of cost efficiencies and scale.

5.4 Questions

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

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

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

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

31. Do you agree that the codes should be digitalised? Yes/No/Don't know. Please explain.

6 Monitoring and compliance

This chapter sets out our high-level thoughts on future monitoring and compliance arrangements for industry codes.

6.1 The vision

In chapter 1, Background, we set out our desired outcome of a well-functioning code system with effective monitoring and compliance arrangements. With more diverse market participants joining an extremely inter-dependent system, it will remain important that there is effective monitoring and compliance in place to ensure market arrangements work effectively.

6.2 Current position and issues

The requirement for industry parties to comply with or become a party to codes are set out in relevant licence conditions. Ofgem's Enforcement Guidelines[33] explain that breach of obligations in codes may amount to breaches of licence conditions and that enforcement action may be taken in respect of these breaches. The Guidelines also set out the circumstances in which Ofgem may take enforcement action, which includes having regard to the better regulation principles of proportionality and transparency.

Under existing arrangements, should a party to an industry code fail to comply with an obligation, i.e. it is in default, depending on the specific detail of each code, provisions are in place to allow action to be taken by the relevant panel, or in some instances other code parties. This can include preventing the party in default from exercising voting rights on code modifications or suspending services provided to them.

The arrangements to monitor party compliance varies between codes. For example, the BSC has arrangements in the form of a Performance Assurance Board (PAB)[34] that carries out activities to provide assurance that all participants in the BSC arrangements are suitably qualified and that the relevant standards are maintained. The PAB reports to the BSC panel. The UNC has in place the Performance Assurance Committee (PAC)[35] with the aim of reviewing, considering and developing performance assurance matters and solutions. Both bodies are made up of industry members and other parties such as independent members, academics and consumer representatives.

As a result of more diverse and often smaller (and sometimes less knowledgeable) market participants joining an extremely inter-dependent system we think it is important to consider the future effectiveness of industry arrangements for monitoring the performance of market participants against code obligations and the impact on market participants' of industry code provisions. In particular, we think there is a need to consider how current and potential future models may be equipped to provide greater clarity to market participants on how performance is monitored against relevant code obligations. The interdependences of the energy system and the codes that govern the behaviour of market participants means it is worthwhile to

[33] https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines
[34] https://www.elexon.co.uk/group/performance-assurance-board-pab/
[35] http://www.gasgovernance.co.uk/PAC

consider if we need greater consistency of approach across the industry on how potential code breaches are identified and acted on.

6.3 Options

As set out in earlier chapters, we propose two models of reform – code manager(s) and a strategic body (Model 1) and an integrated rule making body (Model 2). Both models propose introducing arrangements in respect of:

- monitoring;
- who would act when instances of non-compliance are identified; and
- measures that may be taken.

These activities would move away from an industry-led approach and would instead be a function on the code manager or IRMB. The appointment of an independent body that has clear roles and responsibilities in carrying out these functions could ensure transparency in respect of monitoring code compliance. Having both code development and monitoring in the same organisation may also bring benefits, as this body should be able to identify emerging issues and improvements to the framework.

Compliance monitoring

Any future monitoring regime will be required, as a minimum, to provide compliance monitoring of the industry rules. This could include using performance reporting and risk management tools to identify non-compliance quickly. These tools could provide reports that detail the reason, effect and impact of any non-compliance.

The body that undertakes these functions will need expertise in the operation and technical arrangements of the code. It will also need to access relevant data from parties, some of which may be market sensitive.

Under Model 1, we propose that the code manager would undertake compliance monitoring. As a result of its other functions, for example in rule development, we anticipate that the code manager would have a strong understanding of the code arrangements and would be able to put in place processes to ensure it has good oversight of market performance.

Under Model 2, the monitoring role would be carried out by the code management function of the IRMB. Like the code manager in Model 1, as the integrated body, the IRMB would be well placed to understand the code arrangements due to its role in developing rule changes

Tackling non-compliance

As part of our proposed reforms we are proposing to place obligations for monitoring and compliance activities on an independent body. We believe that this body will be able to identify if instances of non-compliance are systematic and if found, look at improvements to existing obligations. These could lead to changes being proposed to ensure that code and system arrangements work more efficiently and in the interests of consumers.

As set out in chapter 1, Background, we want the rules to be clear and accessible. We believe that being clear on who is responsible for monitoring compliance and what the effect of a non-

compliance is should build confidence in the regulatory arrangements, allowing rules and sanctions to be clear and accessible.

We think it is important for the codes to include clear measures to encourage compliance and to enable non-compliance to be dealt with effectively. It is important that these arrangements will provide a credible deterrent to non-compliance but are proportionate, transparent and fair. In most cases, we would expect the inclusion of escalation routes to allow parties to deliver against an agreed action plan to become compliant. This would sit alongside the ability to impose sanctions where rectification plans are not complied with or the impact of the non-compliance requires enforcement action to be taken. We will consider the need for and format of any appeals processes against any decisions to impose sanctions or rectification plans.

Under Model 1, the code manager would be responsible for identifying what compliance action should be taken in the event of a non-compliance with the code.

Under Model 2*,* the IRMB would be responsible for identifying what compliance action should be taken in the event of a non-compliance with the code. However, given the IRMB's other roles, we would welcome views on whether a different organisation should decide what measures should be put in place in the event of a non-compliance being identified.

Under either model, we would expect licensees to continue to be required by their licences to comply with the relevant codes. As such, we expect Ofgem would continue to have some role in terms of licensees' compliance with the codes. We would consider the exact nature of this role depending on how the wider codes framework is reformed.

6.4 Questions

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

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

34. 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.
Please note this question only applies in respect of Model 2 (integrated rule-making body).

7 Next steps

This chapter sets out the next steps for the review.

Ofgem and BEIS are seeking comments by Thursday 16 September.

After this we will publish a summary of the comments received on the GOV.UK/BEIS website, and BEIS and Ofgem will continue to work through the issues set out in this document, following up specific points with stakeholders and expanding our evidence base. We intend to use the evidence to inform policy proposals for reforming the industry codes governance and modification framework.

This consultation sets out options for a fundamentally different approach to the governance of the detailed rules on which the GB energy market operates. In the light of feedback, we will refine our proposals and further develop the detailed design of the new regime.

This will include consideration of which model could most effectively deliver the intended outcomes. As noted throughout this consultation, there are advantages and disadvantages to both models, and we welcome stakeholders' views on the relative merits and feasibility of each.

We then intend to consult further later this year or early next year, and depending on the outcome of consultation put forward primary legislation at the earliest opportunity.

We are also aware that reforms to code governance interact with wider questions of system governance, including the current split of responsibilities across Ofgem, the system operator and Government. Government are currently undertaking thinking in this area and intend to publish a position paper on system governance in 2020.

The reforms set out in this consultation propose significant change to the existing regulatory framework for gas and electricity markets. To achieve the aims of this consultation we expect that implementation will take a number of years, and that the delivery of some elements may need to be staged.

8 Consultation questions

1 Background and scope of this review

1. **Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? Yes/No/Don't know. Please explain.**

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

2. **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.**

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

4. **Do you agree with our proposed scope reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?**

5. **Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.**

2 Vision & options

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

7. **Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible. – further detail can be found on each model in the chapters that follow.**

8. **Which model do you believe will best deliver on our desired outcomes? Please explain. NB: – further detail can be found on each model in the chapters that follow.**

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

3 Providing strategic direction

10. **Do you agree there is a missing strategic function for codes development in the energy sector and 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.**

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

11. **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?**

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

13. **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)?**

14. **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.**

4 Empowered and accountable code management & independent decision making

15. **Do you agree that in addition to the current responsibilities that code administrators have, that a. the code manager function should also have the following responsibilities:**
a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;
b. making decisions on some changes, or making recommendations to the strategic body; and
c. prioritising which changes are progressed.

    Yes/No/Don't know. Please explain.

16. **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?**

17. **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.**

18. **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.**

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

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

20. **Do you agree that we should not consider further a model whereby code managers are accountable to industry? Yes/No/Don't know. Please explain.**

21. **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.**

22. **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. 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.**

23. **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
    b. requiring a licensee (or group of licensees) to create the code manager?

    Yes/No/Don't know. Please explain.

24. **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.**

25. **Are there any factors that:**
    a. would stop parties (including code administrators) from becoming a code manager
    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).

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

5 Code simplification & consolidation

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

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

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

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

31. **Do you agree that the codes should be digitalised? Yes/No/Don’t know. Please explain.**

6 Monitoring and compliance

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

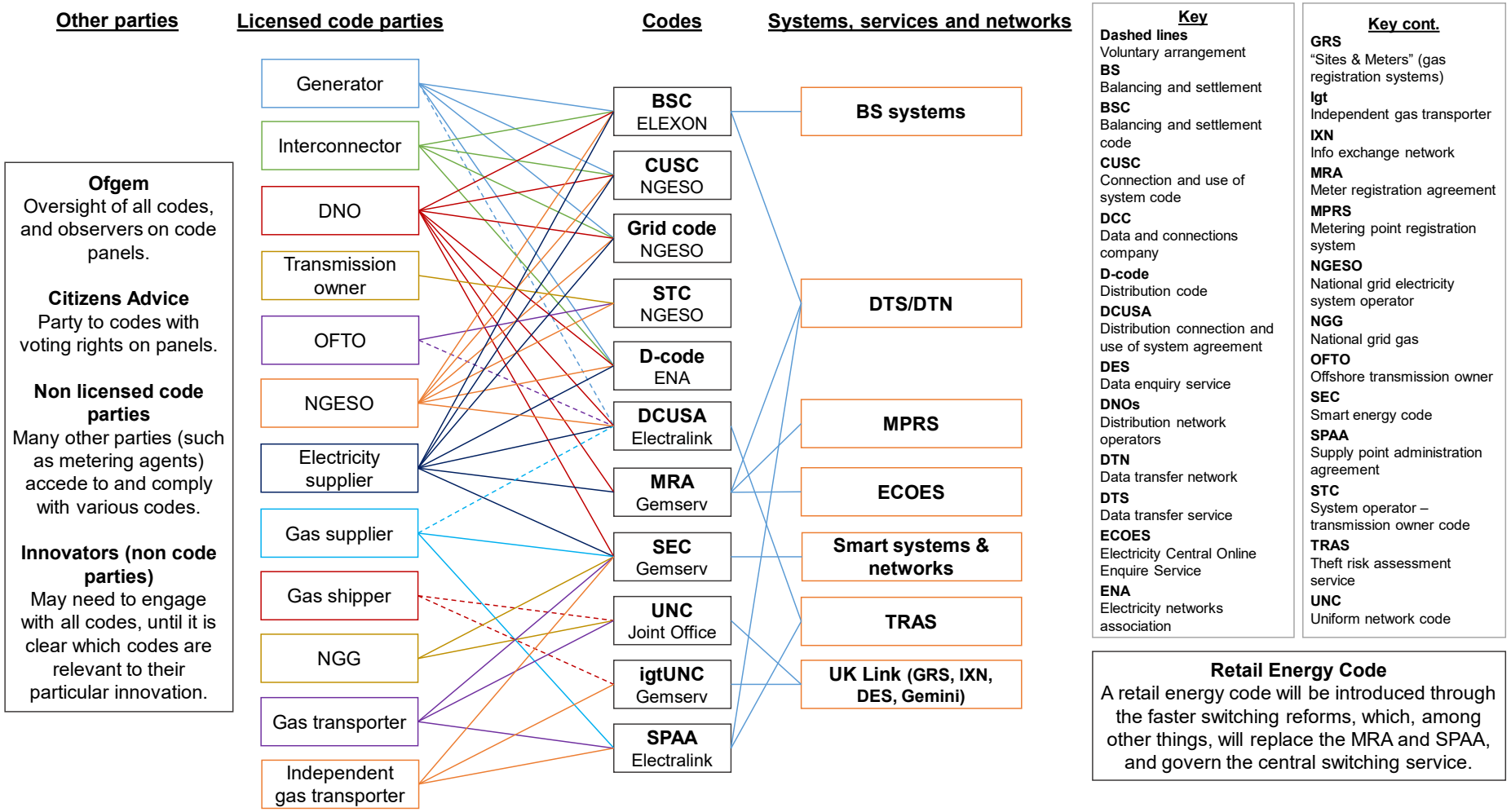
33. **Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.**

34. 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.

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

9 Annexes

Annex A: Illustrative, non-exhaustive representation of relationship between code parties, codes and related systems, services and networks



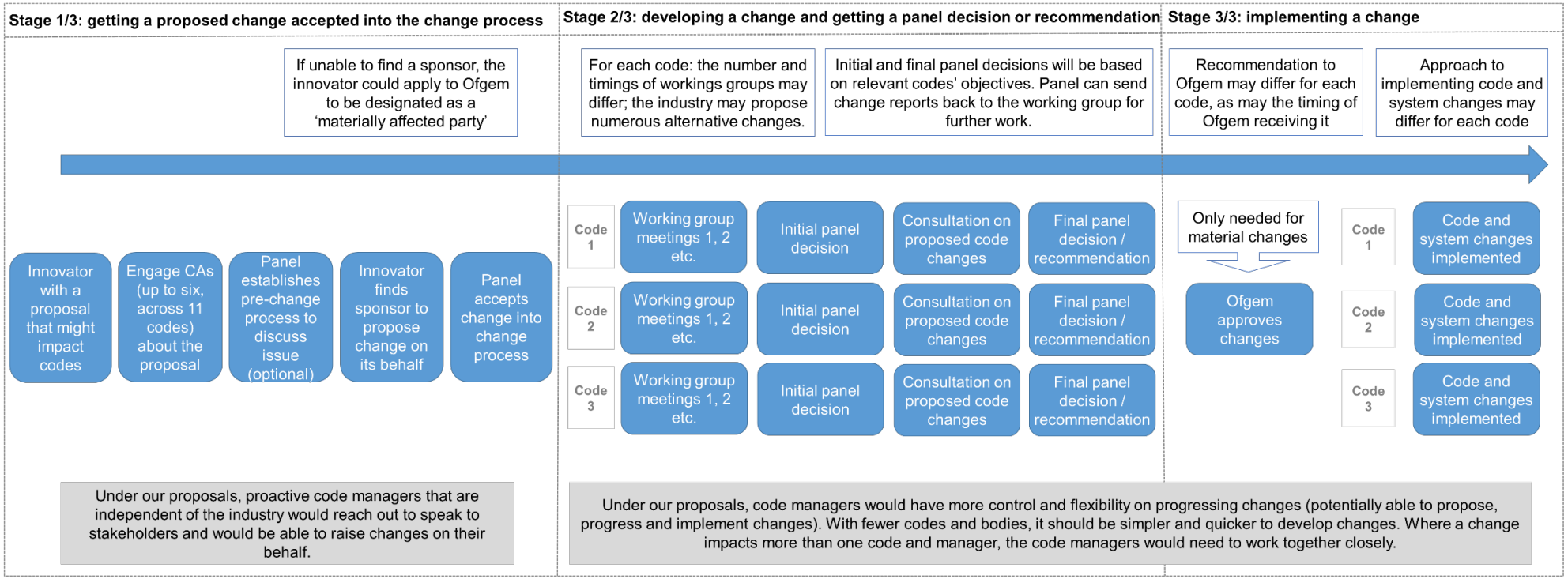
Annex B: Description of systems

System	Fuel	Purpose
Balancing and Settlement Code Central Systems	Electricity	BSC Central Systems reconcile electricity imbalances between suppliers and generators and record the associated charges against parties.
Data Transfer Service	Dual Fuel	DTS centralised service which allows energy market participants, primarily electricity (but also gas suppliers), to send and receive information about consumers, such as settlement data, change of suppliers, and metering.
Metering Point Registration Service	Electricity	DNOs use the MPRS to manage metering point registration and delivers change-of-supplier processes for their portfolio. MPRS is the master system from which ECOES runs. Sits under MRA governance.
Electricity Central Online Enquiry Service	Electricity	ECOES is an online enquiry service of meter points together with registration history and meter technical details. It is used by suppliers, DNOs, and others in customer service. It is available to third parties such as price comparison sites.
Smart Systems & Networks	Dual Fuel	Suite of secure networks, systems, and cryptographic standards which underpin access to and administration of smart meters.
Theft Risk Assessment Service	Dual Fuel	TRAS is a data analytics service for energy suppliers to help assess the risk of energy theft at consumer premises and target theft investigations. Combines data provided by suppliers with third party data, such as credit history, to identify unusual patterns that may indicate theft. Sits under SPAA and DCUSA governance.
UK Link	Gas	A suite of systems and networks together constitute ‘UK Link’ and underpin gas industry processes, including systems for gas meter point registration, billing, accessing information about meter points, and (in relation to a system known as Gemini) trading and transporting gas. UK Link sits under UNC governance.

Annex C: Illustrative example of the process of changing the codes and systems and how our proposed reforms may help to improve the experience and process

This flow diagram sets out an example of the steps that an innovator may have to take to change the codes and systems to allow it to rollout an innovative product that is not currently allowed under the codes. It is illustrative but may differ depending on the particular changes the innovator is seeking to make. For example, it assumes the innovator is not a code to the party, and that its proposal requires a pre-change process and changes to three codes.

The grey boxes at the bottom of the diagram provide some examples of how our proposed reforms may improve the experience and process of making code changes. We are not suggesting that our reformed arrangements would follow the same steps as the existing process.



Annex D: proposed scope

This annex sets out further detail on which codes and related systems should be in scope of our proposed reforms.

Bringing about change in the energy industry often requires changes to both the industry codes and related IT systems. In introducing our proposed reforms, we need to decide which codes and IT systems, and which bodies responsible for managing changes to these[36], are in scope. Broadly, if the Government's policy or its vision for the energy system is reasonably likely to require changes to a code or system, then it may be appropriate for it to be in scope.

As set out in chapter 2 (Vision & options), we have identified four areas in which reform of code governance and processes is needed:

- providing strategic direction,
- empowered and accountable code management;
- independent decision-making; and
- code simplification and consolidation.

We note that the scope of these areas of reform is broader than those proposed by Ofgem in its 2016 consultation[37] on delivering the CMA's code governance remedies. For example, we are explicitly considering consolidation and simplification of the codes, as well as a more fundamental restructuring of the institutional framework (e.g. potentially consolidating code management).

In Ofgem's 2016 consultation, it considered which codes and functions its reforms should apply to. Ofgem proposed that the codes governed by the Code Administration Code of Practice (CACoP) and the central system delivery functions should be in scope. We consider that these codes and systems are likely to need to change in response to the vision and priorities articulated by the Government. We therefore propose that these same codes and systems (listed below) should be in scope of our proposed reforms:

35. NGESO codes (CUSC, GC, STC) and the non-NGESO codes (BSC, MRA, DCUSA, DC, SEC, UNC, SPAA, iGTUNC). This would also, in future, include the REC[38].
36. Smart metering (delivered by data and communications company - DCC), gas (delivered by Xoserve) and electricity (delivered by ELEXON) central systems delivery functions.

In addition to these codes and systems, we have considered if any additional codes or systems should be in scope of our proposed reforms. The Data Transfer Service (DTS) carries data that is used in the change of supplier process that impacts consumers. We consider that given the role it plays in this process it should be in scope of our proposed reforms. We also note that

[36] Currently these bodies are known as code administrators and delivery bodies

[37] https://www.ofgem.gov.uk/publications-and-updates/industry-code-governance-initial-consultation-implementing-competition-and-markets-authority-s-recommendations

[38] Connection and use of system code (CUSC); grid code (GC); system operator – transmission owner code (STC), balancing and settlement code (BSC), meter registration agreement (MRA); distribution connection and use of system agreement (DCUSA); distribution code (DC); smart energy code (SEC); uniform network code (UNC); supply point administration agreement (SPAA); independent gas transporter uniform network code (igtUNC); retail energy code (REC).

the inclusion of the DTS was supported by a number of respondents to Ofgem's 2016 consultation.

There are other codes (such as the system, security and quality of supply standards - SQSS[39]) and systems that impact on the industry. We consider these codes and systems are less instrumental in delivering strategic priorities than the codes and systems we have proposed as in scope. We welcome stakeholders' views on whether any other codes and systems, including the SQSS, should also be in scope.

Given the range of reforms we are proposing, we note it could be possible for a broad range of reforms to apply to some codes or systems and a limited set of reforms to apply to others. Regardless of the codes and systems that we decide should be in scope at the point we implement our reforms, we consider we should have flexible arrangements that ensure it is possible to keep under review which codes and systems are in scope, and for codes that are in scope, to keep under review how the scope of the reforms should apply (for example, IT systems and those bodies currently responsible for them may not initially be consolidated, but over time a case may be built to consolidate them).

[39] NB: the CACoP codes are multilateral agreements between parties, while the SQSS is essentially a set of rules that apply to a small group of licensees

This consultation is available from: https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes

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