Department for Business, Energy & Industrial Strategy

Consultation on the Design and Delivery of the Energy Industry Code Reform

Response form

The consultation is available at:

https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

The closing date for responses is 28 September 2021.

Please return completed forms to:

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

And

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

Email: codereform@beis.gov.uk and industrycodes@ofgem.gov.uk

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.

Personal / Confidential information

Please be aware that we intend to publish [a summary of] all responses to this consultation.

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Comments: Click here to enter text.

About You

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	Respondent type
☐	Business representative organisation/trade body
☐	Central government
☐	Charity or social enterprise
☐	Individual
☐	Large business (over 250 staff)
☐	Legal representative
☐	Local government
☐	Medium business (50 to 250 staff)
☐	Micro business (up to 9 staff)
☒	Small business (10 to 49 staff)
☐	Trade union or staff association
☒	Other (please describe) Central body (gas)

Questions

Question 1

This question refers to chapter 2 – Scope of reform.

To what extent do you agree with our proposals on the licensing of a code manager for engineering standards, and why?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☒ Not sure

Comments:

Xoserve agrees that specific product and asset standards which have no direct effect on consumers e.g. BSI or IGEM standards, should be out of scope of the energy code reform consultation.

We can see that there may be some benefit to having a code manager licensed for engineering standards which have direct effects on the journey to Net Zero, although we are struggling to see any material synergies with the competencies required for the management of code changes or data and system activities.

As the in-scope engineering standards would appear to relate to the design and operation of the electricity system, rather than the gas system, we do not feel it is appropriate for us to to comment any further on this point at this time.

Question 2

This question refers to chapter 2 – Scope of reform.

What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this will be the subject of future consultation?

Comments:

Xoserve supports BEIS-Ofgem's desire and intention to make it easier to deliver change within both the gas and electricity markets in a coordinated way. We agree that the ability for the strategic function to direct the central system delivery bodies for the purpose of delivering the strategic direction would help achieve this aim, as would the requirement for code managers to cooperate with the central system delivery bodies to do the same.

We recognise that BEIS-Ofgem are in the early stages of considering how to achieve this. The licencing of central system delivery bodies is certainly one way to achieve this as it would:

- ensure that the central system delivery bodies were accountable to the strategic body directly, allowing BEIS/Ofgem greater ability to direct industry-wide changes.
- normalise the arrangements for determining the funding for the central system delivery functions by moving decisions on funding from industry processes to Ofgem, which is the approach more typically adopted.

- In the context of the pressing need to support the transition to Net Zero, this will allow code manager budgets to be aligned with strategic requirements and ensure that code managers are not prevented from promoting changes because they don't have the budget to do so. It is important to recognise, however, that code changes typically involve expenditure by code bodies and market participants.

There are some factors to consider, though, namely:

- The way that the strategic body chooses to enforce licence conditions: if fines form part of the enforcement toolkit, this could create a challenge for those central system delivery bodies which are non-profit-making organisations, and therefore do not have the ability to accrue reserves which can be used to fund fines.

- From an Xoserve perspective: there will likely be implications for our funding, governance and ownership (FGO) arrangements. Xoserve is created via a licence obligation on the gas transporters, governed by a Board comprised of nominees from each of our customer constituencies and funded through a fully transparent annual business planning process. A direct licence to Xoserve would remove any perception (by other gas market participants) of bias towards the gas transporters but would likely have an impact on the gas transporters' view of their own licence obligations. It might also be appropriate to review the nature and membership of our Board. Consideration of the impact on our customers of any change in funding process would also need to be factored in.

We also believe that any governance structure that results in multiple organisations with too many levels feels directionally wrong, increasing complexity and cost, while likely slowing responses to change and reducing efficiency. Given this, and looking at the current structure of the gas industry, we wonder if there is a more ambitious approach which merits consideration: the amalgamation of accountability for the code manager and central system delivery function activities into a single organisation, which can then integrate the operationalisation of the strategic direction for codes into one seamless approach: in effect, a "code integration function".

We believe this would be in the interests of both the Government and consumers because it would:

- combine the assessment, management and delivery of industry-wide change into one holistic activity, considering both the operational and systems implications of code changes simultaneously;
- as a result, improve the efficiency of code changes, allowing them to be delivered more quickly with resulting reduction in industry overhead for the benefit of end consumers; and
- simplify the governance structure for code management, reducing the number of industry bodies and thus saving cost for the benefit of consumers.

We recognise that there are potential concerns associated with bringing together code manager and central system delivery function responsibilities, the two most immediate being: (i) potential conflicts of interest, whereby the code manager is commercially incentivised to prioritise changes with big system impacts from which it profits, and (ii) a potential reduction in competition. We consider these concerns can be easily resolved.

Conflicts of interests could be mitigated by:

- establishing arms-length, commercial contracts for the delivery of certain services under the code integration function, with appropriate levers included in the arrangements to robustly assure the delivery activities
- ensuring that the code integration function is explicitly focused on delivering what is in the best interests of consumers, via its licence; and
- employing a not-for-profit organisation to act as the code integration function, thereby removing any financial incentives that might inadvertently have given rise to conflicts.

This approach could also encourage competition, by requiring the procurement of the outsourced delivery via competition (in the same way that RECCo has procured services to deliver Code Management responsibilities).

We believe Xoserve can play a role in realising this vision. Xoserve has unparalleled knowledge, expertise and breadth of view across the gas industry and, through the recent separation of the systems delivery (now performed by Correla) from its role as Central Data Services Provider for the gas industry, Xoserve now has the independence to assure the system delivery activities on behalf of consumers, without the inherent conflict of also being the organisation doing the delivery. In other words, we have separated the roles of code delivery management from systems delivery.

Following these changes, Xoserve:

- remains a not-for-profit company and does not benefit from promoting (or constraining) industry change;
- operates at arms-length from Correla, managing the contract with them and assuring delivery performance from them;
- has a singular focus on delivering outcomes; and
- has become a procurement, contract / commercial management and performance assurance specialist.

Consequently, as a result of its experience, capabilities and demonstrable ability to embrace and deliver change, we consider that Xoserve is extremely well placed to rapidly evolve to perform the role of code integration function. We could develop, or procure, any capabilities not available internally, presenting a quick and low risk solution to this area of change and enabling Ofgem to focus on developing the strategic direction. Please see our covering letter for further information, including a diagram which illustrates our thinking.

Regardless of the outcome of the consultations, Xoserve has started to work more closely with the code administrator for gas, the Joint Office of Gas Transporters, to ensure that gas market participants (and thus end consumers) can leverage the synergies arising from more closely combining our respective activities and understanding of the codes.

Question 3

This question refers to chapter 3.1 – Setting the strategic direction, chapter 3.2.4 - Detailed roles and responsibilities of the strategic body, and chapter 3.2.7 – How would our proposals differ under option 2?

To what extent do you agree with the detailed roles and responsibilities of the **strategic function** as set out above, and why?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We understand why BEIS-Ofgem are proposing to establish a strategic function as it seems unlikely that the existing code governance arrangements would be capable of coordinating and delivering the scale and complexity of the change required to support the transition to Net Zero.

In our view, a strategic function of the type proposed will benefit consumers by:

- making it easier to coordinate and align complex cross-code impacts;
- helping to deliver critical change at speed;
- providing better strategic oversight of complex system implementation; and

- reducing the risk of misalignment between the codes and the strategic direction sought by BEIS and Ofgem.

The proposed roles and responsibilities seem aligned to delivering these benefits.

Question 4

This question refers to chapter 3.2.3 - Detailed roles and responsibilities of the code managers, and chapter 3.2.7 – How would our proposals differ under option 2?

To what extent do you agree with the proposed roles and responsibilities of the **code manager function** as set out above, and why?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

Although we agree with the roles and responsibilities of the code manager that BEIS-Ofgem have set out in section 3 of the consultation, we believe that code managers should additionally:

- provide a likely first point of contact for new parties looking to enter the market, helping them to navigate the codes and the requirements within them; and
- take on responsibility for a future framework that could enable parties to be compliant with their obligations and at the same time support innovation.

We also believe it is important that code managers have:

- a deep understanding of the sector that the code regulates;
- the ability to adapt and respond to changes quickly and thoughtfully; and
- the vision to proactively identify where change is necessary and then propose and implement the required changes.

Alongside our review of the consultation documents, we have considered the accountabilities of RECCo as per the “REC full prospectus” documentation that was published during the process for procuring REC code manager services. Based on this review, we think the code managers might also need to be accountable for:

- contract management and assurance (particularly if they outsource activities to specialist providers);
- market monitoring, including awareness of new innovations in the market place;
- provision of a helpdesk;
- training and technical support; and
- technical assurance of changes.

In the gas market, Xoserve already has accountability for these additional services and has direct responsibility for managing and assuring the contract for technical service delivery between Xoserve and Correla. We think this positions us well to take on the accountabilities of the code manager role.

Question 5

This question refers to chapter 3.1 – Setting the strategic direction, chapter 3.2.5 - Roles and responsibilities of other stakeholders, including code parties, and chapter 3.2.7 – How would our proposals differ under option 2?

To what extent do you agree with the proposed roles and responsibilities of **stakeholders** as set out above, including the role of the stakeholder advisory forum, and why?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

The way the gas market has been set up makes effective stakeholder engagement a continuous requirement. Stakeholder input will be particularly crucial to the development and delivery of change that will realise the country's Net Zero targets.

Xoserve is involved in a very wide range of stakeholder engagement, from the appointment of members to our Board (which is comprised of nominees from each of our customer constituencies), to the way we manage the services contract we have with Correla. We also have regular dialogue with parties outside the industry, such as Citizens Advice and, in our experience, if stakeholders feel heard and consider their views are being taken into account, they will be more vested in industry changes.

Through our stakeholder engagement, we see first-hand both the expertise that these organisations contribute and the benefit of the breadth of view they bring. We also see the dissatisfaction that can arise when the considerations of a certain group of stakeholders are overlooked in favour of louder voices. We therefore fully support any approach which recognises that one size does not always fit all and takes into account the needs of specific types of organisations. This experience tells us that effective engagement requires:

- Participants to make time to hear and understand different perspectives;
- Processes that ensure diverse range of interests are reflected in the solutions that emerge from the consultation process; and
- A mechanism to close-off discussion in a timely way, to allow the conversation to move to the next stage, without unduly constraining the opportunity to contribute to the discussion.

We would also strongly advocate consideration being given on how to engage with both consumers and experts outside the industry to ensure that the energy market benefits from the even broader perspectives that these "external" engagements can contribute.

We would be happy to spend some time sharing our experience of stakeholder engagement across the gas market, if that would be helpful to shape BEIS-Ofgem's thoughts on this topic further.

Question 6

This question refers to chapter 3.3 - Appeals process and compliance.

In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how **decisions by the code manager** would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We believe it is important that code parties feel they have an effective and efficient method of appealing decisions made by code managers.

Although BEIS-Ofgem is seeking to ensure a broad perspective is brought to decision making through the involvement of industry expertise, it is easy to see how code parties might fear that centralised decision making, by code manager rather than panels, may result in unfair outcomes. We feel that a clear and transparent appeals process, with well-defined grounds for appeal and prompt timescales, would allay any such fears.

Since the code manager is accountable to the strategic body for the delivery of code changes to realise the Government's strategic vision, we support BEIS-Ofgem's proposals for the oversight of the code manager by the strategic body. It makes sense for the appeals process to align with oversight.

We note that the proposed appeals arrangements are similar to the arrangements that apply to the process of developing and approving Xoserve's business plan. We have found that process to work effectively, allowing dissatisfied parties to air their concerns and resulting in improvements in engagement. This provides further confidence that the consultation proposals will be effective.

Question 7

This question refers to chapter 3.3 - Appeals process and compliance.

In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant **decisions by the code manager function** would be appealable to Ofgem, with a potential prior review route via an internal body?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☒ Not sure

Comments:

We believe that Option 1 is best placed to reform code governance for the reasons set out in our response to question 16.

Question 8

This question refers to chapter 3.3 - Appeals process and compliance.

Do you have any views on the two proposed options for appealing **decisions made by Ofgem on material code changes** in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?

Comments:

Xoserve has no views to offer on this topic at this stage.

Question 9

This question refers to chapter 3.3 - Appeals process and compliance.

Do you have any thoughts on other potential appeal routes?

Comments: Click here to enter text.

Xoserve has no thoughts to offer on this topic at this stage.

Question 10

This question refers to chapter 4.1 - Proposed operating model and accountability (for option 1).

To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☒ Not sure

Comments:

We do not feel this is a topic for Xoserve to comment on at this stage.

Question 11

This question refers to chapter 4.2 - Monitoring and evaluation (for option 1).

To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as strategic body, and why?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☒ Not sure

Comments:

We do not feel this is a topic for Xoserve to comment on at this stage.

Question 12

This question refers to chapter 5.2 - Establishing code managers.

To what extent do you agree with the ways we propose that the strategic body select code managers, and why?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☒ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

As set out in response to question 2, we think there are benefits in having an integrated code manager and central system delivery function for each code, creating a “code integration function” which combines the accountabilities of both code manager and delivery body. This “code integration function” would have the expertise in the relevant energy market to be able to understand the impact of changes and manage the delivery of those changes in the right context. This body would deliver its remit through a combination of in house and outsourced delivery and would therefore need to be a specialist in the relevant fuel / code(s), stakeholder engagement, contract / commercial management, procurement and service assurance.

We support the use of competition wherever this will deliver value and believe there are good reasons for considering how best to take advantage of competition when selecting organisations to perform roles in the energy market. However, our experience is that competition based on price point, adherence to proposed commercial terms, and the evidencing of a broad set of commercial credentials tends to favour commercial entities whose financial performance and broad portfolio of contractual arrangements supports the agreement of high-risk, low-price contracts in specific circumstances. Such organisations, while excellent at delivery of business services, may not have the deep industry expertise, historical knowledge and contextual understanding to make the proposed governance reforms a success.

We believe it is in the best interests of both Government and consumers for BEIS-Ofgem to be able to consider all organisations with the right skills and experience and we feel strongly that Ofgem should be appointing a not-for-profit organisation to this role, with the remit to consider how best to introduce competition in the delivery of its functions in the most efficient way. This is the approach that has been followed for RECCo, which is a non-profit organisation that has then taken decisions about which services it has chosen to procure from external providers. Any selection process which excludes some parties from consideration, such as those who are not able to bid due to their unique industry position or those who cannot accept contractual liabilities as they are set up as “not-for-profit”, may therefore not be in the best interests of consumers.

We believe that Xoserve’s unique gas industry experience and expertise makes us well-placed to fulfil a broader role in the gas industry, combining our delivery focus with code management as outlined above. Our “not for profit” status delivers good value compared to companies whose owners/ shareholders have an expectation of a certain level of profitability, and our knowledge of the gas market and considerations of the various stakeholders within it is unparalleled. Further, we are an established organisation, with mature internal governance arrangements, meaning that any set up costs for the extended scope would be minimal. Yet, our not-for-profit status and the current restrictions on our activities would prevent us from bidding in a competition, depriving the energy market of the opportunity to engage us for such a role. We feel this would be an opportunity missed.

Question 13

This question refers to chapter 5.3 – Budget and funding.

To what extent do you agree with our proposed approach to code manager funding, and why?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

☐ Not sure

Comments:

We agree that code managers should be funded through charges levied on code parties in accordance with an agreed charging methodology, as it would have the following advantages:

- The creation of a charging methodology would provide for greater transparency in the way that code manager charges are levied;
- The process of developing and agreeing the charging methodology would allow stakeholders to contribute to the development of the charging approach;
- The approach is likely to make it easier to ensure that the charges levied on code parties are proportionate and fair; and
- The use of a charging methodology would allow code managers to charge code and non-code parties for value added or optional services.

Xoserve has experience of operating under the approach proposed by the consultation document. We levy charges for our activities in accordance with an agreed charging methodology. We have found that the approach works well. Our experience highlights the importance of:

- Ensuring there is a mechanism for varying funding and charges within-year, to provide the flexibility to fund unexpected expenditure; and
- The need to take care to develop a charging methodology which is simultaneously fair and straightforward to implement.

We agree that the bad debt risks need to be managed. Arrangements such as those already in place for Xoserve provide the ability for industry parties to both input to and control the management of bad debt, ensuring that the risk of bad debt does not compromise the delivery of critical central services. Adoption of the same approach for code managers would extend this benefit to cover a wider set of central bodies.

Finally, as we observe in our response to question 14, we think it will be important that code managers have adequate funding to discharge their responsibilities properly.

Question 14

This question refers to chapter 5.3 - Budget and funding.

To what extent do you agree with our proposal that the strategic body should be accountable for code manager budgets, and why?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We agree that the strategic body should be accountable for budgets, as this will:

- Help ensure the code manager budget(s) are consistent with the delivery ask. This will strengthen the ability of the strategic body to direct and deliver strategic change by minimising the risk that code managers do not have the funds to support the change process;
- Allow the strategic body to provide the code managers with guidance on priorities, taking account of the impact on their resources and budgets; and
- Allow the strategic body to maintain an appropriate focus on ensuring value for money for consumers. At a time when consumers are likely to experience bill increases to support the

investment in low carbon technology, it is important that Ofgem can determine the necessary level of expenditure on code activities.

We look forward to the opportunity to contribute to the future consultation on the requirements for code managers in setting budgets. We think it will be important for the budget-setting process to provide code parties with the opportunity to appeal code manager budgets. However, in creating the eventual design of the budget appeals process, some focus will be needed on how to ensure that the role of the strategic body in determining the code manager budget does not prevent code parties from appealing the budget (as the appeal is also to the strategic body).

Question 15

This question refers to chapter 6.1 - Proposed operating model and accountability (for option 2).

To what extent do you agree with the proposed operating model and accountability structure for option 2, where the FSO takes on the role of the IRMB, and why?

☐ Strongly agree ☐ Agree ☒ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We believe that Option 1 is best placed to reform code governance for the reasons set out in our response to question 16.

Question 16

This question refers to chapter 7.1 - Options analysis

Overall, which of the two options do you think would be best placed to reform code governance, and why?

☒ Option 1, where Ofgem is designated as the strategic body with the power to licence separate code managers

☐ Option 2, where the FSO takes on the role of an IRMB, which combines the strategic and code manager functions

☐ Not sure

Comments:

We think Option 1 is best placed to reform code governance because it:

- Is most likely to be capable of being delivered at speed, allowing the earlier realisation of consumer benefits. It is imperative that the economy transitions to Net Zero and this transition needs to happen at speed. We note that BEIS-Ofgem consider that Option 1 is capable of implementation some two-years earlier than Option 2. In itself, this is a strong reason to adopt Option1;

- Represents an evolutionary, rather than revolutionary approach, which will allow a more careful consideration and review of the implications of changes, before making further reforms;
- Allows greater separation of strategy setting / oversight from the operationalisation of the strategy;
- Avoids ending up with a monolithic governance structure, which risks reducing innovation; and
- Avoids the risk (arising from Option 2) that the distinctive voice of the gas industry is under-represented in cross-industry reform, as explained below.

The importance of hearing the voice of gas:

To date, the UK's transition to Net Zero has had a strong focus on electrification, driven by the prioritisation of the deployment of renewable electricity and distributed electricity generation, and the roll-out of electric vehicles and electric heat pumps. However, the gas industry also has a significant role to play in the transition to Net Zero. Gas plays a critical role in heating businesses and around 85% of homes use gas on a daily basis – these domestic consumers need to be supported by informed policy and regulation to ensure that their bills remain affordable and access to heat is not disrupted. It is also currently used to generate around 40% of UK electricity[1].

Moreover, whilst the use of natural gas is expected to decline over the coming years, the transition to Net Zero will require the creation and deployment of innovative new technology and to the increasing use of low carbon gases such as hydrogen, and biomethane. Indeed, the Government's UK Hydrogen Strategy, published in August 2021, acknowledged the importance of hydrogen as a new low carbon solution which can help the UK to achieve Net Zero by 2050. It is also possible that there will be an increasing need for the capture, transportation and sequestration of carbon dioxide, which the gas sector is uniquely placed to do.

Consequently, we think that gas has a critical role to play in the transition to Net Zero and that it is important to maintain gas industry expertise.

It is important to bear in mind when changing the structure of energy policy and regulation that the technical and market characteristics of the gas industry are different from those of electricity. For example, gas is traded on a daily rather than on a half hourly basis, gas needs to be transported physically and is easier to store than electricity, and the gas markets differentiate between the role of shipper and the role of supplier. These and other distinctive characteristics of the gas industry result in variations in the design of industry codes. As a result, it may never be possible to bring into complete alignment the codes for electricity and gas markets.

In the absence of distinct institutions focused on gas, there is a risk that the interests of gas consumers could be overlooked. We therefore believe that the reform needs to retain industry-specific expertise and avoid "memory loss", which would be to the detriment of consumers and could also significantly damage and hamper the ability of gas(es) (including hydrogen and biomethane) to play a key role in moving to Net Zero in the short, medium and long term.

We are concerned that the adoption of Option 2 may have the unintended effect of diluting gas industry expertise and reducing the focus on gas issues because a single body would be responsible for managing changes to the electricity and gas codes. We think it is important to retain specialist organisations who are focused on the arrangements that support the gas markets.

We believe that our unique gas industry expertise and our innovative and efficient approach to delivering change and data solutions means that we are well placed to ensure that the gas industry's potential to successfully facilitate the transition to Net Zero is fully realised.

The following three questions relate to the impact assessment on the code reform that is published along with this consultation. Please only answer the questions below if you have read the Impact Assessment.

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[1] Pathways to Net-Zero: Decarbonising the Gas Networks in Great Britain, Navigant

Question 17

To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☒ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We have some reservations about the costs estimates set out in the consultation, due to the following considerations:

- We think it will be difficult to determine the level of code manager costs until further work is completed on roles and responsibilities of code managers. For example, it is not clear that the estimated costs include the additional spend that will be required on legal input to code changes. This could be a significant expenditure, perhaps amounting to between £2m and £5m per code, if legal input is procured from external providers.
- We think it is critical that code managers are resourced appropriately to ensure they are able to discharge their responsibilities effectively. Given the importance of delivering Net Zero, it is vital that important code changes are not delayed because code managers do not have adequate funds to pursue them.
- Without completing detailed work, it is difficult to comment on the anticipated level of spending. However, we are concerned that an additional spend of £35m across 11 codes (roughly £3m per code) is an underestimate of the level of funding that code managers are likely to require.

There are also likely to be some fixed costs associated with managing each code. This might argue in favour of combining some codes. For example, in the gas industry, we feel strongly that there are benefits in combining the Uniform Network Code (UNC) and the Independent Gas Transporters Uniform Network Code (IGTUNC), managed by one code manager and removing the duplication of effort currently involved in keeping the two aligned. Given the current level of alignment between the two, we believe this could be done relatively quickly.

Question 18

To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why?

☐ Strongly agree ☐ Agree ☒ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

We were not directly involved in the work of the two case studies set out in the consultation document. However, we agree that the case studies highlight many of the major barriers facing code changes under the current system.

The conclusions drawn from these case studies are supported by our own analysis.

In 2019, we carried out an extensive review and analysis of the change history for all 11 Codes that are in scope of the consultation. We created a database that captures almost 38,000 data points across all 954

Modification Proposals raised between 1st June 2014 and 31st May 2019 which we believe has the potential to provide a solid foundation for further analytical insight into a wide range of Code governance matters, both within and between individual Codes and across different parts or all of the Code landscape.

Of all 954 Modifications analysed, we found only 14% (134) involved interaction with one or more other Codes. Most cross-Code interactions (106 of 148) are contained within either the family of gas Codes or the family of electricity Codes.

We were surprised at the low level of cross-market, dual-fuel interactions between Codes and this prompted us to perform a second wave of analysis, using fuzzy-matching techniques, to identify unclear interactions between codes. Whilst this approach identified some additional interactions between electricity Codes, it did not change the pattern or significantly increase the instances of dual-fuel interactions. Where there were cross-market, dual-fuel interactions, the large majority of occurrences (37 of 42) were concerned with ensuring alignment of supplier process solutions across the Supply Point Administration Agreement, the Master Registration Agreement, and the Distribution Connection and Use of System Agreement. Development of the Retail Energy Code will cause these occurrences to fall away in the future.

Our research identified the following additional problems that are likely to be addressed by the proposed reforms, and in particular, the creation of Code Managers:

- **There is no single party with accountability for ensuring that Code change is a value for money process that works for the benefit of end consumers.** Where Modifications complete development and are subsequently referred by Code Panels to Ofgem for decision, there is a good degree of correlation (85% (223 of 263 Modifications)) between the Panel recommendation and Ofgem's direction. However, there are 15% (40 Modifications) where Panel recommendations and Ofgem decisions diverge. The most common divergence scenario (27 of 40 Modifications) was a Panel recommendation for implementation but rejection of the Proposal by Ofgem. The most common reason for divergence was a difference of opinion regarding satisfaction of the relevant Code Objectives.

- **There is no common 'best practice' process across the industry for the management of Code change, nor any standards against which the progress of Modification Proposals can be measured.** End to end timescales from the raising of a Modification Proposal through to an Ofgem or Code Panel direction to implement vary widely and are not measured against any predefined norms or standards. The mean period for Modifications to complete their cycle is 8.5 months, and the majority are progressed over a period of between 3 and 12 months. Either side of this range, Modifications have been completed in as short a time period as 8 days, and in as long a time period as 3.5 years.

- **Modification Proposals are not prioritised according to their drivers. Whilst the Code governance framework necessarily provides for self-governance and urgent procedures to be applied when and where appropriate, Modification Proposals are not prioritised according to their drivers.** We found that 19% (177) were raised as a result of a regulatory policy or legislative change, and development of these took an average of 204 days. This is not significantly faster than the mean development time of 8.5 months. A further 15% (143) were raised following industry discussions or workshops that took place prior to the commencement of the formal Code governance process, and these took an average of 173 days to progress through the Modification lifecycle, faster than those raised as a result of a regulatory policy or legislative change.

- **Modifications withdrawn during development are a drain on industry resources.** Not all Modification Proposals complete their development cycle: 9% of all Modification Proposals have been withdrawn by the Proposer during their development.

- **There is no common or centralised process for the management of interaction between Codes both administratively and in terms of technology change.** Modification processes and procedures, documentation and terminology are not standardised across all Codes. This means that

Code parties need to have a base level of understanding of and familiarity with industry terminology, processes and acronyms in order to be able to assess the impact of a Modification Proposal on their organisation. Code Administrators' websites have wide variations in the signposting, navigability and accessibility of information. Some Code Administrators have provided guidance to users, but even this requires a high degree of familiarity with industry arrangements to be able to use it effectively.

- **The raising of Modification Proposals and participation in Workgroups are dominated by the larger organisations in the energy industry.** Across all Codes, Modification Proposals are most commonly raised by Supplier / Shipper organisations (39%) and by Network businesses (including the TO/SO functions) (32%). Workgroup participation is most prevalent amongst the 'Big 6' Supplier / Shipper organisations, who have attended an average of 51% of all Workgroup meetings. Any reform must create equality of engagement.

Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?

Comments:

Please refer to our response to the first part of this question.

Question 19

To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment?

☐ Strongly agree ☐ Agree ☒ Neither agree nor disagree ☐ Disagree ☐ Strongly Disagree ☐ Not sure

Comments:

The Impact Assessment only quantifies two benefits: savings to industry from responding to consultations, and savings from participating in work groups. In both cases, the savings are anticipated from industry parties, who are best-placed to comment on estimated scale of the benefits.

We agree that the main benefits anticipated from the proposed reforms are likely to be a more efficient (and therefore faster/ more cost effective) code change process and closer alignment to the government's strategic and policy priorities, in particular with respect to Net Zero. Since these are not quantified in the consultation, we think it would be beneficial to see a calculation of these benefits, in line with Treasury Green Book guidance.

Are there further cost savings to industry that should be included?

Comments:

Please refer to our response to the first part of this question.

Question 20

This question refers to chapter 8.1 – Context and wider industry developments

Are there any other wider industry developments we should consider in relation to the implementation timeline?

☒ Yes ☐ No ☐ Not sure

Please provide details of any industry developments you believe should be considered in the implementation timeline and how they could impact on code reform.

Comments:

We agree that the reforms will need to take account of the industry developments listed in section 8.1, including the DCC review, the further development of the Retail Energy Code, market-wide half hourly settlement, the recommendations of the Energy Digitalisation Taskforce, and the work supported by the Energy Regulation Sandbox.

We believe it is also important to take into account the following other developments:

- The Government has set out an ambitious hydrogen strategy and plans to publish a heat strategy in the near future. It is important that code reform does not prevent the timely delivery of these two strategies.
- More generally, as noted in our response to question 16, the gas industry has an important role to play in the transition to Net Zero. Whilst the use of natural gas is expected to be in decline, the transition to Net Zero will lead to the increasing use of other gases. In addition to hydrogen, forecasts anticipate the growing use of biomethane and the capture and sequestration of carbon dioxide. We think it is important to consider the resilience of any proposed arrangements to potential future developments.
- At any point in time, there will be code modifications which are being developed and implemented, and a backlog of future code changes. Careful thought will be required to ensure code reform does not cause problems for the development and implementation of ongoing and/or anticipated code changes.

Question 21

This question refers to chapter 8 – Implementation approach

Are there any implementation issues, risks or transition considerations we should take into account?

Comments:

We have set out our key observations on the process for appointing code managers in our response to question 12. In addition, we would highlight that:

- At any point in time, there will be code modifications which are being developed and implemented, and a backlog of future code changes. Careful thought will be required to ensure code reform does not cause problems for the development and implementation of ongoing and/or anticipated code changes.

- It may prove difficult to secure engagement with people who face uncertainty when their jobs are transitioned to another business. The reform programme should consider how best to motivate and incentivise individuals who support the codes. In this context, clear and effective communication will be essential.
- We think it will be important to appoint a senior level programme manager to oversee the delivery of the reform. Cross-industry reforms of this type, with multiple stakeholders and complex dependencies, can only be delivered through strong programme leadership, oversight and execution.

How do you think these could impact on code reform?

Comments:

If these considerations are overlooked, there is a significant risk that the code reforms will not deliver the desired outcomes.

If any inflight/ future code modifications are held up as a result of the reforms, this could delay the realisation of benefits for both the industry and consumers. Disengagement of key individuals is likely to lead to the loss of deep industry knowledge, vital to the success of any reforms. And without strong programme leadership, the path to code reform could take longer, cost more and result in an incoherent and sub-optimal solution.

Question 22

This question does not refer to any specific chapter.

We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of policy impacts.

Comments:

We do not envisage any impact of the proposals on people who share a protected characteristic.

Question 23

This question does not refer to any specific chapter. Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

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

Comments:

The case for Option 1 is compelling. We would therefore favour moving as quickly as possible towards the implementation of this Option, to realise the benefits as soon as possible.

Code reform has been the subject of consultation and industry discussion for a number of years. As committed industry participants, we are keen to avoid any lengthy processes which will delay implementation

and move into the execution phase. We would encourage BEIS-Ofgem to consider how to stage the reform to deliver “quick wins” and build momentum and commitment.

As mentioned in our response to question 21, we think it will be important to appoint a senior level programme manager to oversee the delivery of the reform as cross-industry reforms of this type, with multiple stakeholders and complex dependencies, can only be delivered though strong programme leadership, oversight and execution.

Finally, we are concerned that BEIS-Ofgem are underestimating the cost of the specialist skills that will be needed to deliver the anticipated reforms. The codes are a complex set of legal and commercial documents which have given rise to equally complex IT systems, that support the operation of the energy market. It is important that the reform programme can draw upon skilled and experienced individuals. The costs of this specialist input will not be cheap. In particular, we wonder if the proposed budget for the strategic function will be adequate. The consultation suggests the function will have 30 staff and a budget of £2m. This would imply an average fully loaded (including on-costs and overheads) cost of £67,000 per member of staff, which might imply an average salary of around £35,000. Given the importance of the strategic function, we think it likely that the function will need to be staffed by individuals who have experience and a good understanding of the market arrangements. We think it might be difficult to attract such individuals to the function if they are not rewarded appropriately.

Thank you for your views on this consultation.

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

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations, and your views are valuable to us. Would you be happy for us to contact you again from time to time either for research or about other consultations?

☒Yes ☐No