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Consultation on the Design and Delivery of the Energy Code Reform

Dear Colleague,

I am writing to you on behalf of the Joint Office of Gas Transporters.

The Joint Office of Gas Transporters (Joint Office) welcomes the BEIS and Ofgem consultation on the Design and Delivery of the Energy Code Reform and the opportunity to provide our views. We have responded to the questions put forward and have provided a high-level summary below.

Background

The Joint Office is the Code Administrator for the Uniform Network Code (UNC). We are a small team of experienced, committed individuals who are highly skilled in the efficient administration of the

Uniform Network Code and who are dedicated to effective, good governance and this is reflected in feedback received from stakeholders. We work closely with the Uniform Network Code Modification Panel to manage the governance arrangements which facilitate change within the gas industry.

The Joint Office was created in 2005 during the sale of four of National Grid's gas distribution networks. As part of the sale, Ofgem placed a licence condition, Standard Special Condition A12 (Joint Governance Arrangements) (SSpCA12)¹ on the gas networks.

SSpCA12 requires gas transporters to work together to establish, develop and operate joint governance arrangements for the implementation and administration of the UNC and other common matters. In accordance with SSpCA12, the gas transporters entered into a joint agreement, the Joint Governance Arrangements Agreement (JGAA). This agreement, amongst other things, describes how the Joint Office is established, governed, and funded.

The Uniform Network Code (UNC) is the hub around which the competitive gas industry revolves, comprising a legal and contractual framework to ship and transport gas. It has a common set of rules which ensure that competition can be facilitated on level terms. It governs processes, such as the balancing of the gas system, network planning, and the allocation of network capacity.

Summary

- The Joint Office is supportive of the overall proposals outlined by BEIS and Ofgem. We believe that they will help to support the transition to a cleaner energy system and the UK's ambitious climate change goals.
- Over the forthcoming years, gas and its infrastructure will play an indispensable role in the future decarbonised energy system. The scale of future changes required in gas to decarbonise heat and transition towards the use of hydrogen will be unprecedented. Given the pace, complexity and diversity of the changes required, it is vital that change is managed within a timely strategic context, that is coherent and sets unambiguous and realistic priorities. Any future changes to the code governance frameworks must allow for innovation and enable unified, dynamic, and flexible approaches.
- We are supportive of the preferred model, Option 1 which sees Ofgem as a strategic body with separate code managers.
- Under the reforms put forward, the role of the UNC Code Administrator would need to transform into that of a much larger Code Manager or merge with other another organisation. In any event, it is vital that the current skills and experience of the Joint Office are maintained to ensure service continuity and a much smoother implementation of the proposed reforms.
- Given the changes highlighted for gas and its infrastructure, we believe that it would be beneficial for there to be a single code manager for gas. It is vital that the chosen code manager has appropriate gas knowledge and expertise to enable them to execute their duties effectively and support the strategic direction set by Ofgem. In relation to code consolidation, subject to regulatory approval, stakeholder feedback and appropriate funding,

¹ <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

we are supportive of and could see benefit from the Independent Gas Transporters' Uniform Network Code merging with the Uniform Network Code (UNC).

- We are concerned that if a single, universal code manager was appointed, issues or concerns in one sector, might drive or lead to behaviours/changes that may not provide benefit or value for GB energy customers.
- We agree that code managers should be held fully accountable through a licence issued by Ofgem as this will provide the most flexible means for the code manager to anticipate and respond to the rapidly changing environment and for Ofgem to incentivise the right behaviours. By contrast a contractual approach would be bound by the terms of the contract which may encourage disputes and inhibit responsiveness.
- We agree with the proposal put forward that code managers should be funded through charges levied on code parties.
- Moving forward, we would wish to see further development and consideration of the benefits of closer integration between Xoserve and the Joint Office. Both the Joint Office and Xoserve have a complementary team of highly capable and knowledgeable people who support the gas industry.
- We agree with the proposal put forward to give the strategic body powers to direct central system delivery bodies for the purpose of delivering the strategic direction. We also welcome the licensing of central system delivery functions, as this will allow for greater accountability and delivery between central system delivery bodies and their users.
- We agree, that as a minimum existing appeal routes should be retained and moved to the strategic body. We welcome further discussion relating to how decisions made by the strategic body may be appealed. We firmly believe that there needs to be clear regulatory accountability and that any appeals framework should allow effective opportunities for different interests and views to be represented whilst being as simple, rational, transparent, and timely as possible.

Conclusion

We look forward to working with BEIS and Ofgem and all stakeholders involved in the governance of the detailed rules in which the GB energy market operates.

In the meantime, if you wish to discuss any of the matters detailed in this response, please do not hesitate to contact me.

Yours sincerely

By email

Penny Garner

Chief Executive of the Joint Office of Gas Transporters

Consultation question responses

Scope of reform

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

We have no comments to put forward.

2. 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 may be the subject of future consultation?

We agree with the proposal put forward to give the strategic body powers to direct central system delivery bodies for the purpose of delivering the strategic direction. We also welcome the licensing of central system delivery functions, as this will allow for greater accountability and delivery between central system delivery bodies and their users. We would like to consider in greater depth how codifying the powers and responsibilities of central services delivery bodies through licence would work and we welcome further clarification on such matters.

In relation to the gas industry's Central Data Service Provider (CDSP), Xoserve delivers services to gas Suppliers, Shippers and Transporters. Xoserve is a not-for-profit organisation and is funded, governed, and owned by the gas transporters. Xoserve's board is made up of industry-nominated directors and independently Chaired.

Moving forward, we would wish to see further development and consideration of the benefits of closer integration between Xoserve and the Joint Office. Both the Joint Office and Xoserve have a complementary team of highly capable and knowledgeable people who support the gas industry. Whilst leading the field in relation to gas governance, given its size, the Joint Office would not be able to take on accountability for full end-to-end delivery responsibilities as a code manager for the gas industry. However, the knowledge, capability, and expertise that the Joint Office has would be invaluable in supporting the CDSP in providing an end-to-end service delivery.

We believe that under the proposals put forward, a closer integration between a non-profit making Xoserve and the Joint Office would be invaluable in providing support to Ofgem in delivery of the strategic direction, whilst continuing to deliver and support the gas industry and customers.

Roles and Responsibilities

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

The establishment of a clear line of accountability between the strategic function and the code management function will be essential for ensuring coordination and consistency across codes for delivering strategic change. More effective strategic direction and management should lead to greater coordination between parties, for the benefit of end consumers. The strategic body must ensure that decisions are made in a transparent, cost effective and timely manner. Future roles and responsibilities should be clearly defined and agreed with stakeholders.

The strategic body will play a vital and important role in ensuring that the future system of code governance can respond to the significant changes required to the UK energy sector, whilst

supporting competition, innovation, and the end consumer and as such it should be held to account in an open and transparent manner.

We do not support the strategic body having the vires to make direct changes to industry codes without appropriate stakeholder involvement and consultations.

We would like to see further consideration as to how the strategic body will be assessed and held to account in relation to areas such as UK net zero targets, strategic direction, delivery, benefit to end consumers and financial accountability. Any assessment should include the views of the energy industry stakeholders, consumers, business, and the UK government.

We would like to see the strategic body produce an annual report relating to its performance, that is approved by the Secretary of State.

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

We agree that code managers should be held fully accountable through a licence issued by Ofgem as this will provide the most flexible means for the code manager to anticipate and respond to the rapidly changing environment and for Ofgem to incentivise the right behaviours. By contrast a contractual approach would be bound by the terms of the contract which may encourage disputes and inhibit responsiveness.

The licensing of code managers and a robust enforcement framework should provide accountability and flexibility as the energy system evolves. Code managers should be independent and driven by the needs of their stakeholders and the industry, rather than driven by commercial gain and profits. It will be imperative that the interests of consumers, stakeholders and the UK energy market are placed at the centre of code governance and management moving forward.

The way in which code managers will be monitored and evaluated should be open to stakeholder engagement and scrutiny. We would expect Ofgem to seek a meaningful level of stakeholder views and we would welcome the establishment of stakeholder boards to hold to account and oversee the performance of code managers. Code managers must provide regular and transparent updates to both the strategic body and stakeholders in relation to budget setting, financial updates, the prioritisation of work, work delivery and overall alignment to the strategic plan set by the strategic body.

We are concerned that if a single, universal code manager was appointed, issues or concerns in one sector, might drive or lead to behaviours/changes that may not provide benefit or value for GB energy customers.

Given the changes highlighted for gas and its infrastructure, we believe that it would be beneficial for there to be a single code manager for gas. It is vital that the chosen code manager has appropriate gas knowledge and expertise to enable them to execute their duties effectively and support the strategic direction set by Ofgem.

In the future, there may be instances, where companies that wish to support the delivery of energy code reforms are not-for-profit organisations. Consideration should be given to how the licencing of not-for profit organisations would work.

5. 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 forums, and why?

In administering the UNC, the Joint Office operates independently of the gas transporters to maintain impartiality and avoid perceived or real discrimination between UNC parties. We ensure that all parties are provided with opportunities to engage and put forward their views. For the twelve-month period, constituting the Gas Year 2020-21, the Joint Office chaired 324 meetings and supported the governance and raising of 48 Modifications. During the same period, we received 180 consultation responses to a total of 30 consultations, with an average of six responses per consultation.

The careful and considered engagement of stakeholders will be essential to the role that the code manager undertakes. Stakeholder groups play a crucial role in the codes decision making process and the inputs they provide are essential to sound code governance.

We welcome any future approach that places stakeholders at the heart of change management and decision making. We agree that codes and licences should be used to ensure that engagement mechanisms are clear, consistent, fair, and transparent. Any future approach should be evidence based, encourage innovation, and reduce barriers to entry.

Moving forward, we note that the proposals remove the requirement for industry workgroup/engagement meetings and that the role of industry modification panels will no longer exist. It is crucial that the expertise provided by industry participants and stakeholder is encouraged and valued.

We welcome stakeholder advisory forums and would expect both the code manager and strategic body to be fully engaged in these. We look forward to further discussions relating to how the code manager would be expected to take on board the views of such a group and how the composition for such groups would be chosen.

The strategic body and code manager should have a formal duty to ensure that the views of all stakeholders are recognised during any change management process. The approach to stakeholder engagement needs to be robust and will require flexibility.

6. 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?

In the first instance, stakeholders should do their very best to resolve any disagreements early in the process with the Code Manager. Where a stakeholder(s) and the Code Manager cannot come to an agreement then there should be a transparent and timely appeals process.

We agree, that as a minimum existing appeal routes should be retained and moved to the strategic body.

We welcome further discussion relating to how decisions made by the strategic body may be appealed. We firmly believe that there needs to be clear regulatory accountability and that any appeals framework should allow effective opportunities for different interests and views to be represented whilst being as simple, rational, transparent, and timely as possible.

7. 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?

We do not support option 2, where the FSO would take on the role of the IRMB.

We do not support this operating model as the proposals for the FSO are already wide ranging and would place too much reliance on a new organisation whose responsibilities need to be focused on its core role.

8. 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)?

We support the proposal where all strategic body decisions on code changes will be subject to both judicial and CMA appeals. By restricting appeals to judicial review only, we have concerns that this could lead to a lessening of licensee protections.

We do not support Option 2 and therefore have not responded on this point.

9. Do you have any thoughts on other potential appeal routes?

We have no further comments currently.

Preferred option: Ofgem as a strategic body with separate code managers (option 1)

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

We are supportive of the preferred model, Option 1 which sees Ofgem as the strategic body with separate code managers.

We agree that the strategic body should set strategic priorities, through a Strategy Policy Statement (SPS) and keep under review relevant developments in the energy sector.

It will be essential that the strategic body has the appropriate capabilities to deal with both gas and electricity not only holistically, but also on an individual fuel basis.

Ahead of taking on the role, it will be imperative that Ofgem has the appropriate legislative powers, budget, skills, capabilities, and resources in place.

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

Given the vital role of the strategic body, it is essential that there is a transparent and open framework relating to the monitoring and performance of Ofgem, as the strategic body. The monitoring framework and evaluation approach must ensure that Ofgem is effectively delivering against its role and responsibilities and is ensuring that stakeholder feedback is listened to and acted on. The monitoring framework and evaluation approach must be open to scrutiny by all parties.

The strategic body should have a clear responsibility to regularly report to government, its progress in helping to achieve government policy objectives

We would like to see the strategic body produce an annual report relating to its performance, that is approved by the Secretary of State and includes feedback from all stakeholders.

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

We favour appointing a licenced Code Manager based on the existing Code Delivery and Administration bodies in gas. This is because the core skills required to deliver net zero in gas are already in place and with some additional functions could provide an excellent service to stakeholders from the outset and importantly do so with minimal mobilisation and disruption compared to the alternative approach. Both Xoserve and the Joint Office have a proven track record in facilitating and delivering change and as they are not for profit organisations, their interests are fully aligned with customers and stakeholders, unencumbered by competing commercial drivers. This contrasts with REC where those existing bodies did not exist and a yet to be proven competitive model is still developing. This doesn't need to be the case for the Code Manager where the key functions are already operating and can be driving change from day one.

We agree with the proposal that a review of options for codes consolidation should take place before the new governance structure is introduced. We would also welcome code simplification and digitisation.

We firmly believe that gas and electricity codes should be kept separate. Such an approach would allow gas and electricity stakeholders to concentrate their efforts on their own individual, strategic priorities. Where there is an opportunity for whole system synergies and the sharing of best practice, we would expect the strategic body and code managers to oversee and manage this process.

In relation to code consolidation, subject to regulatory approval, stakeholder feedback and appropriate funding, we are supportive of and would like to see the Independent Gas Transporters' Uniform Network Code merge with the Uniform Network Code (UNC) as the former was originally largely modelled on the UNC and therefore should be easier to combine than electricity codes, with the advantage of removing some of the current process costs and duplication. Consolidation would also lead to increased stakeholder engagement through the UNC with consequential benefits to gas customers.

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

We agree with the proposal put forward that code managers should be funded through charges levied on code parties. Under SSpCA12 funding of code administration for the UNC is provided by the Gas Transporters. Moving forward, consideration will need to be given to this matter.

Careful consideration will need to be given to the design and application of any charging methodology relating to code management activities. Any proposed charges should not prevent smaller parties or non-code parties from raising code changes, where there will be a clear benefit to end consumers.

We are mindful that one of the criticisms of the present system is that some proposals are incentivising commercial behaviours that are self-serving and provide limited benefit to the

customers. Any changes should ensure that they benefit customers while progressing net zero pathways.

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

We support the proposal that the strategic body should have ultimate accountability for code manager budgets.

When setting budgets for code managers it is imperative that there is a timely and transparent process for stakeholders to be involved in the process. This process should be agreed in advance and communicated to stakeholders. Stakeholders should be able to scrutinise the budgetary proposals of code managers and a process for challenging budgetary proposals should be put in place to ensure that there is full accountability.

Alternative option: Future System Operator as Integrated Rule Making Body (IRMB) (option 2)

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

We do not support this proposed operating model.

Analysis of institutional governance options

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

As stated, we are supportive of Option 1 as it creates an appropriate separation of roles and the opportunity to drive net zero changes more efficiently. The strategic body can concentrate on whole-system strategy and by having separate Code Managers, the delivery of that strategy can be optimised for each vector to the benefit of customers and our carbon targets.

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?

It is difficult to assess the estimated costs for the new code manager function. This year, the Joint Office had an approved budget of £1.8 million. Given the requirements highlighted within this Consultation, we would expect to see considerable additional costs.

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

As the Code Administrator for the UNC, the Joint Office avoids undue discrimination or preference across the gas industry. We are trusted to impartially, support, facilitate, educate and where necessary challenge all parties as a critical friend. We work closely with the Uniform Network Code Modification Panel to manage the governance arrangements which facilitate change within the gas industry. As part of Ofgem's energy Code Governance Review a Code of Practice (CACoP) was developed by industry to facilitate convergence and transparency in code modification processes and to help protect the interests of small market participants and consumers through the adoption of key code administration principles. The Joint Office of Gas Transporters is committed to operating in line with the Code Administration Code of Practice (CACoP).

We note that Case Study 2 was the Gas Transmission Charging Review. The review received the largest number of alternative modifications in the history of the Joint Office.

Under the present governance framework, the Joint Office fully supported the review. Joint Office received positive feedback from stakeholders in relation to the way in which we administered and supported the review.

We note that there were many differing views on the matters raised and the time taken on the review was considerable.

19. To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment? Are there further cost savings to industry that should be included?

We wish to see further analysis of potential costs and savings. We note that most of the assessments are based on electricity codes.

The Joint Office was not requested to provide data for the impact assessment.

Implementation approach

20. Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?

We have no further comments.

21. Are there any implementation issues, risks, or transition considerations we should take into account? How could these impact code reform?

We have no further comments.

Next Steps

22. 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 impacts.

We have no further comments at this time.

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

Gas Transporter Standard Special Condition A12 (Joint Governance Arrangements) (SSpCA12)² was placed on all gas networks following National Grid's sale of gas distribution network in 2005. SSpCA12 requires gas transporters to work together to establish, develop and operate joint governance arrangements for the implementation and administration of the UNC and other common matters. After reviewing the present proposals, we believe that there will be consequential impacts on the licence obligations of gas transporters and potentially other licences. It will be essential for Ofgem to provide clarity to all parties in relation to this matter, as potential

² <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

misalignment between obligations and control could lead to inefficient processes and costs to consumers.