
ADE Response | Design and delivery of energy code reform | 28 September 2021

Introduction

The ADE is the UK's leading decentralised energy advocate, focussed on creating a more cost effective, efficient and user-led energy system. The ADE has more than 140 members active across a range of technologies, they include both the providers and the users of energy equipment and services. Our members have particular expertise in heat networks, combined heat and power, demand side energy services including demand response and storage, and energy efficiency.

Response

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

The ADE provisionally agrees with this.

The engineering standards will need to evolve more rapidly over time, and it will be necessary to improve interoperability between DNOs and the ESO. The way in which they are governed and reviewed currently is too unstructured to achieve this currently.

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?

The ADE supports licensing is needed for central system delivery.

We further agree that obligations should be placed on both the central system delivery functions and the code managers to cooperate and deliver the strategic direction.

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

The ADE agrees with the roles of the strategic function.

We support the proposal to use a Strategy and Policy Statement to communicate the Government's strategic vision and that this should be more regularly reviewed than the normal 5-year cycle given how quickly the system is changing.

We support the proposal to develop and publish a "strategic direction" annually indicating what the strategic function is prioritising for change through the codes. The ADE considers that this should be subject to public consultation; not limited to specific stakeholders. We would further note that Ofgem has at times been relatively weak at translating a strategic vision into a clear set of code modifications and other reforms. An example of this is Access and Forward-looking Charging review which has suffered somewhat from the lack of a clear link back to Ofgem's strategic direction.

We also support their role in providing oversight and accountability of the code managers.

Regarding the proposal that the strategic function could develop changes and then directly implement them into the codes, we are provisionally supportive. However, it will be important in these cases that Ofgem undertakes detailed consultation with industry. For example, in the SCR process, Ofgem's directions are necessarily relatively high-level and they do not uncover all the complexities of implementing a given change. If Ofgem is going to make these changes directly, an appropriate process of industry consultation will need to be in place to ensure these detailed issues are identified.

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

The ADE agrees that the code managers should be required to publish a delivery plan in response to the strategic direction and then report on progress against it.

We agree that the code managers will need the ability to raise code modifications to fulfil the strategic direction and to robustly prioritise other proposed modifications. If the code managers are to play this role and for this to become the dominant way in which code changes are made, there will need to be very robust consultation and transparency measures put in place for the code managers to ensure that modifications appropriately reflect the diversity of impacts on the energy sector.

Further to this, CBAs are currently an important part of the evidence base for modifications. The ADE supports this continuing to be the case under these reforms. However, at present, a working group would decide on the level of detail and analysis needed to allow a decision to be made on a code change. This is somewhat efficient because the proposers and at least some working group members tend to be incentivised not to gold-plate this. If this decision passed to the code managers, there would need to be processes in place to ensure gold-plating does not happen.

We support the proposal to oblige each code manager to assess and then, where relevant, help coordinate cross-code coordination. We also support the proposal to transfer decision-making powers with respect to the code change process from the panels to the code managers.

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 forum, and why?

The ADE supports much greater use of formal consultations. This lessens the burden on smaller parties who cannot resource working groups that meet regularly for some time each meeting and over the course of weeks or months.

Whilst the ADE recognises the reasons for wanting to be flexible, we consider that the significant market-making role potentially being created for the strategic function and code managers means that a more prescriptive approach is needed. Firstly, we would consider that there should be statutory obligations on code managers to formally consult. Secondly, whilst we would not completely remove working groups as a form of engagement, we would caution that retaining this as an option may mean that the same difficulties experienced now (of very long timescales to make changes, long discussions without at times clear structure or resolution and barriers to smaller parties) would persist if this becomes one of the main ways for code managers to consult. Therefore, they should only be used as an exception and should be very time-limited. Finally, we would support any working groups being required to recruit a minimum number of attendees from beyond the usual participants. This could be done for example through requiring a minimum number of non-BSC parties.

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?

The ADE agrees with these proposals.

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?

The introduction of an internal body to the IRMB does not seem necessary and may simply add administration to the process. This is particularly the case given that Ofgem would retain decisions on the vast majority of potentially contentious topics.

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)?

The ADE does not have a view on whether only the Judicial Review route should be retained or whether appeals should continue to be split between Judicial Review and appeal to the CMA.

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

The ADE has no view on this question.

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

The ADE agrees with this approach.

In setting out the SPS to Ofgem, it is important that Ofgem are required to publish analysis and their view of the interactions between the changes they are prioritising for different participants and the risks/opportunities therein. They have not always been very successful at doing this - for example, the links between the Targeted Charging Reform and the Access SCRs were poorly drawn out and there was some buck-passing where important issues for industry were de-scoped from the TCR on the expectation they would be reviewed in Access, only for the latter to find that they could not go as far on this as they wanted. An example of this is the development of more dynamic signals for the value of flexibility at distribution.

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

To date, Ofgem's publications setting out the progress it has made tend to be highly qualitative and do not tend to include more quantitative assessments of their impact on different sectors and how this relates to the strategic vision.

Given that Ofgem's role could substantially increase through these changes, the ADE considers that more than qualitative statements against the annual forward programme etc. will be needed to ensure that Ofgem is prioritising the right changes and driving the code managers to develop modifications in a timely way that deliver the right impact on the market.

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

The ADE agrees that the default should be competitive tendering.

We would not support the FSO or its affiliate being chosen without competitive tendering and further public consultation given that this would be a significant addition to its already considerable role.

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

As this consultation highlights, many newer business models and types of organisation are likely to be materially impacted, and involved in, code modifications in future. Further, these proposals do weaken the link between being a code party and having the right to modify the codes. Finally, a success of these reforms would be that code managers spend more resource on cross-cutting collaboration.

Therefore, the ADE is not currently convinced that recovery of code manager charges should simply be levied on code parties, as has previously been the case. For example, an alternative could be that these costs are also recovered through Ofgem's cost recovery for acting as strategic function. This would more closely align the recovery mechanism with the ambition of code governance acting more directly in consumers' interest.

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

The ADE agrees.

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?

The ADE agrees.

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

The ADE provisionally supports Ofgem as the strategic body with code managers developing codes, noting the caveats expressed above.

Whilst we note the merits in the FSO playing this role, more robust structures for decision-making, consultation with industry and transparency would need to be put in place if the FSO were to play this role. We have set out the areas which we think would need to be strengthened in our response to the Future System Operator consultation.

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?

The ADE does not have a view on this 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? Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?

The ADE agrees.

The ADE would further note that we have many conversations with new entrants into the energy market who struggle to understand and participate in the current working group structure. As a result, it is very hard for the current system to ensure it does not negatively impact innovative business models.

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?

The ADE agrees with the benefits that have been identified.

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?

No.

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

The ADE does not have further comments to make on this.

22. We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender reassignment, 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.

The ADE does not have a view on this question.

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

The ADE would note that the development and regulation of the heat network market may eventually lead to an equivalent set of codes and technical standards as exists for the other networks. It is likely too early to include such standards directly into this process, but it should be borne in mind - both with respect to how energy code governance develops but also how the change processes for heat network standards are developed through the introduction of heat network regulation.

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