



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,
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Ofgem

Team: Industry Code and Licensing Team
Office of Gas and Electricity Markets
Postal Address: 10 South Colonnade
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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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If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

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

About You

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

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: We have seen few problems with the engineering standards, so the case for change would be based on principle and alignment rather than to resolve material issues.

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:

We welcome further consultation on this.

Whether the central system delivery body is licensed as an end-to-end (including the Code Manager and System roles), or two separate licences, likely comes down to costs and efficiencies. What is important, is the content of the licences and ensuring the standards and expectations are set high to ensure high quality, timely, efficient delivery of central systems.

When considering licensing, lessons should be learned from existing codes such as the SEC and DCC licensing regime, which was designed to be efficient and effective, but has resulted in many issues which are yet to be resolved such as high DCC costs, poor change processes and opaque governance.

Also, high numbers of licences to administer could prove costly and may require additional expertise to oversee procurement, contract management, and enduring management of the licensees. Considering who should be responsible for conducting the end-to-end licensing process from procurement to enduring contract management should also be considered, as Ofgem may not be best placed to fulfil all procurement roles.

The funders of the code, who are also those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. Participants should have a meaningful input into the competitive tendering, e.g. via representation, to ensure that industry needs will be met.

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This paragraph and the next three apply to all aspects of the proposals, not just this question, but are not repeated under each question in the interests of brevity and efficiency. It is essential to ensure that industry participants can seek change flexibly and

efficiently.

The risk in the current proposals is that the regulatory environment will, by prioritising the requirements of government and regulators, preclude industry participants from achieving changes. Such changes may provide efficiencies or new commercial opportunities which may also be beneficial to customers.

While we agree government or regulatory change is important and must be provided for, provision must equally be made for creative change and innovation by industry players. Industry-driven change should be possible in parallel to that driven by Government or the regulator or the lost opportunity cost will be too high.

If there is no opportunity to achieve innovation or deliver efficiencies, and hence make a reasonable return, achieving healthy investment in the industry will become very difficult.

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: Firstly, Ofgem as the Strategic Body has potential negative consequences around the regulator overseeing the strategic implementation of the rules it is designed to enforce. By playing a core role in the implementation of strategy, this could lead to a biased approach to enforcement and could impact the other Objectives of the regulator including how successfully they promote competition. While it makes sense in some ways for the role to be fulfilled by Ofgem, this would only make sense where there is formal separation between the functions and auditable separation of duties, e.g. similar to National Grid's separation of duties. There is a serious risk of Ofgem becoming an enforcer of itself, via the role of Strategic Body.

Secondly, the Strategic Body role is outside the scope of economic regulator duties and skill set. We challenge how the knowledge and skillset gap will be closed, especially given the proposed disbanding of Code Panels whose membership usually equates to decades of expertise across technology, energy retail, and customer-centric roles.

Thirdly, there are some roles and responsibilities proposed to be undertaken by the Strategic Body which sit better with another body. For example, setting and approving budgets should sit with those funding the code.

Fourthly, the accountability of the Strategic Body has not been considered as part of these proposals. This cannot be overlooked as it is a core part and dependency of the proposals.

Lastly, in general, the proposals for stakeholder engagement are insufficient. The industry participants who are required to provide funds for the codes and must comply with the code, must have meaningful input into decision making. Suppliers, as the parties who are

compelled to fund the codes, understand the details of code interactions and consequences. Therefore, participant input must be strengthened far beyond the proposals.

The Strategic Body should adhere to specific criteria around stakeholder engagement, and by default, stakeholder feedback must be acted upon unless there is a justification why it is not. Minimum prescribed frequency of communication with a minimum prescribed number of diverse stakeholders must feature: all consumers must be represented in stakeholder engagement.

We do not support any proposal which would remove meaningful participant input into critical industry decision making.

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: Overseeing code change in a more proactive manner, developing a codes roadmap and plan for delivering strategic change, are important roles which are currently lacking. However, the proposed method of how these are conducted will likely have negative consequences for the whole market.

Firstly, Suppliers are vital to the funding of the energy market, e.g. renewables, schemes like ECO and Green Deal, pay generators, collect funds from customers for networks. Coming at a time when margins are negative and subject to a price cap, removing the funder, Suppliers, from having influence is extremely risky for investor confidence in the sector. This could distort the whole market, negatively impacting customers.

Secondly, the proposed general approach to stakeholder engagement is insufficient. The Code Manager should adhere to specific criteria around stakeholder engagement, and by default, stakeholder feedback must be acted upon unless there is a justification why it is not.

The industry participants who are required to provide funds for the codes and must comply with the code, must have meaningful input into decision making. Suppliers, as the parties who are compelled to fund the codes, understand the details of code interactions and consequences. Therefore, participant input must be strengthened far beyond the proposals.

We do not support any proposal which would remove meaningful participant input into critical industry decision making.

Thirdly, the proposed role of the Code Manager (and Strategic Body) in setting and approving budgets should sit with those funding the code. While the Code Manager should propose a draft budget, it should be up to the funders to decide if it is approved or not.

Approving budgets must be complemented by direct contributions and guidance from those participants required to fund the code. Where the code manager and/or the strategic body is able to determine the of costs in the budget, it is essential that Suppliers are able to recover the costs (e.g. in the price cap).

Fourthly, this consultation comes at a time when the REC is newly established. We note similarities between the REC, the SEC, and the proposals for a Code Manager role. Given REC and RECCo are in their infancy, and the fact that the SEC still has issues especially around code change, it would make sense to undertake a critical review of the REC and RECCo model, and SEC, after 12 months of full operation, before planning to implement a similar model at scale. Lessons can then be learned and applied to avoid having to review the entire code landscape at a later date.

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 proposals around stakeholder engagement are insufficient. The current proposals risk creating more appeals.

Firstly, while it is proposed that the Code Manager must give due regard to the Forum's advice, it must take the advice of the expert forum by default, and prove why the advice should be disregarded, rather than starting from vice-versa. We also believe considerations should be given to provide the Forum with a veto over certain types of defined change.

Secondly, it is important to ensure the representatives on the Forum reflect the market and the change/scope of the Forum. Suppliers are vital to the funding of the energy market, e.g. renewables, schemes like ECO and Green Deal, pay generators, collect funds from customers for networks. Coming at a time when margins are negative and subject to a price cap, removing the funder, Suppliers, from having influence is extremely risky for investor confidence in the sector. This could distort the whole market, negatively impacting customers.

The funders of the code, and those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. Therefore, Supplier input must be strengthened beyond the proposals.

We do not support any proposal which would remove meaningful participant input into critical industry decision making.

Thirdly, all consumers must be represented in the proposed model. Consumers have been considered as a broad-brush stroke in the Impact Assessment. However, consumers' interaction with their energy supply is fundamentally different if it is in PPM or credit mode.

As such, we advocate for all consumers, including those in PPM mode being represented in the proposed stakeholder engagement model.

Fourthly, if a certain combination of proposals were implemented, it could be that Ofgem provide the Strategic Direction, manage it, overturning Code Manager decisions, and are responsible for appeals to any decisions. Without auditable and traceable separation of functions and duties, there be serious risks of the 'judge, jury, executioner' principle.

Even having Ofgem as Strategic Body may risk some of this principle in action. As such, having a formal route to an independent appeals body, e.g. Competition Appeals Tribunal, may be useful regardless of the combination of proposals implemented to ensure the distinction of roles and responsibilities.

Lastly, given that much of the proposal appears to hold similarities with the SEC and the newly established REC and RECCo model, we advocate for a critical review after 12 months of full operation, before planning to implement a similar model at scale. Issues remain with SEC, especially around the code change process. Lessons can then be learned and applied to avoid having to review the entire code landscape at a later date.

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: Firstly, the scope of the decision-making ability of the Code Manager, e.g. being able to raise changes, determine the progress, and implementation, including prioritisation, is unjustified. There should be an approval process whereby the Stakeholder Forum reflects the current Panel roles and responsibilities. The Forum can then work with the Code Manager on prioritisation, delivery of change, approvals, and recommendations.

This aspect of the proposal is particularly similar to the REC model, albeit REC is a lighter touch version. It would therefore make sense to see how the REC Code Manager role works in practice, undertake a critical review after a year of full operation, and apply lessons learned.

Secondly, Ofgem already has significant power without the need to be able to overrule Code Manager decisions. Significant Code Reviews are already a mechanism available to Ofgem to make material code change. An appeal route remains, which can be used by all interested parties where code change is challenged or disputed.

As such, there is no justification for putting in place the power to overrule any decision without scope/limitation.

Should the Strategic Body be able to overturn decisions, it must be scoped to certain necessary circumstances, e.g. when a change has been appealed.

Thirdly, with specific regard to budgeting, setting and approving budgets should sit with those funding the code. Decisions on this should not be with the Code Manager or Strategic Body.

Fourthly, decisions by the Code Manager being overseen by the Strategic Body brings accountability into question. The funders of the code, and those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. The Code Manager should be accountable to these stakeholders first and foremost and Supplier input must be strengthened beyond the proposals.

We do not support any proposal which would remove meaningful participant input into critical industry decision making.

Lastly, given that much of the proposal appears to hold similarities with the newly established REC and RECCo model, and the SEC. We advocate for a critical review after 12 months of full operation, before planning to implement a similar model at scale. Lessons learned can then be incorporated to avoid having to review the entire code landscape at a later date.

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

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: [Decisions made by Ofgem must be appealable.](#)

Appeals should be viewed as a last resort. This means the change process must ensure that sufficient stakeholder engagement has been conducted to try to resolve disputes or issues way before any decision is made.

To avoid appeals, the funders of the code, and those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. Therefore, Supplier input must be strengthened beyond the proposals.

We do not support any proposal which would remove meaningful participant input into

critical industry decision making.

Where a decision has been made, there must be ample opportunity for all interested parties to appeal. We strongly support, 'Any appeals framework should allow effective opportunities for different interests and views to be represented whilst being as simple, rational and independent as possible'.

To ensure the most appropriate appeal route, both Judicial Review and referral to the CMA must be allowed to occur. Taking the option away of CMA referral is not justified. In contrary, we advocate for maintaining the CMA and JR route, and considering other routes in addition such as appeal to the Competition Appeal Tribunal.

A JR is not a normal appeal route, as it is limited in scope. It is also so costly that it is likely to preclude smaller participants to be able to use for appeals economically and efficiently.

The CMA is an independent non-ministerial department with the responsibility of protecting customers and promoting competition. Removing the option of referral to CMA takes away the option of challenging at this institutional level around the discrete scope of customer protection and competition promotion. The scope and purpose of a Judicial Review is significantly different, as it centers around the lawfulness of a government decision, for example, procedural. It is not about a different decision, or whether that decision was right/wrong. As such, the customer protection and competition promotion aspect of CMA is not held within the scope of a Judicial Review.

Hence, there is no justification for removing the option for CMA referral, and therefore it must remain. Removing CMA appeal could have deep and profound effects. All participants should have the economical and efficient right to appeal.

Question 9

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

Do you have any thoughts on other potential appeal routes?

Comments: See answer to Q8. The proposals must recognise that there are a range of sizes of companies in the market so any proposals around appeals should be appropriate and indeed useable for all companies. All participants should have the economical and efficient right to appeal. Leaving only the JR route may preclude smaller parties to appeal. There must be an alternative to JR.

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 accept that the Strategic Body will be a person designated by the Secretary of State. However, Ofgem is a specialist economic regulator whose core skill set is in the economic regulation of the energy industry. Ofgem are not a commercial developer and manager. As such, there are concerns around the potential negative consequences of this proposal – please see answer to Q3 in reference to this question.

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 support the approach of the responsibility on Ofgem to inform government of its progress in helping to achieve government policy objectives, that Ofgem needs to produce an annual report about its activities and also to publish an annual forward work programme on upcoming direction and activity, which can be scrutinised by government.

However, it is expected that Ofgem would seek stakeholder views on its performance, there must be stronger requirements: the proposed approach to stakeholder engagement is insufficient.

Suppliers are vital to the funding of the energy market, e.g. renewables, schemes like ECO and Green Deal, pay generators, collect funds from customers for networks. Coming at a time when margins are negative and subject to a price cap, removing the funder, Suppliers, from having influence is extremely risky for investor confidence in the sector. This could distort the whole market, negatively impacting customers.

The funders of the code, and those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. Therefore, Supplier input must be strengthened beyond the proposals.

We do not support any proposal which would remove meaningful participant input into critical industry decision making.

There must be criteria which the Strategic Body (Ofgem in this case) must adhere to. Minimum prescribed frequency of communication with a minimum prescribed number of diverse stakeholders must feature. All consumers must be represented in stakeholder engagement. By default, the stakeholder feedback must be acted upon unless there is a justification why it is not.

Secondly, the accountability of the Strategic Body has not been considered as part of these proposals. For example, who is the Strategic Body accountable to? How would it work in practice? This cannot be overlooked as it is a core part and dependency of the proposals.

Thirdly, there are certain roles and responsibilities proposed for the Code Manager and Strategic Body which sit better with the funders of the code. For example, setting and approving budgets should sit with those funding the code. Decisions and accountability on this should not be with the Code Manager or Strategic Body.

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:

A licensing regime for Code Managers may make sense where there is a positive cost benefit to doing so. However, lessons should be learned from previous experiences to ensure a positive result.

The funders of the code, and those who are obliged to comply with the code should have meaningful input into decision making. Suppliers, as funders and as those that are obliged to comply, understand the details of code interactions and consequences. This is one example where Supplier input into decision making is vital. Participants should have a meaningful input into the selection of providers, e.g. via representation, to ensure that industry needs will be met.

Selecting Code Managers could be via competitive tender or opt for another business model which could drive the same behaviours seen in competitive markets. Without the protection of competitive powers, there is a real risk of increased costs and reduced service and quality. Using competitive powers plus a licensing regime to hold Code Managers to account seems the most sensible approach.

Alternatively, creating a shell company and appointing a board could make use of competitive powers via tendering of specific contracts, similar to RECCo. Given REC and RECCo are in their infancy, it would make sense to undertake a critical review of the REC and RECCo model after 12 months of full operation, before planning to implement a similar model at scale. Lessons learned – including from the other newly developed code, the SEC, where issues remain especially in code change processes - can then be incorporated to avoid having to review the entire code landscape at a later date. While this model is newly in operation, lessons should be learned from this approach before discounting or progressing this proposal.

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: Firstly, the Code Manager must be accountable to the funders of the budget, for setting budgets. Suppliers are vital to the funding of the energy market, e.g. renewables, schemes like ECO and Green Deal, pay generators, collect funds from customers for networks. Coming at a time when margins are negative and subject to a price cap, removing the funder, Suppliers, from having influence is extremely risky for investor confidence in the sector. This could distort the whole market, negatively impacting customers.

Secondly, the funding model should ensure that the costs are appropriately distributed and recoverable. For example, non-core changes designed to service interested stakeholders for commercial reasons, but do not have anything to do with the core running of the code,

should be paid for by said interested stakeholders, not the end consumer. There must be a method for the Code Manager to charge non-parties for value added services and changes. End consumers should not pay for services and processes which may not impact them and are designed for commercial gain.

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: The Code Manager must be accountable to the funders of the budget, for setting budgets. Since the costs are paid via Energy Suppliers, then sufficient stakeholder engagement must be required in setting and approving budgets. This should include prescribed minimal amount of engagement with the relevant parties, and should ensure the feedback is acted upon by default. See answer to Q13.

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

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

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.

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: 'Industry is also expected to save around £1.5m per year in reduced costs of workgroup participation due to the increased preparatory work carried out by the enhanced code manager functions'.

While it is the case that industry will have reduced costs of workgroup participation, there will arguably be increased preparatory work needed to 'keep up to speed' with changes to codes, as meetings decrease but consultation relies on reading over large documents as the main method of engagement.

Having information and changes explained to industry in the same room at the same time, allows debate and everyone getting to the same level of understanding. Removing this and relying only on one Stakeholder Advisory Forum and paper consultations, increases the overall time and effort in researching and keeping up to date with changes in general across industry, thereby increasing costs.

In addition, impact assessments will still be required by the Code Manager to assess the impact of change on industry. Should insufficient stakeholder engagement be conducted, it invalidates the IA. Conducting accurate and wide ranging impact assessments will be costly, increasing rather than decreasing costs. These are currently not sufficiently factored into the IA provided with the consultation.

These increased, rather than decreased costs should be reflected in the modelling to ensure that benefits are not over-emphasised. Removing working groups does not simply mean industry participation drops to near zero: everyone has a duty to keep informed and participate in the industry changes.

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

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

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

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: [See answer to Q17](#)

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

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

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.

Yes, we note the similarities between the proposals and the REC and SEC.

Firstly, issues with SEC like the change process remain, particularly around the stifling of innovation via lengthy and costly code change. Lessons must be learned and applied to other existing and new code models.

Secondly, the REC and RECCo are newly established and include many of these principles such as being developed via the 'shell company' approach, with tendered competitive contracts for specific services. Since it is proposed to introduce these changes from 2024 with primary legislation in 2023, a review of the success of the REC model should be conducted in late 2022 to understand what works well and lessons learned.

As such, we propose deferring proposal implementation until a full meaningful evaluation of similar codes can be undertaken, as only then can lessons be learned and incorporated into any future code design.

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: It is proposed to introduce this new code structure from 2024, at a time when major programmes of work are underway. This means, it is likely a time of high change via codes.

The proposals must be reviewed in late 2022 to understand the level of changes being progressed via the codes including SEC and REC, to understand more accurately the impact of introducing a new code governance structure at that time of high code change. There may be an opportunity to consider implementing smaller but meaningful changes like aligning Objectives and governance arrangements without instigating another major programme of work.

There is no justification for implementing these changes using a Big Bang approach.

Instead, a gradual implementation could support the idea of incorporating lessons learned, and support reducing the 'knowledge gap' risk. This risk is where both Code Managers and the Strategic Body need to sharply increase the level of expertise and knowledge base they need at the same time, in a short period of time. This consultation does not address this knowledge or skill set gap which is a negative consequence of the proposals, especially if disbanding panels.

How do you think these could impact on code reform?

Comments: High amount of code change during the implementation of a new code governance framework could impact 'in flight' or planned changes, causing costly delays.

Implementing a code governance framework based on a Big Bang approach could risk a major Code Manager and Strategic Body knowledge, skills and general expertise gap. Instead, a gradual implementation could support the idea of incorporating lessons learned, and support reducing the 'knowledge gap' risk.

Poorly defined and drafted code changes could have very negative consequences, e.g. for programmes like SMETS where interoperability relies on interpreting the change in the same way and implementing it in the same way. Any deviation undermines the change, potentially leading to a costly consequential change to rectify the issue. Meaningful stakeholder input is therefore vital to reduce the risk of this.

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

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?

The difficulties of achieving the levels of service that prepayment customers require has been difficult to deliver under the SEC and other codes. The way in which the SEC has operated has still not delivered the level of change needed to service prepayment customers. Lessons must be learnt and applied such that the new codes function without discrimination for prepayment customers. The code landscape must deliver benefit for all, not just credit customers

There is potential that this change has significantly more impact on vulnerable customers. One of Ofgem's vulnerability categories is using prepayment mode. Prepayment requires different processes and any changes which affect the meter directly impact the end user,

who is more likely to be vulnerable. There are many industry code changes which have the potential to impact the meter, and therefore impact the supply to a meter in prepayment mode. For prepayment customers, changes need to be fast and agile, but always maintain the lowest risk stance. Otherwise, there is a risk that some of the most vulnerable people in society go off supply.

This distinction has not been addressed at all in this consultation: consumers have been considered as a broad-brush stroke in the Impact Assessment.

Any restructure to aspects like code governance landscape must put the most vulnerable in society at its heart and work from that as a default. One of the ways to do this, is to consider vulnerable prepayment and vulnerable credit customers first, design around what can work well for these customers.

Secondly, much has changed since 2016 and yet the concepts in this consultation remain similar. There are two options provided but the consultation itself explains why the second option is not viable and therefore not preferred. This approach appears like the second option has been included as a comparison tool rather than discrete option.

Thirdly, the IA provided with the consultation can only be viewed a draft, the next stages must include an updated IA as a direct result of the consultation responses to reflect the true costs and benefits. For example, once the Stakeholder Advisory Forum scope and governance is decided upon, this will directly impact the cost of its operation and required attendance etc.

Lastly, as mentioned in the answer to Q2: This paragraph and the next three apply to all aspects of the proposals, not just this question, but are not repeated under each question in the interests of brevity and efficiency. It is essential to ensure that industry participants can seek change flexibly and efficiently.

The risk in the current proposals is that the regulatory environment will, by prioritising the requirements of government and regulators, preclude industry participants from achieving changes. Such changes may provide efficiencies or new commercial opportunities which may also be beneficial to customers.

While we agree government or regulatory change is important and must be provided for, provision must equally be made for creative change and innovation by industry players. Industry-driven change should be possible in parallel to that driven by Government or the regulator or the lost opportunity cost will be too high.

If there is no opportunity to achieve innovation or deliver efficiencies, and hence make a reasonable return, achieving healthy investment in the industry will become very difficult.

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