



# 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**

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BEIS and Ofgem will share with each other all responses that are received.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

## Personal / Confidential information

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

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: The FSO will have to be involved in decisions on engineering standards, as they will have the expertise necessary and will be reliant on appropriate engineering standards to meet their obligations to manage the system safely. There should therefore be a clear and legally binding link between the FSO's advice and changes to engineering standards. However, we do not believe the FSO should be the code managers for engineering standards, as changes can have significant knock-on impacts to markets (by affecting different classes of users differently, commercial impacts and creating limitations on technology types etc) that could cause a conflict of interest to the FSO. Having engineering standards managed by a separate body would provide an extra degree of transparency, both to industry and the Authority.

### 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: Central systems delivery are key to successful industry change, so the structure, nature of relationship and purpose of regulation must be absolutely clear. The relationship between delivery bodies and code managers is vital to understand the practicality of changes to industry. Information must be able to flow freely and transparently between them so prioritisation of changes can be effective and efficient. There is the potential for conflict of interest if the delivery bodies are too closely integrated with code managers, as changes which would enhance the role or increase the range of the delivery body may be prioritised unduly. If the delivery body and code manager are fully integrated, there will have to be a careful balance of resources between the dual roles. This balance could be guided by licensing directly, or through careful drafting of the Strategic Policy document that would guide code managers. If code managers and delivery bodies are integrated, they should also have clear strategic guidance to ensure efficient delivery of the changes required.

### 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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We support the creation of a strategic function in principle and agree that it should not be to the detriment of the strategic body's other, independent roles. We do not believe the strategic function should fit within the Code Manager but we do also not believe Ofgem will have sufficient resources and technical ability to fulfil the role. It is vital that the strategic direction is clear, precise and detailed enough to be of immediate use. Part of the cause to delays in implementation to the decisions of the Targeted Charging Review were because the Direction from the Authority left key areas unaddressed. This required industry workgroups to consider all possible variations, creating confusion and delaying the process. For example, the creation of the new Transmission Demand Residual (TDR) charge structure did not address whether Triad charges should be floored at £0 (as the baseline) or be allowed to go negative to send a stronger locational signal. Whilst the modelled Impact Assessment should have made an assumption on this issue, and so the Authority's Direction was made based on that assumption to a degree, the open governance process was not bound by that assumption. The workgroup did not have the resources to conduct their own impact assessment, nor is that the role of a workgroup. A code manager could, but it would need to be clear that this is a useful way to spend time and resources. The delay to the implementation of the Targeted Charging Review decision was, at partially, down to poor strategic direction from Ofgem in the Decision and their inability to engage during the change process. There is nothing in this consultation to suggest that Ofgem will increase their resources or expertise to be able to provide competent strategic guidance.

We agree that an annual publication of the strategic direction seems appropriate but it should acknowledge that there will need to be a balance between changes that are 'quick wins' and those that are more fundamental or have greater commercial impact, so will naturally take more time.

We strongly reject the idea that the FSO (as code manager) could take on the strategic function, as they could be incentivised to address any "low hanging fruit" in the strategic direction, thus delaying more fundamental reforms that need to be started as soon as possible. We agree that current lines of accountability can be unclear in code governance and it would appropriate to have the strategic function hold code managers accountable. However, in terms of oversight and monitoring, Ofgem do not currently attend the majority of industry workgroups, nor provide much direct interaction with code panels. While it appears to be the intention of the proposals that the strategic function should be more visible, which would be welcome, the consultation does not address the root cause of Ofgem's absence.

We note there is an existing path for strategic direction to be given to industry at a high level, and that is the Strategy and Policy Statement by the Secretary of State. This power was introduced in 2013 and has never been used. Given the complicated, delayed and overlapping consultations being faced by the industry from BEIS and Ofgem, it is clear that there is a lack of strategic leadership in general. This consultation does not address

that directly and therefore the proposals are not appropriate.

It is not clear why the budget setting of the code manager would be the ultimate responsibility of the strategic function and not the Authority, as with other regulated bodies. The costs of the Code Manager would, in the end, be borne by consumers and so it should be the Authority who determines whether the budget provides suitable value for money for them. If Ofgem are the strategic function, this issue is somewhat mitigated but it should be clear that the delivery plans and budgets of regulated bodies (Network owners, system operators, Code admin/managers) etc are considered against appropriately aligned criteria.

#### 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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: There is the potential for code managers to have a conflict of interest between their own priorities and those of the industry, especially if the code manager is integrated with other industry bodies such as the FSO. For example, if the strategic direction describes a desired end-state, there may be multiple ways to reach that state, some more effective/faster/future-proof than others. The Code Manager could be incentivised to take the fastest route, without doing sufficient analysis to prove it is at least as beneficial than a route industry may have proposed. Since the Code Manager can decide not to advance industry's proposed change, there will be no analysis for or against. The question of "which route is better?" would not be answered because the Code Manager can choose not to ask it. It would not be practical however, to bind the Code Manager into taking on all potential changes presented to it. In order to reach Net Zero by 2050, there will have to be a more streamlined and robust process to decide which potential changes are worth developing further and the Code Manager, in consultation with industry and observed by the Authority, would be the appropriate body to do so. We have concerns that the criteria used for the REC "no reasonable prospect of being approved" could be misused, as it would be the Code Manager essentially making a decision on behalf of the Authority. We would expect clear guidelines on how "reasonable" is to be interpreted and a route for the proposer to challenge the Code Manager's decision, especially if supported by other parties. We also believe the Code Manager will need considerable resources, above and beyond requirements for Code Admin currently, in order to fully investigate and reach appropriate conclusions in a timely manner. They will also need people with the appropriate skills and knowledge and we are concerned that a high turnover of staff may result in lack of in-house and/or historical knowledge. If large amounts of analysis is outsourced, this reduces transparency and accountability.

#### 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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We agree that, given the scale and speed of change required, engagement with new entrants and innovators is important and that they may not fit neatly in with engagement routes used by established parties. There is an opportunity for the Code Manager to take on an educational role, to open the workings of the industry up. Engagement with smaller parties is key and the proposed structure of advisory fora may limit smaller parties' involvement. This could be mitigated by having multiple, focused fora that can engage at a meaningful, detailed level on particular changes, in a similar way to Workgroups. It is worth noting that individuals can carry a great deal of experience around the industry and it is not unusual for industry participants to remember a past change from a different party's perspective. When acting independently, such as in Panels, this experience can provide insight and long-term steer. Should the Code Manager have a high turnover of staff or internal movement, this historic viewpoint could be useful to prevent retracing steps and delaying the end result. The stakeholder advisory forums should be engaged in every level, including advising whether proposed changes should be progressed. It is not clear from the consultation how stakeholder engagement will be reflected in the decision-making process, which is especially important when stakeholders will be the ones implementing the decisions. There needs to be a clear definition connection between decisions by the Authority, recommendations by the Code Manager and the 'front line' of the industry.

## 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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We support option 1 to have Ofgem as the strategic body. Given decisions made by the Code Manager would have to be approved by the Authority and in line with the strategic direction, it seems most practical to have the Authority as the strategic function. We agree that existing appeal routes should be retained as a minimum. We also believe there is room for improvement, in that currently, industry parties can only appeal

an Ofgem decision if it goes against the Panel's recommendation. This route of appeal should be extended to include when the Ofgem and the Code Manager are in agreement, but the appellant believes criteria have not been applied correctly or relevant information has not been taken into account, such as a poorly constructed Cost Benefit Analysis. As part of the decisions process, the Code Managers and strategic function should be aware that fast decision-making, especially if it affects fundamental business models, will unnerve investors and may mean industry does not respond as quickly as anticipated. If the GB regulatory space becomes seen as "unstable" compared to other international markets, we will not see the investment required to reach Net Zero without significant incentives from government, which will be expensive.

### 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    ☐ Somewhat disagree    ☒ Disagree    ☐ Not sure

Comments: We do not support option 2, as there is less transparency to the industry. With the scale and speed of change that is required, it is vital industry trusts the decisions made to be in the best interests of the consumer, including Net Zero. If decisions by the Code Manager function are to be held against the strategic direction and held accountable to Ofgem, it does not seem practical to have those criteria created/held by separate bodies. We would have concerns that there may be lack of transparency via an internal review and the results may not be independent. In that case, it could be viewed as a waste of resources and could be used as a delaying tactic, either to implement the change as originally agreed (as reversing an implemented change is harder than preventing it), or to delay the implementation date whilst the decision is 'under review'. The appeal route should be concise and as fast as appropriate.

### 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: It is important that, regardless of the option taken, the industry has a route to appeal whether a change is considered material or not, and thus whether the final decision



is made by the Code Manager or by Ofgem. If an objection or appeal can be made at the beginning of the change process, it will result in more efficient development and reduce the risk of unnecessary repetition. Whilst we agree a judicial review only route may be similar, the option of appealing to the CMA should still be available. It is possible that the nature of industry changes will develop as new technologies and processes develop, so the flexibility of having the CMA as a potentially more appropriate appeal route is necessary.

### **Question 9**

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

Do you have any thoughts on other potential appeal routes?

Comments: We believe there should be a way for stakeholders to register a formal objection or protest earlier in the process of change development that would go with the proposal to the Authority for decision making. This would be less cumbersome than a formal appeal but would clarify industry opinion where it is strongly felt. This could be through an advisory forum or by individual parties. If from an advisory forum, it could serve to open up an appeal route in the same way a Panel decision allows the Authority decision to be taken to JR, although ideally, the basis of the objection would be addressed explicitly as part of the change development process.

### **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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We agree that there is clear overlap with Ofgem's existing powers and duties and, due to the cross-cutting nature, costs should not be ring-fenced. The decision-making power of the strategic body would be best suited to a senior committee, as a range of industry knowledge will be needed and solutions should be viewed in a holistic manner. We would also like Ofgem to consider publishing minutes from that committee, where the findings and agreements would not already be published as part of a decision document. We believe Ofgem will need increased resources to take on this expanded role, especially as Ofgem's remit is likely to increase in other areas, such as being the regulator for carbon transport and storage.

### **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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We agree that technical expert organisations accountable to Ofgem are best placed to deliver changes. It would be appropriate for Ofgem to oversee change develop within Code Managers from the beginning when the changes are likely to be complex, have potentially controversial elements or be high materiality. Under the current process, lots of discussion occurs without an Ofgem presence, including making decisions on most appropriate options. Changes are delayed when Ofgem have not been following these discussions, so require considerable time to make their decision, or feel elements have not been discussed suitably, resulting in send-backs. As part of monitoring major changes, especially as the stakeholder role is now only advisory, it is vital that Ofgem engage fully with the process and do not rely solely on a single document, summarising hours of technical discussion. This will make evaluation of the proposed change significantly more robust and holistic, as well as following the strategic direction. Being present in the discussions would also give Ofgem, as the strategic body, the opportunity to provide clarification where practical application of the strategic direction is not obvious.

## 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    ☐ Somewhat disagree    ☐ Disagree    ☐ Not sure

Comments: We believe that, if the FSO is to be Code Manager, the reform of code governance should wait until the FSO is fully established and working well, before taking on new roles. This would therefore push the energy code reform back considerably, potentially until approaching 2030 before it is fully implemented. This would not leave a lot of time for the advantages of the new governance process to be realised before the 2050 Net Zero deadline. While there are advantages to the FSO or an affiliate being Code Manager, has they have (or will have, should transition go smoothly) appropriate expertise and knowledge, we are concerned there may be conflicts of interest. The Code Manager will have considerable power to accelerate or deprioritise changes which will have direct impacts on the operation of the FSO. If there is a tender held to find a suitable code manager, it is unclear what the outcome would be if the winner of that tender cannot fulfil the role as they described in their submission. It is also not clear what other bodies, other than the FSO would wish to register their interest, so tendering may not be completely appropriate. It is difficult to judge the relative advantages of establishing Code Managers as there is so much concurrent change running parallel in the industry, including within governance. Since the FSO is not clearly defined yet, and will not exist for some time, there must be future consultation once there is clear direction.

### 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   ☐ Somewhat disagree   ☐ Disagree   ☐ Not sure

☐ Not sure

Comments: We agree that the funding needs to be more flexible than licence fees and think the current not-for-profit used by Elexon would present a good starting point. Where the code manager manages multiple codes or areas, we are concerned that parties may be obliged to pay for activities related to codes to which they are not a party, or activities that they do not benefit from. However, given the holistic nature of the changes required, ring-fencing budget sections to apply to certain user categories could become confusing and inefficient.

### 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   ☒ Somewhat disagree   ☐ Disagree   ☐ Not sure

Comments: The budget for the code manager should be approved by Ofgem, with its obligation to protect consumers' interests. The strategic body may not be appropriately incentivised to ensure the code manager provides good value for money unless they are obligated to do so via licence condition or similar. There should also be a mechanism for stakeholders to comment on proposed budgets and be able to challenge where they feel the code manager has not provided value for money for the industry or consumers. Consumers, via industry parties, are providing the funding for the code manager, so must be involved in a meaningful way.

### 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   ☐ Somewhat disagree   ☒ Disagree   ☐ Not sure

Comments: We do not support option 2 with the FSO as IRMB. The consultation on the FSO is still with industry, meaning respondents to this consultation may have different visions on what the FSO will actually be, and so will answer this question accordingly. Whatever the precise form, it seems clear that option 2 is not in line with the principles of good governance, as it gives the FSO undue influence and risks internal conflicts of interest, especially if the FSO is privately owned by a corporation with interest in other areas such as interconnector volumes. We do not believe there will sufficient clarity of thought and transparency to industry unless the roles of code manager, strategic function and system operation are clearly separated. We acknowledge the ESO's current abilities with regards to strategic thinking and believe they should be recognised but in an advisory role, rather than decision-maker.

## 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: The exact role and nature of the FSO is still under discussion, so it is impossible to fully support option 2 without information. But, given the intent described in the FSO consultation, the FSO would have control over all key central industry bodies, with the Authority at risk of being excluded. There is significant risk of conflict of interest, especially as code manager can chose to not give proposals discussion space. As IRMB, the FSO would be able to chose a strategic vision that can directly benefit the system operator and create it in such a way to empower the code manager beyond Ofgem's original intentions. If the system operator's and code manager's performances are incentivised, they can naturally cooperate to make it easier for each other. This may bring industry changes (such as associated consumer and carbon benefits) sooner, but also may incentivise cutting corners, obscuring decision making and double-counting of benefits delivered in incentives, resulting in poor value for money for the end consumer.

*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   ☐ Somewhat disagree   ☐ Disagree   ☐ Not sure

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

### 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   ☐ Somewhat disagree   ☐ 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   ☐ Somewhat disagree   ☐ Disagree   ☐ Not sure

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

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.

[Click here to enter text.](#)

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

How do you think these could impact on code reform?

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

## 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?

[Click here to enter text.](#)

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