

Code Reform - Electricity Systems Team

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Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

And

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Ørsted response to the consultation on design and delivery of energy codes

The Ørsted vision is a world that runs entirely on green energy. Ørsted develops, constructs, and operates offshore and onshore wind farms, solar farms and energy storage facilities, bioenergy plants and provides energy products to its customers. Headquartered in Denmark, Ørsted employs 6,500 people including over 1,000 in the UK. Globally, Ørsted is the market leader in offshore wind and it is constructing the world's biggest offshore wind farms off the East Coast of the UK. Its UK offshore wind farms generate enough clean electricity for over three million UK homes. We are signatories to the applicable electricity energy codes, including Connection Use of System Code (CUSC), Balancing and Settlement Code (BSC), and Security and Quality Standards (SQSS), to name a few.

We welcome the opportunity to respond to BEIS and Ofgem's joint consultation on the design and delivery of the energy codes reform. The energy sector is undergoing rapid transformation, and we believe there is merit in reviewing the current governance framework for energy codes to ensure that it is fit for purpose and enables the delivery of net zero decarbonisation. A reformed government framework that is forward-looking, utilises industry expertise and ensures that codes develop in a way that benefits both market participants and energy consumers.

The way we produce and consume energy is rapidly evolving and the governance arrangements in the code framework needs to reflect the increasingly diverse range of market players and business models that are being implemented to facilitate the green, smart, and flexible energy system of the future, and future innovative models. Importantly, in light of the changing market landscape, the governance arrangements

need to ensure that the operation and management of energy codes does not hinder the net zero decarbonisation agenda and offers best value for consumers.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

In considering the proposals outlined in the consultation, we have structured our response on six important areas that should be given due consideration in order to facilitate policy aims better, preserve the expertise and crucial role played by code signatories, and enhance consumer outcomes:

1. **Maintain an active industry role** for an optimal operation and delivery of energy codes
2. **Continue a robust and fair appeal route on decisions** made by the Strategic Body, the existing appeal route via the Competition and Markets Authority (CMA) and Judicial Review
3. **Ensure robust accountability and clear responsibilities of institutional governance bodies** within energy codes and beyond
4. **Prioritise expertise and experience** in the selection of Code Managers to ensure efficient outcomes
5. **Proceed with Option 1 where Ofgem undertakes the function of the Strategic Body** subject to a number of changes
6. **Reform Ofgem's governance approach to energy codes if appointed the Strategic Body**

Of these six points, our key message is that an active role for industry is vital for the efficient and successful governance of energy codes. Independent code panels comprising a variety of industry parties have made and continue to make valuable contributions to the efficient management of the codes. It is important that this continues to be the case.

In the remainder of this letter, we set out our response building on the six key themes mentioned above. We have included an annex to provide a cross-reference between your questions and our response.

1. The role of industry is crucial for the optimal development and delivery of energy codes.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

The energy code landscape is highly technical and the specialist knowledge within industry has huge value in being able to support the continued operation of the codes. We see a number of potential adverse impacts associated with a diminished role for industry, and have several comments to make in this area:

a. Risk of underutilising a vast wealth of industry knowledge and expertise necessary in code development.

There is a risk that the proposed reform will diminish the active involvement and wealth of industry knowledge that has been nurtured over the years from having a level of ownership in the codes development process. It is important that the expertise and expansive knowledge/experience that industry offers is preserved and continues to be sufficiently utilised. For instance, the indepth and extensive understanding of energy codes from industry leads to workable solutions that are developed in working groups, efficiently scrutinising and de-risking of numerous code proposals, and expertise in risk/opportunity assessment of change proposals.

With the code design and implementation process developed by the Code Manager and not the industry, the stakeholder advisory forums will be a poor alternative that risk under-utilisation of the wealth of knowledge and expertise that industry brings to the code development process. This could result in inefficiency where expert industry views are sought too late in a process or lost entirely if the Code Manager fails to identify its own knowledge gaps and proceeds without industry involvement.

b. Diminishing the role of industry in the codes process risks disincentivising industry from the proactive role they play in developing codes.

Code Managers should be obligated to coordinate with industry to deliver code changes, beyond giving due regard to industry's views. Industry input is critical in code modifications. Many code changes are complex, and developing such changes sufficiently can only be done by relevant industry experts, where the Code Manager and the Strategic Body may not possess such knowledge.

The role of industry-based workgroups in developing code changes should be preserved, as the proposed stakeholder forums can not substitute the crucial role Work Groups play. There should be further thought on how to continue incentivising industry participation in codes development given their knowledge of the practical workings of the codes.

The code experts are incentivised to participate in modification meetings because it is their chance to influence. If the Strategic Body has the ultimate power to approve changes to codes, there is a risk that industry will have no interest in facilitating the design of the right implementation of modifications and instead focus on lobbying the Strategic Body and de-prioritise the relevant modification meetings.

Furthermore, there is risk of incorrect prioritisation of code changes if the responsibility lies solely with the Code Manager. Code Managers need to be able to prioritise changes based on a range of factors, including strategic value, materiality, and urgency. Code Managers may prioritise code changes raised by non-code parties purely on the basis of their contribution to the strategic direction set, but which are of low benefit compared with changes raised by code parties that have considered the wider industry needs.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

c. **Substantial industry representation is key in the establishment of Stakeholder Advisory Forums.**

As stated above, we believe that the industry should continue to leverage its expertise to drive changes. This will benefit consumers and help to facilitate net zero. It is also important that consumer representatives continue to play a role in code developments to ensure the interests of consumers are fully considered.

For the same reasons as set out in the previous bullet, it is imperative that there is a robust representation of industry in Stakeholder Advisory Forums.

Much of the expertise around the codes sit with industry, and independent code panellists are vital in ensuring this expertise remains visible and at the core of the code process. Therefore, we believe that the current arrangement of code panels should continue, with the relevant representation from various industry stakeholders. Otherwise, in the event that it is ultimately decided a Stakeholder Advisory Forum is established in place of code panels, an open and detailed consultation will be required. It is important that more clarity and further details are provided on the role of the Stakeholder Advisory Forums, the legal standing and composition of such forums, and how the Code Manager demonstrates that it has given the advice from the forums due regard.

d. **Efficient review and management of the codes change process should not be compromised.**

Under the current framework, code signatories fund the energy codes institutions and are the only parties able to propose changes. However, under the proposed governance framework changes, any interested party (including non-code parties) will equally be able to raise and participate in code changes. There is a concern that this leads to a significant increase in the number of code modification proposals, which the Code Managers may struggle to triage and review appropriately.

Therefore, an efficient process and more resources need to be in place to identify quickly and limit the progression of unhelpful modifications as well as adequately identify modifications that present benefits to consumers, the industry and energy system at large.

2. **A robust and fair appeal route should be maintained to ensure good governance and decision-making are upheld.**

a. **Preserve the existing appeal route via CMA and Judicial Review.** The CMA process allows consideration of a wider number of issues; Judicial

Review is limited to questions of following process. Although CMA appeals can slow down code modifications, it should be noted that such appeals are not regular occurrences nor pursued lightly, considering how resource intensive it is for the parties involved. The CMA has the required knowledge of the energy industry and impartial position needed to review the concerns brought in an appeal. Judicial Review then provides an unbiased check to make sure processes are followed fairly.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

Under Option 1 set out in the consultation, there is a clear preservation available for this process which should be maintained.

Under Option 2, while the IRMB's decision is appealable to a suggested internal body and then Ofgem, further options to appeal against Ofgem's decision should exist, i.e. preservation of the same CMA and Judicial Review routes. For simplicity and to maintain consistency, it could be that the decision by the IRMB is appealable directly to Ofgem (rather than initially appealing to an internal body) which will subsequently be appealable to CMA and Judicial Review if Ofgem's decision is challenged.

- b. **Position on appeal of Code Manager's decisions to Ofgem.** We support proposals for decisions made by the Code Manager to be overseen by the Strategic Body, so long as such Body abides by the same (standard) set of robust/rigorous guidelines and does not override decisions made by the Code Manager on the basis of its perceived interpretation or prioritisation of the principles (and objectives) set out in the strategic direction. There should also be a clear route of appeal against the Code Manager's decisions to Ofgem.

3. **Robust accountability of institutional governance bodies to ensure optimal delivery of the energy codes process and delivery of net zero.**

- a. **The Strategic Body should be closely monitored and held to account, in order to ensure it is delivering against its strategic direction, and not biased towards a particular core objective.** The Strategic Body's objectives may lead to competing requirements, and it is important that there is transparency and justification for all decisions taken to ensure that all objectives are met. If Option 1 is pursued, further thought should be given on addressing and managing potential risks associated with Ofgem becoming the Strategic Body and being the single point of both regulation and code governance. Such risks may include making decisions based on its role as a regulator which prioritises benefits to consumers in the near term over workable solutions that achieve wider industry benefits that result in more significant consumer benefit and net zero in the longer term.
- b. **A net zero remit is required.** A binding obligation on the Strategic Body to deliver on its objectives with net zero at its core will be required. A robust and detailed Strategy and Policy Statement (SPS) from the government with an explicit net zero remit would be welcomed. This should communicate clear guidelines to the Regulator, the Strategic Body and other decision making organisations to ensure that the new governance

structures adhere to a net zero remit, align with the government's net zero visions and objectives, and are properly held to account.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

- c. **Management of Code Manager interactions.** Under Option 1, in the event that multiple Code Managers are licenced, there should be cross-code coordination to ensure alignment, with this responsibility adequately and clearly accounted for. Under Option 2, it is proposed the Code Manager assumes the role of both code administrator and code change panel with the discretion to outsource some of these duties. Although the Code Manager will be accountable for both functions, this proposed arrangement could lead to a complicated and less transparent governance set-up with inefficient outcomes, should the IRMB become responsible for both Strategic Body and Code Manager functions.

4. **Expertise and experience should be prioritised over financial competitiveness in the selection of Code Managers.**

- a. **Focus should not be solely on tendered bid price when selecting Code Managers.** In fact, given the highly technical nature of the Code Manager role, selection criteria should be centred around capability. Codes are very technical rules and the current code administrators have accumulated specialised knowledge over a long period of time that will be difficult to transfer to another entity without the transfer of employees. Therefore, there is merit in retaining and/or expanding the role of the current code administrators to code management.
- b. **The FSO can support the Strategic Body in delivering its strategic direction** in energy codes by utilising the pre-existing and extensive experience from migrated ESO and GSO resources. However, significant improvement and sufficient resourcing of the existing ESO/GSO functions would be required should the FSO be directly involved in code management. In this context, transparency will be vital in order to reassure parties that a level-playing field is maintained, and that a common interpretation of the codes is used by the FSO – and others – at all times. There have been instances where NG ESO has introduced changes to system conditions and processes that are either misaligned with the general interpretation of grid codes, or liabilities have been imposed prior to Ofgem's approval of proposed code changes. In the event that the FSO is firmly considered as a potential Code Manager, such actions would need to be robustly addressed.

Overall, we believe that an additional code management responsibility at a time when the FSO's role is being enlarged risks creating an overburden, which would create delays in the FSO's discharging of its responsibilities.

- c. **Code Managers should be non-profit** and adopt a similar financial model to companies such as Elexon, to mitigate against conflict of interest (actual or perceived) in a management of codes process, and sub-optimal outcomes. There is difficulty in creating the correct incentives for a for-profit organisation that preserves the impartial and informed approach that is

needed to deliver the necessary code management services. For instance, there is a risk of a for-profit organisation prioritising internal cost management, therefore limiting investment in the resources required to deliver efficient code management.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

5. Overall, of the two options presented, we believe Ofgem will be best placed to reform energy codes governance.

We support the case for the establishment of a code governance institution that is forward looking, agile, independent in decision making, accessible and focussed on delivering net zero.

- a. **Given the significant transformation that is coming to the energy industry over the next decade, it is potentially beneficial for Ofgem to take the lead in Code Reform**, assuming it flows from active, comprehensive consultation and discussions with the industry. Alignment with the strategic net zero ambition should be a core obligation for the Regulator in future iterations of a Strategy and Policy Statement.
- b. **Whilst Ofgem is the preferred choice of the two options, we would highlight a concern with Ofgem as both the Regulator and Strategic Body without any ringfence.** In the absence of any ringfencing, we believe there may be inconsistencies between the underlying principle-based approach Ofgem adopts as a Regulator in decision-making processes and the strategic, governance and rule-based approach a Strategic Body should embody. As the strategic body, Ofgem would have extensive powers to set direction, incentivise or direct delivery, and determine outcomes, with the discretion to implement some changes without industry consultation. To preserve the principles of good governance, no single party should have the sole power to raise, direct and determine the implementation of a change, except in highly exceptional circumstances. Such circumstances should be clearly defined, with complete transparency of the processes if triggered.

6. A new and improved governance approach to energy codes should be adopted by Ofgem if appointed the Strategic Body.

In the event that Ofgem is appointed the Strategic Body, we recommend some necessary changes to its systemic and decision making processes.

- a. **Fundamental improvement in Ofgem's current engagement process and frequency.** Ofgem should organise annual meetings or roadshows to provide high level views on the future developments and progress made. This should involve industry interaction in a form that includes a presentation of Ofgem's strategic direction, how it aligns with its Forward Work Programme, and how it facilitates net zero.

There should be enhanced involvement in code change processes. Ofgem should invest in more subject matter expert resources in order to be actively engaged and provide sufficient/relevant guidance during the

development of code changes. There have been instances where earlier Ofgem involvement would have avoided later inefficiencies. As an example, CMP 317/327 involved a working group that produced 83 proposed solutions, all of which Ofgem later rejected, and has led to ongoing disputes that have reached Judicial Review stage. Had Ofgem been involved in the process earlier, it is likely that industry would not have spent time to produce so many proposals, and potentially the engagement would have been more collaborative and avoided the need for dispute resolution altogether.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

If Ofgem were to adopt the Strategic Body role, it would be an opportunity to create a more efficient modification process that limits instances of late feedback.

- b. **A longer term view of consumer interests that is paired with a clear mandate for facilitating net zero through a robust Strategy and Policy Statement (SPS).** This is a good opportunity to provide Ofgem with a clearer remit to support net zero, and clarify how to make decisions in a context that often involves making trade offs between decarbonisation and short term consumer interest in terms of managing costs. The SPS would be needed as a near-term measure to provide explicit guidance to Ofgem on how it should regulate for net zero, ahead of a primary legislation that includes a net zero remit as a statutory duty for the Regulator.
- c. **Management and rigorous evaluation (and intervention where necessary) if Ofgem's capacity is stretched.** There may be a risk that Ofgem is not able to scale up quickly and flexibly in the event of a surge in modifications proposed. This could create a bottleneck in the codes process that leads to hasty and inaccurate prioritisation (e.g. code modifications that do not relate to the strategic direction but have high materiality may be incorrectly deprioritised). A process for managing such low capacity/high demand scenarios is therefore needed.
- d. **Risk analysis of Ofgem as the Strategic Body.** A thorough risk evaluation around giving Ofgem these powers should be conducted. This should include a set of mitigation measures against risks associated with the power to direct changes with limited/no consultation.

Conclusion

We recognise there is a need to reform the codes framework and address the barriers to entry, innovations and wider network of energy participants. We believe that code panels have made valuable contributions to the efficient management of the codes, and as such, any changes to the code management processes that are proposed should not remove the highly beneficial involvement of industry in decision-making.

The role of industry in code modifications has delivered benefits deriving from the knowledge and expertise that have been leveraged, and these benefits should not be lost. The change process and eventual new governance arrangements should continue to have a role for affected parties and expert voices from within industry – this will have



a higher possibility of delivering efficient outcomes (and fewer appeals), than change imposed on those parties.

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

We strongly believe that the benefits of a more active industry involvement in code development outweigh any costs identified in the existing framework. In particular, we note that industry has played a key role in helping to drive the net zero ambition, and this should also be continued. Whatever governance arrangements are arrived upon, it will be important that a net zero code objective should be included.

Yours sincerely
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Annex – Guidance on consultation response

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

In this annex, we provide commentary and reference to where in our 6 points we address the questions posed.

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? [Somewhat agree](#)
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 the subject of future consultation?

Roles and Responsibilities

3. To what extent do you agree with the detailed roles and responsibilities of the strategic function, as set out above, and why? [Somewhat agree, subject to Points 3, 5 & 6](#)
4. To what extent do you agree with the roles and responsibilities of the code manager function as set out above, and why? [Neither agree nor disagree - see Point 1](#)
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? [Disagree - see Point 1](#)
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? [Agree - see Point 2](#)
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? [See Point 2](#)
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)? [See Point 2](#)
9. Do you have any thoughts on other potential appeal routes?

Preferred option: Ofgem as strategic body with separate code managers (option 1) (pg 57 - 59)

10.To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why? [See Point 3](#)

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

11.To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as the strategic body, and why?. [See Points 3](#)

Code manager approach under option 1 (Accountability and funding)

12.To what extent do you agree with the ways we propose that the strategic body select code managers, and why? [See Point 4](#)

13.To what extent do you agree with our proposed approach to code manager funding, and why? Neither agree nor disagree - [See Point 4c](#)

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

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 the FSO becoming the Integrated Rule-Making Body \(IRMB\) for energy codes under the newly proposed energy codes governance, as this responsibility will be too broad a remit for the FSO in addition to its whole system operation and planning functions.](#)

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? [See Point 5 & 6](#)

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?

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?

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?

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?

Our ref.: Design and Delivery of
Energy Codes Reform
Consultation

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

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 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.

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