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28th September 2021

Dear BEIS and Ofgem

Re: Consultation on the Design and Delivery of the Energy Code Reform

Thank you for the opportunity to provide representation on the above noted proposal. Northern Gas Networks has been actively involved in workgroups and discussions relating to the Energy Code Reform. We have set out our responses to the specific questions in the consultation in Appendix 1. We have also added a number of additional questions both within our answers to specific consultation questions, as well as further questions under section 23. These are all areas where we have not found clarity within the consultation document, and would therefore ask that these are covered in future consultations to aid us to provide an informed response.

The main points we would like to highlight from our responses to this consultation are:

- Our preference between the two proposals is for Ofgem to carry out the role of the Strategic Body.
- We believe there needs to be more than one code, and associated code manager, with separation of Gas and Electricity to be taken into account.
- We believe that continual engagement with code parties around modifications is critical to the ongoing effectiveness of code management.
- This consultation contains a number of assumptions and scenarios and we therefore look forward to seeing these further refined and explored as part of future consultations. We look forward to the crucial engagement with industry in ensuring that the code reform takes into account the views and expertise available to aid in achieving the best outcomes.

I hope these comments will be of assistance and please contact me should you require any further information in respect of this response.

Yours sincerely,

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Appendix 1 - Consultation questions and responses.

Section 2 Scope of Reform

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

We agree that it is appropriate for the gas engineering standards to remain with the Health and Safety Executive etc rather than within the scope of the code reform..

Question 2: What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this may be the subject of future consultation?

Comments in relation to question 4 are also applicable here.

We believe that the most appropriate way of regulating central system delivery bodies, including consideration of licensing, will be dependent on the detail within the final model and therefore we would like to reserve the ability to express our confirmed view until a later consultation once this information is better known.

We can advise that we believe that having the code managers and central system delivery bodies integrated should help ensure that both systems and code are considered jointly at all stages of change management, as is already the case in gas. This should allow for more visibility earlier in process in relation to complexity and cost of delivering change potentially resulting in improved ability to adapt and respond to required changes. Currently within gas, Xoserve; the central system delivery body, are actively engaged in Uniform Network Code (UNC) workgroups and attend the UNC panel meetings, thus allowing them to be involved in modification proposals from the earliest opportunity. This interaction also serves to encourage proposersto engage with them, where relevant, at the premodification stage.

We would like it noted that we believe that licencing the central system delivery body directly could potentially result in an increased risk of systems becoming the driver for change in code, rather than the other way round, however it would be hoped that the other changes and alignment to strategic planning would reduce this risk. Potentially, having the central system deliver body working closely with the code manager should further reduce this risk.

Should code managers or central system delivery bodies become licences parties, then Standard Special Conditions A11, A12 and A15 of the Gas Transporters Licence would need to be amended to take this into account, and there may be further consequential impacts on other licence conditions.

Section 3 Roles and Responsibilities

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

We broadly agree with the proposed roles and responsibilities, however, we feel this could be better met if there was a subset of separate oversight between gas and electricity. Whilst net zero by 2050 needs to be a combined outcome from both of these energy sectors, they have both different and combined paths and challenges to this. To encourage innovation and change within these spaces they need to have independent, as well as combined strategic direction. With this in mind we believe that the function can be carried out by a single independent body; and agree that Ofgem seem best placed and qualified for this function.

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

We agree that due to the changes in recent years, and ongoing changes in relation to net zero and other challenges, it may now be appropriate for code managers to be licenced entities. This should result in better visibility of costs to industry and therefore consumers, as well as allowing oversight for control and alignment of strategic direction.

We would like to stress that due to the differences between gas and electricity that there should be, at a minimum, separate code managers for each of these areas. There is also the potential to further split the function between wholesale and retail and we would encourage this to be explored and considered. The suggested collaboration between these multiple code managers to produce a consolidated delivery plan should aid effective cross code working and better awareness of impacts of changes.

Making the code managers licenced bodies and including licence conditions to require them to develop, maintain and review delivery plans in line with government policy or other changes, including stakeholder driven changes across the industry, would better align the energy industry and allow them to be more reactive, also encouraging, proactiveness, and innovation. These benefits should be further enhanced by the requirement to effectively liaise and consult with industry stakeholders.

Allowing code managers to prioritise changes based on set criteria would aid in ensuring that key areas of change, e.g. towards net zero, have suitable time and resource applied to them. This should also reduce the number of 'single commercial interest' modification proposals that are raised and progressed. However without panels being part of the decision process, for this to be effective there needs to be the relevant expertise within the code manager function (not just reliant on forums), not only around effective research and raising of proposals, but also to be able to assess whether a proposal is of singular commercial gain, or has wider reaching benefits as well as the materiality of these impacts. Please also see our additional answers, relating to forums, under questions 23.

Should the central systems delivery body become part of the code manager organisation or separately licenced, then they should also be responsible for ensuring that changes are prioritised in line with the same criteria as code changes, with the added priority of security and efficiency of the systems. Again, they will need to ensure that they have the correct expertise employed within central systems delivery teams. This raises a question as to how these code manager roles will be funded and whether these should be 'not for profit' as is currently the case for both the Joint Office and Xoserve for gas wholesale arrangements.

Question 5: To what extent do you agree with the proposed roles and responsibilities of stakeholders as set out above, including the role of the stakeholder advisory forums, and why?

We appreciate the recognition that a one-size-fits-all approach would not be suitable. We would like there to be a number of forums that discuss and feedback views, based on the area of impact. Currently changes under various codes, e.g. UNC, Smart Energy Code (SEC) etc are sent out to different workgroups to be discussed and developed, depending on the area of code and code parties that they impact. This principle can be further expanded to ensure that, where relevant, the appropriate wider industry and other stakeholders are members of these groups. A core group of people that sit on these forums for quoracy should be maintained, together with the ability for any interested party to request to attend, and be allowed to do so. It is important that attendees with specific industry knowledge are able to be fully engaged in changes that will impact operational or strategic direction of their organisations.

Question 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?

Whilst there needs to be a robust appeals process, and Ofgem, as the strategic body seem best placed to continue to carry out this purpose. There is a concern around conflict of interest, with Ofgem being both the body directing what modifications should be made as well as the priorities applied to any proposals raised elsewhere in industry, and the body that determines appeals against modification decisions. This may need to be taken into account as to whether this would dissuade parties from appeal, or even raising modification proposals in the first place. Ofgem being the appeal body for decisions taken by the Code Manager for other areas, e.g. performance assurance, events of default etc, would seem to be pragmatic and a clear approach for all parties. This also aligns with how process works for a number of codes, including SEC, however with the difference that it is the Code Manager, rather than a Panel

making these decisions. We agree that Ofgem should remain the decision making party in relation to any enforcement or penalty relating to breaches.

We would however, like further clarity as to how the strategic bodies ability to overrule a decision works: Whether this can only be triggered should a party raise an appeal, and if so under what grounds can this be raised. Or whether the strategic body would also have the power of veto, without any appeal needed to trigger this? Triggers currently within the Electricity and Gas Appeals (Designations and Exclusion) Order will need to be revised to reflect changes to governance and removal of Panels making recommendations.

With relation to the appeals process relating to Material and Strategic changes, we believe it is appropriate for both CMA and Judicial to be open avenues of appeal. These are existing appeal routes based on different criteria and evidence, and therefore have differing levels of transparency around how the final decision is made. Maintenance of these existing rights should be core to any changes.

Question 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?

With reference to the appeal route suggested for option 2, we would like to raise a concern that a potential prior review by an internal body may raise questions as to a conflict of interest. We therefore would like to understand better how this would work and what segregation and assurances would be in place to ensure that this would be a fair and unbiased review of any appeal, and what the next steps would be for each of the potential outcomes of this review.

Question 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)?

Please see our comment in our responses to questions 6 & 7

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

Please see our comment in our responses to questions 6 & 7

Section 4 Preferred option (1)

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

Whilst we agree with the proposal for Ofgem to operate as the strategic body, we feel that there needs to be clear distinction and separation between the strategic element and their existing remit, so that whilst these may on the whole complement each other, that they are independently focussed and reviewed. We do recognise there should be the ability for both areas to jointly fund specific teams and initiatives to deliver a clear whole systems approach.

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

The utilisation of the existing evaluation framework with BEIS would appear to be pragmatic, however it may be worth considering additional updates to this framework to ensure that it covers the strategic body functions, and includes separate measures for the two distinct areas. The introduction of an annual short consultation with industry, as to views on performance in relation to the strategic body function, may also be of benefit.

Section 5 Code Manager Approach (Option 1)

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

We believe that the difference between gas and electricity structurally and in terms of challenges to meet net zero, leads to the need for these to be managed separately, with the possibility for there also to be a split between wholesale and retail. The separation of these different areas of energy should allow code managers to have different, but relevant and specialist expertise for the codes they manage. The role of Shippers in gas market needs to be specifically considered when developing new arrangements for a future market. Existing code administrators work closely with the different parties to existing codes and are therefore well suited to ensuring that the differences are considered fully. Ofgem, as the strategic body would be more suited to understanding the nuanced differences than the FSO who may have a more electricity based background and expertise.

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

Charging parties via the codes, rather than licences seems more pragmatic as it allows for flexibility in amending the required funding within a shorter timeframe should it so be required. This would be better facilitated with separate code managers for gas and electricity as well as wholesale and retail with charges to the specific constituency parties managed by each code. This should ensure that funding was correctly contributed by parties impacted by that code.

Whilst the potential for code managers to also offer additional chargeable services could exist, there needs to be clear segregation, and assurance that additional chargeable work does not adversely impact on core code services by directing trained, knowledgeable resources away from where they are needed.

Currently most existing codes are directly funded by parties in accordance with code requirements and their budgets go through a rigorous process which includes board member scrutiny for the proposals by the code manager, as well as consultation with code parties. We would encourage this additional level of scrutiny, possibly by committee or forum of relevant constituency representatives. However, it would also be appropriate for the strategic body to either carry out the final sign off, or at minimum have the ability to challenge or veto the budgets or manage any appropriate appeal process.

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

As stated above, we agree that the strategic body should have the final oversight, or an ability to challenge budgets presented by code managers. Inclusion of a licence requirement around this should provide this level of confidence and assurance.

Where there are multiple codes, comparison between spends for similar services should be encouraged and code managers held accountable to being able to justify their costs.

We note that the details of how this would work and what these licence requirements would be are intended to be included in a future consultation. We therefore would like to reserve providing a confirmed opinion of the deemed effectiveness of these until we have had chance to see and consider these.

Section 6 Alternate Option (2)

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

We do not support this alternative option, as the FSO currently is in its infancy and has no history within gas. We believe that currently there are too many unknowns and changes happening with the FSO for us to have a clear view of how it will operate and therefore its feasibility in the IRMB role.

Please also see our separate response to the Energy Future System Operator Consultation.

Section 7 Analysis of institutional governance options

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

We believe that option 1 is best placed to reform code governance. Ofgem are better placed to perform the strategic function for both gas and electricity, and this option allows for separation of subsets of energy, e.g. gas and electricity, to be more effectively managed as separate vectors, under separate code managers. Whilst we appreciate that the FSO has some element of strategic role, this is primarily focussed on a technical perspective, rather than an over arching governance perspective, and is their expertise and focus is currently electricity centric.

Impact Assessment Questions

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?

The impact assessment mentions a number of savings but does not provide full clarity around what factors have been taken into account when reaching these figures, making it hard for us to give an informed opinion.

For example, it is estimated that industry would save £0.3m per annum in relation to reading and responding to consultations. It is not clear whether this is driven directly solely by an assumption that there will be less modification proposals due to a more strategically aligned code process. We believe from the document that individual parties can still raise modification proposals, however the difference being that these would be deprioritised but are likely to still require individual organisations to monitor these, and respond to consultations where the appropriate.

Again, there is an estimated saving of £1.5 million in relation to workgroup participation which is stated to be due to increased preparatory work by the code managers. Currently workgroup discussions allow a wide range of educated opinions from various subject matter experts to be aired, bringing to the proposers attention consequential impacts that they may not have been aware of, and valuable suggestions as to how the proposal could be shaped for the better benefit of wider industry and consumers. The document states that the exact arrangements for the code change process after reform will be decided by code manages. Without the clarity as to the make up of the forums and how proposals will be prioritised and progress, including the number of forum meetings the proposal is expected to be discussed at, we cannot agree, or disagree with this figure.

Question 18: To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why? Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?

We note that Case Study 2 relates to the Gas Transmission Charging Review (GTCR) which compromised of UNC modification suites 0621 and 0678. This refers to the number of alternative proposals that were raised against each of these modifications and that a number of these were rejected on the basis of them not being EU Tariff Network Code (TAR NC) compliant, it states that there is no filter to prevent clearly non-compliant modifications from progressing and therefore taking considerable industry resource to have to consider them.

TAR NC compliance during 0678 seemed to be a contentious point, with legal opinions being provided by proposers that their proposals were compliant, with Ofgem finally concluding this was not the case. Therefore, specific legal expertise would be required upfront by the code manager to go through all of these proposals under the newly proposed solutions, the cost of which would be significant and passed through to industry. This counter cost and does not seem to have been taken into account as part of the case study when talking about cost vs saving to industry.

It should also be noted, that had the GTCR been subject to a Significant Code Review (SCR), this would have allowed Ofgem to have more control over the alternatives being proposed. We do however acknowledge that the final approved modification was actually one of the alternatives raised.

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

The current costs of the code administrators and managers are varied and hard to directly compare due to their differing operating models and scope of remit. This has resulted in the Impact Assessment being based mainly on analysis from one code administrator, therefore it is difficult to assess how this could be extrapolated to the full breadth of the proposed reforms. Consequential impacts into market participants should also be considered as the changes may drive either additional cost for monitoring or savings from reduced modifications. The overall scale and complexity of modifications often drives both costs and benefits, and therefore it is not possible to assess the scale of costs, savings or benefits without considering this as part of the broader strategic change.

Section 8 Implementation approach

Question 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?

Implementation timeline will need to take into account the ability for industry to make necessary changes and allow for a fair and clear tendering process. Lessons should be learnt around the implementation of Retail Energy Code (REC), relating to code consolidation as to what was successful, and what areas could be more effective, including earlier effective engagement from the whole of industry.

Consideration is needed to ensure that the impact on large scale strategic innovation projects, e.g. hydrogen trials and enduring market, are not adversely impacted by changes to codes and governance. NGN is currently leading the way in introducing the concept of derogation into the UNC to allow for trials to take place and for the enduring future code & system related impacts to be considered at an earlier stage. Ensuring in flight net zero projects are not disrupted by changes to code governance is critical to ensure that government net zero targets and hydrogen strategy are achievable.

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

A number of general concerns have been highlighted in some of our answers to questions above, including engagement with industry and potentially adverse impacts to innovation. We do however also acknowledge that a lengthy implementation timeline is more likely to result in poorer engagement.

As part of the tendering process, potential code managers should include their analysis of the impacts of implementation and their plans around how this could be managed. There will be positive and negative impacts, including costs to industry parties for either a co-ordinated or staggered implementation of all codes to the new approach. Whilst it may be on the surface preferred to have a single implementation, all of these things should be clearly considered, and if necessary a staggered approach, e.g. gas and electricity happening on separate timelines, be introduced where appropriate.

Other factors that impact resources and focus of industry parties should also be taken into account, e.g. the lead up to a new price control period, so that parties can ensure they have the ability to maximise engagement with the changes to ensure a smoother transition for all.

Section 9 Next steps

Question 22: We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of impacts.

As a gas transporter, NGNs interaction with the mentioned customer base is primarily from a connections, emergency response, and pipeline replacement perspective. The way we prioritise and protect vulnerable, and other customers, should not change under the proposals.

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

We would like to request additional clarity around certain aspects of the proposal.

Consultations

- Clarity on whether consultations for modifications raised under the new structures would just be via the forums, or whether they would be formal consultations that all interested parties could respond to would be welcomed, especially whether there would be any difference to this process depending on whether the proposal was self-governance or authority direction / material changes.
- We would encourage that all proposals have a formal consultation period that is open to wider industry to ensure engagement with parties by allowing them to continue to have a voice in the absence of representations at panels.

Prioritisation

- Understanding at what stage of the proposals journey the materiality and priority of the proposal decided will be important to having confidence in a new regime. If it is decided by the code manager at the initial stages, assurances are needed to ensure that the code manager has the relevant subject matter experts in place to understand the direct and consequential impact of the proposal. We would again stress that different subject matters experts may be needed as to which elements of industry the proposal impacts.
- Regardless of when the priority and materiality are decided, understanding under what rights proposers or other interested parties may challenge these decisions would be welcome. Clarity around how this would work would be appreciated and aid in being able to further comment on the proposals.

Forums

- We would like to ask for clarity around how the forum attendance would work. Is it intended that these would be open for anyone to attend, but subject to a minimum quoracy requirement, or would these be closed meetings with set attendees? If the latter, understanding how these are nominated and selected will help determine our views on the effectiveness of the forums. We would also be interested in understanding what the constituency make up would be in these forums, and whether the intention is for this to differ dependent on code, e.g. gas and electricity having different constituency ratios. We believe that an open forum would encourage better engagement, and without it, smaller party engagement may be lost.
- We also seek clarity as to the number of forum meetings that that each proposal would be discussed at and whether this would differ dependent on the proposal itself. Clear and transparent criteria for determining this will be required for industry to have confidence in the arrangements. Currently code administrators have limited ability to reject proposals and stop them entering the process. If these powers are to be increased for code managers it is important that parties understand these powers, especially if this delays the ability for a proposers change to be developed.

Code Manager

- Current arrangements in gas keep ownership of any modification with the proposer, and in the future regime where modifications are proposed by parties other than the code manager, and where the code manager is the sole party responsible for decision or recommendation for a modification, we would like to understand at what point in the process is it deemed that the proposer no longer has control over the development of their proposal.