

**Date**

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**Cadent Gas Limited**

Brick Kiln Street, Hinckley

Leicestershire LE10 0NA

[cadentgas.com](http://cadentgas.com)

**Industry Code and Licensing Team**

Ofgem

10 South Colonnade

Canary Wharf

London

E14 4PU

**Code Reform - Electricity Systems Team**

Department for Business, Energy and Industrial Strategy

3<sup>rd</sup> Floor, Abbey 1,

1 Victoria Street

London

SW1H 0ET

Dear Colleague,

**Consultation on the Design and Delivery of the Energy Code Reform**

Thank you for the opportunity to respond to the joint Ofgem and Business, Energy and Industrial Strategy (BEIS) consultation: 'Design and Delivery of the Energy Code Reform'. This response is made on behalf of Cadent and can be published by Ofgem and BEIS.

Cadent is supportive of the proposal for reform to better facilitate the strategic changes required to transition to a cleaner energy system, whilst unlocking innovation and significant benefits to consumers.

The scale of change required in gas, to decarbonise heat and transition towards the use of hydrogen, is unprecedented, and Ofgem and BEIS will be aware we have been a strong advocate of managing change within a strategic context. The pace, complexity and diversity of change is likely to continue and in the absence of a coherent strategy, accompanied by unambiguous priorities, there is a risk that the industry may not be able to deliver the improved outcomes and services that customers need.

In relation to the proposed new institutional governance framework, we support the preferred model, option 1, which sees a separation between the Code Manager and Strategic Body functions. Whilst we support designating Ofgem as the strategic body, it is important Ofgem ensures it has a balanced approach and the skill set to assess change on a whole systems basis between both electricity and gas.

**Cadent Gas Limited**

Registered Office Ashbrook Court, Prologis Park

Central Boulevard, Coventry CV7 8PE

Registered in England and Wales No.10080864

**National Gas Emergency Service**

0800 111 999\* (24hr)

\*Calls will be recorded and may be monitored

We welcome code simplification and digitalisation, and consolidation by fuel; ensuring gas and electricity codes remain separate. For example, the Uniform Network Code (UNC) and the Independent Gas Transporters' Uniform Network Code (IGT UNC) could be consolidated into a single gas code, whilst the electricity codes are similarly treated but remain separate from gas. Taking this approach would mean that both sectors could focus on their priorities, with the strategic body providing the overarching coordination across electricity and gas.

We support the proposals for licensed code managers. The role of a code manager is significantly wider than the existing arrangements in gas where the Joint Office of Gas Transporters provides an efficient, low cost code administration service to the gas industry. Whilst we acknowledge the benefits competitive tendering may bring, we strongly believe consideration should be given to utilising and incorporating the skills and experience of existing code entities that support the process. Due to the complexity and industry knowledge that is required in the role, there may only be a small number of organisations able to undertake the role and existing code administrators and central system delivery bodies, such as Xoserve, already have the skills and expertise required to undertake the role of code manager and do so with least disruption and speed.

Further, we believe that there should be a different code manager for each gas and electricity sector. This would enable benchmarking code manager performance. Any concern around inconsistencies in the strategic direction of codes would be mitigated by the overarching strategic body across the two code managers.

There will be consequential impacts on the licence obligations of Gas Transporters and potentially other licensees. Ofgem will need to provide clarity on the licence obligations of all parties as misalignment between obligations and control will lead to inefficient processes and costs to consumers.

Our responses to the individual questions within the consultation are set out below.

Please contact me should you wish to discuss any aspect of this consultation response.

Yours sincerely,

Guv Dosanjh

**Cadent**

Industry Codes/ Xoserve Contract Manager

+44 (0)7773 151 572

[Gurvinder.dosanjh@cadentgas.com](mailto:Gurvinder.dosanjh@cadentgas.com)

**Questions:**

**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?**

Given the central role that these documents play in the design and operation of the electricity system, we support the licensing of a code manager to be responsible for developing in-scope engineering standards. This would provide clear ownership over the standards, which would then help to enable more rapid evolution and adaptation of the standards to achieve net zero ambitions and facilitating innovation. The relevance in relation to gas is less obvious and a clearer case would be needed in consultation with the HSE, gas networks and the Institute of Gas Engineers and Managers.

**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?**

In gas, both the Code Administrator (the Joint Office of Gas Transporters (Joint Office)) and Central System Deliver Body (Xoserve) are vicariously regulated through the Gas Transporter licence and owned by the Gas Transporters (GTs), although in the latter case control resides through a joint Shipper and GT Board.

For historical reasons relating the sale by National Grid of four Gas Distribution Networks (GDNs) in 2005, the two organisations have operated independently of each other. Nevertheless, under the BEIS proposals there are compelling reasons to integrate the two organisations as their roles and skills are complimentary. In the case of the Joint Office in particular it would be too small to function as an independent Code Manager and yet its expertise and Uniform Network Code (UNC) knowledge would be invaluable in providing the continuity required to develop the UNC at the pace required for net zero. Greater integration between these existing entities would also provide efficiencies in decision making and planning, making it easier to deliver the strategic direction particularly as the governments Hydrogen strategy means there will be more change required in the gas sector than electricity.

In relation to licensing, we agree that licenced bodies would be the optimum route to ensure the strategic body is able to drive code change through the Code Manager and this would also require modifications to the GT licence to re-align responsibilities.

We do not support the option to tender the services as with some additional resourcing, a combined Joint Office and Xoserve already have the core skills and capability that would mean minimum disruption or mobilisation. Crucially both are not for profit entities so their interests would be fully aligned with those of government, Ofgem and the interests of their stakeholders, unfettered by other commercial drivers. The track record of both organisations to date, should be sufficient evidence of economic and efficient service delivery at a significantly lower cost and better value than other commercial equivalents.

**Roles and Responsibilities**

**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 proposed roles and responsibilities of the Strategic Body. By having clear oversight and monitoring of the code change process, and holding code managers accountable via licences, the strategic body will be better positioned to ensure codes develop in line with the government's wider vision for a future energy system. However, the Strategic Body or function must have a proportionate level of sectoral skills and knowledge to avoid being dominated in its thinking by one sector or the other.

We do not support the strategic body having the vires to make direct changes to the code, without the appropriate stakeholder consultation process, as is present in Ofgem's Significant Code Review (SCR) process.

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

Whilst we broadly agree with the proposed roles and responsibilities of the Code Manager function, who would be held accountable by the Strategic Body through a Code Manager licence, it is vital the Code Manager has the appropriate gas knowledge and expertise to enable it to execute its duties effectively. Further, with the scale of change envisaged and particularly that for gas, we advocate that there should be separate Code Managers for gas and electricity. The overall strategic direction and co-ordination will be defined by government and the Strategic Body, but a Code Manager focused on delivering in such a complex area must have the requisite skills. If a universal Code Manager was appointed, this would inevitably mean the problems associated in one sector would drive inappropriate change or focus in the other.

We agree with the Code Manager prioritising which changes are progressed, so long as there is clear published guidance on the criteria for prioritisation that adequately balances the interests of customers, licensees and stakeholders.

With the removal of code panels, consulting with stakeholders will carry greater importance due to industry expertise. The Code Manager should therefore ensure it consults throughout the code change process lifecycle and have a duty in its licence to have due regard to the views expressed by stakeholders including shippers, suppliers and networks as well as wider stakeholders and customers.

It should be noted that if the Code Manager becomes a separately licenced activity that the current responsibilities of gas transporters under Standard Condition 9, Standard Special Condition A11 and Standard Special Condition A12 of their licences will require consequential modification,

**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?**

Stakeholder groups play a central role in supporting codes decision-making, and we believe it is crucial that they continue to do so. These parties lend their expertise through working groups, and various panels and forums. Therefore, it is vital the Strategic Body and Code Manager have a duty to consult and work with stakeholders as appropriate.

With regards to the stakeholder advisory forums, we would expect the Code Manager to consult with the relevant forums during the development of Code Manager proposals and ahead of making certain decisions. The forums should be open to all stakeholder groups.

**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?**

We agree, as a minimum, that any decisions made by code panels in the existing framework that include an appeal route to Ofgem should, be appealable to the Strategic Body where the decisions are made by Code Managers in the future. Existing appeals routes should not be lost. This is vitally important to ensure that Code Managers are accountable and responsive to stakeholders in their decision making.

We support the view that future arrangements should also include mechanisms that encourage, or require, stakeholders to resolve disagreements early in the process to facilitate their speedy resolution.

**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?**

We do not support this operating model as the proposals for the FSO are already wide ranging and would place too much reliance on a new organisation whose responsibilities need to be focused on its core role. If option 2 was implemented, it is not clear in the consultation what an internal body function would be and how it would be constituted. We therefore struggle to provide an informed view on this 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)?**

Any appeals framework should allow effective opportunities for different interests and views to be represented whilst being as simple, rational and independent as possible. It should be accessible, without introducing undue delay or uncertainty to the code change process, but the timescales should have sufficient flexibility to cater for different levels of complexity or materiality in the subject matter.

We support the proposal where all strategic body decisions on code changes will be subject to both judicial review *and CMA appeals*. By restricting appeals to judicial review only, there are concerns that this could weaken existing licensee protections as it provides a generally less intrusive standard of review and does not necessarily involve economic and other technical expertise.

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

We have no further comments at this time.

**Preferred option: Ofgem as a strategic body with separate code managers (option 1)**

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

We agree with the proposal that overall accountability for delivering the Strategic Body's functions should sit with Ofgem. Ofgem already has relevant objectives, powers, duties and accountabilities, so this option would avoid the creation of an additional institution and the need to provide for complex interfaces between that institution and Ofgem.

We note Ofgem would need to increase the number of staff with relevant expertise and may need to source specialist resource. It is important Ofgem ensures it has the skills, knowledge and adequate resources to assess change on a whole systems basis between both electricity and gas.

We support Ofgem being the strategic body and agree stakeholders should be consulted prior to the Secretary of State designating another person to be the strategic body, should there be a case in the future for this change.

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

We agree with the monitoring and evaluation approach to ensure that Ofgem, as the strategic body, is effectively delivering against its role and responsibilities. We agree there should be a clear responsibility on Ofgem to inform government of its progress in helping to achieve government policy objectives, that Ofgem must 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. We agree Ofgem should seek regular stakeholder feedback on its performance as the strategic body, and on the performance of code managers, with a summary published in its annual report to the Secretary of State.

**Code manager approach under option 1**

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

Whilst we acknowledge the benefits competitive tendering may bring, we strongly believe consideration should be given to utilising and incorporating the skills and experience of existing code entities that support the process. Due to the complexity and industry knowledge that is required in the role, there may only be a small number of organisations able to undertake the role. Therefore, we support utilising the skills and expertise of existing code administrators and central system delivery bodies, such as the Joint Office of Gas Transporters and Xoserve. We do not support the strategic body powers to create a shell company and appoint the board, nor do we support the powers to select the FSO or any affiliation created by the FSO.

We believe that the new Code Manager function should operate without real or perceived undue influence from licensees. It would therefore be inappropriate for an existing licensee to become a Code Manager, or for licensees to create the function. Existing arrangements, for example with the Joint Office where gas transporters are required through their licence to establish and fund the joint governance arrangements, while arguably very successful in providing a low cost/high value service are legacies of earlier industry developments. The Code Manager should instead be held accountable by the Strategic Body through a Code Manager licence.

We do not support consolidating all codes into a single unified code. We note code consolidation will be consulted on later, and support consolidation by fuel; ensuring gas and electricity codes remain separate. For example, the Uniform Network Code (UNC) and the Independent Gas Transporters' Uniform Network Code (IGT UNC) could possibly be consolidated into a single gas code, whilst the electricity codes are similarly treated but remain separate from gas. Taking this approach would mean that both sectors could focus on their priorities, with the strategic body providing the overarching coordination across electricity and gas. It is noteworthy that two principal gas codes should be relatively easy to unify as the IGT UNC was largely based on Transco's original Network Code. This is not the case in electricity where there is a far stronger case for consolidation.

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

We agree with the proposal that Code Managers should be funded through charges levied on code parties in accordance with a charging methodology set out in the relevant code(s). We are concerned that a balance should be struck between lowering barriers for non-code parties to be able to propose change versus incentivising behaviours that encourage proposals that are in the narrow interests of individual organisations rather than the wider benefit of customers overall. This is a difficult balance, but arguably one of the reasons why the current codes have faced criticism where individual commercial interests can drive proposals because there is no cost to those organisations raising such changes.

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

Whilst we agree the Strategic Body should be accountable for the code manager budgets, it is important stakeholders, in particular code parties, are consulted to create the checks and balances needed to drive cross sector change.

**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 this proposed operating model. We have concerns with the IRMB having the power to set the strategy; ability to raise and develop change proposals; and the capacity to approve said proposal places too much reliance on one organisation and dilutes the checks and balances that would be a natural feature of Model 1, the preferred operating Model.

**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?**

We broadly agree with the views expressed in the consultation that Option 1 would be best placed to reform code governance by comparison to Option 2. The separation of roles between the Strategic Body and Code Manager creates clarity and better governance in order to deliver the government's objectives. Option 2 on the other hand with the FSO as IRMB would in our opinion prevent the checks and balances needed for effective delivery and as pointed out, the FSO will have a number of important duties in delivering net zero and adding another significant facet is more likely to add complexity and slow down delivery.

**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?**



It is difficult for us to assess the likely costs of the new Code Manager function, but inevitably they will be considerably higher than those of the current Joint Office function in gas that typically costs around £1.5m pa to provide administration services rather than a full suite of project management and legal services.

**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?**

To a degree the case studies are indicative of the barriers arising in achieving code change, although it's unlikely given the inherent complexities of codes that any of the proposed remedies will improve access for smaller players. In gas, the Joint Office has a role of critical friend and adviser where modifications to the UNC are proposed and the Central Delivery Body (Xoserve) provides advice on more technical matters. All of these services are free at the point of use, but smaller players don't have the resources to engage on such matters in the first place.

The changes may break the dominance of the larger industry players and by focusing on strategic change, reduce the volume of low priority incremental modifications. Recent gas transmission charging modifications have highlighted the complicating effect of significant numbers of alternatives being raised, but equally an inability of Ofgem to provide clear guidance until much later. The BEIS proposals should be designed to streamline decision making and at the same time filter out the incremental modifications that are not aligned with customer's interests.

**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?**

It's difficult to assess the scale and benefits highlighted although we note most of the assessments are based on electricity codes and administration (Elexon) which may not be representative of those found in gas (The Joint Office is an order of magnitude less costly than Elexon for example). The assumptions and estimates used are likely in any case to be unreliable, suffice to say that avoidance of issues such as those encountered in the gas transmission charging review should reduce costs, although this circumstance is atypical and was as much as failure of regulation as one of the parties involved.

### **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?**

Other government net zero consultations and indeed current network price controls could impact the implementation timeline as could a change of government or indeed other non-related factors that may pull on government resources and focus. In addition, the pace of innovation in the industry such as that currently being seen with Hydrogen development may alter the industry dynamics and hence where the focus of code reform may turn.

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

Please refer to the answer to question 20.

### **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 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.**

We have no further comments at this time.

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

BEIS should be mindful of drawing distinctions where relevant between gas and electricity codes as they are very different. Gas is arguably far simpler and there are only two codes (both of which are closely related) compared to a far more complex, numerous and therefore less accessible electricity codes framework. Viewing the problems and therefore defining solutions may be aided by looking at both sectors equally.

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