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Attn: Lisa Charlesworth

By email: [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

Date

23 April 2024.

Contact

Nia Lowe

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Dear Lisa,

### Consultation on the implementation of Energy Code Reform

SPEN welcome the opportunity to respond to Ofgem's policy consultation on the implementation of Energy Code Reform. We respect and conform to our licence conditions on applicable code compliance, and actively participate in the modification process.

SPEN work closely on a day-to-day basis with the current code administrators. Our role in the current code process uses our technical expertise, vast corporate memory and allows us to comply with our licence obligations. Furthermore, our involvement in code management ensures that customers across our network are efficiently, economically, and safely delivered a secure, reliable electricity supply.

The experience and knowledge of SPEN within relevant electricity codes is extensive and, in this response, we outline specific considerations we believe are important when considering the Energy Code Reform (ECR) proposals. The Energy Act 2023 is clear in its intent to simplify energy codes, appoint code managers and put in place a Strategic Direction Statement (SDS) for industry application. We welcome this intent and are supportive of the rationale. However, we have identified areas which we believe require further thought in this response. A summary of these areas can be viewed below. Our comments in response to the consultation questions are set out in Annex 1.

### Summary:

Given the current consultation direction and the Energy Act legislation, despite the challenges we previously set out in our response to Ofgem's February '23 Code Reform CFI, we understand the rationale and necessity for energy code reform. Notwithstanding the detailed concerns which we outline in this response, SPEN broadly support the proposed reform and are keen to play an active role in the process.

Our desire is now to ensure that decision making processes are clear and transparent, code managers are appointed with the appropriate checks and balances and that the Strategic Direction Statement (SDS) includes targets on net zero and the requirements of licensees to own and operate a safe, resilient, and secure network so code objectives can be aligned. We continue to question; how code managers and Stakeholder Advisory Forums (SAFs) will account for the work currently undertaken by the impartial TO and DNO in panel representation. Presently, under the current arrangements, we support the code administrators in code change programmes and are part of the conversation for code reform that will benefit consumers and allow progress towards net zero targets whilst ensuring network security and resilience. It is imperative that this ability is retained throughout the consolidation process and within a new regime to make sure progress towards net zero targets and security of supply are not constrained nor diminished.

### *Strategic Direction Statement (SDS)*

*SPEN welcome the requirement for a SDS across all codes which is set annually and has a longer-term focus. It is critical that the SDS clearly defines roles and responsibilities as well as how code managers will be held accountable in adhering to the SDS. Network owners must be able to have the appropriate input into the SDS to share our experience and knowledge. The safety, reliability, and resilience of both the Transmission and Distribution Networks as well as the efficient delivery of net zero should form fundamental principles of the SDS.*

Our experience, knowledge, and commercial impartiality as a TO and DNO within the code modification processes mean we are ideally placed to be instrumental in the formulation and discussion of the SDS. We would welcome early engagement with Ofgem and suggest a steering group comprised of stakeholders to assist with the formulation of the SDS prior to consultation. We agree that a SDS should focus on a period of one – two years, with a longer-term five-year vision, which will allow for succinct and streamlined decision making. We would urge Ofgem to consider the safety, security, and resilience of supply alongside the efficient and timely delivery of net zero as fundamental principles of the SDS to ensure a holistic focus across all codes.

The application of a SDS across codes will require significant work in advance of any code manager appointment. This should include reference and definition within the code manager licence terms, reference to the implementation of the SDS within the current code modification processes, principle of adherence to the SDS of code licenced and non-licenced parties and a clear monitoring framework. In the long term we would request that Ofgem consider where the responsibility in reviewing, setting, and updating the strategic direction lies, considering the independence, scrutiny and remit of an appointed code manager, the new National Energy System Operator (NESO), and relationships with Ofgem and Department for Energy Security and Net Zero (DESNZ).

### *Code Governance - Stakeholder Advisory Forum (SAF)*

*Further clarity is required on several areas of the proposed SAFs. It is essential that the code manager will be held to account. We urge Ofgem to consider how the proposed SAFs will replicate the scrutiny and due process currently in place via Code Panels and the advisory role of SAFs in decision making. We strongly advise that there is a requirement for a stakeholder role to be formally created and undertaken by licence holders to ensure the safety, reliability, and resilience of the electricity networks in line with their licence obligations.*

The primary concern of SPEN in relation to SAFs is the accountability of the code manager, given the proposed SAF is an advisory body with no decision-making authority. A newly appointed code manager will have a licence condition to maintain, modify and update a consolidated larger, more complex code, with a sizeable number of code participants with different interests, yet there is no defined process for licence holders to hold a code manager accountable, nor a formal opportunity for network licensees to present licensee obligation concerns. The SAF proposal gives no indication of how accountable the code manager would be to a SAF challenge, a route of appeal, nor does the SAF make up consider the expertise and technical proficiency utilised in the current code panels and workgroups.

Furthermore, the wide remit of a SAF covering areas such as code manager budget scrutiny, prioritisation of code modifications, SDS review and code manager performance assurance, creates additional issues regarding the scope and depth of knowledge required in SAF membership. SPEN suggest there is a requirement for a central or primary SAF group, constructed with the necessary stakeholders to represent code signatories, which would support, review and work alongside code managers on defined areas. Whilst the appointment of technical and commercial advisory panels are required to allow licenced operators to input effectively into the code process and by which code manager processes can be scrutinised and decisions held accountable.

We suggest that the SAF makeup, role and responsibilities, relationship to the code manager and governance processes of the code manager require significant further scrutiny before progression of the policy.

### *Quantitative and Qualitative Impact Assessment*

*SPEN broadly agree with the areas that Ofgem have reviewed as part of their impact assessment, however we believe that there has been a lack of consideration to the disruption and implementation periods considering the vast amount of industry resource required. Further, we strongly believe that the savings have been overestimated given the lack of clarity on the cost of individual and industry roles and responsibilities.*

The quantitative and qualitative elements of the Impact Assessment (IA) look at the correct areas, although we query the broad assumptions of the figures and stated percentages in the consultation, which we understand to have been derived with no stakeholder input. We feel strongly that the figures used are overestimates and the saving calculated will be difficult to materialise. We see a difficulty in clarifying savings or additional costs when the number of codes remains unknown, and the roles of a new code manager are not yet defined.

Whilst the cumulative scoring of the IA gives a positive result for change, it does not give an appropriate level of credence to the risk of consolidation. The IA does not consider the cost of change, the time, resource, and knowledge of stakeholders to facilitate; nor is it reflective of the costs associated to align NESO to newly appointed code managers. Consideration is not given to “the cost of distraction” during the consolidation process or “missed opportunity costs” whilst working on institutional reform.

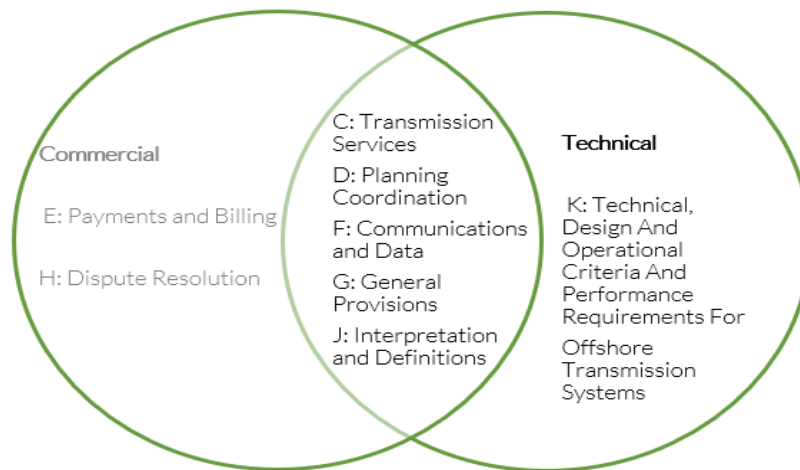
Many of Ofgem’s stated benefits are reliant on anticipated longer-term rationalisation of the codes and achieving agile and efficient oversight across transmission and distribution, which we believe are difficult to realise in practice and risk loss of functionality as demonstrated by the recent creation of the Retail Energy Code (REC).

### *Consolidation Rationalisation processes*

*The creation of larger and more complex codes could result in unintended consequences and a further burden on resource. SPEN welcome working with Ofgem towards code consolidation, however we believe that the current proposal will not achieve the intended purpose of Energy Code Reform to make codes more accessible and transparent for new and existing entrants and users.*

SPEN feel the consolidation of all Electricity Codes into the technical and commercial codes may have unintended consequences particularly in relation to the STC. We have concern about larger consolidated codes, with more signatory parties and different licence / non licenced obligations, becoming difficult codes to access and manage. To aid consolidation and rationalisation we see it as fundamental to include a design principle of “preserving essential elements of current code functionality,” and to ensure that any consolidation respects the key objectives to be agile to adapt and change for future market arrangements. Prior to consolidation there is a necessity to create a uniform base in each code, ensuring elements such as definitions, modification process, appeal process, and code framework are reflective in each.

We have an underlying concern regarding the STC, that it is neither a technical nor commercial code in its entirety (as illustrated in figure 1 below). Given it defines the essential relationship between transmission system owners and the system operator, the STC should not be treated as technical in the same way as the other codes identified which have a much larger volume of code parties. Our suggestion is that the STC is not consolidated but remains a separate code and would welcome conversation with Ofgem on how this could be achieved.



STC section mapping: Figure 1.

### *Transition process, Consolidation Rationalisation processes*

*In the global race to decarbonise society and to reach critical net zero targets, as industry resources are already under pressure we urge Ofgem to consider how they prioritise Energy Code Reform. Implementation timescales must be realistic, pragmatic, and present consumer value as well as consider the broad industry resources required.*

SPEN will work with Ofgem to facilitate energy code reform, however we have concerns around the industry resource required and the timeframes to implement. Our concern regarding industry resource relates to the small number of code specialists required to support reform and the substantial number of affected parties, who would be required to adapt and transform to accommodate any new structure. Given our resource concerns, we believe reform should be fully sequential, completing one consolidation phase prior to starting another. Whilst this may take longer to start each phase, subsequent phases will become quicker as lessons learnt are applied, especially if the required standardisation code work is conducted prior to any consolidation. Throughout the indicative transition sequence proposed we urge Ofgem to retain their focus on ensuring TO and DNO licence conditions can be fulfilled at all times and the safety, resilience and security of supply is prioritised.

SPEN understand the rationale of energy code reform and continue to play an active role in the current code process. We are keen to ensure our role as a key stakeholder is maintained and that post reform, we continue to play the role of independent advisor assuring the safe, secure, and resilient supply, whilst adapting and facilitating the necessary steps to achieving net zero. As such we are keen to engage with Ofgem on the points highlighted and be part of the planning process.

Yours sincerely,



**Nia Lowe**  
**Head of Regulation and Government Policy**  
**Network Planning & Regulation**

## Annex 1 – Summary of SPEN response to Consultation Questions

Q1 - Do you agree that we should recommend to the Secretary of State that the 11 industry codes listed (including the SQSS) should be designated as “qualifying documents” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?

We recognise the SQSS does not currently meet the necessary requirements under the Energy Act to be designated as a ‘qualifying document’ and would support a modification of the standard licence conditions of the Electricity Transmission Licence to address this, by placing an obligation on the electricity system operator to maintain the SQSS. We acknowledge the ten industry codes<sup>1</sup> and the SQSS which have been identified in successive consultations by government and Ofgem to be in scope for energy code reform. We support that the specified documents may be used for the purpose of transition, consolidation, and the selection of code managers and that the powers afforded to Ofgem under the EA23 should not compromise the safe operation of the network.

Q2 – Do you agree that we should recommend to the Secretary of State that the 5 central systems listed (including the Central Switching Service) should be designated as “qualifying central systems” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?

SPEN agree the four delivery systems<sup>2</sup> and the Central Switching Service (CSS) are integral to the operation and function of the energy codes referenced in question 1. It is therefore sensible to designate these identified systems to their associated codes so intended energy code reforms can be implemented effectively.

Q3 – Do you agree with the monetised costs and benefits set out in the accompanying draft impact assessment (ie the quantitative analysis)? Please specify if you think there is any further evidence that we should consider.

We agree the Ofgem quantitative analysis looks at the correct areas, although we question the accuracy of financial figures and percentages stated given there was no stakeholder input and that neither new structures nor roles and responsibilities are yet clarified. Given this we have difficulty in recognising the level of saving, spend and costs, especially around the code manager where a 50% increase in cost has been assumed yet the role is not defined.

We agree in aggregating costs across a period of twelve years but have fundamental issues with some of the numbers suggested for cost savings and the modelling: the estimates of the annual Great Britain (GB) market spend being circa £55billion and therefore the estimated whole industry code related spend equating to £137.5 million per annum seem particularly presumptuous. We support the consultation assumption that code consolidation will bring a reduced frequency of cross code modifications but highlight the level of increased industry expertise to facilitate modifications in a larger, wider ranging super code which is not mentioned.

Whilst the cumulative scoring of the IA gives a positive result for change, it does not give an appropriate level of credence to the risks of consolidation and is bias to change. The process does not consider the cost of change, nor the difficult to quantify resource, knowledge, and time to facilitate for stakeholders, nor is reflective of the costs associated to align NESO to newly appointed code managers. In further analysis of the IA not only are potential savings significantly overestimated, but there should also have been consideration of the cost of distraction during the consolidation process and an assessment of the missed opportunity cost in achieving net zero whilst working on institutional reform and consideration of the challenge when new organisations are required to work collaboratively.

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<sup>1</sup> BSC, REC, SEC, CUSC, DCUSA, UNC, IGT UNC, Grid Code, Distribution Code and STC

<sup>2</sup> Central delivery systems currently managed by Xoserve, Elexon, DCC and Electralink

Additionally, we would highlight our experience in the creation of the Retail Energy Code (REC) where implemented code rationalisation and simplification caused detriment due to a loss of code functionality, which had to be reversed. The IA does not show lessons learnt from this process and we seek reassurance from Ofgem that a review and evaluation of the project has been undertaken and recommendations can be applied in ECR.

Q4 - Do you agree with the hard-to-monetise costs and benefits set out in the draft impact assessment (ie the qualitative analysis)? Please specify if you think there is any further evidence that we should consider.

The qualitative analysis suggests a positive result for change but does not take account of the practical time, resource, and knowledge necessary from stakeholders to participate in the consolidation of large, complex codes across network areas. Whilst we set out below our view on the principles of consolidation, we urge Ofgem to be always mindful and not underestimate the complexities and depth of work involved in aligning and consolidating detailed, complex industry codes.

We outline our response below on the consideration of design principles and concerns on the assumptions:

ECR will be easier for market participants to engage & understand:

- initially the consolidation process of codes will create larger, more complex, and difficult to access code documents, although being managed under one code manager should support new entrants.
- a larger more complex “super code” will create code modifications across a wider scope of areas, affecting several sections of a consolidated code. This will be challenging, requiring a wider breadth of knowledge from industry stakeholders and the newly appointed code manager.
- current code administrators rely heavily on code panels to inform the decision-making process and a newly appointed code manager would not in the consultation proposal have this facility.
- consolidating the proposed number of codes will not reduce the elements of code compliance for each signatory, given that each code covers different areas for compliance. There are limited overlapping facets, but a consolidation of technical codes will not reduce the number of technicalities requiring compliance.

ECR will facilitate the delivery of strategic change and enable the codes to be agile & adaptable to future market arrangements:

- consolidation will reduce number the number of consequential code modifications and should therefore be an improvement, but the level of knowledge required across a wider technical or commercial code is an issue and will require engaged stakeholder code experts.
- reviewing and aligning present code objectives could be perceived to achieve this aim without the necessity for code consolidation.

ECR will support the implementation of the new code governance arrangements and minimise disruption:

- the risk of disruption during code consolidation and associated structural code reform has been significantly underestimated, whilst we accept the rationale for ECR the additional demands on industry during a period of unprecedented change and time of significant development is substantial.
- ECR will increase the risk of diverting resources from other vital areas, such as connections reform, the overarching aim of achieving net zero, the new transmission price control period, formation and support of the NESO, new potential government targets.
- it will in the short term necessitate developing a mix of knowledge covering technical and commercial electricity codes and across the realms of distribution & transmission which will be challenging. As industry continues to imbed a whole system approach, we see this is where benefit could be found in technical and commercial code consolidation.

In our learning from the establishment of the Retail Energy Code (REC), we saw consolidation lead to instances of the seemingly arbitrary deletion of important code provisions<sup>3</sup>, which invariably had to be

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<sup>3</sup>E.g.: REC creation gave little consideration to MRS technical appendices and there was no reference to one of the MRS schedules (MAP08), which was later introduced under REC category 3 document: guidance of metering points.

reversed sometime later to avert or address the loss of functionality of key industry processes and systems. Therefore, we feel it imperative to see the inclusion of an additional design principle to guide any consolidation “preserving essential elements of current code functionality.” This principle is important as it demands a thorough and in-depth understanding of all current code provisions and the historic development that has led to their current form. We continue to have concern that rationalisation without extensive industry expert involvement with corporate memory, will mean sections of code will be deleted without the correct due diligence.

**Q5 - Do you agree with our preferred option to consolidate the CUSC and DCUSA to form a unified electricity commercial code?**

While we understand the stated rationale of a commercial code comprising the CUSC and DCUSA we feel the benefits of such consolidation in practice maybe limited. Whilst we will work with Ofgem to facilitate the proposed consolidation we have concern around the volume of code parties in a larger commercial code, the lack of recognition of licence holder obligations and unrecognised breadth of ongoing commercial activities across the distribution and transmission networks. Beyond the provision in rationalising similar activities e.g.: connections in transmission and distribution we are unsure about further opportunities for consolidation and rationalisation and remain unconvinced that commercial consolidation will support new market entrants or allow for a more agile code.

Concern remains about the number of code parties in a larger consolidated commercial code and the challenge for a code manager given the required knowledge depth and cross industry experience. We highlight the necessity to ensure code parties are correctly represented within any SAF or working body in a new code, bearing in mind the difference in volume, spend and responsibilities between distribution and transmission operators, alongside the varying obligations of licenced and non-licenced code signatory participants.

SPEN will work with Ofgem towards code consolidation as stipulated in the Energy Act 2023, however reiterate that consolidation will initially create larger more complex codes and will not achieve the aim of making the industry more accessible to new entrants. We restate our support of a design principle which should be used across all codes of “preserving essential elements of current code functionality,” thus allowing the consolidation process to align with the fundamental objectives: to be agile to adapt and change for future market arrangements.

**Q6 - Do you agree with our preferred option to consolidate the Grid Code, STC, SQSS and Distribution Code to form a unified electricity technical code?**

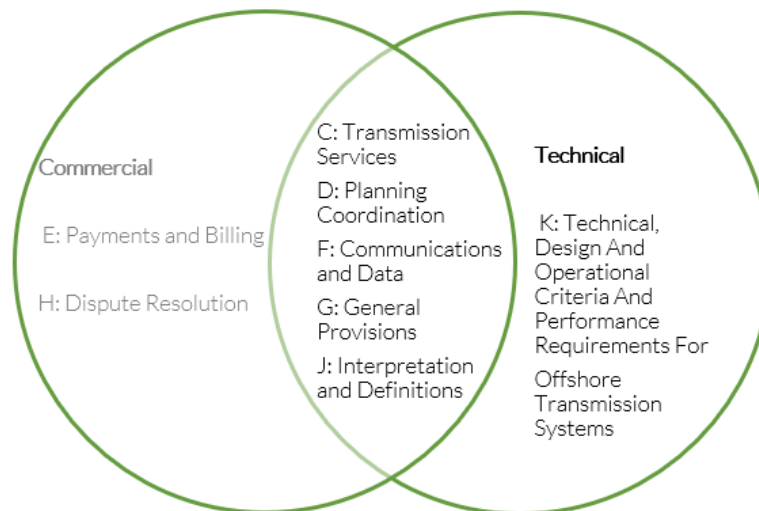
The complexities and work involved in the consolidation of technical codes should not be underestimated, it will be a lengthy and involved process no matter the outcome, involving operational and technical requirements of Transmission and Distribution network operators. We draw attention to the recent digital Whole System Technical Code (dWSTC) process undertaken by the ESO where the project has been significantly scaled back, resulting in the unfinished modification of just one element (Operating Code 2) taking an extensive amount of time<sup>4</sup> and requiring significant resource from stakeholders. SPEN would advocate Ofgem to remain mindful of the reasons for consolidation i.e.: agile and more accessible codes, and to keep under review whether consolidation of four technical codes achieves the rationale.

We have particular concern, as previously outlined surrounding the treatment of the STC, given it applies to a small number of code signatories, has relatively few code modifications and crosses both technical and commercial realms. (as illustrated in figure 1 below.)

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<sup>4</sup> Modification GC0164 was brought to panel in October 2023 on the back of significant work being undertaken by the dWSTC. The dWSTC steering group work started in December 2021, GC0164 timeline was extended 22/4/24 with implementation now planned for December 2024. If implementation now goes ahead as proposed, this equates to a three-year time period.





STC: Figure 1.

We are not convinced by Ofgem's rationale for continuing to include the System Operator Transmission Owner Code (STC) within a larger technical code. Given the STC applies only to the ESO and TOs, it is therefore very distinct in subject area and user base from the other three identified technical codes. In practice we believe the STC should remain a standalone code, thus retaining its efficiency of governance. Ofgem state that given its small size and low frequency of modification the STC would impose higher costs if left separate, however we would suggest that Ofgem's rationale means the cost and benefits to consolidate the STC are marginal so it should be left as a standalone code. SPEN would support Ofgem to consider if the STC should be omitted from consolidation and be its own entity or ring fenced with separate governance after reflecting on our concerns.

We would also highlight the consideration required in consolidating and managing annex and associated documents which sit alongside code structures, e.g.: Annex 1 and 2 of the Distribution Code, Data Transfer System (DTS) which will necessitate navigation as part of the consolidation processes.

As with a consolidated commercial code we believe a larger technical code with more signatory parties will be extremely challenging for a single code manager, requiring significant resource and expertise, yet will not necessarily be any more accessible for new market entrants or smaller code parties.

Q8 - Do you agree with our proposals to rationalise the identified code provisions as part of any consolidation exercise?

The proposal to rationalise code provision, allowing for standardisation across the codes prior to code consolidation is key to the success of the ECR, we support Ofgem as we recognise this is a prerequisite to success. Within the proposed codes to be consolidated there are insufficient aspects of common activity and definition, which without work prior to consolidation will cause too many variables. If not addressed prior to code manager recruitment these will cause additional cost and more challenges on the newly appointed code manager. The streamline process as proposed should importantly ensure there is no loss of clarity in any consolidated code and minimise the challenges of larger consolidated codes.

For each code to be consolidated in to the commercial and technical electricity codes there is a necessity to streamline the following:

- definitions
- code modification application / assessment / scrutiny / withdrawal / decision process
- code objectives
- appeal process
- code framework
- overarching principles of debate, consultation, prioritisation, decision making, work group make up, meeting agenda, secretariat role, new entrant / departure



- agreement of stakeholder input / balance of signatories input – professional / commercial input
- fines / penalties for non-code compliance
- agreement on stakeholder input and confirmation of consolidation timelines to minimise disruption, ensure maintenance of functionality and for resource alignment

Q9 - Do you agree with our proposal to publish the first SDS for all codes next year (before code managers are in place)?

We support the publication of a SDS and the application across all codes prior to code manager appointment to align industry on common focused objectives.

The application of a SDS prior to code manager appointment and code consolidation would ensure all separate codes are striving towards the same objectives, allowing for a holistic assessment of modifications. At present each code has its own objectives and in the case of the grid code, objectives for each section, we would welcome broader and more targeted strategic direction across codes, however we recognise the significant work required in advance of any code manager appointment to align current code objectives. This work would be a necessity prior to implementing the consultation proposal to allow current code panels to prioritise the assessment of code modification requests against SDS objectives.

However, the proposed consultation process is not sufficiently formal to ensure the development of an SDS which is fit for purpose with stakeholder buy in. Formalising the development process (please see our response to question ten) along with an annual timeline for review and application would improve the success of implementation. Additionally, we have wider concern over the resources of industry required to create, monitor, and implement an annual SDS prior to code manager appointment; the recent DESNZ strategy policy took nine months to consult, review and issue in draft form, the energy code reform consultation suggests an SDS can be in place for early 2025. Whilst we appreciate the first production of any policy requires more time, in this period of unprecedented investment and development, the proposed SDS timeline and required stakeholder buy in necessary to ensure success will be a challenge.

Furthermore, we highlight the potential issue of disruption being caused by non-licensable parties who will not be subject to the proposed licence condition of SDS compliance yet are code signatories who have different obligations, we query if the compliance of non-licensable parties is possible without further regulation of these entities. We acknowledge that SDS application could be difficult within the current code administrator process and would flag the importance that all code parties be compliant at the same level, that consideration should be given to how code parties which are not compliant will be dealt with.

Given the proposal to implement a SDS prior to code manager appointment, we would support any recruitment process of a code manager to include demonstration of how they “would implement policy driving towards the strategic direction goals”, plans that would be put in place to deliver, monitor, report and evaluate the SDS, alongside timelines of subsequent SDS reviews detailing stakeholder involvement.

Q10 - Do you have views on the proposed SDS process?

To ensure the success of a SDS it is important that key industry stakeholders are involved at an early stage, thus ensuring buy in to the direction and implementation. The consultation advises there will be engagement with stakeholders prior to a subsequent consultation in Winter 2024, as an industry expert we would welcome early engagement and the opportunity to be part of a steering group relating to the formulation of the SDS consultation proposal. Our experience, knowledge, and commercial impartiality as a TO and DNO within the code modification processes means we would be instrumental in the formulation and discussion of any SDS. We feel strongly that any policy within the strategic direction should identify issues that require action and that any SDS should include all areas that are in the scope of code change, thus allowing industry experts and ultimately code managers to act in the best way possible.

It will be important within the SDS process for Ofgem to work alongside the government’s Strategic Policy Statement (SPS), ensure that the Nick Winser report recommendations regarding the formulated NPS & National Energy Policy (Eng & Wales) are considered, whilst aligning the Ofgem workflow and DESNZ

draft strategy. The licence requirements within RIIO ED2 and RIIO T2 should also be considered alongside business plans already in place to ensure any SDS does not place additional regulatory obligations on network operators.

We would urge Ofgem to define stakeholder engagement at an early stage given the role they will play in the success and application of the SDS and to ensure the SDS considers the safety, security, and resilience of supply alongside the efficient and timely delivery of net zero as fundamental principles ensuring a holistic focus across all codes. We reinforce our proposal that it will be imperative the SDS includes considerations on system resilience, security and safety given issues which have previously arisen due to commercial changes within the DCUSA and CUSC having cross code impact on the STC regarding the security of supply.

We agree that a SDS should focus on a period of one – two years, with a five-year vision giving an element of certainty which is welcomed, this will allow for good and streamlined decision making. The SDS longer term vision is particularly relevant in the current code scenario where modifications can run across several years and a re-prioritisation annually would potentially stall progress and development.

Once code managers are in place with the proposed remit to prioritise and validate code modifications against the SDS, we ask Ofgem to consider the imperative requirement for stakeholders to challenge and scrutinise decisions, including the right to appeal, given our licence obligations.

Q11 - Do you agree with our proposal that a principles-based standard condition for gas and electricity licensees would support the development and delivery of code modifications related to the SDS?

SPEN are concerned that a licence principle-based approach would not be sufficient to ensure stakeholder compliance to a SDS. Theoretically the inclusion of a principles-based statement within the licence detailing a high level, broadly stated rule would be sufficient and provide flexibility, however, there are numerous variables which make the concept unworkable as it is presently proposed. We would welcome further engagement with Ofgem to input on the consideration of how a non-licensed code party should be compliant, the level of expected SDS compliance prior to a code manager being appointed, a structure on the level and stringency of application. If a principles-based approach is to be applied there should be clear details on the guidance of SDS application to code affected parties, a timeline for compliance and clarification of the licence conditions of the code manager.

We recognise SDS application maybe difficult within the current structure of code administrators and therefore see it as critically important that compliance to the SDS is ratified for all code parties within the code objectives as identified in our response to question nine.

Looking to the future, such a licence condition should become obsolete in a reformed governance landscape. Where code managers have unilateral powers to raise and develop modification proposals and under the current consultation are no longer bound by the views of users and code panels, there is no reason the principles based SDS licence obligation should apply.

Q12 - Do you agree with our preferred option for how a Stakeholder Advisory Forum should be constituted?

The stakeholder advisory forum (SAF) option preferred by Ofgem “fixed membership and independent parties acting impartially” is recognised as the best option by SPEN, yet we have significant concerns about the makeup, the role of the SAF and the accountability of code managers to the recommendations of the SAF. SAFs would have no jurisdiction over a code manager, yet SAF members many of whom could be licence holders are responsible for a technical network, a system of national security and safety. The current SAF proposal will disenfranchise stakeholders and reduce the ability of licensees to fulfil their obligations, whilst also affecting the development and progression of industry codes in which stakeholders play a key role as panel and workgroup members. We strongly advise that there is a requirement for a role to be formally created and undertaken by licence holders to ensure the safety, reliability, and resilience of the electricity networks in line with their licence obligations.

#### SAF make up:

We agree with the proposal that SAF stakeholders act independently and urge Ofgem to consider the wider number of stakeholders required to represent the varied membership in any SAF associated with a consolidated code and how the larger number of members will retain functionality. We are concerned about the requirement for SAF members to have the necessary level of industry detail, the depth of knowledge required across a more complex code and worry about the time involved to be a constructive and useful SAF participant given the broad remit of a SAF as currently proposed.

Furthermore, we would ask Ofgem to consider why an independent party, academic or consumer group would participate in a SAF when any SAF proposal or decision submitted to the code manager would be treated in an advisory manner. Members of an appointed SAF will, as defined in the consultation proposal, be specialist technical experts in the field, academics, and consumer experts; bearing in mind the size of the proposed consolidated electricity codes, finding such SAF members will be a potential challenge. SAF members should have knowledge of each of the pre-consolidated codes, corporate memory of code development, industry code panel experience and an understanding of licence obligations, given these skills will be imperative to formulate advice and recommendations for code managers. When considering the high level of expert scrutiny afforded by the proposed SAF make up SPEN questions why recommendations by a SAF would not require mandatory adherence by the code manager.

The consultation suggests further consideration will be given to the appointment of independent SAF chairs. We are unsure what an independent chair will bring if the makeup and remit of a SAF is correct, allowing for adequate debate and clear process; an independent chair may bring little, bar additional cost. However, we recognise the current independent chairs of the CUSC & DCode initially brought credence to panel discussions and debate. We would urge that, to bring value, any appointed chair must have industry knowledge. Further the chair should change regularly to maintain the independence vital to the role as without this they become embedded in the process and lose impact – this could be achieved by appointing the chair for a set length of time, as the length of service affects the chair's decision-making ability.

We ask Ofgem for clarification on appointing additional SAF members, role of the code manager within a SAF, how SAF appointment would work, the process for identifying when additional membership would be required, if a SAF would have the ability to call for additional membership given the breadth of code principles and remit it will oversee? We also consider that code managers should be accountable to all code stakeholders and would like clarification on how different party interests will be accommodated in the makeup of a SAF to ensure fair representation. For example: industry can require code modifications based on safety or technical issues, such requests should not be blocked or countered by non-licensed code parties within a SAF because of low commercial interest or lack of consumer benefit.

#### SAF Roles & Responsibilities – Governance:

SPEN do not believe the SAF as outlined in the consultation is reflective of or takes consideration of the considerable expertise and technical proficiency utilised in the current code administrator panel system. We would request that Ofgem provide clarity on the role and responsibilities of a SAF and code manager governance before progressing the SAF policy. We would request that the SAF remit is clearly outlined, reflecting the additional information supplied within the joint Energy Code Reform: Consultation on code manager licensing and secondary legislation. We would suggest that one SAF across a larger consolidated code would be a significant undertaking and for many stakeholders' membership would simply be an unrealistic commitment both in terms of the necessary time and the depth of code knowledge required.

In defining the expected roles and responsibilities of a SAF we would expect to see clarification of the relationship between the code manager and the SAF and how accountable the code manager would be to a SAF challenge. We have concern about the code manager rejecting the decision of the advisory forum, giving the code manager significant authoritarian power, in a scenario where they have written or strongly influenced an SDS, prioritised code processes and then have ultimate decision-making ability.

Network owners' licence obligations to provide a safe, secure, and resilient supply have not been appropriately considered in the consultation. There is a real risk that a code manager could use a potential veto on a modification process and go against the recommendations of the SAF. which could potentially impact on licensees who have a legal obligation to fulfil. We strongly feel that in any SAF composition that

a licence holder should have confidence that a SAF recommendation will be given due consideration and respect by the code manager and that the decision-making body has sight of the recommendation, particularly in the code modification process where changes may affect networks for which we are responsible.

Within the ECR consultation there is no reference to the right of appeal. An appeal process must exist to enable licence holders and any materially affected party to quickly challenge a modification decision. The current procedure in the decision-making of code modifications, gives users confidence that Ofgem will make the correct decision, allowing a review of opinions and based on their regulator obligations. It is unclear in the ECR consultation if the same level of confidence in a code manager decision would be possible, we would also look to clarify that Ofgem will remain the ultimate decision maker in a new world of code managers. Further, assuming Ofgem will remain the final decision maker, affected licensees should be able to appeal any Ofgem code modification decision to the Competition and Markets Authority (CMA) - we note that the existing CMA code appeal rights are rarely used due to the thorough discussion, agreement and voting processes within the present code administrator structure, however it is crucial that this important backstop is maintained.

We would additionally highlight previous government consultations having mentioned the “right to appeal” and the commitment to developing this through the code manager licence and code changes. However, in the current government consultation Energy Code Reform: code manager licensing and secondary legislation (closing 5 May) the proposals are not set out but instead note: “A full set of draft licence conditions, and associated policy proposals, will be consulted on in due course. We will also consider policy options for updating the process for appeals to the Competition and Markets Authority (CMA) on Ofgem’s code modification decisions, as set out in Statutory Instrument 2014 No. 1293 The Electricity and Gas Appeals (Designation and Exclusion) Order 2014.<sup>67</sup>”. We would welcome clarity on the Government’s proposals for an appeal process as soon as possible.

There are numerous and unanswered questions with the consultation proposal, including: the wording of the standard licence condition proposed for the code manager to appoint a SAF? How the impartial advice from the SAF would be considered by the code manager? The constitution of a SAF and how impartial the SAF will be given each member will have their own area of expertise and knowledge? How a SAF and code manager would work together to oversee code modifications? How the SAF and code manager would work together to implement the SDS to code modifications? How the SAF and code manager would interact? How accountable to the SAF is a code manager? What consideration is given to licence holders obligations in SAF construction? Will SAFs include voting rights or equivalent measures? Will quoracy of full representation of codes signatories in a SAF be applicable? How can code signatories challenge or appeal code manager decisions? The makeup of a SAF to allow a fair representation and voice of code signatories, for example: ensuring the smaller number of transmission operators is heard amidst the significant larger number of distribution network operators in a consolidated technical code? We recognise the joint DESNZ and Ofgem Energy Code Reform: Consultation on code manager licensing and secondary legislation looks to clarify some of these questions, but they remain a concern at present given the lack of certainty.

#### Primary SAF working alongside Technical / Commercial Groups:

The role of a SAF as currently presented across the two consultations is extensive and we suggest that it is impractical for one SAF to conduct all the activities and the proposal will not allow licence holders to fulfil their licence obligations. We believe there should be a central or primary SAF group, constructed with the necessary stakeholders to represent code signatories. This primary SAF would support, review and work alongside code managers on:

- performance assurance
- oversee and approve code manager budget and charges
- support forward code work and delivery plans
- prioritise code modifications in alignment with the SDS
- support implementation, evaluate and update the SDS
- recommend a governance route for all proposed code modifications
- create / appoint technical groups which would be responsible for reviewing code modifications as per a remit set down by the SAF

We believe that a SAF as detailed in the consultation which sits across a larger consolidated code will not have the detailed technical knowledge to debate code modification proposals nor fully consider cross code modification requirements; but could as suggested in our proposal of a primary SAF, set appropriate terms of reference for a technical / commercial panel (perhaps mirroring the current code workgroup process). In turn, the panels could reach a decision, to which if correctly constituted and governed a SAF could adhere. Such panels would be experts in the specific areas of the code being modified, we feel strongly that code managers should be held accountable by industry experts, who have a licence obligation to ensure a secure, safe, and efficient network. We would propose a central or primary SAF supported by additional SAFs or technical groups / working groups, forums with a “power” of enforcement. As stated previously, consideration would have to be given to the process for electing or selecting code party representatives in any SAF groups and the process for creating additional / supporting SAFs / technical groups or workgroups.

Current code panel practices ensure relevant industry engagement in the technical code modification process, SPEN see it as vital that an appointed code manager should be obligated under their licence conditions to ensure that this engagement continues within any new modification structure. In addition, we see it as imperative that a code manager ensures a SAF or any composed group have the correct skills, experience and understanding to evaluate any modification proposal.

In summary, the accountability of the code manager to the SAF (whatever the makeup) and the authority of the SAF in decisions making are our biggest concern, especially given a SAF does not replicate the accountability currently in place via Code Panels, nor considers the legal obligations of licence holders in operating a reliable, efficient network in the best consumer interests. We would welcome engagement with Ofgem, being a member of a working group to consider the wider role of SAFs including: the SAF make up (mix of academics, code compliant parties and licensees), ideas of industry experts within a SAF, the right of appeal, a challenge process to code manager prioritisation decisions, role of the SAF given our concerns about volume of required of cross code knowledge (depending on defined role of SAF) and would be happy to outline the idea of panels in more detail, which if implemented would reduce our concerns around SAFs and code manager accountability considerably. We would welcome further Ofgem engagement to work through these aspects of the consultation.

**Q13** - What are your views on i) a requirement to assess the greenhouse gas impact of code modifications with updated guidance, or, ii) introducing a ‘net zero’ code objective?

We would support the introduction of a ‘net zero’ code objective within the SDS (question 10 response), which would be applied across all codes. We consider implementing additional objectives within the codes themselves could cause disruption in the prioritisation of code modifications surrounding the matters of code housekeeping and maintenance. We also believe a review of code objectives should ensure the impacts on security of supply and network security are given sufficiently high priority across commercial and technical codes.

**Q14** - Do you agree with our proposal to extend and harmonise the ability of code panels to prioritise the assessment of code modification proposals?

SPEN currently support the prioritisation of modifications within several codes panels of which we are members. We agree with proposal to extend and harmonise the basis for modification prioritisation across all current code panels ahead of the appointment of code managers. We would welcome the opportunity as identified in the consultation, to work with Ofgem to assess the existing code objectives and review the code modification process under current arrangements.

**Q15** - Do you agree with our proposal to adopt a phased approach to transitioning codes to the new governance model?

A phased approach is a necessity in transitioning codes to facilitate stakeholder resource, SPEN believe the completion of a phase and reflection is important to learn lessons and implement success in the next phase.

We note Ofgem's current preferred transition route of a phased approach where each code would be allocated stages with the overlapping of activities at the end of stages and start of the next. However, we have definite concern over this approach, primarily surrounding industry resource and the lack of evaluation of the previous phase. The issue of resource is very apparent with key members across multiple stakeholders being involved in a multitude of current electricity commercial and technical code modification processes; in addition, we are entering a period of unprecedented change with connections reform also involving the same key personnel.

There is a finite amount of sufficient code experts within stakeholders, with sufficient corporate memory and knowledge to navigate energy code reform, we must ensure this is considered when timelines are drawn. We would propose the only workable transition approach is sequential, where we learn from each stage of consolidation, lessons learnt will allow the next phase to progress at a faster pace and we firmly believe that whilst consolidation may start later the lessons learnt can ensure the pace of later consolidation should quicken, thus regaining the time lost in completing one phase prior to the commencement of another.

**Q16 - Do you identify any strategic or operational considerations that might inform the transition sequence?**

Industry resource is finite, we would suggest the transition sequence be sequential, with each phase completing prior to the next commencing, allowing for lessons learnt to be implemented.

We reinforce our belief that any consolidation approach must have the appropriate work undertaken prior to the consolidation commencing, alongside a realistic and detailed project timeline for each section of code consolidation. These principles are vital in ensuring code managers and stakeholders can resource plan to facilitate change at the required pace. This timeline should be shared as soon as reasonably possible including the timing of:

- additional consultations mentioned within the ECR consultation
- areas identified within the consultation requiring further stakeholder engagement
- the licence and code legislative arrangement
- code manager recruitment and appointment schedule
- change and implementation structure

SPEN believe the necessity to have a clear pathway identified is key to the timely success of ECR, the magnitude of work required should not be underestimated, nor the resource of stakeholders to engage and facilitate the process. If Ofgem ensure consistent, transparent, and open communication with stakeholders, whilst retaining a focus on consumer benefit we think the aim of an agile and responsive code system which can help us reach net zero is achievable. The role the NESO will play is crucial and the increasing urgency to see their vision, objectives and work paths is imperative.

**Q17 - What are your views on our proposed transition sequencing?**

SPEN would expect Ofgem to fully assess the sequencing of code reform, taking account of the efficient, effective, resilience and safety of supply. We would welcome sight of the assessment to ensure there are no unintended consequences from consolidating commercial code ahead of technical, given the consultation does not offer any insight on how the maintenance and oversight of technical codes will be facilitated during any consolidation phase. Technical codes are critical in our role as TO and DNO informing how we go about our day-to-day operations in a way that meets the needs and expectations of our customers and the regulator. It is crucial that any consolidation of the codes does not undermine our ability and authority to make decisions about safe, effective, and compliant management of our network. We would ask Ofgem to consider how technical codes will:

- remain resilient if commercial consolidation takes place first given the volume of cross code change required after a commercial modification.

- flex and adapt during the start-up phase of a commercial code manager, where the code will be larger, initially more complex and have more code parties to consider, alongside the timetable suggestion of technical codes being consolidated themselves.
- consider contingency measures that could be adopted should the new commercial processes / code manager experience unforeseen or sustained performance issues.
- ensure and apply the appropriate safeguards to retain functionality when impacted by a fully reformed commercial electricity code.

We strongly support technical and commercial electricity code consolidation occurring at different stages due to operational and resource capabilities. The consolidation of technical codes is a large and complex task which should not be underestimated; however, we agree with Ofgem that there are fewer modifications within the existing technical codes, some of which are consequential changes required given change in the CUSC and DCUSA or which are necessary to ensure the safety and security of supply. We feel technical code consolidation could, if the correct framework and preparation are in place be an easier consolidation process with less operational challenges than a commercial electrical code. We urge Ofgem to review the contractual relationships between the identified codes and consider how these will affect the transition sequencing. We suggest technical code consolidation would face a lot fewer of the operational challenges than other codes with three of the four proposed codes being managed by the ESO at present with similar panel modification processes, industry tracker updates, allowing a quick win given the breadth of knowledge across the technical codes. There is also benefit in the synergy of culture, IT (Information Technology), prioritisation of tasks which would be easier rather than the mix of cross code personnel required for a commercial consolidation code with more code parties. Yet we recognise the challenges of commercial consolidation and the time which will be required given the breadth of interested industry stakeholders.

We support the proposed Phase 1, with the Balancing and Settlement Code (BSC) and Retail Energy Code (REC) taking place initially with the appointment of a code manager and agree lessons can be learnt from this approach. Prioritising two non-consolidated codes first makes sense allowing for the licence necessities, party frameworks, governance, accountability, and the code manager appointment process to be carried out and lessons learnt prior to the next phase commencing.

Whilst consolidation of any code is no easy task, we would reiterate the requirement of the work needed prior to any consolidation taking place as outlined above (please see our response to question eight) and the absolute necessity to have the correct framework and baseline details in place across all codes prior to any action being taken.

Q18 - Do you have any other comments on how Ofgem should approach the implementation and transition process?

Any code consolidation should be carefully considered, with a clear realistic timeline and qualified stakeholder engagement. We urge Ofgem to ensure that the vital requirements of open transparent and responsive communication are in place which are key for stakeholders to maintain their licence obligations of safety, resilience, and security of supply during a period of structural change.