

# Consultation

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## Consultation on code manager selection

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We are consulting on our approach to selecting code managers, a new type of licensed role created by the Energy Act 2023. We would like views from people with an interest in energy code governance. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential and, if possible, put the confidential material in separate appendices to your response.

**Consultation** – Consultation on code manager selection

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## **Executive Summary**

Under new powers created by the Energy Act 2023, we<sup>1</sup> will be responsible for selecting and licensing code managers, who will be responsible for the governance of designated codes.

In this consultation, we are seeking views on the design of our code manager selection process, for both competitive and non-competitive selection, including the criteria and evidence that we propose to evaluate at each stage.

We are also seeking views on the draft guidance document, and accompanying forms, that we have published alongside this consultation, as well as the proposed content of our forthcoming regulations that will govern any competitive selection process.

Alongside this consultation, we have launched the selection processes for the first two code managers: we have invited Elexon to become a code manager candidate for the Balancing and Settlement Code (BSC) and the Retail Energy Code Company (RECCo) for the Retail Energy Code (REC).

## **Overview of the code manager selection process**

We propose to follow a three-stage assessment process as part of every code manager selection exercise: an eligibility assessment to ensure that potential candidates are both qualified and suitable; a licensing assessment to determine whether candidates have credible plans to succeed as code manager; and an implementation and assurance process to ensure that they are ready to commence their new role.

We also set out our proposed approach to determining whether to select code managers on a competitive or non-competitive basis, and our proposal to award code manager licences on an enduring basis:

- non-competitive selection for the BSC and REC, based on considerations related to speed of delivery and value for money
- either competitive or non-competitive selection for the consolidated gas code, electricity commercial code and electricity technical code, based on the number of eligible candidates following a public expression of interest (EOI) process, and
- a deferred decision for the Smart Energy Code (SEC), in recognition that the SEC's current governance arrangements are still in their ramp up phase.

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<sup>1</sup> References to the "Authority", "Ofgem", "we", "our" and "us" are used interchangeably in this document. The Authority refers to the Gas and Electricity Markets Authority (GEMA). The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

## **Eligibility assessment**

We propose to begin the selection process by determining whether a potential candidate is eligible to proceed to a licensing assessment, based on four key areas:

- basic information relating to the candidate for us to verify
- a candidate's suitability to hold a licence
- a candidate's confirmation that they intend to comply with conflict-of-interest requirements, and
- a candidate's past experience, and whether that gives us reasonable confidence in their potential ability to fulfil the code manager role.

## **Licensing assessment**

After one or more candidates have passed the eligibility assessment, we would proceed to the licensing assessment stage. This stage would require the candidate to submit information relating to potential conflicts-of-interest, including proposed mitigations where necessary, to enable us to complete a conflict-of-interest assessment. This stage would also require detailed proposals for how they would propose to carry out the role, including plans to acquire any additional personnel, capabilities or expertise needed to fulfil the obligations of the licensed activity.

## **Competitive licensing assessment**

Where two or more candidates remain after the eligibility assessment, we would complete the licensing assessment stage on a competitive basis. We propose that this assessment would take the form of a single competitive round, using the same criteria as for non-competitive selection, with some flexibility built in by including certain aspects of the process in guidance rather than regulations. We also set out proposals for how these criteria would be scored, including the use of minimum scores and weighting, and options for how a tie-break process could work.

We also propose including two additional assessment criteria in the competitive process (compared to the non-competitive process): one on "innovation" and another on "facilitating the move to net zero and clean energy".

## **Implementation and assurance**

Following public notice of our proposal to grant a licence, and subject to any representations received, the final stage of our proposed selection process would commence. At the end of this stage, we would expect the candidate to be fully compliant with all relevant licence requirements and ready to carry out the licensed activity, culminating in a final readiness assessment.

## 1. Introduction

- 1.1 The Energy Act 2023 (“the Act”)<sup>2</sup> gives new powers and responsibilities to Ofgem, enabling us to implement significant reform to the governance of the energy industry codes.
- 1.2 Under the new framework, we will be responsible for selecting and licensing code managers, each of which will be responsible for the governance of its respective code. These new licensed entities will take on the roles currently performed by code panels and code administrators, such as making recommendations on code modifications, as well as new responsibilities, such as ensuring that the codes develop in line with our annual Strategic Direction Statement. Given how important these roles are to the smooth functioning of the energy industry, as well as protecting consumers and enabling the net zero transition, it will be vital to ensure that the right bodies are selected to perform them.
- 1.3 In March 2024, we consulted jointly with the Department for Energy Security and Net Zero (“DESNZ”)<sup>3</sup> on our high-level approach to selecting code managers, alongside the proposed content of what would subsequently become the Code Manager Selection Regulations 2024 (“the Regulations”).<sup>4</sup> Our joint response to this publication was published in October 2024,<sup>5</sup> and the Regulations then came into force the following month.
- 1.4 Through these Regulations, DESNZ have confirmed that we will be able to use our discretion to select code managers on either a non-competitive or competitive basis. The Regulations also enable us to set out further detail on the criteria that we will apply, and the processes that we will follow, when selecting code managers, the details of which will be published in supplemental guidance documents.
- 1.5 In this consultation, we are seeking views on our proposed code manager selection process, for both competitive and non-competitive selection, and the criteria and evidence that we propose to evaluate at each stage.<sup>6</sup> We are also

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<sup>2</sup> [Energy Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>3</sup> [Energy Code Reform: Consultation on Code Manager Licensing and Secondary Legislation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>4</sup> [The Code Manager Selection Regulations 2024](https://publishing.service.gov.uk)

<sup>5</sup> [Energy Code Reform: Code manager licensing and secondary legislation - government response \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>6</sup> In developing the policy for this consultation, we have drawn on stakeholder views, as obtained through previous consultation responses and engagement (for example, thematic workshops on code manager selection held in 2023 and the Modification Process Workgroup in 2024).

seeking views on the draft guidance document, and accompanying forms, that we intend to publish to fulfil our obligations under the Regulations, as well as the proposed content of our forthcoming regulations that will govern any competitive selection process.

- 1.6 We will carefully consider stakeholder feedback on our proposals and decide whether any changes need to be incorporated to them prior to publishing our final decisions.
- 1.7 Alongside this consultation, we have also launched the selection processes for the first two code manager appointments, related to the Retail Energy Code (REC) and the Balancing and Settlement Code (BSC). Further details have been included in “Section 2: Overview of the Code Manager Selection process” below, as well as at the end of this section as part of our discussion of next steps.

### Background

- 1.8 Industry codes contain the detailed rules of participation in the electricity and gas wholesale and retail markets. Licensees are required to maintain, become party to, and/or comply with the industry codes in accordance with the conditions of their licence. Certain non-licensed parties in the sector are also party to some codes.
- 1.9 Each code currently has an industry panel or committee that oversees the assessment of proposed changes to that code, and makes certain decisions related to the codes’ operation. They are supported by a code administrator or secretariat function.
- 1.10 Energy code reform is a joint project with DESNZ that aims to ensure that the codes can respond to the significantly changing sector, enabling change to be delivered efficiently and effectively in the interests of consumers, and to support the transition to net zero. Building on joint consultations in 2019 and 2021, this project culminated in the successful passage of the Act in 2023, which gave us new powers and responsibilities related to energy code reform and the transitional powers required to implement them.
- 1.11 In March 2024, we consulted jointly with DESNZ on additional elements of this new governance framework, related to code manager licensing and secondary legislation.<sup>7</sup> In the October 2024 response to that consultation, DESNZ confirmed its intention to grant us discretion regarding both who to select as

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<sup>7</sup> [Energy Code Reform: Consultation on Code Manager Licensing and Secondary Legislation](#)

code managers and how to select them, supported by the publication of relevant details in Ofgem-owned guidance documents.

- 1.12 The consultation response also confirmed our intention to consider speed of delivery and value for money when determining whether to select code managers on a competitive or non-competitive basis. We maintained that these considerations would enable code reform to be realised more promptly and efficiently, while also minimising disruption, for the overall benefit of the industry and consumers.
- 1.13 We also set out that, with the above considerations applied, a non-competitive selection process could be preferable in many cases, leading to the selection of an incumbent code administrator or other code body rather than holding an open competition. We also set out our intention to use an expression of interest (EOI) process to help inform this decision, such as where the number of interested and eligible bodies for the role may not be clear, and noted that a competitive selection process may be justified in scenarios where there is sufficient interest from eligible bodies to warrant it.

## **What are we consulting on**

- 1.14 This consultation sets out our proposals on how the code manager selection process would work in practice. It divides the process into three sequential stages that would apply to all code manager selection exercises, both competitive and non-competitive: eligibility assessment, licensing assessment, and implementation and assurance process.
- 1.15 Alongside this consultation, we are also publishing draft forms and draft guidance for the eligibility and licensing assessment stages of the selection process. These documents are intended to fulfil our obligations, under the Regulations, to publish the criteria that we intend to use when determining whether to select code managers on a competitive or non-competitive basis, as well as the criteria and processes that we intend to use as part of any non-competitive selection process.

## **Section 2: Overview of the Code Manager selection process**

- 1.16 This section presents and seeks views on our proposed process for selecting code managers. This includes:
- an initial eligibility assessment
  - a licensing assessment, and



- an implementation and assurance process

1.17 This section also includes proposals for how we would decide whether to select code managers on a competitive or non-competitive basis, when we might change our selection route, and our proposal to grant code manager licences on an enduring basis.

### **Section 3: Eligibility Assessment**

1.18 This section sets out our proposals for the eligibility assessment process. We seek views on our proposals for assessing candidate eligibility, including suitability to hold a licence, intention to comply with relevant conflict-of-interest requirements, and experience relevant to fulfilling the code manager role.

1.19 We also seek views on the draft eligibility assessment form and draft guidance published alongside this consultation.

### **Section 4: Licensing assessment**

1.20 This section sets out our proposals for the licensing assessment stage. We seek views on the processes and criteria that we would use to assess code manager candidates prior to publishing a proposal to grant a licence.

1.21 We also seek views on the draft licensing assessment form and draft guidance published alongside this consultation.

### **Section 5: Competitive selection**

1.22 This section set out our proposals for how the licensing assessment stage would work on a competitive basis. We seek views on the processes and criteria that we would propose to use as part of any competitive selection process.

1.23 We also seek views on the proposed content of our forthcoming competitive selection regulations, which is what will enable us to select candidates on a competitive basis.

### **Section 6: Implementation and assurance**

1.24 This section sets out initial proposals on the implementation and assurance stage. We seeks views on how we should approach these two distinct processes, including the kinds of activities that should be included and who should carry them out.

1.25 We also seek views on our proposal to subject all candidates to a final readiness assessment prior to publishing our notice of licence grant, to ensure that all

candidates have the right capabilities, resources and processes in place to fulfil their new obligations.

## **Context and related publications**

1.26 A summary of relevant publications can be found below:

- In July 2021, we consulted jointly with the Department for Business, Energy and Industrial Strategy (BEIS) on the governance framework of energy code reform and the proposed content of the enabling primary legislation.<sup>8</sup> In April 2022, we published a joint government response to this consultation.<sup>9</sup>
- This was followed by a joint Ofgem and DESNZ consultation on code manager licensing and secondary legislation in March 2024,<sup>10</sup> followed by a joint response in October 2024.<sup>11</sup>
- We published an Ofgem consultation on the implementation of code governance reform in January 2024,<sup>12</sup> followed by a decision in August 2024.<sup>13</sup> Proposals and decisions in these documents about the consolidation of codes and phasing of the transition process have interactions with our selection decisions.
- The enabling primary legislation for Energy Code Reform is set out in Part 6, and Schedules 12-14, of the Act.<sup>14</sup>
- Associated secondary legislation includes the Code Manager Selection Regulations 2024,<sup>15</sup> which contains both overarching requirements for all code manager selection processes and specific requirements for selections made on a non-competitive basis.

## **Consultation stages and next steps**

1.27 The consultation will be open until 30 January 2025. Responses will be reviewed and the consultation decision will be published thereafter.

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<sup>8</sup> [Energy code reform: governance framework - GOV.UK](#)

<sup>9</sup> [Government response to the consultation on Energy Code Reform](#)

<sup>10</sup> [Energy Code Reform: Consultation on Code Manager Licensing and Secondary Legislation](#)

<sup>11</sup> [Energy Code Reform: Code manager licensing and secondary legislation - government response](#)

<sup>12</sup> [Energy code reform: implementation consultation | Ofgem](#)

<sup>13</sup> [Implementation of energy code reform: decision | Ofgem](#)

<sup>14</sup> [Energy Act 2023](#)

<sup>15</sup> [The Code Manager Selection Regulations 2024](#)

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- 1.28 As set out in the attached notice, we are also commencing our selection of the code managers for the BSC and REC alongside this consultation.<sup>16</sup>
- 1.29 In line with our previous proposals,<sup>17</sup> we have decided to invite the incumbent code administrators for the BSC (Elexon) and REC (RECCo) to express their interest in the relevant role and participate in an eligibility assessment process. Subject to responses received to this consultation, we may decide to amend aspects of the eligibility assessment process and, if so, may then request additional information from those two candidates at a later date.
- 1.30 Once those bodies have been fully assessed against our eligibility requirements, we will determine whether to proceed with the licensing assessment on a non-competitive basis, and publish our decision.
- 1.31 As outlined in Section 5 below, policy proposals and stakeholder responses will feed into the development of regulations for the competitive selection of code managers. We intend to work with DESNZ to introduce these regulations in 2025, subject to Parliamentary timetables, with the aim to have them come into force before the end of the year.
- 1.32 Further details on the timing of code manager selection exercises for the remaining four codes will be published in a forthcoming consultation, alongside a plan for how Ofgem intends to approach the transition and implementation process for the next two phases of energy code reform.
- 1.33 We also intend to publish three additional consultations on the implementation of code reform in early 2025:
- **Strategic direction:** we intend to consult on the first strategic direction statement this winter and then to publish the final version in spring 2025.
  - **Implementation policy:** we intend to consult on further elements of our detailed approach to implementation, including content related to code consolidation, code governance, transition timelines and sequencing, and our new powers to issue directions to responsible bodies for central systems. We expect to publish the final Modification Process Workgroup report alongside this consultation as well.
  - **Code manager licence and code modification appeals:** we intend to consult on further elements related to code manager licence policy jointly

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<sup>16</sup> The decision to begin with these two codes was published in August 2024, as part of a three-phase approach to the implementation of energy code reform: [Implementation of energy code reform: consultation decision](#)

<sup>17</sup> [Energy code reform: code manager licensing and secondary legislation - GOV.UK](#)

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with DESNZ early next year, including policy proposals related to code modification appeals.

## **How to respond**

- 1.34 We want to hear from anyone interested in this consultation. Please send your response using the template provided to [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk).
- 1.35 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.36 We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## **Your response, your data and confidentiality**

- 1.37 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.38 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.39 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.
- 1.40 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

1.41 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please use the template provided to provide any general feedback.

## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit.

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Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

## 2. Overview of the code manager selection process

This section presents and seeks views on our proposed process for selecting code managers. This includes:

- a) an initial eligibility assessment
- b) a licensing assessment, and
- c) an implementation and assurance process

This section also includes proposals for how we will decide whether to select code managers on a competitive or non-competitive basis, when we might change selection route, and our proposal to grant code manager licences on an enduring basis.

### Questions

Q1. Do you agree with our proposed, three-stage process for assessing code manager candidates?

Q2. Do you agree with how we have proposed to make our selection route decisions, in line with our considerations of speed of delivery and value for money?

Q3. Do you agree with our proposal to grant code manager licences on an enduring basis?

- 2.1 The Code Manager Selection Regulations 2024 (“the Regulations”),<sup>18</sup> created under the Energy Act 2023 (“the Act”), contain requirements for us to follow when selecting persons to license as code managers. These requirements relate to our choice of selection route, our assessment of potential conflicts of interest, and our process for selecting code managers on a non-competitive basis.
- 2.2 This section briefly describes the content of these Regulations and then sets out how we propose to implement them, including how we intend to fulfil relevant publication requirements, via a three-stage process: eligibility assessment; licensing assessment; and implementation and assurance process. It also includes proposals for how we would decide whether to select candidates on a competitive versus non-competitive basis for each code, and a proposal to grant code manager licences on an enduring basis.

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<sup>18</sup> [The Code Manager Selection Regulations 2024](#)

## **Code Manager Selection Regulations 2024**

- 2.3 The Regulations require us to determine whether to select code managers on a competitive or non-competitive basis (ie, without consideration of any other body), in line with any criteria that we may have published ahead of time. Once we have made this decision, which may in some instances be supported by seeking expressions of interest (EOI), they require us to both publish our decision and our reasons for making it.
- 2.4 To prevent the selection of an unsuitable candidate, the Regulations set out that we may not select a candidate unless we are satisfied that that the candidate does not have a conflict of interest. Where we consider that a potential conflict of interest exists, we may still decide to select that candidate where we are satisfied that the conflict is manageable (ie, measures have been put in place by the candidate, or we are satisfied that they will be put in place, that would either remove the conflict entirely or mitigate it to an acceptable level).
- 2.5 When undertaking a non-competitive process, the Regulations require us to determine, and publish, a statement of the processes and criteria that we would apply, before we have made any relevant decisions. They also require us to publish any relevant notices of a proposal to grant a licence, in response to which stakeholders would be able to make representations. If we decide not to select an existing body, the Regulations provide for the creation and selection of a Special Purpose Vehicle (SPV) as code manager, as long as it is sufficiently independent from us by the time it is licensed.
- 2.6 Finally, where we have decided to revoke a code manager licence and are unable to select a replacement code manager quickly enough via the regular selection process, the Regulations enable us to select an existing code manager as a 'Code Manager of Last Resort'. To allow this appointment to proceed promptly, we would not be required to publish a notice of proposed licence grant prior to selection. We would also have the flexibility to modify any published selection criteria or candidate assessment processes, if necessary.
- 2.7 A summary of the Regulation content, and associated publication requirements, can be found in Table 1 below.

**Table 1: Code Manager Selection Regulations 2024**

Regulation	Explanation
<b>3 – Basis of Selection</b>	<ul style="list-style-type: none"> <li>Enables Ofgem to establish criteria by which it will determine the basis of its selection, whether competitive or non-competitive.</li> <li>Enables Ofgem to seek expressions of interest from prospective candidates before determining the basis of selection.</li> <li>Enables Ofgem to change the basis of selection when it is no longer appropriate to proceed with selection on a certain basis.</li> <li>Requires Ofgem to publish its basis of selection.</li> </ul>
<b>4 – Conflict of interest</b>	<ul style="list-style-type: none"> <li>Prevents Ofgem from selecting a candidate via either a competitive or non-competitive process unless it is satisfied that there is no conflict of interest, or that any such conflict is manageable.</li> <li>Enables Ofgem to consider the terms and conditions of the licence, and the ability of the candidate to comply with those conditions, in determining whether a conflict is manageable.</li> </ul>
<b>5 – Non-competitive selection</b>	<ul style="list-style-type: none"> <li>Requires Ofgem to publish a statement of the criteria that it will apply, and the process it will follow, when selecting a candidate on a non-competitive basis.</li> <li>Requires Ofgem to publish a notice of a proposal to grant a code manager licence, stating its reasons for selecting the candidate and allowing for stakeholder representations.</li> <li>Requires Ofgem to subsequently publish a notice of licence grant.</li> </ul>
<b>6 – Specially formed company</b>	<ul style="list-style-type: none"> <li>Enables Ofgem to form a limited company and select that company as a code manager on a non-competitive basis.</li> <li>Requires Ofgem to publish a notice of its proposal to grant, and a subsequent notice of licence grant, as is required for other non-competitive selection decisions.</li> </ul>
<b>7 – Code Manager of Last Resort</b>	<ul style="list-style-type: none"> <li>Where Ofgem has revoked a code manager licence and needs to promptly select a replacement, then the regulations enable it to do so without publishing criteria in advance and without publishing a proposal to grant the licence.</li> <li>Restricts Ofgem to the selection of an existing code manager licence-holder to act as a code manager of last resort.</li> </ul>

## Code manager selection process design

2.8 We are proposing to divide the code manager selection process into three sequential stages: eligibility assessment; licensing assessment; and implementation and assurance process. Further detail on each of these proposed stages, and the underlying policy rationale for establishing them, is set out below. They are also discussed in additional detail in subsequent sections of this consultation.

### Eligibility assessment

2.9 We would start by conducting an assessment of relevant candidates to determine whether they meet the basic eligibility requirements to progress to a licensing assessment. Candidates for this stage would either be invited directly by us, where we have determined that this would align with our considerations



related to speed of delivery and value for money, or be determined by publishing an expression of interest (EOI) for any interested body to respond to (see more detailed explanation later on in this section). Depending on the number of successful candidates, the outcome of this stage would then be used to inform our decision as to whether we should proceed with a competitive or non-competitive selection process.

- 2.10 At this stage, we are proposing to assess candidate eligibility by evaluating written submissions in connection with four subject areas:
- we would require candidates to submit basic information for us to verify
  - candidates would be required to confirm their intent to comply with the conflict-of-interest requirements in the code manager licence, with proposals for how they would do this in practice deferred until the licensing assessment stage
  - we would consider candidates' past experience, in relevant areas such as code governance and stakeholder management, to determine whether they are likely to be an appropriate candidate to proceed to a full licensing assessment, and
  - the eligibility assessment would include a 'fit and proper' check of directors, major shareholders, persons in effective control of the applicant, any person with significant managerial responsibility or influence (SMRI),<sup>19</sup> and directors of any parent undertaking or ultimate holding company (collectively, "relevant persons") to determine a candidate's suitability to hold a licence.<sup>20</sup>

### Licensing assessment

- 2.11 Where a candidate has passed the initial eligibility assessment, we propose to conduct an assessment for a code manager licence via either a competitive or non-competitive process.
- 2.12 At this stage, candidates would be assessed on proposals to meet key criteria around fulfilling the requirements of the role and complying with conflict-of-interest licence conditions. As set out above, we do not propose to require

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<sup>19</sup> We regard persons of significant managerial responsibility or influence to include those individuals who hold responsibility for, or manage, key business areas, particularly regulatory compliance, financial management, trading (where applicable), operations and business strategy. In small organisations, this may include the majority of staff.

<sup>20</sup> These checks would be repeated at every stage of our process, as well as on an ongoing basis if the candidate were to be licensed, in order to ensure that any new senior managerial or director appointments would continue to meet our suitability requirements.

candidates to be fully ready to commence the licensed activity at this point in the process. Instead, the licensing assessment would be intended to provide sufficient confidence that the candidate has understood the requirements of the role and has a credible plan to carry it out, including the acquisition of any necessary resources, capabilities or expertise, at the later time of being licensed.

- 2.13 In line with the requirements of our eligibility assessment, we would at this stage ask candidates to resubmit details of relevant persons for us to assess their suitability to hold a licence – including details of any new appointments of relevant persons, as well as any organisational or substantive corporate changes.
- 2.14 Following its assessment, we would publish a proposal to grant a licence, in line with the requirements set out in the Regulations. Stakeholders would then be able to make representations in response to this proposal, which we would consider against our licensing criteria.

### **Implementation and assurance**

- 2.15 Following public notice of our proposal to grant a licence, and subject to any representations received, the implementation and assurance process would commence. At the end of this process, we would expect candidates to be fully compliant with the relevant licence requirements and ready to commence the licensed activity.
- 2.16 The objective of this step would be twofold. Firstly, it would enable the selected candidate to take any steps required to become compliant with the licence requirements, such as acquiring the necessary resources (whether those be staff, IT systems, or the procurement of certain services), implementing any required organisational changes, facilitating any other governance and/or process-related obligations, etc. Some elements of this implementation process are likely to be undertaken jointly with us, whereas we expect that others would be undertaken independently by relevant candidates.
- 2.17 Secondly, it would enable us to undertake, or commission, any assurance activities required to establish the candidates' readiness to comply with the licence, prior to publishing our notice of licence grant. As part of this process, we expect that the candidate would be required to demonstrate that it is successfully implementing its proposals in line with any milestones or plans provided during its licensing assessment, and subsequently agreed with us. At the end of this process, a final readiness assessment would be conducted,

including a final fit and proper check, to evaluate whether candidates are likely to be capable of meeting their obligations at the point of licence grant.

### **Policy rationale for three-stage assessment**

2.18 This sub-section sets out the key considerations underpinning the design of our three-stage assessment process. Building on our joint response with DESNZ,<sup>21</sup> we have sought to ensure that the selection process meets the following three principles: transparency and objectivity; efficiency and effectiveness; and proportionality.

#### Transparency and objectivity

2.19 We want to ensure that our selection processes and criteria are clear to potential candidates, and interested industry stakeholders, at every stage of the assessment. To achieve this, we have sought to design a fair and transparent process with distinct requirements at each stage, a complete description of which can be found in the accompanying draft guidance document and forms.

#### Efficiency and effectiveness

2.20 We consider that an efficient and effective process will be in the best interests of the industry and consumers, as it will ensure that the best candidates for the role can be selected as promptly as possible. We also recognise that participation in any selection process, whether competitive or noncompetitive, will place resource demands on interested parties.

2.21 Therefore, we consider that making an initial determination of candidates' eligibility for selection, prior to a decision on selection route, is a sensible way to limit the time and resource spent on the assessment process, while also enabling us to confirm whether candidates are likely to have the appropriate level of experience to succeed in the role.

#### Proportionality

2.22 We believe that our asks of the industry should be proportionate to the relevant stage of our assessment process and that duplication between the different stages should be avoided as far as possible. For example, we have not proposed to require detailed business plans from candidates at the eligibility assessment stage, due to the time and resource that it would take candidates to develop. We consider that it would be more proportionate to ask candidates to demonstrate how their past experience is relevant to the code manager role

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<sup>21</sup> [Energy Code Reform: Code manager licensing and secondary legislation - government response](#)

first, with only those deemed eligible invited to submit detailed proposals at the licensing assessment stage.

- 2.23 Similarly, as full compliance with the licence will likely require candidates to build additional capability (eg, such as the required staff, operational capacity and supporting systems, processes and governance, etc.), we consider that it would be disproportionate to require candidates to develop these capabilities until we have published our proposal of licence grant, giving them the reassurance that they would need to proceed.
- 2.24 We welcome views on our proposed, three-stage process for selecting code manager candidates. We are particularly interested in any views on how we have proposed to draw the line between these three stages, particularly between the eligibility and licensing assessment stages.

### **Choice of selection route**

- 2.25 When deciding whether to select a code manager on a competitive or non-competitive basis, we want to ensure that whatever selection route we choose is effective and efficient in delivering benefits for the industry and consumers, in line with the overall aims of code reform.
- 2.26 In our March 2024 consultation with DESNZ, we proposed to make this decision in a way that would deliver on two key considerations:
- **speed of delivery** – including the time needed to undertake a selection process, whether an existing entity may possess sufficient experience and expertise to meet the relevant eligibility criteria, and whether the code in question has been consolidated and may therefore have more than one incumbent code administrator or code body to consider, and
  - **value for money** – including whether there is likely to be sufficient interest to justify a competitive process, whether there is likely to be sufficient value in running a competitive process (in terms of both potential cost savings and quality of outcomes), and whether competitive pressure is likely to be available through alternative mechanisms.
- 2.27 We also noted that the combination of these considerations with the not-for-profit status of the code manager would likely lead us to favour non-competitive selection in many cases, particularly where a code had not been consolidated.
- 2.28 However, we acknowledged that this decision might not always be straightforward, particularly where there may be multiple incumbent code administrators or other relevant code bodies to consider, so we proposed to

publish an EOI whenever we needed further information (eg, to determine whether an existing entity may possess sufficient experience and expertise to meet the relevant eligibility criteria and/or whether there is likely to be sufficient interest to justify a competitive process).

2.29 Below, we build on these initial proposals by setting out how we intend to make our selection route decisions for all six electricity and gas codes that we anticipate will exist following code consolidation.<sup>22</sup> These codes include:

- three unconsolidated codes, namely the Balancing and Settlement Code (BSC), the Retail Energy Code (REC) and the Smart Energy Code (SEC)
- a consolidated electricity commercial code, containing the provisions currently held within the Connection and Use of System Code (CUSC) and Distribution Connection and Use of System Agreement (DCUSA)
- a consolidated electricity technical code, containing the provisions currently held within the Grid Code, Security and Quality of Supply Standard (SQSS), System Operator – Transmission Owner Code (STC) and Distribution Code, and
- a consolidated gas network code, containing the provisions currently held within the Uniform Network Code (UNC) and Independent Gas Transporters' Uniform Network Code (IGT UNC).

### **BSC and REC**

2.30 We have decided to invite the incumbent code administrator/manager for the BSC (Elexon) and REC (RECCo) to express their interest in becoming code manager candidates for their respective codes, in anticipation of considering their selection on a non-competitive basis.

2.31 We consider that these organisations are likely to possess sufficient experience and expertise to take on the role. We also consider that non-competitive selection in this context would remove the potential time and cost required to assess multiple candidates for these codes, during both the eligibility and licensing assessment stages, while still delivering an outcome that is likely to be the same or similar than if we had facilitated an open competition. Directly approaching the incumbents of these two codes should also minimise the potential for wider disruption as part of the transition process, for the benefit of the industry and consumers.

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<sup>22</sup> As set out in our [Consultation on the implementation of energy code reform](#)

- 2.32 If these two bodies are interested in the role, we will start by conducting an eligibility assessment to determine whether they meet the requirements necessary to progress to the licensing assessment stage, in line with the three-stage process outlined above. Following the completion of that assessment, we will either publish a notice confirming our decision to consider their selection on a non-competitive basis or propose an alternative approach.
- 2.33 Where we decide to proceed with their selection, it is worth emphasising that both candidates would be required to demonstrate that they have credible plans for taking on this new and expanded role, such as potential conflict-of-interest mitigations where those may be required, and then to implement those plans, within agreed upon timelines and to the required standard. Where warranted, we would also retain the option of switching to an alternative selection route, such as holding an open competition or creating and licensing an SPV, as described in more detail below.

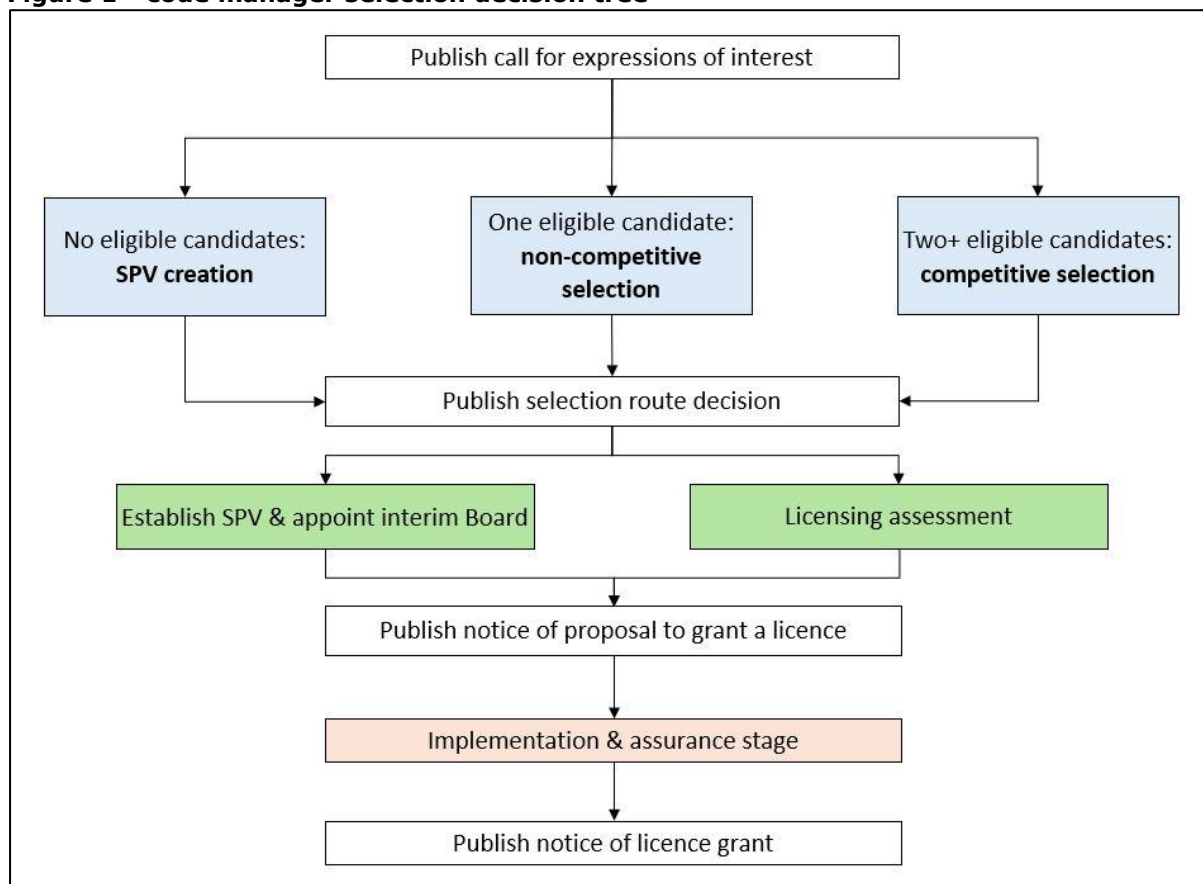
### **Gas network code, electricity commercial code and electricity technical code**

- 2.34 We propose to base our selection route decision for the three consolidated codes on the information gathered during a public EOI process, where any interested body would be able to put themselves forward as a potential code manager candidate.
- 2.35 After considering the submitted information, we would publicly confirm how many candidates had met the basic eligibility requirement to progress to a licensing assessment and then make our decision in line with the following criteria (see Figure 1 below):
- where we determine that only one body is eligible, then we would proceed with selection on a non-competitive basis
  - where we determine that two or more bodies are eligible, then we would proceed with selection on a competitive basis, and
  - where we determine that no body is either interested or eligible, then we would create and license a new SPV on a non-competitive basis.<sup>23</sup>

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<sup>23</sup> As provided for in Regulation 6 of [The Code Manager Selection Regulations 2024](#)

Figure 1 - code manager selection decision tree



2.36 While we consider that incumbent code administrators and related code bodies may possess the right expertise and experience for these new roles, we recognise that multiple bodies may be interested in each consolidated code. We also note that these consolidated codes will have a broader scope than they do currently, so there may be benefits from opening them up to a wider range of potential candidates. As a result, we do not consider that there is sufficient rationale for us to invite only a single body to express interest in becoming a code manager candidate for any of these codes.

2.37 At the same time, we recognise that there is unlikely to be value in running a competition in all instances, particularly where strong incumbent code administrators or closely related code bodies already exist. We have therefore designed the eligibility assessment in a way that should screen out candidates with insufficient experience or expertise to be successful in the role, which should preserve the possibility of non-competitive selection. We will also retain the discretion to use our transitional powers to create an SPV instead of running a competition, using powers granted by Schedules 12-13 of the Act, such as where we might be faced with the prospect of inviting two not-for-profit candidates to compete for a single licence.

2.38 We intend to publish a decision in due course setting out when we will launch the EOI process for these three codes, after which we will publish a notice of our decision to proceed with selection on either a competitive or non-competitive basis.

## **SEC**

2.39 We are currently unable to determine whether selection on a competitive or non-competitive basis would be appropriate for the SEC. As set out in our January 2024 implementation consultation,<sup>24</sup> we recognise that the SEC's arrangements are still in their ramp-up stage and that preparing to transition it to new governance arrangements too soon may be disruptive. We are therefore proposing to defer our decision on how to select a code manager for the SEC, with an update expected in due course.

2.40 We believe that, pending the outcome of these transitional activities, the non-competitive selection of the Smart Energy Code Company (SECCo) could potentially fulfil our speed of delivery and value for money criteria. However, we consider that it is still too early to make this decision and have decided to reserve judgement until a more appropriate time. We note that the SEC is not scheduled to complete its transition to the new code governance framework until the final phase of our implementation process and, in the meantime, we will also consider whether there may be a benefit to opening up this selection process to wider interested bodies as well.

## **Change of Selection Route**

2.41 The Regulations enable us to change our selection route in various circumstances, whether from competitive to non-competitive or vice versa. These circumstances include the following:

- in light of progress made, or lack of progress, in taking steps towards selection on the original basis
- in light of information obtained by Ofgem in the course of taking steps towards that selection, and
- in light of any other information that may have come to the attention of Ofgem since the start of the selection process.

2.42 What this means in practice, is that we may decide to launch a competition for a specific code after having previously started a non-competitive selection process, such as where the originally identified candidate has not been

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<sup>24</sup> [Consultation on the implementation of energy code reform](#), p.61



successful at the eligibility or licensing assessment stages. Or, equally, we may decide to change from a competitive process to a non-competitive process if we determine that competitive selection is no longer the right approach, such as where we decide that none of the candidates are suitable. Before making a change of this nature, we would inform prospective candidates of our decision and publish a notice of our intent to change selection route.<sup>25</sup>

- 2.43 We welcome views on how we have proposed to make our selection route decisions, including any comments on the proposals themselves and the underlying rationale.

### Licence duration

- 2.44 We are proposing to grant code manager licences on an enduring basis. In developing our proposal, we have paid particular attention to the following considerations:

- any impacts of licence duration on code manager performance incentives
- how best to support the strategic role of the code manager, and
- the cost and disruption of facilitating repeated selection processes.

- 2.45 We have also carefully considered the responses that we received to our recent joint consultation with DESNZ,<sup>26</sup> where we sought views on licence duration. In our joint response, we indicated that we would consult further on this question as necessary, and we have therefore reflected responses to our joint consultation in the proposals set out below.

### Stakeholder views

- 2.46 Support from respondents was fairly evenly split between enduring and fixed-limited licences, with a small majority favouring enduring licences and a few noting that there are merits to both approaches. A few respondents also suggested that licence duration should depend on how the code managers had been selected, with non-competitive selection resulting in an enduring licence and competitive selection resulting in a fixed-term licence, or taken on a code-by-code basis.
- 2.47 Among those supporting enduring licences, the main comments in favour of this approach related to providing certainty and stability for industry, and enabling long term strategic planning on the part of the code manager. Some

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<sup>25</sup> In accordance with Regulation 3(8) of [the Code Manager Selection Regulations 2024](#)

<sup>26</sup> [Energy code reform: code manager licensing and secondary legislation - GOV.UK](#)

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respondents also stated that enduring licences would help with knowledge retention, which would provide benefits as well.

- 2.48 Among those supporting fixed-term licences, the main reason cited was that this would create stronger incentives for code managers to perform well. Some respondents also commented on the potential economic benefits of running selection processes at fixed intervals.
- 2.49 The importance of strong performance management and assessment was emphasised by respondents on both sides of the debate, including statements from a few that it would be important for Ofgem to have the ability to revoke licences where there is poor performance.

### **Performance of the code manager**

- 2.50 We acknowledge stakeholder views that granting fixed-term licences could help incentivise better code manager performance, as high performing code managers would be rewarded through renewal of their licence.
- 2.51 While we agree that fixed-term licences can offer performance management benefits in some contexts, we do not consider that they are likely to be effective for code managers. We anticipate that the pool of interested parties in each licence will be small, due to the combination of highly technical subject matter and lack of profit incentive, so the perceived incentive for positive performance in this context could be relatively low.
- 2.52 However, we also agree that it will be important to ensure that a strong performance management process is established for code managers, including the ability for us to revoke licences where warranted.
- 2.53 We consider that code manager performance can be effectively supported for enduring licences by provisions in the licence. In our recent joint response with DESNZ, we set out our decision to proceed with proposals to require code managers to include a set of performance metrics in the relevant code, with the aim of creating a reputational incentive for good performance. We are also exploring additional ways to incentivise code manager performance, and to address poor performance, through the licence. We intend to consult on relevant proposals jointly with DESNZ in due course, as part of a consultation expected early next year.

### **Strategic role of the code manager**

- 2.54 Many of the stakeholders who supported granting enduring licences commented that this approach could better support code managers to engage in strategic

forward planning, particularly for long term goals such as supporting the drive to net zero.

- 2.55 We consider that the strategic role of the code manager is important in setting a clear direction for the development of codes, in line with our strategic direction statement. We expect that enduring licences would incentivise code managers to devote time and resources to issues that may take longer to address, rather than being incentivised to focus solely on 'quick wins' to demonstrate progress over a short time horizon. We also expect it would facilitate cross-code collaboration and cooperation, rather than risk creating an environment in which other code managers are viewed as potential rivals for future selection processes.

### **Cost and disruption of a repeated selection process**

- 2.56 Given the technical and not-for-profit nature of the code manager role, we anticipate that there will be a small pool of suitable potential candidates, so there may not be many alternative bodies in future that would possess the right level of expertise, and willingness, to compete for the code manager role. As a result, we anticipate that a situation might arise in which the incumbent code manager is repeatedly re-selected, which would be unlikely to provide good value for money for the industry and consumers.
- 2.57 A repeated selection process, and possible change of licensee, would also risk disruption to the ongoing business of code maintenance and modification, including implementation of the annual strategic direction statement. We consider that enduring licences would be more likely to enable continuity in these areas, allowing code managers, and the industry, to focus their efforts on delivering change.
- 2.58 We welcome views on our proposal to grant code manager licences on an enduring basis, alongside our commitment to ensure that a strong performance management process is established for code managers, including the ability for us to revoke licences where warranted.

### 3. Eligibility assessment

This section sets out our proposals for the eligibility assessment process. We seek views on our proposals for assessing candidate eligibility, including suitability to hold a licence, intention to comply with relevant conflict-of-interest requirements, and experience relevant to fulfilling the code manager role.

We also seek views on the draft eligibility assessment form and draft guidance published alongside this consultation.

#### Questions

Q4. Do you agree with the processes and criteria that we have proposed to use during the eligibility assessment stage?

Q5. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the eligibility assessment process or the proposed content of the draft form?

- 3.1 Before we decide whether to select a code manager on a competitive or non-competitive basis, we propose to invite one or more bodies to complete an information request (either by invitation or via an open EOI) to determine whether they meet the eligibility requirements to progress to a full licensing assessment.
- 3.2 To help us determine candidate eligibility, we propose to:
- carry out checks on basic information relating to candidates
  - carry out an assessment of a candidate's suitability to hold a licence, based on consideration of adverse information in relation to relevant persons, in line with our processes for other gas and electricity licences<sup>27</sup>
  - ask candidates to confirm their intention to comply with relevant conflict-of-interest requirements,<sup>28</sup> whether in the code manager licence or the code itself
  - assess candidates' experience relevant to fulfilling the code manager role.
- 3.3 We propose to consider candidates to have met our eligibility requirements where:

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<sup>27</sup> Our current guidance on applying for electricity and gas licences can be found here: [Applying for a gas or electricity licence \(ofgem.gov.uk\)](#)

<sup>28</sup> We set out our decision on these requirements with the Department for Energy Security and Net Zero in our joint response to consultation on code manager licensing and secondary legislation: [Energy code reform: code manager licensing and secondary legislation - GOV.UK \(www.gov.uk\)](#)

- the candidate has demonstrated that considering them for selection would pose low or no risk to the industry and consumers
- we have assessed the candidate as 'fit and proper' to hold a licence in our suitability assessment
- the candidate has confirmed their intention to comply with the relevant conflict-of-interest requirements,<sup>29</sup> and
- the candidate's description of their experience has given us reasonable confidence in their ability to fulfil the code manager role.

3.4 We consider these to be reasonable minimum requirements for candidates to be considered for a full licensing assessment.

3.5 What follows is an overview of our proposals for the four sections of our eligibility assessment form (as summarised in Table 2). Further detail on our proposals for the eligibility assessment stage can be found in the draft guidance published alongside this consultation, as well as in the draft form itself, which is attached as an appendix to the draft guidance.

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<sup>29</sup> Or, where we have indicated that we may consider exceptions to those requirements, we would consider the candidate to have met the requirements where we have reasonable confidence that the relevant conflicts of interest could be manageable, subject to the candidate outlining further plans to mitigate this at the full licensing assessment stage.

**Table 2: Summary of eligibility assessment process**

<b>Section</b>	<b>Proposed assessment area</b>	<b>Proposed eligibility requirements</b>
Section 1: Basic information, expression of interest, and declaration of understanding	Basic information and declaration of understanding about the full assessment process.	Information provided is verifiable, consistent with public records, with low or no risk to the industry and consumers due to adverse information.  Candidate has formally expressed their interest in the role and declared their understanding of, and willingness to engage in, the full assessment process.
Section 2: Suitability to hold a licence	Details of company directors, major shareholders, holding company or parent undertaking directors, persons in effective control of the candidate, and other people with significant managerial responsibility or influence in the candidate.	Directors and other people with significant managerial responsibility or influence are, in the view of the Authority, fit and proper to hold a licence.
Section 3: Conflicts of interest	Confirmation of intention to comply with relevant requirements on conflict of interest.	Confirmation of intention to comply, or, for conditions where exceptions may be granted, reasonable confidence on the part of Ofgem that conflicts of interest could be manageable. <sup>30</sup>
Section 4: Experience	Experience of candidate and/or its staff in: code administration, or similar relevant experience; applying the relevant code's objectives, or similar relevant experience; project management; stakeholder management; and delivering projects within budget and on time.	Reasonable confidence on the part of Ofgem in the candidate's ability to fulfil the code manager role.

### **Basic information and suitability to hold a licence**

3.6 Code managers will be responsible for the development of codes that have material impacts on both the industry and consumers. They will also recover their costs from the industry at the expense of consumers. We therefore consider it proportionate to ensure that we consider any adverse information

<sup>30</sup> Subject to the candidate setting out plans to mitigate the relevant conflict(s)-of-interest at the full licensing assessment stage.

before determining the eligibility of candidates for this role, and whether this poses any risk to the industry or consumers.

- 3.7 We similarly consider that, as for other gas and electricity licensees, all relevant persons should be 'fit and proper'<sup>31</sup> to hold a licence.

### **Conflict of interest**

- 3.8 At this stage, we consider that candidates should be required to confirm their intention to comply with the conflict-of-interest requirements that will be included in the code manager licence, and the relevant code. Relevant requirements will include, for example, operating their regulated business on a not-for-profit basis and putting in place a board composed of 50% independent directors.<sup>32</sup> Following this confirmation, we propose to assess candidates' detailed plans to meet these requirements at the licensing assessment stage.
- 3.9 For certain requirements, such as not being a related undertaking of a code party or external service provider, we would consider making exceptions on a case-by-case basis. For these conditions, we would ask candidates to provide additional information if they have not confirmed their intention to comply. We would then consider the relevant eligibility requirements to be met if we have reasonable confidence the conflict of interest could be manageable – subject to a full assessment of the candidates' plans to mitigate this potential conflict in the licensing assessment stage.

### **Relevant experience**

- 3.10 We further consider that candidates should be required to demonstrate that they possess experience that is relevant to performing the code manager role, which will combine most of the functions currently fulfilled by code administrators and code panels, as well as some new ones. As such, we consider that candidates will require familiarity with code governance processes, such as the ability to apply code objectives to recommendations and decisions on code modifications, as well as relevant experience in project management, stakeholder engagement and governance processes, while operating within a finite budget.

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<sup>31</sup> For this assessment, we would take into account any adverse information that comes to our attention about relevant persons and consider whether it is relevant to our decision to grant the licence. Our assessment of suitability is based on our duty to protect the interests of existing and future consumers.

<sup>32</sup> Independence in this instance means independent of the candidate, of any external service providers to the candidate or to the incumbent code administrator for the relevant code, and of code parties.

- 3.11 We therefore propose to ask candidates to provide word-limited responses to a small number of questions, describing their experience in the following areas:
- code administration, or similar relevant experience
  - applying code objectives, or similar relevant experience
  - project management
  - stakeholder management, and
  - delivering projects and enduring functions within budget.
- 3.12 We also propose to require the submission of CVs of staff with senior managerial responsibility or influence, to support the cases made by candidates in demonstrating their relevant experience.
- 3.13 Where the evidence provided gives us a reasonable degree of confidence in the candidate's ability to fulfil the code manager role, we would determine that candidate to be eligible to proceed to the licensing assessment, provided they also meet the other eligibility criteria.
- 3.14 We recognise that candidates may intend to acquire additional capabilities and expertise ahead of any licence grant, as part of preparing to take on the role. Nonetheless, we consider that requiring a minimum level of relevant experience at this stage is reasonable as a baseline before assessing any such plans at the licensing assessment stage.

### **Alternative approaches**

- 3.15 An alternative approach would be to skip any form of eligibility assessment and proceed directly to the licensing assessment stage, for any potential candidate that might be interested in taking on the role. However, we consider it to be proportionate to ensure that candidates meet minimum requirements for eligibility before being considered for a licensing assessment, to avoid time and resource being spent where a candidate is unlikely to be viable. This approach should also decrease the risk of significant concerns being uncovered about a candidate's suitability at a later stage in the selection process, which could have implications for both our choice of selection route and implementation timelines.
- 3.16 Another approach would be to ask candidates for detailed plans regarding how they propose to carry out the code manager role at the eligibility assessment stage, rather than the licensing assessment stage. However, we consider that the licensing assessment stage is better suited to this more detailed assessment, and more proportionate, as this would give candidates the



confidence that they need to spend time and resource to develop their plans, following an initial assessment of eligibility.

- 3.17 We welcome views on how we are proposing to assess candidate eligibility. We also welcome views on the draft guidance that is published alongside this consultation and on the eligibility assessment form itself, which is attached as an appendix to the draft guidance.

## 4. Licensing assessment

This section sets out our proposals for the licensing assessment stage. We seek views on the processes and criteria that we would use to assess code manager candidates prior to publishing a proposal to grant a licence.

We also seek views on the draft licensing assessment form and draft guidance published alongside this consultation.

### Questions

Q6. Do you agree with the processes and criteria that we have proposed to use during the licensing assessment stage?

Q7. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the licensing assessment process or the proposed content of the draft form?

- 4.1 Where one or more candidates have been found eligible to proceed to the licensing assessment stage, we would ask them to submit detailed proposals describing how they would fulfil the obligations of the role, if they were to be selected. These proposals would include:
- a detailed explanation for how they currently meet, or would propose to meet, the licence conditions related to conflicts-of-interest and the operation of the core regulated business on a not-for-profit basis,
  - any requests for potential licence modifications, including the reasons for those modifications and an explanation as to why they would not have a detrimental impact on their ability to carry out the role,
  - detailed proposals for how they would fulfil specific obligations related to the licensed activity, including plans to acquire any additional resources, capabilities or expertise where those may be needed, and
  - a resubmission of all information required to evaluate a candidate's suitability to hold a licence, including details of any changes that may have occurred to relevant persons since the start of the eligibility assessment process.
- 4.2 At this stage, candidates would be assessed on the credibility of their proposals to meet relevant obligations, rather than expecting them to demonstrate that they are currently ready to commence the licensed activity. Where we decide to proceed with the selection of a candidate, we would publish a notice of our

proposal to grant a licence and invite representations, which we would then consider against our licensing criteria.

4.3 It is worth noting that we are proposing to mirror the licensing assessment stage across both competitive and non-competitive selection, where possible, to ensure that code manager candidates are subject to a similar degree of scrutiny regardless of how they have been selected. Additional details on any processes or criteria that would apply solely to a competitive process can be found in the next section.

4.4 We have also published a draft licensing assessment form and draft guidance document alongside this consultation. These currently apply to the non-competitive selection process only. We will publish a similar form and draft guidance for the competitive selection process in due course, once the content of the enabling regulations has been finalised.

### **Licensing assessment criteria**

4.5 A summary of our proposed licensing assessment criteria is set out in Table 3, consisting of four key areas:

- a conflict-of-interest assessment
- an evaluation of any requests for potential licence modifications
- a capability and expertise assessment, covering five key aspects of the code manager role, and
- a suitability assessment.

4.6 We run through each of these areas in additional detail below, describing what the assessment would entail, what evidence we would propose to request from candidates, and how we would propose to evaluate it.

**Table 3 – summary of licensing assessment criteria**

<b>Criteria</b>	<b>Description of assessment</b>
Conflict-of-interest assessment	Full assessment of proposals to comply with the following conflict-of-interest licence conditions: prohibition on cross-subsidies; not-for-profit requirement; sufficiently independent directors; restriction on activity and investment; and restriction on becoming a related undertaking / Ultimate controller undertaking.

<b>Criteria</b>	<b>Description of assessment</b>
Requested licence modifications	Assessment of any requested modifications to the standard licence conditions, to meet the requirements of a specific case. <sup>33</sup> The candidate may provide alternative proposals (eg, exemptions or special conditions) for Ofgem to consider on an exceptional basis.
Service provision capability	Demonstrable understanding and plans to implement required systems and processes, including but not limited to: operational approach, risk management processes, data protection compliance, and business continuity arrangements.
Value for money to the industry/consumers	Proposals to establish and operate a service that is cost-effective and efficient, demonstrating synergies and delivering value for money to the industry and consumers.
Stakeholder management capability	Proposals to provide meaningful code management services and assistance to code parties and other stakeholders.
Expertise relevant to applying the code objectives	Plans to apply, and where necessary acquire, the expertise required to facilitate effective code maintenance and modification processes and decisions – including wider industry knowledge/expertise beyond the code in question, and relevant transferable skills to support the modification process.
Capability in project management	Plans to support the effective production of a delivery plan and development of code modifications in line with the strategic direction set by Ofgem.
Suitability to hold a licence	Ofgem to consider disclosure of adverse information about “relevant persons” to determine candidate suitability.

### **Conflict-of-interest assessment**

4.7 We propose to use this part of the licensing assessment to determine whether the candidate has sufficiently demonstrated that it could comply with the conflict-of-interest conditions in the code manager licence.<sup>34</sup>

4.8 For each of these conditions, we would assess candidates’ proposals to implement any necessary restructuring, ringfencing, or governance changes required to ensure the independence of the code manager’s functions. We would expect proposals to be supported by relevant supplementary evidence, such as business plans and envisaged timelines. Where a candidate is not compliant with these obligations, or lacks credible plans to become compliant if selected, then it would not be eligible to be granted a licence.

<sup>33</sup> See [Electricity Act 1989](#) section 8A(2) and [Gas Act 1986](#) section 8(3).

<sup>34</sup> See Regulation 4 of [the Code Manager Selection Regulations 2024](#).

4.9 We recently published decisions confirming our approach to these licence conditions in a joint consultation response with DESNZ.<sup>35</sup> They can be found in two sections of the draft licence skeleton: the section on financial and operational controls; and the section relating to the independence of the licensee. We are continuing to refine and develop the drafting of these conditions jointly with DESNZ, in preparation for consulting on a full draft of the code manager licence in 2025. If any changes are made to the licence as part of this consultation that would impact the design of our conflict-of-interest assessment, then we will update our guidance and forms accordingly.

### **Prohibition on cross-subsidy**

4.10 The proposed licence condition prevents the code manager from giving or receiving any cross-subsidy to an affiliate or related undertaking. We propose to require the candidate to disclose all affiliates or subsidiaries and to specify whether it has given cross-subsidies to, or received cross-subsidies from, these bodies. Where the candidate answers yes to this question, then we would require further information on the nature of these cross-subsidies and the candidate's proposed measures to comply with this condition going forward, including financial ring-fencing measures if necessary.

### **Restriction on profit**

- 4.11 The proposed licence condition requires the code manager to carry out its licensed activity on a not-for-profit basis. We therefore propose to ask the candidate whether they are a not-for-profit organisation and, if not, how they would propose to comply with this obligation.
- 4.12 This licence condition would not prevent a profit-making body from fulfilling the code manager role. However, a profit-making organisation undergoing assessment would, in most circumstances, be expected to set up a discrete, not-for-profit legal entity, separate from its parent companies, to ensure that the code manager function would not be impacted by its profit-making activities.

### **Sufficiently independent directors**

4.13 The proposed licence condition, potentially supported by the relevant code, would require the code manager to have in place directors of which at least 50% are independent. As part of our assessment, we propose to require candidates to provide documentation confirming the composition of their current board and, where they are not currently compliant with the 50% requirement, to set out

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<sup>35</sup> [Energy code reform: code manager licensing and secondary legislation - GOV.UK](#)

proposals for how, and when, they would secure sufficient independent directors.

### **Restriction on activity and investments**

- 4.14 The proposed licence condition prevents the code manager from conducting any other business aside from the licensed activity, or from holding shares or investments of any kind, apart from in circumstances where we have directed an amendment or exception. There is also a separate draft condition in the licence that would prevent the code manager from distorting competition in the provision of any commercial activities connected to markets governed by the code, or other licensable activities governed by Principal Energy Legislation.<sup>36</sup>
- 4.15 As part of our assessment, we would ask candidates to confirm whether they currently undertake other activities or hold investments. In exceptional circumstances, we may consider it appropriate for a candidate to continue to undertake an activity, where it can evidence to our satisfaction that it will not prevent its ability to deliver the code manager function on an impartial basis. Candidates would also be required to provide evidence that any additional activities would not breach its obligation to not prevent or distort competition now or in the future – including measures that it would take to ensure this outcome.
- 4.16 With regards to investments, we would require candidates to provide details of any shares or investments they hold so that we can assess whether holding them may interfere with the code manager role. We would also require candidates to explain how they would ensure that these activities do not interfere with the governance or function of the code manager role.

### **Restrictions on the Licensee becoming a related undertaking / Ultimate controller undertaking**

- 4.17 The proposed code manager licence condition prevents the candidate from being a related undertaking of a code party, an external service provider that will be procured by the code manager, or any person that may exert an influence over a code party or service provider.
- 4.18 Where the candidate is a related undertaking, then we will require further evidence of how it would ensure its independence, including through fulfilment

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<sup>36</sup> Principal Energy Legislation means: the Gas Act 1986; the Electricity Act 1989; the Utilities Act 2000; the Energy Act 2004; the Electricity and Gas Appeals (Designation and Exclusion) Order 2014; the Energy Act 2013; the Energy Act 2023; and any other applicable law or legislative provision.

of the requirement to procure legally enforceable undertakings from its Ultimate Controller.

### **Modifications to standard conditions**

- 4.19 We intend to offer candidates the opportunity to request modifications to the standard licence conditions of the code manager licence, in line with our approach to other licences.<sup>37</sup> However, we envisage that modifications would only be considered in exceptional circumstances, such as where this would be to the benefit of the industry and consumers, and only for certain conditions.<sup>38</sup>
- 4.20 Where we use a competitive selection process, it is still likely that requests for licence modifications would be made at this stage. Any request would not impact the overall score that a candidate receives in the rest of the competitive assessment. However, it would be important for us to be aware of any licence modification requests before making an announcement about the outcome of the competitive process.
- 4.21 Where relevant, we would include any amended standard licence conditions or special conditions in our proposal to grant a licence, meaning that they would be open to stakeholder representation.<sup>39</sup>

### **Capability and expertise assessment**

- 4.22 In addition to the conflict-of-interest assessment, we would also assess whether candidates possess the required capabilities and expertise for the role, including their proposals to acquire them where needed, with a focus on the following five criteria:
- service provision capability
  - value for money to industry and consumers
  - stakeholder management capability
  - expertise relevant to applying the code objectives, and
  - capability in project management.
- 4.23 For each of these criteria, we would evaluate the candidate's current level of readiness to commence the code manager role, including proposals for how they would propose to carry out relevant activities. Where needed, we would also

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<sup>37</sup> For the purposes of section 8(3) of the Gas Act 1986 and section 8A(2) of the Electricity Act 1989.

<sup>38</sup> The standard licence conditions subject to exceptions will be set out in the licence.

<sup>39</sup> Section 8A(3) of the Electricity Act and section 8(4) of the Gas Act require us to consult before making modifications to a licence on grant.

require candidates to demonstrate how they would propose to acquire any additional capabilities, resources or expertise. We would expect any proposals to be supported by relevant supplementary evidence, such as business plans and envisaged timelines.

4.24 When developing these criteria, we have been guided by the following considerations:

- the requirements of the licensed role, and the necessary systems and processes to support this function,
- feedback received from the industry on the required skillset of a code manager as part of Ofgem’s Modification Process Workgroup in September 2024, as well as insights derived from workshops held in 2023 and previous consultations responses, and
- a desire to ensure that industry change can be delivered efficiently and effectively in the interests of the industry and consumers, and to support the transition to net zero.

### **Service provision capability**

4.25 There are a number of licence requirements that would oblige candidates to have robust systems and processes in place at the time of licence grant. These include risk management obligations, data protection compliance, business continuity arrangements, etc.

4.26 We propose for our licensing assessment to require the candidate to set out its operational approach and demonstrate how it intends to deliver these requirements.

### **Value for money to the industry and consumers**

4.27 We consider it to be vital that code managers are able to operate their service in a way that is both effective and efficient, in a way that will deliver value for money to the industry and consumers.

4.28 We propose to ask candidates to describe how they will establish and operate their service in a way that fulfils this criterion. In responding, candidates would be required to set out how they would undertake their functions with cost-efficiency and value for money in mind, such as through the development of appropriate performance metrics, its design of budgets, and/or its cost recovery processes.



### **Stakeholder management capability**

- 4.29 We consider that the code manager's ability to engage effectively and efficiently with the industry will be crucial its success, particularly when it comes to facilitating the modification process. As a result, we propose to require the candidate to submit detailed plans for how it would deliver this vital function. We would also expect the candidate to set out how it would ensure customer satisfaction in this regard and ensure that information is accessible and easy to use for code parties.
- 4.30 In addition to its engagement with code parties, the candidate would also be expected to demonstrate how it would develop an engagement strategy that considers interaction with other code managers and encourages cross-code collaboration.

### **Expertise relevant to applying the code objectives**

- 4.31 We consider that the code manager's ability to facilitate effective code modification processes, recommendations and decisions will require them to possess sufficient expertise in the relevant code. Where the candidate cannot evidence that they currently possess this expertise, we would expect them to submit credible proposals for how they would acquire it.
- 4.32 We consider that this expertise should extend to an understanding of relevant regulatory frameworks and market structures, as well as in more general skills such as options analysis, impact assessments and legal drafting, to enable the code manager to grasp the nuances of modifications.

### **Capability in project management**

- 4.33 Finally, we propose to assess the candidate's project management capabilities, with a particular focus on how it intends to develop and deliver code modifications in line with our annual strategic direction statement.
- 4.34 We would require candidates to set out their envisaged approach to formulating a delivery plan as required by the licence, as well as a proposed project management and delivery strategy for monitoring implementation and complying with required reporting procedures.

### **Suitability to hold a licence**

- 4.35 Building on the requirements at the eligibility assessment stage, we propose to ask candidates to resubmit details of 'relevant persons' as part of the licensing assessment, in case a potential change has occurred that would make them unsuitable to hold a licence.

### **Request for additional information or to attend an interview**

- 4.36 The candidate would be expected to provide us with all relevant information relating to the above criteria as part of the licensing assessment. Where we believe this to be necessary, we propose to request additional evidence or documentation from the candidate at any point throughout this process.
- 4.37 In addition, where it would be beneficial to discuss the information provided by the candidate in greater detail, we would propose to send the candidate a request to attend an interview. This step may not be required in all instances. However, we consider that it would be a useful way to ask clarifying or supplementary questions, where this may be necessary to support our decision.
- 4.38 We welcome views on the processes and criteria that we are proposing to use at the licensing assessment stage. We also welcome views on the draft guidance published alongside this consultation and on the licensing assessment form itself, which is attached as an appendix to the draft guidance.

## 5. Competitive licensing assessment

This section set out our proposals for how the licensing assessment stage would work on a competitive basis. We seek views on the processes and criteria that we would propose to use as part of any competitive selection process.

We also seek views on the proposed content of our forthcoming competitive selection regulations, which is what will enable us to select candidates on a competitive basis.

- Q8. Do you agree with the processes and criteria that we have proposed to use as part of the competitive licensing assessment, including our proposal that there should only be a single competitive round rather than multiple rounds?
- Q9. Do you agree that the enabling regulations should set out how the competitive process will work, with the use of draft guidance allowing flexibility in some instances?
- Q10. Do you have any views on how we should design a potential tie-break process, such as whether to make use of existing evidence versus requesting follow-up submissions?
- Q11. Do you agree with our proposal to introduce two additional criteria as part of the competitive licensing assessment, namely “innovation” and “facilitating the move to net zero and clean energy”?

- 5.1 We are proposing to use a competitive selection process where, following the eligibility assessment stage, two or more candidates are considered to be eligible to progress to a full licensing assessment. The aim of the competitive process would be to allow us to identify a preferred candidate based on evidence submitted by participating organisations.
- 5.2 As with the non-competitive assessment, our proposals for the competitive licensing assessment are designed to ensure that the preferred candidate is able to fulfil the conditions of the code manager licence. This is why we consider that alignment between competitive and non-competitive processes is important in terms of the assessment criteria. However, the nature of a competitive assessment means that our approach to evaluating these criteria needs to be adapted accordingly. Our proposals for how to adapt these processes are outlined in the rest of this section.
- 5.3 Like the non-competitive assessment, we aim to provide a competitive assessment that is fair and transparent, and results in the selection of a code manager that is best able to fulfil its licence conditions and manage the code in a way that results in benefits to the industry, and ultimately energy consumers.

In the context of a competitive process, we consider that fairness means ensuring candidates have a level playing field.

### **Process for competitive licensing assessments**

5.4 This sub-section provides an overview of the competitive process that we believe will best meet our policy objectives for code manager selection. A more detailed policy rationale is provided in the next section, explaining the reasons for our proposed design choices.

5.5 We expect the competitive licensing assessment to contain the following steps:

- Publication of our decision to use a competitive process before inviting eligible candidates to submit bids. We would also publish information and draft guidance about the competitive process at this stage, if we have not already done so, including timeline information.
- We would then invite bids from eligible candidates and would confirm the deadline by which bids must be received. There would be a single competitive round, meaning the process in total would involve only one stage (or two, if including the preceding eligibility assessment stage). Any candidate that does not submit a bid by the deadline would be considered to have withdrawn from the process.
- Bids would be assessed against pre-determined assessment criteria. For most criteria, it is likely we would provide a numerical score. Some criteria may be weighted more strongly than others, reflecting the relative importance of those criteria in the outcome. A minimum score may be required for some questions, reflecting the fact that the competitive assessment is as much a process to determine that organisations are able to fulfil licence conditions as it is a process to choose between different organisations.
- There may be some criteria that are assessed on a pass/fail basis rather than being scored. For example, it may be less appropriate to score and compare candidates on criteria relating to cross-subsidy and independence of directors, but it is still important for candidates to have demonstrated their ability to comply with these licence conditions.
- We expect that the highest scoring candidate, if it has also passed any pass/fail questions and achieved the minimum score required in individual questions, would become the preferred candidate. In instances where we would need to decide between two candidates that received the same score,

a tie-break process would be used. Details about a tie-break process would be provided in a guidance document.

- 5.6 After completing the assessment process, we would publish a notice confirming the outcome of the competition. This notice would include which organisation had been successful in becoming the preferred candidate and confirm our proposal to license the relevant candidate, subject to the outcome of the implementation and assurance process. We would also consider any representations made in response to this notice prior to making a final decision on licence grant.

### **Policy rationale for competitive assessment**

- 5.7 In designing the competitive assessment process, we have followed, as far as possible, a principle of not placing a disproportionate burden on candidates. This is because we are aware that some candidates are likely to be not-for-profit organisations. However, we consider that this policy objective should be balanced against the need to provide a thorough competitive exercise that gives candidates sufficient opportunity to demonstrate their ability to fulfil the role, while also giving us sufficient opportunity to assess their suitability.
- 5.8 The remainder of this sub-section expands on this rationale by applying it to each step in the competitive licensing assessment process, with reference to the list of bullets set out above.

### **Notice requirements**

- 5.9 The initial steps set out above (bullets one and two) focus on making sure that the necessary information is available to candidates in a timely manner. Setting out information in this way and providing a deadline to candidates is standard practice for competitive processes in the public sector.

### **Single stage vs multi-stage**

- 5.10 Bullet two sets out that there would be a single competitive stage, which is a key design choice for the competitive licencing assessment. It would be possible to include the option of additional stages. For example, a pre-qualification stage could be used to further narrow the field of candidates in the event that a large number pass the initial eligibility assessment, via any public expression of interest (EOI). A best and final offer stage could also be used to allow the two best performing candidates to have a further opportunity to compete and provide evidence. There is also precedent for multi-stage competitive processes. For example, Ofgem uses such a process for the tendering of offshore wind transmission licences.

- 5.11 However, we consider that there is insufficient rationale for a multistage process in this context for three main reasons. First, multi-stage competitive processes are often useful where a large candidate field is expected, as they can help to narrow the field before more in depth competitive rounds. We consider that this is unlikely to be needed for code manager selection, due to the eligibility assessment stage already serving this purpose.
- 5.12 Second, multi-stage processes can also be useful where there is a need to iteratively refine the requirements of the role. Since this process will have already been completed ahead of time, as a result of drafting and consulting on the code manager standard licence conditions, there is unlikely to be a need for further iteration at this stage.
- 5.13 Third, we are mindful of the potential burden that a competitive process can place on candidates, so there is a strong incentive to reduce the number of competitive stages to ensure that the overall process is less resource intensive. This burden could be particularly acute for candidates that are exclusively not-for-profit and potentially less used to responding to competitive tenders.

### **Assessment criteria**

- 5.14 Bullet three in the process outlined above sets out our approach to competitive assessment criteria. We consider it important for both the non-competitive and competitive assessment processes to be based on the standard licence conditions in the same way. As a result, we are proposing for the competitive assessment to be based on the same criteria as outlined in the licensing assessment section above. However, we consider that there is a case for expanding on these criteria in a competitive context, so we set out proposals later in this section for the inclusion of additional assessment criteria that go beyond the standard licence conditions.
- 5.15 It would also be possible for the competitive assessment criteria to deviate from the non-competitive process, but, after careful analysis, we have decided to discount this option. For example, the competitive process could be more streamlined by focusing on only a few aspects of the code manager role (with the successful candidate then assessed against all relevant licence conditions at a later stage). This streamlined process would have the advantage of a less intensive competition, which may be to the advantage of smaller organisations that are less used to responding to competitive tenders. However, the resulting lack of alignment between the competitive and non-competitive process would create risks, particularly from an efficiency perspective – if candidates have

been assessed less thoroughly via competition, then there could be a risk of needing to re-run that selection exercise entirely if the candidate is subsequently found to be unsuitable for the role.

- 5.16 We are mindful that, in a competitive process, the volume of evidence may need to be considered more carefully compared to a non-competitive assessment, as the requirements placed on both successful and unsuccessful candidates will need to be considered. It is likely that all candidates would need to provide evidence at a level comparable to the non-competitive selection process, but we recognise that there may need to be different processes in place for competitive selection for additional or supplementary evidence requests. While it may still be appropriate to ask for supplementary evidence as part of a competitive selection, we would propose to require this step only where we consider it necessary.

### **Scoring approach**

- 5.17 Bullet three also mentions the possibility of minimum scores in some areas. Requiring a minimum score for some assessment criteria would ensure that the preferred candidate has not only shown that they are the strongest candidate compared to competitors, but would also be able to meet the required standards as defined in the licence. Without minimum scores, it may be possible for a candidate to be successful despite not demonstrating sufficient evidence that it could fulfil a key aspect of the code manager role. The criteria to which minimum scores would apply would be set out in a draft guidance document, rather than in the regulations themselves.
- 5.18 Bullet four mentions our proposal that some aspects of competitive assessment should be on a pass/fail basis, rather than scoring candidates on a numerical scale. This reflects the fact that some licence conditions, like cross-subsidy and independence of directors, are likely to involve circumstances and details that are unique to a given candidate. While it is important that we have confidence that candidates can fulfil their licence conditions in these areas, it would be less appropriate to compare different organisations to one another in a way that results in a value-based judgment, as opposed to focusing solely on their ability to mitigate any potential conflicts of interest.

### **Tie-break process**

- 5.19 The final bullet point specifies that we would outline a tie-break process in draft guidance. This process would be triggered where two or more candidates achieve the same weighted score following the competitive assessment.

- 5.20 There are different options for how we could approach a tie-break process, for example:
- we could make use of existing evidence submitted by organisations, which could include either asking all bidders to provide responses to specific tie-break questions or specifying that one or more criteria would apply in a tie-break scenario, or
  - we could ask candidates for new, written information.
- 5.21 We are interested in stakeholders' views about the proposals set out above, including the number of competitive stages, assessment criteria and scoring, and tie-break approach.

### **Competitive selection regulations**

- 5.22 Before we can facilitate a competitive selection process, we will first need to prepare regulations under Section 189 of the Energy Act 2023 and then work in collaboration with DESNZ to lay them before Parliament. These regulations would be distinct from, but connected to, the Code Manager Selection Regulations 2024. Their purpose would be to make provision for us to select a person to be a code manager on a competitive basis.
- 5.23 We propose for these regulations to enable a single-stage tender process. We also propose that they enable a process that is either fully open (ie, allows any interested party to participate) or restricted (ie, one that would invite only certain parties to participate, such as eligible candidates following an initial expression of interest and eligibility assessment). The regulations would also make provision for a number of the aspects of the competitive process set out above, such as the potential use of weighting when scoring criteria and a requirement to set out key aspects of how a competition would be run, such as use of a tie-break process.
- 5.24 Our proposed approach would be to ensure that the regulations define all necessary aspects of the competitive process, while in some cases using draft guidance to provide information about the process where setting information out in the regulations would leave insufficient flexibility. We consider that this approach would strike the right balance between providing certainty for interested parties on how any competitive process would be run, while allowing these processes and criteria to be adapted, as required, over time. We also want to ensure flexibility and transparency around relevant timelines, so we propose to require the timeline for each competitive selection exercise to be published as well.



5.25 We welcome views from stakeholders about our proposal for the competitive selection regulations, including the use of supplemental draft guidance in some instances to maintain flexibility, in line with the approach taken in the Code Manager Selection Regulations 2024.

### **Additional assessment criteria**

5.26 We have also considered whether additional criteria that are less closely aligned with specific licence conditions should be applied to the competitive assessment process. We consider that there is a case for introducing two additional assessment criteria for the competitive assessment process only, with the possibility of expanding or revising this list over time:

- **innovation** – for example, this could include questions about a candidate’s plans for innovation around the governance process or how to make the codes more streamlined and accessible for code parties, and
- **facilitating the move to net zero and clean energy** – for example, this could include questions about a candidate’s plans and ability to link its approach to code governance to industry action, as well as the Government’s goals in this area.

5.27 The rationale for introducing these criteria for the competitive assessment only is that it would provide candidates with the opportunity to further differentiate themselves from their competitors. This information could also help differentiate between candidates that are otherwise closely matched on other criteria, either as part of all competitive assessments or solely in the case of a tie-break scenario.

5.28 However, we recognise that there is a case for having complete alignment of criteria across both selection processes, which could mean including these additional criteria in the non-competitive assessment as well.

5.29 We therefore welcome views on the inclusion of these additional criteria, and whether they should be limited to the competitive process only or also included as part of non-competitive licensing assessments.

## 6. Implementation and assurance

This section sets out initial proposals on the implementation and assurance stage. We seek views on how we should approach these two distinct processes, including the kinds of activities that should be included and who should carry them out.

We also seek views on our proposal to subject all candidates to a final readiness assessment prior to publishing our notice of licence grant, to ensure that all candidates have the right capabilities, resources and processes in place to fulfil their new obligations.

### Questions

- Q12. Do you have any views on how we should approach the implementation and assurance stage, including any potential interaction between these two distinct processes?
- Q13. Do you agree with the proposed scope of the final readiness assessment that would be required of all candidates?

6.1 Following public notice of our proposal to grant a licence, and subject to any representations received, the final stage of our proposed selection process would commence. At the end of this stage, we would expect the candidate to be fully compliant with all relevant licence requirements and ready to carry out the licensed activity.

6.2 Although the activities required during this stage are likely to vary from one candidate to another, we consider that they can be grouped into two distinct categories:

- **implementation** – the processes and steps that candidates will undertake in preparation for taking on the code manager role, potentially with our support, building on the detailed proposals submitted during the licensing assessment stage, and
- **assurance** – the processes and steps that we will undertake, or commission, to determine whether candidates are ready to be granted a licence, culminating in a final readiness assessment.

6.3 Below, we set out our initial views on what these two categories of activities are likely to entail and what our role would be in this process. We intend to consult in more detail on our proposed approach to implementation and assurance in due course, as part of a broader package of proposals related to the implementation of energy code reform.

## **Implementation approach**

- 6.4 We expect that all successful candidates will require time to prepare for the code manager role and implement related changes, regardless of whether they are an experienced code body or a new market entrant. This expectation is due to the novel nature of the code manager role, which will require changes in approach, culture and operational capabilities compared to the current governance arrangements.
- 6.5 The precise nature of these activities is likely to vary from candidate to candidate, depending on their underlying level of readiness, but we expect that the following list of tasks will be common for all candidates:
- developing a detailed implementation plan and governance framework, including appropriate timelines and milestones, and securing the necessary funding,
  - complying with licence conditions related to conflicts-of-interest and not-for-profit status, which could require changes to the candidate's organisational structure, board composition, etc.,
  - hiring of new staff and/or procurement of new services, including any considerations related to the Transfer of Undertakings (Protection of Employment) regulations (TUPE),
  - establishing the necessary governance arrangements, systems, and operational processes required to commence the licensed activity, in collaboration with code parties and other industry stakeholders where appropriate, and
  - developing and implementing a cultural change strategy, to reflect the novel nature of the code manager role.
- 6.6 We may also decide to facilitate aspects of the implementation process ourselves, by using the transitional powers granted to us by the Act.<sup>40</sup> These powers include the ability to modify codes, licences and contracts for relevant purposes, and to transfer property, rights and liabilities from existing entities to the incoming code manager, where those are reasonably required for the purposes of its obligations under the licence. Before using these powers, we would consult with relevant parties, as required by the Act.
- 6.7 More generally, we will need to consider what level of involvement we should have in the implementation process, and whether this should vary from code to

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<sup>40</sup> See Schedules 12-13 of the Energy Act 2023: [Energy Act 2023](#).

code. One approach would be for us to adopt a relatively hands-on role, with a high level of involvement in the planning and implementation activities of a given candidate, including joint governance arrangements. Another approach would be for us to adopt more of an oversight role, with key milestones and deliverables agreed with candidates at the outset but little direct involvement from that point onwards. There would also be the possibility of a hybrid approach, in which we would retain a high degree of involvement in some activities and a lower degree in others.

- 6.8 We will continue to consider the benefits and risks of adopting different approaches to implementation, with the aim of ensuring that the necessary steps are delivered in a timely manner, with minimal cost or disruption, while delivering robust outcomes.

### Assurance process

- 6.9 We expect that there will be a need for us to undertake, or commission, assurance-related activities alongside the implementation process, culminating in a final assessment of candidate readiness. The purpose of these activities would be to ensure that all candidates have the right capabilities, resources and processes in place to fulfil their new obligations, prior to publishing our notice of licence grant.
- 6.10 We envisage that the readiness assessment would be based around the requirements of the licensing assessment form, with candidates required to provide evidence of the following:
- full compliance with all conflict-of-interest and not-for-profit licence conditions, including confirmation of governance changes and board appointments where those were needed,
  - demonstration of sufficient progress towards developing the necessary capabilities and expertise, related to service provision capability, value for money to the industry and consumers, stakeholder management capability, expertise relevant to applying the code objectives, and capability in project management,
  - evidence that the candidate has become party to the relevant code and that it can comply with any requirements of the code that would be enforced via the licence, and
  - a final fit and proper assessment, to ensure that the candidate is suitable to be granted a licence.

- 6.11 As with the implementation approach, we will need to consider what level of involvement we should have in the assurance process and who should be responsible for performing these activities. One approach would be to take a relatively hands-on approach, with candidates required to submit regular progress reports to us for consideration. Alternatively, we could commission a third-party to undertake that role on our behalf, or allow candidates to monitor progress against their plans independently, with our role limited to a final assessment of candidate readiness at the end.
- 6.12 Due to the complementary nature of implementation and assurance, we will also need to consider the potential interaction between these two processes when deciding on our approach. For example, if we decide to adopt a relatively hands-on approach to implementation, then we might be able to adopt a less involved approach to assurance because of the enhanced visibility that would provide into the status of the project. Similarly, if we decide to require regular progress reports from candidates and have established governance processes that would let us address emerging issues, then the need to be directly involved in the implementation process might be diminished as a result.
- 6.13 We welcome stakeholder views on the implementation and assurance process more generally, including any suggestions for implementation activities beyond those already listed above and the proposed contents of our final readiness assessment.

## **Appendices**

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## Appendix 1 – Consultation questions

### Section 2

- Q1. Do you agree with our proposed, three-stage process for assessing code manager candidates?
- Q2. Do you agree with how we have proposed to make our selection route decisions, in line with our considerations of speed of delivery and value for money?
- Q3. Do you agree with our proposal to grant code manager licences on an enduring basis?

### Section 3

- Q4. Do you agree with the processes and criteria that we have proposed to use during the eligibility assessment stage?
- Q5. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the eligibility assessment process or the proposed content of the draft form?

### Section 4

- Q6. Do you agree with the processes and criteria that we have proposed to use during the licensing assessment stage?
- Q7. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the licensing assessment process or the proposed content of the draft form?

### Section 5

- Q8. Do you agree with the processes and criteria that we have proposed to use as part of the competitive licensing assessment, including our proposal that there should only be a single competitive round rather than multiple rounds?
- Q9. Do you agree that the enabling regulations should set out how the competitive process will work, with the use of draft guidance allowing flexibility in some instances?
- Q10. Do you have any views on how we should design a potential tie-break process, such as whether to make use of existing evidence versus requesting follow-up submissions?

Q11. Do you agree with our proposal to introduce two additional criteria as part of the competitive licensing assessment, namely “innovation” and “facilitating the move to net zero and clean energy”?

## **Section 6**

Q12. Do you have any views on how we should approach the implementation and assurance stage, including any potential interaction between these two distinct processes?

Q13. Do you agree with the proposed scope of the final readiness assessment that would be required of all candidates?



## **Appendix 2 – Subsidiary documents**

The following subsidiary documents have been published on Ofgem’s website alongside this consultation:

- Draft guidance on the code manager selection process
- Consultation response template

## Appendix 3 – Glossary

<b>The Act</b>	“The Act” in this document refers to the Energy Act 2023.
<b>BEIS</b>	Department of Business, Energy and Industrial Strategy
<b>BSC</b>	Balancing and Settlement Code
<b>CUSC</b>	Connection and Use of System Code
<b>DCUSA</b>	Distribution Connection and Use of System Agreement
<b>DESNZ</b>	Department for Energy Security and Net Zero
<b>EOI</b>	Expression of interest
<b>GEMA</b>	Gas and Electricity Markets Authority
<b>IGT UNC</b>	Independent Gas Transporters’ Uniform Network Code
<b>REC</b>	Retail Energy Code
<b>RECCo</b>	The Retail Energy Code Company Ltd
<b>The Regulations</b>	“The Regulations” in this document refers to the Code Manager Selection Regulations 2024
<b>SEC</b>	Smart Energy Code
<b>SMRI</b>	Significant managerial responsibility or influence
<b>SPV</b>	Special Purpose Vehicle
<b>SQSS</b>	Security and Quality of Supply Standard
<b>STC</b>	System Operator- Transmission Owner Code
<b>TUPE</b>	Transfer of Undertakings (Protection of Employment) regulations
<b>UNC</b>	Uniform Network Code

## Appendix 4 – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### 1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### 3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. ie a consultation.

#### 4. With whom we will be sharing your personal data

(Include here all organisations outside Ofgem who will be given all or some of the data. There is no need to include organisations that will only receive anonymised data. If different organisations see different set of data then make this clear. Be as specific as possible.)

#### 5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for (be as clear as possible but allow room for changes to programmes or policy. It is acceptable to give a relative time eg 'six months after the project is closed')

#### 6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data

- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas** (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

8. Your personal data will not be used for any automated decision making.

**9. Your personal data will be stored in a secure government IT system.** (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

**10. More information** For more information on how Ofgem processes your data, click on the link to our “[ofgem privacy promise](#)”.