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## Modification Process Workgroup Report (Part 2)

### Introduction

This is the second of a two-part report providing stakeholders with the output of discussions that took place during the Modification Process Workgroup (MPW).<sup>1</sup> Detail on the role and purpose of the MPW are described in Part 1 of this report.<sup>2</sup>

### Workgroup sessions

This Report has been structured to reflect the outputs of workgroup discussions, with observations, issues and questions raised during sessions grouped together under common identified themes. Workgroup meetings were held by Microsoft Teams. Workgroup members were invited to engage in the discussion verbally and/or by using the Teams chat function, or, Mural whiteboard. It was agreed that members would not allocate any views to individuals outside of the sessions, in order to ensure open and productive discussion on the topics.

Ofgem chaired the meetings and provided a secretariat function. This report (Parts 1 & 2) represents the outputs of the workgroup sessions.<sup>3</sup> A draft of this report was circulated by Ofgem to members of the workgroup for comment prior to publication.

### Next steps

We are grateful to industry stakeholders who gave their time and shared their expertise as part of this workgroup. We will consult on proposals related to the code modification process and this workgroup report will, among other things, help to inform future proposals.

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<sup>1</sup> Part 2 refers to the final two MPW sessions which took place on 4 September and 17 September.

<sup>2</sup> [Implementation of energy code reform: decision | Ofgem](#)

<sup>3</sup> Separate minutes were not taken.

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## Workgroup content

<b>Session</b>	<b>Content</b>	<b>Areas for discussion</b>
Session 4	Skill set of a code manager	The skill set a code manager would need to fulfil its role in the code modification process.
Session 4	Decision-making	Whether a Stakeholder Advisory Form (SAF) should vote on modifications; how the code manager could demonstrate it has taken the views of SAF into account in its decision making.
Session 4	System delivery bodies	How effectively do current processes assess the impact of code modifications on central systems, and how Ofgem's direction power might further support the implementation of system-related change.
Session 4	Cross-code working	Identifying needs and options for cross-code working in future arrangements.
Session 5	Direct code changes & Significant Code Review (SCR) process	Which parts of the code modification process might need to change to accommodate Ofgem's use of the direct code change process; possible changes to the SCR process including the role of the code manager.
Session 5	Transition and handover	Considering how the impacts on the modification process could be best managed during transition/handover to the new code manager.
Session 5	Alternatives	Whether and if so how the number of Alternative modifications that can be raised should be limited in future arrangements.
Session 5	Appeals to Ofgem decision	The CMA appeal mechanism in an updated process.
Session 5	SAF	Detailed SAF arrangements including appointing members, alternates, an independent chair and quoracy requirements.

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## **Workgroup report**

### **Skill set of a code manager**

The workgroup considered what skill set a code manager would need to fulfil its role in the code modification process effectively.

### **Making recommendations**

Comments included that the code manager should have the ability to demonstrate the business case for a material change which would impact code parties and this should reduce unnecessary send backs from Ofgem. Views also included that the code manager should consider end consumers and liaise with consumer groups.

### **Strategic thinking**

Comments included that the code manager should have knowledge of the industry, to understand the context of a modification, including an awareness of the legislative framework and how it interacts with existing code provisions.

Other comments included that the code manager should have suitable energy system knowledge beyond their own code and should display cross-code awareness. It was suggested that a lack of industry knowledge may delay change.

The workgroup indicated that the code manager should have the ability to consider and communicate with those who are not industry experts. It was also suggested that the code manager should ensure that all impacted parties are considered at the start of the modification process.

### **Proactive stakeholder engagement**

The workgroup highlighted that the code manager will need to be able to get engagement from a wide range of industry parties. It was noted that ensuring code modification workgroups run effectively is an important aspect of a good modification process. It was raised that the code manager should have the skills/knowledge to ask parties appropriate and potentially challenging questions.

Other comments included that the code manager should possess strong chairing skills for workgroups.

It was raised that the code manager should know when to exercise powers to seek information or cooperation from stakeholders. It was noted that a code manager should have an awareness of the time it can take for parties to complete impact assessments and/or consultations. It was also suggested that the code manager should ensure that duplication of requests for evidence are avoided, for example where information was already gathered during any pre-modification stage.

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## **Modification process**

The workgroup considered that a code manager should manage pre-modification issues ahead of modification proposals being raised and highlighted the importance of premodification groups. To achieve this some workgroup members felt the code manager would need a specific skill set including resolution skills and a broader awareness of other codes.

Other views included that the code manager will need to be able to control the process and the timeframe a modification proposal is developed, eg being able to determine that a modification proposal has been sufficiently developed and further work is not justified where that could risk intended benefits being delayed.

## **Checks and balances**

Comments included the importance of ensuring the code manager appropriately engages with industry expertise in its decision-making, to ensure checks and balances on the code manager. Other views were that clear internal governance processes should exist for decisions taken by a code manager.

It was raised that industry engagement, including workgroups, could allow industry to check and challenge code manager decisions.

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## **Code manager decision-making**

The workgroup considered how SAF should feed into code manager decision-making.

### **SAF voting**

There was support for SAF to vote on whether a proposed modification should be implemented or not. Comments included that this would provide a SAF recommendation, providing a balance to the code manager view and highlighting when SAF disagrees with the code manager decision. It was also stated that voting would increase transparency and ensure smaller parties' views are captured.

It was noted that the SAF vote should be included in the final change report that is provided to Ofgem. There was a view that SAF should take due account of any workgroup recommendations. It was also suggested that clear criteria and guidance for SAF voting should be developed.

Alternative suggestions included that SAF views could be captured without a vote and that it is important to capture detailed discussion where there are more nuanced differences of opinion. Other comments included that voting is only useful if it has a clear impact on the process. The workgroup indicated that it would be helpful for Ofgem to provide clarity in certain areas, to fully understand the details of a SAF vote. In particular, what would the code manager do with the vote and what weight would be given to a SAF vote.

### **Code manager**

There was support for code managers to demonstrate how they have accounted for SAF views in recommendations to the Authority. It was recommended that the code manager should clearly record SAF views and its response in the change report. There was support for code managers to record if a decision or statement is a result of a chair's casting vote (if applicable) and the rationale for that vote.

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## **SAF**

The workgroup considered detailed SAF arrangements including appointing members, alternates, an independent chair and quoracy requirements.

### **Membership**

There was no support for limiting the number of terms a SAF member could serve. It was highlighted that the process for appointing SAF members should be open, transparent, and there should be ways of updating its membership and encouraging new members to come forward. Other comments included support for SAF members to be voted on, while noting that consumer representatives should follow a different process.

The workgroup considered reasons that members may need to be removed from SAF. It was highlighted that attendance and participation at meetings is important with views including that members should be removed if they fail to attend a certain number of meetings. It was raised that it can be difficult to measure participation and that rules around this could be set out in the code and/or the SAF Terms of Reference. Other points included that individuals should be removed if they fail to act impartially. There was some workgroup support for SAF having quoracy arrangements, with comments highlighting that quoracy is needed to ensure that the forum is productive and has effective governance.

### **Chair**

There was some support for SAF to have an independent chair with comments including that it would mitigate the risk of potential bias. It was also suggested that an independent chair is key to showing that stakeholders are being treated fairly. Clarity was sought on what a chair would be independent of and why.

There was some support for the chair to have a casting vote, noting it could mitigate the risk of deadlock. Others did not support this, and it was suggested that principles should be developed to guide the chair's casting vote.

The workgroup commented that the skill of a chair is key to a good voting process.

### **Pool**

There was some support for the pool of members to add wider representation to the SAF. It was raised that, to ensure SAF members can engage in constructive discussions, this may be easier if members are used to working with each other. Other comments included it was more beneficial that the members who attend actively participate and are an expert.

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## **Alternates**

There was support for alternates to ensure that the forum can function throughout the year. There was a suggestion for a pool of alternates rather than direct cover for individual SAF members.

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## **Alternative modifications**

The workgroup considered if there should be a limit on the number of alternative modifications that can be raised in the new arrangements. How any limit should be determined was also discussed.

### **Limit**

There was some support for limiting alternatives, including a comment that a good modification process should mean that multiple alternatives are not needed, and that it can be difficult to manage multiple alternatives. It was also highlighted that it takes resource (time and cost) to develop alternatives, and that not having a limit may result in overly complex, multi-dimensional modifications.

Others supported a process without limits to alternatives. Views included that raising an alternative could provide code parties, especially smaller parties, the opportunity to present a different view to the code manager. It was commented that there is a risk that stakeholders may feel disenfranchised by the process if they are unable to raise an alternative. Other comments included that limiting the number of alternatives would mean different options for different parts of a proposal couldn't be raised. It was suggested that limiting the number of alternatives may result in poorer quality modifications being implemented.

It was also commented that there could be unintended consequences in introducing an artificial constraint on the number of alternatives able to be raised. It was noted that safeguards should be put in place but there should not be a numerical limit on alternatives. Other comments included that a numerical limit on alternatives could be decided by the SAF on a case by case basis while it was raised that allowing more than one alternative could be warranted but clear criteria to allow this would need to be in the governance arrangements.

### **Code manager role**

It was suggested that the code manager should triage alternatives when they are raised to prevent potentially spurious alternatives from slowing down the process.

There was some support for the code manager to assess alternatives, group the changes and then assess options for determination.

There were a range of views on the code manager being able to raise alternatives, including that they should raise alternatives where industry has a common view that an alternative is needed, or to reduce the burden on industry.



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### **Role of workgroups**

It was commented that workgroups effectively refine initial proposals. There was support for the workgroup to develop alternatives, carry out analysis, ensure alternatives are robust, and select the most appropriate alternative to be considered. Comments included that the workgroup should consider consumer interest when deciding which alternative is the most appropriate.

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## **Cross-code working**

The workgroup considered how cross-code working could operate to facilitate a smoother transition, and, under the new arrangements ease the implementation of modifications that originate in one code, but require changes in other codes. Members provided observations on cross-code working in current arrangements.

## **Knowledge of other codes**

There was support for the chair of any future cross-code forum to have in-depth knowledge across codes to get traction and engagement with them all.

## **Scope**

There was support for the scope of cross-code working to include the discussion of pre-modification issues. The workgroup recommended introducing consideration of potential cross-code impacts at the triage stage.

Other views included that the need for cross-code change is likely to decrease due to code consolidation.

## **Transparency**

It was raised that transparency is important and that stakeholders should have more insight into what is discussed at any cross-code forum, with the rationale behind decisions published.

Other comments included that strong chairing of any cross-code forum was required, including some support for an independent chair.

## **Timing**

The challenge of aligning timetables across codes was raised and it was suggested that aligning the modification process will help with this.

The workgroup also commented that the code manager should try to ensure that timetables for developing cross-code modifications across codes align, and that there is an incentive for the code manager to do this.

## **Digitalisation**

There was some support to prioritise the digitalisation of codes as a way of improving the identification of potential cross-code impacts.

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## **Central systems**

The workgroup considered how well current processes identify and assess the impact of code modifications on central systems. The workgroup also discussed how Ofgem's new direction power could help facilitate implementation of code modifications that have system impacts.

### **Challenges the new framework could address**

The workgroup discussed the current arrangements, and it was noted that one improvement could be for central system delivery bodies to provide more commentary on the impact of code modifications on the systems they manage. It was also highlighted that greater visibility of the cost impact of modifications on central systems would be beneficial, and that this could provide more opportunities for scrutiny of costs.

It was also suggested that central system providers should be required to provide more detailed impact assessments.

It was highlighted that effective cross-code working is becoming a more important aspect for modifications that impact central systems.

The workgroup questioned whether the direction power can introduce lead-in times for any system changes that impact industry systems. The workgroup also sought clarity on how the interaction between a central system delivery provider and a code manager will work.

### **New power to direct responsible bodies**

The workgroup discussed the power to direct responsible bodies for central systems. It was suggested that Ofgem could use the direction power as a 'backstop', stepping in if the costs of implementing modifications escalate or if Ofgem considers that costs have not been efficiently incurred. It was also suggested that Ofgem could step in and issue a direction where it considers that modifications are being unduly delayed.

It was noted that the direction power could be a good deterrent but that it should not be overused. Another view was that the Ofgem direction power could add an unnecessary layer of complexity to processes.

The workgroup indicated that it would be helpful for Ofgem to provide clarity in certain areas, to fully understand how the direction power will impact the code modification process:

- How will the direction power work where the central systems body is subject to licence conditions?
- What is the scope of the direction power?
- How much involvement does Ofgem anticipate?

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### **Challenges with implementation**

Views included that some central system delivery bodies deal with some changes more easily than others. It was suggested that this might be influenced by the organisational impact a modification will have.

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## **Direct code changes and SCR process**

The workgroup considered if the code modification process might need to change to accommodate Ofgem's use of the direct code change process. The SCR process was also considered and if changes would be needed to reflect the role of the code manager.

### **Governance**

The workgroup highlighted that the direct code change process should be fair, open, and transparent. It was questioned how the consultation process would be followed by Ofgem for direct code changes.

The workgroup considered that new modifications should be able to proceed as usual if they are not related to a direct code change. It was also noted that in-flight modifications should only be paused when they are related to the same area as a direct code change that is being consulted on. Other views included that pausing in-flight modifications and reprioritisation of modifications may be required.

The workgroup highlighted that the direct code change process will require cross-code coordination where a change impacts more than one code. It was suggested that Ofgem may need to lead this cross-code coordination, or consider how coordination could be achieved.

### **Code manager**

The workgroup commented that there may be less need for Ofgem to intervene through direct code changes when code managers are in place.

Views included that the Authority should be able to direct the code manager to raise SCR modifications. Other views were that the circumstances for direct code changes and SCRs seem to overlap, and that the former could replace parts of the latter. The point was raised that once code managers are in place SCRs may no longer be required.

### **Coordination**

The workgroup suggested that the Authority should better coordinate consultations during the SCR process to reduce the amount of time parties spend re-reading information. It was suggested that code bodies can work together better to make the SCR process more efficient for code parties.

### **Code objectives**

It was highlighted that having closer aligned objectives across codes would help to improve the SCR process.

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## **Transition and handover**

The workgroup considered how the impacts on the modification process can be managed during the transition to code managers.

### **Freezing modifications**

There was support for new modifications and in-flight modifications to continue as normal because a moratorium could prevent beneficial change from progressing. It was also suggested that pausing in-flight modifications would create a backlog of change which should be carefully considered.

Other views included that transitions should be considered on a code-by-code basis and a moratorium on raising modifications or pausing in-flight modifications are more likely to be needed for consolidated codes.

### **New modification process introduction**

The workgroup recommended that due notice is given to parties before appointing a code manager and sought clarity on how longstanding / in-flight modifications would be treated. It was commented that longstanding / in-flight modifications should move to the new process.

Concerns were raised that code parties may rush to submit modifications pre-transition. The workgroup suggested introducing a bespoke prioritisation process during this time.

### **Resource**

It was noted that code panels and code managers will need to have additional resourcing to support a minimum-impact transition. Views included that panels should review modifications ahead of code manager appointment.

Other comments raised a concern that it could present a cost risk if there was an expectation that a code administrator takes on code manager roles prior to code manager appointment. It was suggested that this risk could be mitigated by appointing code managers as soon as possible.

### **Other impacts**

The workgroup highlighted that the process of consolidating the codes will make the transition to the new modification process more complex and that a different approach may be needed for consolidated codes. A suggestion was made that some code changes can be made by the code manager after transition.

It was noted that the length of transition could be dependent on who a code manager will be.

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## **Appeals**

The workgroup provided their views on the Competition and Markets Authority (CMA) mechanism, in the context of an updated code modification process.

### **Pre-decision factors**

The workgroup highlighted that making an appeal to the CMA is resource intensive and expensive, and that parties do not appeal decisions lightly. It was also noted that the right to bring an appeal is an important check and balance. It was queried what solutions can be put in place to avoid appeals occurring.

The workgroup highlighted that the code manager should engage with industry parties through the work of SAF and industry responses. It was suggested that the code manager should respond to all comments, including on whether or not the change better facilitates the objectives.

### **Appeal rights**

There was support for industry to have a right to appeal if they do not agree with decisions made by the code manager and/or the Authority. It was highlighted that having a right to appeal is an important safeguard for industry to have in place, and it was noted that DESNZ intended to retain this appeal route.<sup>4</sup>

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<sup>4</sup> [Energy code reform: governance framework - GOV.UK](#)