

By Email Only

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28 September 2021

Dear BEIS Code Reform – Electricity Systems Team and Ofgem Industry Code and Licensing Team

GEMSERV RESPONSE TO THE CONSULTATION ON THE DESIGN AND DELIVERY OF THE ENERGY CODE REFORM

Gemserv is pleased to provide a response to this consultation. Gemserv has a long history of providing code management services in relation to both electricity and gas supply, having supported the Master Registration Agreement since its inception. We are currently providing code management services for the Smart Energy Code, Retail Energy Code and IGT-UNC.

We welcome that further progress is being made in overhauling the energy codes landscape to enable the transition to a clean energy system and reach net zero. We strongly support the BEIS/Ofgem reform objectives for a code framework that will:

- be forward-looking, in line with net zero goals and benefit existing and future consumers
- accommodate a growing number of market participants and ensure compliance
- be agile and responsive to change
- make it easier for any market participant to understand the rules

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This July 2021 consultation proposes options for a new institutional governance framework and the associated implementation plans. In summary, we support Option 1, which proposes Ofgem as a strategic body with separate licenced code managers, selected by competitive tender.

We have summarised our response to the consultation in this covering letter and provided answers to the specific questions in the attached annex. We have also provided a separate response to the related issues in the Ofgem consultation on Future System Operator.

GEMSERV'S MARCH 2021 PAPER

Firstly, we are pleased to highlight that in March 2021, Genserv published a thought leadership paper on industry governance¹. We proposed several no-regrets initiatives that may commence in the short and medium term to help deliver the Net Zero policy goals. Our key suggestions were:

- 1. Strategic direction and co-ordination** – we proposed that Ofgem should take a strategic leadership role in relation to code governance. We recommended:
 - **Strategic direction** - Ofgem should issue strategic guidance to Code Managers to help guide their decision making, administration and compliance activities.
 - **Strategic co-ordination** - Ofgem should lead senior-level strategic co-ordination across Code Managers to ensure effective collaboration.
- 2. Accountable and incentivised code management** – we proposed there should be greater accountability for Code Manager performance. We recommended:
 - **Performance incentives** - to improve Code Manager performance and accountability, including how they proactively address controversial issues and future market changes.
 - **Competitive tenders for Code Managers** - to improve accountability for efficient delivery performance. Enables consolidation of codes and code management functions.
- 3. Simplification and accessibility** – to improve accessibility for all market participants by addressing complexity and the self-interest of existing participants. We recommended:
 - **Simplification** – improve how participants engage with codes e.g., common web portal.
 - **Transparency** – enhancing transparency and access to market data and decision-making
 - **Digitalisation** - create a common platform for market rules and compliance
 - **Compliance** – create efficient compliance regimes appropriate for the risks involved.

¹ <https://genserv.com/wp-content/uploads/2021/03/Enabling-Energy-Markets-for-Net-Zero-Reforming-Code-Governance.pdf>



We welcome that the BEIS/Ofgem consultation has addressed many of the themes that we have outlined in our prior paper, and these are reflected in our response.

OUR RESPONSE TO THE CONSULTATION

In summary, our response is strongly supportive of the need for code governance reform so that it can be fit for purpose to meet the future challenges of a Net Zero energy sector. The Net Zero energy transition will drive a dramatic change in both the energy mix and in the numbers and types of market participants, with customers becoming increasingly more active in energy markets.

We would highlight the following from our response:

- **Scope of reform** - we support that the scope of reform should include a) all existing industry codes plus engineering standards, and b) all delivery roles including those performed by the FSO, Xoserve, Elexon, DCC, and Electralink.
- **Strategic direction** – we agree the BEIS/Ofgem preferred model that Ofgem should be the designated strategic body and should licence Code Managers.
- **Code Manager selection** – we urge that all code management and delivery functions should be competitively tendered, and performance incentivised.
- **Implementation** – we support code consolidation as part of drafting new licences and competitive tenders. We consider that merging gas and electricity codes should be a priority.

Finally, we would urge that early decisions are made on progressing Code Governance reform to achieve the expected benefits from clear strategic direction, empowered and accountable code management, and reduced complexity. Gemserv is keen to be an active participant in enabling and delivering these reforms.

Yours sincerely

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Annex: Response to consultation questions

This annex addresses the specific questions raised in the Energy Code reform consultation. These are set out in response to the following main consultation areas:

- A. Scope of Reform
- B. Roles and responsibilities
- C. Preferred option 1 – Ofgem as strategic body with separate code managers
- D. Option 2 – FSO as an Integrated Rule Making Body
- E. Analysis of governance options
- F. Implementation of options 1 and 2
- G. Next steps

A: SCOPE OF REFORM

Prior BEIS/Ofgem consultations proposed that the 12 existing codes² plus central delivery functions should be included in the scope of reform. We support that the scope of reform should include:

- all existing industry codes plus engineering standards, and
- all central delivery roles including those performed by the FSO, Xoserve, Elexon, DCC, and DTS (Electralink).

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

The consultation proposes that a one or more Code Managers should be responsible for engineering standards i.e., Grid Code, Distribution Code and SQSS. This might include the FSO providing advice and insight or managing the codes.

The electricity and gas engineering standards have played a critical role in ensuring security of supply but will have an increasingly important role in enabling access for the plant and equipment owned by an increasing number of smaller market participants.

² 3 Connection and Use of System Code (CUSC); Grid Code (GC); System Operator – Transmission Owner Code (STC); Balancing and Settlement Code (BSC); Master Registration Agreement (MRA); Distribution Connection and Use of System Agreement (DCUSA); Distribution Code (DC); Smart Energy Code (SEC); Uniform Network Code (UNC); Supply Point Administration Agreement (SPAA); Independent Gas Transporter Uniform Network Code (IGT UNC); and Retail Energy Code (REC)



It will be important that a future Code Manager is able to take a whole system perspective, looking beyond the detailed standards that have been developed historically for a system based on large electricity generators or gas producers. The future energy system will involve increasing numbers of prosumers seeking to engage with the energy system with behind the meter technologies, and the engineering standards, which can govern matters such as metering, communications as well as network access can present barriers to their engagement in electricity and gas markets.

We support the consolidation of the in-scope engineering standards for electricity together with those for gas. The vast amount of engineering information presents a significant complexity barrier that have been developed by well-resourced industry incumbents. Consumers and new market participants face significant additional associated costs of understanding and complying with these standards. Such a consolidation should be focused on improving accessibility and reducing complexity for a wide range of market participants.

We support the competitive tendering of this function. We believe it is important that the Code Manager selected to manage engineering standards should not only have the relevant individual technical capabilities but should be focused on the delivery of the best outcomes across the whole energy system. If the FSO is not appointed as Code Manager, then the FSO should be an adviser (within an advisory forum) to the Code Manager alongside other relevant parties.

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

The consultation proposes that there should be at least four central delivery functions i.e., those currently performed by Xoserve, DCC, Elexon, and DTS. The consultation proposes that these functions should be given direction by a strategic body and be licenced either as separate functions or combined with a code management function.

We agree that these central delivery functions should be in scope and that the strategic body should licence and direct these functions. A strategic body will be able to oversee and incentivise performance of accountable delivery organisations as well as giving direction. We consider this should bring an increased consistency of approach to strategic aims, as well as implementation of reforms. It should make it easier to address cross-cutting issues and deliver reforms in a timely way.

A strategic body will be well placed to undertake competitive tendering for the different delivery roles. We strongly support the proposals for competitive tendering of licencees, which offers an opportunity to enhance accountability delivery performance and innovation.

We suggest that there will be benefits in separating code management from central delivery functions. The capabilities for code management differ significantly from those for delivery functions, and the combination of these can make it harder to identify clear performance targets and accountability either for code management



or delivery. Furthermore, the integration of these different roles may also make it harder to undertake competitive tenders for these common industry services. The separation of code management from delivery functions should enable greater innovation as well as accountability.

B: ROLES AND RESPONSIBILITIES

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

The consultation proposes that the preferred governance option is to designate Ofgem as the ‘strategic body’ and to have licenced Code Managers. As the strategic body, Ofgem would develop and annually publish a strategic direction for codes, ensure it is delivered by code managers, decide whether to approve material code changes and, under some circumstances, lead code changes itself. It would also select and license code managers, holding them to account via licence obligations.

We agree with this proposed approach, including that the Strategy and Policy Statement (SPS) would be used to set out the Government’s strategic priorities and outcomes for Ofgem. This approach should bring benefits in terms of

- ◆ Ensuring that the Government’s strategic vision is consistently communicated
- ◆ Maintaining regulatory independence and confidence through an enhanced role for Ofgem
- ◆ Enabling a more agile and whole system approach to industry change
- ◆ Establishing clear accountabilities for coordination and delivery of change

However, we suggest that the success of this approach will depend upon Ofgem’s capabilities – while Ofgem has considerable experience in code governance, the pace and scope of change will require enhancement of its capabilities, such as commercial and technology awareness and the agile management of change. However, many of these capabilities may be provided by seeking delivery partners who are equipped with the right capabilities, skills, and experience, and are committed to deliver the required performance outcomes. But even if Ofgem relies on delivery partners, it will still need the in-house capability to appoint them, oversee their performance, and retain responsibility for the operational and strategic decisions that are being managed by third parties – this will be an important part of the strategic function.

If full advantage is to be taken of the benefits of competitive tendering for code management and delivery activities, and subsequent oversight of delivery performance, this will need additional focus and resources. Such additional governance responsibilities may require Ofgem to refocus its own organisation and delivery priorities.



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

The consultation proposes that Code Managers would replace the existing code administrators after a suitable transition period. Code Managers would likely be selected through a competitive tender process that would be open to anyone with the skills and capabilities to fulfil the function (subject to management of conflicts of interests). They would also take on most of the roles that are currently held by industry-led code panels. The consultation proposes that industry input would remain key to the code change process, including through new stakeholder advisory forums.

We agree with the proposed approach for appointing Code Managers through competitive tendering. We consider that competitive tendering is the best way of delivering the desired delivery outcomes and value for money. An incentivisation framework associated with licence tenders ensures that Code Managers are constantly seeking to improve performance and benefits to market participants. Such approaches can be used to incentivise finding solutions to difficult issues such as whole system co-ordination, and speed of change. Having the strategic body running all the licence tenders should bring benefits from consistency and procurement experience.

The consultation proposes that Code Managers would be responsible for developing an annual delivery plan based on the strategic direction issued by the strategic body. They would also manage the code change process, decide on the approval of non-material code changes, make recommendations on material code changes to the strategic body, and monitor and report on code change outcomes.

We agree with this approach. A Code Manager should be empowered to develop and then deliver its reform initiatives, fully engaging with relevant market participants and coordinating with other Code Managers as needed. The whole system energy transition will require a strong collaborative and agile approach to change. We believe that there should be a common accountability for all Code Managers to work in a co-ordinated way.

A critical factor that Code Managers must address is stakeholder representation. In practice, many stakeholders struggle to offer meaningful expert representation due to other priorities calling on this expert resource (as illustrated by the current energy crisis). There are relatively few people in organisations who can provide quality input. If companies can't lead the agenda anymore there is even less incentive to participate. If Code Managers are to be more decisive, and minimise the risk of appeal, then they will need to address this risk to meaningful and sufficient engagement.

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

The consultation proposes stakeholder engagement should be robust, but not be a one-size-fits-all approach, to ensure there is flexibility in how stakeholders would be engaged, depending on the change. The



consultation proposes to require by licence that code managers work collaboratively with a range of stakeholders, including smaller players, new entrants, and innovators. It is expected that code panels will be disbanded and replaced by stakeholder advisory forums.

We agree with these proposed changes to the way in which Code Managers engage with stakeholder advisory forums to develop changes. We envisage this will allow Code Managers to be proactive in delivering changes aligned with the strategic direction and to engage independently and effectively with all stakeholders, including smaller players and new entrants. Code Managers should be able to engage effectively with stakeholders that have different levels of knowledge and expert resources.

The proposed freedom and flexibility in the form of engagement will allow change processes to be targeted to meet the needs of different stakeholders, ensuring that change decisions do not become overly resource intensive or bogged down in detail.

6: In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how decisions by the code manager would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body?

We agree with the proposed approach that the strategic body retains overall responsibility for the code changes. This will provide overall oversight and aid cross-code coordination, both of which should enhance confidence in the regulatory regime. However, this should not become a duplicate assessment process - an independent and accountable Code Manager should be empowered to deliver decisions or recommendations that should just require endorsement from the strategic body – this would speed-up decision making.

If this approach is to work effectively, it will require changes to the way in which Ofgem engages with change decisions as well as the way in which Code Managers consider them. Ofgem and Code Managers should establish regular interaction between them place during change development to help timely delivery of recommendations and decisions. Ongoing interaction should minimise the likelihood of a change rejection with consequences of delays and wasted effort.

We agree that appeal routes should move to Ofgem as the strategic body. We suggest that a process should be established within Ofgem where appeals may be quickly heard by an Ofgem delegated decision maker not previously involved in the change approval process.

7: In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant decisions by the code manager function would be appealable to Ofgem, with a potential prior review route via an internal body?

As described later in our response, we don't think the FSO should take on the role of the IRMB. We consider it would be challenging for the ESO to gain the necessary whole system and regulatory capabilities needed and to demonstrate the necessary independence to all stakeholders.



However, if the FSO were to be given this role, we would agree that all decisions should be appealable to Ofgem. Given the challenges associated with the FSO taking on both new governance responsibilities and a wider cross-industry role at the same time, we envisage that the number of appeals may be greater if the FSO were to assume the IRMB role.

8: Do you have any views on the two proposed options for appealing decisions made by Ofgem on material code changes in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?

The consultation proposes that Code Managers should take on compliance monitoring roles currently performed by code panels – we agree with this approach, including that enforcement decisions should continue to be made by Ofgem. We think it's important that Code Managers should be empowered to develop efficient, fit-for-purpose compliance processes across the lifecycle of full market entry, operation, and exit.

The consultation proposes that Ofgem decisions could be appealed either by only judicial review, or by a combination of judicial review and CMA appeals. We see merits in both approaches where judicial review may be simpler but doesn't consider economic or technical issues, or CMA appeal on certain issues to allow consideration of wider market implications.

We suggest that a key factor to consider in each approach is the timing of potential appeals and the delays this may cause to change processes. We suggest that if CMA appeals are to be considered these are limited by a pre-defined set of eligibility criteria.

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

As a potential Code Manager, we consider it is important that there are incentives on the Code Managers to seek, assess and present evidence that support decisions so that appeals are unlikely to emerge.

We consider that making Ofgem able to consider appeals provides an important check and balance. Nevertheless, it is important there is clarity about the available further appeal routes and how these may operate. We do not think there are other appropriate appeal routes to those already described.

C: PREFERRED OPTION 1 – OFGEM AS STRATEGIC BODY WITH SEPARATE CODE MANAGERS

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

Under option 1, it is proposed to legislate for Ofgem to assume the core roles and responsibilities of the strategic body. We agree that this is the best approach because Ofgem already has many of the appropriate objectives, powers, and duties so avoids the creation of an additional institution and additional interfaces. Ofgem's independence should maintain market confidence.



In terms of operating model, we agree that Ofgem already possesses many of the broad range of capabilities and skills required to take on these new roles. We agree these should be supported by expert Code Managers accountable to Ofgem together with Ofgem's own additional resources. However, it will be important that Ofgem does recognise that its new governance regime will be different from the less proactive one of the past and introduces an organisational structure and ways of working that meet the new requirements.

In addition, there will need to be effective interaction between Ofgem and Code Managers. We consider that there will need to be:

- Arm's length relationships where the responsibilities of each body are clearly defined, empowering the Code Managers to fulfil their role and achieve their deliverables.
- Good liaison and communication between Ofgem and Code Managers to enable good coordination and planning of change and decision making.
- Expertise within Code Managers that Ofgem can exploit as part of the code management process.
- Change programmes that encompass many code areas e.g., market access for distributed energy, that will need to be designed as stand-alone change programmes, with clear accountability for leadership and delivery.

Overall, we consider that Ofgem as the strategic body should take a more proactive role to drive standardisation/collaboration across codes, particularly if not all codes are competed. Similarly, Ofgem should be proactive in driving integration and improvement across central delivery activities.

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

The consultation proposes that there is a need for a monitoring and evaluation framework to be put in place between BEIS and Ofgem. This framework would require Ofgem to report on progress in helping to achieve government policy objectives through an annual report and a forward work plan.

We agree this is an appropriate approach where progress is monitored and plans are published to communicate how objectives will be achieved. This will aid transparency and accountability and provide confidence to market participants. We think this process should also enable Code Managers and central delivery bodies to provide feedback on how Ofgem is performing in its role as a strategic body.

We consider that a similar approach should be applied between Ofgem and Code Managers and central delivery bodies, demonstrating how they have performed against operational targets and setting out their future plans, including how they will meet their objectives agreed with the strategic body.



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

We agree that the strategic body should appoint and hold Code Managers accountable for their performance. We think that a licencing approach is appropriate, but this must be linked to underlying delivery contracts that the Code Managers have with their supporting resources. While licences may be more flexible to change in flight, this will only take effect if the associated delivery contracts that the Code Manager has with its suppliers are able to adapt in the same way. It will be important that licence flexibility aligns with the practical issues faced by Code Managers in changing their delivery contracts to deliver new licence obligations.

Licences may also include performance targets and financial incentives for Code Managers to deliver against. If this is the case, we suggest that symmetrical incentives i.e., rewards as well as penalties, are used to encourage good Code Manager performance.

For selection of Code Managers and central delivery bodies, we agree with the proposed approach for selection by competitive tender. We suggest this should be mandatory, and legacy arrangements should only be maintained in exceptional circumstances. But there should be transparency about the tender process and what is being tendered. There should be clear definition of scope of work and terms for bidders, together with clear change control as variations may be included. This should apply in a consistent way across all tenders.

For Code Manager tenders, we consider this should be a tender for the licenced Code Manager and the full functions it is required to deliver. We don't think there is value in appointing a Code Manager shell company that then must run its own competitive process to add new functions/resources. It would be better to retain competitive tension between bidders for as long as possible to benefit consumers.

A competitive tender process for Code Managers and central delivery functions should deliver benefits in terms of experience, expertise, value for money and ability to deliver. We suggest that the timetable for these tenders is set out as part of the code governance reform decision so that the potential bidders have time to prepare for the competitions. To enhance the certainty of obtaining a suitable qualified party we suggest that a pre-qualification process is used to identify interested parties. This could address factors such as conflicts of interest or cross-subsidisation from other industry parties.

To enable effective competition for Code Managers and delivery bodies, it will be important to ensure that incumbents are not unfairly advantaged through their exclusive rights to existing assets such as IT systems, Intellectual Property, specialist staff, etc, that were gained during their tenure. We suggest that the governance reform proposals should include measures to ensure that any such barriers to competition are addressed.

The consultation also proposes non-tendering options, which include the appointment of a shell company or direction of the FSO as a Code manager. We do not think this is necessary as if the governance framework is designed appropriately, there should be no reason these activities would not attract interested delivery partners.



However, it would be prudent to ensure that essential delivery activities could always be performed and back up arrangements should be in place in the event of a failure or underperformance of a delivery body, and revocation of their licence. In this event it would be appropriate for Ofgem to either invite bids for a replacement delivery body or to direct another licensee to take on these activities temporarily.

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

The consultation proposes that Code Managers should be funded for their base services through charges levied on code parties, with Code Managers able to charge for additional value added or optional services.

Overall, we agree with this approach.

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

The consultation proposes that Code Managers would be accountable to the strategic body when setting budgets. However, it also suggests that it would not necessarily be appropriate for the strategic body to approve budgets. We consider there are disadvantages to this approach in that it may lead to a lack of accountability and empowerment.

We suggest there are benefits if budgets for all Code Managers are approved in advance by Ofgem. These could include sufficient flexibility to:

- a) cope with unknown changes due to external factors; and
- b) provide incentives to encourage improved efficiency and delivery performance.

Budget setting by Ofgem would provide a transparent and accountable process and allow comparability of costs across Code Managers.

OPTION 2 – FSO AS AN INTEGRATED RULE MAKING BODY

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

The alternative institutional governance option is to create an IRMB within a Future System Operator (FSO). The consultation suggests that the FSO would be well suited to this role because its focus on whole systems thinking would complement the strategic function's main responsibility to provide strategic direction across codes.

In an IRMB, the strategic function and code manager function would be combined, meaning that there would be no separate code managers. However, Ofgem would retain some oversight and decision-making roles



under this option, such as the ability to approve material code changes, in line with its duties as the regulator and to protect against potential conflicts of interest.

We note that the separate FSO consultation identifies the need to embed new roles and activities within system operation and to create joined up thinking across electricity and gas system operation. The consultation suggests that the FSO could have a larger role to play in developing the system rules, bringing a more strategic approach across the whole system. The FSO could take potentially take on:

- an advisory role to decision making organisations drawing on its expertise;
- enhanced roles in strategic system planning;
- enhanced functions in market development;
- new roles in co-ordination across distribution networks and energy infrastructure; and
- new and enhanced roles in developing engineering standards.

We do not support this model. It appears to envisage the FSO as a whole system architect, taking responsibility for end-to-end industry design and operation, encompassing a wide range of delivery and governance activities. In our view, this is a major expansion of the ESO's role at a time when it is facing growing challenges to its core business of electricity system operation and transmission network planning. At present, code management forms a very small part of the ESO's activities. Given the focus on expansion, it is unlikely to drive innovation.

We do not think this model will work because the FSO will face several significant barriers, including the need to:

- refocus its business model away from its existing core electricity operational activities.
- build capabilities across the whole energy system and the code governance framework.
- gain trust of industry participants in its independence from industry influence.
- address risk of conflicts between code management and delivery roles.
- build effective relationships with code managers and delivery bodies.
- address its own transformation and cultural issues as a newly independent organisation.

Overall, we suggest that this is a risky approach to realising desired reforms, potentially delegating additional activities to a newly independent organisation with current significant capability gaps across both the whole energy system and code governance activities.

D: ANALYSIS OF GOVERNANCE OPTIONS

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



We note that the consultation assesses the two governance options against the following criteria:

- **Meeting reform objectives:** Does the option achieve the governance reform objectives?
- **Value for money:** Does the option minimise costs while maximising benefits?
- **Skills:** Does the proposed body have the right expertise to take on a strategic role?
- **Feasibility of implementation:** Will there be resources available for implementing the reform? Does the level of complexity allow for the option to be implemented within 5 to 10 years? Under this option, will any disruptions be manageable?

We agree these are appropriate criteria for assessing the governance options. As set out in our earlier comments, we consider that the model of Ofgem as the strategic body better meets the reform objectives, delivers value for money and the skills needed, and offers the fastest route to implementation. But this is dependent upon reform of Ofgem itself so it can better perform this role.

We consider that there are risks of delay or less effective delivery if the FSO IRMB model is chosen.

There are FSO roles, e.g., Future Energy Scenarios and network planning and associated industry-wide advice that the FSO would be expected to continue providing and reform should not impact the benefits from delivering such activities.

17: To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?

We note the costs used for the impact assessment are based on estimates from Elexon suggesting that the current cost of code administration is around £30m per annum. This only includes the direct costs of code administration and not their wider impact on industry participants. There is limited evidence to support this forecast.

We would suggest that this figure significantly understates the annual costs of code administration by only taking account of the resources involved in code administration and modification consultation with third parties. Every industry participant will also incur costs associated with understanding and complying with codes, including extensive use of expert advisers. These costs are an overhead resulting from code complexity and compliance activities and are directly related to the existence of the codes.

Furthermore, we suggest that the IA should also include central delivery costs as these are largely determined by the market design parameters that are set out in the codes. The Code Managers will have a significant influence on central delivery costs in the way which they develop the codes and the associated central delivery requirements.



A report produced by Policy Exchange in 2015 suggests that there are 30 organisations responsible for the delivery of energy policy at an estimated cost in excess of £600m per year.³

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

The case studies quoted are for modification P272 and the Gas Transmission Charging Review, both of which took several years to develop and implement. We agree these are typical of the type of challenges faced by the governance regime when managing large-scale change impacting multiple parties.

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

The impact assessment sets out that unmonetized benefits will accrue from reduced time and effort for modifications, resulting in less efficient code processes and an indirect cost to consumers.

We suggest that the benefits from code governance reform will materialise in terms of benefits to consumers in terms of:

- Lower costs from more efficient market operation by enabling access for innovative new technologies and market services.
- Faster decarbonisation from enabling higher penetration of renewables.
- Enhances security of supply from enabling appropriate technical standards for a high renewable energy system.
- Increased competition from better functioning more accessible market.

As an example, the recent BEIS Smart Systems and Flexibility Plan⁴ suggests that customer savings from increased flexibility resources will amount to c£10 billion per annum by 2050. It is likely that this will not be achieved without an effective code governance process.

E: IMPLEMENTATION OF OPTIONS 1 AND 2

20: Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?

³ <https://policyexchange.org.uk/publication/governing-power-improving-the-administration-of-the-energy-industry-in-great-britain/>

⁴ <https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021>



The consultation outlines a potential timeline to implement the proposals, including early initiatives by Ofgem to work in consultation with stakeholders to develop elements of the reforms that do not require primary legislation. These could include code changes required for the new institutional governance framework, the licence conditions for the code management function, and options for code consolidation and implementation. It is anticipated that code consolidation could begin in 2024 under option 1, or in 2026 under option 2.

We welcome that implementation plans are being developed and would urge that key design decisions are taken as soon as possible. We support the choice of option 1 which will deliver the benefits we have outlined in our above responses as well as an earlier delivery timetable and realisation of benefits.

As far as wider developments are concerned, we suggest that the need for change is growing increasingly urgent in an energy system that is rapidly transforming to one that will be dominated by renewable energy resources) with different operating characteristics and locations to fossil-fuel resources) and by increasing participation of data-enabled distributed energy resources. The energy vectors of electricity, transport and heat are integrating and presenting new market dynamics. Above all, the pace of change is growing. Market rules will need to be increasingly responsive to these changes.

We think there is one important recent industry development that should be taken into account, namely the consolidation of electricity and gas matters in the SEC and REC. In our view, this is a positive consolidation development in that it provides a simpler and more accessible interface for customers and suppliers. We think there is merit in considering how this consolidation of gas and electricity codes may also be applied elsewhere in the code and central delivery landscape.

In summary, we suggest that the reforms should take account of the need for rapid change, and also seek to expand upon the simplification and accessibility benefits already being gained by consolidating electricity and gas retail and smart meter codes.

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

The consultation suggests that the main risks to delivery of these reforms could be from tendering delays associated with tendering under option 1 and negotiations with National Grid under option 2. A key uncertainty will be the unknown issues that arise out rapid industry transformation. Furthermore, it is possible that a change to primary legislation may be required.

We agree these are key risks and uncertainties which need to be addressed. As far as tendering processes are concerned, we would suggest these are no different from processes routinely performed in both public and private sectors. The key to securing a successful tendering outcome will be to design a transparent, fair process that will attract the best applicants and incentivise them to deliver the required outcomes.

We would suggest that there is an additional risk that may occur during the transition to a new regime in that current performance improvements are put on hold and market participants do not receive these benefits



until the new structure is in place. In our March 2021 thought leadership paper, we suggested several no-regrets initiatives that could be pursued under the current framework to improve accessibility for all market participants. We recommended:

- **Simplification** – improve how participants engage with codes e.g., common web portal.
- **Transparency** – enhancing transparency and access to market data and decision-making.
- **Digitalisation** - create a common platform for market rules and compliance.
- **Compliance** – create efficient compliance regimes appropriate for the risks involved.

We would suggest that these initiatives are cross-cutting and needed under all possible future reform models.

F: NEXT STEPS

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

The implementation of these code and governance reforms will enable the BEIS/Ofgem objectives to accommodate a growing number of market participants, by making it easier for any market participant to understand the rules and participate in energy markets.

These initiatives should help to remove any potential barriers to people who share a protected characteristic from participating in energy markets, either on their own account or through other market participants that are addressing their needs.

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

We suggest that the consultation should take full account of the needs of future energy market participants alongside those expressed by the existing market participants. Future energy markets will increasingly be two-sided markets where consumers participate in markets with their own energy resources alongside large-scale energy producers and suppliers.

Gemserv has extensive experience of engaging with a wide range of existing and prospective market participants. These include prosumers, EV owners, and developers of new technological or business solutions. We suggest that the code industry reforms will benefit a wide range of new market participants who may not yet be able to respond to this consultation. As the likely main beneficiaries of these reforms, we suggest that it is important that these views are taken into account.