

Ofgem Energy code reform: second implementation consultation

Citizens Advice response



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Summary

We welcome the majority of the proposals within the second code reform implementation consultation. We have made additional recommendations for certain of the proposals below but wanted to highlight the following:

- The currently-open Joint Department of Energy Security and Net Zero and Ofgem consultation on [‘Energy Code Reform: Consultation on Code Manager Licence Conditions and Code Modification Appeals to the Competition and Markets Authority’](#) refers to an objective for openness and transparency for the Code Manager within the licence regime, however, this principle should also apply to all operations of the Code Manager, the Stakeholder Advisory Forum (SAF), and any subcommittees or Performance Assurance Boards (PABs). We recommend that the codes and Terms of Reference of these bodies should include an objective for open and transparent governance as far as is practical. We expect these bodies to publish their decisions with explanations as well as to publish the details of other governance activities e.g. through minutes of meetings.
- The changes to codes and code manager governance are substantial. The role and expected activities of Ofgem are likely to be equally substantial in facilitating and driving these changes. Sufficient resources need to be provided to Ofgem to enable an efficient and effective transition to new code management bodies.

Section 2

Q1: Do you agree with our proposal to have in place a premodification process and the proposed roles and responsibilities in this process?

Yes, we support a consistent pre-modification process across all codes and the intended roles of the forum with the code manager as chair. We support the ability of the proposer of the issue to request that the code manager takes on the issue to progress next steps in the process.

Q2: Do you agree with our proposals on who can raise modification proposals and the associated triage criteria?

Yes, we agree with the ability for only certain stakeholders to be able to raise a modification proposal. Using a list of stakeholders, which includes statutory consumer groups, appears to be a proportionate response to allow for innovation and change, while not having poor or ill-considered modifications proposed which will delay more useful modifications. Any stakeholder may raise an issue at the pre-modification stage which can be taken forward by the code manager if thought appropriate. This pre-modification process should allow a stakeholder to effectively progress modifications even if the proposer is not captured in the list of stakeholders able to raise a modification.

We support the ability of a non-code party, which has been refused a designation request to raise a modification, to appeal the decision to the Authority.

We note that the REC will be different from the other codes in allowing modifications to be proposed by any interested person in accordance with its current processes. We understand the rationale for this decision given the disruption that this may cause.

The harmonised triage criteria appears to be a sensible list of items that will avoid pointless or unlikely to be successful proposals from proceeding. The process includes that the code manager consults with the SAF, which appears to be a suitable safeguard.

Q3: Do you agree with our proposals on when modifications proposals are deemed as withdrawn; i) if a code manager doesn't take ownership and ii) if the proposer does not engage in the process or acts vexatiously.

The requirement for the code manager to consult, and take into account, the views of the SAF when considering withdrawal of a modification proposal appears to be an appropriate safeguard to the process. We recommend that there is a requirement to provide written reasons for withdrawal in all circumstances and not only where the code manager refuses to take on the proposal.

Q4: Do you agree with our proposed roles and responsibilities in determining the materiality and priority of a modification proposal?

Yes, we support the proposals outlined in the consultation. We support that code managers will now make these decisions along with the requirements to consult with their SAFs and to publish outcomes.

Q5: Do you agree with our proposals on cross-code working; i) to use the cross-code working arrangements in the Retail Energy Code as the basis of future cross-code working and; ii) any improvements that could be made to the cross-code process.

Cross-code coordination is an important element of code reforms. We support the proposed use of the REC cross-code arrangements as the model and the proposed use of TORs of the Cross-Code Steering Group as the basis of the new cross-code group. We also welcome the proposal to have a lead change code body where a change affects more than one code.

Q6: Do you agree with our proposal on how a code manager should decide the need for a workgroup to develop a modification proposal?

We agree that code managers should decide the need for a workgroup plus the default position of a workgroup to discuss the modification proposal. We welcome that the need for a workgroup can be dispensed with if the issue and solution are clear but that this is justified by the code manager. We also support the ability for the code manager to establish standing working groups and other working groups as needed. Each code has its own particular requirements and this flexibility in approach will be needed to fulfil a code's functions.

Q7: Do you agree with our proposals on alternative modifications; i) who can raise them and ii) a limit on their number.

We support the proposals as outlined. It should also be made clear that when a modification has alternative solutions the decision-maker (code manager or the Authority) is able to select their preferred solution from the options presented

even if the SAF-recommended solution (or the code manager recommendation for an Authority-only decision) is different.

Q8: Do you agree the default should be that modification proposals are consulted on once?

We believe that a default of one consultation appears reasonable but support the ability of the code manager to undertake further consultations. It is evident that some modifications evolve after the first consultation and further solution options or evidence needs to be presented to parties and stakeholders for further opinions to be sought.

There should also be the ability for the code manager, after consultation with the SAF, to not seek a consultation. The type of issues for which this may be applicable could be 'housekeeping' matters e.g. where terminology in the code needs to be updated or typographic errors need correcting. It would not be a good use of resources nor efficient to require a default consultation for such modifications.

Q9: Do you agree with our preferred option (Option 2) to deliver these proposed changes?

We agree that a standardised method using template legal text to harmonise code modification processes (Option 2) would be beneficial to ensure consistency.

Q10: Do you agree with our proposals for the future of the Code Administration Code of Practice?

We have no objection to the proposal to remove the CACoP provided that the proposed cross-code forum (modeled on the REC Cross Code Steering Group) is established along with its coordination powers.

Section 3

Q11: Do you agree with our proposed SAF objectives?

We agree that the SAF should have an advisory remit beyond the modification process. We are aware of the variety of different activities carried out within each Code, many of which are non-modification activities.

We support the objectives including the aim to ensure that the code is given effect without undue discrimination between parties or any classes of party. We recommend that an additional objective is introduced so that the affairs of the SAF are conducted in an open and transparent manner as far as possible; this will allow appropriate scrutiny of SAF discussions and decisions.

Code subcommittees and Performance Assurance Boards should also be required to operate in an open and transparent manner.

Q12: Do you agree with our proposals for SAF membership?

We support the appointment of independent chairs for SAFs who would be independent from the code manager. We would welcome clarity on how the SAF chair is appointed.

Independent members may have value but it is not clear how they would be appointed, who would be appointing such independent members, nor how their value would be assessed. We would welcome clarity on these matters.

The SAF should be a balanced and representative body to ensure that industry and other stakeholders are appropriately represented.

We support Option 2 (nominations from code parties followed by elections) for the appointment of code party representatives. This will be seen to be a fairer, and open and transparent means to appoint representatives.

We can see that the proposal of appointing alternates by voting appears to be fairer and could open the work to those that may be unfamiliar with it, however, the alternate needs to work closely to support the main code party representative and we therefore feel that a direct nomination and appointment by the code representative party is more workable in practice.

We are aware that members of some codes have served for multiple terms and have extensive and valuable experience that is beneficial to the operations of a Code Panel. On balance, we support the term limits for members but trust that the appointed SAF independent members will have considerable and deep expertise to ensure that such knowledge is available.

We support the requirement for codes to have two statutory consumer advocates.

Q13: Do you agree with our proposals on how a SAF will operate?

We note the proposals for operation and support the following suggestions:

- Written undertakings by members to act impartially
- Resignation of SAF membership where a SAF member leaves their employment
- Voting on code modifications or other decisions. This practice works well in current Panel meetings and reveals unanimity or divergence of opinion.

Section 4

Q14: Do you agree with our preferred approach of conducting a case-by-case review of subcommittees in terms of delegated decision making and impartiality?

We support the case-by-case approach (Option 1) of reviewing subcommittees and their delegated responsibilities and impartiality. We are aware, from sitting on numerous code panels, that these subcommittees vary tremendously in task and responsibility and a blanket removal of delegations to the code manager may result in inefficiencies and risks in operation of the industry. Certain delegated roles are highly specialised (e.g. cyber security, or other technical aspects) and industry specialists are needed to input to these forums to ensure that the codes operate appropriately to protect the energy industry and consumers. The industry expertise needed to input to these subcommittees would be highly costly to replicate within the code manager, and value for money should therefore also be a factor in assessing the future operation of

subcommittees and whether their decision-making should revert to the code manager.

Q15: Do you agree with our proposals for the running of subcommittees, including that code managers chair and provide the secretariat in all cases? Consultation - Second consultation on the implementation of the energy code reform

We welcome the aim to have consistency in subcommittee operation across codes. We support code managers being responsible for chairing subcommittees, providing secretariat support and setting agendas.

Q16: Do you agree that the same approach we are taking for subcommittees should be applied to performance assurance boards or committees where these are already in place?

We would like to see consistency across codes for Performance Assurance Boards or committees wherever possible. We understand the reasonable approach to look at each code's Performance Assurance Board separately to assess requirements, but the principle should be to have consistency unless there is a material reason for divergence. Decision-making for these bodies should be held by the code manager.

There should be a regular process whereby breaches and actions for remediation are discussed across codes and with relevant stakeholders, such as Ofgem, to rapidly identify issues and to ensure a consistent approach.

Q17: Do you have any views on whether we should introduce performance assurance frameworks to the consolidated electricity technical code and electricity commercial code?

No response.

Q18: Do you agree with our preferred option of making the code manager decision maker for all code derogations?

We support a consistent approach across all codes with the code manager as the decision maker for code and sandbox derogations.

Q19: In terms of sandbox derogations, do you agree that in the long-term there should be a harmonised process across all codes? Do you have views on our options for how SAF members are consulted on sandbox derogation requests?

We support:

- A consistent process for sandbox derogations across all codes.
- The code manager to take such decisions following consultation with the SAF and Ofgem.
- All derogation requests to be put to the SAF and Ofgem for comment rather than the code manager choosing which derogations to consult upon. A consistent approach is preferable to different approaches for each derogation. Consultation with the SAF for each derogation would ensure that unforeseen issues may be identified by SAF industry and consumer experts which may not be appreciated by the code manager.

Q20: Do you have views on what works well within existing sandbox derogation processes? Or views on what should change?

No response.

Section 5

Q21: To what extent do you agree with the proposal to retain the existing code administrator cost recovery methodologies in the BSC and the REC? (Noting that appropriate consequential changes would need to take place)?

The current cost recovery arrangements appear to be transparent and reflective of 'usage'. We therefore support the retention of the existing methodologies for

the REC and BSC provided that any new charges (such as the MHHS programme, etc.) have similar transparent and coherent methodologies for cost recovery.

Q22. Are there any specific factors or concerns we should consider when carrying out the consequential changes required to implement the changes to the cost recovery mechanisms?

No response.

Section 6

Q23: To what extent do you agree with the proposed approach to issuing directions to responsible bodies for designated central systems, in particular the proposed consultation process?

We support the consultation process whereby any interested parties may provide their views. However, we would want to see the following information provided as part of the consultation:

- The consequential costs and the intended benefits of issuing such a direction. We note that Ofgem would consider whether cost recovery is able to be undertaken, however, there does not appear to be any cost/benefit analysis to be provided.
- Impact analysis on consumers and other interested parties.

Q24: Are there any factors we should consider when carrying out the consequential changes required to implement the power to direct responsible bodies for central systems?

We note that Ofgem intends to use existing safeguards to ensure any additional costs are reasonable and are cost-reflective. Despite these assurances, we would recommend that detailed costs and benefits, and impact analyses are provided at the consultation stage (see our answer to Q23.).

Section 7

Q25: Do you have views on our approach to allocating roles and responsibilities to the range of implementation activities?

The allocation of roles and responsibilities appears reasonable. We also believe that the proposals set out in relation to Q26 to Q28 appear comprehensive and sensible.

Sufficient resources will need to be allocated to Ofgem to enable its roles and functions to be carried out efficiently.

Q26: Do you have views on the completeness of the list of implementation activities, and how we expect to be assured of good outcomes?

No response.

Q27: Do you agree with our view on the responsibility individual stakeholders should have in readiness for the transition?

No response.

Q28: Are there specific ways we can facilitate timely industry readiness?

No response.

Q29: Do you agree with our proposed approach to the implementation and monitoring of the code manager candidate?

We support the more 'hands-on' approach by Ofgem in managing the process of new code manager appointment and implementation. Some codes and their current management are well-established and in a steady state while others will be newly established or evolving through consolidation. Therefore, an active response by Ofgem is needed to provide assurance on progression and to identify issues as soon as possible as well as to provide consistency.

Regular updates on progress to code panels will be essential to reassure stakeholders and for such stakeholders to provide constructive recommendations for further action, if needed.

Q30: Do you agree with the list of products proposed for the final assurance assessment to demonstrate compliance with the standard licence conditions?

We agree with the list of products as outlined in the consultation.

Q31: Do you agree with our proposals on code consolidation (including use of workgroups, and early proposals on the common contractual framework)

We support the proposals outlined for the use of industry expert workgroups and the establishment of the common contractual framework. We also support the management of the process by Ofgem including drafting of the code changes needed.

Section 8

Q32: Does our plan capture the critical path activities for a 2026 go-live for the phase 1 codes? If not, what is missing and how would it improve the deliverability of our plan?

The plan appears to be appropriate to meet the go-live for 2026 and we support the flexibility to use lessons learned from the Phase 1 codes process to amend, if needed, the plan for Phase 2 and Phase 3 codes.

Q33: Are there activities in the business-as-usual timetable for the codes you believe are important to build into our plan? What are they and why?

We believe that sufficient resources should be made available within each code to be able to progress standard priority code modifications alongside higher priority changes. The resources should allow for modifications that may be valuable to industry or consumers to proceed without undue delay.

Identification of low risk and administrative 'housekeeping' changes should be made at an early point to enable modifications to be processed speedily.

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