



Government response to the consultation on Energy Code Reform



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Ministerial Foreword

Our energy system is at a transformative moment. We need fundamental change to ensure we match the scale of our net zero ambitions, set out in our recent Net Zero Strategy, but also to implement this change efficiently so that consumer bill payments are kept as low as possible. This requires a shift to a more ‘whole system’ approach, coordinating the ever more integrated electricity and gas systems, both onshore and offshore, while looking ahead to the emerging markets of hydrogen and Carbon Capture and Storage. And it is necessary that the rules and governing institutions of the system adapt and evolve to support and enable this transition.

The Russia/Ukraine conflict only underlines the serious need to transition and decarbonise our energy system and focus on generating cheaper, cleaner power in Britain. This is not only vital for reaching net zero but also to our national security, and to becoming energy independent in the long-term.

The consultation which we undertook over the second half of last year has confirmed the view that a new, independent Future System Operator (FSO) can play a vital part in helping us meet these challenges. In this consultation response we set out our commitment to proceed with the creation of the FSO, as an expert, impartial body with an important duty to facilitate net zero whilst also maintaining a resilient, and affordable system. We will establish the FSO in public ownership, in a way which ensures it is truly and properly independent – not only of asset ownership and other commercial energy interests, but also from day-to-day operational control of government. As a trusted and expert body at the centre of the gas and electricity systems, the FSO will play an important role in coordinating and ensuring strategic planning across the sector. It will have an ambitious long-term vision and provide independent advice to government and Ofgem. I am hugely encouraged that both energy industry participants and consumer groups have broadly endorsed these changes and responded to our consultation with similar levels of ambition.

We acknowledge that this will affect the current electricity and gas system operators, owned by National Grid, because the FSO would be founded on some of the existing roles and capabilities within these organisations and will involve a transfer of ownership. National Grid has played a central and integral part in the energy system since privatisation, and the networks they own will continue to be a vital aspect of our resilience, affordability and decarbonisation goals. I welcome the engagement National Grid has shown with this work to date and look forward to continuing this important dialogue further in the coming period as we transition to the new arrangements.

Alongside the FSO, in our reform of energy codes we are further progressing this move towards net zero by ensuring clear strategic direction of codes. Acknowledged by the wide stakeholder support for our preferred consultation option, we will be empowering Ofgem with new strategic functions for codes, including the ability to establish and regulate (by licence) code managers.

These are significant and exciting step changes in our approach to governing the energy system and will ensure we can drive forward the delivery of net zero for the benefit of consumers, the economy and the environment. Together with Ofgem, I am pleased to set out in this consultation response our position for how this can be achieved.

Jonathan Brearley Foreword

The imperative to transition to net zero energy has never been more urgent. The energy sector is changing rapidly, and it must be supported with reforms to the institutional framework that governs the sector. The industry codes introduced following privatisation changed the way the industry operated - and to meet today's challenges, we must take a similarly innovative approach.

Our priority is to protect the interests of consumers. The reforms set out in this response are key to ensuring that the energy codes can respond to the significantly changing sector, enabling change to be delivered more efficiently and effectively in the interests of consumers. The new framework aims to ensure that new technologies, new business models and new ways of managing the system are supported by the energy code arrangements which underpin the market's operation.

We welcome the opportunity to take on new strategic functions for the energy codes. We recognise that this new role will present fresh challenges and we look forward to working alongside the industry to secure an effective transition to a new codes framework.

Alongside code governance reforms, we are moving forwards with the government's proposals for a Future System Operator. This new system operator will be fully independent, taking on a wider remit in the drive towards net zero, and focussed on the interests of consumers.

I am immensely pleased by the positive response of industry and consumer groups towards our consultation proposals. The next steps following this consultation response will need to involve a wide range of stakeholders, as we bring these changes to life.

Ofgem and BEIS will bring industry together on this, including beginning work to shape the new licensing and code arrangements necessary to deliver smooth, rapid change. We will work closely with stakeholders to develop a framework which works better for all industry participants, providing an opportunity for all voices to be heard. This consultation response sets out the first steps towards delivering a new approach to code governance and a framework that can realise the benefits of net zero.

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1. Introduction

1.1. Context and consultation overview

On 20 July 2021, BEIS and Ofgem launched a consultation on the design and delivery of energy code reform,¹ which built on the BEIS-Ofgem consultation launched in 2019 on the same topic. This document forms the government response to both consultations and also sets out some high-level details on our legislative proposals.

2019 consultation

In our 2019 consultation,² we set out four proposed areas of reform for code governance: providing strategic direction; empowered and accountable code management; independent decision-making; and code consolidation and simplification. We then suggested that these reform areas could be delivered by two potential models: a strategic function performed by a 'strategic body' and a separate code manager function; or an Integrated Rule Making Body (IRMB), where strategic and code manager functions are combined in one organisation. We also put forward potential options for where the strategic body or IRMB would best sit, seeking views on Ofgem, the Electricity System Operator (ESO), and a potential new independent body.

Most respondents to the 2019 consultation agreed with our four areas of reform and with our proposal to introduce a strategic function and a code manager function. Roughly three times as many respondents were in favour of having a strategic body with separate code managers than an integrated rulemaking body. Most respondents identified Ofgem as their preference for who should take on the role of the strategic function. We published a summary of responses in December 2020.³

2021 consultation

In our 2021 consultation, we consulted on more detailed proposals for reform. The main question asked by this consultation was which of two **institutional governance options** we should take forward: our preferred option of designating Ofgem as a strategic body over the codes alongside licensed code manager(s) (Option 1); or our alternative option of giving the

¹ Design and delivery of the energy code reform: consultation, BEIS, July 2021.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004005/energy-code-reform-consultation.pdf

² Reforming the energy industry codes: consultation document, BEIS, July 2019.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828302/reforming-energy-industry-codes-consultation.pdf

³ Reforming the energy industry codes consultation: summary of responses, BEIS, December 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943756/reforming-energy-code-summary-responses-.pdf

Future System Operator (FSO) the role of an IRMB (Option 2).⁴ Regardless of which option was chosen, we proposed to include all 11 codes⁵ in the **scope** of our reforms, as well as specific central system delivery bodies and engineering standards.

The consultation also set out the **proposed roles and responsibilities of the strategic function**, with our key proposal being that the strategic function would develop a strategic direction for codes. Under Option 1, Ofgem would have the power to select and licence code managers, either by tender, licensing a built-for-purpose company or direct selection. Under Option 2, this power would not be necessary because the code management function would be integrated within the FSO.

We also proposed that the **code management function** would take on the roles currently played by code administrators and code panels, including decision-making, while continuing to draw on the expert advice and experience of **stakeholders** through new stakeholder advisory forums. However, we noted that further consultation and engagement on many of these proposals would be necessary before we could take a decision on the finer details.

In addition, we included proposals on **appeals and compliance**, potential **operating models** for both institutional governance options, and some preliminary thinking on how we might **implement the reforms**.

1.2. Summary of stakeholder engagement and responses received

The consultation was published on gov.uk and on the BEIS Citizen Space consultation hub on 20 July 2021 and closed on 28 September 2021. We also ran a virtual engagement event on 5 August 2021, where we presented and discussed the proposals with more than 100 interested parties, including code parties, code administrators and trade associations.

We received 56 responses to the consultation from a range of organisations, including large and small code parties, code administrators, system bodies, trade associations and interested charities. A clear majority of all respondents agreed with our preferred option, where Ofgem would become the strategic body and establish separate code managers. Our proposals on the roles and responsibilities of the strategic and code manager functions were also supported, with many respondents expressing a desire to engage further on elements of our proposals that will be subject to future consultation.

Given the large number of responses to our consultation, this document focuses on the most common or relevant points for each consultation question, rather than summarising every point

⁴ In parallel with the code reform consultation in July 2021, BEIS launched a consultation on the FSO (<https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>), proposing to bring together the Electricity System Operator (ESO) and the forward-looking elements of the Gas System Operator (GSO) together in a new entity, which will enable the systems to be transformed to ensure the energy system drives progress towards net zero. In the code reform consultation, we stated that our alternative option of giving the FSO the role of the IRMB would depend on such an FSO being established.

⁵ There are now ten codes due to the merging of the SPAA and MRA into the REC.

made. We have, however, considered and given due weight to all responses when developing the details of our proposed reforms.⁶

We do not use the exact or absolute numbers of respondents in this document, mainly because the number of respondents to each question varied. Instead, we use the following categories:

- “most” is used when referring to more than 50 per cent of those that provided a response to the question;
- “many” is used when referring to 21-50 per cent of those that provided a response to the question;
- “some” is used when referring to 11-20 per cent of those that provided a response to the question; and
- “a few” is used when referring to up to 10 per cent of those that provided a response to the question.⁷

This is a joint consultation response document from BEIS and Ofgem. We issued the consultation as a joint document because we recognise that the potential benefits to industry and consumers of an agile system that supports innovation are significant, and that BEIS and Ofgem have distinct but complementary roles in meeting this objective. The joint consultation means BEIS and Ofgem have been working closely together to develop a coherent code reform policy position, taking into account our respective responsibilities over different parts of the legal and regulatory framework.

This response document sets out a number of decisions in relation to the energy code framework and its governance. Where decisions have been made, these have received Ministerial approval and require legislation to enable them. However, not all of the design features of this new governance framework have been decided. BEIS and Ofgem will continue to work together, and with industry, to further develop the detailed design of these reforms, such as code manager licence conditions and the role played by stakeholder advisory forums. This policy will be enabled across a range of mechanisms, such as secondary legislation, licences, and codes. They will therefore be subject to ongoing engagement with stakeholders, and to a range of decision-making processes.

This is a joint consultation response document from BEIS and Ofgem so the use of ‘we’ throughout refers to both parties collectively. Where a statement made in this document applies to only one of us, we have identified this explicitly below.

⁶ All non-confidential responses will be published on Ofgem’s website

⁷ For further information on how we analysed the responses, please see Annex A

1.3. Overview of decisions

We have decided to implement our preferred option (Option 1), where Ofgem will be given new strategic code functions, including the ability to establish and regulate (via licence) one or more code manager(s). This decision is expected to result in a long-term net benefit for industry and consumers, with no adverse material impact on consumer energy bills.⁸

For the sake of regulatory and legislative simplicity, this decision will result in an expansion of Ofgem's existing functions rather than the creation of a distinct entity known as the 'strategic body'. This means that the strategic code functions will constitute new roles for Ofgem, rather than a new body that Ofgem is taking on.

The scope of the new governance framework will extend to the 10 current electricity and gas codes, as well as relevant central system delivery bodies and engineering standards. We have decided not to license central system delivery bodies at this point in time but future changes in circumstance may warrant further consideration of this matter.

We will be expanding Ofgem's functions by providing it with the following new strategic code functions:

- **Publishing a strategic direction:** Ofgem will be required to publish an annual strategic direction to set out its vision for how the codes should evolve over the following year, which the code managers will then implement. The contents of this document will need to take into account relevant material from the latest Strategy and Policy Statement (SPS), which will be published by BEIS, as well as consider the implications of recent market developments and any advice provided by the Future System Operator (FSO). It will also be subject to public consultation.
- **Making direct code changes:** Ofgem will have the ability to change the codes directly in a limited range of circumstances where the normal processes would not be appropriate: where the change is urgent; where the relevant code manager may have an adverse conflict of interest; where the change is particularly complex; or where the change is related to code consolidation. To limit this power, all direct code changes will be subject to public consultation, potential veto by the Secretary of State, and a right of appeal to the Competition and Markets Authority (CMA).
- **Licensing code managers:** Ofgem will have the power to select and license a code manager for each in-scope code or engineering standard. When using this power, Ofgem will be able to select a code manager via a range of selection options, both competitive and non-competitive. We anticipate that these regulations will include several options, such as direct selection of a suitable entity or the creation of a built-for-purpose company, as well as detailed criteria regarding when each option should be used.

⁸ See the impact assessment published alongside this consultation response for details of the relevant analysis: <https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>.

- **Directing system delivery bodies:** Ofgem will also have the power to issue directions to in-scope central system delivery bodies to ensure that they do what is required by a code or what is reasonably necessary to facilitate the ongoing efficient operation of the codes.

In addition to taking on these new functions, Ofgem will continue to play its existing role in code governance, such as by being responsible for approving material code modifications.

BEIS has decided not to allow Ofgem to delegate these new functions to third parties or to enable it to redesignate all of its new functions to an alternative organisation without new primary legislation. However, BEIS will be granting the Secretary of State the power to permanently transfer the duty to publish a strategic direction from Ofgem to the FSO, subject to public consultation, if it emerges that the FSO is better placed than Ofgem to exercise this specific strategic function in future.

We have also decided to replace code administrators and code panels with a class of newly licensed code manager, who will be responsible for playing an enhanced role in the code change process and delivering the strategic direction set by Ofgem. Ofgem will carry out further consultation on the roles and responsibilities of code managers, which will provide stakeholders with the opportunity to input on these details before they are implemented.

The transition from the current governance structure to the new governance structure will take place on a code-by-code basis, with a code considered to have 'gone live' once its first code manager has been put into place. To facilitate this transition, Ofgem will be granted powers to modify relevant codes and licences, as well as to modify or terminate contracts, for an anticipated period of up to seven years from the passage of legislation. The precise sequencing of this process will be dependent on the outcome of further consultation by Ofgem on approaches to code consolidation, which will also fall within the scope of its transitional powers.

Ofgem will also be granted a power to establish transfer schemes for the purposes of facilitating the transition from code administrators to code managers, with all such schemes subject to consultation with the affected parties and approval by the Secretary of State.

1.4. Next steps

The proposed reforms will require primary legislation to implement, which Government plans to introduce when Parliamentary time allows. Some of these proposals will also rely on provisions set out in secondary legislation, the details of which we will be developing over the course of the next year.

We cannot yet be certain of timings for any legislation. Therefore, it is not yet possible to set a firm timescale for the overall transition to the new code governance framework. However, if legislation were to be enacted at the earliest opportunity, we might expect Ofgem's new strategic functions to be established around 2023 (although the majority of these functions would not 'go live' in relation to a specific code until after the initial code manager had been

appointed). Any changes to licences, codes and contracts required to facilitate the transition to the new code management regime would then follow, as would any steps towards the implementation of code consolidation.

In addition to these legislative measures, the implementation of code reform will also require Ofgem to take the lead on transitional arrangements. This will involve further consultation on detailed elements of code reform, such as code manager licence conditions and the roles played by stakeholder advisory forums, as well as the development of a high-level plan for code consolidation. Engagement on these topics will begin this year.

To provide further clarity on next steps, Ofgem will set out more details on its intended approach to implementation, transition, and stakeholder engagement in an open letter later this year. BEIS will also continue to engage with stakeholders moving forward, both to seek input into the drafting of required secondary legislation and to ensure a smooth transition to the new governance framework.

2. Scope

2.1 Question 1 - Licensing of a code manager for engineering standards

To what extent do you agree with our proposals on the licensing of a code manager for engineering standards?

What we said

Engineering standards are requirements specifying how the physical electricity and gas infrastructure must be built, maintained, and operated. In the consultation, we proposed that the Distribution Code, Grid Code and Security and Quality of Supply Standard (SQSS), and their subsidiary documents, should be included in the scope of our reforms by being granted their own code manager(s), as we consider them closely linked to the delivery of our stated objectives of code governance reform. We proposed that the full roles and responsibilities of the code manager function would also apply in this instance, including powers to propose code changes and to take decisions on non-material code changes.

What you said and our response

What you said: Most respondents either agreed or strongly agreed that the electrical engineering standards identified in our consultation should be overseen by a licensed code manager. Respondents suggested that these standards will be key to the delivery of net zero objectives. By contrast, one respondent argued that it was unnecessary to appoint a licensed code manager to oversee engineering standards.

Our response: Ofgem will appoint one or more licensed code manager(s) to oversee the in-scope engineering standards identified in our consultation, with the exact number dependent on the outcome of code consolidation. Building on the recommendations of the engineering standards review, we consider that the appointment of a code manager will enable more coordinated and efficient evolution and adaptation of these standards over time.

What you said: Among those that voiced support for bringing electrical engineering standards into scope, some respondents suggested that their support was contingent on the code manager having appropriate technical knowledge and expertise to be able to perform its role effectively. By contrast, one respondent cited doubts about the code manager being able to harbour such knowledge and expertise as their argument against the electrical engineering standards being brought into scope of our reforms.

Our response: We note the comments from respondents around ensuring that the code manager has a suitable level of skill and expertise to effectively manage the engineering standards. To achieve this, we intend the processes established for appointing code managers to be designed in such a way as to ensure that the licensed code manager(s) for engineering

standards is sufficiently equipped for the role, including in relation to technical expertise and knowledge.

What you said: In relation to other engineering standards, some respondents suggested that the existing gas engineering standards should be included within the scope of our reforms, while a few respondents supported these standards being kept under review by the strategic body and possibly brought into scope in future. Among those in favour of the gas standards being in scope, respondents argued that these standards have an impact on the interactions between network licensees and their customers. Conversely, a few respondents expressed a preference for gas engineering standards to be kept separate, suggesting that the current governance arrangements in place for these standards are effective.

Our response: We note the views from some respondents that the scope of our reforms should be extended to include existing gas engineering standards. Our proposals for engineering standards were built on the recommendations of the engineering standards review, which focussed on electricity engineering standards. The review noted that there are other standards, such as those overseen by the British Standards Institution (BSI) and the Institution of Gas Engineers and Managers (IGEM), which do not have a direct impact on consumers, and for which the current arrangements for their management and operation have proven to be successful. We do not propose at this stage to bring any other engineering standards into scope, other than those set out in the Distribution Code, Grid Code, and SQSS, and their subsidiary documents.

What you said: A few respondents voiced support for the FSO having a key role in the development of engineering standards, citing the existing levels of knowledge and expertise currently held by the system operator in relation to these standards. However, one respondent advised against the FSO taking on the code manager role for standards due to potential conflicts of interest.

Our response: We recognise the level of expertise and knowledge currently held by the system operator in relation to transmission engineering standards. As set out in our consultation, the FSO could in principle be licensed as a code manager for one or more codes and in-scope engineering standards. However, potential conflicts of interest would need to be carefully considered before any such licence were granted. We also recognise that the FSO would need the proper skill set in distribution electrical engineering if it were to undertake the code manager role for distribution engineering standards. Where the FSO is not appointed as the code manager for these standards, we anticipate that it will have a role in providing advice and insight to ensure a whole system approach is taken. This may include providing advice or input into the ongoing management and development of in-scope engineering standards. The extent of any such role will be decided in future.

2.2 Question 2 – Regulation of central system delivery bodies

What are your views on how central system delivery bodies should be regulated by the strategic function?

What we said

In our consultation we proposed that the four central system delivery functions identified below should be captured within the scope of our reforms:

- the central system delivery function for systems underpinning the gas industry arrangements (including those contained in the UNC) that is currently undertaken by Xoserve;
- the central system delivery function for systems underpinning the electricity industry balancing and settlement arrangements that is currently undertaken by Elexon;
- the central system delivery function underpinning the rules and requirements for service delivery for smart metering that are under the SEC, and;
- the central system delivery function underpinning the DTS, which carries data that is used in the change of supplier process.

We also said that we anticipate that the Central Switching Service will be brought into scope once it is in live operation. These central systems play an important role in the current governance framework and we consider them to be vital to the future development of the system. In the consultation, we noted that our reforms provided an opportunity to consider further ways in which lines of accountability between central system delivery bodies and their users could be strengthened. We also proposed to give the strategic function powers to direct central system delivery bodies for the purposes of delivering the strategic direction, including where the central system delivery functions are carried out by different persons than those carrying out code manager functions.

What you said and our response

What you said: Most respondents expressed a desire for better coordination between code management and system delivery so that code and system changes are delivered in a timely and efficient manner. However, respondents had mixed views on the best ways of achieving this. Some respondents were supportive of our proposal to give the strategic body power to direct central system delivery bodies, arguing that this would ensure the effective delivery of the strategic direction for codes. Many respondents were supportive of system delivery becoming a licensable activity, with many of them arguing that licensing establishes clear lines of accountability and would give the strategic body greater oversight and control of the performance of central system delivery bodies. Further, a few of those respondents in favour of licensing also suggested that it would allow for good performance to be incentivised and would build more competition in the delivery of central systems.

Alternatively, many respondents were against licensing central system delivery bodies, although fewer respondents were opposed to licensing than were in favour of it. Respondents

who were opposed to licensing argued that it would introduce a disproportionate level of regulatory oversight over central system delivery and would not achieve the desired outcomes. Respondents also argued that it may inhibit innovation where the spending of these bodies needs to be justified through a licence mechanism.

Our response: In line with our consultation proposals, we intend that the four central system delivery functions identified will be captured within the scope of our reforms. As stated in our consultation, we also anticipate that the Central Switching Service will be included in scope once it is in live operation. In addition, as part of implementing market-wide half-hourly settlement (MHHS), in December 2021 Ofgem published a decision that industry should develop an 'Event Driven Architecture' (EDA) to enable the Target Operating Model for MHHS. Ofgem is now consulting on the ongoing governance, funding and operation of the MHHS EDA, and expects to publish its decision in April 2022. Given the anticipated role of the EDA, there may be merit in considering whether it should be within the scope of these reforms in due course. However, Ofgem would engage further with stakeholders ahead of any changes in this area.

We agree with the majority view offered by respondents that better coordination is needed between code managers and central system delivery bodies to ensure the effective and efficient development and delivery of code and system changes. To this end, we intend to place licence obligations on the code manager(s) to cooperate with the central system delivery bodies for the purposes of delivering the strategic direction. Furthermore, we have decided to give Ofgem, as part of its new strategic code functions, the power to direct central system delivery bodies for the purposes of ensuring that these delivery bodies do what is required of them by a code or what is reasonably necessary to facilitate the ongoing efficient operation of the codes. These directions will be enforceable under Ofgem's existing enforcement powers (as a "relevant requirement" under the Gas Act 1986 and the Electricity Act 1989).

We note that many respondents supported licensing of central system delivery bodies, and the views offered in support of this option that licensing would establish clearer lines of accountability and oversight. We do not consider such licensing arrangements to be appropriate at this time and as such do not intend to pursue this option through this review. As set out above, our proposed reforms seek to achieve enhanced oversight of central system delivery bodies, and improved coordination between central system delivery and code management, by giving Ofgem the power to direct these bodies for specific purposes. Nevertheless, we are aware that future changes in circumstance may warrant further consideration of this matter, and we have therefore not discounted possible licensing of central system delivery bodies in the future. Establishing any such licensing framework would require new primary legislation, and we would expect to engage with stakeholders before any changes were implemented.

What you said: More respondents favoured combining code management and system delivery than keeping the two functions separate, although many respondents presented arguments for either option. This split in views was also present among respondents who expressed support for licensing system delivery bodies, with a few respondents arguing for a

combined licensable activity, and a few favouring establishing separate licences for code management and system delivery.

Arguments in favour of combining the functions included that this would drive efficiencies between the two activities in terms of progressing code and system changes. Alternatively, arguments in favour of establishing separate functions included that separation would make it easier to set clear performance targets and allow poor performance in one activity to be identified and addressed. Further, one respondent argued that granting different licences for code management and system delivery would ensure a more competitive selection process for both roles.

Our response: We note the contrasting views on whether central system delivery should be treated as a standalone activity or whether the same legal entity should undertake both central system delivery and code management functions. We consider that decisions in this space are best assessed on a case-by-case basis by Ofgem and therefore intend our reforms to retain, but not mandate, the option of a single legal entity undertaking both functions.

What you said: Finally, one respondent sought further clarity on the impact that our reforms would have on the Alt HAN Arrangements under the SEC, while another respondent suggested that more detail was required on which parts of the DTS would be included within the scope of our reforms.

Our response: As set out in our consultation, we intend that code managers should oversee most of, or all, decisions currently made by code panels. However, we note that there may be some decisions that are better placed with other forums, which could include the Alt HAN Forum. We intend our reforms to retain flexibility for Ofgem to assess any such decisions on a case-by-case basis and, where necessary and appropriate, to allow the code manager to be able to delegate decision-making responsibility to other forums. With regards to the DTS, we note comments from one respondent that this system supports a number of industry processes that are set out in the codes, in particular the REC and the BSC. We have therefore decided to include all DTS activities required by in-scope codes within the scope of our reforms. In practice, this means that it will be possible for Ofgem to issue directives to the central system delivery body responsible for the DTS, as outlined above, to ensure that it does what is required of it by a code or what is reasonably necessary to facilitate the ongoing efficient operation of the codes.

3. Roles and Responsibilities

3.1 Question 3 – Roles and responsibilities of the strategic function

To what extent do you agree with the detailed roles and responsibilities of the strategic function as set out in the consultation document?

What we said

In the 2021 consultation, we proposed establishing a strategic function with the ability to oversee code changes across the sector and related IT systems. We set out the roles and responsibilities of the strategic function as:

- developing and publishing a strategic direction for code managers, which would include identifying and analysing how the Government strategic vision for the energy sector and related policy priorities, and current and future trends in the energy market, create a need for changes across the code landscape;
- overseeing and monitoring the code change process;
- holding code managers accountable through licences; and
- delivering code changes, including the ability to develop or coordinate the development of the details of code changes, and to directly change the codes (with prior consultation of code manager and other stakeholders, where appropriate).

We said that most roles and responsibilities of the strategic function and the code manager function would be very similar for option 2, where the FSO would take on the role of the IRMB. However, we noted that certain roles might need to differ under this option, either to account for Ofgem's duties as the regulator or to manage potential conflicts of interest for the FSO.

What you said and our response

Theme 1: Overall arguments raised in relation to our proposed approach

What you said: One of the main points raised by respondents in relation to our proposed approach was that the strategic function needs to be appropriately resourced both financially and in terms of staff to exercise the proposed roles and responsibilities successfully. Some respondents considered appropriate resourcing crucial to develop the skills required to successfully fulfil the role of the strategic function; be able to engage with stakeholders; provide advice and direction as required during the development of change proposals; and make fast decisions at the end.

Our response: We agree that adequate funding and staffing of the strategic function is crucial to the success of code reform and that Ofgem would require additional resources, including additional expert staff, to exercise its strategic code functions successfully. As set out in the

impact assessment, we expect Ofgem to require an additional 30 more staff, although this number may need to increase over time.

What you said: Some respondents mentioned that they considered the proposed roles and responsibilities for the strategic function crucial to make industry more agile and therefore able to adapt efficiently, effectively, and at speed, including alleviating current market issues.

Our response: We believe that a strategic direction set by Ofgem will provide clarity to industry over the strategic policy context in which the strategic function will take decisions, increasing transparency as compared to the current process. This will help code managers to prioritise code changes so that critical change can be delivered faster, which will also allow industry to adapt to change more quickly.

What you said: A few respondents noted that while the development of codes should take into account evolving Government policy and be compliant with legislation, the roles and responsibilities of the strategic body and code managers should also be considerate of: prioritising the safety, security, reliability and economic operation of the energy networks, systems and services in the decision-making processes; and of promoting effective competition and providing value for money to consumers.

Our response: We agree that setting and following a strategic direction should not happen at the expense of maintaining the safety, reliability, and economic operation of the energy system, networks and services. Ofgem's principal objective is to protect the interests of existing and future consumers in relation to electricity and gas, and it will be bound by this objective when exercising its strategic code functions. Under the Electricity Act 1989 s.3A(5) (and equivalent provision in Gas Act 1986), for example, among the many factors which Ofgem must take account of when carrying out its functions are what it considers is best calculated (1) to promote efficiency and economy on the part of licence holders; and (2) to protect the public from dangers arising from the generation, transmission, distribution and supply of electricity. We have also decided to introduce requirements on Ofgem to consult stakeholders when setting the strategic direction (see theme 2 below) and when making direct changes to codes (see theme 5 below).

What you said: A few respondents saw code reform as an opportunity to put a clear net zero mandate on Ofgem (this also came up as a response to question 10). One suggestion was to introduce a new statutory duty on Ofgem, explicitly referencing the net zero targets and requiring Ofgem to set out how it measures its progress as a facilitator of net zero (beyond the current principal objectives of protecting customers).

Our response: We acknowledge the suggestions for Ofgem's remit being reformed to focus on net zero. We consider that Ofgem's existing duty, to protect the interests of current and future consumers in relation to the reduction of greenhouse gases, is currently sufficient to allow it to take net zero into account. Ofgem already incorporates government's decarbonisation strategies, including net zero, into its regulatory work.

Theme 2: Responsibility of the strategic function to develop and publish a strategic direction

On the SPS and Government influence:

What you said: A few respondents explicitly said that they consider the SPS a useful mechanism to set long-term policy priorities and outcomes for the strategic body, although a few noted that questions around timelines and level of detail would be important to consider. A few respondents also said that the absence of an SPS, due to Government or Parliamentary processes, or the five-year interval between SPS reviews, must not lead to a slowdown or halt to energy industry change progression. It was noted that Ofgem and other governance bodies are able to function currently, incorporating decarbonisation goals into their decisions without explicit policy statements.

Our response: We believe that the SPS is the right mechanism to enable Government to communicate its vision for the energy sector to Ofgem on a regular basis. We would not consider the absence of an SPS to be problematic if this occurred. If no SPS were available, the development of the strategic direction would be guided by Ofgem's principal objectives, any advice from the Electricity System Operator/Gas System Operator or the FSO (depending on when the FSO comes online), and by consultation with stakeholders. The same principle would apply for the periods between SPS reviews. We are therefore confident that the strategic direction will be developed with major developments in the energy sector in mind.

What you said: A few respondents noted that Government influence over the strategic body should be strictly strategic and related to long-term goals rather than day-to-day operational decisions.

Our response: Government will set policy objectives through the SPS and any legislative proposals it brings forward following appropriate consultation. It will continue to preserve the independence of Ofgem in the exercise of its functions, including in respect of any operational decisions related to its strategic code functions.

On the strategic direction:

What you said: Some respondents said that transparent consultation with stakeholders will need to be a key part of all stages of developing and setting the strategic direction. It was also mentioned that the strategic direction should be subject to public consultation and not limited to responses from specific stakeholders. One respondent argued that, as the statutory consumer advocate in the energy industry, Citizens Advice should be specified as a stakeholder to be consulted during the process, and/or that Citizens Advice should play a specific advisory role. Another respondent argued that consulting with the Secretary of State and other stakeholders prior to publishing the strategic direction would seem inefficient and could incur further delays.

Our response: We consider consultation with industry and other stakeholders to be crucial prior to the publication of any strategic direction. Accordingly, Ofgem will be required to consult with any persons who are likely to be affected by the strategic direction before it is published.

This will include any interested parties (e.g., code parties, code managers, interested non-code parties, system delivery bodies, etc.); Citizens Advice and Citizens Advice Scotland; and the Secretary of State.

What you said: Respondents gave a number of reasons as to why they considered a strategic direction beneficial. These reasons included that a strategic direction would help address shortcomings in the current governance process; help deliver Government policy objectives like net zero; and help to align cross code modifications. One respondent argued that the strategic function needs to look forward to the next five to ten years to ensure industry and code managers can plan their activities and resources to support strategic change. Nobody explicitly argued against a strategic direction, although one respondent noted that if the strategic direction were too detailed it might risk defining potentially non-deliverable and time-intensive solutions before the necessary groundwork is undertaken.

Our response: We agree that the strategic direction will be useful to inform and instruct the code managers about what to consider and prioritise when changing the codes in the upcoming year. While the strategic direction will be published annually, this should not stop Ofgem from including a longer-term vision in the document if it considers this beneficial as context for industry or code managers. We expect that the points raised in the responses to the consultation will be addressed through the introduction of a strategic direction.

Theme 3: Oversight and monitoring of code change process

What you said: A few respondents noted that the strategic body should be more involved in the change process than Ofgem currently is and be able to give its view on code changes throughout the process. They argued that Ofgem do not currently comment on some proposals whilst they are in the development process, which leads to inefficiency and delayed decisions, and that a hands-on approach of the strategic body is vital to ensure that it is kept informed of the progress of changes and to give regular feedback, which could shorten the decision-making time. A few respondents argued that the strategic function should only become involved directly in the management and delivery of changes where the change does not meet, or is contrary to, the strategic direction.

Our response: We expect that by creating specific strategic functions for codes and ensuring senior oversight and adequate resourcing for these functions, it will be easier for Ofgem to engage with the code change process. The appointment of licensed code managers will also help to address these concerns, given that they will be directly accountable to Ofgem for delivering changes to the codes in line with the strategic direction.

Theme 4: Holding code managers accountable via licence

Responses relating to code manager licensing were distributed across different questions. For ease, we are addressing them all in this section under question 3. The majority of respondents did not explicitly comment on licensing code managers. However, opinions were split among those that did.

What you said: Many respondents (across questions 3, 4, 5, 6, and 12) commented explicitly on being in favour of licensing code managers. A few respondents argued that licences would allow the strategic body to ensure that codes develop in line with Government's wider vision for the future energy system, with a few other respondents arguing licensing would increase transparency of accountability and costs. One respondent noted that associated delivery contracts of code managers with their suppliers must be able to adapt in the same way if the licence changes. Another argument by one respondent was that licensing was the most flexible means for the code manager to anticipate and respond to the rapidly changing environment and for Ofgem to incentivise the right behaviours.

Some respondents (across questions 1, 3, 12 and 14) explicitly argued against licensing, stating that Ofgem lacks the skills and experience to hold code managers to account, and that moving the accountability of code managers from industry to the strategic body could lead to code parties having fewer incentives to engage and participate. One respondent said that whether or not licensing code managers was beneficial would depend on the code, and that further consultation with industry on options for control and supervision of code managers would be welcomed. One respondent noted that it is difficult to judge the proposals without having seen the code manager licence conditions. Another respondent cited an organisation that is licensed but, in their view, nevertheless does not perform well in customer survey results for its performance as a code administrator and that it would be more effective if industry and consumers would hold code managers to account.

Our response: Currently, not all code administrators are directly accountable to Ofgem. We consider accountability of code managers to Ofgem through a licence necessary to ensure code change is more strategic, proactive, and driven by Government priorities, with independence of decision-making. This arrangement will also incentivise good code manager performance. We think this is more appropriate than industry holding code managers to account, for example due to Ofgem's new strategic direction setting function.

However, industry will continue to play an important role in scrutinising code manager performance and informing any decisions Ofgem makes about code manager performance. This could include, for example, the ability to scrutinise proposed budgets, to engage in the code managers' decision-making process (including through the proposed stakeholder advisory forums – see question 5 below) and, where appropriate, to appeal code manager decisions. Industry would also be able to engage with Ofgem regarding code manager performance.

Legislation will set out that a party must be licensed in order to be a code manager for in-scope codes and standards. This will broadly mirror the existing licensing framework, including allowing Ofgem to set and modify licence terms and conditions; to set time limits for licences; take enforcement action for breaches of licences; and revoke licences. The Secretary of State will be able to make exemptions from the requirement to hold a code manager licence, if appropriate.

Ofgem will develop the code manager licence conditions and consult on those details in the future.

Theme 5: Delivering code changes

What you said: Some respondents noted that the strategic body should only directly deliver code changes in exceptional, clearly defined circumstances, and if there are appropriate checks and balances in place. One respondent noted that a direct code change power would help to incentivise code managers to rapidly implement code changes in line with the strategic direction. A few noted the similarities of the proposed power to directly change codes to the Significant Code Review process, suggesting that this process might need to be replaced and, if not, there would need to be clarity about when the new power and SCR process would be used.

Our response: We agree that the direct code change power should only be used under clearly defined exceptional circumstances and be subject to appropriate checks. To this end, we will set out four specific grounds in legislation when Ofgem could use this power, in circumstances where the normal process would not be appropriate: urgent changes that existing urgency provisions would struggle to address; changes where the code manager has, or may have, an adverse conflict of interest; changes that are required to deliver the strategic direction for codes and that are particularly complex, such as where they cut across multiple codes; and code consolidation. All direct code changes will be subject to: public consultation (with timelines and processes being flexible for urgent code changes); Secretary of State veto prior to implementation; and CMA appeal. In addition, we believe that the SCR process, which is concerned more with potential longer-term reform options rather than, for example, an urgent code change, may merit changes in light of the new framework introduced by this review. Ofgem will be considering reforms to the SCR process and how the process will interact with the direct code change power.

3.2 Question 4 – Roles and responsibilities of the code manager function

To what extent do you agree with the proposed roles and responsibilities of the code manager function as set out in the consultation document, and why?

What we said

We proposed that the code manager roles and responsibilities will be set out in specific code manager licences. In the consultation, we set out the following proposed roles and responsibilities for code managers:

- developing and publishing a delivery plan consistent with the strategic direction;
- proposing code changes, as part of its need to implement this delivery plan;
- prioritising code changes;

- managing the code change process, broadly in line with the role currently carried out by code administrators;
- facilitating cross-code coordination and change (such as convening cross-code stakeholder groups), if more than one code manager is licensed; and
- making decisions currently made by code panels, including on whether to approve non-material code changes.

What you said and our response

What you said: Of those respondents who agreed with our proposals, many caveated the circumstances in which they would support it. For example, in carrying out their roles, code managers should have the right resources and expertise in place, should sufficiently engage stakeholders, and should have in place clear and transparent processes. Of those respondents who disagreed or otherwise flagged potential considerations, some raised concerns about industry being locked out of the code processes, and a few had concerns about conflict of interest (including because the code manager and strategic body would be able to raise and approve their own code changes). One respondent who disagreed with our proposals explicitly raised questions on whether the code manager would have sufficient expertise or resources to manage the proposed roles.

Our response: We agree with stakeholders that code managers will need to have the right expertise and resources in place in order to fulfil their roles and responsibilities successfully. We also agree with the need for code managers to be transparent when carrying out this role and making decisions.

We recognise concerns about industry being 'locked out' of the decision-making process and we intend to implement the reforms in a way that mitigates the risk of this happening. We stand by our proposal that responsibility for most or all decisions currently made by panels will move to code managers.⁹ However, we also intend our reforms to retain flexibility for Ofgem to assess any such decisions on a case-by-case basis and, where necessary and appropriate, to allow code managers to be able to delegate decision-making responsibility to other forums, such as a technical committee. We stress that it will be critical for code managers to engage with stakeholders, and to draw on their expertise, when carrying out its role.

On potential conflicts of interest, we recognise the risks of, for example, code managers being able to propose, develop and (for non-material code changes) approve code changes. We consider that our response to this point in our July 2021 consultation is relevant. In that document, we gave examples of how our proposals would help to address conflict of interest concerns, such as by Ofgem having oversight of code changes; hearing appeals; and monitoring and taking enforcement action in relation to the code manager's delivery of their

⁹ This would include decisions such as the following: whether a proposed change should enter the change process; whether it has a material impact on consumers and competition; whether to approve non-material changes; and whether to make recommendations to Ofgem on whether to approve changes that have material impacts on consumers and competition.

delivery plan. We also pointed to mitigations related to the code manager's obligations, such as having to consult. To build on that, we will ensure that any potential conflicts of interest can be appropriately managed when implementing these reforms, such as through the development of appropriate code manager licence conditions and selection regulations.

On the benefits of code managers taking on the proposed roles, we set out a range of potential benefits in the 2021 consultation, including that code managers would be able to proactively deliver code changes that would help to deliver the strategic direction and benefit consumers. Updated details on the anticipated costs and benefits of our reforms are set out in the impact assessment published alongside this response.

We received many comments on the detailed design of the code manager roles. Ofgem will carry out further consultation on the roles and responsibilities of code managers, providing an opportunity for stakeholders to input on these details. This will be part of its work to develop the code manager licence ahead of initiating the code manager selection processes.

3.3 Question 5 – Roles and responsibilities of stakeholders

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?

What we said

We proposed that decision-making would move from code panels to code managers and that we would disband panels. However, we noted that stakeholder groups play a central role in supporting codes decision-making and that we believed it will be crucial that they continue to do so. We proposed that all interested stakeholders, including smaller players and new market entrants, would continue to be engaged in the code change process. However, there would be flexibility in what this engagement would look like, depending on the change.

We also proposed to require code managers to establish stakeholder advisory forums (each of which may have a specific area of focus and expertise) and to consult with the relevant forum(s) ahead of making certain decisions. We noted that the advice provided by a forum would not be binding, but that the code manager would, for example, be required to give due regard to it.

We also said that the same broad proposals would apply equally in option 2 (where the FSO would be given the role of the IRMB) but, in addition, we would expect Ofgem to be informed and engaged throughout. We noted that we would further consult on the details of stakeholder engagement in the future.

What you said and our response

Theme 1: Benefits of our proposals

What you said: A few respondents argued that a wider range of parties would have their views represented in code decisions by introducing the new stakeholder advisory forums, and a few

others said that the flexibility of approaches to engagement would allow engagement to be targeted and proportionate.

Our response: We note and agree with these points.

Theme 2: Risks related to industry engaging less

What you said: Many respondents voiced concerns that by removing industry's role in decision-making, industry will feel disenfranchised and will engage less, meaning code decisions would not benefit from their expertise and experience. This could result in more appeals being raised.

Our response: We consider it essential that industry (and other stakeholders) continue to engage with code managers and we will ensure our reforms are designed to enable this. As part of this process, Ofgem will consult further on code manager licence conditions and the detailed design of stakeholder advisory forums. We anticipate requiring code managers to engage with stakeholders, to have regard to their views and also to ensure that any recommendations that the code managers are empowered to deliver to Ofgem include details on stakeholder views. This will ensure that industry will have opportunity to engage, code managers will be required to listen, and Ofgem will be aware of the views of both.

It was also suggested that the current process works well (particularly for self-governance code changes), although the respondents recognised there may be a role for further strategic direction and prioritisation. We note that our proposed approach should ensure we have the flexibility to be able to build on what works well now. For example, it would still be possible for Ofgem to not be involved in approving/rejecting non-material code changes (which the CMA cited as leading to efficiencies through the existing self-governance code change process).

Theme 3: Calls for further details, including on consumer representation

What you said: There were various calls for further details, including suggestions that we didn't provide enough detail on how stakeholders, including consumer groups, will be engaged to allow respondents to provide informed views to this consultation question.

Our response: Ofgem intends to consider the detailed approach to stakeholder engagement further through later consultation. Any approach that is implemented will be able to adapt over time. On how the consumer voice or groups will be heard, Ofgem will engage with relevant stakeholders to develop the approach. At a minimum, we would expect groups that represent the consumer voice to be members of the relevant stakeholder advisory forums, as well as being invited to respond to consultations, etc.

Theme 4: Suggestions on stakeholder engagement and stakeholder advisory forums

What you said: Many respondents made various comments around how important stakeholder engagement is and what forums this should be provided through or how it should be done. Specifically on stakeholder advisory forums, a few respondents made suggestions on how to strengthen the status of the stakeholder advisory forums' advice – for example

suggesting the advice should be binding, or at least the default should be for the code manager to accept the advice unless they can demonstrate why it should be disregarded. Further suggestions were made around the scope of that advice, for example that it should also feed into strategic body decision-making. Some respondents made suggestions on how stakeholder advisory forums should work, including on

- who should be on the forums, with many supporting wide representation, but with a strong voice for industry;
- how frequently they should meet, and whether they should have a wide scope and long-term standing, or be more targeted and short term (or both);
- there may be a need for cross code meetings; and
- how to ensure good representation (including suggestions on paying people to attend and obliging code parties to attend).

Our response: We believe that making the forums' advice binding would be inconsistent with our aim of having empowered and accountable code managers involved in delivering the strategic direction. However, we will consider further the nature of the advice provided by these forums and whether, for example, code managers should be obliged to accept the advice of a forum unless they can demonstrate why it should reach a different decision than that recommended by the forum.

On the suggestions on the detailed design of stakeholder advisory forums, Ofgem will revisit these comments as it consults further on the code manager licence conditions.

Having considered the range of respondents' views, we anticipate that stakeholders will have the broad roles outlined in the July 2021 consultation, with the details primarily being defined in code manager licences and the codes. In particular, we would have empowered and accountable code managers alongside a strong role for industry in advising, informing and supporting code managers (including through consultation and stakeholder advisory forums). This will ensure codes are managed in a way that allows the strategic direction and wider code changes and processes to be proactively delivered whilst being informed by the right expertise.

Ofgem will carry out a further consultation on the roles and responsibilities of code managers, which will include considering any obligations around engaging with stakeholders. This will be part of its work to develop the code manager licence ahead of selecting code managers. Further details could be considered through the development of code changes needed to implement our reforms. In developing detailed proposals, we will monitor the performance of the Retail Energy Code (REC) and learn lessons.

4. Appeals

4.1 Question 6 – Appealing code manager decisions under option 1

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?

What we said

We proposed that where an industry panel currently has an existing decision-making role in monitoring compliance, responsibility for such decisions would move to the code manager. Where sub-committees exist to carry out specialist functions, we expect similar groups would also exist under the new framework, with the code manager taking on responsibility for building on these arrangements.

We also proposed that any decisions currently made by code panels that include an appeal route to Ofgem could, in principle, be appealable to the strategic body. In addition, we said that the strategic body should have similar powers to those Ofgem has in the existing framework to oversee the code change process and to overrule certain code manager decisions.

What you said and our response

Theme 1 - Decisions of code manager to be overseen by strategic body

What you said: Most respondents either agreed or strongly agreed with the proposal, with one commenting that the proposed oversight of code manager decisions by the strategic body is a sensible approach, noting the importance of ensuring oversight of code manager activity. A few respondents also considered that similarity to existing processes would ease transition.

Of the respondents that either disagreed or strongly disagreed with the proposal, one respondent argued that the position of the code manager could be undermined if the strategic body were to oversee the day-to-day operations and low materiality decisions of the code manager and it would be better if the strategic body remains at arm's length from code manager decisions unless by exception any of them are appealed to it. Another respondent expressed concern that Ofgem would not be sufficiently removed and may be lobbied directly, even at an individual staff level.

Our response: Our view is that appropriate oversight and appeal provisions will be needed to ensure that the decisions of the code manager are appropriately overseen. We note the suggestion from one respondent that Ofgem is not sufficiently removed and may be lobbied. In response, it is worth emphasising that Ofgem is the independent energy regulator and is accountable to Parliament. It is also subject to public law duties, including requirements to act lawfully, rationally and fairly in its decision-making (for example, by giving adequate reasons

for its decisions). Ofgem staff must also carry out their roles in line with the Civil Service Code, which includes core values of integrity, honesty, objectivity and impartiality.

What you said: Some respondents noted the need for more clarity on the ability of the strategic body to overrule code manager decisions, with some suggesting that a clear framework and criteria/rules that is timebound need to be set out.

Our response: Ofgem's ability to overturn decisions of the code panels and code administrators is currently set out in licence and codes. In the consultation, we recognised that it may be beneficial to consider if additional appeal routes to Ofgem for decisions made by code managers would be needed before new arrangements are in place. Ofgem will carry out a further consultation on the roles and responsibilities of code managers as part of its work to develop the code manager licence. Through this, and the development of code changes to implement the reforms, there will be an opportunity to consider the case for additional appeal routes or other process changes.

Theme 2 - Existing appeal routes to be retained and moved to strategic body

What you said: Of the respondents that either agreed or strongly agreed with the proposal, one respondent said that it would maintain an objective process for onward recourse and dispute resolution. A second respondent said it would allow dissatisfied parties to air their concerns and improve engagement. Another respondent noted that it would ensure code managers are accountable and responsive to stakeholders in their decision-making.

Our response: We intend to create a governance framework that ensures confidence that the decisions made by a code manager are appropriately overseen, including a route of appeal to Ofgem, where necessary.

4.2 Question 7 – Appealing code manager function decisions under option 2

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?

What we said

For option 2, we proposed that the decision-making role in monitoring compliance or in events of default currently undertaken by panels would move to the IRMB.

On appeals, we proposed that Ofgem could be the appeal body for relevant decisions taken by the code manager function of the IRMB but that some of these decisions could be reviewed through an internal body first, dependent on the internal governance and accountability structure of the FSO.

What you said and our response

Theme 1 - Some decisions of a code manager to be reviewed via IRMB internal body first

What you said: There was little support for this proposal specifically in the responses, with only a few respondents agreeing that it was viable. A few respondents asked for more clarity on how it would work and assurances that would be in place to ensure that the review is fair and unbiased. Of those who disagreed with the proposal, a few argued that it would add an unnecessary additional step to the code modification change process. A few respondents expressed concern about a lack of independence, transparency, and impartiality of an internal body of the IRMB, with one noting a potential resulting conflict of interest.

Our response: We agree with the concerns of some respondents regarding further time and complexity being added to the code change process. This option will not be implemented.

Theme 2 - Decisions of code manager function of the IRMB to be appealable to Ofgem

What you said: Most respondents supported Ofgem hearing appeals of decisions of the code manager function of the IRMB. Among those who expressed support, one respondent noted that it would help incentivise the decision-making of the IRMB to meet appropriate objectives. Another one said that it is a necessary approach to ensure that any perceived conflicts of interest can be well managed. One respondent caveated their support with the need to ensure that there are clear timelines for appeals. Concerns that were raised in responses were mostly based on the role of the FSO as IRMB more broadly, rather than Ofgem being the appeals body.

Our response: Although we agree with many of the points made by respondents in support of Ofgem hearing appeals, we will not be implementing the IRMB option.

4.3 Question 8 – Appealing decisions made by Ofgem under option 1 and 2

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)?

What we said

We noted that any appeals framework should allow effective opportunities for different interests and views to be represented, whilst being accessible and as simple, rational, flexible, and independent as possible.

We said that we believe this could be achieved in one of the following ways:

- all strategic body decisions on code changes will be subject only to judicial review; or

- a combination of judicial review and CMA appeals with timings aligned with the licence modification appeals process and potentially made more flexible.

We noted that if the second proposal were taken forward, further work would be needed to create criteria to determine when an appeal to the CMA would be available and the timescales for them. Examples of possible appeal criteria could be when the strategic body approves a code change that the code manager recommends should not be implemented as it does not meet any code objectives; or that the strategic body has used its powers to directly change the code in a material way.

With regard to option 2, we said that we would expect that any appeals of Ofgem decisions on whether or not to implement a code change would follow the same route as set out above.

What you said and our response

Theme 1 - Keeping the CMA route

What you said: A number of respondents provided arguments in favour of the CMA route. Some respondents argued that relying on judicial review only would introduce a cost barrier to appeal, limiting the ability of smaller parties to raise appeals. Some said that the CMA has relevant and crucial specialist technical and economic expertise and is appropriately resourced to hear appeals. Some others said that removing the CMA route would weaken existing licensee protections because judicial review provides a generally less intrusive standard of review and does not necessarily involve economic and other technical expertise. Finally, some respondents noted that CMA and judicial review look at different elements of a decision that has been appealed, with the CMA route challenging the merits of a decision and the basis on which a decision was made, whereas judicial review looks for procedural error or errors in law. They argue that this means that both processes are required.

Only one respondent argued against the CMA route, stating that removing CMA route would simplify the appeals process.

Our response: We intend to maintain the CMA's current role as the body for appeals to Ofgem decisions in relation to codes. The CMA currently hears appeals to such code change decisions, so it has the relevant experience and knowledge. It also handles licence modification appeals and we believe it is sensible to keep the same body as the appeal route for both code and licence changes in future. We further intend to align the timelines for this appeal process with the four-month timeframe that is currently in place for other CMA appeals of Ofgem decisions, but with the option for the CMA to extend this timeline by one month if needed. This would allow flexibility for complex cases.

Theme 2 - Appeals criteria

What you said: Some respondents advocated for having no criteria to limit the CMA appeal route, arguing that past experience demonstrates that appeals are not undertaken lightly, and because code parties should be able to appeal irrespective of whether an Ofgem decision aligns with the code manager recommendation. Other respondents agreed with the need for

criteria to prevent overuse of the CMA appeal route which would slow down the pace of change, with a few in favour of the options put forward within the consultation, including where the code manager and strategic body disagree.

Our response: We expect to update the CMA appeal criteria in light of the reforms, recognising that panels will be disbanded. However, we are not taking a decision on the appeal mechanism at this point in time, with further consultation on this topic to follow by BEIS in due course.

4.4 Question 9 – Thoughts on other potential appeal routes

Do you have any thoughts on other potential appeal routes?

What we said

We asked for your thoughts on other potential appeal routes.

What you said and our response

What you said: One respondent commented that, given the removal of industry panels and relative reduction in code signatories' influence, a lower-level appeals process is required to challenge decisions for which judicial review or CMA routes are not appropriate or proportionate. Another noted that there should be a way for stakeholders to register a formal objection or protest earlier in the process of change development that would go with the proposal to Ofgem for decision-making. The respondent suggested this could be through an advisory forum or by individual parties. If from an advisory forum, it could serve to open up an appeal route.

Our response: Stakeholder advisory forums will give industry and other relevant parties the opportunity to object to or raise any concerns during the change development process. Ofgem will further consult on the details of how the stakeholder advisory forums will operate.

What you said: One respondent said that if the CMA is to remain the appeal route, then its remit might need to be adjusted to ensure that it can make decisions based on the Government strategic vision.

Our response: Our initial view is that the CMA's appeals remit does not need to be reviewed. Section 175 of the Energy Act 2004 governs the matters to which the CMA must have regard when considering appeals under section 173 of the Energy Act 2004. Those matters include matters to which the Authority must have regard when carrying out its principal objectives and statutory duties under the Electricity Act 1989 and Gas Act 1986, which already include a requirement for Ofgem to have regard to any strategic priorities (for example, in relation to codes) set out by the Government in its Strategy and Policy Statement. The CMA would therefore need to have regard to those priorities to that same extent.

5. Preferred option – Ofgem as a strategic body

5.1 Question 10 – Operating model and accountability structure for option 1

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

What we said

We proposed that overall accountability for delivering the strategic body's functions would sit with Ofgem, as opposed to a ringfenced board. We further proposed that Ofgem's code-related decision-making powers could be delegated within Ofgem to either appropriate senior individuals or a committee of senior individuals, to allow for decisions to be taken in an efficient and joined-up manner.

On funding, we noted that Ofgem's budget settlements are agreed by Her Majesty's Treasury (HMT), with Ofgem recouping its costs from fees charged to the energy industry and bilateral agreements with BEIS. As with Ofgem's current work on codes and broader energy market regulation, we proposed to continue the funding through charges to the energy industry (through licence fees). We also noted that we did not think funding should be ring-fenced, due to the cross-cutting nature of codes.

To ensure that any reforms we introduce are both flexible and future proof, we proposed that the strategic body should be able to delegate some of its proposed powers and duties to an alternative body or bodies. We also proposed to give the Secretary of State the power to redesignate who the strategic body is, should there be a case in the future for this change. In both cases, due process would be followed ahead of any decision to delegate or redesignate, for example through a requirement to consult.

What you said and our response

Theme 1: Ofgem's existing experience and suitability as strategic body

What you said: Some respondents argued that Ofgem already has the expertise, skills, objectives, powers, and duties relevant to exercise the strategic function, which would otherwise be timely and costly for another organisation to acquire. Another respondent said that utilising Ofgem's current resources appeared to be the most efficient option for a strategic body. Some respondents noted that the similarity of Ofgem taking on the strategic body's functions to existing arrangements would allow for continuity with minimal disruption during the transition period. However, a few respondents commented that, in their view, Ofgem currently lacks sufficient expertise for this role and/or that the required capability build would be significant. A few also argued that Ofgem's past performance in relation to codes suggests that

it may not be effective in the role of the strategic body. Finally, a few respondents argued that having one organisation acting as both the regulator and the strategic body might risk creating conflicts of interest or compromise the regulator's independence.

Our response: We agree that Ofgem taking on the new strategic code functions will allow for a smoother transition to the new framework compared to the alternative option. We also agree that, while Ofgem already has relevant experience to take on these functions, Ofgem would need to increase the number of staff with relevant expertise and may need to source some specialist resource (see our response to the point below for more detail). Regarding stakeholder comments on Ofgem's past performance in relation to codes, we expect that the new framework will enable Ofgem to take on a more proactive role in the code change process and drive better outcomes for consumers.

Theme 2: Strategic body must be adequately resourced and funded

What you said: Many respondents noted that, as the strategic body, Ofgem would need to be adequately resourced, including with appropriate technical and commercial skill sets to be able to support both Government and the code managers. A few said that Ofgem should continue to be funded through licence fees and should not be ringfenced as work on codes is cross-cutting. However, a few respondents voiced concerns with funding for the strategic body not being ring-fenced within Ofgem, and that they considered that there was a risk that resources intended for the strategic function would be used for different purposes within Ofgem.

Our response: We agree that Ofgem will require additional resources, including additional expert staff, to perform its new strategic code functions successfully. As set out in the impact assessment, we expect Ofgem to require an additional 30 more staff to support the establishment of its new strategic code functions, with more potentially needed in future. We are also aware of how resource-intensive tendering for code managers could be and will keep the necessary level of resource under review.

On funding, we continue to think the most efficient mechanism to recover any costs of Ofgem's strategic code functions would be through the licence fee process and that that funding should not be ringfenced. It remains our view that work on codes is cross-cutting, so introducing ringfencing would add unnecessary complexity and may result in inefficiencies.

Theme 3: Delegation and redesignation

What you said: A few respondents explicitly supported the idea of enabling delegation of some of the strategic body's functions to ensure that the reforms remain flexible and could adapt to unpredictable changes. A few, however, also explicitly disagreed with the idea of delegation and considered that the strategic body's functions should sit with Ofgem only, as delegation of any functions to, for example, the FSO or code managers would add additional complexity and could create potential conflicts of interest. It was mentioned that this could be the case if, for example, the same party is drawing up both the strategic and delivery plan.

Our response: While we remain of the view that there may be long term benefits to flexibility, we agree that allowing Ofgem to delegate some or all of its new strategic code functions at this stage may increase the risk of additional complexity and conflicts of interest, which would run contrary to our stated reform objectives. BEIS has therefore decided not to legislate for an option of delegating strategic code functions at this time.

What you said: A few respondents explicitly supported the idea of allowing the Secretary of State to potentially redesignate the strategic body in the future, arguing that it would help to future-proof the proposed framework, and that legislation should be drafted in a way which would permit an organisation other than Ofgem to be designated as the strategic body. A few commented that redesignation should be subject to consultation with stakeholders. One respondent added that, while they support redesignation in principle, it has the potential to introduce some instability to the code governance framework.

Our response: BEIS has decided not to build an option into the new governance framework that would allow the Secretary of State to redesignate all of Ofgem's new strategic functions to an alternative organisation. The majority of these new functions are regulatory in nature so it is difficult to anticipate who else would be well-suited to take them on in future. However, we believe that it would be beneficial to preserve some flexibility regarding Ofgem's new duty to publish a strategic direction because this particular function is more about system-wide strategy and planning, rather than traditional regulation. BEIS has therefore decided to give the Secretary of State the power to permanently transfer the duty to publish a strategic direction from Ofgem to the FSO, if it emerges that the FSO is better placed than Ofgem in the future to prepare such a document and take a view on what code changes may be appropriate and necessary. Before initiating the transfer of this duty, the Secretary of State would be required to consult with Ofgem, the FSO and any other persons whose interests are likely to be affected.

Theme 4: Distinction between Ofgem as SB and Ofgem as regulator

What you said: Some respondents commented that they consider it important to have a clear distinction between Ofgem as the strategic body and Ofgem as regulator, including because of a risk of conflicts of interest, so that whilst these roles may on the whole complement each other, they are independently focussed and reviewed. It was also noted that there should be the ability for both areas to jointly fund specific teams and initiatives to deliver a clear whole systems approach. A few respondents said that Ofgem should establish a delegated internal structure for codes, such as a ringfenced department or organisation. They argued that adding the strategic body's functions to Ofgem's responsibilities would be a considerable stretch in scope and role and require additional resources, and that the creation of a separate entity, supported by informed experts, would facilitate a greater sense of independence while increasing the accountability for delivery.

Our response: Rather than establishing the strategic body as a separate entity, we will directly expand Ofgem's existing functions. This means that the strategic code functions will constitute new roles for Ofgem, rather than a new body that Ofgem is taking on. We agree that there is a need for a clear internal governance of the strategic code functions within Ofgem to ensure

sufficient senior oversight for codes and to ensure that codes are being given a strong ‘voice’ within Ofgem. However, we do not agree that having both regulatory and strategic code functions within Ofgem will risk conflicts of interest or that there is a risk that the exercise of these functions will become unaligned.

Theme 5: More Ofgem involvement in code change process

What you said: Some respondents noted that Ofgem should be more involved in the code change process at all levels to deliver the reforms in the desired timescales and make the process more efficient.

Our response: We agree that Ofgem will need to take a different role to make the new framework work and recognise the need for Ofgem to engage in the code change process. We will, at a minimum, preserve the existing tools that it has to do so in the codes (with scope to review these tools as part of upcoming consultations). In addition, our proposals for new functions for Ofgem, including setting and overseeing the strategic direction and the licensing of empowered code managers, mean that Ofgem will have more tools to engage in the code change process.

5.2 Question 11 – Monitoring and evaluation under option 1

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

What we said

We proposed to introduce a monitoring and evaluation approach to ensure that Ofgem, as the strategic body, is delivering effectively against its responsibilities. We noted that this approach would be in line with the relationship set out within the 2019 Framework document¹⁰ between BEIS and Ofgem, following the existing mechanisms in place. This would include an obligation to produce an annual report about its activities and to publish an annual forward work programme on upcoming direction and activity, which can be scrutinised by Government.

We further proposed that if Ofgem were to act as the strategic body, it would also be required to report on the delivery of its obligations under the SPS.¹¹

What you said and our response

Theme 1: Stakeholder feedback on strategic body performance

What you said: Most respondents made arguments supporting the use of stakeholder feedback to monitor the performance of the strategic body. The points made were wide-

¹⁰ Framework document between Department for Business, Energy and Industrial Strategy and The Gas and Electricity Markets Authority (operating through Ofgem) 2019.

https://www.ofgem.gov.uk/system/files/docs/2019/12/framework_document_final_publication_version_december_2019.pdf

¹¹ Utilities Act 2000, section 4A.

ranging and included a call for stakeholder feedback to be included in the annual report, for more details on the process of how this would work and be reported on, as well as the relevance that this activity might have in the future in determining outcomes.

Our response: We agree that stakeholders are likely to be able to provide unique views and perspective on Ofgem's performance of its strategic code functions. We will consider the views put forward by these respondents when developing any framework to monitor Ofgem's performance of its new strategic code functions.

Theme 2: Align approach with existing mechanisms in place between BEIS and Ofgem

What you said: Many respondents made arguments in favour of aligning the monitoring and evaluation approach of the strategic body with the existing mechanisms that are in place between BEIS and Ofgem, including an annual report and annual forward work programme. One respondent suggested to consider additional updates to the BEIS-Ofgem framework agreement to ensure that it covers the strategic code functions.

Our response: We intend to use the 2019 framework document between BEIS and Ofgem as the basis for our monitoring and evaluation approach. The framework sets out some non-legislative processes for managing the relationship between both parties and it also references the legislative reporting requirements for Ofgem (i.e., annual report and forward work programme). Further to that, we have agreed to update the content of these legislative reporting requirements so that Ofgem is required to include an overview of how it has delivered against its statutory strategic code functions over the preceding year.

Theme 3: Regular assessment against progress of delivering the SPS

What you said: Some respondents considered it important that the link between the SPS and the performance of the strategic body is set out clearly and that progress against delivery of the strategic priorities and policy outcomes set out in the SPS is regularly assessed.

Our response: We agree that it will be important for Ofgem to report on the performance of its obligations related to the SPS. Section 4 of the Utilities Act 2000 already sets out such reporting requirements for Ofgem. They will equally apply to the new strategic functions, as those functions will become part of Ofgem's existing remit.

Theme 4: Arguments against the proposed monitoring approach

What you said: Only a few respondents made explicit arguments against the proposed monitoring approach. One respondent voiced concerns that BEIS was unlikely to be sufficiently engaged with codes to provide active and consistent monitoring and evaluation as proposed, particularly regarding how industry stakeholders' views will be sought and documented. Another respondent noted that it was unclear how accountability and evaluation of the performance of the strategic body would be undertaken, as the framework document between BEIS and Ofgem only sets out respective areas of responsibility without providing clarity regarding accountability lines.

Our response: Ofgem will have to comply with its existing reporting mechanisms (annual report and forward work programme), including with those regarding any obligations related to the SPS.¹² In addition, we also expect that Ofgem will set up a process for stakeholders to regularly provide feedback on Ofgem's performance of its strategic code functions.

Theme 5: Other points raised

What you said: A few respondents raised concerns regarding the accountability of the strategic body. One of them noted that there is a risk that the strategic body lacked accountability and relied more heavily on the empowered role of the code managers to embed change without appropriate consideration of costs and benefits to market participants and consumers. Another one said that it is unclear who the strategic body would be accountable to and how this would work in practice. And finally, a third respondent commented that more information on the role of BEIS and their rights to take enforcement action on any failures of the strategic body would be required.

Our response: The relationship between BEIS and Ofgem with regard to reporting, monitoring, and evaluating is set out in the 2019 BEIS-Ofgem framework document, which we intend to update to reflect Ofgem taking on those new functions. If Ofgem does not comply with its statutory duties in relation to its strategic functions, the usual accountability mechanisms will apply, including the option of judicial review. It is also worth noting that Ofgem's new functions will be treated as included in Part 1 of the Gas Act 1986 and Electricity Act 1989, so they will be subject to Ofgem's existing Principal Objective and any other relevant duties that are set out in those Acts.

What you said: A few respondents said that they would like to see more than qualitative statements (e.g., KPIs) against the annual forward work programme, to address performance issues and to ensure that Ofgem is prioritising the right code changes and driving the code managers to develop modifications in a timely way that deliver the right impact on the market. Similarly, a few respondents commented that the monitoring process should include timelines and/or milestones for major decisions, with a requirement to report on any delays and a lessons learned exercise to identify the reasons for those delays.

Our response: We acknowledge the desire for more transparency on Ofgem's work on codes, as well as the need to ensure that new functions are performed in a timely manner. In the existing framework, for example, Ofgem has introduced a trial approach of publishing a register of Expected Decision Dates (EDDs) for each code modification submitted for decision on its website. EDDs are based on the importance, urgency and impact of the modification on consumers, whilst also taking into account Ofgem's strategic priorities. This change is intended to improve transparency around code modification decision timelines for stakeholders.

¹² Utilities Act 2000, section 4, section 4A, section 5

5.3 Question 12 – Code manager selection

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

What we said

The consultation addressed the initial stage of code manager selection, with the need to legislate to impose a duty on the strategic body to select a code manager for each in scope code. We suggested that the strategic body would be given discretion as to how to select a code manager to licence: whether by tender or, if tendering is not possible or preferable, licensing a built-for-purpose company or direct selection. We said that any decision to select code managers in any other way than tendering would require Secretary of State approval. We proposed that code managers should be selected in a way that allows for existing code administrators to become code managers, but we did not propose that they would by default become enduring code managers.

What you said and our response

Theme 1 - Selection routes for code managers

What you said: Many respondents explicitly supported tendering as the default option for code manager selection, as the competition would bring in experience, expertise and value for money as well as being a tried and tested method. Many commented that robust tendering criteria are important to find the most qualified code managers with the right experience and knowledge so they can fulfil the demands of the role. There was consensus among most of these respondents that price should not be the sole decider of a tender, as the lowest cost option may not deliver the best outcomes and may favour commercial entities who support high-risk, low-price contracts.

Many respondents raised concerns about tendering for code managers, including that there may not be enough interest for a competitive tender to be successful; tendering could prevent not-for-profit organisations from bidding; and that competitive tendering could make coordination between the code managers difficult, potentially reiterating the current siloed approach.

A few respondents noted that there could be benefits in directly selecting the existing code administrators, and a few considered a built-for-purpose company a sufficient or valuable means of establishing a code manager, with two of them noting the RECCo as an example. However, a few respondents considered a built-for-purpose company as less transparent or could not see any additional value in selecting a code manager this way, and a few others said that any other options than tendering for code manager selection should only be used in exceptional circumstances. Finally, a few other respondents argued that not tendering requires explanation, consultation or consent of the Secretary of State.

Our response: We have decided not to make competitive tender the default selection option for code managers. We have also decided not to require Ofgem to seek permission from the

Secretary of State when it wish to pursue a code manager selection option other than tender. Instead, Ofgem will have the ability to choose from a range of selection options, both competitive and non-competitive, subject to any constraints established by BEIS via secondary legislation.

In cases where Ofgem decides to run a tender, we agree that robust tendering criteria will be crucial to success. Any tender for code managers should consider cost, expertise, knowledge, and whether any real or potential conflicts of interest exist and how they would be mitigated. BEIS has therefore decided to introduce a power for Ofgem to make tender regulations through secondary legislation, with Secretary of State approval, which would create a bespoke procurement process for the purposes of selecting and licensing code managers. We anticipate these tender regulations would set out the broad framework for the tender process, including any minimum tender entry requirements and criteria that Ofgem may assess bids against.

We agree that there may be scenarios in which tendering is not the best approach for selecting code managers. BEIS has therefore decided to introduce a power for the Secretary of State to make regulations that will set out the range of non-competitive code manager selection options available to Ofgem. We anticipate that this list will include selection options beyond those proposed in the consultation,¹³ such as the ability to directly select a current code administrator or code manager. However, no decisions have yet been made on the content of these proposed regulations and BEIS intend to consult further on this topic in the future.

To help inform Ofgem's decisions on which selection option to use, BEIS will also set out a list of criteria in secondary legislation that will establish any constraints on the use of competitive versus non-competitive selection processes by Ofgem. We also want Ofgem to be able to appoint a code manager urgently, where necessary, to ensure continuity of code management. In this case, we would expect any appointed code manager to be in place for a limited period, pending Ofgem carrying out a fuller selection process.

We intend for all proposed selection routes (including tendering) to allow for both for-profit and not-for-profit organisations to be eligible. To inform Ofgem's decision on what selection route to use, we expect Ofgem would carry out a consultation and invite stakeholders' views on its proposed approach or options.

¹³ Those options were tendering, licensing a built-for-purpose company, or directly selecting the FSO (or affiliate) or another licensee.

Theme 2 – Views on who should become a code manager, including related to conflicts of interest

What you said: Some respondents mentioned potential conflict of interests of code managers as a concern, including that parties that are interested in becoming a code manager should be required to disclose any potential conflicts of interest and set out how they plan to mitigate them. A few explicitly voiced concerns about the potential conflicts of interest the FSO would have as a code manager.

Our response: We agree that potential or perceived conflicts of interest need to be considered when selecting a code manager, whether through a tender process or another selection route, and once a person has been licensed as a code manager. Ofgem will consider potential and perceived conflicts of interest through the selection process and ongoing licensing regime, where it will have oversight of code managers.

What you said: With regard to who should and should not be allowed to become a code manager, some respondents argued that code managers should be not-for-profit organisations, including because such an approach would help code managers gain trust from industry parties and would allow the strategic body to select a code manager based on ability only. A few respondents stated that existing licensees should not be allowed to become a code manager and a few more said that the FSO should not manage any additional, or any, codes at all.

Our response: Ofgem wants to retain a degree of flexibility in how code managers are selected, with or without competition, and we intend that the regulations reflect this approach. Ofgem will consider all potential candidates on their individual merits at the time, and we do not intend to preclude the option of the FSO being appointed as a code manager. Irrespective of how code managers would be selected, or who would be selected, Ofgem would always consider potential conflicts of interest before making the decision to appoint any code manager.

What you said: One respondent pointed out that the current code administrators have accumulated specialised knowledge over a long period of time and said that there is merit in retaining and/or expanding the role of the current code administrators to code management.

Our response: We agree that both code administration and the new role of code management will require highly specialised knowledge and skills, and we note that our reforms will enable code administrators to participate in the selection process to become code managers. Through the selection processes, Ofgem will ensure that all code managers have the necessary skills and knowledge that they need to do the job.

5.4 Question 13 – Code manager funding

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

What we said

We proposed that code managers should be funded through charges levied on code parties in accordance with a charging methodology set out in the relevant code(s). Code parties would pay a portion of these charges (calculated in accordance with the charging methodology). We also said that, provided that appropriate processes and safeguards were in place, code managers could be allowed to charge code and non-code parties for some value added or optional services. The details of the approach to charging would be considered in a future consultation.

What you said and our response

What you said: Most respondents provided arguments in favour of our proposed approach, including that it would be more flexible and less risky than the alternative proposed approach of funding via licence fees. Responses also included that the approach to charging needs to be transparent and that stakeholders should be engaged in the code manager's budget setting process. It was also suggested that budgets should be flexible to allow for new projects and that the code manager should not use code funding for other business ventures. One respondent said that the strategic body should be able to make amendments to the individual code funding models as and when appropriate. One respondent noted that code managers should be publicly funded if they are accountable to Ofgem, with another one arguing they should be funded by the strategic body.

A few respondents argued that code manager costs must also be fairly distributed among the relevant code parties, including clarity on who is funding which code. However, while one argued that code managers should not be able to charge non-code parties for proposing a code change to prevent this acting as a barrier to smaller parties raising proposals, another said that that there must be a method for the code manager to do so.

Our response: We agree with stakeholders on the importance of the transparency of code manager budgeting, fair distribution of costs and on the necessity for funding to be flexible. We consider that our proposed approach can address these concerns. We disagree that Ofgem should fund code managers. Licence fees are set once a year and the amount recovered is subject to HMT signoff, which might lack flexibility to set charges outside of the timings for setting the licence fee. Also, licence fees are less targeted in terms of who costs will fall on, both when considering segments of the market (e.g., wholesale versus networks) and on individuals (noting that a charging methodology could allow for volumetric charges, which can help to ensure elective services are used efficiently). Overall, we continue to believe that code managers should be funded through charges levied on code parties in accordance with a charging methodology set out in the relevant code(s). Code parties would pay a portion of these charges (calculated in accordance with the charging methodology) and, provided appropriate processes and safeguards were in place, code managers could be allowed to charge code and non-code parties for some value added or optional services.

Ofgem will consider code manager funding further when it consults on the detailed content of code manager licences ahead of selecting code managers.

5.5 Question 14 – Accountability for code manager budgets

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

What we said

We proposed that the code manager would ultimately be accountable to the strategic body when setting its budgets. We proposed that how this accountability is exercised would also be flexible – for example, it would not necessarily require the strategic body to approve budgets, provided the strategic body had other routes for holding the code manager accountable (such as being able to veto budgets or hear appeals from code parties on proposed budgets). Finally, it was noted that in the future a consultation may consider the detailed requirements for code managers in setting budgets.

What you said and our response

What you said: Of those that supported our proposals, some said that the funding arrangements need to be clear and transparent to those that are funding code managers, including that stakeholders would need to be able to scrutinise the budget and that there would need to be a clear route of appeal.

Of those that disagreed with our proposals, some said that code manager budgets should be accountable to “the industry” or “code parties” (i.e., those who would fund the code manager). One respondent argued that as only a small proportion of the budget will relate to the strategic function, code parties should input in relation to the rest of the budget. Another argued that the strategic body should only have a veto power over code manager budgets, as the code manager is best placed to set its budget, so it remains flexible and agile.

Of those agreeing with some aspects of our proposals, a few explicitly questioned Ofgem’s ability to scrutinise multiple code manager budgets as strategic body. There were various requests for further details and consultation on how the approach to funding would work in practice.

Our response: We agree it is essential that stakeholders are consulted on and able to scrutinise the code managers’ proposed budgets. We maintain that Ofgem should retain ultimate oversight of code manager budgets. Ofgem would be setting the strategic direction and requiring code managers to deliver it and hence must be able to ensure the code manager has the appropriate funding to deliver. However, this oversight could be lighter touch in the form of a veto or step-in powers, and Ofgem will ensure that budgets are developed in close consultation with industry, who will be well placed to scrutinise and challenge it.

Ofgem will carry out a further consultation on the approach to code manager budgeting, as part of its work to develop the code manager licence ahead of selecting code managers.

6. Alternative option – FSO as IRMB

6.1 Question 15 – Operating model and accountability structure for option 2

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

What we said

We proposed, as our alternative option, to give the role of the IRMB to the FSO. We said that the FSO would be suited to perform this role because of the ESO's existing strategic expertise; the FSO's anticipated strong focus on whole systems thinking; and the ESO's experience of acting as a code administrator. We also noted that the detailed IRMB governance structure would be developed and decided on by the FSO once it had been established.

On funding, we proposed two options: the first one being to fund the IRMB as part of the FSO and the second one being to fund the IRMB by charging code parties.

On monitoring and evaluation, we proposed to extend the SPS framework to the FSO, including relevant reporting requirements, and to introduce a duty to keep developments between SPS publications under review.

What you said and our response

What you said: While some respondents submitted arguments in favour of the proposed operating model, including a few that noted that the FSO would have the knowledge necessary to manage the codes well, most respondents argued against the proposals. The most common points against this proposal have been summarised below:

- many respondents raised concerns about a high risk of conflict of interest between the role of the IRMB with the other roles of the FSO, and about the FSO's independence from industry influence;
- many voiced concerns regarding accountability and transparency;
- some noted that combining the strategic body and code manager roles in one body would not achieve the policy aims;
- some commented that giving the role of the IRMB to the FSO would distract from its core responsibilities;
- some said that there were too many unknowns about the FSO at this stage, including on the FSO implementation timeline, which could make this option risky;
- some were worried about putting too much reliance on one organisation, including that this could restrict the ability for stakeholders to challenge and to consult on proposals; and

- some doubted that the ESO has the necessary expertise and resources to take on the role of the IRMB, including a lack of retail market and gas expertise and a bad track record of running codes.

Our response: We acknowledge the concerns that respondents have raised in regard to the IRMB option, particularly around potential conflicts of interest. Although we still believe this option could have been viable with the right structure and processes in place, we have decided not to implement this option and will instead expand Ofgem's responsibilities to include new strategic code functions.

7. Option choice

7.1 Question 16 – Best option to reform code governance

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

What we said

The consultation sought feedback on two alternative options for energy code governance reform: our preferred option of Ofgem being designated as a ‘strategic body’ over the codes with separate licensed ‘code managers’ and an alternative option where the FSO would perform both roles. Although we concluded that both options would be viable, we argued that our preferred option would result in a less complex governance landscape than the alternative, build on the existing expertise of Ofgem, provide a greater net benefit, and be more straightforward and quicker to implement.

What you said and our response

What you said: Almost all respondents agreed that our preferred option would be best placed to reform code governance, with none in favour of the alternative. The most common argument in favour of our preferred option was that it could be implemented more quickly and easily than the alternative, without causing too much disruption due to it being relatively close to the status quo. Additional arguments largely echoed the rationale that we set out in the consultation document, such as Ofgem’s greater ability to meet our stated reform objectives and its better fit in terms of existing skills and experience. Some respondents also preferred the strategic body model due to its comparable lack of conflicts of interest and clear separation between the strategic and code management roles.

However, there were some concerns with Ofgem taking on the strategic body role, with some respondents raising concerns about its past track record on codes and others suggesting that Ofgem’s perceived unwillingness to use its existing powers does not bode well for its future performance. To address these concerns, the respondents suggested that an effective strategic body would need to engage proactively in all aspects of code governance, in addition to being appropriately resourced to carry out all of its assigned tasks.

By contrast, there were no positive arguments presented in favour of our alternative option. The most common argument against creating an IRMB as part of the FSO was that it would risk creating conflicts of interest, with it being poor governance to have the same body setting the rules that it needs to follow. Other respondents argued that adding codes to the FSO’s remit would distract it from its core responsibilities, particularly during its early years, which would then lead to lengthier implementation timelines and sub-optimal outcomes. However, this view was not shared by all respondents, with some noting that it may be sensible to make the FSO responsible for codes in future.

Our response: We agree with the majority of consultation respondents that our preferred option would be best placed to reform code governance. BEIS has therefore decided to grant Ofgem a set of new strategic code functions, one of which will be the ability to select and licence code managers, rather than to create an IRMB as part of the FSO. As set out in our response to question 10, BEIS do not plan to legislate to enable Ofgem to delegate any of these new functions to a third party. However, the Secretary of State will be empowered to transfer Ofgem's duty to publish a strategic direction to the FSO, following consultation, if the FSO is better placed than Ofgem to fulfil this duty in future. We also recognise the concerns that respondents have raised around Ofgem's past performance and agree that an appropriate level of engagement and resourcing will be critical to the success of this new governance structure. BEIS and Ofgem will work together to ensure that Ofgem has everything that it needs to succeed in this new role.

8. Impact Assessment

8.1 Question 17 – Estimated costs for code manager function

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

What we said

This question referred to the Impact Assessment, and the accuracy of the analysis included within.

What you said and our response

What you said: Some respondents suggested that the analysis looked reasonable and comprehensive, although a few suggested costs were still underestimated, either as a result of items non-monetised, or even simply just as a general ballpark figure given cost comparisons. Some respondents wanted more robust and a wider breadth of analysis, with some especially in favour of the use of further cost benchmarks for code managers (i.e., the fact that only costs by Elexon were used), and some others seeking further recruitment costs. Some respondents suggested other areas where costs may arise, for example, from the increase in usage of consultations to substitute for loss in stakeholder engagement, costs for Ofgem in tendering and licensing, and more. A few respondents requested wider impact assessment of the proposals, i.e., to industry participants, the environment, or consumers. The usage of the 2016 CMA Report to inform analysis, seen to be outdated, was also highlighted by some respondents.

Our response: We have updated the final Impact Assessment (IA) to reflect the key asks that respondents have noted, as well as to monetise further costs and/or benefits where possible and given data constraints. Where costs and/or benefits were unable to be monetised, a clear rationale has been provided for this, and suitable evidence has been given to demonstrate the likely size of the effect. We have also improved the description of the wider impacts of the proposals and the clarity of the analysis. We have sought further information from code administrators in light of responses; however, none were able to provide data to the same level and breadth that Elexon could. We have further highlighted this sample size issue and performed sensitivity analysis around costs. In many cases, many of industry's requests had already been incorporated into the IA. The IA has also been updated with increased clarity to make sure the analysis behind the estimates is clearer to readers.

The final IA, while still providing illustrative estimates for costs associated with secondary legislation, is only intended to assess the effects of primary legislation. Further Impact Assessments will accompany eventual secondary legislation and will reflect secondary costs, in particular those related to code managers, more accurately and with more informed analysis.

8.2 Question 18 – Case studies

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?

What we said

This question referred to the case studies included within the Impact Assessment (IA) – specifically, modification P272¹⁴ and the Gas Transmission Charging Review¹⁵ – and their relevance and appropriateness to determine the case for change.

What you said and our response

What you said: While the case studies themselves were seen as relevant and appropriate by many respondents, many suggested that the case studies provided were not sufficient in suggesting that the current governance process does not work, or at least did not provide a balanced picture of the current arrangements.

Most respondents also argued that where the current governance process did not work in the past (either as a result of the case studies provided or of other examples given), responsibility could also be shared with Ofgem. In the view of those respondents, Ofgem occasionally failed to provide guidance in advance, advanced proposals slowly, or even in some cases, did not turn up to meetings, viewed as stemming from resource constraints.

Many respondents were very helpful in providing a whole range of new case studies to study and analyse to help improve both the breadth and balance of the narrative.

Our response: The final IA has been updated to reflect the new case study information in the narrative for balance, as well as to highlight as a risk what respondents viewed as the possibility of Ofgem's poor performance/risk of inadequate funding (as above) and include the measures they are taking to mitigate such a risk.

8.3 Question 19 – Scale and type of benefits to industry

To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment?

What we said

This question referred to the narrative set out in the IA of the benefits that would arise from this proposal.

¹⁴ <https://www.ofgem.gov.uk/publications/balancing-and-settlement-code-bsc-p272-mandatory-half-hourly-settlement-profile-classes-5-8>

¹⁵ <https://www.ofgem.gov.uk/publications/amendments-gas-transmission-charging-regime-decision-and-final-impact-assessment-unc678abcdefg hij>

What you said and our response

What you said: Some responses seemed to agree that the analysis and assumptions used was reasonable, and that the proposals would help to reduce delays. On the other hand, a few believed it remained unclear as to how/whether the benefits would materialise.

There were mixed views around the qualitative element of the IA, with some respondents asking for further monetisation of benefits, while some others suggested that while there are a number of unmonetised benefits, it would be difficult to quantify many of these further, and as such agreed with the analysis involved.

Many respondents raised additional benefits from the proposals, which included second-order benefits from more efficient and consolidated processes, enhanced security of supply, breaking dominance of larger industry players, faster decarbonisation, and more.

Our response: We have updated the final IA to add in the additional benefits that responses had suggested, strengthening the narrative around how these reforms will make up for their costs and provide value-for-money, as well as to monetise further benefits where possible. The description of the unmonetised benefits has also been made clearer to demonstrate the second-order transmission of how the benefits of the reforms may diffuse to the wider industry and public.

9. Implementation

9.1 Question 20 – Wider industry developments

Are there any other wider industry developments we should consider in relation to the implementation timeline?

What we said

We noted that as the codes span arrangements across the energy value chain, we must ensure that our reforms take into consideration existing work programmes by Government, Ofgem and industry. We also set out high level stages for implementation of the reforms in a diagram.¹⁶

What you said and our response

What you said: Many respondents noted the wide range of industry developments and change programmes that are underway to enable the energy transition, with several projects noted in addition to those that had been listed in our consultation document.

Some expressed a view that careful consideration of these wider industry programmes was essential to determining an effective implementation timetable. A few argued that the reforms should be implemented as soon as possible to facilitate net zero. One respondent asked for visibility of the timeline to ensure that there was time to evaluate potential conflicts or impacts. Other respondents noted the challenges of ensuring that code reform does not cause problems for the development and implementation of ongoing and/or anticipated code changes and other net zero projects.

One respondent noted that there are some changes that can be progressed: alignment of objectives across codes, allowing code administrators/code managers to designate materially affected parties and consideration of the role of Code Administrator Code of Practice amendments. They noted that the market has changed since the CMA assessment and that this should be reflected in the scale of change and approach needed, with market change to deliver net zero a priority.

Many respondents raised concerns about the availability of resources, in Ofgem, industry and code administrators; it was noted that the timetable for implementation looks extremely ambitious and that different change programmes use a relatively small pool of resource to progress deliverables in interrelated areas. A few respondents pointed out that the current uncertainty in the energy market, where high gas and electricity prices have prompted insolvencies, may affect the availability of resources to deliver change.

¹⁶ Figure 4, p.84 [Design and Delivery of the Energy Code Reform: consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Our response: We agree that there are significant challenges in delivering reform on this scale while the energy system is in the process of transition and that there is a limited pool of expertise to deliver these changes. Implementing code reform will require careful prioritisation, both in development of these reforms and on the part of Ofgem.

We also appreciate that planning this process is particularly challenging in the context of ongoing developments in the energy sector. However, we believe that these reforms will enable a new framework that will support the energy system of the future, one which is more innovative, dynamic and helps us to meet our net zero obligations.

We remain supportive of work to implement low-regrets reforms where feasible. We will also consider how to engage most effectively with stakeholders, noting the challenges in the current context as our work develops. Ofgem will set out its proposed approach to implementation, transition activities and stakeholder involvement in an open letter later this year.

9.2 Question 21 – Implementation issues, risks or transition considerations

Are there any implementation issues, risks, or transition considerations we should take into account?

What we said

Our consultation included an outline of how we intend to transition from the current framework to our future vision for code governance (chapter 8.2). We proposed that, once designated as the strategic body, Ofgem would move into a more formal delivery phase of code reform activities. This would build on our preparatory work.

The consultation noted some key transition activities, including:

- further streamlining of code change processes, noting that this has already begun;
- planning for digitalisation of codes;
- agreeing and implementing a coherent set of principles and standards; and
- consolidation of codes, to be delivered by new code managers under the leadership of the strategic body.¹⁷

What you said and our response

Theme 1: Implementation risks

What you said: Some respondents raised concerns about whether there was sufficient capability and expertise within Government, industry and most particularly Ofgem to deliver this reform. Some noted that Ofgem would need resources to fulfil the strategic body role,

¹⁷ The consultation notes that this will be based on the review of options carried out earlier by Ofgem, and that it is expected that industry would be involved in any work to develop the details of the consolidated codes with a formal consultation process.

interact with the code managers and run the tendering process. One thought that the estimated costs for Ofgem appear low.

A few respondents raised issues on the scope and timing of the review and the consequent impact on implementation risk. One respondent noted that licensing code managers will make code consolidation harder and more complex.

A few considered that there is considerable risk that if reform does not happen fast enough it could be a barrier to energy transition. Therefore, Ofgem should create a strategic direction for the codes and a plan for code consolidation within the next year.

One respondent considered that the risks have been underestimated and more emphasis should be on proposals that tackle the most important and pressing problems with the current structure of the codes.

Our response: As noted above (question 20), we are conscious of the concerns in relation to the resources available to undertake energy code reform and will work with the industry to manage these risks. We are aware that some respondents have indicated that reform should happen quickly to facilitate the energy transition, while others are concerned about the risks associated with the speed of reform. Our proposals look to balance these considerations carefully.

Theme 2: Transition issues

What you said: A few respondents noted the importance of good engagement with industry parties to manage the risks associated with the implementation of the project, and one respondent noted the need for a clear timetable and a smooth transition to avoid uncertainty.

Some respondents also indicated that the success of these reforms would depend on the transition from code administrators to code managers. They noted concerns about a potential disengagement of industry parties as a result of disbanding boards and panels and the risk of expertise being lost. They mentioned the importance of engaging with, motivating, and providing appropriate funding for code administrators to mitigate any risk of losing knowledge and expertise for those facing uncertainty over their jobs with the creation of the code manager role and ensuring that transition process is clear. In addition, one respondent raised concerns that code reform could undermine ongoing changes to the codes, while another respondent suggested a moratorium on code changes during the transition period.

Our response: Ofgem's transition plans will consider how knowledge can be retained, including by effective engagement with stakeholders. They will set out a timetable that will help us to deliver a smooth transition.

10. General

10.1 Question 22 – Public Sector Equality Duty (PSED)

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.

What we said

This question asked people to provide additional evidence that could be helpful for our analysis of the impacts of our policy on persons with protected characteristics.

What you said and our response

What you said: One third of respondents provided views or identified some impacts of the reform on people who shared protected characteristics.

Some respondents noted that, if properly enacted, the proposed reforms would have the potential to lead to greater inclusivity, including with regard to participating in the energy market due to the removal of potential barriers for people who share a protected characteristic; benefitting structurally disadvantaged consumers through consumer-focused code changes in line with net zero ambitions; and regarding opportunity for greater diversity within the organisations established (code managers and strategic body). However, it was also noted that for these opportunities to materialise they need to be reflected in the code change process and code consolidation/new codes.

One respondent said that, as a consequence of increased digitalisation of the energy system, the reforms have the potential to increase the digital divide between consumers, and that new codes and code revisions must fully consider how customers, particularly fuel-poor and vulnerable customers, can be protected.

The remaining two thirds of respondents noted that they had not identified any specific impact on persons with protected characteristics as a result of the reforms.

Our response: We agree with respondents that the proposed reforms could have a positive impact on inclusivity and benefit structurally disadvantaged consumers and have carefully considered the responses to this question. However, we have not identified any evidence that our proposed reforms would disproportionately (positively or negatively) affect people sharing protected characteristics.

Annex A - Methodology

We provided a form for stakeholders to use when responding to this consultation, which set out all 23 questions and provided space for free text responses. For those questions where we explicitly asked whether stakeholders agreed with our positions (e.g., on the roles and responsibilities of the strategic function), we also included tick boxes for people to indicate their level of agreement/disagreement. The options on the form were strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, and not sure. There was also the option for respondents to opt out of answering individual questions at all.

For each consultation question, where relevant, we have included summary statistics to indicate the support for an option or proposal, based on the responses in the tick boxes on the response form (see Annex B below). In some cases, respondents provided a free text answer to a question but did not indicate their level of agreement/disagreement through the tick boxes. In those instances, we categorised them as agree/disagree only if it was entirely clear from the free text answer whether they supported the statement or not. If there were any inconsistencies or doubts about whether or not the respondent agreed or disagreed, we categorised their answers as 'not sure'.

The responses to question 23 were analysed and allocated to those questions where we thought them to fit best, as almost all of them were relevant for other questions we asked. We therefore have not included a specific chapter in this document for question 23, which had asked the following: "Do you have any other comments that might aid the consultation process as a whole?".

Annex B – Overview of responses

The following table summarises the responses that we received to all consultation questions where people were asked to indicate their support for our proposals on a scale from strongly agree to strongly disagree. The number in brackets is the absolute number of respondents that responded in that way for each question.

Table 1: Overview of responses to questions with a scale from “strongly agree” to “strongly disagree”

Question	Respondents who answered this question	Of those who responded to this question					
		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Not sure
1 – Code manager for engineering standards	84% (48)	2% (1)	63% (30)	10% (5)	4% (2)	-	21% (10)
3 - Roles and responsibilities of the strategic function	91% (51)	4% (2)	59% (30)	24% (12)	10% (5)	2% (1)	2% (1)
4 - Roles and responsibilities of the code manager function	95% (53)	6% (3)	47% (25)	15% (8)	17% (9)	2% (1)	13% (7)
5 - Roles and responsibilities of stakeholders	98% (54)	4% (2)	30% (16)	11% (6)	28% (15)	9% (5)	19% (10)
6 – Appealing code manager decisions (under option 1)	82% (47)	6% (3)	51% (24)	26% (12)	11% (5)	4% (2)	2% (1)
7 – Appealing code manager function decisions (under option 2)	82% (47)	-	23% (11)	35% (16)	21% (10)	15% (7)	6% (3)
10 – Operating model (for option 1)	77% (44)	4% (2)	58% (26)	18% (8)	16% (7)	-	4% (2)
11 – Monitoring and evaluation (for option 1)	81% (46)	2% (1)	63% (29)	11% (5)	7% (3)	-	17% (8)

12 – Code manager selection	90% (50)	2% (1)	30% (15)	40% (20)	24% (12)	4% (2)	-
13 – Code manager funding	84% (47)	-	60% (28)	19% (9)	6% (3)	-	15% (7)
14 – Accountability for code manager budgets	79% (45)	-	53% (24)	16% (7)	16% (7)	7% (3)	9% (4)
15 – Operating model (for option 2)	77% (44)	-	11% (5)	16% (7)	52% (23)	7(13%)	2(4%)
17 - Estimated costs for code manager function	60% (34)	-	12% (4)	29% (10)	29% (10)	9% (3)	21% (7)
18 – Case studies	61% (35)	3% (1)	29% (10)	11% (4)	29% (10)	11% (4)	11% (6)
19 – Scale and type of benefits to industry	63% (36)	-	14% (5)	28% (10)	39% (14)	3% (1)	17% (6)

The following tables summarise the responses that we received for those questions that asked for a preference between two proposed options or that were open-ended.

Table 2: Overview of responses to question 2

Question	Respondents who answered this question	Level of agreement		
2 – Regulation of central system delivery bodies	79% (45)	Licence system delivery bodies		
		Yes: 38% (17)	No: 20% (9)	Not sure: 42% (19)
		Combine code manager and system delivery bodies		
		Yes: 31% (14)	No: 20% (9)	Not sure: 49% (22)

Table 3: Overview of responses to question 8

Question	Respondents who answered this question	Level of agreement	
8 – Appealing Ofgem decisions (under option 1 and 2)	82% (47), 68% (32) of which expressed a clear preference	Of those with clear preference	
		Supportive of preserving CMA route: 97% (31)	Supportive of removing CMA route: 3% (1)

Table 4: Overview of responses to question 16

Question	Respondents who answered this question	Level of agreement		
16 – Best option for code governance	82% (47)	Preferring option 1: 96% (45)	Preferring option 2: -	Not sure: 4% (2)

Table 5: Response rate for open-ended questions

Question	Respondents who answered this question
9 – Thoughts on other potential appeal routes	39% (22)
20 – Wider industry developments	61% (35)
21 - Implementation issues, risks or transition considerations	61% (35)
22 – Public Sector Equality Duty (PSED)	43% (24)

This publication is available from: <https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>

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