Consultation on the Design and Delivery of the Energy Code Reform

Closing date: 28 September 2021

July 2021

OGL

Foreword - BEIS

The scale of our ambition for the energy system can only be delivered through a governing architecture to match. As the energy system itself undergoes a transformation equal to any it has undergone in the past, so the rules and governing institutions of the system must adapt to foster the transition away from fossil fuels to clean energy. Many of the detailed rules that facilitate the gas and electricity systems are set out in codes. Although these codes have done a remarkable job guiding the industry post-privatisation, many of them were designed to deal with a more predictable energy system and have seen only incremental changes over time. This has resulted in a code governance framework that is complex, fragmented, and lacks incentives to innovate, despite our urgent need for a more unified, flexible, and dynamic approach. That is part of the reason why we committed in the Energy White Paper to ensure that the institutional arrangements governing the energy system are fit for purpose for the long term. The future of codes is a critical part of this, and our work builds on our last consultation from 2019.

In this consultation we, alongside Ofgem, set out our proposals for the design and delivery of the energy code reform. The centrepiece of these proposals is a new institutional governance framework for codes, which would introduce a strategic function to set a clear direction for code reform and a code management function to implement it. This new framework will allow the codes to facilitate the significant changes required to transition to a cleaner energy system, such as code consolidation and simplification. It will also ensure that the codes develop in line with the government's wider vision for a future energy system and with what is best for consumers and competition, in addition to making the code landscape more forward-looking, flexible, and innovative.

The proposals in this consultation will benefit consumers and industry by lowering barriers to competition, improving transparency and accountability, and driving innovation. They will also reimagine the relationship between industry and the codes by moving away from the existing usage of code administrators and code panels, although we intend for industry to continue to play a key role in the code change process. Our proposals also aim to make the code change process accessible to a wider range of stakeholders, such as new market entrants, consumer groups, academics, and other non-code parties.

A new code governance framework, with the right roles and responsibilities, has the potential to play a vital role at this critical time for our energy system by helping to bring all greenhouse gas emissions to net zero by 2050. Together with Ofgem, I am pleased to set out in this consultation our proposals for how this can be achieved.

Foreword - Ofgem

Meeting the UK's ambitious climate change goals requires a transformation across the energy system, including dramatic change to how we generate electricity, how we heat our homes and power our vehicles, and how our electricity and gas networks are built and operated. The scale and pace of change needed represents an unprecedented challenge, and an opportunity to design and deliver a much smarter, more flexible, and better integrated energy system.

We will not be able to deliver on our energy and climate change goals without the right institutional framework. Ensuring that energy system governance - including Ofgem - is fit to deliver this future is one of our five key strategic programmes.

To facilitate the transition to a more flexible, data enabled, net-zero energy system, we believe that stronger strategic oversight and direction is needed. This will require changes to existing governance structures, including the detailed arrangements underpinning the day to day operation of the energy market. The current framework has worked well to keep the rules and systems fit for purpose for the current energy system. However, it was not designed to deliver the sheer scale of reform now needed to ensure the energy system continues to benefit consumers and meet the UK's climate change goals.

New technologies, new business models and new ways of running the system are emerging. These innovations will help us move to a low carbon system that is both secure and affordable. They will also be important for enabling our vision for smarter markets where consumers are more engaged and empowered.

The reforms proposed in this joint consultation with BEIS are aimed at ensuring there is clear strategic vision and direction, and appropriate accountability, so that code change can be delivered in the interests of consumers. This will require changes to current roles and responsibilities, including an enhanced role for code managers and a new Strategic Function, which will play an important role in ensuring the system of code governance can respond to the significantly changing energy sector, and supporting competition and innovation. More effective strategic direction, management, and greater coordination across the energy system will deliver significant consumer savings.

We look forward to continuing to work with government and the wider industry to develop the proposals set out in today's consultation and deliver a flexible, responsive and agile code framework, that will be a critical enabler of future reform to the energy sector.

Contents

General information

Why we are consulting

BEIS and Ofgem are seeking the views of interested parties, including existing code parties, wider industry players, consumer groups, academics, and existing code administrators, on our proposals for energy code reform. These proposals were developed with the help of feedback gathered during our previous consultation, held in 2019, and represent a further refinement of our thinking in this area. In addition to feedback on our preferred option for a new institutional governance framework, we are particularly interested in views on detailed elements of our proposals that were not addressed in the previous consultation.

We have referenced responses to the 2019 consultation throughout this document, but it does not form the government response to the 2019 consultation. This is to enable us to consider further responses to our proposals when developing final policy positions. A full government response to both consultations will be published in due course.

Consultation details

Issued: 20 July 2021

Respond by: 28 September 2021

Enquiries to:

Code Reform - Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor,
1 Victoria Street
London
SW1H 0ET

And

Industry Code and Licensing Team
Office of Gas and Electricity Markets
10, South Colonnade
Canary Wharf London
E14 4PU

Email: codereform@beis.gov.uk and industrycodes@ofgem.gov.uk

Consultation reference: Energy Code Reform

Audiences: Code parties, code administrators, consumer groups, energy sector research groups and any other organisations with a direct interest.

Territorial extent: Great Britain

How to respond

The consultation is available online. If possible, we would prefer to receive responses via the following link: https://beisgovuk.citizenspace.com/energy-security/energy-codes-reform

If you would prefer to respond via email, please ensure you respond to both email addresses below and use the response form available on the GOV.UK consultation page: https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

Email to: codereform@beis.gov.uk and industrycodes@ofgem.gov.uk

If you would like to send a hard copy, please send copies to the following addresses. As this is a joint review, please ensure you send copies to both addresses below.

Write to:

Code Reform - Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor,
1 Victoria Street
London
SW1H 0ET

And

Industry Code and Licensing Team
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf London
E14 4PU

BEIS and Ofgem will share with each other all responses that are received.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if you indicate the number of the question you are replying to. This is the easiest way to make sure that your response is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Ofgem will publish non-confidential responses (or parts of response) on its website. If you want your response in whole or in part to be considered confidential, please tell us in your response and say why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Please be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

All responses will be processed by BEIS and Ofgem as this is a joint consultation.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Glossary

Term	Definition
AMICoP	Approved Meter Installers Code of Practice
BEIS	Department for Business, Energy and Industrial Strategy
BSC	Balancing and Settlement Code
BSI	British Standards Institution
CACoP	Code Administration Code of Practice
CCUS	Carbon capture, usage and storage
Central system delivery body	We use the term 'central system delivery body' when we refer to the person(s) undertaking the delivery of **central system delivery functions**.
Central system delivery function	Refers to the functions underpinning the energy systems, including smart metering (currently delivered by the **DCC**), gas (currently delivered by Xoserve), electricity (currently delivered by Elexon) and the Data Transfer Service.
CMA	Competition and Markets Authority
Code consolidation	Refers to merging all or some of the codes into one or several codes to improve accessibility and facilitate coordinated change.
Code manager	We use the term 'code manager' when we refer to the person undertaking the **code manager function** under our preferred option where Ofgem is designated the **strategic body**, and code managers would be separate from the **strategic body**.
Code manager function	We use the term 'code manager function' when we refer to the body/bodies carrying out the code management roles and responsibilities identified in this consultation. This would be **code managers** under the preferred option, or the **IRMB**, in which the **strategic function** and **code manager function** would be combined.

Term	Definition
Code simplification	Refers to simplifying the content within individual codes, including through translating code requirements (where possible) from technical prescriptions into plain English.
CUSC	Connection and Use of System Code
DC	Distribution Code
DCC	Data Communications Company
DCUSA	Distribution Connection and Use of System Agreement
Delivery plans	We propose that each **code manager** (or the **code manager function** in the option where the **FSO** took on the role of the **IRMB**) would be required to develop, publish, and keep under review a delivery plan for the code(s) it is responsible for, setting out what code and system changes would be required to deliver the **strategic direction**.
DTS	Data Transfer Service
ESO	Electricity System Operator, also referred to as **NGESO** (see below).
FES	Future Energy Scenarios, an annual publication by **NGESO** which outlines what the future of energy could look like and identifies credible scenarios for the next 30 years and beyond.
Forward work programme	Annual publication by Ofgem setting out its priorities and key initiatives over the coming year and beyond.
FSO	Future System Operator
FSO consultation	Refers to the Future System Operator Consultation published in parallel to this consultation.
GC	Grid Code
HMT	Her Majesty's Treasury
HSE	Health and Safety Executive
IGEM	Institution of Gas Engineers & Managers
IGT UNC	Independent Gas Transporter Uniform Network Code

Term	Definition
IRMB	Integrated Rule Making Body, our proposed alternative (but not preferred) option for code governance, where the **FSO** would take on the role of the IRMB and fulfil both the **strategic function** and **code manager function**.
KPI	Key performance indicator
Material code change	A code change that has a material impact on consumers, competition, or the operation of the market (in line with current criteria set out in licences and codes).
MOCOPA	Meter Operation Code of Practice Agreement
MRA	Master Registration Agreement
NGESO	National Grid Electricity System Operator Ltd, also referred to as **ESO** (see above).
NGET	National Grid Electricity Transmission plc
NGG	National Grid Gas plc
Non-material code change	A code change that does not have a material impact on consumers, competition, or the operation of the market (in line with current criteria set out in licences and codes).
Panel	Among other things a panel, committee, sub-committee, or forum of a specific code.
REC	Retail Energy Code
RECCo	Retail Energy Code Company
SCR	Significant code review, an existing way for Ofgem to influence the existing end-to-end code change process to modify industry codes.
SEC	Smart Energy Code
SMICoP	Smart Meter Installation Code of Practice
SPAA	Supply Point Administration Agreement
SPS	Strategy and Policy Statement, a document that can be designated by the Secretary of State under the Energy Act 2013 (after Parliamentary approval), which would set out

Term	Definition
	the strategic priorities and policy outcomes for the government's energy policy.
SQSS	Security and Quality of Supply Standard
Stakeholder advisory forum(s)	A proposed body (or bodies) consisting of a range of stakeholders, including non-code parties (e.g., academics or innovators) and representatives of classes of code parties (e.g., suppliers, generators etc.).
STC	System Operator - Transmission Owner Code
Strategic body	We use the term 'strategic body' when we refer to Ofgem fulfilling the roles and responsibilities of the **strategic function**.
Strategic direction	We propose that the **strategic function** would be required to annually publish a strategic direction, considering the strategic priorities and policy outcomes communicated by the government through any **SPS**. The document would form the basis for the **delivery plans** that we propose will be required to be developed by **code managers**.
Strategic function	We use the term 'strategic function' when we refer to the body/bodies carrying out the strategic roles and responsibilities identified in this consultation. This would be the **strategic body** under the preferred option, or the **IRMB**, in which the **strategic function** and **code manager function** would be combined.
Strategic vision	We use the term 'strategic vision' when we refer to government's vision for the energy sector, including policy priorities such as net zero by 2050. We propose that government uses the SPS to communicate its strategic vision to the **strategic function**, which the **strategic function** will have to consider in developing and delivering the **strategic direction**.
System delivery bodies	System delivery bodies provide services to support the functioning of the energy system. Some of the owners of the systems are existing code administrators (i.e., Elexon) whereas others are separate entities.
TCA	Trade and Cooperation Agreement

Term	Definition
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
UNC	Uniform Network Code

Executive Summary

Net zero is an unprecedented challenge. It has created a need for new technical roles and responsibilities in the electricity and gas systems to drive decarbonisation, while minimising costs and maintaining resilience.

Many of the detailed rules that facilitate the gas and electricity systems are set out in codes. Although these codes have done a remarkable job guiding the industry post-privatisation, many of them were designed to deal with a more predictable energy system and have seen only incremental changes over time. This has resulted in a code governance framework that is complex, fragmented and lacks incentives to innovate, despite our urgent need for a more unified, flexible, and dynamic approach.

Recognising this need, the 2020 Energy White Paper committed to overhaul energy code governance as part of our transition to a clean energy system.[1] It also pledged to consult on options for reform in 2021. This is part of a wider reform of governance in the energy sector where the role of the system operator is also being considered.

This document is part of a joint consultation by the Department of Business, Energy and Industrial Strategy (BEIS) and Ofgem. We are publishing this document together because we recognise that the potential benefits to industry and consumers of an agile system that supports innovation are significant, and that we will both need to act for this to be delivered.

Background and scope

As we stated in our 2019 consultation, our desired outcome for energy code governance is a framework that is forward-looking, agile, easy to understand, and able to accommodate a growing number of market participants. We also set out four areas for reform that we believed would allow us to deliver on this outcome:

- providing strategic direction;
- empowered and accountable code management;
- independent decision-making; and
- code simplification and consolidation.

Due to the overarching nature of these reforms, the scope of the proposed reform process will need to be similarly broad, covering all 12 of the current electricity and gas codes as well as relevant engineering standards (see chapter 2). We also propose to bring central system delivery bodies into scope, which would include the gas systems operated by Xoserve, the electricity systems operated by Elexon, the smart systems operated by the Data

---

[1] Energy white paper: Powering our net zero future, BEIS, December 2020. p.86
https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

Communications Company (DCC), and the Data Transfer Service (DTS) operated by Electralink.

Proposed new institutional governance framework

In our 2019 consultation, we identified two potential models that we considered could deliver our desired outcome for energy code governance:

- model 1 - a code manager function and a strategic function performed by a separate 'strategic body'; or
- model 2 - an 'integrated rule making body' (a combined code manager function and strategic function, or 'IRMB').

In chapter 3 of this consultation, we set out the proposed roles and responsibilities of the strategic and code manager functions in additional detail. We also set out how we expect our two institutional governance options would work in practice, as well as who we think would be ideally suited to take on each role.

Ofgem as strategic body with separate code managers (option 1)

Our preferred institutional governance option is to designate Ofgem as the 'strategic body' and to have separate code managers (see chapter 4). As the strategic body, Ofgem would develop and annually publish a strategic direction for codes, ensure it is delivered by code managers, decide whether to approve material code changes and, under some circumstances, lead code changes itself. It would also select and license code managers, holding them to account via licence.

The code managers would replace the existing code administrators after a suitable transition period (see chapter 5). Code managers would likely be selected through a competitive tender process that would be open to anyone with the skills and capabilities to fulfil the function (subject to management of conflicts of interests). They would also take on most of the roles that are currently held by industry-led code panels.[2] However, crucially, we expect that industry input would remain key to the code change process, including through new stakeholder advisory forums.

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

---

[2] There are a range of terms used in the codes. We recognise these differences but have chosen to use 'panel' in a broad way to encompass these different terms to help make our proposals relevant to all codes.

Future System Operator as integrated rule making body (option 2)

Our alternative institutional governance option is to create an IRMB within a Future System Operator (FSO). We believe that the FSO would be well suited to this role because its focus on whole systems thinking would complement the strategic function's main responsibility to provide strategic direction across codes (see chapter 6).

In an IRMB, the strategic function and code manager function would be combined, meaning that there would be no separate code managers. The FSO would therefore hold most of the responsibilities outlined above. However, Ofgem would retain some oversight and decision-making roles under this option, such as the ability to approve material code changes, in line with its duties as the regulator and to protect against potential conflicts of interest.

Assessment of our two institutional governance options

We have assessed both of our options against the following criteria: their ability to address our four reform objectives; value for money; organisational capability and skills; and feasibility of implementation (see chapter 7).

Based on this assessment, we believe 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.

In order to provide flexibility and future proofing, we are proposing that primary legislation would enable Ofgem (in certain circumstances and following appropriate consultation) to be able to delegate some of its proposed powers and duties to an alternative body, or bodies, with approval from the Secretary of State. We are also proposing that the Secretary of State should be able to redesignate who the strategic body is, should there be a case for a transfer of the strategic body role to a different body in the future.

Implementation and next steps

Chapter 8 outlines some preliminary thoughts on the stages required to implement our proposals. It should be regarded as initial high-level thinking that we are seeking stakeholder views on, rather than as a definitive blueprint for code reform. Ofgem would work in consultation with stakeholders to develop elements of the reforms that do not require primary legislation, such as the code changes required for the new institutional governance framework, the licence conditions for the code management function, and options for code consolidation and implementation.

To ensure that code reform is delivered as quickly as possible, we propose that Ofgem begin a review of options for codes consolidation before the new governance structure has been implemented. We currently anticipate that the delivery of codes consolidation could begin in 2024 under option 1, or in 2026 under option 2, although these timelines may shift because they are contingent on the passage of legislation, the outcome of the FSO consultation (published in parallel to this consultation), and the detailed design of the reforms.

We are seeking comments on this consultation by 28 September 2021. We will then review the responses and publish a government response covering both this and the 2019 consultation on the GOV.UK/BEIS website in due course.

1 Background

In June 2019, government passed a law requiring the UK to bring all greenhouse gas emissions to net zero by 2050.[3] The changes needed to meet this target will be transformational. It will change the way that people travel, heat their homes, and interact with the natural environment. It will also transform how our energy is generated, how our buildings are built and how businesses produce their products. To deliver these changes by 2050, we need to ensure that the right institutional frameworks are in place to drive decarbonisation, while minimising costs and maintaining resilience.

The energy industry codes (also referred to as 'energy codes' or 'codes' from here on) set out the commercial, operational, and technical rules of the energy system. In the 2020 Energy White Paper, the government set out that the energy codes landscape will need an overhaul to allow us to transition to a clean energy system and reach net zero.[4] It also pledged to consult on options for reform in 2021. This is part of a wider reform of governance in the energy sector where the role and ownership of the system operator is also being considered (see the FSO consultation).

This chapter sets out the background to code reform efforts. This includes the 2016 Competitions and Markets Authority (CMA) investigation that identified issues with the code governance landscape, our 2019 consultation on code governance reform,[5] and a discussion of wider energy system governance reform. It also provides a brief overview of the proposals covered in this consultation.

1.1 Competition and Markets Authority investigation

In 2016, the CMA concluded a two-year investigation into the state of the energy market. It found that the existing system of energy code governance was adversely impacting competition, stemming from conflicting interests, lack of incentives to deliver policy changes and Ofgem's insufficient ability to influence code change processes.[6]

To address these issues, the CMA recommended that Ofgem be given greater oversight of the code change processes. This would include the ability to publish a cross-cutting strategic direction for code development as well as the power to ensure that important strategic changes were delivered. It also recommended that government should legislate to give Ofgem the

---

[3] The Climate Change Act 2008 (2050 Target Amendment) Order 2019, available at www.legislation.gov.uk/uksi/2019/1056/contents/made
[4] Energy white paper: Powering our net zero future, BEIS, December 2020. p.86 https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[5] Reforming the energy industry codes, BEIS, July 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828302/reforming-energy-industry-codes-consultation.pdf
[6] Energy markets investigation, Final Report, Competition & Markets Authority, June 2016. p.1402 https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf

power to modify codes in exceptional circumstances and that the limited role played by code administrators in delivering code changes should be expanded.[7] Annex A sets out the CMA investigation recommendations in relation to codes more fully and explains how our proposals are intended to address them.

1.2 2019 consultation on code governance

1.2.1 Our proposals in 2019

We launched a consultation on code governance reform in 2019,[8] building on previous work to address the CMA recommendations.[9],[10] In the 2019 consultation we stated that a reformed energy code framework should:

- be forward-looking, informed by and in line with the government's ambition and the path to net zero emissions, and ensures that codes develop in a way that benefits existing and future energy consumers;

- be able to accommodate a large and growing number of market participants and ensure effective compliance;

- be agile and responsive to change whilst able to reflect the commercial interests of different market participants to the extent that this benefits competition and consumers; and

- make it easier for any market participant to identify the rules that apply to them and understand what they mean, so that new and existing industry parties can innovate to the benefit of energy consumers.

To achieve these four objectives and thereby improve the existing code governance system, the 2019 consultation proposed four areas of reform:

- **providing strategic direction**: ensuring the regulatory framework is forward looking and is informed by the government's vision for the energy system. We proposed creating a new function that could take account of that high-level vision and translate it into a strategic direction for codes that promotes the interests of consumers. This was intended to address the current fragmentation and lack of co-ordination between the codes;

- **empowered and accountable code management**: a mechanism for ensuring that the strategic direction is delivered through appropriate changes to codes and that these

---

[7] Energy market investigation: Final Report, CMA, p.1414

[8] Reforming the energy industry codes, BEIS, July 2019.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828302/reforming-energy-industry-codes-consultation.pdf

[9] Code Governance Review, Ofgem. https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review

[10] Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations, Ofgem, November 2016.
https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf

changes are progressed in a clear and logical manner across codes. We considered that this could be achieved through the creation of an empowered code manager function that has the right expertise, resources, and powers to oversee the change process, monitor compliance with code obligations, and decide on appropriate measures in the event of non-compliance;

- **independent decision-making**: rebalancing decision-making away from industry control to decision-making processes that are agile and responsive to change and work in the interests of existing and future customers, where the right incentives drive the design of rules and systems, while continuing to draw on industry input and expertise; and

- **code simplification and consolidation**: to improve accessibility for code parties by simplifying and consolidating codes, removing unnecessary content, and ensuring codes are suitably adaptive to a changing industry. This could enable innovation and lower barriers to entry by making codes clearer, more transparent, and accessible. Fewer and simpler codes would also be easier to rapidly change in response to strategic priorities.

In the 2019 consultation, we proposed two alternative models we viewed as being capable of delivering our reform objectives: model 1, a strategic body with a separate code manager function; or model 2, an IRMB containing both the strategic and code manager functions. We also put forward potential options for where the strategic body and IRMB would best sit, seeking views on Ofgem, the Electricity System Operator (ESO), and a potential new independent body.

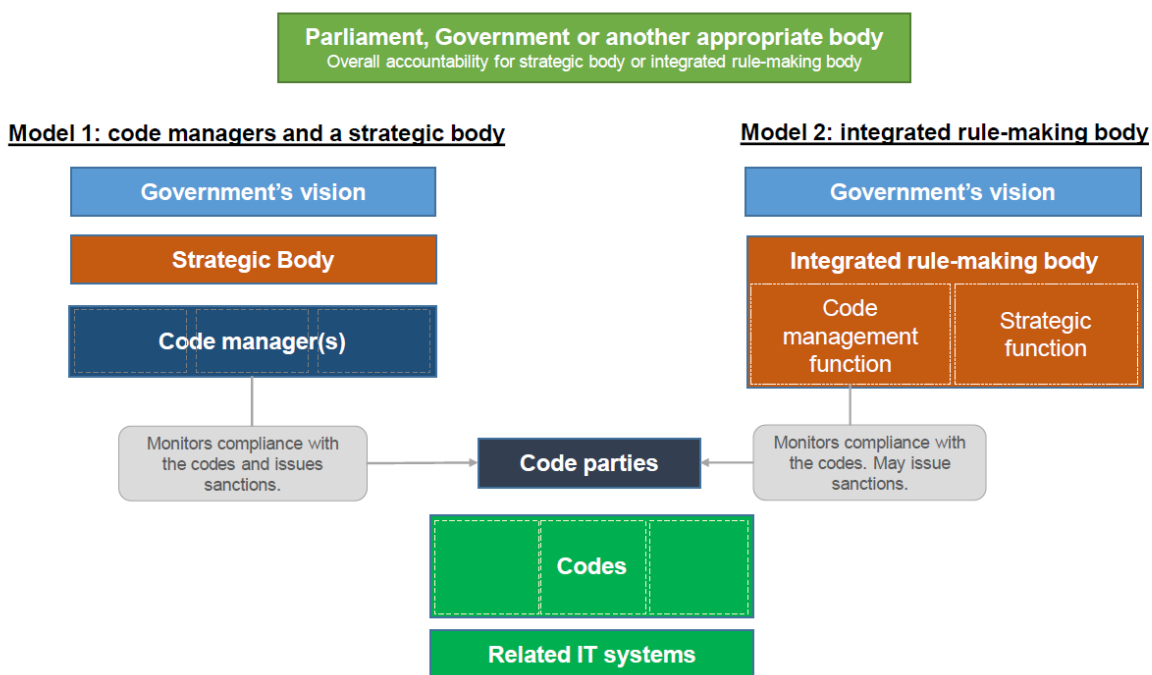A high-level view of these proposals is illustrated below:

Figure 1: Proposed operating models in 2019 consultation.

1.2.2 Responses to the 2019 consultation

We published a full summary of responses in December 2020.[11] More respondents agreed than disagreed with the problems we identified with the current code governance framework,[12] and the four objectives we identified for code governance reform. Most respondents supported three of the four areas of reform (providing strategic direction, empowered and accountable code management, and code simplification and consolidation). However, views were split on our proposal to increase independence of decision-making, with a large number both supporting and opposing it, but more respondents supporting it (44%) than opposing it (21%).

Some of those who supported the proposal of increased independence of decision-making argued that current arrangements lacked the incentives needed for reform, and that our proposal for an independent decision-making body could speed up the change process. Of those who opposed the proposal, some argued that, due to the level of expertise and knowledge it holds, industry's role in the decision-making process should continue. Others suggested that we should retain the role of industry to ensure industry 'buy-in' to governance arrangements.

On the two proposed models, a large number supported the proposals (38%), with a large number also not expressing a firm position (47%). More respondents were in favour of model 1 (separate strategic body, 48%) than model 2 (IRMB, 15%), with a common argument being that a clear separation of the strategic and code manager functions would allow the relevant body responsible for each function to focus on their core roles.

Of those who expressed a preference for where the strategic function should sit, most identified Ofgem as their preferred option. The majority of arguments in favour of Ofgem centred around Ofgem having some of the relevant powers, duties, and accountabilities already.

1.3 This consultation

1.3.1 Overview

This consultation builds on the two institutional governance models proposed in our 2019 consultation. Considering the consultation responses received, we have further refined our thinking on how we expect these models would function as well as who we think would be ideally suited to take on each role:

---

[11] 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

[12] The consultation responses were categorised by:
"Most" or "the majority" when referring to more than 51 per cent of respondents (i.e., 34 or more respondents);
"A large number" when referring to 21-50 per cent of respondents (i.e., 14 to 33 respondents);
"Some" when referring to 11-20 per cent of respondents (i.e., 8 to 13 respondents);
"A few" or a "small number" when referring to 0-10 per cent of respondents (i.e., 1 to 7 respondents).

- our preferred institutional governance option (option 1) is to designate Ofgem as the strategic body and to have separate code managers; and

- our alternative institutional governance option (option 2) is to create an IRMB within the FSO, which would include the strategic and code manager functions.

In addition to responses on these two options, we are also seeking views on detailed elements of our proposals that were not addressed in the previous consultation. These include the detailed roles and responsibilities of the strategic and code management functions, details on the proposed operating model for both options, and high-level approaches on implementation. We have also published an impact assessment alongside this consultation, where we set out our estimates on the costs and benefits of our two institutional governance options and ask for feedback on our calculations.

Responses to this consultation will inform final government decisions that need to be taken forward through primary legislation, including:

- which institutional governance option to implement: either Ofgem as the strategic body, with separate code managers, or the FSO as IRMB;

- the core roles and responsibilities of the strategic and code manager functions; and

- if the preferred institutional governance option is implemented, the framework powers for the strategic body to select code managers and license code managers.

Some elements of the proposals do not require primary legislation to implement but are likely to require further development in consultation with stakeholders. These may include, but are not limited to, the following:

- the detailed code changes needed for the new code governance framework, including the role of stakeholders within that process;

- the licence conditions for the code management function;

- if the preferred institutional governance option is implemented, the code manager selection process criteria, funding, and budget proposals; and

- the approach to consolidation of codes.

1.3.2 Consultation timeline and government response

The majority of the proposals in this consultation build on and provide further detail in relation to the institutional governance models in the 2019 consultation. The new proposals we are consulting on in this consultation document are focused and specific. This consultation will therefore run for ten weeks rather than 12 weeks as we believe that stakeholders will already be familiar with the bulk of the broad proposals. We will also undertake stakeholder engagement during the consultation period to gather wide ranging views from industry and other interested parties.

We have referenced responses to the 2019 consultation throughout this document. Although we have engaged with some of the responses that we received to the 2019 consultation in order to set out why we are making the proposals we are, our views may change in light of responses that we receive to this consultation, and so should not be treated as final. We will consider responses to this consultation in developing and taking decisions on the proposals outlined in this consultation. A future government response will address responses to both the 2019 and 2021 consultations, building on the summary of responses published in 2020, and set out a final policy position on government decisions that need to be taken forward through primary legislation.

1.4 Wider energy system governance reform

We consider code governance to be one part of a necessary wider reform programme for energy system governance. We are also carrying out a parallel consultation on the establishment and roles of the FSO ('FSO consultation' from here on).

We have identified the need to embed new roles and activities within system operation and to create joined up thinking across electricity and gas system operation. The FSO could have a larger role to play in developing the rules of the system, including within code governance, bringing a more strategic approach across the whole system. At a high level, in the FSO consultation we propose the FSO could take on:

- an advisory role to provide advice to decision making organisations drawing on its expertise;

- enhanced roles in strategic system planning;

- enhanced functions in market development;

- new roles in co-ordination across distribution networks and energy infrastructure; and

- new and enhanced roles in developing engineering standards.

In this consultation, we set out that we see potential formal roles for the FSO:

- in code governance as the IRMB under our alternative option (option 2);

- in code governance as a body that has been delegated aspects of the strategic function, under our preferred option of Ofgem acting as the strategic body (option 1); and

- as a potential code manager, under our preferred option of Ofgem acting as the strategic body (option 1).

In this document, we have set out only the details of the FSO consultation which are relevant to this consultation. For further detail, please see the FSO consultation.

The remainder of this document is structured as follows:

- chapter 2 covers the scope of the proposed reforms, which includes codes, central system delivery bodies and relevant engineering standards;

- chapter 3 sets out the proposed roles and responsibilities of the strategic function, the code manager function, and stakeholders;

- chapter 4 set out how the strategic body would operate under our preferred option (option 1) of Ofgem as the strategic body with separate code managers;

- chapter 5 sets out how the code managers would operate under our preferred option (option 1);

- chapter 6 describes how we expect the IRMB would operate as part of the FSO under our alternative option (option 2);

- chapter 7 presents a comparison of these two institutional governance options and sets out our rationale for preferring option 1, designating Ofgem as the strategic body with separate code managers; and

- chapter 8 outlines high-level implementation plans for both of the institutional governance options.

2   Scope of reform

This chapter sets out which codes, engineering standards and central system delivery functions we propose to include in the scope of our reforms. We invite views on the merits of each proposal.

2.1   Summary of our proposals

In our 2019 consultation we proposed that the following codes and systems should be within scope of our reforms:

- NGESO codes (CUSC, GC, STC) and the non-NGESO-administered codes (BSC, MRA, DCUSA, DC, SEC, UNC, SPAA, IGT UNC). We noted that this would also include the REC following retail code consolidation;[13]

- central system delivery functions underpinning energy systems ('the central system delivery functions'):

- smart metering, delivered by DCC;

- gas, delivered by Xoserve;

- electricity, delivered by Elexon; and

- DTS.

We also asked whether, given the range of reforms we are proposing, a broad range of reforms should apply to some codes or systems and a limited set of reforms should apply to others.

We continue to propose that the 11 codes discussed in the 2019 consultation should remain in scope, along with the REC. We also propose to bring central system delivery functions into scope by requiring the bodies that deliver those functions ('central system delivery bodies') to comply with directions of the strategic function.

In addition, following stakeholder feedback and building on the conclusions of the Engineering Standards Review, we propose to bring certain engineering standards into scope (chapter 2.1.2 below).[14]

---

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

[14] This includes the SQSS (Security and Quality of Supply Standard) and Engineering Recommendation P.2/6 which forms part of the distribution code and is, broadly speaking, the distribution equivalent of the (planning aspects of) the SQSS.

2.1.1 Codes

Our proposals aim to establish a clear line of accountability between the strategic function and the code management function. They also aim to achieve greater coordination and consistency across codes for delivering strategic change that benefits consumers.

Our view is that all codes which are subject to the Code Administrator Code of Practice (CACoP)[15] should be in scope. We consider that these codes and systems are likely to need to change to facilitate the delivery of the strategic direction. We therefore propose that they should all be overseen by the strategic function and shaped by the strategic direction.

Ofgem will work in consultation with stakeholders on potential code consolidation, as set out in chapter 8. The proposals in this consultation focus on the overall governance framework for codes and our initial thoughts on potential next steps.

We note the differing structures of the existing codes as well as the current efficiencies that exist in their day-to-day operation. For example, the CMA's 2016 Market Investigation found that the industry self-governance modification process (which covered 30% of modifications in 2015) was appropriate and efficient in many instances. In implementing our reforms, we will therefore need to fully consider the differences between individual codes and seek to build on these existing efficiencies.

2.1.2 Engineering standards

Relevant standards

The engineering standards are requirements specifying how the physical electricity and gas infrastructure must be built, maintained, and operated. They include provisions within the Grid Code (GC), the Distribution Code (DC) and the Security and Quality of Supply Standards (SQSS)[16], and their subsidiary documents which include P2[17] and engineering recommendations G98 and G99.[18]

These particular standards, and their subsidiary documents, have direct effects on consumers because they describe requirements, or behaviours, at the interface between network licensees and their customers. Further, given the central role that these documents play in the design and operation of the electricity system, we consider that they will be integral to achieving net zero ambitions and facilitating innovation. We consider that these documents are

---

[15] The Code Administration Code of Practice (CACoP) was developed by industry under Ofgem's code governance review project, with the aim of making code modification processes more convergent and transparent.
[16] Transmission licensees are required by their licences to comply with the National Electricity Transmission System Security and Quality of Supply Standards (NETS SQSS), which sets out criteria and methodologies for planning and operating the GB Transmission System.
[17] 'Engineering Recommendation P2 – Security of Supply' (ER P2) is a distribution network planning standard. It sets the minimum levels of security of supply that Distribution licensees must achieve on GB distribution networks.
[18] Engineering Recommendation G98/1-1(2018)3 (EREC G98) sets out the requirements for fully type tested micro-generators up to 16A per phase connected in parallel with the Low Voltage (LV) distribution network. Engineering Recommendation G99/1-1(2018)4 (EREC G99) sets out the requirement for the connection of generation equipment in parallel with public distribution networks and covers all generation above 16A per phase. Both EREC G98 and EREC G99 are Distribution Code Annex 1 document.

therefore closely linked to the delivery of our stated objectives of code governance reform, and as such propose that they should be included in the scope of our reforms.

Conversely, there are a number of additional standards that the network licensees use for wholly internal purposes, and which have no direct effect on consumers (e.g., specific asset or product standards). These standards sit under the remit of non-energy specific bodies, such as the British Standards Institute (BSI) or the Institution of Gas Engineers and Managers (IGEM). We do not consider that these standards would have a direct impact on the delivery of the strategic direction, and therefore we do not propose at this stage to include these non-code standards in the scope of the reforms we set out below. However, the strategic function would be required to keep this under review once the new regulatory framework is in place.

Role of code manager(s)

A joint government and Ofgem review of electrical engineering standards published in 2019 found that standards have evolved over the last four decades to form a complex framework that is lacking in areas such as interoperability and standard data formats.[19] This complexity acts as a significant barrier to change, because it makes it difficult to identify where accountabilities lie or to implement changes in a timely manner.

To address this issue, the review panel recommended that a single party should be made responsible for coordinating changes to these standards. This would provide clear ownership over the standards, which would then help to enable more rapid evolution and adaptation of the standards as new technologies emerge. Suggested roles and responsibilities for this party include developing and maintaining a map of the standards and initiating action to develop new standards. The review panel acknowledged that this responsibility parallels the need for the kind of code manager function proposed in this consultation.

Under option 1, we propose to act on their recommendation by introducing one or more code managers to be responsible for developing the relevant provisions in codes and in-scope engineering standards. The code manager(s) could oversee the Grid Code, the Distribution Code, SQSS and their subsidiary documents, such as P2, G98 and G99, etc. We propose that the full roles and responsibilities of the code manager function (as set out in chapter 3.2.3) would also apply in this instance, including powers to propose code changes and to take decisions on non-material code changes. Under option 2, where the FSO takes on the role as the IRMB, we propose that this responsibility would sit with the code manager function of the IRMB.

Role of the FSO

Where the FSO does not take on the role as the IRMB, we still anticipate it being involved with the engineering standards. We are separately consulting on the FSO, including its roles and responsibilities. That consultation proposes that the FSO should have a role providing advice and insight to ensure the system remains operable, and potentially in monitoring engineering standards. This would involve working closely and engaging with standard-setting bodies such

---

[19] Electrical engineering standards: independent review, 2019.
https://www.gov.uk/government/publications/electrical-engineering-standards-independent-review

as BSI, the strategic body and code manager(s), including those for in-scope engineering standards, to recommend changes it considers necessary. Code managers may be required through their licences to consider FSO advice. The FSO could itself be licensed as a code manager for one or more codes and in-scope engineering standards. However, potential conflicts of interest and any appropriate mitigations would need to be carefully considered before any licence were granted.

2.1.3 Central system delivery functions

The central system delivery functions underpinning the gas, electricity and smart metering systems play an important role in the current framework and we consider these vital to the future development of the system. The bodies that perform the central system delivery functions are responsible for supporting effective implementation of code change, by delivering central system changes and coordinating with other system changes.

We propose that at least the following four central system delivery functions should be included in the scope of these code governance 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 undertaken by Elexon, alongside their role as code administrator for the BSC;

- the central system delivery function underpinning the rules and requirements for service delivery for smart metering that are under the SEC. There is already a single line of accountability from the DCC to Ofgem for these via a licence; and

- the central system delivery function underpinning the DTS, which carries data that is used in the change of supplier process. We consider that given the role it plays in this process, which impacts consumers, it should be in scope of our proposed reforms.

In addition, further system delivery functions could, in future, be brought into scope if they are likely to have a material impact on the delivery of the strategic direction or the objectives of code governance reform. For example, we anticipate that the Central Switching Service will be brought in to scope once it is in live operation.

As part of the energy transition there are currently substantial changes being made to central systems, many through significant code review (SCR) processes (e.g., faster and more reliable switching, and market wide half-hourly settlement).[20] These changes are an important step in the right direction and should improve accountability and drive effective performance in the delivery of these essential systems. Through these code governance reforms, there is an opportunity to further build on these changes, aligning accountability more directly with consumers' interests. Through our code governance reforms we intend to ensure that future

---

[20] Ofgem undertakes SCRs from time to time. An SCR provides a role for Ofgem to holistically review a code-based issue (for the main commercial industry codes).

substantive system changes, required by modifications to the relevant code(s), should be consistent with the strategic direction to ensure the regulatory framework can operate as a coherent whole. This would help to ensure a more joined-up and efficient change process.

We propose to legislate 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. In addition, we propose to place licence obligations on code managers to cooperate with the central system delivery bodies to deliver the strategic direction. This is to ensure that future changes are made in a way that supports the move to net zero, enables innovation, and delivers maximum benefits to consumers.

Licensing central system delivery functions

We recognise that these reforms present an opportunity to consider further ways in which lines of accountability between central system delivery bodies and their users can be strengthened. One way in which this could be achieved is to further codify the powers and responsibilities of central system delivery bodies through licence. This could be delivered either via a new licensable activity and licence in respect of central system delivery, or in granting licences in respect of full end-to-end delivery responsibilities (i.e., making a licensee responsible for both code management and central system delivery).

We recognise that the benefits of licensing persons performing central system delivery functions would need to be evidenced and weighed against the increased regulatory burden and other costs. On the one hand, more integration between code management and central system delivery could make it easier to deliver the strategic direction. On the other hand, there are both synergies and potential for conflicts of interest between a code management role and central system delivery body role that would need to be explored before making any decisions.

We would expect to engage further with stakeholders on these detailed considerations ahead of any changes in this area. However, at this stage we welcome initial views on the best way of regulating central system delivery bodies, including their relationship or integration with code manager(s) and the extent to which licensing may be appropriate.

2.1.4 Managing changes to scope over time

The scope of the future regulatory framework for codes, central delivery systems and in-scope engineering standards should be responsive to new developments, such as in relation to heat, hydrogen, and CCUS. The strategic function will therefore have to keep evolving codes and standards under review. Where necessary or desirable to further the delivery of the strategic direction, it could recommend appropriate reforms to the regulatory framework to government, for example in relation to the remit of the strategic function or the code manager(s). We are considering ways in which we could legislate to give the Secretary of State powers to adapt the scope of this regime.

It will be important for the strategic function to manage stakeholder expectations about which additional agreements, standards and methodologies that stakeholders suggest should come

into scope should do so and when, recognising the already significant scope of our proposed reform. One criterion for determining any additions to the remit of the strategic function or code management function could be its likely impact on the delivery of the strategic direction.

2.1.5 Respondents' views on the 2019 consultation and our response

In response to our proposals in the 2019 consultation, a large number of respondents agreed with the proposed scope of our reforms. Only a small number of respondents considered fewer codes and systems should be in scope, with more respondents suggesting the scope should be increased. A few respondents suggested all codes, multi-lateral contracts, guidance documents and schedules should be in scope (including SMICoP,[21] MOCOPA[22] and AMICoP[23]). We note that Ofgem is undertaking a significant code review (SCR) to deliver consolidation under the REC. As a result, Ofgem have already proposed that these ancillary documents will be appropriately considered through REC reforms.[24]

In 2019, we invited stakeholder views on whether any other codes, standards, or systems should also be in scope. In response, a number of stakeholders suggested that the scope of reforms should also include engineering standards on the basis that these standards are interconnected with the commercial landscape. As outlined in our proposals above, and consistent with the recommendations of the 2019 review of electrical engineering standards, we now plan to include engineering standards, and their subsidiary documents within the scope of our reforms. As noted above, we also propose to give the strategic function the power to direct central system delivery bodies in support of delivering the strategic direction.

2.2 Questions

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

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

---

[21] Smart Meter Installation Code of Practice.
[22] Meter Operation Code of Practice Agreement.
[23] Approved Meter Installers Code of Practice.
[24] Decision on Retail Energy Code V2.0 and Retail Code Consolidation, 2021.
https://www.ofgem.gov.uk/publications-and-updates/decision-retail-energy-code-v20-and-retail-code-consolidation-consultation

3 Roles and responsibilities

In this chapter we outline how the government will set a strategic vision for the strategic function, which will in turn set a strategic direction for code managers and industry based on that vision. We also set out in detail the proposed roles and responsibilities of the strategic and code manager functions in setting and delivering the strategic direction, and how they would interact with industry and other stakeholders throughout this process. Finally, we set out our proposals for compliance and appeals processes for both options.

3.1 Setting strategic direction

3.1.1 Our proposals

In the 2019 consultation, we proposed establishing a strategic function with the ability to oversee code changes across the sector and related IT systems. In line with this and taking into account stakeholder responses to the 2019 consultation, we now propose that the main roles of the strategic function will be to:

- identify and analyse how the government's strategic vision for the energy sector and related policy priorities (including net zero by 2050), current and future trends in the energy market, and the emergence of innovative technologies create a need for changes across the code landscape; and
- drive such changes in a holistic way across codes.

We propose that the strategic function would do this through setting a strategic direction for the code manager function, irrespective of which institutional governance option is implemented.

Reviewing government policy priorities and the wider energy landscape

Currently, there is no mechanism to systematically align code development with the government's vision for the energy sector and related policy priorities. To allow the strategic function to develop a strategic direction in line with the government's vision, and to provide clarity to industry over the strategic policy context in which the strategic function will take decisions, government needs to communicate its vision to the strategic function on a regular basis.

As the regulatory authority, Ofgem is independent from government. Similarly, the desired characteristics for the FSO include that it is independently minded and not conflicted or occupied by other commercial interests, and government influence over it should be strategic and not related to day-to-day operational decisions. Therefore, whilst it is key that the strategic function and government are aligned and coherent regarding their priorities and objectives, it will be crucial to ensure that this is not to the detriment of the strategic body's independent regulatory role (if Ofgem is the strategic body) or independent operational role (if the FSO is the IRMB).

Below we propose two measures (which are not mutually exclusive) which could be used by the government to articulate its strategic vision, including policy priorities, to the strategic function. We believe there must be a legally binding mechanism(s) to align the rule-making functions of the strategic function with government policy.

(1) Set government strategic policy priorities and outcomes through a Strategy and Policy Statement (SPS) which will apply to the strategic function:[25]

The Energy Act 2013[26] provides a power for the Secretary of State to designate a Strategy and Policy Statement (SPS) that has been approved by Parliament,[27] which would set out the strategic priorities and policy outcomes of the government's energy policy. Currently, the Energy Act 2013 sets out that the duty to have regard to the SPS framework only applies to Ofgem and Secretary of State in carrying out specified 'regulatory functions', although the SPS can set out roles and responsibilities of other persons. No SPS has yet been designated.

Statutory duties apply in relation to a designated SPS. Currently, the duty to have regard to the SPS framework only applies to Ofgem and the Secretary of State in carrying out specified 'regulatory functions', although the SPS can set out roles and responsibilities of other persons. Ofgem is required, in carrying out its regulatory functions, to have regard to any SPS strategic priorities and to further SPS policy outcomes. Ofgem also has to report in its forward work programme on its strategy for furthering the delivery of the SPS policy outcomes and implementing its strategy, and in its annual reports on how it has complied with its duties in relation to the SPS.[28]

We propose to legislate to amend the SPS framework in the Energy Act 2013 to impose new duties on the strategic function.

If option 1 were implemented and Ofgem is the strategic body, a designated SPS would already apply to Ofgem. But, in order to enable a designated SPS to apply to any other person who might be designated to perform the role of the strategic body in the future, we propose that the SPS framework in the Energy Act is amended to apply the statutory duties in relation to the SPS to any person designated as the strategic body, including reporting requirements mirroring those currently imposed on Ofgem in relation to the SPS.

The FSO consultation proposes to amend the Energy Act 2013 to extend the SPS framework to the FSO as well, including reporting requirements mirroring those currently imposed on Ofgem in relation to the SPS.[29] If the strategic function were carried out by the FSO as IRMB

---

[25] Section 134 of the Energy Act 2013 states that government must review a designated SPS every five years, or earlier if a specified event occurs. The SPS will set out the strategic priorities and policy outcomes of the government's energy policy.

[26] Energy Act 2013 (legislation.gov.uk)

[27] See BEIS 2014 consultation: Strategy and policy statement - GOV.UK (www.gov.uk)

[28] The reporting requirements on Ofgem are set out in the Utilities Act 2000 sections 4A and 5.

[29] More details on this proposal are set out in chapter 4.3.1 of the FSO consultation which has been published in parallel to this consultation. The FSO consultation sets out that the FSO would be required to report annually against the SPS.

under option 2, the government could use the SPS as a mechanism for communicating its priorities.

An SPS would help maintain the independence of the strategic function as parliament would need to approve the SPS. It would also reduce frequent change to the government's strategic priorities and desired policy outcomes because an SPS must only be reviewed every five years, although there are circumstances in which an early review can be triggered.[30]

If an SPS has been designated by the time that primary legislation to implement these reforms is introduced, we propose to make a time-limited modification to the Energy Act 2013 to allow any designated SPS to be reviewed and amended outside of the normal quinquennial cycle so the SPS can apply to the strategic function from the commencement of the function.

(2) Ensure that the strategic function keeps under review relevant developments in the energy sector:

The strategic function should keep under review any relevant government policy initiatives or other developments in the energy sector that are likely to impact codes, including those which occur or emerge between the (usually quinquennial) reviews of a designated SPS. This is to enable it to make decisions informed by that context.

The criteria for determining which government policy initiatives are relevant and are likely to impact codes will naturally depend on the outcome of this consultation and other context like the FSO consultation. For example, we are considering how such work would operate in relation to the content of the SPS, for example in relation to the scope of what is to be kept under review. The outcome of the consultations on the SPS proposals is therefore another interdependency.

The strategic function would be expected to take these developments into account when developing its strategic direction (see following section in this chapter).

The strategic function could report on its performance of such 'keeping under review', for example in its annual report and forward work programme, or other reporting or transparency mechanisms it already has in place.

Developing and publishing the strategic direction

We propose to legislate to impose a duty on the strategic function to develop and publish a document called the strategic direction. The strategic function would develop its strategic direction informed by the context of any policy initiatives and developments identified as it keeps matters under review as set out above. After the publication of the strategic direction, the code manager function will be under a duty to prepare a delivery plan for each code to deliver the strategic direction (see chapter 3.2.3). If the strategic function is performed by Ofgem as the strategic body (option 1), this duty would be included in the code manager licence and the strategic body would enforce this requirement under its licensing powers. Under the FSO as IRMB option (option 2), this duty would be imposed on the code manager

---

[30] These exceptions are set out in section 134 of the Energy Act 2013.

function of the IRMB through the relevant licence. While the strategic direction would be aimed at the code manager function, industry would be able to refer to the strategic direction as evidence of the strategic direction for the codes landscape.

We would expect the strategic direction to include:

- relevant content from any designated SPS;

- any particular initiatives or developments it has considered as part of the keep under review work;

- the impact of the government's policy priorities and emerging trends on the codes landscape; and

- a high-level view on which codes may need to change to support the achievement of any policy priorities and to allow for emerging trends to be reflected in the codes, as well as the broad nature of potential changes and their relative priorities.

We propose that the strategic function be required to publish a strategic direction annually, with the expectation that the extent to which the strategic direction will vary from year to year will depend on the extent of developments since the previous strategic direction. If the strategic function is performed by Ofgem as the strategic body (option 1), this would align with Ofgem's forward work programme[31] and reporting against the SPS. If the strategic function is performed by the FSO as the IRMB (option 2), this would align with its forward work programme, as proposed in the FSO consultation, and regulatory reporting cycle. Publishing the strategic direction on a yearly basis would ensure that codes change in line with wider strategic plans and would also allow market participants to implement their work in line with this.

We propose to legislate to require the strategic function to consult with specified stakeholders, including the Secretary of State, before publishing the strategic direction. If Ofgem were the strategic body (option 1), we would need to consider further how this obligation would interact with other existing statutory consultation requirements.

3.1.2 Respondents' views on the 2019 consultation and our response

Responses to the 2019 consultation included that the strategic function would need to be aware of the impact of the strategic direction on investor confidence and markets. We propose that the strategic function would develop the strategic direction in light of any designated SPS and the wider context, including impacts on the energy market.

It was also raised that the performance of the system and changes could be reviewed against the strategic direction regularly. We agree that this is crucial. If the strategic function is performed by Ofgem, code managers could be required by their licence to develop delivery plans based on the strategic direction and propose, prioritise, and develop code changes based on these plans. More details on this are covered in chapter 3.2.3. If the strategic

---

[31] Ofgem produces an annual Forward Work Programme which outlines its priorities and key initiatives over the coming year.

function is performed by the FSO as the IRMB, we would propose this obligation to be set out in the relevant licence.

3.2 Delivering the strategic direction

3.2.1 Current approaches for changing the codes

The policy proposals set out in chapters 3.2.2 to 3.2.6 relate to our preferred option of Ofgem as the strategic body (option 1). As such, in those sub-chapters we refer to 'strategic body' instead of 'strategic function' and 'code managers' instead of 'code manager function'. Most of these proposals equally apply to the FSO as IRMB option but, for ease, we separately focus on that option in chapter 3.2.7.

Much of the focus below is on how codes would be changed. Here we summarise the current broad approaches for changing the codes, so that our proposals can be placed in context:

- **industry led change**: a code party or a materially affected party proposes a code change and retains ownership of the detail of their solution (often engaging through working groups) and is supported by code administrators;

- **Ofgem's SCR**: the three SCR routes range from Ofgem directing industry to raise code changes to implement changes on conclusion of an Ofgem SCR, to Ofgem developing the code change drafting and sending this to the relevant code panel/forum, with that panel/forum making a recommendation to Ofgem on whether to approve; and

- **legislative powers**: Ofgem and the Secretary of State have some powers in legislation to directly change codes to deliver specific policies;

We recognise that individual codes have different change processes and that we would need to carefully consider these differences when planning and implementing our reforms.

3.2.2 Proposed approaches for changing the codes under option 1

We propose that the primary route for changing codes would be through a code manager-led process. The detailed code change process will be consulted on and established later and subsequently set out in licences and codes as appropriate. Given that licences and codes can be modified, this would ensure that there is flexibility to adapt and optimise the approach over time. The detailed change process and associated roles and responsibilities will be consulted on in future. However, we consider it is helpful to set out some details now, to draw out some of the questions we still need to answer and to illustrate how we anticipate our proposed changes to roles and responsibilities (including the introduction of code managers) could work in practice. To aid this, we set out an illustrative code change process in annex B, explaining the roles at each stage and how that would differ to the current approach.

Our proposed changes to roles and responsibilities would apply to all code changes, including both material code changes (where Ofgem is required to decide whether to approve the change) and non-material (where they currently follow a self-governance route, with a panel

making the decision on whether to approve the change). We note that the CMA (in its 2016 market investigation) considered that the self-governance scheme improved the overall efficiency of the code regime. Our proposals below seek to capture some of these efficiencies by ensuring that decisions on whether to approve a code change can be taken at the appropriate level (e.g., we propose that code managers would be able to decide on whether to approve non-material code changes). However, we propose that our proposed changes to roles and responsibilities would apply to both material and non-material code changes. Noting that we propose to replace code administrators with code managers and that we expect to disband panels, we do not consider it would be efficient or practical to retain the status quo for non-material code changes. This would not be workable, noting that code changes may change status (from material to non-material and vice versa) and that a non-material code change may be part of a wider suite of proposed changes that are material.

Below we set out the key roles for code managers, the strategic body and other stakeholders (including code parties) in delivering the strategic direction through changing codes and systems. We start with the code managers, as their primary focus will be on delivering the strategic direction.

3.2.3 Proposed roles and responsibilities of code managers under option 1

As set out in more detail in chapter 5.1.1, we propose that code managers would be held accountable by the strategic body through a 'code manager licence'. This licence (and where appropriate the relevant codes) would govern their roles. Legislation enabling licensing of code managers would set out the scope of the licensable activity and code managers' functions.

Delivery plans

We propose that a licence condition would require code managers to develop and publish a delivery plan consistent with the strategic direction within a specified period following a strategic direction being published by the strategic body. This delivery plan would set out what code and system changes would be required to deliver the strategic direction (including any optionality around this), how these changes will be made and by when. Code managers would be required to consult with relevant stakeholders, including code parties, system delivery bodies and consumer groups, to develop the delivery plans. If there are multiple code managers, they would be required to collaborate to publish a single consolidated delivery plan that covers the whole code landscape.

We anticipate that code managers would be required by their licence to report to the strategic body on its progress against its delivery plan. This would allow the strategic body to monitor whether the code manager is meeting its delivery plan, with the ability to take enforcement action if, in its view, this is not the case.

A licence condition would also require code managers to keep the delivery plans under review and update them, where necessary, ahead of the next strategic direction. An update could be necessary following any developments in government policy or code changes raised by stakeholders, or if aspects of the delivery plan need to be amended so it is viable.

Proposing code changes

As noted in chapter 3, there will be further consultation on the detailed code change process under the new code governance framework, including the role of stakeholders within that process. However, we set out our current thinking on these proposals to help to bring to life the anticipated change process and the role of, for example, code managers in that process.

For most codes, currently it is primarily code parties who can propose changes. We currently anticipate that any interested person, including code managers, would be able to propose a code change. This would align with the approach under the REC. We propose that a licence condition would require code managers to triage proposed changes to decide whether to enter it into the code change process.

Triage criteria would be consulted on in future. In deciding on any triage criteria, we would consider existing arrangements and those emerging in the REC, where the code manager can refuse to accept a change where it:

- is incomplete or unclear;
- is not materially different from another live change;
- concerns matters outside the scope of the REC; or
- has no reasonable prospect of being approved.

The focus of this triage process would be on whether a code change is progressed at all, which is separate from the prioritisation approach proposed below.

To meet its delivery plan, code managers would likely need to identify, propose and develop code changes. We propose to use licences to ensure that code managers' primary focus in identifying and proposing code changes would be on those that most effectively deliver the strategic direction and benefits to consumers and facilitate the transition to a cleaner energy system and net zero. We recognise that code change proposals are currently considered against code objectives (including when deciding whether to raise changes and approve them). In a future consultation, we will consider whether any changes are needed to these objectives to ensure the code manager can focus on the relevant priorities.

Code changes that are not directly related to the strategic direction could be proposed and, subject to entering the code change process, would be prioritised accordingly.

Prioritising code changes

In general, code change proposals entered into the code change process are currently prioritised, to differing degrees, by industry panels. We propose that code managers would prioritise code changes as they are proposed, developed, and implemented, to ensure there is a suitable focus on delivering the strategic direction.

We recognise that there could be a proposed code change that is not directly related to delivering the strategic direction but could nonetheless be considered high priority. Also, we

intend that code managers would be suitably resourced to also progress lower priority code changes as appropriate.

Managing the code change process

Currently, code administrators manage the code change process. We propose that code managers would at least retain the same broad duties currently carried out by code administrators in terms of administering the code change process, including managing the input of stakeholders (see below for further details on how code managers would consult with stakeholders). As happens now, there will be a need to consider policy questions and options in developing the detail of a code change – the code manager would be responsible for this task and would need to have the necessary expertise. Code managers would also be responsible for ensuring proposed code modification legal drafting is prepared. We will consult again in future on the details of the code change process with an aim to coordinate the processes across codes as far as is beneficial, noting there are currently different processes across the codes.

Cross-code coordination

If more than one code manager is licensed, each licensee would be obliged by their licence to facilitate cross-code coordination and change, such as convening cross-code stakeholder groups. The strategic body would have oversight of this and, where necessary, take a more active role in coordinating cross-code change (see chapter 3.2.4 for further details).

Decision-making

Currently, industry panels make most day-to-day decisions regarding the codes. As a starting point, we expect that industry panels would be disbanded, and all decisions currently taken by panels would be taken by code managers. For example, this would include decisions: on the materiality of a code change; on whether to approve a change to enter the change process; on whether to approve non-material code changes (the strategic body would decide on material code changes);[32] on performance assurance (see 3.3.1); and various operational matters related to the codes. The strategic body would hold the code manager accountable for these decisions. For example, it may be able to hear appeals on those decisions (see chapter 3.3) or overrule those decisions (see chapter 3.2.4).

After transferring panels' decisions to code managers, it may be necessary or beneficial for some detailed decision points to change under the codes. In the first instance, we expect that any such changes could be considered when the code managers are in place, or refinements could be proposed by stakeholders or code managers thereafter based on experience under the new governance framework.

There will continue to be an important role for industry expertise in the code governance process. We set out in chapter 3.2.5 our current thinking on how stakeholders, including stakeholder advisory forums, would be involved in making decisions.

---

[32] A material code change could be (as is currently the case) one where the change has a material impact on, among other things, consumers or competition.

Managing system changes

Chapter 2.1.3 discusses the role of central system delivery bodies. The decisions we reach in this area will impact on code managers' roles related to system changes.

3.2.4 Proposed roles and responsibilities of the strategic body

We propose that the strategic body's broad functions, powers, and duties would be set out in legislation, although the detail of how the strategic body will interact with code managers and code parties would be set out in licences and codes.

The strategic body's roles in delivering the strategic direction	Examples of what these roles could include
Oversight and monitoring	The strategic body would engage in the code change process by, for example, monitoring the progress of code changes, attending relevant meetings, etc. It would also receive progress reporting from code managers on their delivery plans (see chapter 3.2.3).
Holding code managers accountable via code manager licences	Currently, lines of accountability are unclear and there can be a lack of direct accountability from code administrators to Ofgem. We propose that the strategic body would have oversight of code managers as they develop their delivery plans, with the ability to act where the plans do not adequately deliver the strategic direction or where the plans are not delivered effectively. For example, the strategic body would have enforcement powers (see chapter 5.1 for further details). The strategic body would have oversight of code manager decisions on code changes (e.g., on prioritisation, materiality of a code change and whether to approve a change) by having the option to overrule certain code manager decisions (e.g., currently Ofgem can overrule some panels' decisions on the materiality of a code change) and being responsible for hearing any appeals (see chapter 3.3). The code manager would ultimately be accountable to the strategic body when setting its budgets (see chapter 5.3.1). Also, the strategic body would be responsible for setting and, where appropriate, modifying the licence obligations (including any incentives) that apply to the code manager (see chapter 5.1).

Delivering code changes	Ofgem currently initiates significant code changes by following the SCR process. This is primarily designed for cross-code issues, generally takes a long time to deliver (so may not be suited for any rapid changes that the strategic body might need to make) and requires any proposed changes to be submitted to an industry panel ahead of any proposal coming to Ofgem for a decision.
	In chapter 3.1, we propose that the strategic body would set the strategic direction for code managers. In addition to this, we also propose that the strategic body would be able to develop or coordinate the development of the details of code changes and we would legislate to give the strategic body the power to directly change the codes. The strategic body may consult code managers and other stakeholders, where appropriate. It may not be appropriate to consult where, for example, the code manager has already conducted a consultation on the substantive issue or where a change is particularly urgent. We will consider whether there is a need to provide for any additional checks and balances on the strategic body deciding to not consult before directly changing codes, noting broader public law duties.
	We expect code managers would be incentivised[33] and able to lead most, if not all, code changes, so we would only expect the strategic body to use this power in limited circumstances. The factors that might mean the strategic body would be more likely to use this power, particularly when a combination of factors are relevant, would be where: • there are complex cross code impacts; • there is an urgency to deliver the code change; • there are complex industry system implementation impacts; and • there is a risk of the codes being misaligned with the strategic direction due to code managers being unable or being highly likely to be unable to meet its delivery plan for any reason: e.g., due to not being in place/fully established;[34] being conflicted (e.g., where the change relates to their role under the codes); or due to performance issues.

---

[33] See chapter 5 for further details on how code managers would be held accountable and funded.
[34] Under our implementation approach, the strategic body would be established ahead of code managers being selected.

	Although we would only expect the strategic body to use this power infrequently, the power would act as a backstop to ensure that the strategic direction and ultimately the government's strategic vision for the energy system can be delivered. We propose that the strategic body would also decide whether to approve material code changes.

If the strategic body can hold code managers accountable for delivering the strategic direction and can make direct changes to the codes, this could supersede Ofgem's SCR process in its current form. If these proposals are enacted, Ofgem will look at whether the current SCR process could either be removed or streamlined. However, the current SCR process also provides a route by which Ofgem can direct licensees to raise code changes. To help future proof these arrangements, for example if someone other than Ofgem were to be designated as the strategic body in the future, we propose to legislate for a power for the strategic body to direct code managers to propose code changes. This would allow the strategic body to set out the kind of code change that it would like to see implemented, with the details left up to the relevant code manager, in addition to its ability to deliver significant code changes on its own.

3.2.5 Proposed roles and responsibilities of other stakeholders, including code parties, under option 1

A range of stakeholder groups play a central role in supporting codes decision-making, and we believe it is crucial that they continue to do so. This includes code parties, consumer groups, consultants, academics, and other non-code parties. These parties often lend their expertise through working groups, consultations, and various panels and forums.

It can be more difficult for some organisations (such as smaller players and new market entrants) to engage with code governance, partly due to the number, size and complexity of codes, the different governance arrangements for each, and the number of code bodies and forums. Through our reforms we are aiming to ensure that all interested stakeholders can engage with the codes. The codes and licences could be used to ensure those engagement mechanisms were clear and consistent. The strategic body would also have a broad duty to consult with stakeholders as appropriate.

We propose that the approach to stakeholder engagement would be robust, but also that it would not be a one-size-fits-all approach, to ensure there is flexibility in how stakeholders would be engaged, depending on the change. We expect to require by licence that code managers work collaboratively with a range of stakeholders, including smaller players, new entrants, and innovators. Below, we set out some of the ways that stakeholders could be engaged and provide some illustrative examples of when each might be relevant, although the details of this would be decided later (and kept flexible to adapt over time).

Stakeholder advisory forums

Noting that we expect panels will be disbanded (see chapter 3.2.3), we expect to require code managers to establish stakeholder advisory forums (there may be one or more for each code, and where there is more than one, each may have a specific area of focus and expertise) and to consult with the relevant forum(s) ahead of making certain decisions. The advice provided by a forum would not be binding, but the code manager would, for example, be required to give due regard to it. We would expect the forum to include a range of stakeholders, including appropriate non-code parties (e.g., academics and innovators) and representatives of classes of code parties (e.g., suppliers, generators etc.) that are impacted by the decisions the code manager would be taking. We also consider the forum should provide an opportunity for discussion and debate on code manager proposals.

The detailed arrangements would be considered in a future consultation, including on the composition of each forum, how they would be chaired, how they would appropriately consider the views of all relevant stakeholders, and how and when a forum would be consulted by code managers. For example, we might expect them to be consulted on whether some code changes are material (e.g., where it does not obviously fall into one category), on prioritisation of code changes and on code manager budget proposals. Further consideration of the detailed arrangements would include considering work done through the code governance review phase 3[35] and on the REC.

Other approaches to stakeholder engagement

How we anticipate code managers will consult and inform stakeholders	When might this be appropriate
Informing stakeholders of developments Stakeholders to be informed of developments, for example through placing transparency and communication obligations on code managers. If necessary, this should be tailored to the individual parties (e.g., ability to opt into regular emails and updates, as well as accessible on a website or app).	When documents are published (e.g., consultations), when decisions have been made, when meetings and publications are scheduled for, and when scheduled deliverables are likely to be missed.
Formal consultation documents These would invite stakeholders' views on, for example, code changes.	At least once ahead of a decision being made on whether to implement any non-housekeeping code change.
Working groups	May be more useful for changes that require the input of experts and for affected parties

---

[35] Ofgem's code governance review project sought to improve the governance arrangements of the codes and reduce fragmentation. Ofgem published its decision on the third phase of the review in 2016.

This could involve one or more meetings with a more focused group of experts.	to work through code change issues and shape the solution.
Appeals of decisions made by code managers	This is covered further under chapter 3.3.

Overview of code change process in option 1

The following diagram schematically illustrates the responsibilities in the code change process in option 1. The diagram applies to all code changes.
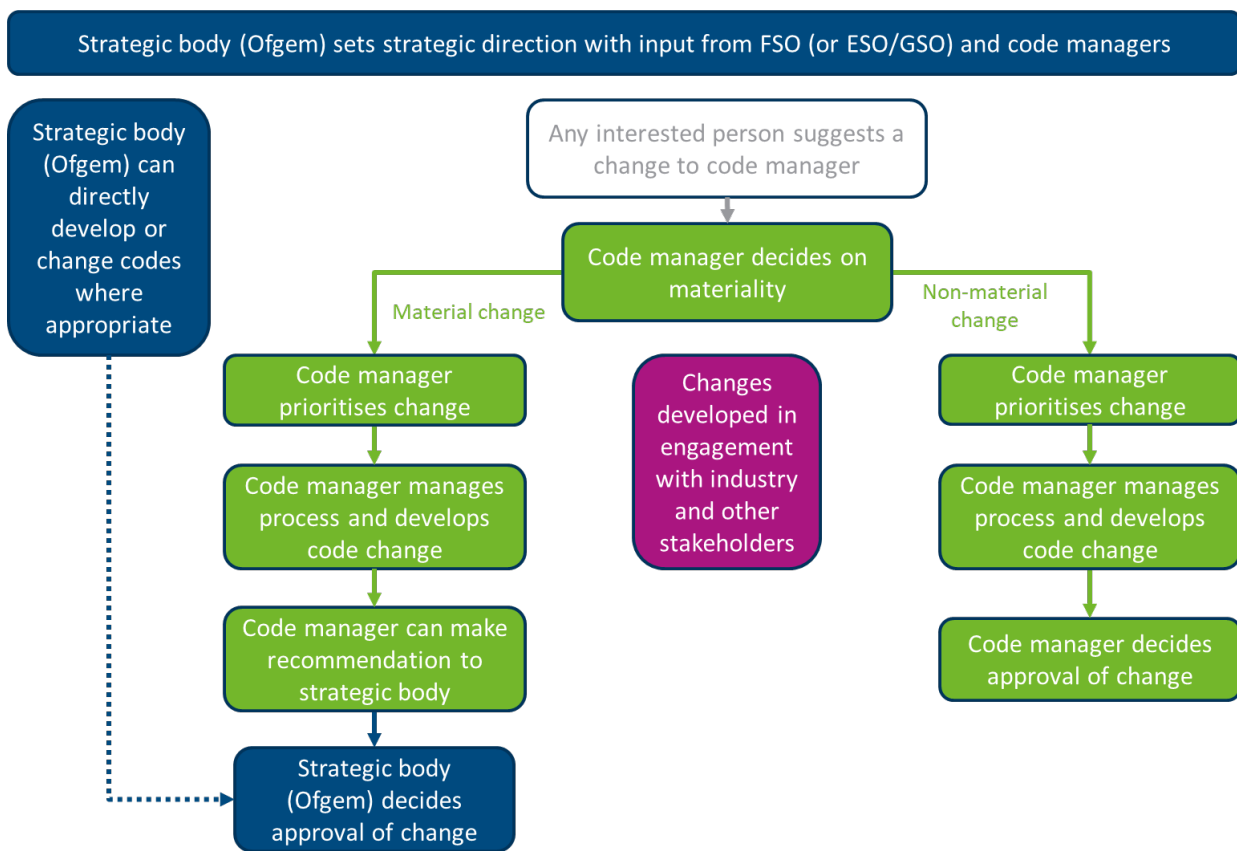
Figure 2: Schematic overview of code change process under option 1.

3.2.6 The benefits of our proposed changes

We consider that the benefits of the proposed and anticipated changes are as follows:

- code managers would be responsible for proactively delivering code changes that help to deliver the strategic direction and benefit consumers. This would reduce the reliance on industry to drive code changes, who may lack the incentives to bring forward strategically important change to the benefit of consumers and delivery of net zero;

- code managers would be held accountable by the strategic body via licence for the delivery of the strategic direction and broader management of the code change process,

including cross-code coordination. This would enable the strategic body to monitor delivery of the strategic direction across all codes;

- stakeholder expertise would be retained by ensuring they are consulted on changes to the codes (including through proposed stakeholder advisory forums). They would not, however, be responsible for code change decisions (such as prioritisation of code changes and, through panels, overseeing the code change process), so would be less able to influence the progress of changes that may not align with their corporate interests;

- increasing the scope of who can propose a code change would encourage innovation and reduce barriers to entry but would need to be carefully managed by the code manager to ensure only viable suggestions are progressed and that these are prioritised (see chapter 3.2.3 on prioritisation); and

- decisions or recommendations of the code manager would be evidence-based and independent, delivering the best outcomes for consumers and delivering strategic direction, whilst drawing on the expertise of stakeholders, and with the strategic body retaining overall accountability for code changes.

3.2.7 How would our proposals differ under option 2?

Proposed roles and responsibilities for the IRMB

The IRMB would combine the strategic function and the code manager function in one single organisation. As such, it would fulfil the roles of both the strategic body and code managers as set out above, which means that the distinction between them would not be so clear. However, we would expect there to be some delineation within the IRMB so that the strategic function could ensure that the code manager function develops any code changes in line with their delivery plans, which would be based on the strategic direction. We anticipate that the FSO's role as the IRMB would be set out using a combination of legislation and licence, although this arrangement may vary depending on the outcome of the FSO consultation and the detailed policy design of the IRMB.

Most roles and responsibilities of the strategic function and the code manager function would be very similar as outlined for option 1, where Ofgem would be the strategic body (and as summarised in Annex B). Other key similarities are that delivery plans would be developed by the code manager function and that the strategic function of the IRMB would ensure cross-code coordination. If licence changes were required to make a material change across codes, the IRMB would be responsible for putting forward recommendations in regard to this to Ofgem.

There would however be some key differences in roles and responsibilities to those outlined above in relation to material code changes, which we set out below.

The role of Ofgem in delivering the strategic direction in option 2

In light of Ofgem's statutory principal objective to protect consumer interests and Ofgem's broader role as a regulatory authority, we consider it would not be appropriate for another body to make decisions on code changes that materially impact on consumers and competition. In

addition, it would be inappropriate for another body to make decisions on any code changes that Ofgem has to approve according to requirements in the Trade and Cooperation Agreement (TCA) and retained EU law.

For transparency and consistency, we therefore propose that Ofgem would decide on the approval of any changes that have a material impact on consumers or competition as well as on those where retained EU law, or the TCA, requires approval decisions to be made by Ofgem. This would mirror Ofgem's current role in the code change process. Over time this could be kept under review, with some material decisions being taken by the IRMB if that were consistent with Ofgem's decision-making responsibilities set out in law. Consequently, we propose that the IRMB would not have the equivalent power suggested under option 1 of being able to directly change the codes, although further consideration may need to be given to Ofgem's role in this relationship over time to ensure that responsibility and control are appropriately balanced.

We note that splitting the roles of the strategic function between two organisations would weaken the argument for the IRMB, as it makes the option less joined up. However, having both bodies involved would promote a balance of whole system thinking alongside a consumer focus to bring benefits to the codes. It would also help to mitigate a potential conflict of interest arising from the FSO in the role of IRMB being responsible for codes rulemaking while being itself subject to codes.

Ofgem's role in supporting the IRMB's delivery of the strategic direction would be comprised of:

- inputting into the strategic direction;

- raising areas of concern in relation to consumer interests to the IRMB;

- retaining any decision-making powers on any changes (including material ones) as outlined above; and

- handling appeals to decisions on non-material changes. Chapter 3.3 sets out the appeals process in more detail.

Role of current code administrators and tendering for administrative tasks

As the code manager function would be integrated into the IRMB, current code administrators as such would not have a role in the IRMB option. However, there would be further work to ensure that any establishment of the IRMB captured existing knowledge and skills.

In addition, the IRMB may tender out administrative tasks, such as organising the process for code changes or secretariat. The tendering process would need to be in line with procurement rules. Any administrative service provider would not be involved in any decision-making on whether code changes are approved, so even if an industry party were awarded that tender it would not be able to (intentionally or unintentionally) stifle any beneficial change that happens not to align with their commercial interests. Any delivery of responsibilities that is outsourced to the administrative service provider would be monitored by the IRMB via key performance indicators (KPIs) set out in a contract. The IRMB would remain accountable for the performance of the administrative service providers.

To keep the tendering process efficient and simultaneously ensure transparency and fairness in the process, the IRMB could consider re-tendering on a fixed term basis, but this would ultimately be for the IRMB to decide.

Overview of code change process in option 2

The following diagram schematically illustrates the responsibilities in the code change process in option 2.
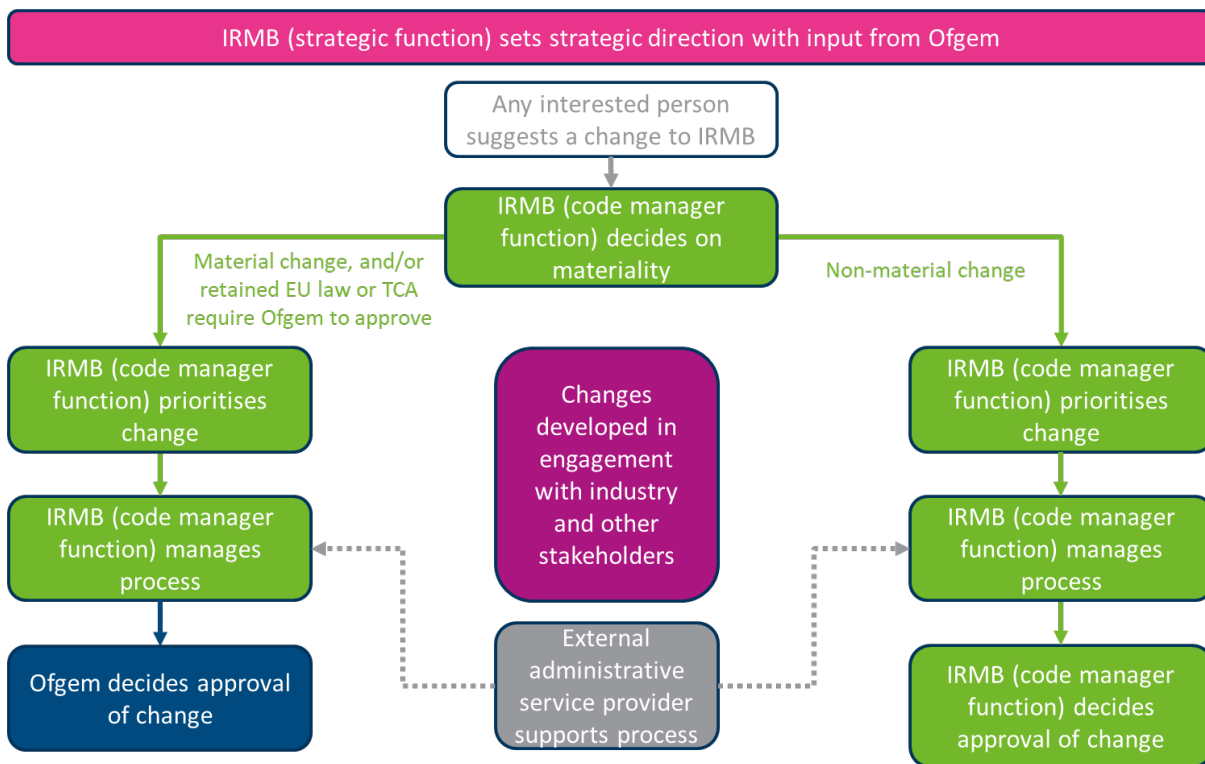
Figure 3: Schematic overview of code change process under option 2.

Stakeholder engagement

The same broad proposals identified for option 1 would apply equally in option 2 but, in addition, we would expect Ofgem to be informed and engaged throughout as set out above. If the FSO were licensed, as we propose in the FSO consultation, requirements regarding stakeholder engagement could be set out in the licence.

3.2.8 Respondents' views on the 2019 consultation and our response

In the responses to the 2019 consultation, it was suggested that this review should determine what best practice looks like across existing code administrators and ensure consistent delivery of this. Where relevant we have drawn on the approaches proposed under the REC, which has considered existing approaches in developing its proposals. Subject to the outcomes of this consultation, further details would be developed in future and would consider best practice, including through reference to the annual cross-code satisfaction survey of code administrators' customers.

Various points were made on prioritisation of code changes, including on any prioritisation criteria, appeal routes, code manager resources and the role of industry and the strategic body. We believe that a high priority should be given to changes that most effectively deliver the strategic direction and benefits to consumers and facilitate the transition to a cleaner energy system and net zero. However, we consider that code managers should be appropriately resourced to be able to deliver both high and lower priority code changes. Also, decisions on prioritisation should be transparent and informed by stakeholder views, including industry. The strategic function would provide oversight of the prioritisation process, including giving steers through the strategic direction.

Several concerns were raised around the code manager potentially having conflicts of interest if it is responsible for identifying, proposing, and developing code changes, including a code manager potentially proposing changes that benefit itself, particularly if the code manager does not bear the costs of those decisions. Concerns were raised about having the right checks and balances in place.

We would ensure any potential conflicts of interest could be appropriately managed and will consider this further, particularly as we develop the code manager licence and tender process (see chapter 5). In the option where Ofgem takes on the role of the strategic body, these concerns would partly be addressed by the strategic body having oversight of code changes, including through powers to overrule decisions made by the code managers; to hear appeals (see chapter 3.3); and to monitor and take enforcement action in relation to the code manager's delivery of the delivery plan. Additionally, code managers will be required to consult and have due regard to the views of the stakeholder advisory forum. Further, where a code manager has any conflicts of interest, the strategic body could put in place appropriate mitigations in the code manager's licence, such as limiting the scope of the decisions they may make to avoid or mitigate the risk of a conflict of interest.

A code signatory did not see the justification in code managers having the ability to propose code changes, adding that there have been almost no examples where code administrators have not been able to find a code signatory to raise a change proposal. We believe that it would be artificial and inefficient to require code managers to find someone else willing to raise the change proposal on their behalf if the proposal can be demonstrated to be necessary or appropriate to deliver policy. Also, our broader reforms are proposing to have the strategic function setting a strategic direction that would need to be delivered, and we cannot reasonably expect unassisted and unfunded code parties to deliver this change in an accountable and coordinated manner.

A few respondents argued thinking must move away from 'code signatories' to sector stakeholders due to the growing number of sector stakeholders who will be involved in the operation of the system, such as electric vehicle producers. We consider that, alongside simplifying the codes framework and having a transparent process for setting the strategic direction, requiring code managers to engage a range of stakeholders should help to ensure non-traditional stakeholders (such as innovators that are not code parties) can input. Also, we anticipate that any interested person would be able to propose changes to the codes.

It was suggested that the rationale for moving power away from industry was unclear. A few respondents argued that changes should only happen with the agreement of all code signatories. A key part of our rationale is that code parties are not currently incentivised to propose and develop certain code changes that deliver on strategic priorities. Another concern is that industry's decisions (e.g., through panels) may not always align with consumers' interests and the delivery of strategic priorities. Requiring the agreement of all code signatories could stifle and delay the delivery of beneficial change. Our supporting evidence includes:

- the CMA's energy market investigation, which found an adverse impact on competition due to "parties' conflicting interests and/or limited incentives to promote and deliver policy changes". For example, the CMA referenced their case studies on Project Nexus and P272 where they noted that "the current system of self-regulation of the industry does not work well when the changes being considered are associated with costs and benefits that are unequally distributed between industry participants";

- the draft impact assessment published alongside this consultation, which includes a more recent case study related to the gas transmission charging review, focusing on two code change proposals (UNC621 and UNC678) where, amongst the lessons learned, we note that Ofgem is unable to incentivise industry to develop and raise proposals when deemed necessary for consumers; and

- there has been increasing need for intervention from Ofgem in response to changes in the energy system (e.g., SCRs on charging, access, switching, time-limited, purpose-specific primary legislation to implement cross-code changes, e.g., half-hourly settlement, and balancing).

Having accountable and empowered code managers working to deliver a clear strategic direction should help to address this.

Various arguments were made around the benefits of industry-led code changes, including noting it ensures industry buy-in and reduces the risk of decisions being challenged. Also, it was noted by some of the respondents that there is a risk of reducing and/or losing technical expertise if more decisions are made by a strategic function. We envisage that most or all current decisions currently taken by panels would be taken by code managers. Further, although we are proposing that panels would be disbanded, we are proposing an approach where code parties and other stakeholders would be involved throughout the code change process, including being consulted on the strategic direction, being able to propose code changes, and being engaged throughout the code change process (including through stakeholder advisory forums). Code parties will also be able to appeal some code manager decisions to the strategic body (see chapter 3.3).

It was argued that the strategic function should coordinate code change. We have proposed that the strategic function would have a role in code change coordination, although on a day-to-day basis we would expect the code manager(s) to work in a coordinated way, informed by the strategic direction.

It was argued that competition between legal drafters used within the UNC shows that efficiencies are not accrued by using one firm exclusively. We can clarify that we would not

necessarily prohibit a code manager drawing on a variety of legal support, but code managers would be responsible for ensuring the quality and consistency of the proposed legal drafting.

One respondent suggested that our proposed desire to rebalance away from code signatories' role in decision-making contrasts with Ofgem's proposal (through the code governance review 3) that code modifications would be classed as self-governance unless a requirement for an Ofgem decision could be demonstrated. We note that our proposals on rebalancing decision-making away from industry is focused on the end-to-end change process (not just the final decision on a code change). Our proposed reforms would not necessarily envisage additional decisions being made by Ofgem in its role as the strategic body. We would still expect non-material decisions to be made at an appropriate level (under our proposed reforms, this would be by the code manager).

A large number of respondents stated that consultation and ongoing engagement with stakeholders, including industry, was key to implementing a strategy. We agree and propose that code managers would be required to consult with relevant stakeholders in developing their delivery plans.

Various points were made regarding codes planning, with suggestions both in respect of shorter-term and longer-term planning. We have proposed that the code manager function would be required to develop and implement delivery plans that represent shorter-term plans to support the delivery of the longer-term strategic direction. We intend that the detailed requirements on preparing delivery plans will be in the code manager licences, which will ensure flexibility to adapt the approach over time.

3.3 Appeals process and compliance

3.3.1 Our proposals on compliance

We propose that where an industry panel has an existing decision-making role in monitoring compliance, for example through a performance assurance regime, or in events of default, responsibility for such decisions would move to the code manager.[36] This is in line with our proposals in chapter 3.2.2, where we propose that the code manager would make the decisions currently taken by industry panels. In line with our other proposals, we expect that code managers would draw on the expertise of industry and ensure that their views would be sufficiently represented, for example through the formation of stakeholder advisory forums. Where sub-committees currently exist to carry out specialist functions, we expect that similar groups would also exist under the new framework, with the code manager taking on responsibility for building on these existing structures.

Our view is that code managers would be well placed to be responsible for these decision-making roles because of the other functions we propose they would be responsible for, such

---

[36] These differ between codes but include when a code party is in material breach of its obligations under the code; has failed to pay charges defined under the code; is unable to pay debts, is being wound up, enters administration, is in credit default.

as making decisions on non-material code changes. This could mean no immediate change to existing arrangements in the codes other than accountability for decisions moving from code panels to the code manager, whilst drawing on the expert advice and experience of stakeholders.

Decisions on whether or not to take enforcement action under the relevant licence conditions would continue to be made by Ofgem.

We see code managers as a likely first point of contact for new parties looking to enter the market and having a role supporting and guiding them to navigate codes and the requirements within them. This is an important role, particularly for non-traditional models and smaller parties looking to enter the market.

We also consider that an independent code manager would be well placed to be responsible for a future framework that could enable parties to be compliant with their obligations and at the same time support innovation.

How would our proposals differ under option 2 (IRMB option)?

Similarly to what is outlined above for option 1, we propose that the decision-making role in monitoring compliance or in events of default currently undertaken by panels would move to the IRMB. The details of routes and how this would work would be consulted on separately. As with our preferred option, any enforcement action under the relevant licence condition would be taken by Ofgem.

Under option 2, details of new compliance arrangements would need to be provided for in legislation as the IRMB does not exist.

3.3.2 Our proposals on appeals

Appealing decisions made by code managers

We said in our 2019 consultation that a separate strategic body could be responsible for hearing appeals of decisions made by code managers under model 1. This remains our view. We therefore propose, as a minimum, that any decisions made by code panels in the existing framework that include an appeal route to Ofgem could, in principle, be appealable to the strategic body where the decisions are made by code managers in the future.

However, at the moment, the process for reconsidering decisions, including appeals, varies depending on the subject of what is to be appealed. It seems likely to be important that differences remain in any future arrangements to help ensure that the change process is efficient. For example, some of the decisions that could move from panels to the code manager are not always appealable by stakeholders to Ofgem in the existing framework. Instead, Ofgem has the ability to, for example, direct a different decision or object to a decision of the panel.

We propose to legislate to give the strategic body similar powers to oversee the code change process and giving it the option to overrule certain code manager decisions where it does not

agree with the decision of the code manager. We also recognise that it may be beneficial to consider if additional appeal routes to the strategic body for decisions made by code managers would be needed before new arrangements are in place.

Wherever possible, future arrangements should also include mechanisms that encourage, or require, stakeholders to resolve disagreements early in the process to facilitate their speedy resolution.

In summary, we expect that, as a minimum, the existing processes available to Ofgem to reconsider panel decisions would move to the strategic body. This would include existing routes of appeal.

Appealing decisions made by the strategic body

Under existing arrangements, Ofgem makes decisions on whether a material code change should be implemented and those with sufficient interest who wish to challenge these decisions may do so via either judicial review or appeal to the CMA.

The existing distinction between CMA and judicial review depends on which code the decision relates to and, often, whether or not the decision follows the majority view of the panel. A consequence of our proposal that code managers should make recommendations to the strategic body on material code changes, and the outcome of any future code consolidations, means that the existing framework and distinctions will no longer apply.

To ensure regulatory accountability, our proposals need to consider the appropriate route of appeal for decisions made by the strategic body on code changes. Any appeals framework should allow effective opportunities for different interests and views to be represented whilst being as simple, rational and independent as possible. It should also be accessible, without introducing undue delay or uncertainty to the code change process, but the timescales should have sufficient flexibility to cater for different levels of complexity or materiality in the subject matter.

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, including where the decision of the strategic body aligns with the recommendations of the code manager. This would be simple to effect and be relatively future proof (e.g., by avoiding gaps emerging between legislation and the substance of the codes themselves as they develop or are consolidated). It would also allow timescales to be flexible depending on, amongst other things, the urgency of the matter in dispute. There may be concerns that this option could weaken existing licensee protections because it provides a generally less intrusive standard of review and does not necessarily involve economic and other technical expertise. However, judicial review applies to many code changes already and has been utilised in other areas of significance, for example the retail price cap; or

- a combination of judicial review and CMA appeals with timings aligned with the licence modification appeals process and potentially made more flexible. Creating a route of appeal to the CMA for decisions made by the strategic body on code changes would need to be delivered through primary legislation.

We will use responses to inform whether to include an appeal route to the CMA for decisions the strategic body makes on code changes into primary legislation.

If this second proposal were taken forward as the detailed arrangements develop, further work would be needed to create criteria to determine when an appeal to the CMA would be available and the timescales for them, which could be longer than the current timetable for code change appeals. Examples of possible criteria to allow an appeal to the CMA 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. It may also be suitable to formalise requirements for those wishing to bring an appeal to give advance notice and ensure any opportunity to resolve a matter without recourse to appeal is identified and considered.

In any event, we anticipate that for those licence and code changes required to implement our proposals and the outcomes of any code consolidation, judicial review rather than CMA appeal would be available.

How would our proposals differ under option 2 (IRMB option)?

We propose 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.

We also propose that Ofgem would continue to make decisions on the approval of any changes that have a material impact on consumers or competition as well as on those where retained EU law, or the TCA, requires approval decisions to be made by Ofgem (as set out in chapter 3.2). We expect that any appeals of Ofgem decisions on whether or not to implement a code change would follow the same route as under option 1.

3.3.3 Respondents' views on the 2019 consultation and our response

A number of respondents expressed the view that industry should not have a role in compliance and monitoring as it could lead to slow progress and that self-policing could lead to conflicts of interests. We propose that decisions currently taken by industry panels would move to the code manager. However, we expect that code managers would draw on the expertise and experience of industry and ensure that their views would be sufficiently represented.

Detailed comments and questions were also provided on the arrangements that should be in place, for example around data use and the types of remedies or sanctions available to a code manager. Respondents also discussed the need for appeal routes to the strategic body on decisions made by the code manager in respect of performance management. As a starting point we propose that existing arrangements could remain in place but with responsibility for

decisions moving to the code manager. We also propose that any appealable decisions made by panels to Ofgem would be appealable to the strategic body.

Respondents commented that it is important that stakeholders have confidence that decisions made by code managers are subject to appropriate appeals. We propose that the ability to appeal a decision of a code manager would, as a minimum, align with existing rights to appeal panel decisions. We also propose to give the strategic body powers to overrule certain code manager decisions where it does not agree with the decision of the code manager (similar to current Ofgem powers in some codes to overrule decisions made by code panels with which it does not agree). In addition, we recognise that it may be beneficial to consider if additional appeal routes to the strategic body for decisions made by code managers would be needed before new arrangements are in place.

It was argued that the IRMB should not be responsible for monitoring compliance or imposing measures in a case of non-compliance because this could be misaligned with its main aim of providing strategic oversight and direction. Another respondent argued that the IRMB could choose to prioritise enforcement work in areas which were aligned with the strategic direction. It was also argued that if the IRMB took on these responsibilities, there would be a risk that it could be responsible for both taking enforcement action and hearing subsequent appeals. We do not see any issues with the IRMB monitoring compliance. Responsibility for taking enforcement action under the licence for non-compliance would remain with Ofgem.

3.4 Questions

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

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

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

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

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

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

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

4 Preferred option: Ofgem as strategic body with separate code managers (option 1)

In this chapter, we set out our proposals on the suggested operating model and accountability of our preferred option, in which Ofgem would be designated as the strategic body (option 1). This includes our proposals on governance and funding, as well as on resourcing, skills, and capabilities, and on how the performance of Ofgem as the strategic body would be monitored and evaluated.

The proposed operating model for our alternative (but not preferred) option, in which the FSO would be given the role of an IRMB, is set out in chapter 6.

4.1 Proposed operating model and accountability

4.1.1 Our proposals on governance and funding

If option 1 is implemented, we propose to legislate for the core roles and responsibilities of the strategic body. The strategic body will be a person designated by the Secretary of State. The Secretary of State would initially designate the Gas and Electricity Markets Authority (referred to as Ofgem) to be the strategic body but could, in future, designate another person to be the strategic body instead. The strategic body's legislative framework will be separate from Ofgem's legislative framework.

If Ofgem were the strategic body, we propose that overall accountability for delivering the strategic body's functions would sit with Ofgem as opposed to a ringfenced board. We note that in July 2019 we had proposed there might be advantages to establishing separate governance and funding arrangements within Ofgem. One of the benefits of Ofgem being the strategic body is that Ofgem already has some relevant objectives, powers and duties (such as its statutory duties to act in the interest of current and future consumers, including its interests in greenhouse gas reductions, as well as its power to modify energy licences) and accountabilities (e.g., to Parliament), so this option would avoid the creation of an additional institution and the need to provide for complex interfaces between that institution and Ofgem. Making Ofgem the strategic body would ensure it could use those objectives, powers and duties and work in a joined up and efficient way to put in place a strategic direction and oversee code managers in delivering it.

As with other functions Ofgem has, we propose that its decision-making powers could be delegated within Ofgem to either appropriate senior individuals or a committee of senior individuals (noting the cross-cutting nature of codes). This flexibility to delegate could allow for decisions to be taken in an efficient and joined-up manner. We note 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, for example for environmental and social schemes administration delivery funding allocation. As with Ofgem's current work on codes and broader energy market regulation, we propose to continue the funding through charges to the energy industry (through licence fees). We also consider that funding should not be ring-fenced. Work on codes is cross-cutting, so introducing ring-fencing would add unnecessary complexity and risk inefficiencies.

4.1.2 Our proposals on resourcing, skills, and capabilities

Ofgem as the strategic body would have oversight of the code change process, from design to delivery. It would work closely with all relevant stakeholders, challenge the status quo, and drive positive behaviours. In chapter 3 we set out the roles and responsibilities of the strategic body, and in chapter 8 we set out our proposed implementation proposals. These include:

- delivering the transition to the new arrangements, as well as special projects including, for example, selecting code managers and consolidating codes;

- setting the strategic direction for codes and monitoring code managers' delivery of their delivery plans;

- overseeing the change process, and in limited circumstances developing or coordinating the development of code changes, and directly making code changes;

- holding code managers accountable via licences; and

- ongoing codes work, including making decisions on code changes, monitoring change, hearing appeals etc.

For these roles, where appropriate, Ofgem as the strategic body would work collaboratively with the code managers and engage with relevant stakeholders. Some of these will be new areas of responsibility, requiring additional resource. The government is committed to ensuring that any new funding allocated to Ofgem is as tightly allocated as possible, delivering good value for money, as well as ensuring that Ofgem receives sufficient funding to effectively deliver on these new responsibilities.

Ofgem already has many of the skills and capabilities required to take on these new roles. For example, it already has extensive policy development and implementation skills, as well as expertise in programme delivery, engineering, law, procurement, and data and digitalisation. However, we expect Ofgem would need to increase the number of staff with relevant expertise and may need to source some specialist resource.

Alongside this, we believe that expert organisations accountable to Ofgem as the strategic body are best placed to deliver a large share of the technical and delivery functions required for changes. We expect code managers to be responsible for the delivery of change programmes relating to their codes. Where there are cross-code change programmes, these could be delivered through a combination of the strategic body, code managers, the system operator and industry/external experts depending on the nature of the change. Importantly though – unlike under the current framework – we expect code reform to give Ofgem better tools to ensure this end-to-end change is timely and effective by providing it with

enhanced legal powers over the code managers themselves, who will be appropriately resourced to deliver on their roles and responsibilities.

In delivering any change, Ofgem as the strategic body would expect, as appropriate, to engage closely with a range of stakeholders, including code managers, code parties, government, other regulators, the system operator, Citizens Advice and other consumer bodies, and technical experts. The approach to engagement would depend on the issue and stakeholder. Chapter 3 discusses how the strategic body would engage with stakeholders.

4.1.3 Flexibility and future proofing

We consider it important to ensure that any reforms we introduce are both flexible and future proof. To this end, we are proposing that primary legislation would enable the strategic body (which, under option 1, would be Ofgem) to be able to delegate some of its proposed powers and duties to an alternative body or bodies. Due process would be followed ahead of any decision to delegate, for example through requiring the strategic body to consult and, where appropriate, seek Secretary of State approval or veto prior to delegating its functions. We will consider further any legal limits to what the strategic body may delegate and how it would work in practice, noting it raises various questions, such as around funding and accountabilities.

To ensure that the reforms are future proof, we are also proposing to legislate 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. We will similarly consider further how this could work in practice and what legislative or other provisions would be needed to support it (e.g., in relation to monitoring and evaluation of the strategic body's performance). If the Secretary of State were considering redesignating the strategic body, there would be consultation ahead of any decision to do so.

4.2 Monitoring and evaluation

As set out in chapter 3, Ofgem as the strategic body would be responsible for setting a strategic direction in line with the government's strategic vision communicated via the SPS and ensuring that the strategic direction is delivered. There is a need for a monitoring and evaluation approach to ensure that Ofgem, as the strategic body, is effectively delivering against its role responsibilities.

The high-level proposed monitoring and evaluation approach would be in line with the relationship set out within the 2019 Framework document[37] between BEIS and Ofgem, following the existing mechanisms in place. This sets out that there is a clear responsibility on Ofgem to inform government of its progress in helping to achieve government policy objectives, that Ofgem needs to produce an annual report about its activities and also to

---

[37] 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.

publish an annual forward work programme on upcoming direction and activity, which can be scrutinised by government.

Specifically on codes, chapter 3.1 sets out the way in which government will set out its strategic vision, including policy priorities to Ofgem to be accounted for in the development of the strategic direction. This would be delivered through statutory duties imposed on Ofgem in primary legislation and in relation to any SPS.

If an SPS is designated, Ofgem would need to provide a statement in its annual forward work programme setting out its strategy for delivering the policy outcomes in the SPS, what it will do to implement its strategy, and how it has had regard to the strategic priorities in the SPS.[38] Ofgem is also required to report annually on how it has performed against its forward programme and carried out its duties in relation to any SPS.[39] In addition, as set out in chapter 3.1, Ofgem could report on its performance of its work to keep under review relevant policy initiatives and developments, for example in its annual report and forward work programme.. This would form the basis of the formal monitoring and evaluation of the strategic body by the government.

If, as set out in chapter 4.1.3, the strategic body would be redesignated in the future to a different organisation, we propose to impose reporting requirements that mirror those set out above.

Stakeholder Input

We would expect Ofgem to seek stakeholder views on its performance as the strategic body, including its effectiveness in delivering strategic change. Ofgem would also seek regular stakeholder feedback on the performance of code managers. Ofgem would report to the Secretary of State on these matters in its annual report.

4.3 Questions

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

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

---

[38] Utilities Act 2000, section 4A.
[39] Utilities Act 2000, section 5(2A).

5 Code manager approach under option 1

In this chapter, we set out our proposals on how the code manager(s) should be established, held accountable and be funded. We also set out some policy issues related to the transition from the status quo to the implementation of our proposed reforms. These considerations only apply to option 1 (Ofgem as the strategic body).

Under option 2 (FSO as the IRMB) these questions would be considered as part of establishing the FSO as a whole. This is set out in detail in chapter 6.

5.1 Accountability of code managers

5.1.1 Our proposals

To whom would code managers be accountable and how?

We propose that code managers would be held accountable by Ofgem as the strategic body, through a licence granted by Ofgem as the strategic body.[40] The strategic body would grant licences and monitor and (where appropriate) enforce the licence conditions of the code managers. We would expect the legislative framework for enforcing code manager licence breaches to broadly mirror the framework for other activities that Ofgem licenses, including the ability to impose financial penalties and issue directions and orders.

Although the industry would have some tools for holding code managers accountable (such as an ability to appeal decisions), we consider that accountability to the strategic body through a licence is necessary to ensure code change is more strategic, proactive, and driven by government priorities, with independence of decision-making.

Compared to the strategic body contracting with code managers, licensing would offer a greater degree of accountability to the strategic body, due to the relative ease with which the strategic body can modify the code managers' licence conditions, as well as the ability to enforce licence breaches. This ability for the strategic body to modify the licence (subject to appropriate due process, such as consultation) also allows for more flexibility in an evolving energy system.

---

[40] In a licensing regime, the legislation prohibits the regulated activity (in this case, code management) from being carried out without a licence or an exemption from the requirement to hold a licence. The legislation would define the regulated activity and make provision for any criteria that must be met before a licence can be granted. The legislation could provide for individual or class exemptions from the requirement to hold a licence. It will also provide for powers to monitor performance, investigate particular cases, and take enforcement action, including possible termination of the licence. A licensing approach ensures that the only organisations able to carry out code management (as defined in the legislation) are those that have been licensed to do so.

5.1.2 Respondents' views on the 2019 consultation and our response

To whom should code managers be accountable?

A respondent suggested that if code managers are made accountable to the strategic body, the strengths of having an independent code body – objectivity, good engagement with industry, the critical friend role – are potentially lost. We consider that the reforms proposed would enhance the independence of code managers, and we also expect that the framework put in place would place appropriate incentives on code managers to engage effectively with stakeholders.

Another respondent noted that divorcing the industry from being accountable for a key part of how it operates could lead to industry problems being laid at the door of government. As set out in chapter 3.2, we consider it crucial that code parties and other stakeholders remain involved and engaged in code governance. However, we believe that to ensure the delivery of the strategic direction, we need code managers who are accountable to a single body that gives code managers a strategic direction and who have the appropriate powers to ensure that strategic direction is delivered.

Other comments made regarding the need for industry to have a role in holding code managers accountable included:

- the code management function should maintain accountability to licensees where the reliability, security, safety, and economic operation of the networks may be impacted upon; and

- network codes are essentially multilateral contracts between the code signatories, as such they in some way 'belong' to code signatories. The proposals outlined in this consultation remove the ability of industry participants not just to amend the codes, but to challenge amendments made by non-signatories to what is effectively a contract.

We agree that the codes are multilateral contracts between code signatories (which are also subject to regulation via statute and licence), but we consider that our proposed reforms are consistent with this position, particularly with the checks and balances we are proposing in how codes will be governed. Although we are proposing that code managers would make decisions currently made by panels, licensees would continue to have a number of obligations regarding the codes, as well as having the ability to propose code changes and engage in how these are developed. Where appropriate, licensees would also be consulted on any proposed code changes, with their views being considered ahead of any final decisions (see chapter 3.3 for further details on appeals).

We consider that code managers should be obliged by their licences to consult stakeholders and to allow stakeholders to scrutinise code managers' budgets, proposed decisions, and performance. We proposed in chapter 3.2 that code managers would be responsible for the code change process, but we also propose that the strategic body should retain oversight of the change process and (in chapter 3.3) that existing code manager decisions would be appealable to the strategic body where the equivalent code panel decision can currently be appealed. We agree with many of the points made regarding the importance of codes to the

functioning of the energy system. However, because of these crucial roles of codes, and the fact that many strategic changes will be needed over the coming years, it is crucial that there is a suitably independent governance system to ensure the strategic direction and consumer benefits can be delivered.

Another respondent suggested the strategic body should be a shareholder of the code manager, which would give it the right to dismiss and replace the senior team without having to re-tender the contract. Where the code manager has been selected by tender, we consider that any decision to dismiss the senior team and appoint a new one would be a matter for the independent code manager's board. Or alternatively, in the extreme, the code manager could be replaced through an open and transparent tender process.

How should code managers be held accountable?

One stakeholder argued that licensing is not a necessary, timely or proportionate approach for delivering the intended changes to the codes. They also noted that licensing requires legislation, which itself is time consuming, and that licensing has the potential to increase cost and complexity. We acknowledge that this option will require legislating for the licensing framework. However, legislation is required for the broader reforms, so this should not impact on overall implementation timescales. On the concerns on costs and complexity, we would expect that even with contracting, we would need to develop a similar level of detail to ensure the appropriate obligations and incentives are on the code managers.

It was suggested that, where a code manager does not abide by the strategic direction, they could incur a fine, with a suggestion that if it accrued to the code manager, there would be a mismatch between those ultimately incurring the fine and the motivations of the offence, which may be committed in line with a company's individual commercial interest. A code manager would be required to comply with its licence conditions, which would include a requirement to prepare and meet delivery plans. There would be a range of enforcement actions that the strategic body could take, including potentially issuing financial penalties. Our view is that the concerns raised are not related specifically to licensing, but are more broadly about the incentives and obligations placed on the code manager; these would apply equally in contracting.

A respondent suggested that experience with the DCC licence and the various contracted code administrators demonstrate that the contract model is favourable. Further, they noted that a price control framework for a non-monopoly asset service (which we assume refers to the DCC, which is a monopoly, but is 'asset-light') has proved to be complicated, challenging to enforce and delivers results of questionable quality. It is unclear to us whether the respondent's concerns with the DCC are due to it being licensed. On the concerns with a price control framework for non-monopoly asset services, we deal with budgets and funding under chapter 5.3. In brief, we note that we would not necessarily follow the same approach to price control as is currently used for the DCC.

5.2 Selecting code managers

5.2.1 Our proposals

We propose to legislate to impose a duty on the strategic body to select a code manager for each in-scope code. The strategic body would be given discretion as to how to select a code manager to licence: whether by tender or (with Secretary of State's consent) by licensing a built-for-purpose company or direct selection.

The strategic body could decide to run a competitive tender to find a suitable code manager where this is likely to deliver the best outcomes. The competitive pressures brought through tendering may ultimately achieve the aim of selecting code managers with the right expertise and experience, and place pressure on costs. It would allow the strategic body to directly scrutinise the track record of the bidders before selecting them. Primary legislation would set out the framework for tendering, including powers to make secondary legislation which would provide for the tendering process and selection criteria.

We propose that the legislation should also give the strategic body powers to select a code manager through the following alternative means to a competitive tender:

- creating a shell company, appointing the board, licensing that company;
- selecting the FSO or an affiliate created by the FSO; or
- as a backstop, selecting a licensee other than the FSO.

Our intention is that these proposals leaves open the possibility that existing code administrators could become code managers, but we are not proposing that they would by default become enduring code managers.

Who could become a code manager?

In the 2019 consultation, we noted that if the strategic body tendered for a code manager, it might want to set a tender criterion to require some level of independence from licensed parties; we invited views on this. We now propose that any restrictions on who may become a code manager should focus on preventing actual or unacceptable potential conflicts of interest. This would help to ensure that the market for code management services is not unduly restrictive. Current code administrators could bid, and they (as would any other bidder) would need to be able to demonstrate how they would manage any potential or actual conflicts of interest to the strategic body ahead of the tender.

Alternatives to tendering: the case for flexibility

Although we believe that tendering could offer the best outcomes, we acknowledge that there is benefit in having flexibility to select code managers in other ways. Several factors affect whether tendering will be the best way to select a particular code manager. For example, for a tender to be feasible, we would need to be confident that there was a market for potential code managers. Also, code governance will continue to evolve (e.g., depending on the outcomes of code consolidation and wider system governance reforms including the potential establishment

of the FSO). Finally, the existing code body arrangements are complex, so flexibility may be necessary to adapt our approach depending on the circumstances. Some examples of where we may need flexibility include:

- for the REC, a code body has recently been established and designed in a way to address some of the concerns with the current code governance arrangements (e.g., by consolidating codes and agreements into a single retail energy code, and by having empowered code managers). As such there is a strong case for building on these arrangements by, for example, licensing the Retail Energy Code Company (RECCo) as a code manager (subject to, in line with our broader position, ensuring any potential conflicts of interest can be satisfactorily managed); and

- subject to the outcome of this consultation and the FSO consultation, there could be a strong case for the FSO to become a code manager for one or more codes that are clearly within its remit, given the strong links to its wider proposed role in supporting the transition to net zero through system planning and delivery. If it were deemed that there was a conflict-of-interest risk between code manager functions and any wider functions of the FSO (e.g., its real time operation of the electricity system), there may be justification for an independent affiliate of the FSO (i.e., an affiliate that the FSO does not have overall control of) to fulfil that role. Noting though that this may not be the case for all tendered code managers and that potential or actual conflicts can be managed in a variety of ways.

The strategic body could decide to select a code manager in a different way than tendering where:

- following consultation, it has been concluded that not tendering would deliver better outcomes for consumers; or

- following a tender process, it has been unable to identify a suitable bidder to become the code manager.

We will consider whether to legislate to require that the strategic body must obtain the Secretary of State's consent or veto before following a different approach than tendering.

Below we provide some further details on our proposed non-tendering options.

Create a shell company and appoint the board

We propose that the legislation should give the strategic body the power to create a company and run an appointment process to identify and then appoint board members to that company. The strategic body could then license this company as the code manager. The code manager would be able to deliver the day-to-day tasks of managing the codes by either tendering for service providers, developing an in-house team, or a mix of both. However, in the short term, licence conditions might require the code manager to tender for services or contract with existing code administrators, to reduce the risk of losing the expertise and experience of current code administrators. This requirement could be set out in a code manager licence, although legislation could provide for the discretionary power for the strategic body to require a code manager to outsource or contract with existing code administrators.

This option could have benefits where we consolidate all codes into a single unified code,[41] as it could be difficult through a tender process to find a single organisation capable of delivering across such a broad role. Under this option, the code manager could contract with a few service providers. This would help to ensure a diversity of potential providers of services, which could create competitive pressure between the providers, driving better service and value for money. However, the code manager would require resource and expertise to deliver this model. For example, it would remain accountable for regulatory obligations and would need to procure, contract, and manage its service providers.

If there are many codes, this option could reduce the regulatory burden on the strategic body (as it would only have one company to regulate), ensure a consistent approach to management across the codes, and create a single point of contact for stakeholders. However, this could arguably be achieved through tendering by the selection of a single company as a code manager for multiple codes.

Directly select the FSO as code manager

This proposed option may be desirable where there are strong synergies and overlaps with the FSO's wider proposed role.

As with the option above of creating a company, this option may have benefits where there is a single code (following consolidation) or many codes (i.e., little to no consolidation).

This option may not be suitable in the early stages of code reform. If the proposals in the FSO consultation were implemented, we assume for the purposes of this consultation that the earliest point at which the FSO would be fully set up in its new roles is 2026, in line with the end of the RIIO-2 price control. In any case, it might be prudent to wait until the FSO could be established in its new roles before giving it a significant additional role in code governance (notwithstanding the potential option discussed in chapter 5.4 of granting the existing code administrators time-limited licences).

Backstop option – select a licensee other than the FSO

We also propose to legislate to give the strategic body the power to select a licensee (other than the FSO) to be licensed as a code manager, for example where the options above are not suitable and the strategic body was satisfied that suitable ring-fencing and other protections were in place. This is a change in stance from our proposals in the 2019 consultation, and we consider it is unlikely we would need to rely on this option. However, we consider it is prudent to make provision for this option in the legislation.

5.2.2 Respondents' views on the 2019 consultation and our response

In relation to both tendering and contracting for code managers, it was noted that the Transfer of Undertakings (Protection of Employment) regulations (TUPE) may apply. We noted that it is possible the TUPE could apply to any action which effectively moved an existing code

---

[41] Note that consolidation will be consulted on later. Our proposals are to future-proof the legislation for a range of potential consolidation outcomes.

administrators' business from one body to another. Whether it will apply will depend on the specific circumstances at the time. Ofgem, in its potential role as the strategic body, will be mindful of this as it progresses its work on consolidation, selecting code managers and any change in code manager.

Tendering

From those who agreed with a competitive tender approach, some argued that this should not be based only on cost and should consider other factors such as the previous experience and performance of the bidder. We agree with this point and would consider it during the design of any tender process.

A few respondents who disagreed that the code manager should be selected via a competition process argued that this would be expensive to run, would lead to siloed working, and would entrench the traditional structure of the codes. We agree that this option could pose some additional costs compared to other options, although these are unlikely to be significant and may be offset through the benefits that tendering can bring.

Selecting a licensee from existing licensees or requiring a group of licensees to establish a code manager

It was argued that to prevent conflicts of interest, distorted judgement and bias, licensees who hold licences by virtue of other industry functions should not be selected as code managers. Conversely, arguments were made that, if there is no conflict of interest, there is no reason why such a price-controlled licensee could not be a code manager, and that the strategic body should just choose the party most capable of being a code manager even if it is an existing licensee or affiliate of a licensee. Our proposed positions above balance these points by keeping open the options of selecting the FSO or another licensee. We would only consider selecting a licensee where this offers a better outcome for consumers, including through managing any conflicts of interest.

Restrictions on who could bid to become a code manager

A few respondents argued that current code administrators and delivery bodies should be able to bid, with a concern expressed by one code body that if we were to require "no affiliation" with existing licensees, this could rule out some existing code administrators. We agree that there could be benefit in retaining the expertise and experiences of some of the existing code administrators. However, we maintain that to become a code manager, any potential conflicts of interest must be manageable, and it may be that some code administrators would have to consider whether their current arrangements align with that position, and if not, address them before bidding in any tender.

5.3 Budget and funding

5.3.1 Our proposals

Funding the code manager

We propose 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. An example of this might be the code manager offering bespoke training courses and materials on code content and processes to individual parties. We do not anticipate the code manager would be able to charge a non-code party for proposing a code change to prevent this acting as a barrier to smaller parties and innovators engaging in the code change process.

This approach to charging should be more flexible than the option of using licence fees. For example, licence fees are set once a year and the amount recovered is subject to HMT sign-off, which might lack flexibility to set charges outside of the timings for setting licence fees. This approach could also build on existing approaches in codes.

The details of the approach to charging would be considered in a future consultation.

Code manager budgets

We propose that the code manager would ultimately be accountable to the strategic body when setting its budgets. The details will be specified by the strategic body in the code manager licence. We propose 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). A future consultation will consider the detailed requirements for code managers in setting budgets, for example considering how the strategic body would exercise its oversight and how stakeholders would be consulted.

5.3.2 Respondents' views on the 2019 consultation and our response

Code manager budgets

There were various responses on the merits of the different approaches to ensuring efficiency of costs. As we have provided flexibility on how costs would be controlled, we do not provide a response to each of these here and we will consider these in any future consultation on controlling costs.

One stakeholder proposed that the strategic function and code signatories should have joint sign-off on the code manager's budget. Similarly, others made suggestions about the different mechanisms that parties funding the code manager could use to exercise control over and scrutiny of the code manager's budget. We consider it essential that stakeholders are

consulted on and able to scrutinise the code managers proposed budgets (even where it is through a price control). This consultation could also result in a provisional agreement on the budget, subject to appeal.

However, although stakeholders would be consulted, we propose that the strategic body would have ultimate oversight of budgets, to ensure the funding is at the right level to ensure the delivery of the strategic direction and broader duties of the code manager.

Funding code managers

A few respondents suggested additional options for funding, such as funding by the strategic body, or through government funding or taxation. Compared to funding by code parties (which can build on existing approaches), funding by government or taxation would require setting up a bespoke process. These options (in addition to funding by the strategic body) may also lack flexibility to allow charging for optional or value-added services, which can ensure these services are only used where the user appropriately values it.

An argument in support of the option of funding code managers through licence fees included that it is less likely to lead to shortfalls in collecting payments arising from bad debt. We note the risks of managing bad debt, although we consider that this risk should be manageable using the mitigations that currently exist (such as parties providing credit cover and reconciliation arrangements).

Noting that Ofgem can already collect licence fees, another argument made in support of the option of funding through licence fees was that it would be easier to implement if established with Ofgem as the IRMB (in our July 2019 consultation, there was a potential option for Ofgem to become the IRMB). Also, it was suggested that for code party charging, we would need to explore and determine the practicalities of such an arrangement (including how the costs would be apportioned amongst code parties). We agree that our preferred option (costs recovered in line with a charging methodology) would require further work to implement, but we note that it could build on the existing approaches under other charging methodologies, and we consider the benefits to outweigh the costs of the upfront work.

5.4 Transition to the new institutional governance framework

5.4.1 Our proposals

During the implementation of our reforms, we consider there would be benefits to code administrators carrying on their functions until the strategic function can license code managers, and even alongside licensed code managers for a limited time. This would ensure any handover of responsibilities is orderly and will facilitate consolidation. If we implemented a licensing framework as proposed, this would include a prohibition[42] on carrying out the regulated activity (code management) without a licence or licence exemption. We would need

---

[42] To enable licensing, the activity (in this case, of code management) needs to be prohibited in legislation. The legislation would then specify the circumstances in which the activity can be carried out, which would include being where a licence has been granted to the relevant organisation.

to ensure the legislation enables code administrators to continue their activities until these can be performed by code managers.

We also recognise the important role that codes play regulating commercial terms between energy industry participants. Ensuring stability in those arrangements will also be a focus of the detailed plans for an orderly transition to the new institutional framework.

5.5 Questions

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

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

14. **To what extent do you support our proposal that the strategic body should be accountable for code manager budgets, and why?**

6 Alternative option: Future System Operator as Integrated Rule Making Body (IRMB) (option 2)

This chapter sets out our alternative (but not preferred) option for code governance. We propose an IRMB which would combine the strategic function and the code manager function in one single organisation. If the FSO is established, and if we were to go with an IRMB option, we propose to give the role of the IRMB to the FSO.

6.1 Proposed operating model and accountability

6.1.1 Our proposal on the FSO taking on the role of the IRMB

If the FSO were established as proposed in the FSO consultation, and we were to go with an IRMB option, we propose that the FSO would be suited to performing this role for the following reasons:

- although not its current main focus, NGESO already carries out strategic roles, for example through setting a vision for the technical evolution of the system. We expect this role to be strengthened further for the FSO, through taking on new and enhanced functions in network planning and development and co-ordinating functions, both across voltage levels (distribution) and between energy sectors, for example gas, electricity, heat, or transport. These roles are in line with the ESO's expertise to operate the system and to provide advice about how the system needs to develop;

- the FSO's anticipated strong focus on whole systems thinking, and its broader co-ordination roles and objectives would fit well with the IRMB's strategic function of thinking long-term across the energy sector and providing a strategic direction across codes based on that thinking;

- by considering the interaction between different energy policy decisions, the FSO would be able to identify desirable code changes to remove barriers it had observed or to facilitate potentially beneficial interactions, which ultimately would benefit consumers and the energy market alike; and

- the ESO currently acts as code administrator for the CUSC, GC, and STC meaning that the ESO already contains some of the capabilities required. The current ESO and future FSO would also have insight into the operation of the wholesale market. In addition, Elexon, which is fully owned by the ESO, currently acts as the code administrator for the BSC. However, as Elexon is operationally independent from the ESO (and it is proposed in the FSO consultation that this would remain the case for the FSO), the extent to which the IRMB could make use of this knowledge and those skills might be limited.

Dependencies on FSO decisions

The FSO consultation sets out proposals for roles and responsibilities for the FSO. Future decisions on those points, informed by the FSO consultation, will have an impact on whether the IRMB option is feasible for code governance, as it will determine whether the FSO could take on this role.

The ownership model of the FSO would also impact whether the IRMB is a feasible option for code governance. We note that questions of the FSO's organisational design cannot be determined completely independently of its roles and purpose as, in practice, those decisions will themselves determine aspects of the design itself. This consideration does, however, provide some insight into the implications of those decisions. A for-profit organisational design would pose two challenges to the IRMB option:

- incentivising a for-profit FSO to deliver the strategic IRMB function would present a challenge. A misalignment between shareholder interests, the code governance reform objectives and consumer interests may not be reconcilable, so there is a risk that the IRMB could make decisions which benefit shareholders but not necessarily consumers. To mitigate this, there would be the need for robust legal separation between the FSO's board and the IRMB function, as well as a level of trust and accountability that would be difficult to achieve; and

- the IRMB would have more power over codes than any organisation currently holds, despite Ofgem retaining decision-making for some changes. This makes a for-profit organisational design difficult due to potential vested interests, where the FSO would be able to influence the rules by which it is governed in a way that could benefit itself.

From a codes point of view, the FSO as IRMB option would therefore only be appropriate, and feasible, if the government decided after the FSO consultation to establish a highly independent, public FSO organisational design with a rulemaking role.

6.1.2 Our proposals on governance and funding

Governance structure

If the FSO were established as proposed in the FSO consultation, the FSO would be regulated by Ofgem via licence and hence would be accountable to Ofgem. If the FSO were classified as belonging to the public sector, it would have operational independence from government, but would ultimately have accountability to Parliament directly or to BEIS' Secretary of State on a strategic basis.

The detailed IRMB governance structure would be developed and decided on by the FSO once it had been established to ensure that the IRMB fits within the wider organisational structure of the FSO. However, we would expect the FSO to consider the following points when developing the IRMB's governance structure:

- the IRMB should be part of the FSO, and both the strategic and code manager functions should sit within the IRMB. While the code manager function would not be internally accountable to the strategic function (as the two functions would both sit within the

same body and the IRMB would be held accountable as one body), it would be crucial that they work together closely to ensure that any changes to the codes landscape are made with the strategic priorities in mind. We would expect the IRMB to be set up as a separate FSO business unit; and

- the IRMB governance structure would need to ensure effective delivery of both functions and guarantee a level of senior attention that would be required to fulfil the reform objectives. This could, for example, be achieved through accountability of the IRMB to a codes-specific sub-committee of the FSO board.

Funding proposals

Below, we set out two funding options for the IRMB. Our position is that any funding structure must not erect new barriers to entry for new market participants and should recover the IRMB's costs from those it benefits.

Funding the IRMB as part of the FSO

In this option, the IRMB would be funded as part of the funding model proposed in the FSO consultation. The FSO consultation proposes to make the minimum number of changes to system operator funding required to fund the FSO, using the financing infrastructure already in place wherever possible. UK system operators, and many other system operators internationally, are funded by charges to network users which are passed to their customers. Depending on final decisions on FSO funding, further analysis would be needed to identify any potential restrictions on covering IRMB costs through the general FSO charges.

Funding the IRMB separately from other FSO funding, by charging code parties

In this option, the IRMB would be funded by the code parties. Currently, code parties only fund code administrator activities, and Ofgem covers any of its costs related to codes via licence fees. Funding the IRMB would mean that code parties would provide funds for both the strategic and code manager functions, with the latter likely being more resource-intensive than the current code administrators (see the impact assessment published alongside this consultation). If code parties were charged for this, the IRMB funding would need to be ringfenced from other FSO funding. Code parties would also need to be charged in a way that it does not erect new barriers to entry for new market participants.

In line with our proposal for funding code managers as set out in chapter 5.3, we propose that the charges should be levied in accordance with a charging methodology to be set out in the relevant code(s).

6.1.3 Our proposals on resourcing, skills, and capabilities

If the FSO were established as proposed in the FSO consultation, and the FSO performs the role of the IRMB, the FSO would be required to own the end-to-end delivery of code changes, including non-material changes. It would fulfil both the strategic function and the code manager function, for which it will require skills in strategic oversight, technical expertise in electricity and gas, code management expertise, data and digitalisation skills, and project management.

The current ESO already has technical expertise and a number of required skills that would be necessary to take on the role of the IRMB:

- the ESO has **strong technical expertise** in, and good knowledge of, the transmission network and related codes; and

- the ESO currently has **code management skills** as it currently acts as code administrator for the CUSC, GC, and STC. Elexon, which is fully owned by the ESO, currently acts as the code administrator for the BSC. Through this route, the current ESO and presumably future FSO will have some insight into the wholesale market.

If the FSO consultation proposals were implemented, we would also expect other relevant code governance capabilities to be developed as the roles and functions of the FSO develop:

- currently, the ESO and NGG are less well versed in **energy retail markets and only somewhat versed in gas/electricity distribution networks**, including related codes. We anticipate that the FSO will further develop its skills and expertise in these areas due to its proposed roles in whole energy system oversight and enhanced network planning, which would prove to be useful if it is asked to perform the role of the IRMB;

- to understand and be able to advise on how different technology choices will help or hinder the operability of the system, the FSO would need **deep technical understanding**, including on distribution networks. These types of skills would also be required for the IRMB and should enable the FSO to take a more proactive role in overseeing and managing codes that are not related to the transmission network. However, the IRMB might need to procure additional expertise on retail markets to act as a credible code manager for codes related to this area;

- **strategic activity** is not the ESO's and NGG's current main focus, although the ESO already sets a proto-vision for the sector through the Future Energy Scenarios (FES), with input from NGG. However, the proposed roles for the FSO include further new and enhanced strategic roles, such as the co-ordination of heat or transport decarbonisation which would require strong cross sector and vector strategic thinking, that would fit well with performing the strategic function for codes;

- the FSO would also be responsible for **whole energy system oversight**.[43] The ESO and NGG currently have limited experience of overseeing holistic change outside of their fuel. They do have significant experience of actively managing networks, but this expertise is mostly in the transmission network. However, a proposed role of the FSO would be to co-ordinate with distribution networks to ensure the effective management of the network as a whole. The FSO's increased knowledge and skills relating to distribution networks could then be used by the IRMB;

- as the IRMB, the FSO would be in charge of the current electricity, gas and multiple fuel codes, as well as any future codes on for example hydrogen and CCUS. It is possible

---

[43] Our proposed definition for a "whole energy system" encompasses interactions between transmission and distribution systems, between onshore and offshore development, between gases (covering natural gas, biomethane and hydrogen), electricity and other emerging markets, such as Carbon, Capture, Usage and Storage ("CCUS"), and between decarbonisation of energy sectors including heat, transport, and industry. This is set out in more detail in the FSO consultation.

that, through consolidation, more codes would be turned into multiple fuel codes. While we would expect the FSO to have some **gas expertise**, this would depend on the extent to which the FSO would take on certain gas functions (options for this are set out in detail in the FSO consultation in chapter 3.1). To be able to credibly take on the role as IRMB, the FSO would need to ensure they have technical expertise in gas, including engineering expertise, either through resourcing the FSO fully for this capability, or by partly depending on other organisations that already have this expertise; and

- the IRMB would require skills and expert knowledge on **data and digitalisation**. This is crucial to make the code reform a success. We understand that the ESO currently has capabilities in this area and ensuring that this is retained in the FSO would facilitate an effective IRMB.

6.2 Monitoring and evaluation

Chapter 3.1 sets out the legally binding measures which we propose government would use to communicate its strategic vision to the strategic function, which the strategic function will have regard to in developing and delivering the strategic direction. There is a need for a monitoring and evaluation approach to ensure that the FSO as the IRMB would effectively deliver in its role and against its responsibilities. The detail of this approach is still being developed. However, in line with the FSO consultation and the proposals set out in chapter 3.1.1, we propose:

- to legislate to amend the SPS framework in the Energy Act 2013 so that the duties in relation to the SPS (in particular, to have regard to any SPS strategic priorities and to further SPS policy outcomes) apply to the FSO, including as IRMB. The FSO would be required to report in its forward work programme on its strategy for furthering the delivery of the SPS policy outcomes and implementing its strategy, and its annual report reports on how it has complied with these duties;

- to ensure that the FSO in its role as the IRMB keeps under review relevant government policy initiatives or other developments in the energy sector that are likely to impact codes including those which occur or emerge between the (usually quinquennial) reviews of a designated SPS. We also propose that the strategic function could report on its performance of such 'keeping under review', for example in its annual report and forward work programme (see chapter 3.1).

The roles of Ofgem in monitoring the FSO's performance will be dependent on future decisions on licensing.

6.3 Questions

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

7 Analysis of institutional governance options

In our 2019 consultation, we presented a number of potential options for how best to deliver strategic direction and oversight for codes, which we subsequently narrowed down after considering the consultation responses that we received and engaging in further policy development. This chapter provides an analysis of the two institutional governance options presented in this consultation – Ofgem as strategic body or FSO as IRMB. It summarises why we think that Ofgem as the strategic body with separate code managers (option 1) is a stronger option than an IRMB with the FSO fulfilling that role (option 2).

7.1 Options analysis

We assessed both options against the following criteria:

- **meeting reform objectives:** Does the option achieve our four code governance reform objectives (see chapter 1), namely an energy code framework that is forward-looking, able to accommodate a growing number of market participants, agile and responsive to change, and easy to understand?

- **value for money:** Does the option minimise costs (including for industry and consumers) while maximising benefits?

- **skills:** Does the proposed body have the right expertise to take on a strategic role?

- **feasibility of implementation:** Will there be resources available for implementing the reform? Does the level of complexity allow for the option to be implemented within 5 to 10 years? Under this option, will any disruptions be manageable?

Both options consulted on in this document were found to be viable and implementable. For detailed information on the estimated costs and benefits of both options, please see the impact assessment published alongside this consultation.

7.1.1 Meeting reform objectives

We assessed both options against our four reform objectives. While both options meet all of the reform objectives, we have concluded that Ofgem as the strategic body (option 1) would overall be able to fulfil them better than the FSO as the IRMB (option 2). We found no significant difference between the options regarding the second objective (ability to accommodate a large and growing number of market participants) and that all other objectives would be better met by option 1.

Objective 1: Forward-looking and in line with government vision and strategic direction

In **both options**, the strategic function would be required to align the strategic direction with the government's vision for the energy sector. We consider that the individual options fulfil the objective as follows:

- **Ofgem as strategic body (option 1):** Ofgem has experience overseeing all energy sectors covered by the codes and could provide independent strategic direction as part of its current role. For example, Ofgem already provides a strategic annual forward work programme. As the strategic body, Ofgem could ensure that code changes are developed and implemented in line with the strategic direction, by holding code managers to account and taking decisions on material code changes.

- **FSO as IRMB (option 2):** While strategic activity is not the current ESO's main focus, strategic thinking is part of its day-to-day work, for example through setting the FES. Also, as we expect an FSO with expanded responsibility to take on a number of more strategic roles as set out in chapter 6.1.3, we would expect the IRMB to be able to meet this objective. However, the fact that the role of strategic function would have to be split between the IRMB for strategic direction setting and oversight, and Ofgem for decision-making on material changes, would mean that the IRMB would be less able to ensure that its strategic direction is delivered. In addition, since the FSO would likely be licensed by Ofgem, its operations would therefore also be regulated by codes. Giving the power over code rulemaking to a body that is itself bound by those rules would therefore create potential conflicts of interest. In addition, the IRMB would also fulfil the roles of current code panels in its code manager function, which would strengthen the decision-making power of the IRMB even more. This could be overcome somewhat through adequate organisational separations within the FSO but still means that this option would be more problematic.

Objective 2: Can accommodate a large and growing number of market participants

- **Both options** could accommodate a large and growing number of market participants. Any potential implementation challenges of the FSO in relation to non-codes work would not significantly impact its work on codes, considering that the IRMB would be set up as a separate unit within the FSO.

Objective 3: Agile and responsive to change, taking account of different participants

- **Ofgem as strategic body (option 1):** Making Ofgem the strategic body would mean that strategy setting, licensing and codes oversight were all in one place. Ofgem as the strategic body could thus be more responsive and agile when delivering its policies that impact on both licences and codes, as the strategic element of codes would be looked after by the strategic body. This would reduce the complexity of the regulatory landscape and make the code landscape more flexible and responsive to change.

- **FSO as IRMB (option 2):** Giving the role of an IRMB to the FSO would mean combining the strategic and code manager function in one body, therefore making the codes change process more integrated. However, as set out in chapter 3.2.8, Ofgem, not the IRMB, would decide on the approval of code changes that materially impact on consumers and competition, or where retained EU law or the TCA require Ofgem to approve.[44] This would split the roles for the strategic function between Ofgem and the IRMB, making the option less joined up and risking making the change process less agile and flexible.

- **Both options** would be able to take account of the views of different participants, considering that they would undertake similar stakeholder engagement.

Objective 4: Easier for market participants to understand the rules and what they mean

- **Ofgem as strategic body (option 1):** Option 1 could be implemented faster than option 2 so consolidation and simplification could therefore be delivered sooner. If Ofgem were designated as the strategic body, the same organisation would be responsible for licences, codes, and code strategy setting. Despite the fact that some complexities for stakeholders would remain, such as handling different documents or liaising with different parts of Ofgem for different enquiries/issues, this scenario would make it easier for market participants to engage with code and licence change processes overall.

- **FSO as IRMB (option 2):** Option 2 would equally allow for simplification and consolidation. However, it might take longer due to the longer implementation timelines for this option. In option 2 the wider regulatory landscape would remain fragmented, with Ofgem, the IRMB and other players fulfilling different roles in that framework, making it overall more confusing for market participants and consumers.

7.1.2 Other assessment criteria

Below we set out the analysis of both options against the remaining assessment criteria listed above.

Value for money

Overall, while we do not see a significant difference in terms of quantifiable costs and benefits between the two options, we consider that option 1 would provide a greater net benefit due to quicker implementation timelines.

The major costs of code reform have been quantified in the impact assessment published alongside this consultation. For option 1, the establishment of Ofgem as the strategic body is estimated to cost around £2 million per year, while the estimated cost of the code managers is £35 million per year. For option 2, these two functions would be combined within the IRMB, at an estimated cost of £33 million per year due to the efficiency savings expected. As there is no

---

[44] In the years from 2017 to 2020, around 40% of the decisions made on code changes were related to material changes. However, it should be noted that this varies from year to year and therefore the percentage indicated here should only be taken as a guidance.

significant difference between the costs, they do not constitute a major deciding factor between either option.

The potential benefits of the two options would also be similar. However, only a fraction of those benefits could be quantified. These are in the form of savings to industry from responding to consultations, estimated to be around £300,000 per year, and participating in workgroups as part of the code change process, estimated to be around £1.5 million per year. The case for code governance reform is strengthened by non-quantifiable benefits. These benefits include a more efficient and faster code change process, closer alignment to the government's strategic and policy priorities, and lower costs of participation for industry, arising from the shift of responsibilities to code managers and the resulting changes in the code change process. This will be particularly beneficial to small firms as the costs of participation currently act as a barrier to participation.

While in both options the quantified costs will outweigh the quantified benefits, we expect the reform to provide a net benefit overall.

As the costs and benefits of the two options are expected to be similar, any material difference between the options depends on the speed at which each option could be implemented, and its respective benefits could start to be realised. While the implementation timelines depend on the detailed design of the reforms, it may be possible for option 1 to be implemented from 2024, assuming primary legislation is passed, and secondary legislation is made in 2023. By contrast, we assume for the purpose of this analysis that the FSO would only be fully set up from 2026. This is because of the time required to establish the FSO and to develop and implement the proposed new roles of the FSO. Consequently, option 1 could realise any benefits earlier than option 2, therefore delivering better value for money in the long term.

Skills

We concluded that option 1 meets this objective slightly better than option 2, mainly due to the lower capability build that would be needed to make Ofgem the strategic body.

Ofgem already holds a number of the responsibilities that we propose for the strategic function. This includes extensive experience overseeing all elements of the electricity and gas systems and existing knowledge of codes. However, Ofgem may currently have an expertise gap for detailed technical changes. Similarly, based on current strategic skillsets in the ESO, the FSO should be well-versed in strategic thinking as part of its day-today work (despite this not being its focus) and have deep technical knowledge. However, the FSO would have initial gaps in more general and holistic code knowledge, particularly in relation to retail markets, and its expertise on codes is limited to the ESO acting as a code administrator for three electricity codes.

The fact that Ofgem has extensive knowledge of both the codes landscape and the electricity and gas systems means that it would require less resources to build the strategic and holistic capabilities needed for a strategic function. For its gap in technical knowledge, it should be able to draw upon expertise from the existing pool of code administrators. By contrast, the strategic ability and expertise of the FSO would be less developed initially with regard to codes

than Ofgem's and would likely be more resource intensive to develop. Unlike Ofgem, the FSO would likely find it harder in option 2 to hire or contract people with the required strategic expertise on codes to support its operations and would therefore need to develop that capability in-house.

Feasibility of implementation

Option 1 would be quicker and easier to implement than option 2. Ofgem could set a strategy sooner than an FSO that is yet to be established, and possibly start work on planning and implementation prior to legislation. We would consider it prudent to wait until the FSO were established in its new roles before giving it a significant additional role in code governance.

Ofgem would also have the option of using the licensing regime to gradually transition from the existing system of code administrators to the new system of code managers over time, whereas the IRMB could only become operational after code administrators' functions would have been transferred to it and transitional arrangements would be in place. Moreover, the IRMB option would require a transition of codes, expanding FSO expertise, and integrating the strategic and code manager functions to create a seamless organisation, making it very complex to implement. As set out in chapter 6.1.1, the feasibility of option 2 also depends on the outcome of the FSO consultation, in relation to the FSO's roles and its organisational design. These dependencies mean that the feasibility of option 2 is more uncertain than for option 1.

7.1.3 Respondents' views on the 2019 consultation and our response

The most common arguments against having a strategic body separate from code managers included that it adds an extra layer of bureaucracy, that the strategic body might be out of touch with codes, that it could lead to conflicts between the strategic body and code managers and prevent a more collaborative approach. We think that by giving the role of the strategic body to Ofgem this risk would be minimised, considering Ofgem already plays a significant role in code governance.

Some respondents voiced concerns that the IRMB's remit would be too wide and therefore lacking agility, and that it would provide less transparency and fewer checks and balances than in an option with clearly separated strategic and code manager functions. This is a concern we share, although we think that involving Ofgem in the decision-making on code changes and having clear and transparent appeal routes would mitigate this risk.

7.2 Questions

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

NB: The following three questions relate to the impact assessment on the code reform that is published along with this consultation. Please only answer the questions below if you have read the Impact Assessment.

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

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

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

8 Implementation approach

This chapter describes our preliminary thoughts on the stages required to implement our reform proposals. It should be regarded as initial high-level thinking that we are seeking stakeholder views on, rather than as a definitive blueprint for code reform. We do not set out a detailed timeline for delivery because this will depend on the detailed design approach. Instead, we identify what may need to be achieved at each stage of the implementation process so that we can gather feedback on any potential issues that we will need to take into consideration.

We start by describing some of the context that will need to be considered when implementing the reforms, such as wider industry developments. We then show how we intend to transition from the current framework to our future vision for code governance, first for option 1 and then for option 2. As mentioned, we will consult on future stages such as code consolidation.

It is also important to note that the proposed implementation approach outlined in this chapter is dependent on the passage of primary and secondary legislation, which is subject to the will of Parliament.

8.1 Context and wider industry developments

The codes span arrangements across the energy value chain so we must ensure that our reforms take into consideration existing work programmes by the government, Ofgem and industry.

This ranges from projects that are well underway, such as market wide half hourly settlement, to other projects that have either been recently published or are being announced alongside this consultation.

This work includes, but is not limited to:

- **Current industry arrangements and processes**: the existing codes and the processes to change them continue to play a key role in the functioning of the energy system, with important ongoing code changes. These code changes, together with existing code administrators, their shareholders, and their contractors' rights and assets need to be given due regard during the transition to the new governance framework, including the transition from code administrators to the code manager function.

- **Data Communications Company (DCC) review:**[45] The aim of the DCC review is to determine the appropriate future regulatory arrangements for DCC. Ofgem published a high-level call for evidence on 1st February 2021. We anticipate that any changes would

---

[45] DCC review: call for evidence, Ofgem, February 2021.
https://www.ofgem.gov.uk/system/files/docs/2021/02/call_for_evidence_-_review_of_the_regulatory_arrangements_for_the_data_communications_company_0.pdf

come into place when the current licence expires in September 2025. As we have discussed in chapter 2, there are various options we could consider in terms of ensuring central system delivery bodies support the delivery of the strategic direction. We will carefully consider interactions with the DCC, recognising its unique position as a currently licensed central system delivery body.

- **Retail Energy Code:**[46] a retail energy code has been introduced through the faster switching reforms, which, among other things, will replace the MRA and SPAA, and will govern the Central Switching Service. We want to ensure that we build on the positive developments from this initiative as part of our wider code governance reforms and that any lessons regarding code consolidation are applied in future. We also recognise that aspects of the REC may need to be updated depending on the outcomes of this consultation.

- **Market wide half hourly settlement (MHHS):**[47] Ofgem is currently developing the implementation and governance arrangements for the introduction of market-wide half hourly settlement. A significant amount of work will be required to deliver these important reforms in the coming years and Elexon has a leading role in ensuring MHHS is delivered on time. We must ensure that the introduction of code governance reforms takes into account planned developments in this area.[48]

- **Energy Digitalisation Taskforce**: the digitalisation of the energy system poses new questions about current data roles and responsibilities. Significant and system-wide investment in digital technologies will be needed in our future energy system, as outlined in the 2019 Energy Data Taskforce report.[49] A follow up Energy Digitalisation Taskforce report due to be published in winter 2021/22 will consider future data governance arrangements, which may have implications for code governance that will need to be taken into account.

- **Energy Regulation Sandbox**: Ofgem developed the Energy Regulation Sandbox as part of an adaptive regulation approach. The existing sandbox toolkit includes Ofgem tools and facilities in the BSC and DCUSA that provide temporary derogations for pre-competitive trials, at the end of which there will be the opportunity for code changes to make an innovation permanent. Sandbox flexibilities are also being built into the REC. We anticipate that the development of sandbox capabilities will continue under our proposed reforms.

---

[46] Website of the Retail Energy Code Company https://www.retailenergycode.co.uk/

[47] Market Wider Half Hourly Settlement (MHHS) – Consultation on Implementation and Governance Arrangements, Ofgem, April 2021. https://www.ofgem.gov.uk/publications-and-updates/market-wide-half-hourly-settlement-mhhs-consultation-implementation-and-governance-arrangements

[48] Ofgem has recently confirmed that Elexon will be undertaking the Senior Responsible Owner role for the implementation phase of MHHS. This role will entail Elexon having responsibility for establishing, operating, and managing appropriate programme structures and governance to ensure timely and effective implementation. https://www.ofgem.gov.uk/publications-and-updates/electricity-retail-market-wide-half-hourly-settlement-decision-and-full-business-case

[49] Energy Data Taskforce: A Strategy for a Modern Digitalised Energy System, Energy Systems Catapult, June 2019. https://es.catapult.org.uk/reports/energy-data-taskforce-report/

8.2 Implementation under option 1 - Ofgem as strategic body with separate code managers

This diagram shows the proposed stages for the implementation of option 1, in which Ofgem would take on the role of the strategic body. The subsequent sections of this chapter describe our initial thinking on these stages in more detail, albeit at a high level.
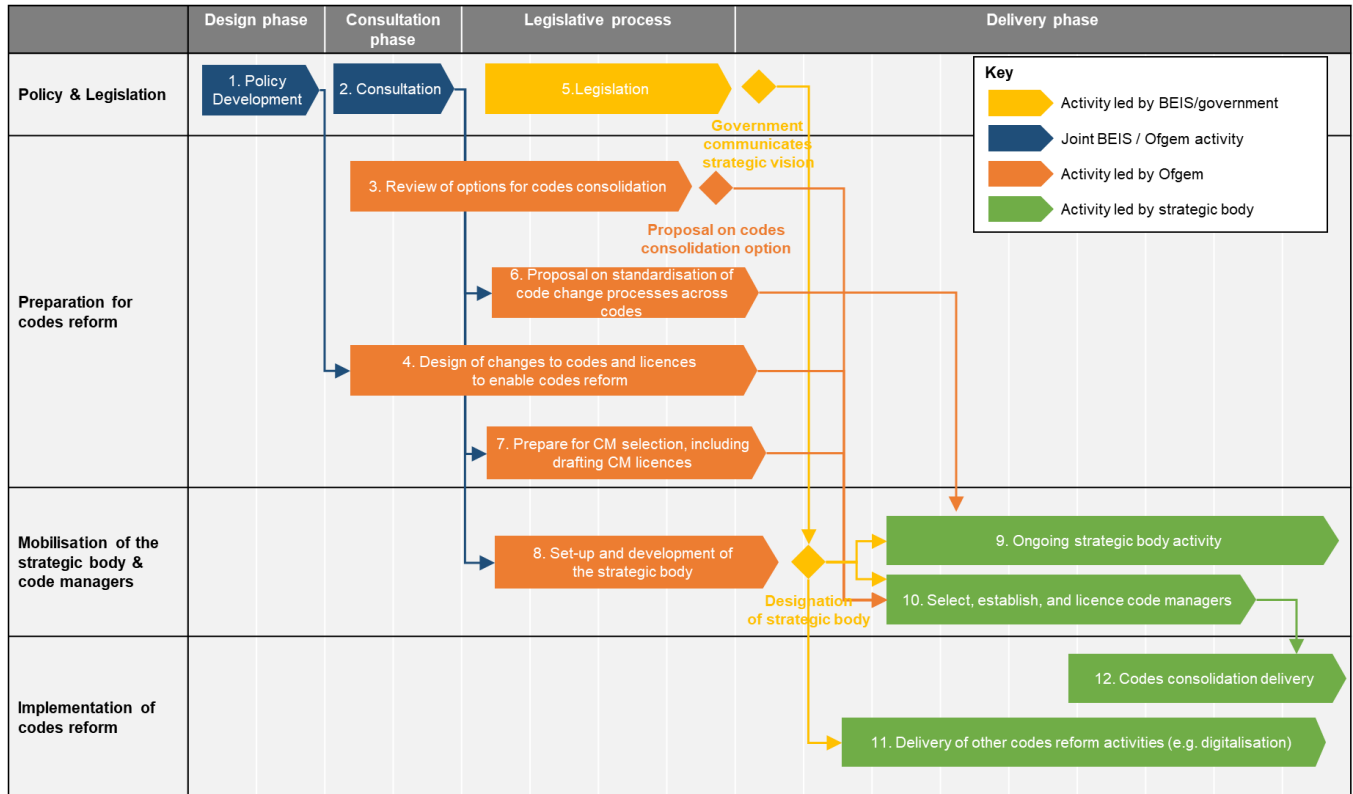

Figure 4: Proposed key stages for code reform implementation under option 1

The proposed approach aims to optimise the timeline for delivering codes reform by starting preparatory activities during the legislative process. Ofgem can initiate these activities as part of its existing functions.

Preparation for code reform

During the legislative process, we propose that Ofgem begin a review of options for codes consolidation. Further work will also be needed to develop how any new governance arrangements would be implemented, including identifying changes to licences and codes.

As part of the legislative process BEIS would prepare the legislation setting out the tender process and criteria. Ofgem would also need to prepare for the selection and licensing of new code managers, which would include designing and drafting the new code manager licences and preparing any other necessary steps to select the code managers (see chapter 5.2). For example, if the strategic body decided to select code managers through a competitive tender process, this would include providing details of the code manager licences in tender documents to enable bidders to fully understand the requirements. As above, we would expect this stage to be completed as soon as practical so code managers could be selected and

established after legislation is in place. Once legislation is introduced to Parliament, we would expect current code administrators to further engage with the work of simplifying the codes and streamlining the code change processes across codes, under the leadership of Ofgem.

Mobilisation of the strategic body and code managers

Once the consultation phase has ended and government has published its response, Ofgem would begin to further develop the strategic body. We would expect this to include analysis of an organisational design that would enable Ofgem to fulfil the strategic body responsibilities. We would expect this initial preparatory phase to help ensure progress can be made as soon as practical, ideally once the strategic body is officially designated.

We intend to lay legislation when parliamentary time allows. If primary legislation is passed, any necessary secondary legislation will be prepared to enable code managers to be selected and licensed.

Ofgem, as the strategic body, would continue its preparation to select and licence code managers. We anticipate that this would happen after the broad approach to consolidation had been considered to ensure clarity on what codes there would be post-consolidation and, for example, how many code managers would be needed (see chapter 5.2.1).

If code managers were to be selected through a tendering process (see chapter 5.2.1), we propose this would be done based on criteria and process set out in secondary legislation. This stage would end with the licensing of the new code manager(s), which - if primary legislation were to be in place by 2023 - could happen from 2024.

However, we note that it is unlikely that all code managers would be licensed simultaneously, and we consider that this would be the start of a longer process rather than a fixed point in time. Therefore, we anticipate that selecting, establishing (if necessary), and licensing the code managers would partly happen in parallel to implementing the code reform, including consolidation.

Implementation of code reform

We propose that, once designated as the strategic body, Ofgem would build on any preparatory work, and any work already being progressed, and move into a more formal delivery phase of code reform activities. These activities may include considering how code change processes could be streamlined across codes, which would have already begun during a previous implementation stage, and how codes could be digitalised. It could also include agreeing and implementing principles and standards to perform these activities in a coherent way across the code landscape.

Once code managers have been licensed, we would expect them to deliver the consolidation of codes under the leadership of the strategic body based on the review of options carried out earlier by Ofgem. As part of this process, we expect industry to be involved in any work to develop the details of the consolidated codes. There would also be a formal consultation on

this content, followed by approval of the consolidated codes by the strategic body and subsequent publication.

8.3 Implementation under option 2 - Future System Operator as IRMB

The diagram below shows the proposed key phases for implementation for option 2, in which the FSO would take on the role of the IRMB. The subsequent sections of this chapter describe these stages in more detail. As above, we propose that Ofgem starts preparatory implementation activities as part of its current functions as the regulatory authority prior to anticipated legislation, ahead of the establishment of the IRMB.
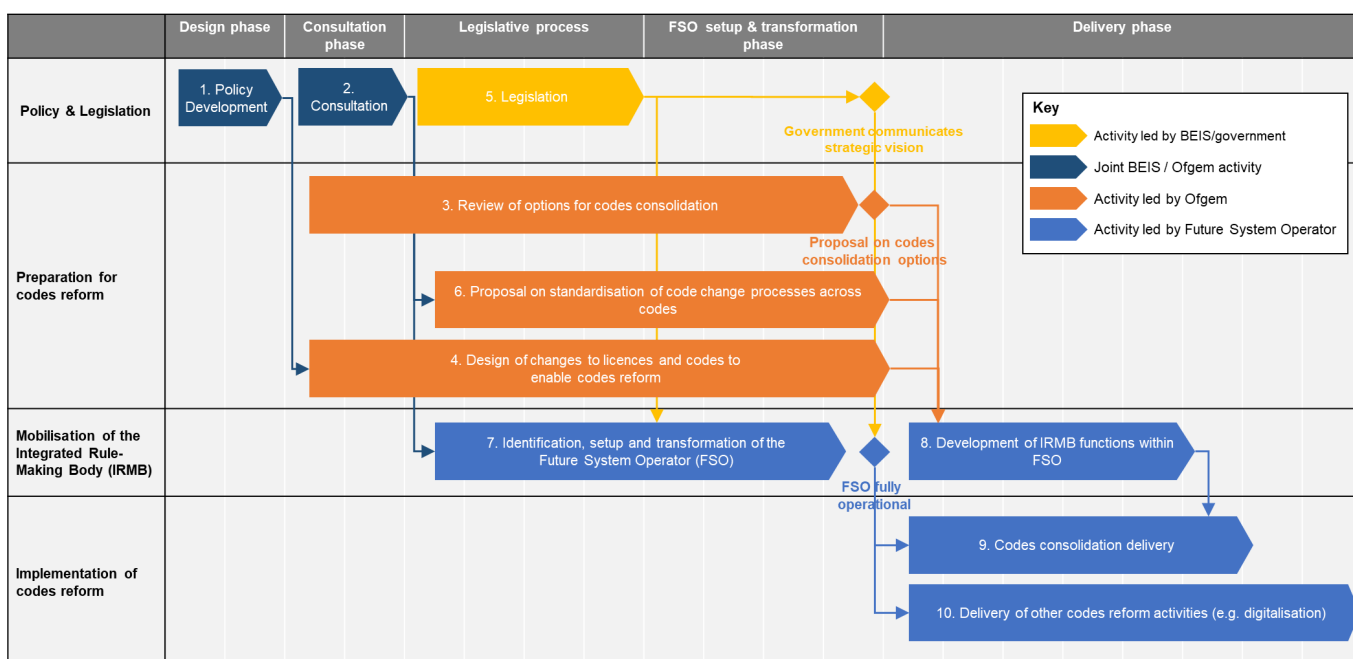
Figure 5: Proposed key stages for code reform implementation under option 2

Preparation for code reform

As in option 1, initial preparation for code reform could be done by Ofgem during the consultation and legislative process. The steps would be broadly the same as those set out in chapter 8.2. However, in this option, the timing for developing a proposal on a preferred codes consolidation option may be deferred until the FSO is fully operational (i.e. performing the roles assigned to it via the FSO consultation). In addition, Ofgem may not need to prepare specific code manager licences under this option, as this would likely, but not necessarily, be covered through the general FSO licence.

Before the FSO is fully operational, we intend for Ofgem to start designing standardised processes for code changes and code simplification. The principles of these standardised processes would then be incorporated into the relevant licence covering IRMB activities and functions. Following the full establishment of the FSO, we would expect the FSO to implement these processes in practice, as part of the development of the IRMB functions.

Mobilisation of the IRMB

Consultation on the FSO is running in parallel with this consultation. The preferred approach is that there would be a phased implementation of the FSO, with the FSO taking on the existing capabilities and functions of NGESO as a first step, followed by phased introduction of any further roles of the FSO. If option 2 is selected, the FSO would need to consider how to incorporate its role as the IRMB.

As mentioned in chapter 5.2.1, we believe that the FSO should be fully operational in its roles before giving it a significant additional role in code governance, considering that the new roles and responsibilities of the FSO could be significant (subject to consultation). Once fully operational, the FSO would start to build its capabilities to deliver its role as the IRMB. This could be accomplished by developing the required capabilities in-house or by engaging third parties to deliver them on its behalf. We anticipate that this process would run in parallel with broader reform activities, such as the codes consolidation, the transition of code administrator roles and duties to the IRMB, and digitalisation.

Implementation of code reform

The IRMB would be responsible for delivering the consolidation of codes, informed by the code consolidation proposal developed by Ofgem. As part of this process, we would expect industry to be involved in any work to develop the details of the consolidated codes. There would also be a formal consultation on the content with wider industry and other stakeholders, followed by approval of the consolidated codes by the IRMB and subsequent publication.

8.4 Questions

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

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

9 Next steps

9.1 Overview of next steps

We are seeking comments by 28 September 2021.

We will use the responses to inform continued policy development. This will include a determination of which of the two institutional governance options we will take forward into primary legislation. As noted throughout this consultation, there are advantages and disadvantages to both options, and we welcome stakeholders' views on the relative merits and feasibility of each.

We will publish a government response covering both this and the 2019 consultation on the GOV.UK/BEIS website in due course.

We will also introduce primary legislation when parliamentary time allows. There will be further consultation on aspects of these reforms that will not require primary legislation to implement. These include, but are not limited to, the detailed code changes needed for the chosen institutional governance option, the licence conditions for the code manager function, further details regarding how code managers would be expected to operate (if our preferred institutional governance option is implemented), and a detailed plan for code consolidation and implementation.

9.2 Questions

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

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

10 Consultation questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annex

Annex A: CMA recommendations - Code Governance Proposals comparison

In 2016, the Competition and Markets Authority (CMA) published its 'Energy Market Investigation Final Report' setting out the below as having an Adverse Impact on Competition (an AEC).

'*The Codes AEC*

20.19 In Section 18, we have found a combination of features of the wholesale and retail gas and electricity markets in Great Britain that are related to industry code governance, and which give rise to an AEC through limiting innovation and causing the energy markets to fail to keep pace with regulatory developments and other policy objectives (the 'Codes AEC'). In particular, we are concerned that this AEC has the impact of limiting pro-competitive change. The underlying features are as follows:

(a) parties' conflicting interests and/or limited incentives to promote and deliver policy changes; and

(b) Ofgem's insufficient ability to influence the development and implementation phases of a code modification process.

20.20 We have therefore found, pursuant to section 134(1) of the 2002 Act, that there are features of the relevant markets, which alone or in combination prevent, restrict or distort competition in the supply of electricity and gas in the United Kingdom, and accordingly that there are various AECs within the meaning of section 134(2) of the 2002 Act. These features are those that we have identified in Sections 5, 9, 16 and 18 of this final report.'

To address these, they proposed a set of remedies as set out in the table below:

CMA remedies	Code Governance Reform proposed measures
A recommendation to Ofgem to	
(i) publish a cross-cutting strategic direction for code development (the 'strategic direction');	One of the duties of the strategic function would be to develop and publish a strategic direction. This would take into account the strategic priorities and policy outcomes in any designated SPS, and any policy initiatives and developments in the energy sector that are likely to impact codes, and which occur or emerge between the reviews of a

	designated SPS. The strategic function would consult with stakeholders ahead of publication.
(ii) oversee the annual development of code-specific work plans for the purpose of ensuring the delivery of the strategic direction;	The strategic function would publish a strategic direction annually, along with providing ongoing steers as appropriate to code managers (under option 1) and industry. The code manager function would be expected to set out delivery plans for how they expect to achieve the strategic direction. Under option 1, code managers would be held accountable via licences granted by the strategic function to deliver on these work plans. As a result, the strategic function would oversee delivery plans across codes. Under option 2, there would be a delineation of roles between the strategic and code manager function, where the code manager function would be responsible for developing and delivering work plans based on the strategic direction.
(iii) establish and administer a consultative board in order to bring stakeholders together for the purpose of discussing and addressing cross-cutting issues;	The strategic and code manager functions will engage stakeholders in the development and delivery of the strategic direction, which would cover cross-cutting issues across codes. In general, the code manager function would be expected to facilitate cross-code coordination and establish stakeholder groups, such as a stakeholder advisory forum (as would be present on individual codes) to engage with stakeholders on the development of codes. The strategic function would have oversight of this and, where necessary, take a more active role in cross-code changes.
(iv) initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the strategic direction;	Under the proposed reform, both the strategic and code manager functions (and any interested person) would have the power to propose a code modification. The code manager function would have the responsibility of prioritising code modifications, ensuring that in doing so they are

	facilitating the delivery of the strategic direction. In the option where Ofgem is the strategic body, it would oversee the code manager in this and monitor progress in delivering the strategic direction. If the FSO took on the role of the IRMB, the strategic and code manager functions would work closely together to achieve this, being jointly accountable.
(v) in exceptional circumstances, intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate; and	In most instances, the code manager function would be responsible for managing the code change process. However, the strategic function would have the power to direct code managers to make a specific change. They would also have the power to directly change the codes. This power would only be expected to be used in situations of complex, cross-code changes, in urgent situations, or where the code manager is unable to deliver.
(vi) modify the licence conditions of code administrators to introduce the ability for the administrator to initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction or to improve the efficiency of governance arrangements.	A code manager function would replace code administrators. In option 1, code managers would be licensed and would be responsible for managing the code change process, including prioritisation and the ability to initiate code modifications necessary for the delivery of the strategic direction. In option 2, the FSO (and thereby the IRMB and its code manager function) would likely be licensed.
A recommendation to DECC to initiate a legislative programme with a view to:	
(i) giving Ofgem the power to modify industry codes in certain exceptional circumstances; and	Under the SCR renewed guidance (2016) Ofgem is able to influence the existing end-to-end code change process to modify industry codes. However, this is established in licences rather than legislation. Under option 1, the strategic body (Ofgem) would have the power to control the change process, including a last-resort option outside of any non-material code change procedure, similar to existing SCR processes.

ii) making the provision of code administration (and delivery) services activities that are licensed by Ofgem and specifying that such licence conditions will include appropriate targets to incentivise code administrators to take on an expanded role to be able to deliver pursuant to the strategic direction.	Code management would be a licensed activity. Under our preferred option 1, code managers would need to create delivery plans following a strategic direction being set by the strategic body. They will be held accountable by the strategic body via licences for delivering this. The strategic body would be responsible for setting an incentive structure for the code managers to deliver the strategic direction. Where a code manager is not effectively performing this role, the strategic body would be able to take enforcement action. Under option 2, the IRMB would fulfil the roles and responsibilities of both the strategic and code manager functions, and the same obligations would apply for these functions as under option 1. The activities of the code manager function would also be set out in licence as in option 1, however this could be part of the relevant licence for the IRMB more broadly. The IRMB governance structure would ensure effective delivery of both functions and guarantee a level of senior attention that would be required to fulfil the reform objectives.

Overall, these interventions should address the features of the Codes AEC that the CMA identified:

(a) parties' conflicting interests and/or limited incentives to promote and deliver policy changes; and	With decision-making power being moved from panels to a code manager function with a clear responsibility to deliver on the strategic direction developed by the strategic function, the issue of conflicting interests and limited incentive to change would be resolved. There would be a clear mechanism for delivering policy changes in line with the strategic direction.
(b) Ofgem's insufficient ability to influence the development and implementation phases of a code modification process.	In option 1, the strategic body (Ofgem) would have the power to propose, develop and implement changes. Generally, this process would be handled by the code manager function, which would be accountable to the strategic body, and code managers would develop

	changes based on their delivery plans which would be created based on the strategic direction. As the strategic body, Ofgem would have the power to directly affect the code change process, particularly where the code manager is unable to deliver or in complex, or material changes. Ofgem would also retain its current power to approve and reject material code modifications. In option 2, Ofgem would be able to input into the strategic direction and also would retain decision making powers for approving material code changes and any other changes they need to retain decision making power over as required by law.

Annex B: Illustrative change process with roles and responsibilities

The table below sets out an illustrative change process and our expectations on roles and responsibilities at each stage. As noted above, some of the content that it covers will be consulted on in the future. This table should therefore be regarded as a helpful reference and overview rather than an exhaustive description, or firm commitment, of what a future code change process might look like.

Stages of code change process	Proposed roles in option 1 (Ofgem as strategic body)	Proposed roles in option 2 (FSO as IRMB)	Broad current roles (this differs from code to code)
Proposing code changes	We anticipate that any interested person, including code managers, would be able to propose a change.	We anticipate that any interested person, including IRMB, would be able to propose a change.	For most codes this is currently primarily limited to code parties
Decide the materiality of a code change	For each of these decisions, the code manager will be responsible for taking day-to-day decisions. Ultimate accountability would sit with the strategic body.	For each of these decisions, ultimate accountability would sit with the body the IRMB is accountable to, with the code manager function of the IRMB responsible for taking the day-to-day decisions.	Proposer gives view but panels (which are mainly industry-led, but also includes consumer groups, independents, and academics) decide. Authority can direct a particular change to follow the alternative path (i.e., self-governance to Ofgem consent or Ofgem consent to self-governance).
Approve proposal to enter the change process			Panels.
Prioritise code changes			Panels set the timetable, and some can prioritise code changes on an ongoing basis. The proposer of a code change can withdraw it.

Arrange/organise administrative side of code change process	This would sit with the code manager.	This would sit with the code manager function of the IRMB.	Code administrator.
Develop details of code change, including consulting and, where appropriate, assessing impacts	This would sit with the code manager.	This would sit with the code manager function of the IRMB.	Proposer 'owns' the code change, but the code administrator provides support (so may draft the reports and legal text, and arrange the consultation), including establishing a working group of experts. The panel is responsible for agreeing that the report is ready to go to Ofgem for decision.
Decide on whether to approve material code change	We would expect the strategic body to make this decision.	We would expect Ofgem to make this decision.	Ofgem decides on material code changes.
Decide on whether to approve non-material and housekeeping code changes	The strategic body is accountable, but code managers would be responsible for making this decision, likely with an appeal route to the strategic body for those decisions.	We would expect the code manager function of the IRMB to make this decision.	Panels decide on non-material code changes.
Implement code changes (i.e., make the changes to the codes and systems)	Code manager to do this, or to coordinate this where it requires central system changes and there is a separate systems provider.	The code manager function of the IRMB would be responsible for doing this, or to coordinate this where it requires central system changes and there is a separate systems provider.	Code administrator changes the codes. Sometimes it also manages the related systems and will ensure these are changed (e.g., Elexon). Sometimes the systems are managed by a separate body (e.g., Xoserve on the UNC).

This consultation is available from: https://beisgovuk.citizenspace.com/energy-security/energy-codes-reform

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.