



Department for  
Energy Security  
& Net Zero

ofgem

# Energy Code Reform:

Consultation on Code Manager Licence  
Conditions and Code Modification Appeals to  
the Competition and Markets Authority

Closing date: 27 June 2025



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## Executive Summary

Britain's energy sector continues to undergo significant technological, operational, and commercial change as we continue to work towards delivering our mission to make the UK a clean energy superpower by 2030 and accelerating the UK's journey to net zero. The transition to a low carbon energy system can only be achieved if the sector rules and governing institutions evolve to enable it. We need an electricity and gas system that allows any challenges to be efficiently and effectively overcome, while empowering the uptake of new opportunities to ultimately benefit consumers.

The detailed rules contained in the gas and electricity industry codes play a key role in facilitating the energy market in Great Britain. Overseen by the independent energy regulator, the Office of Gas and Electricity Markets (Ofgem)<sup>1</sup> and governed by industry-led processes, the codes have been fit for purpose when dealing with an energy system that was more predictable and subject to incremental changes over time. However, we recognise that the existing code governance structure was not designed to deliver the proactive foresight and coordination that will be needed to meet the challenges of the evolving sector.

In this joint consultation, the Department for Energy Security and Net Zero (the Department) and Ofgem, collectively referred to as "we" and "our" where relevant, set out further proposals for code manager standard licence conditions and the policy underpinning the code modification appeals to the Competition and Markets Authority (CMA). Key policy proposals covered in this consultation are summarised below.

## Code manager licence

Here we set out our proposals on the high-level contents of the code manager licence, consulting on the full end-to-end licence (Annex A). We have also developed policy on the following areas and seek views from stakeholders on our proposals, and the associated draft licence conditions.

- **Code manager budgets (follow-up from first consultation):** We propose that budgets should be open to appropriate scrutiny, with costs economic and efficient. The consultation revisits the question of including an appeal mechanism and reconsiders the approach to Ofgem oversight of budgets.
- **Conflicts of interest (follow-up from first consultation):** We aim to ensure code manager independence and prevent any conflicts of interest that could impact negatively on a licensee's ability to deliver its duties.
- **Code manager objectives:** Licences will include the core objectives for code managers to have regard to while carrying out their duties. These will set out high-level functions and characteristics of the role, promote positive outcomes for consumers, and support the delivery of Ofgem's new annual Strategic Direction Statement (SDS).

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<sup>1</sup> Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (GEMA), the body established by section 1 of the Utilities Act 2000 to regulate the gas and electricity markets in Great Britain. In this document, Ofgem, the Authority and GEMA are used interchangeably.

- **Delivery plans:** Our aim is that the codes should align with government policy priorities, following the direction set by Ofgem's SDS. Code managers will be required to develop and implement delivery plans which facilitate this.
- **Controls on the business:** To ensure that code managers are financially stable and appropriately resourced to deliver their duties, we propose that licences will include certain controls on the business, similar to those in existing energy licences.
- **Procurement:** While third parties are not licensed by Ofgem or subject to the same regulation as code managers, we propose the licence should include restrictions and requirements around procurement, with the aim of protecting against adverse consequences where licence functions are outsourced.
- **Optional charging:** We aim to provide flexibility for code manager optional charging arrangements, subject to a set of criteria.
- **Performance:** We aim to ensure code managers' good performance and to allow Ofgem to take appropriate steps if performance is poor.
- **Provision of information to, and co-operation with, the Authority:**<sup>2</sup> We aim to engender a cooperative relationship between Ofgem and code managers, and to ensure Ofgem can access the information it needs to carry out its role as regulator.
- **Ease of use of the code:** We propose that licensees should ensure codes are easy to use.
- **End of licence:** We propose that licences should include mechanisms to ensure that, where a licence is handed over to a successor, there is minimal disruption to services and relevant assets are handed over.
- **Code maintenance and modification:** We propose that licence obligations should reflect the new roles and responsibilities created by code reform around maintaining and modifying codes.

## Code modification appeals to the Competition and Markets Authority (CMA)

The code modification appeals process gives eligible parties who feel adversely impacted by a code modification decision the opportunity to challenge Ofgem decisions on a wider basis than a Judicial Review (JR). This allows for a review by the CMA. After reviewing the modification decision, the CMA can overturn the decision or pass it back to Ofgem for re-determination if the decision was wrong on one or more grounds. This process exists to ensure fairness and accountability within the system.

Changes to the code modification process introduced by code governance reform mean that the CMA appeals framework needs to be updated. The appeals framework is designed to allow effective opportunities for different interests and views to be represented, whilst being as accessible, simple, rational, flexible and independent. This consultation sets out our proposals for four key parts of the appeals process:

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<sup>2</sup> This condition was referred to as "Obligations towards Ofgem" in the previous consultation.

- **Codes in scope of the appeals process:** we propose retaining the existing codes which are in scope for the appeals to the CMA process and bringing the Retail Energy Code (REC) into scope.
- **Eligibility to appeal:** we propose no changes to eligibility criteria, as the new appeals process does not introduce new appellants or remove existing rights, leaving no reasonable basis for modification.
- **Appeals triggers and exclusion criteria:** we propose that the code manager's recommendation should replace the existing code panel's recommendation (a role which will cease to exist) to form the basis of the appeal trigger.
- **Alternative modifications:** we propose that when alternative code modifications are raised, the code manager should have the discretion to recommend more than one modification for approval where they are considered equally better than other modifications and the status quo in facilitating code objectives

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## General information

### Why we are consulting

The Department and Ofgem are consulting on the Code Manager Standard Licence Conditions (SLCs) and the Code Modification Appeals to the CMA policy.

Consultation details

**Issued:** 1 May 2025

**Respond by:** 27 June 2025

**Enquiries to:**

Code Governance Reform Team  
Department for Energy Security and Net Zero  
7<sup>th</sup> Floor, 3-8 Whitehall Place  
London  
SW1A 2EG

And

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

**Email to:**

[codereform@energysecurity.gov.uk](mailto:codereform@energysecurity.gov.uk) and [industrycodes@ofgem.gov.uk](mailto: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:

[energygovuk.citizenspace.com/energy-security/energy-code-reform-manager-licensing-modification/](https://energygovuk.citizenspace.com/energy-security/energy-code-reform-manager-licensing-modification/)

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:

**Email to:** [codereform@energysecurity.gov.uk](mailto:codereform@energysecurity.gov.uk) and [industrycodes@ofgem.gov.uk](mailto: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 consultation.

### Write to:

Code Governance Reform Team  
Department for Energy Security and Net Zero  
7th Floor, 3-8 Whitehall Place  
London  
SW1A 2EG

And

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

The Department 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 it 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 and the Department are joint data controllers for this consultation. All responses (or parts of responses) will be published by Ofgem on its website unless explicitly marked as confidential. If you want the information that you provide to be treated as confidential, please tell us and explain the reason. 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 the Department and Ofgem as this is a joint consultation.

## 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: [bru@energysecurity.gov.uk](mailto:bru@energysecurity.gov.uk)

# Introduction

This consultation builds on the previous energy code reform publications, including the March 2024 consultation and October 2024 response, where we consulted on our initial proposals for code manager standard licence conditions. Our proposals in this document and the full code manager licence conditions (set out in Annex A) have resulted from our own internal analysis, in addition to extensive engagement with industry, consumer groups, and cross-government stakeholders, spanning a range of sectors and jurisdictions.

The document is separated into two main chapters, Code Manager Licence and Appeals, with subsections underneath covering one primary policy area, an options assessment (if relevant), our related proposals, and a set of questions that we seek your views on. The final two chapters provide a recap of all the consultation questions and an overview of planned next steps. We set out the full end-to-end licence in Annex A.

The document is ordered as follows:

- **Chapter 1: Code Manager Licence**
  - 1.1 Introduction and overview of Code Manager Licence
  - 1.2: Code manager budgets: appeals to Ofgem and oversight (follow-up)
  - 1.3: Conflicts of interest (follow-up)
  - 1.4: Code manager objectives
  - 1.5: Delivery plans
  - 1.6: Controls on the business
  - 1.7: Procurement
  - 1.8: Optional charging
  - 1.9: Performance
  - 1.10 Provision of information to, and co-operation with, the Authority
  - 1.11: Ease of use of the code
  - 1.12: End of licence
  - 1.13: Code maintenance and modification
- **Chapter 2: Code Modification Appeals to the Competition and Markets Authority**
  - 2.1 Introduction and Overview of Code Modification Appeals
  - 2.2 Codes in scope of the appeals process
  - 2.3 Eligibility to appeal
  - 2.4 Appeals Triggers/Exclusion Criteria
  - 2.5 Alternative code modifications

Appendix 1: Licence skeleton from the March 2024 consultation

Appendix 2: Table with provisions that address code manager performance

# 1. Code Manager Licence

## 1.1 Introduction and overview of Code Manager Licence

Currently, code governance is managed by code panels, supported by code administrators. As part of our reforms, governance of codes will instead be managed by code managers, who will be licensed by Ofgem. These code managers will play a central role in ensuring we deliver our aims for code governance reform. They will be established and licensed in a way that ensures they govern codes in an independent and impartial manner and will be responsible for facilitating the development of codes in line with Ofgem's new Strategic Direction Statement (SDS).<sup>3</sup>

The SDS will set out Ofgem's vision for how the codes should evolve, based on its strategic assessment of government policies and developments relating to the energy sector that will, or may, require modifications to the designated industry codes.<sup>4</sup> The SDS, in conjunction with licensed code managers, will play a critical role in ensuring the effective and co-ordinated development of the code changes needed to deliver on net zero ambitions and broader benefits to consumers through the energy transition. Industry stakeholders will retain a key role in the code processes, with new Stakeholder Advisory Forums informing code managers' decision-making.<sup>5</sup> This will help to ensure that the vital expertise and knowledge held by industry participants can be harnessed by code managers.

The Energy Act 2023 (the 'Act')<sup>6</sup> introduced code management as a licensable activity. The table below sets out a high-level summary of the main features of the code manager role.

Make decisions under the codes	Administer code governance arrangements	Align code with Ofgem's strategic direction
<p>Prioritise modifications, decide whether to approve certain code changes<sup>7</sup> and make recommendations to Ofgem on whether to approve others.</p> <p>Other decisions may include those not directly related to code modifications, such as on (depending on the code) accession, performance</p>	<p>Provide code administration and secretariat services to, amongst other things, facilitate the code modification procedures and provide assistance to code parties and stakeholders (including consumer advocates) relating to the code.</p>	<p>Prepare delivery plans setting out how they will ensure their respective codes develop in line with the SDS set by Ofgem.<sup>8</sup></p> <p>We propose code managers will have an objective to facilitate the delivery of the strategic direction statement.</p>

<sup>3</sup> Ofgem recently consulted on a preliminary SDS, ahead of the legislative duty in s.190 of the Energy Act 2023 taking effect: [Consultation on the preliminary Strategic Direction Statement and governance arrangements for industry codes | Ofgem](#)

<sup>4</sup> "Designated documents" refers to the industry codes that will be designated by the Secretary of State (per s.182 of the Energy Act 2023) prior to code manager appointment.

<sup>5</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

<sup>6</sup> Any reference to 'the Act' throughout this document relates to the Energy Act 2023.

<sup>7</sup> E.g. modifications that would be classified as 'self-governance' under existing modification arrangements.

<sup>8</sup> The delivery plans may also include information on the code managers broader plans, e.g. also covering code changes or other planned activities not directly related to the strategic direction.

Make decisions under the codes	Administer code governance arrangements	Align code with Ofgem's strategic direction
assurance, novating party IDs, etc.		Identify and develop relevant code changes through proposing code modifications.

Code manager licences will contain a set of standard licence conditions (SLCs) which will apply to all holders of the licence, as well as special conditions which will apply to particular licence holders. Ofgem, working jointly with the Department, are leading the development of these SLCs, prior to these being designated by the Secretary of State. Special conditions will be developed by Ofgem and included at licence grant. These will reflect the individual circumstances of each code and code manager, for example, the relevant code objectives.

## Overview of previous decisions

In the March 2024 consultation, we set out our proposals on priority aspects of the proposed code manager licence, as well as our proposed approach to code manager selection.

In the October 2024 response, we set out the following decisions. Licence condition numbers refer to the condition numbering in the draft licence in Annex A. Note these may differ in the final version of the licence.

### 1. Not for profit requirement (condition 10)

The licence will require code managers to carry out their core regulated activities on a not-for-profit basis. The licence will allow for recovery of costs with no allowance for a profit margin.

### 2. Setting code manager budgets (condition 20)

Code managers will publish and consult on a draft budget and then set their forecast costs ahead of the forthcoming budget period. We committed to reconsider whether a defined appeal route would be beneficial to the budget scrutiny process (see chapter 1.2).

### 3. Code manager funding and cost recovery (conditions 22 – 23)

Ofgem will decide on a code-by-code basis what mechanisms will be used for code managers to recover their costs through core charges.<sup>9</sup> Code managers will also be required to prepare and adhere to a cost recovery statement to aid transparency and provide a useful tool for parties that expect to pay charges.

### 4. Code manager incentivisation (condition 25)

Code managers will not be subject to any financial incentive mechanisms or revenue at risk. Code managers will be subject to performance metrics in the code and will be able to modify

<sup>9</sup> Ofgem is currently consulting on the approach to BSC and REC cost recovery as part of the second consultation on the implementation of the energy code reform: [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

them in line with the code modification procedures, which includes consultation with stakeholders.

## **5. Conflicts of interest and independence (conditions 15 – 19)**

The licence will prohibit code managers from engaging in preferential or discriminatory behaviour, and from becoming a related undertaking of specified parties (including code parties and External Service Providers).<sup>10</sup> We will require that code managers do not prevent or distort competition, and that code manager boards must have a certain number of independent directors. Code managers will also be required to obtain legally enforceable undertakings from any ultimate controller (such as committing to not cause the licensee to breach its licence). We stated that we would revisit further details on independent directors, exceptions, and that we would work on the drafting for “not prevent nor distort competition” (see chapter 1.3).

## **6. Financial and operational controls (conditions 10 – 14)**

A package of financial and operational controls will be implemented to address identified risks associated with the financial stability and operational capability of code managers. These controls cover the availability of all necessary resources, indebtedness and transfers of funds, assurance on the financial stability of the licensee, and a prohibition on cross-subsidies.

## **7. Code maintenance and modification (condition 27)**

The licence will require code managers to have in place and maintain the relevant code.<sup>11</sup> We committed to consulting on incorporating further detail on this licence condition (see chapter 1.13).

## **This consultation**

We are now consulting on the remaining licence conditions, and the policy behind them. We also revisit areas that we stated in the October 2024 response that we would consult further on.

The licence skeleton consulted on in the March 2024 consultation, with notes on where updates have been made, can be found in Appendix 1. In Annex A, a complete draft of the code manager licence is provided, including the licence conditions from the March 2024 consultation. We welcome stakeholder views on the end-to-end licence.

Ahead of SoS designating the SLCs, the detailed drafting of the SLCs will be refined, both in response to stakeholder feedback to this consultation and Ofgem’s second consultation on the implementation of Energy Code Reform<sup>12</sup> (“Ofgem’s second implementation consultation”), but also as part of our ongoing review of the SLCs to ensure they are clear, consistent and aligned with best practice. Some conditions have been based on existing conditions in current licences, so we will also keep the drafting under review in light of any changes made to those existing conditions. For example, if the existing code modification and maintenance conditions (sometimes referred to as ‘code owner’ conditions) are amended, we would consider carrying

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<sup>10</sup> “Related undertaking” means, in relation to any person, any undertaking in which that person has a participating interest as defined in section 421A of the Financial Services and Markets Act 2000. “External Service Provider” is a party that the code manager has procured a service to.

<sup>11</sup> The “Relevant Code” is the code that the code manager has been appointed to act as code manager in respect of.

<sup>12</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

these changes across to the proposed code manager code modification and maintenance condition.

### **Consultation question**

**Q1:** To what extent do you agree with the draft end-to-end code manager licence? For example, do you think there any licence conditions missing, or whether there any inconsistencies or duplication?

## 1.2. Code manager budgets: appeals to Ofgem and oversight (follow-up)

The March 2024 consultation set out proposals for ensuring that code manager budgets are open to appropriate scrutiny and that costs remain economic and efficient. We stated that the licence will require that code managers consult with stakeholders on a Draft Budget and Draft Work Plan, presenting all costs clearly and transparently. We stated that Ofgem would have the power to direct code managers to revisit some or all of the budget and to take actions including, but not limited to, providing additional evidence, recalculating certain cost categories and providing third-party assurance on the content of the budget. Our proposals did not include a mechanism for stakeholders to appeal code manager budgets to Ofgem.

In the October 2024 response, we set out our intention to proceed with the overarching approach to budget setting but acknowledged that many respondents to the consultation disagreed with the proposal not to include an appeal mechanism. Therefore, we stated our intention to revisit the question of whether to include an appeal mechanism, and to reconsider the approach to Ofgem oversight of budgets.

### Summary of options and proposals

In line with our stated intention to revisit Ofgem oversight of budgets, we present two options:

- **Option 1 (preferred):** Code manager licences include provision for appeals to be raised to Ofgem against code manager budgets.
- **Option 2:** No appeal mechanism and instead proceed with our previously consulted-on proposals in which Ofgem has the power to direct code managers to revisit the budget.

### Proposals and analysis

#### Option 1 (preferred): Appeals to Ofgem

Our preferred option is for the code manager licence to require code managers to include, in the relevant code, a process under which certain stakeholders can raise an appeal to Ofgem in respect of one or more items in a code managers' Annual Budget.<sup>13</sup> Having further considered the approach to oversight of code managers' budgets, as well as responses to the March 2024 consultation, we consider that there are benefits to including an appeal process. As stated in the October 2024 response, we recognise the need for stakeholders to be able to effectively challenge code manager budgets in addition to the consultation process. While we consider that the primary mechanism for challenge should be through open and transparent engagement with stakeholders, we recognise the potential benefits of a further route for challenge, should stakeholder comments not be adequately addressed through the consultation process or where other issues are identified.

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<sup>13</sup> The Annual Budget is the document, prepared and published by the licensee, that contains the information required by Part D of Condition 20 (Annual Budget of the Licensee). This may only be published following consultation with stakeholders.

Any appeal process would need to be carefully designed to limit the impact on ongoing delivery of services and to ensure that Ofgem has clear criteria against which appeals may be assessed.

Under this option, we are proposing some key features that should be included in the licence, informed in part by existing appeal processes in codes and licences.

These features are discussed in more detail below and our proposed licence drafting is presented in condition 21 of Annex A.

### Clear criteria for who can appeal the budget

Since code parties will fund code managers through charges, we propose that any code party should be able to raise an appeal. We also recognise that charges ultimately impact on consumer bills and propose that Citizens Advice and Consumer Scotland should also be able to raise an appeal. We welcome comments on whether Citizens Advice Scotland should also be included as a party who may appeal the budget.<sup>14</sup>

### Grounds for appeal and assessment criteria

We propose that the licence includes a set of grounds on which an appeal may be raised. We propose that appeals may be raised where a cost item:

- a) was not presented in the Draft Budget or Draft Work Plan<sup>15</sup> in accordance with the requirements for those documents specified in the licence. For example, the proposed licence condition on code manager budgets states that costs must be presented in a comprehensive, accurate, coherent and transparent manner. Where an item is not presented in this manner, an appeal may be raised. This could be where costs are insufficiently granular or where certain costs have been withheld without a clear explanation being provided.
- b) was not properly consulted upon in accordance with the proposed standard condition 20 of the code manager licence ('Annual Budget of the Licensee') or where the code manager failed to have reasonable regard to the consultation responses submitted. The proposed licence places requirements on code managers to share Draft Budgets and Draft Work Plans with stakeholders and to consider all comments provided. Following the consultation period, code managers will be obliged to consider all comments received and to revise the Draft Budget and Draft Work Plan as they deem fit, before publishing a final Budget and Work Plan. They will also be obliged to publish an explanation of how comments received in the course of the consultation were taken into account, and to publish a comprehensive explanation of why any revisions to the Draft Budget and Draft Work Plan have been made. An appeal could therefore be made where this process has not been followed correctly or where insufficient explanation has been provided as to why consultation responses did not result in amendments to the Draft Budget and/or Draft Work Plan.
- c) is not a Recoverable Cost. Code managers may only recover costs that meet the definition of Recoverable Costs, as defined in the licence.

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<sup>14</sup> Following the introduction of the Consumer Scotland Act 2020, Consumer Scotland was incorporated as a non-Ministerial body, with the general function of providing consumer advocacy and advice and as a result, has taken over various functions from Citizens Advice Scotland.

<sup>15</sup> As set out in the March 2024 consultation, code managers will be required to consult on a draft budget and work plan, setting out the costs they reasonably anticipate will be incurred in the forthcoming year. Please see condition 20 in Annex A.



- d) is a manifestly inappropriate provision for the activity in question. We consider that there should be the ability to appeal against a budget on the grounds that a cost is clearly inappropriate.
- e) will, or is likely to, prejudice unfairly the interests of one or more code parties, or cause them to be in breach of the relevant code, the Energy Licences and/or law.<sup>16</sup> There may be circumstances where a stakeholder considers that a budget item, either the cost or the activity itself, could cause them to breach another obligation such as one required by their licence.

### Ability for Ofgem to dismiss appeals

Trivial or vexatious appeals could be highly disruptive by delaying code managers from spending in line with their annual budget. Since code managers will likely have limited reserves and may only spend against costs that have been set out in their budget, an appeal could prevent spending on the provision of essential services. To minimise disruption from appeals that are without merit, we propose that Ofgem may dismiss appeals that are clearly trivial or vexatious, or that do not make a case that it meets one of the appeal grounds. This would allow Ofgem to dismiss appeals that are patently without merit in a timely manner. A similar provision is found in the Smart Energy Code (SEC).

### Appeals should be in relation to one or more individual budget items

Some of the appeal mechanisms relating to existing code bodies involve appeals against the budget as a whole.<sup>17</sup> We consider that appeals against the whole budget risk preventing code managers from carrying out functions that are not related to the appeal while the outcome of the appeal is determined.

We therefore consider that appeals must be made against one or more individual cost items. This is currently the case for appeals against the Retail Energy Code Company (RECCo) budget.<sup>18</sup> We consider that this will mitigate the risk of overly broad, unfocused appeals and that it will allow Ofgem to carry out more targeted assessments. Appeals against specific items would allow for certain activities to be paused pending a resolution, while other activities could continue (see below).

We do not propose that individual appeals would be restricted to a single cost item, but each item would need to be specified by the person making the appeal.

### Appeals should not stop the whole budget being spent against while the appeal is in progress

Related to the above, we consider that appeals should not result in code managers having to pause delivery of their functions. However, if they continue to spend against a cost item that is subject to appeal, a successful appeal could require repayment of funds that have already been spent. Since code managers recover all their costs from code parties, reimbursement of already-incurred costs would be challenging. We therefore propose that where a cost item is subject to an appeal, spending against that cost item must be paused, except where Ofgem directs otherwise (e.g., where the item in question is a service essential to the running of the code).

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<sup>16</sup> “Energy Licence” means any licence that is granted, or treated as granted, under section 7, 7A, or 7AB of the Gas Act 1986 or under section 6 of the Electricity Act 1989.

<sup>17</sup> Under the CDSP budget appeal process (as set out in Part C of standard special condition A15 of the Gas Transporter licence) appeals are made against the budget as a whole. In the SEC, parties may appeal against the SEC Panel’s approval of the budget as a whole.

<sup>18</sup> [The Retail Energy Code \(“the REC”\)](#) paragraphs 9.7 – 9.10

## Clear outcomes

We consider that the appeal process should set out clear steps that Ofgem may take following consideration of an appeal. We consider these outcomes will allow for flexibility for Ofgem to take different approaches depending on the circumstances of the case. We propose that, where Ofgem upholds an appeal, it may direct the licensee to:

- make no changes to the cost item;
- to pursue a revision to the Annual Budget;
- revise the provision for that budget item to a figure which Ofgem considers to be a more appropriate forecast of the cost likely to be incurred (whether higher or lower than the original figure); and/or
- direct the code manager to remove the cost item entirely and make suitable revision to its Annual Budget and Work Plan.

## Option 2: No appeal mechanism and rely on Ofgem power to direct Code Managers

Under this option we would proceed with the position set out in the March 2024 consultation, whereby Ofgem would have the power to direct code managers to revisit the budget and require them to take actions including, but not limited to, providing additional evidence or recalculating certain cost categories. This could occur, for example, where SAF or other stakeholder comments have not been sufficiently addressed, or where Ofgem had concerns about the values reported. Additionally, we proposed that this could include the ability for Ofgem to require the code manager to provide third-party assurance on the content of some or all of the budget.

We remain of the view that there are benefits to this approach, such as reducing the risk of delays caused by appeals, but we now consider that relying upon this approach alone would not provide as much of a safeguard against excessive budgets as would an appeal mechanism (under Option 1). Additionally, we consider that the direction power places too great an onus on Ofgem to scrutinise budgets, whereas an appeal mechanism allows code parties and other specified parties to identify and raise issues with the published budget.

We consider that if an appeal mechanism is introduced, the need for the Ofgem power to direct is reduced. However, we remain of the view that Ofgem should have the ability to issue directions to code managers in line with the above proposals, whether or not an appeal has been raised by a code party.

We also remain of the view, as set out in the March 2024 consultation, that Ofgem should not have the power to veto a Draft Annual Budget or Annual Budget where an appeal has not been raised. We consider that the proposed appeal mechanism under Option 1 is a more appropriate route for issues with budgets to be raised and addressed.

## Consultation questions

**Q2:** To what extent do you agree with our proposal, under Option 1, that the code manager licence will include a mechanism for code parties, Citizens Advice and Consumer Scotland to appeal code managers' budgets to Ofgem? Should this also include Citizens Advice Scotland?

**Q3:** To what extent do you agree the licence drafting provided in condition 21 of Annex A delivers the intent of our proposed policy on budget appeals? Do you have any other views or comments on the licence drafting?

## 1.3. Conflicts of interest (follow up)

Empowered and accountable code management with independent decision-making is a key aim of code governance reform. Throughout the selection process, and as the code manager takes on its role, it is important that any potential bias and conflicts of interest are identified and effectively removed or, where appropriate, mitigated.

In the October 2024 response, we decided to proceed with incorporating a package of licence conditions intended to address and mitigate conflicts of interest.<sup>19</sup> Additionally, we indicated that we would consult further on the following policy areas related to conflicts of interest:

- **50% sufficiently independent directors:** where the 50% “sufficiently independent director” requirement should be set out;
- **Exceptions in the SLCs:** the process for receiving exceptions to specific licence conditions and the possibility of setting out specific circumstances for exceptions in the standard licence conditions;
- **Exception route for additional licence conditions:** whether any additional conditions should include a route for exceptions; and
- **Updated licence drafting:** the drafting for paragraph 5.5.b of the “Not prevent nor distort competition” licence condition, and the definition of “External Service Provider” (which, if our proposal is adopted, results in a change to the draft for “restrictions on becoming a related undertaking”).

### Summary of Proposals

- **50% sufficiently independent directors:** to set this out in the code manager licence;
- **Exceptions in the SLCs:** that the process for receiving exceptions to specific licence conditions is described in the interpretation section. No exceptions to “restrictions on activity and “restriction on becoming a related undertaking” in the SLCs, but proposal to introduce “treasury management” exception to “restriction on investment”;
- **Exception route for additional licence conditions:** to add possibility of exceptions to “sufficiently independent directors” and “procurement of service capability”; and
- **Updated licence drafting:** new drafting for paragraph 5.5.b of the “Not prevent nor distort competition” licence condition and the “restrictions on becoming a related undertaking” licence condition.

### Proposals and Analysis

#### 50% sufficiently independent directors

In the October 2024 response, we stated that we were minded to increase the proportion of directors needing to adhere to the “sufficiently independent directors” licence condition from 20% to 50%. We noted that this would be appropriate to ensure that, at a minimum, the board does not have a majority of directors affiliated with code parties. We also noted that a 50% independence requirement would prevent the board having a majority composed of executive directors, which would help to ensure a balanced board (with no one constituency having a majority) and align with corporate governance best practice. We indicated that we would

<sup>19</sup> “Prohibition on engaging in preferential or discriminatory behaviour”, “Not prevent nor distort competition”, “Sufficiently independent directors”, “Restriction on activity and investments (with possibility of exceptions)”, “Restriction on the licensee becoming a related undertaking (with possibility of exceptions)” and “ultimate controller undertaking”.

consult further on whether this requirement should sit in the code manager licence, or another document such as the relevant code.

We propose that the requirement for 50% sufficiently independent directors should be in the code manager licence.<sup>20</sup> Code managers will be obliged to follow the requirements set out both in the licence and the code. The key difference between having the requirement set out in the code rather than the licence is that code parties (amongst others) can initiate changes to the code through the code modification process (noting that Ofgem will still be involved and likely need to approve the modification). We are not convinced that this requirement would benefit from this open governance. Given the importance of maintaining independent code managers, we believe it is appropriate that changes to the board independence should only be initiated by Ofgem, not code parties. We do not believe it would be beneficial for this requirement to potentially diverge and become different across code managers. However, if some divergence does become necessary or desirable, appropriate flexibility can be realised through the use of special licence conditions or on an ongoing basis through the exceptions process (see the next section, “Exceptions in the SLCs”).

### Exceptions in the SLCs

In the October 2024 response we stated our intention to introduce the ability for Ofgem to disapply certain licence conditions, to a specified extent, by exception. The licence conditions concerned were restrictions on activity, restrictions on investment and restrictions on becoming a related undertaking. We noted that we would consult further on any requirements on the process for receiving an exception and whether there should be exceptions set out in the standard licence conditions specified (i.e., those listed above), meaning that they would be allowed by default for all code managers.

### Process for receiving an exception

The requirements on the process for receiving an exception from the Authority will be specified in the “Rules of interpretation” section of the licence (see part C of condition 2 in Annex A). The section, as consulted on, notes that any derogation (i.e. exception) from the Authority needs to be made in writing. The exception will also need to specify what is disapplied and in what circumstances.

### Restrictions on activity

This condition restricts the code manager from performing any activities other than what is required to fulfil its Code Manager Business, unless the Authority consents otherwise.<sup>21</sup> To ensure that appropriate mitigations are in place, we believe that additional activity to the Code Manager Business should be allowed on a case-by-case basis, through special conditions or exceptions through Authority approval. We do not think there is a strong case for exceptions to be set out in the standard licence conditions, allowing them by default for every code manager. We recognise that there may be instances where the code manager performing additional activities do not raise conflict of interest concerns, or that such an arrangement can be beneficial in some cases. In practice, additional activities could be realised through two routes, either by the code manager requesting that the Authority approves an exception to this licence

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<sup>20</sup> See condition 16 of the draft licence conditions in Annex A for the proposed requirements for a director to be considered a “Sufficiently Independent Director”.

<sup>21</sup> “Licensed Activity” means the activity of performing the function of code manager in relation to a Designated Document, where “performing the function” is a reference to making arrangements with energy licensees, under which that code manager is responsible for the governance of that Designated Document.

condition, or through raising a code modification to add to the code manager activities in the code.

Requesting an exception to the licence condition from the Authority would be more suitable for activities that do not fit within the remit of the core code manager role. When assessing the request for an exception, we would consider things such as whether the additional activity would raise any concern for conflicts of interest or would otherwise impact on the ability of the code manager to continue to deliver against its licence, including if there are any synergies.

Where an additional activity would fall within the remit of the code manager role, it could be added to their role through raising a code modification that clarifies that the code manager may carry out this activity (so indirectly its Code Manager Business). Ofgem would have oversight of any proposed code modification.

### Restrictions on investment

This condition restricts the code manager from holding any investments, unless the Authority consents otherwise.

We have considered exceptions in existing licences and whether these would be applicable to the code manager. These have included exceptions regarding treasury management and de minimis business, which we are now consulting on.

- **Treasury management:** In the electricity transmission licence, electricity distribution licence and smart meter communication licence, investments are allowed where they are “acquired in the usual and ordinary course of the licensee’s treasury management operations.” Code managers will be required to operate their Licensed Activity<sup>22</sup> on a not-for-profit basis, and investments to create profit will not be permitted. However, investments can also include bonds. Therefore, an exception could be beneficial should the code manager have sums of cash that would earn a better short-term rate of return from bonds rather than bank deposits (e.g. if costs are recovered sooner than they are due to be spent). We are seeking stakeholder input on whether to incorporate such an exception (see condition 17.4 in Annex A).
- **De minimis:** In the electricity and gas transporter licences, there are exceptions to the restrictions on investments for “de minimis business”, which allows the licensee to carry out business which does not exceed certain limits on aggregate turnover and aggregate amount, usually around 2.5% of the total. At present, we do not consider that any exceptions regarding “de minimis” spending would be applicable to the code manager. The original purpose of these conditions was to manage property portfolios the networks inherited. However, the wording is flexible to allow for other minor revenue streams, and we welcome stakeholder input on whether this potentially could be relevant for the code manager.

### Restrictions on becoming a related undertaking

This condition restricts the code manager from becoming a “Related Undertaking”<sup>23</sup> of specified parties, unless the Authority consents otherwise. As with “restrictions on activity”, we

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<sup>22</sup> “Licensed Activity” means the Authorised Activity together with any other activity or obligation which the Licensee is required to carry out by or under any condition of this Licence.

<sup>23</sup> “Related undertaking” means, in relation to any person, any undertaking in which that person has a participating interest as defined in section 421A of the Financial Services and Markets Act 2000.

propose to not include any exceptions in the standard licence conditions, noting that the Authority can approve exceptions under the licence and/or include exceptions in special conditions. Ownership and control of the code manager is a key risk for conflicts of interest and should the code manager be under ownership arrangements not allowed by the licence condition, we believe that it is important for the code manager to clearly demonstrate how risks will be mitigated before an exception is granted.

### Exception route for additional licence conditions: Sufficiently independent directors and Procurement of service capability (clause 7.5)

In the October 2024 response we noted that we would continue to consider whether any additional licence conditions should include a route for exceptions. We are now consulting on incorporating routes for exceptions to two additional conditions, “sufficiently independent directors” and clause 7.5 of “procurement of service capability”.<sup>24</sup>

#### Sufficiently independent directors

We propose to add a clause to the ‘sufficiently independent directors’ licence condition to allow for exceptions through Authority approval. This is common in similar condition in other licences<sup>25</sup> and would allow, in the circumstances specified by the exception, for the code manager to have fewer “sufficiently independent directors” than ordinarily required by the licence condition (see condition 16 in the Annex A). Incorporating such an exception would allow for flexible management of any potential exceptions on an ongoing basis when new directors are appointed, or should new circumstances arise (that do not present potential conflicts of interest). This could be relevant where an SPV is set up to perform the code manager role and the parent company has the same board as the code manager. In this instance it would not be possible for the directors to adhere to this condition. If Ofgem is satisfied that it is appropriate for the code manager and its parent company to have the same directors, an exception could be granted.

#### Procurement of Service Capability (clause 7.5)

We propose that code managers will be prohibited from outsourcing to a third party where a relevant Conflict of Interest is present (see condition 7.5 in Annex A).<sup>26</sup> However, we recognise that there may be instances where contracting with third parties would provide efficiencies and benefits, and that any initial conflicts of interest can effectively be mitigated through appropriate controls. Therefore, we propose to include a route for exception to this condition, in instances where the Authority is confident that any risk is sufficiently mitigated.

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<sup>24</sup> It should be noted that there are some additional exceptions present in the licence. These primarily concern exceptions to timeframes (for example, if the code manager needs to produce an output within 28 days, the Authority can consent to an exception to this). Since these have limited impact on the policy, we have decided to not draw these out in the consultation.

<sup>25</sup> Including the electricity transmission licence (standard condition B22), the electricity distribution licence (standard condition 43A) and the smart meter communication licence (standard condition 9.14)

<sup>26</sup> “Relevant Conflict of Interest” means financial or other interests that might prejudice the discharge by the Licensee of its functions under this licence.



## Updated licence drafting

In the October 2024 response we stated that we would revisit the drafting for the licence condition “Not prevent nor distort competition” and the definition of “External Service Provider”. Below we outline our proposals for the updated drafting.

### Not prevent nor distort competition

In the response to the March 2024 consultation, there were some concerns about clause b) of this SLC (condition 5.5(b) in the March 2024 consultation, condition 15.5(b) in this consultation) casting too wide of a net. In our response we clarified that the intent of the drafting is to expressly prohibit code managers from distorting competition in markets or activities that are covered by the relevant code. We stated that while we do not intend this licence provision to have a broader scope, relevant competition law would still apply. We have revised the drafting to more accurately capture this intent, and the clause now reads (with changes from the last consultation indicated in bold and with strikethrough):

*“The Licensee must at all times undertake its Licensed Activity in a way that is **most likely** ~~best calculated~~ to ensure that it does not restrict, prevent, or distort competition:*

*(...)*

*b) in the provision of, or in any of the markets for, commercial activities that are ~~connected with the markets that are wholly or in part governed by the Relevant Code under the Principal Energy Legislation~~*”

### External Service Provider/Restrictions on becoming a related undertaking

One respondent to the March 2024 consultation suggested we expand the definition of “External Service Provider” to include “service providers whose role is closely associated with the code manager’s operation of code processes” (which could include Central System Delivery Bodies).<sup>27</sup> The definition of “External Service Provider” was at the time of the last consultation present in two licence conditions, “Restrictions on becoming a related undertaking” (see condition 18 in Annex A) and “Sufficiently independent directors” (see condition 16 in Annex A). Therefore, we have considered how extending the definition would impact these two conditions.

The “sufficiently independent director” condition includes a clause which states that “[the director must not] have held a position that could be deemed to cause an unacceptable conflict of interest in their role as a sufficiently independent director”, and then specific examples are listed. We consider that this drafting sufficiently mitigates the risk of conflicts of interest in instances where a prospective director would have affiliations with a service provider closely associated with the operation of code processes. However, “restrictions on related undertaking” does not include this broader clause, and there could potentially be a risk of conflicts of interest if the code manager becomes a related undertaking of such a service provider. To mitigate this, we propose to redraft the first part of the condition (with the new addition in bold):

*“The Licensee must use its best endeavours to, subject to the Authority having otherwise consented, ensure that it is not and/or does not at any time become a Related Undertaking of **a party where it could be deemed to cause an unacceptable conflict***

<sup>27</sup> “Central System Delivery Body” means person responsible for operating or procuring the operation of a Central System where “Central System” has the definition in Section 184 of the Energy Act 2023

**of interest with their role as code manager.** In particular, they must not become a Related Undertaking of: [..]"

We consider that this more effectively addresses the risk rather than extending the definition of "External Service Provider", which could have unintended consequences for other licence conditions that use that term. For example, the definition is now also part of the "Procurement of Service Capability" standard condition (see condition 7 in Annex A).

## Consultation questions

**Q4:** To what extent do you agree with the proposals set out above on conflicts of interest, including where to include, or not include, exceptions in the licence?

**Q5:** To what extent do you agree that the revised licence drafting in conditions 15-19 of Annex A delivers the intent of our proposed policy on conflicts of interest? Do you have any other views or comments on the licence drafting?



## 1.4. Code manager objectives

We have previously indicated that the code manager licence may include a set of objectives that code managers will be required to seek to achieve in the course of carrying out their functions.

Many code panels, as well as some code administrators and Central System Delivery Bodies, currently have objectives placed on them. For example, a number of code panels have objectives to act transparently, facilitate the relevant objectives of the code, and to give effect to the relevant code promptly, economically, and without undue discrimination.<sup>28</sup>

Note that our proposed code manager objectives are distinct from the relevant objectives of a code, which will continue to exist in the new framework and against which modification proposals will be assessed.

### Summary of proposals

We propose that code manager licences will include a set of code manager objectives and a requirement that code managers carry out their Code Manager Business in the manner that is most likely to facilitate achievement of those objectives.<sup>29</sup>

We intend that these objectives will set out how code managers should carry out the role. The majority of the proposed objectives are similar to existing objectives placed on code panels, but we are also proposing new objectives on promoting positive outcomes for consumers and supporting the delivery of Ofgem's new SDS.<sup>30</sup>

We propose that the licence contains the following 'code manager objectives', which are discussed in more detail in the next section:

- to facilitate the full and prompt implementation of the code in accordance with its terms and provisions;
- to implement the code in a fair manner and without undue discrimination between code parties or classes of code parties;
- to implement the code as economically and efficiently as is reasonably practicable;
- to facilitate cross-code coordination and collaboration between code managers, Central System Delivery Bodies, SAFs and other code bodies;
- to conduct its Relevant Business<sup>31</sup> transparently and openly, subject to the express provisions of this licence and the relevant code, and to any other duties of confidence owed to third parties;
- to carry out its Relevant Business in such a manner that is calculated to promote positive outcomes for consumers;

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<sup>28</sup> The BSC Panel, REC Board, SEC Panel and DCUSA Panel have such objectives placed on them by the relevant codes.

<sup>29</sup> "Code Manager Business" means the Licensed Activity and any Permitted Business carried out by the Licensee.

<sup>30</sup> The Act includes a new duty for Ofgem to issue an annual Strategic Direction Statement (SDS) for designated industry codes. The SDS must contain a strategic assessment of government policies and developments relating to the energy sector that Ofgem considers may, or will, require modifications to the designated industry codes. See chapter 1.5 (Delivery Plans) for further detail, as well as Ofgem's [Consultation on the preliminary Strategic Direction Statement and governance arrangements for industry codes | Ofgem](#).

<sup>31</sup> "Relevant Business" means the Code Manager Business and any Permitted Business carried out by the Licensee.

- to carry out its Relevant Business in such a manner that is calculated to facilitate the delivery of the strategic direction set out in the relevant sections of the then current Strategic Direction Statement;
- to carry out its Licensed Activity in such a manner that is calculated to support innovation in relation to the activities governed by the relevant code.

Note that these objectives are intended to apply to code managers' day-to-day operations and not to other decisions or assessments made against specific criteria set out in the relevant codes (such as assessing whether a proposed code modification better facilitates that code's relevant objectives).

## Proposals and analysis

### Implementation of the relevant code

Code managers will implement the code for which they are responsible, a function currently carried out by code panels and code administrators. We propose that three objectives are included in the licence which set a requirement to implement the code as follows:

- fully and promptly and in accordance with its terms and provisions;
- in a fair manner and without undue discrimination between code parties or classes of code parties;
- as economically and efficiently as is reasonably practicable.

These are similar to objectives currently in place for code panels. Although we have already proposed separate requirements that code managers do not unduly discriminate between any persons or any class or description of persons, we consider there to be value in setting a clear objective that places a specific requirement on implementing the code in a fair manner without discrimination.

We also consider it important to set an explicit objective on implementing the code economically and efficiently. We intend that this would apply more broadly than a requirement on code managers not to incur costs that are uneconomical, wasteful or inefficient (see proposed drafting in condition 20 of Annex A), which would apply only to their own Recoverable Costs. An objective on implementing the code as economically and efficiently as practicable would extend to decisions made in the course of implementing the code, including seeking to ensure that it does not result in inefficient costs for other parties, including Charging Parties.<sup>32</sup>

### Facilitating cross-code coordination and collaboration

We have previously identified that a key issue with the existing framework is the fragmentation of codes and lack of coordination between them.<sup>33</sup> We consider that code managers should play a central role in improving coordination and collaboration between code managers of other codes, as well as Central System Delivery Bodies and SAFs.

As set out in chapter 1.13 below, Ofgem's second implementation consultation includes proposals to facilitate cross code working in the modification process.<sup>34</sup> An objective on cross-code working will support this requirement, but we would also expect code managers to

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<sup>32</sup> "Charging Party/ies" is any person that is required by the Relevant Code to pay Core Charges.

<sup>33</sup> [Consultation on the implementation of energy code reform | Ofgem](#), [Call for Input | Ofgem](#)

<sup>34</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

consider further actions they could take. This could include, for example, setting up or engaging proactively with cross-code forums, incorporating cross-code initiatives into codes, or working with other code managers on modification proposals. However, we recognise that there are a range of possible approaches and that the most appropriate may differ by code. We therefore consider that a broad objective represents the best approach, rather than specific requirements.

### Acting transparently

We have previously set out our view that energy code reform should improve transparency, and we consider that code managers should act as transparently as possible in all their activities.<sup>35</sup> We have already proposed a requirement that costs are, as far as possible, published transparently and comprehensively, but we also consider that a broader objective to conduct its business transparently and openly would help ensure openness in decision-making and general conduct.

We recognise that there are circumstances in which full transparency may not be possible, for example in relation to sensitive commercial considerations or other duties of confidence, and the licence drafting we have proposed reflects this. However, where possible, we expect code managers to seek to carry out their role as transparently and openly as possible.

### Promoting positive consumer outcomes

Achieving consumer benefits is a central driver of our energy code reforms. To reflect this intention, and to ensure that code managers put consumer benefit at the heart of their role, we propose that code manager licences include a clear objective requiring them to promote outcomes that will be of benefit to existing and future energy consumers.

We consider that this will complement already proposed requirements intended, in part, to protect energy consumers, including those on budget setting and conflicts of interest, but consider that a specific objective on promoting consumer outcomes would encourage code managers to more carefully evaluate the impact of decisions made in the course of carrying out their business. We recognise that this may involve considering a range of factors that may not always be complementary (for example, impact on bills and facilitating net-zero), and we also recognise that not every decision will have clear impacts on energy consumers. However, we would expect code managers to demonstrate how they had considered the impact on energy consumers when making decisions, and how they had sought to ensure that positive outcomes were maximised in the context of their broader duties and objectives.

There are precedents within the energy sector for objectives on seeking to achieve positive consumer outcomes. The Energy Act requires that the NESO “has regard to... the consumer impact of a relevant activity”,<sup>36</sup> while the REC mission statement includes reference to “promoting... positive consumer outcomes”.<sup>37</sup> Principle 15 of the Code Administrator Code of

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<sup>35</sup> For example, p.3 of Ofgem’s September 2021 consultation: [Consultation on the Design and Delivery of the Energy Code Reform | Ofgem](#) and Ofgem’s December 2022 call for input: [Energy Code Reform: Call for input | Ofgem](#)

<sup>36</sup> See s. 164 of the Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](#)

<sup>37</sup> The REC mission statement states that: “The REC will facilitate the efficient and effective running of the retail energy market, including its systems and processes. It will promote innovation, competition, and positive customer outcomes”

Practice (CACoP) is that “Code Administrators shall endeavour to provide an assessment of the impacts of a Modification on the end consumer and on the drive for net zero”.<sup>38</sup>

Taking these approaches into account, we propose that code manager licences include an objective requiring the licensee to carry out its Relevant Business in such manner that is calculated to promote positive outcomes for existing and future consumers in relation to the activities governed by the relevant code.

### Facilitating delivery of the Strategic Direction

The Act includes a new duty for Ofgem to issue an annual SDS for designated industry codes. The SDS must contain a strategic assessment of government policies and developments relating to the energy sector that Ofgem considers may, or will, require modifications to the designated industry codes.<sup>39</sup> Through this new role, Ofgem will set direction for the development of designated gas and electricity codes.<sup>40</sup>

Part of a code manager's role will be to work to develop the codes they manage in line with the strategic direction set by Ofgem through the SDS. In chapter 1.5 – ‘Delivery Plans’ we propose requirements for code managers to develop delivery plans setting out how they intend to resource and facilitate delivery of the priorities presented in the relevant SDS.

As well as a requirement to develop delivery plans, we propose that code managers should have a more general objective to facilitate delivery of the SDS in carrying out their role. We consider that this objective would make clear the expectation that code managers should be implementing the SDS more generally, would expand the requirement beyond the immediate delivery plan, and could compel code managers to act on the SDS before delivery plans are fully in place (where appropriate).

### Facilitating innovation

In the September 2021 consultation on the Design and Delivery of the Energy Code Reform, we proposed that code managers will play an important role in supporting innovation across the sector.<sup>41</sup> We consider that facilitating innovation by existing and prospective market participants should be a key element of the code manager function and propose that code manager licences should include an objective on facilitating innovation.

While wider strategic initiatives to support innovation will likely be transmitted through the SDS, we consider that supporting innovation should also be part of code managers' day-to-day activities, where appropriate. This could include, for example, providing information and guidance to prospective innovators and collaborating with other code managers on initiatives that support innovation. We also expect code managers to play a key role in processing code derogation requests<sup>42</sup> as part of the regulation sandbox, which is designed to help innovators trial or bring to market new products, services, and business models without some of the usual rules applying.<sup>43</sup>

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<sup>38</sup> [About Us: The CACoP | CACoP](#)

<sup>39</sup> See s. 190 of the Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](#)

<sup>40</sup> For more information on the SDS see Ofgem's 2024 [Consultation on the implementation of energy code reform](#)

<sup>41</sup> See p. 4 of Ofgem's 2021 [Consultation on the Design and Delivery of the Energy Code Reform | Ofgem](#)

<sup>42</sup> See section 4 on cross-cutting consequential code changes in Ofgem's 2025 second implementation consultation: [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

<sup>43</sup> [Energy Regulation Sandbox | Ofgem](#)

We also consider that this would align with a similar duty placed on NESO by the Energy Act 2023 to ‘have regard to’ particular matters, including “the desirability of facilitating innovation in relation to the carrying out of relevant activities”.<sup>44</sup>

## Consultation questions

**Q6:** To what extent do you agree with the proposed objectives? Are there other objectives you think should be included?

**Q7:** To what extent do you agree that the draft code manager licence condition in condition 3 of Annex A delivers the intent of our proposed policy on code manager objectives? Do you have any other views or comments on the licence drafting?

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<sup>44</sup> See s. 164 of the Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2023/55/section/164)

## 1.5. Delivery plans

The Energy Act 2023 establishes a duty for Ofgem to publish an annual SDS.<sup>45</sup> This must contain a strategic assessment of government policy and developments related to the energy sector that will, or may, require changes to industry codes.<sup>46</sup> We propose that code manager licences will include a requirement on code managers to prepare and execute delivery plans setting out how they will facilitate delivery of the SDS through industry codes.

Our proposed approach is intended to provide flexibility, recognising that code managers are the owners of delivery plans and that delivery plans will differ from code to code, while being sufficiently clear to allow code managers to understand the requirements and ensure that the right content is captured. We have also sought to design an approach that optimises the effectiveness of the delivery plan when considering the sequencing of the publication of code manager budgets and Ofgem's SDS, as discussed below.

In response to Ofgem's December 2022 Call for Input, most stakeholders agreed that the licence should include obligations related to delivery plans.<sup>47</sup> Some highlighted the importance of the code manager consulting and seeking input from stakeholders during the development of the plan. Flexibility was also raised, with two stakeholders suggesting that the finer details (e.g. plan contents and requirement to follow the plan) should be kept separate from the licence.

### Summary of proposals

Our proposed approach is to include the following features in the SLCs:

- The code manager must publish a draft delivery plan alongside their draft budget (the delivery plan and the Work Plan could be the same, or part of the same, document);<sup>48</sup>
- code managers must publish a draft delivery plan for consultation;
- each plan must cover at least the next 12 months from publication;
- high-level requirements for the content of the plan would be set out in the licence;
- code managers must comply with licence directions or guidance issued by Ofgem regarding the content of the plan;
- code managers must take all reasonable steps to comply with the plan;
- each new plan must include a report on progress towards meeting the previous plan; and
- code managers must respond to requests from Ofgem for updates on progress.

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<sup>45</sup> See s. 190 of the Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2023/5/section/190)

<sup>46</sup> Ofgem recently published a consultation on the preliminary SDS: [Consultation on the preliminary Strategic Direction Statement and governance arrangements for industry codes | Ofgem](https://www.ofgem.gov.uk/consult/condocs/industry-codes/industry-codes-consultation)

<sup>47</sup> [Energy Code Reform: Call for Input | Ofgem](https://www.ofgem.gov.uk/consult/condocs/industry-codes/industry-codes-call-for-input)

<sup>48</sup> In the October 2024 government response, we confirmed that, alongside their budgets, code managers would set out in a "work plan" all their forecast costs in a clear and transparent manner.

## Proposals and analysis

### Sequencing of the SDS, code manager budgets and delivery plans

Ofgem expects to publish the preliminary SDS following the current SDS consultation,<sup>49</sup> subject to decisions made as a result of that consultation. In future, there could be benefits in delivery plans being published shortly after the publication of each SDS (e.g. during the summer months), as it would minimise the risk of delivery plans becoming out of date. However, there would also be benefits to delivery plans being developed and published alongside, or as part of, the code manager's budget (by 1<sup>st</sup> April). This would allow code managers to factor in their delivery plans to their proposed budgets, minimising the risk of mid-year budget changes.

Although aligning budgets and delivery plans could result in a lag between an SDS being published and a code manager publishing an updated delivery plan to reflect that SDS, we consider this would have minimal negative impacts. In particular, we note the proposal that the SDS will provide a multi-year steer, and that each annual SDS will be an update on the previous one, with updates to existing priorities as well as new ones. Updates would include bringing policy outcomes forward year-on-year and providing more detail as policy is developed.<sup>50</sup> As such, we consider it unlikely that a code manager's delivery plan would be materially misaligned with the subsequent SDS.

On balance, we consider delivery plans should be published at the same time as budgets. Our proposals below, regarding the contents and execution of the plan, are designed to allow for the fact that there will be a lag between an SDS and a delivery plan being published, and that a subsequent SDS may be published while a delivery plan is being executed.

### Requirement to consult on the plan

We propose that the licence will require code managers to publish draft delivery plans, alongside or as part of the Draft Budget and Work Plan, and to allow a minimum of 28 days for consultation. Code managers will be required to consider all stakeholder views. In line with the approach for budgets, code managers would finalise and publish their plan following consultation, without requiring Ofgem approval.

We consider that a requirement to consult on draft delivery plans strikes an appropriate balance between code managers' independence in creating their plan, and including the input of stakeholders. Not requiring Ofgem approval of draft delivery plans creates appropriate separation between roles, with Ofgem setting the strategic direction, code managers owning and executing delivery plans, and stakeholders ensuring scrutiny and providing expert input.

### Contents of delivery plans and directions and guidance under the licence

We propose that the standard licence condition will define the purpose and essential contents of delivery plans. The primary aim of delivery plans is to set out the actions that the code manager proposes to take to align the code with the SDS. This should include their plans regarding the identification, assessment, proposal and implementation of code modifications pertinent to the delivery plan, as well as good faith estimates of milestones and timescales for

<sup>49</sup> [Consultation on the preliminary Strategic Direction Statement and code governance arrangements | Ofgem](#)

<sup>50</sup> [Ofgem consultation on the preliminary Strategic Direction Statement and code governance arrangements](#) p.15



each. The plan need not be limited to code modifications but can include other relevant actions, timescales and milestones as appropriate.

However, as discussed above, there will likely be a lag between an SDS being published and the delivery plan being published. It is possible that the code manager would consult on a delivery plan that was drafted in line with the most recent SDS, but around the same time, Ofgem consult on the contents of the subsequent SDS. Although we think the risk is low, there could be a scenario where the SDS consultation indicates a material change in priorities or a significant impact on the codes that was not anticipated in the published SDS. We would like the code manager to have some flexibility to reflect this in the plan.

As such we have proposed licence drafting that permits the plan to contain multiple scenarios, and in exceptional circumstances (such as where it is clear that an upcoming SDS will significantly change near-term priorities compared to the published SDS), diverge from the published SDS, with a clear explanation of, and justification for, the divergence.

We note that there is a potential risk that any divergence turns out to be unfounded (e.g. where Ofgem subsequently publishes an SDS that does not align with the code manager's plan). We consider this risk would be mitigated in various ways:

- As discussed below, we are proposing the requirement to deliver the plan would be subject to taking 'all reasonable steps', so where the plan doesn't align with the SDS, it may not be reasonable for the code manager to continue delivering against those elements of the plan.
- We propose that code managers would have an objective to facilitate delivery of the SDS (see section 1.4).
- Code modifications would be prioritised against criteria that include alignment with the SDS.<sup>51</sup>

Under this licence condition, Ofgem would have the power to direct that something in the plan is changed post-consultation. While we will generally rely on the code manager consulting with stakeholders for detailed scrutiny of the plan, we still think an important safeguard is that Ofgem will have the power to direct changes, where needed.

Over time, best practice may emerge as more delivery plans are published. In addition to licence requirements on essential contents, and (where necessary) Ofgem issuing a licence direction, Ofgem may produce guidance on the content or structure of delivery plans, and the licence would oblige the code manager to ensure delivery plans align with this guidance.

### Take all reasonable steps to comply with the plan

In an ideal scenario, delivery plans would show how the code manager will fulfil their role in aligning the content of the code with the strategic direction, and this would be followed throughout the year. However, we recognise that circumstances may change post-publication. This might include a need to reprioritise in response to a further SDS. There may also be instances where delivering an element of the plan would take considerably more time and

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<sup>51</sup> Ofgem is consulting on this proposal in its [Consultation on the preliminary Strategic Direction Statement and governance arrangements for industry codes | Ofgem](#).



resources than anticipated and could not be delivered as planned without significantly impacting the delivery of other functions. As such, we propose that this condition will require code managers to take 'all reasonable steps' to (as opposed to 'must') execute its plan. This condition would set the expectation that the plan will be followed in most instances but provides some flexibility for the code manager to adapt to exceptional circumstances.

Where a code manager diverges from the plan, we would expect the code manager to maintain (e.g. on its website) up-to-date information on its plans, including the progress of in-flight code modifications. We consider this to fall within code managers' transparency obligations, and potentially other obligations related to publishing information. We propose that the condition would not require formal changes to the plan itself, and deviations would not require the same due process as a new plan, such as a consultation period.

### Reports on progress towards the plan

We propose a requirement for each successive delivery plan to include a progress report on the previous one, setting out which milestones have been met. Additionally, we propose requiring code managers to respond to any requests Ofgem issues for updates on progress towards the plan.

We consider that this combination of conditions would balance formal and informal reporting, allowing Ofgem to engage with the code manager on progress, and providing clarity for stakeholders on how one year's delivery plan rolls into the next.

### Consultation questions

**Q8:** To what extent do you agree with the policy proposals on delivery plans set out above, including the timing, contents and requirement to execute the plan?

**Q9:** To what extent do you agree that the licence drafting in condition 29 of Annex A deliver the intent of our proposed policy on delivery plans? Do you have any other views or comments on the licence drafting?

## 1.6. Controls on the business

In the March 2024 consultation, we indicated that we would consult on the code manager licence including a number of controls on code managers' business. This included such aspects as organisational structure, corporate governance, requirements on board structure and composition, as well as an ongoing 'fit and proper' requirement for persons in position of "Significant Managerial Responsibility or Influence" (SMRI). Similar provisions are present in existing energy licences and, following analysis of these and other precedents (including code provisions), we are now consulting on our proposals for the code manager licence.

### Summary of proposals

In this section, we set out our proposals on:

- **Corporate governance:** requirement to comply with the UK Corporate Governance Code and issue an annual statement setting out how they have complied.
- **Operational capability:** requirement to maintain robust capability, systems and processes and have 'sufficient control over' assets required to operate their business.
- **Financial reporting:** requirement to issue financial accounts each year.
- **Compliance officer:** no requirement to appoint compliance officers.
- **Fit and proper requirement:** an ongoing fit and proper requirement for persons in a position of SMRI.
- **Board appointment process:** no licence requirements on the board appointment process.
- **Board expertise licence requirements:** no licence requirements on board expertise.
- **Chair independence requirements:** chair appointments must meet the requirements of the "Sufficiently Independent Director" licence condition.
- **Non-executive directors term limits:** non-executive directors appointed for a limited period, with the possibility of reappointment.

### Proposals and analysis

#### Corporate governance

Code managers will play a critical role in the effective operation of the codes they manage, and therefore a critical role in the wider energy system. It is essential that the companies carrying out the role have robust and effective governance to ensure their continued ability to carry out the code manager role to a high standard. Requiring these to be in place in the licence will provide assurance to industry and Ofgem that the appropriate arrangements are in place and being adhered to.

However, we consider that setting out prescriptive requirements on the documentation and processes code managers should have in place would be disproportionate and would be unduly burdensome for code managers and Ofgem. Instead, we propose that code managers will be required to comply with the main principles of the UK Corporate Governance Code and to issue an annual statement setting out how they have complied.<sup>52</sup>

Other energy licences include similar requirements for licensees to issue annual Corporate Governance Statements setting out how they have complied with the main principles of the

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<sup>52</sup> The UK Corporate Governance Code is published by the Financial Reporting Council (FRC): [UK Corporate Governance Code | FRC](#)

Corporate Governance Code, and we consider that this would provide suitable assurance that the appropriate governance is in place. A further benefit of this approach is that the UK Corporate Governance Code provides for flexibility in how the principles are applied, which reflects the different businesses that may carry out the code manager role.

### Operational capability

Although code managers will be free to outsource delivery of services to independent third parties (see chapter 1.7 on Procurement), we consider that the companies carrying out the code manager role should be sufficiently equipped to maintain robust internal capability, systems and processes to enable them to effectively deliver their licensed functions and to comply with their licence obligations.

We propose that the code manager licence includes an operational capability requirement, broadly similar to that found in electricity and gas supply licences. This is intended to mitigate the risk of organisations being extremely asset-light and having minimal internal capability such that they cannot maintain essential governance and operations. This will complement other conditions we have proposed, such as those on availability of all necessary resources and assurance on financial stability.

We propose that the condition would require that licensees have and maintain robust capability, systems and processes and that they either own or have 'sufficient control over' all the material assets required to effectively operate their business. Sufficient control means having legally enforceable rights rather than, for example, relying on informal intra-group arrangements. We propose that, as with supply licences, the licence requirement is a high-level principle rather than setting out detailed requirements on what must be in place.

### Regulatory accounts/financial reporting

We propose that the licence will require code managers to prepare and publish their regulatory accounts each year, and for these accounts to be audited by an appropriate, independent auditor engaged by the code manager. This is in line with other energy licences and general best-practice, including as set out in the UK Corporate Governance Code. The purpose of the requirement is to provide transparency on how code managers' funding is being spent, which is especially important given that funds ultimately come from energy consumers.

### Compliance officer

In some licences there is a requirement to have in place a compliance officer to monitor compliance with certain conditions.<sup>53</sup> These are primarily in place in licences where vertically integrated undertakings are common and are intended to ensure compliance with specific conditions on prohibiting discrimination, conflicts of interest and ringfencing of activities.

For code managers, we recognise that there are risks of conflicts of interest arising where the organisation carrying out the code manager role also carries out other functions in the sector, but we consider that, in most circumstances, the proposed licence conditions relating to conflicts of interest already include appropriate safeguards to manage possible conflicts of interest. We therefore do not consider that a standard licence condition requiring the appointment of a compliance office would be appropriate. We do, however, recognise that in some cases additional measures may be necessary, and Ofgem would have the ability to place additional requirements, including on the appointment of compliance officers, where

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<sup>53</sup> [Gas transporter licence, standard condition 40 | Ofgem](#); [Electricity distribution licence, standard condition 31C | Ofgem](#)

additional measures are required. Prospective code managers may also propose the implementation of additional mitigation measures such as appointing compliance officers.

We therefore do not consider it necessary or proportionate to, by default, require code managers to appoint compliance officers.

### ‘Fit and proper’ requirement

Fit and proper requirements exist in the supply licences.<sup>54</sup> In those licences, similar to the fit and proper assessment that takes place on licence grant, there must be regular assessments that assess persons in positions of Significant Managerial Responsibility or Influence (SMRI)<sup>55</sup> for things such as criminal convictions, if they have been responsible for or facilitated serious mismanagement of another company, or if they have had any previous disciplinary action from a regulatory body in any jurisdiction. The supply licences also require that the licensees have robust governance processes and systems in place to ensure that the specified requirements are implemented.

We propose that the code manager licence includes a “fit and proper” requirement, similar to the supply licences. We believe that this is a proportionate measure to continuously ensure that unsuitable persons are not in SMRI positions. While it is not in itself a guarantee for good performance, we consider that ensuring that these minimum requirements are met can assist in deterring poor performance. Additionally, this summer (2025) Ofgem expects to consult on revising and extending the requirement from the supply licences to other licence types. If these requirements are introduced to other licences, we think the precedent this sets would strengthen the case for including introducing fit and proper requirements in the code manager licence. We will continue to review the licence condition in the code manager licence in light of responses to, and conclusions from, the broader consultation on this requirement, and we expect to update the condition where appropriate.

We propose that the ongoing requirement in the code manager licence initially covers persons in a position of SMRI, as in the supply licences.<sup>56</sup> However, as noted above, a broader consultation on this requirement is expected to take place, and we will consider the responses and conclusions from this, and if any subsequent changes to who is captured by the proposed code manager licence requirement is appropriate.

We do not propose to require that the code manager notifies Ofgem of any new appointments of SMRI staff covered by the “fit and proper” requirement, as we think this creates an unnecessary administrative hurdle for both the code manager and Ofgem. However, we expect the code manager to ensure that there are continuous robust internal processes in place to

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<sup>54</sup> [Gas Supply Standard Licence Conditions, standard condition 4C | Ofgem](#); [Electricity Supply Standard Licence Conditions, standard condition 4C | Ofgem](#)

<sup>55</sup> “Significant Managerial Responsibility or Influence (SMRI)” means where a person plays a role in:  
(a) the making of decisions about how the whole or a substantial part of a licensee’s activities are to be managed or organised, or  
(b) the actual managing or organising of the whole or a substantial part of those activities.

<sup>56</sup> As stated in the [draft code manager selection guidance](#): We regard persons of significant managerial responsibility or influence to include those individuals who hold responsibility for, or manage, key business areas, particularly regulatory compliance, financial management, operations and business strategy. In small organisations, this may include the majority of staff. Additionally, we state that individuals holding significant managerial responsibility or influence may not necessarily be employees of your organisation. The term refers to any individual who exerts (or will exert) significant influence over the managing or organising of the candidate’s activities. This could include, for example, advisers (where their role goes beyond providing advice to company decision-makers). This definition is consistent with our approach to assessing organisations for other licence types.

ensure compliance with this requirement and note that we may request information about these procedures and SMRI staff under the proposed “Provision of information to, and co-operation with, the Authority” licence condition (see chapter 1.10).

### Board/chair appointment process and expertise requirements

In the existing licences<sup>57</sup> there are expertise requirements set out for the “Sufficiently Independent Directors” (they need to have the “skills, knowledge, experience, and personal qualities necessary” in the reasonable opinion of the licensee). They also need to be appointed within a certain timeframe of licence grant, and the Authority needs to be notified of new appointments. For broader board appointments and expertise requirements, there are limited precedents in existing energy licences. The exception to this is the upcoming Successor Smart Meter Communication Licence, which as per the recent Ofgem conclusions will include some requirements on board appointment and expertise.<sup>58</sup> There are some examples of board appointment and expertise requirements in the codes, for example in the REC and the BSC, which require a nomination committee to determine the appointment process of the board and balance its skillset.

As set out in the October 2024 response, code manager licences, as with existing licences, will have board appointment and expertise requirements for their “Sufficiently Independent Directors” (see condition 16.3 in Annex A). We do not consider it appropriate to prescribe, in the licence, any additional detail of the board appointment process. Similarly, the expertise requirements might need to vary among code managers and/or develop over time and, along with the appointment process, the detail of these are more likely suited to the code, or other documents with more open governance.

We have considered two, less prescriptive, options further:

- High-level licence requirements: To incorporate a high-level requirement for the code manager to implement the detail of these requirements elsewhere
- No licence requirements (preferred): To not incorporate any licence requirements in addition to the existing ones on “sufficiently independent directors”

### High-level licence requirements

A less prescriptive approach to detailed licence requirements on board appointment and expertise could be a requirement on code managers to develop and implement the detail of the appointment processes and expertise requirements. This could be set out in the code or other documents. The benefit of this approach is that it could promote consistency across code managers, as they will all be required to set out the appointment process and any expertise requirements. However, we are not convinced it would offer additional clarity to the other proposed code manager licence conditions, such as the code manager objectives (see chapter 1.4). For example, while we consider that code managers should appoint a suitably skilled and experienced board in a transparent and fair manner, we consider that this is already made clear through the proposed code manager objectives and the Sufficiently Independent Director requirements. Code managers will need to fulfil their objectives of transparency and collaboration to the extent relevant in all their activities, including when appointing the board, which should promote a fair and transparent process. We want to avoid incorporating licence

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<sup>57</sup> Including the electricity transmission licence (standard condition B22), the electricity distribution licence (standard condition 43A) and the smart meter communication licence (standard condition 9.14)

<sup>58</sup> [DCC Review Phase 2: Governance arrangements - conclusions | Ofgem](#)

conditions that are not clearly necessary, therefore we do not propose to proceed with this approach.

### No licence requirements (preferred)

Since we consider that the other licence conditions are sufficient, our preferred approach is to not incorporate any licence requirements regarding the code manager board and chair appointment process, nor to specify any board expertise requirements in addition to what already exists in the 'Sufficiently Independent Director' licence condition. We welcome stakeholder views on our preferred approach.

### Chair independence requirements

The chair of the code manager board should be sufficiently independent and possess the right skills and expertise to carry out the role. This will reinforce independent decision-making in the code manager and avoid bias towards parties and affiliates.<sup>59</sup>

We propose that the chair should be required to adhere to the 'Sufficiently Independent Directors' licence condition, which requires that the director in question has not "held a position that could be deemed to cause an unacceptable conflict of interest in their role as a sufficiently independent director" (see condition 16.4 in Annex A). This includes affiliations with code parties, affiliates and external service providers. We believe this condition effectively captures "independence" and that it can be utilised for the chair of the board as well.

As discussed in chapter 1.3 on introducing a route for exceptions to this licence condition, some prospective code managers have broader roles under the code (and beyond). This would not be permitted by the licence, but may offer benefits with minimal risks, and we consider there are benefits to allowing some flexibility for such arrangements, including for the chair.

### Non-executive directors term-limits

Having term-limits for Non-Executive Directors (NEDs) promotes regularly having new expertise and experience on the code manager board. However, continuity and a strong corporate memory can improve the running of the organisation.

We are consulting on three approaches to regulating minimum term-limits for NEDs in the code manager licence (noting that code managers could seek to implement additional requirements in the relevant code (subject to the Authority approving the modification)):

- **No term-limits:** NEDs are appointed without any limits on how long they can serve for.
- **Term-limits with the option of reappointment (preferred):** There is a term-limit (for example, 3 years) for how long NEDs can serve, but they can be reappointed. There is currently precedent for this in the BSC and the REC. This option would allow for NEDs to be retained when it is beneficial to do so, but for them to be replaced should this be preferable. This could work as an indirect performance measure, where NEDs can be replaced if the relevant parties are not satisfied with their performance. An alternative approach to this option could be to allow for a limited number of reappointments (i.e., that the NED can only be reappointed once or twice).
- **Term-limits with no option of reappointment:** A NED is appointed for a limited term and cannot be reappointed.

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<sup>59</sup> "Affiliate" means, in relation to any person, any holding company of that person, any subsidiary of that person, or any subsidiary of a holding company of that person.

We consider that option 2, term-limits with the option of reappointment, most effectively balances the benefits of limiting terms with the benefits of continuous and more long-term directorships. We welcome feedback on the inclusion of this condition, and what term-limits or potential limit on number of reappointments would be appropriate.

## Consultation questions

**Q10:** To what extent do you agree with the proposals set out above on controls of the business?

**Q11:** To what extent do you agree that the licence drafting in conditions 4-6 and 8-9 of Annex A delivers the intent of our proposed policy on controls on the business? Do you have any other views or comments on the licence drafting?



## 1.7. Procurement

The March 2024 consultation proposed that code managers will be required to operate on a not-for-profit basis. It stated that within this model, allowing code managers to subcontract certain functions via competitive procurement could realise efficiencies and achieve a degree of competitive pressure.

While most respondents to that consultation agreed that the code manager should fulfil this role on a not-for-profit basis, some concerns were raised about how to facilitate a drive towards efficiency and good practice. Some respondents agreed with the proposal to allow subcontracting, including to for-profit enterprises, where this would allow advantageous competition and stimulate innovation. There was also support for the stated intention to place limits on which activities may be subcontracted and that procurement of services must be carried out on a competitive basis.

In the October 2024 response, we indicated that we would consult on any restrictions and requirements relating to procurement of service capability by code managers. Noting that procured third parties are not licensed or regulated by Ofgem, we consider that various protections are needed to prevent possible adverse consequences where licensed activities are supported or carried out by unlicensed entities.

### Summary of proposals

Our proposals are intended to make sure that:

- the code manager (and any successor code manager) always has the capability to fulfil its licence function;
- the code manager always continues to take responsibility for its licence function and preventing breaches of the licence, and
- only suitable third-party contractors and subcontractors are used (see more detail below).

Based on this, we propose a procurement licence condition that requires code managers to ensure that, where they procure service capability from third parties:

- Procured third parties are of good standing;
- Contracts are not entered into if there is a Relevant Conflict of Interest.<sup>60</sup> We propose to provide a route for code managers to request an exception, where the conflict can be effectively mitigated.
- All third-party contracts include appropriate provisions:
  - ensuring that the obligations of the relevant licence conditions are met;
  - establishing liability for loss or damage incurred if a licence breach is caused by the third party;
  - controlling further subcontracting, where appropriate;
  - protecting business continuity;
  - facilitating the handover of necessary Intellectual Property Rights (IPR) to a successor licensee (or to otherwise ensure access to intellectual property by a successor licensee).

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<sup>60</sup> “Relevant Conflict of Interest” means financial or other interests that might prejudice the discharge by the CM of its functions under this licence



With these protections in place, we consider that it will not be necessary to limit third-party procurement to certain functions of the code manager. In contrast to the previous consultation, which suggested that we may restrict which functions the code manager can outsource, here we propose a more principles-based approach, giving the code manager autonomy over procurement choices while ensuring sufficient protections for the licence functions.

## Proposals and analysis

Code managers are responsible for ensuring they comply with their licence, including fulfilling any functions, including decision-making, required by the licence. If the code manager were to procure services that facilitate decision making, it would need to be satisfied that it has appropriate oversight of any procured activities (as required by the licence condition on appropriate controls in the contract).

Where a code manager breaches their licence, Ofgem would expect to take enforcement action against the code manager for that breach, even if a third party has contributed to or caused the breach.

We propose that code manager licences include a standard licence condition setting out requirements relating to the procurement of services from third-party providers. These requirements are discussed below.

### Good standing requirement

We propose that code managers will be required to ensure that, where they procure services, they do so from suitable organisations, having due regard to the financial and operational capability, and reputational standing, of prospective third-party providers. The aim is to ensure continued delivery of good service and reduce risks to business continuity.

### Conflicts of interest

The proposed condition would prohibit code managers from entering into any third-party contract where a Relevant Conflict of Interest exists. For example, if a contractor who is affiliated with a code party is appointed to provide analysis to support the code manager in making recommendations or decisions on a modification, they may unduly prefer the affiliated code party in their analysis, undermining the code manager's objectivity.

We consider that prohibiting code managers from entering into contracts with third parties where a Relevant Conflict of Interest exists would provide assurance as to the objectivity of code managers and supporting independent decision-making. However, we recognise that, in some cases, this could prevent efficiencies being realised. We propose that the licence condition will allow for exceptions to be granted by Ofgem where the code manager has provided sufficient evidence that the conflict of interest can be appropriately mitigated (see chapter 1.3 on Conflicts of Interest for more detail). We welcome views from stakeholders on whether the proposals provide appropriate balance between addressing conflicts of interest and providing appropriate flexibility.

### Appropriate provisions to ensure that the obligations of the relevant licence conditions are met

We also propose that the licence would require all contracts with third parties to contain appropriate provisions to ensure that all relevant licence conditions are met. The onus would be on the code manager to consider what provisions, protections and controls are appropriate

for the contract being considered. For example, if a third party is contracted to draft part of a publication, and a delay to that publication would constitute a licence breach, the code manager may consider it appropriate to include provisions in the contract regarding deadlines. We consider that this will lower the likelihood of licence breaches occurring.

#### Appropriate provisions covering liability for loss or damage incurred if a licence breach is caused by the third party

A separate but related matter is liability. If a licence breach occurs as a result of the actions (or omission) of a third party, enforcement action could ultimately be taken against the code manager. It may therefore be necessary for the code manager to ensure that they can hold the third party accountable for the breach, for example by recouping fines from them. This may not be possible unless the contract has established liability for this kind of loss or damage. We propose a requirement that all third-party contracts include appropriate agreements to establish liability for any loss or damage resulting from a licence breach. In deciding what arrangements are appropriate, the code manager should consider all the contractual obligations and the likelihood and impact of a licence breach occurring through the third party's actions (including the actions of any subcontractor of the third party). We propose that the condition is not prescriptive on this, but rather that the onus is on code managers to determine what provisions should be included in contracts.

#### Controls on further subcontracting

The third-party that the code manager has subcontracted to may want to further subcontract some elements of the activities. In theory, the code manager's initial choice of third party may lead to a chain of subcontractors. To mitigate the risk of this negatively impacting transparency, or creating ambiguity regarding accountability, we propose a requirement for the code manager to implement appropriate controls on further subcontracting when procuring to third parties. The code manager will need to determine the level of controls that are appropriate for each contract, noting that this might vary depending on the nature of the services being procured. We consider that this will allow the code manager appropriate flexibility in forming their contracts with third parties, compared to a more prescriptive approach.

#### Protecting business continuity

It is important that the continuity of code manager functions is protected when procuring third party providers, for example where a third party becomes insolvent or is not delivering the services they were contracted for.

To address these risks, we propose including a licence obligation requiring code managers to implement provisions to protect business continuity when procuring services. The onus would be on code managers to consider the risks to business continuity from each potential contract and to implement protections as appropriate. We consider this approach to be proportionate and efficient, and that it may help maximise the number of potential contractors for each role and ultimately lead to high quality outputs.

In instances where the licence comes to an end, it is important that a successor licensee is able to access the resources they need to carry out the role, including any intellectual property (IP). In chapter 1. 12, 'End of Licence' we propose a requirement on code managers to have in place, as part of their Business Handover Plan (BHP), appropriate arrangements to ensure the novation of Intellectual Property Rights (IPR) or the transfer of access rights to any IP a

successor licensee may require carrying out the role. This may require appropriate contractual arrangements to be in place where IP has been developed or is otherwise provided by a third party. We propose a requirement on code managers to consider, and appropriately implement, contractual arrangements to ensure that a successor code manager has the ability to fulfil its role under the licence and is able to use any intellectual property necessary to do this.

### Further provisions regarding Intellectual Property Rights

We also propose that code managers must, when putting in place contracts with third parties, consider the wider impact of IPR ownership on the development of effective competition in the provision of services to the code manager. This is intended to prevent, for example, arrangements that do not allow the code manager to switch to a new service provider, where savings could be made, without losing access to IP necessary for the role. We also propose that the code manager must consider the impact of IPR agreements on integration with IP provided by other third-party providers, such as whether those agreements allow data to be migrated to alternative services.

### Consultation questions

**Q12:** To what extent do you agree with the proposals set out above on procurement of services?

**Q13:** To what extent do you agree that the licence drafting in condition 7 of Annex A delivers the intent of our proposed policy on procurement of services? Do you have any other views or comments on the licence drafting?

## 1.8. Optional charging

In previous consultations we stated that, provided appropriate processes and safeguards are in place, code managers could charge code parties and non-code parties (e.g. a prospective code party) for some value-added or optional services. We have also stated that where there is value in charging per-service used, then optional charges could be issued. For example, where a party takes a service purely for its own benefit (e.g. bespoke training) and where a cost signal would help to ensure the party uses the service efficiently, then an optional charge may be warranted. Stakeholders have been supportive about exploring this further, with some noting the importance of appropriate safeguards. Additionally, in our June 2023 workshop with industry, and in bilateral engagements with existing code administrators, stakeholders noted that similar charging arrangements are already present for code administrators and that they work well. It was suggested that, at a minimum, we should avoid disallowing existing practices unnecessarily.

We are now consulting on our proposed approach for this.

Note that “Optional charging” refers to the possibility of the code manager charging code parties directly for specific services (a “user pays” approach) rather than recovering the costs for those services through the cost recovery methodology, where the costs would be spread out across parties.<sup>61</sup> Optional charges, in this context, would still be recovering costs for the Code Manager Business, and would not fund activities outside of this. Value-added services would be scoping out and undertaking new roles that are not part of its remit. We will not cover value-added services in this section, instead more detail can be found in chapter 1.3 on Conflicts of Interest, which sets out our approach to restrictions on code manager activities and the exceptions process for this.

### Summary of options and proposals

- **Option 1 (preferred):** Adding a high-level principle in the licence setting out when the code manager can issue optional charges.
- **Option 2:** Not specifying anything on optional charges and relying on flexibility in the cost recovery methodology or other conditions in the licence/code.

### Proposals and analysis

#### Option 1 (preferred): high level principle in the licence

We propose that code managers should be able to issue optional charges provided that they meet a set of criteria, outlined in the licence. We consider that allowing optional charging provides flexibility for code managers’ charging arrangements, benefiting both code parties and code managers. To ensure that the charges are issued appropriately and fairly, we propose to introduce a high-level principle in the code manager licence describing the circumstances in when they can be issued. The principle would assert that the code manager should issue core charges (i.e. charges through the cost recovery methodology) as a default, but that an optional charge may be issued where it better facilitates:

- Cost reflectivity (ensuring the charge reflects the costs of carrying out the activity)

<sup>61</sup> As stated in the [Government Response to the Consultation on Code Manager Licensing and Secondary Legislation](#), code managers will be required to comply with the Cost Recovery Methodology set out in the code.

- Efficient use of the code manager's services (where a party has discretion over whether to use a service)
- Proportionality (including, but not limited to, the estimated time spent on the charging arrangement and whether the charge warrants the administrative cost of charging directly).

We also propose prohibiting optional charging being used for a service that benefits all code parties or a specific group of parties.<sup>62</sup> The purpose of optional charging is to add flexibility for code managers to charge a party directly for a service, but we do not consider that this should be used for key code manager activities (for example raising code modifications), which should be covered by core charges to not discourage code parties from engaging with these key activities.

### Option 2: nothing in the licence

An alternative approach to optional charging would be to say nothing specifically about this in the licence and instead rely on flexibility built into the cost recovery methodology and other licence conditions, to indirectly allow for optional charges. The benefit of this approach is its simplicity and not requiring new licence conditions to be added.

As set out above, we propose including a high-level licence condition, as per option 1. We consider that this will provide more certainty as optional charging would be explicitly permitted. We also consider that the proposed criteria will make clear how we expect these charges to be used, as well as providing safeguards against malpractice.

## Consultation questions

**Q14:** To what extent do you agree with the proposals set out above on optional charging?

**Q15:** To what extent do you agree that the licence drafting in condition 24 of Annex A delivers the intent of our proposed policy on optional charging? Do you have any other views or comments on the licence drafting?

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<sup>62</sup> For example, a group of parties that hold the same licence.

## 1.9. Performance

In the October 2024 response, we set out our intention to proceed with non-financial performance incentives for code managers, as it is more proportionate and appropriate for the code managers' not-for-profit model. Code managers will be required to ensure that the relevant code contains a set of performance indicators, which they must report on their performance against. In addition to performance indicators, there are several licence conditions that will have a direct or indirect impact on code manager performance, an overview of these can be found in Appendix 2.

### Summary of proposals

In the response, we acknowledged respondents' request for greater clarity on the tools Ofgem will have available for addressing poor performance, in addition to the performance incentives proposed, and stated that we would consider other mechanisms for addressing poor performance. We are now consulting on two additional licence requirements:

- **Minimum acceptable performance standards:** the code manager must at least perform to a "minimum acceptable standard".
- **Remuneration framework requirements:** the code manager must implement a remuneration framework, and any performance related remuneration of Senior Staff<sup>63</sup> must consider performance against the performance metrics, feedback, as well as any compliance and enforcement actions.

### Proposals and analysis

#### Minimum acceptable performance standard

There is a risk that code managers may fulfil all their licence obligations but that these are fulfilled to a poor standard, where stakeholders and/or the Authority are not satisfied with the performance. We consider that the code manager objectives (see chapter 1.4) will contribute to addressing this, but given their principles-based nature, we consider that adding a further enforceable licence condition which more directly addresses minimum acceptable performance provides clarity on the standards expected. Similarly, the performance indicators in the code will clarify what good (and potentially also poor) performance entails, but will not necessarily make poor performance, or failure to meet "minimum acceptable performance", a case of non-compliance which can result in appropriate compliance and enforcement action. Therefore, we propose to incorporate a licence condition setting out that the code manager needs to adhere to a minimum acceptable performance standard.

Our preferred approach requires code managers to perform at a "minimum acceptable standard" from the perspective of a "reasonable person with knowledge of the relevant code and the sector it operates in", considering feedback from stakeholders and the Authority, as well as performance against the indicators specified in the relevant code. The approach aims to balance sufficient flexibility, avoiding hardcoding arbitrary thresholds in the licence, with clarity on what is expected of the code manager to perform at this standard by setting out the factors that will be considered.

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<sup>63</sup> "Senior Staff" means the Licensee's executive directors and, if applicable, other employees with significant control and influence over the management of the Licensee's organisation. It does not include the Licensee's Non-Executive Directors.

Additionally, we propose to add a sentence to two existing conditions. Firstly, to the requirement for the performance indicators to contain sufficient detail to enable thorough evaluation (see condition 25.4 in Annex A), stating that this may include an indication of what constitutes high level of performance as well as a minimum acceptable level of performance (noting that "minimum acceptable standard" assesses performance against the indicators and feedback more broadly). Secondly, to the requirement to report on performance, stating that this needs to include consideration of minimum acceptable performance and, if applicable, any areas of improvement (see condition 25.5 in Annex A).

We appreciate that the above approach leaves room for interpretation on what is considered "minimum acceptable performance". The proposed licence condition links to the performance indicator section in the relevant code, and more clarity on this will be provided over time as these indicators are developed and as multi-year code manager performance data becomes available. This will contribute to further clarity on what is expected of the code manager.

We also want to be clear that the purpose of the condition is for it to be a safeguard against continuous poor performance (i.e. code managers not meeting a minimum acceptable standard for a continuous period of time). It is not our intention that code managers should be at risk of a licence breach for minor mistakes, or for poor performance when it is evident that it is a one-off or that it can be remedied. Typically, we would expect compliance steps and engagement between Ofgem and code managers to take place before enforcement action commences, and licence revocation is usually a last resort.

### Remuneration framework

We propose to introduce a licence requirement that any bonus payments (i.e., "performance remuneration") of Senior Staff needs to consider performance in line with the performance indicators in the relevant code, feedback from the Authority and stakeholders, as well as any compliance or enforcement action.

In practice, this would result in two licence requirements:

- For the code manager to have a remuneration policy in place, which sets out the principles for remunerating its Senior Staff (noting that the code manager can choose for it to be broader in scope);
- For this policy to explicitly link any bonus payments for Senior Staff to the criteria set out above.

Similar provisions exist in the NESO licence, although the requirements on their remuneration policy are broader.<sup>64</sup> We consider that it is reasonable to adjust the approach in the code manager licence to be more proportionate to the size and role of the code manager.

Linking bonus payments for Senior Staff to compliance, enforcement and wider performance is, in our view, a proportionate measure that allows code managers to introduce incentives for Senior Staff to perform well, but also provides clear consequences for poor performance.

To ensure the remuneration policy is reasonable, and mitigate the risk of it being misused, any staff bonuses (so also for non-senior staff) will, as a total, need to be clearly accounted for in the budget, and consulted on with stakeholders, in accordance with standard condition 20 in Annex A ('Annual Budget of the Licensee'). Additionally, we propose requiring that the

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<sup>64</sup> [Electricity System Operator: Direction and Licence Terms and Conditions](#), condition F7

“Sufficiently Independent Directors” review and input on the policy. We are also considering whether the SAF should have a role in reviewing and inputting on the policy, for example through a consultation process or a right to review, and we are seeking stakeholder input on this.

## Consultation questions

**Q16:** To what extent do you agree with our proposal to introduce a “minimum acceptable performance standard” in the code manager licence?

**Q17:** To what extent do you agree with our proposals regarding remuneration, including introducing a licence requirement for the code manager to implement a remuneration policy, linking bonus remuneration of Senior Staff to performance and compliance and whether the sufficiently independent directors and/or SAF should have a role in reviewing the remuneration policy?

**Q18:** To what extent do you agree that the licence drafting in conditions 25 and 26 of Annex A delivers the intent of our proposed policy on Performance? Do you have any other views or comments on the licence drafting?



## 1.10. Provision of information to, and co-operation with, the Authority

We propose that the licence includes a standard condition setting out licensees' obligations to provide information to, and co-operate with, Ofgem (referred to as the Authority in licences). The aim of this requirement is to engender a cooperative relationship between Ofgem and code managers, and to ensure that Ofgem can access the information it needs to carry out its role as regulator.

### Summary of proposals

We propose including the following requirements:

- The provision of information to Ofgem, where requested; and
- A principle to be open and cooperative, with a requirement to proactively disclose relevant information and to provide advice and guidance to Ofgem, where requested.

### Proposals and analysis

The proposed obligations are intended to facilitate a healthy working relationship between the code manager and Ofgem. They broadly align with precedent set in other licences.

#### Provision of information to Ofgem

We propose that Ofgem will have the power to request from the code manager information that it reasonably requires or may be necessary to carry out its functions. It will allow Ofgem to monitor compliance and performance, including through obtaining information on the operation of the code. The condition will be supplementary to other conditions which allow for Ofgem to request specific information.

#### Principle to be open and cooperative

We also propose that the licence will require the code manager to be open and cooperative with Ofgem. This would include a requirement to keep Ofgem informed of any circumstances or developments that Ofgem would 'reasonably expect notice of'. This could include, for example, the code manager becoming aware of circumstances which might result in non-compliance with its licence, prevent it performing its licence obligations, or which may have a material impact on its corporate structure.

This would not require Ofgem to request information from the code manager, and the onus would be on the code manager to proactively provide the information to Ofgem. Code managers would be required to provide this information as soon as the circumstance arises, or they become aware of it.

We also propose that the code manager will be required to provide any advice and guidance requested by Ofgem. This could include, for example, advice on matters relating to industry changes, such as to inform the development of future Strategic Direction Statements. This will support Ofgem in delivering its duties, in particularly in relation to the industry codes.

## Consultation questions

**Q19:** To what extent do you agree with our proposals regarding the provision of information, and co-operation with, the Authority?

**Q20:** To what extent do you agree that the licence drafting in condition 30 of Annex A captures the intent of our proposed policy on provisions of information, and co-operation with, the Authority? Do you have any other views or comments on the licence drafting?

## 1.11. Ease of use of the code

We indicated in previous publications that we would consider introducing a licence condition requiring code managers to ensure the codes are easy to use. In Ofgem's 2022 call for input on Energy Code Governance Reform, it noted that this could include requirements regarding digitalising and simplifying the code.<sup>65</sup>

### Summary of options and proposals

We have considered two options:

- **Option 1 (preferred):** introduce a principle requiring code managers to ensure that the code and related materials are easy to access, understand and engage with.
- **Option 2:** introduce prescriptive requirements, such as requiring the code is digitalised, that the text of the code and any related materials are in plain language, that the website that hosts the code is easy to navigate, etc.

### Proposals and analysis

#### Option 1 (preferred): principles-based condition

Option 1 would place a broad obligation on code managers and may help ensure they take a comprehensive approach to ensuring ease of use of the code. It provides less certainty to code managers on what is expected of them, but this risk could be mitigated, if needed, by Ofgem issuing guidance, providing steers through its SDS, or adding prescription to the licence at a later date.

We prefer option 1, but to provide some flexibility to be more prescriptive where needed, we propose to also require that code managers, in meeting the principles, have regard to guidance published by Ofgem and any relevant best practice.

Our expectation for option 1 would be that, to comply with it, code managers would (among other things):

- Digitalise the code and provide other tools that enable easy navigation of the code, improving functionality over time to align with best practice
- Use plain language in the code and related documents (as far as possible)
- Remove defunct clauses and consolidate and rationalise the content of the code to help streamline the code
- Ensure their website meets the accessibility requirements that apply to public bodies (e.g. ensuring the website can be used by those with impaired vision, motor difficulties etc.)<sup>66</sup>
- Provide written guidance or training on the code, to support understanding
- Ensure the website easy to navigate, such that the code and any related guidance can be easily located
- Not put unnecessary barriers in the way of accessing the code (e.g. requiring website users to log in to access the code)

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<sup>65</sup> [Energy Code Governance Reform | Ofgem](#)

<sup>66</sup> [Understanding accessibility requirements for public sector bodies | GOV.UK](#)

## Option 2: prescriptive licence condition

Introducing a prescriptive licence condition would provide more certainty to the code manager on what is required. However, it would be difficult to comprehensively list all actions code managers should take to ensure ease of use of the code. Also, the actions code managers should take could change over time, particularly as technology advances.

## Consultation questions

**Q21:** To what extent do you agree with our preferred option 1 (principles-based licence condition)?

**Q22:** To what extent do you agree that the licence drafting in condition 28 of Annex A delivers our policy intent for Ease of use of the code option 1? Do you have any other views or comments on the licence drafting?



We also propose that BHPs will be required to include arrangements for the novation of IPRs.<sup>69</sup> We propose that these arrangements must include a plan for the novation of IPR that has been used for, or created for, the purpose of carrying out the Relevant Business. The intention is to ensure that where the development or procurement of IP has been funded by code parties (through charges), the successor licensee can continue to use that IP and code parties continue to see the benefit. This would include any IPR that has been assigned or licensed to the licensee under any External Service Provider Contracts,<sup>70</sup> and we propose that this requirement will be supported by requirements in our proposed procurement condition (see section 1.7) on including provision for this in contracts with third-party providers.

There may be circumstances where novating IPR to a successor licensee is not appropriate. For example, this could be where systems were developed as part of a licensee's Permitted Business (i.e. additional services that Ofgem had granted an exception to carry out), and we consider that the licensee should retain that specific IPR once they are no longer a licenced code manager. Under such circumstances, we propose that the licence includes provision for an exception to be made, or for the IPR to remain with the original licensee but for a non-time-limited, royalty and payment-free licence to use the IP to be granted.

Similarly, licensed code managers may carry out additional roles that will not be taken on by a successor licensee (for example, delivering central system functions). We propose that the requirement to novate IPR, or to grant access to IP, will be limited to IP which will be required by the successor licensee for the purposes of carrying out its nascent Licensed Activity.

We also propose mandatory content pertaining to code manager budgets. BHPs would be required to show how the outgoing code manager would transfer any remaining funds accrued for their Licensed Activities to their successor, on a legally enforceable basis. We consider that this would help to ensure a smooth transition and reduce the risk of budget disputes. Additionally, BHPs would have to show how the code manager would keep a record of their spending against costs recovered for their duties and provide these records to their successor. This is to mitigate the risk of the successor code manager not being well informed of any under- or over-recovery, resulting in significant duplication of work or incorrect amounts being collected from, or returned to, code parties.

Code managers would also be required to include further commitments, objectives or other suitable provisions, as appropriate, designed to facilitate a smooth handover. This could include commitments to co-operate with the successor code manager, details of relevant plans and procedures, and making available suitably qualified staff to facilitate the handover, as well as setting out the process for how the code manager and successor code manager may make alterations to the BHP during a Handover Period.

### Approval of BHPs and consulting with interested parties

The purpose of BHPs is to minimise disruption to crucial services, and we consider that the parties potentially affected by a handover should play a role in scrutinising the arrangements established by code managers. We propose that code managers will be required to consult on

<sup>69</sup> "Intellectual Property Rights" means:

- (a) patents, trademarks, trade names, service marks, rights in designs, copyright (including rights in computer software), logos, rights in internet domain names, and moral rights, database rights, rights in know-how, and other intellectual property rights,
- (b) in each case, whether registered or unregistered or subject to an application for registration, and includes any and all rights or forms of protection having equivalent or similar effect anywhere in the world.

<sup>70</sup> "External Service Provider Contract" means, as between the Licensee and an External Service Provider, any arrangement (however described) that has been entered into for the provision by the External Service Provider to the Licensee of Service Capability.

the content of the BHP by publishing a draft plan on their website for at least 28 days, and to take into account the views of respondents. Only following such a consultation could Ofgem consider approving the plan. Once Ofgem approves a plan, code managers would be required to publish it.

### Revising Business Handover Plans

We propose that, rather than a requirement to periodically update BHPs, code managers will be responsible for ensuring that BHPs are up-to-date and in line with the requirements of the condition. Where licensees become aware of any circumstances or information which could impact the ability of the plan to meet those requirements, such as its efficacy in facilitating a smooth handover, they will be required, within 28 days, to review the plan and propose any necessary modification to Ofgem. Ofgem will also have the ability to direct licensees to review the plan.

### Compliance with the plan

Given that BHPs will be consulted on with stakeholders and approved by Ofgem, they should be followed as far as possible during a Handover Period. However, it may not be possible for the plan to accurately reflect every scenario that could arise, so we propose that code managers will be required to ‘take all reasonable steps’ to follow the plan. This will provide sufficient flexibility to apply the plan as circumstances require.

We also propose that Ofgem has the ability to direct that one or more specific commitments in the plan are met. This may be helpful in facilitating (in certain circumstances) a smooth transition.

### Code manager of last resort direction

The Code Manager Selection Regulations 2024 include provision for Ofgem to appoint a Code Manager of Last Resort (CMoLR) using a non-competitive selection process, in a scenario where a code manager could not be found using the standard selection process before a revocation becomes effective.<sup>71</sup> We propose a licence condition allowing Ofgem to issue a MoLR Direction, requiring an existing holder of a code manager licence (in respect of another code) to act as code manager. Before issuing a direction, Ofgem would be required to consult the code manager being considered and seek appropriate evidence to show that they can complete their last resort duties without any detriment to other licence or contractual obligations. Once given a CMoLR Direction, the code manager would be required to comply with it.

## Consultation questions

**Q23:** To what extent do you agree with the policy proposals set out above on end of licence arrangements, including the proposals relating to IPR? Are there any other assets you consider should be addressed in handover plans?

**Q24:** To what extent do you agree that the licence drafting in conditions 31 and 32 in Annex A capture the intent of our proposed policy on End of licence? Do you have any other views or comments on the licence drafting?

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<sup>71</sup> Regulation 7: [The Code Manager Selection Regulations 2024 | legislation.gov.uk](https://www.legislation.gov.uk)

## 1.13. Code maintenance and modification

In the October 2024 response, we stated that we intend to include an obligation to have in place and maintain the relevant code in code manager licences. In this section we set out further proposals for inclusion in the code maintenance and modification standard licence condition that reflect the changes introduced by the Act, and by our reforms more broadly.

### Summary of proposals

We are seeking views on proposed licence obligations relating to core requirements of the code modification process. We have reviewed and considered obligations in existing energy licence conditions (code owner conditions)<sup>72</sup> as well as aligning with Ofgem's proposals for an updated modification process currently being consulted on.<sup>73</sup>

We are consulting on proposals to update and amend existing licence provisions, as well as to introduce new provisions:

- **Role of the code manager:** requirement on code managers to act as a critical friend and, to the extent possible, support less well-resourced parties and provide secretariat support to the Stakeholder Advisory Forum (SAF).
- **Code manager assessment of modification proposals:** requirement for code managers to prepare a report setting out its assessment of a modification against the relevant code objectives and the reasons for its recommendation. They must also have regard to views of the SAF.
- **Significant Code Review (SCR) process:** standard licence conditions to reflect the SCR process, ability for the Authority to direct the code manager to support them during the SCR phase, and to make publishing SCR conclusions more flexible.
- **Send back provisions:** update the existing send back provisions and add these to the code manager licence.
- **Self-governance process:** licence requirement to retain the self-governance and fast track self-governance processes that exist in the codes, as well as retain existing mechanisms to appeal self-governance decisions to the Authority.
- **Cross code working:** licence requirement that the code manager should raise a modification (where it is aware that this is required) where this is necessary to give effect to a modification of another code.
- **Consumer impact assessment:** enshrine requirement to assess positive and negative consumer impacts in the code manager licence.
- **Direct code change:** requirement that modifications cannot be raised during a proposed direct modification phase, that are in scope of the direct modification, without the Authority's consent.
- **Stakeholder advisory forum:** high-level requirements on SAF constitution in the licence. Set out that a key function of the forum is in the modification process.

These are intended to reflect the new roles and responsibilities created by code reform. Any consequential changes to existing energy licence obligations required as a result of these proposals will be subject to further consultation.

<sup>72</sup> The gas and electricity industry codes were created, and are maintained, in accordance with conditions contained in relevant licences.

<sup>73</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)



## Proposals and analysis

### Role of the code manager

In existing arrangements, licence requirements provide for the role of a code administrator who must have regard to (and where relevant, be consistent with) the principles of the CACoP.<sup>74</sup> The first principle in the CACoP is that the code administrator should act as a critical friend.<sup>75</sup> Our view is that supporting stakeholders in the modification process will be a core activity of a code manager. For this reason, we propose to include this requirement in the code manager licence (see condition 27.25 and 27.26 in Annex A). We also propose to require that code managers should ensure, where practicable, that the views of less well-resourced participants who are impacted by a modification proposal are considered in the assessment of that modification (see condition 27.5 in Annex A). This will require code managers to engage with wider stakeholders to ensure their views are considered in a recommendation or decision on a code modification.

We are also proposing that code managers will be required to provide secretariat support to a SAF (see condition 27.23 in Annex A). This support should ensure that the SAF is able to operate effectively.

### Code manager assessment of modification proposals

Like existing arrangements, a modification proposal will be assessed against the relevant code objectives. We propose that code managers will be required to prepare a report setting out its assessment of a modification against the relevant code objectives and the reasons for its recommendation (see condition 27.8 in Annex A). In making its assessment we are proposing to require that code managers must have due regard to the views of the SAF. The views of SAF must also be recorded in the modification report and where there is misalignment between the view and recommendation of code manager and SAF this should be explained. This will provide transparency to stakeholders by allowing them to know the view of SAF and how this has been considered by the code manager.

### Significant Code Review process

The SCR process provides a tool for Ofgem to initiate wide ranging and holistic change and to implement reform to a code-based issue. We have considered if changes in light of the new framework introduced by code reform should be made to the SCR process. In particular, noting that code managers will be responsible for having in place and maintaining a code.

Firstly, we propose that the standard licence conditions reflect the SCR process, including that the Authority can direct code managers to raise an SCR-related code modification proposal (see condition 27.15 in Annex A). We also consider there could be benefits in code managers engaging in the SCR phase, for example to canvas and consolidate views from less well-resourced parties. For this reason, we propose that the Authority should be able to direct that the code manager provides support to the Authority during the SCR phase. Once the SCR phase ends, the code manager would carry out its role in the modification process as set out in licence and code.

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<sup>74</sup> [Approval of Code Administration Code of Practice Version 6.0 | Ofgem](#)

<sup>75</sup> “Principle description: A ‘critical friend’ is a Code Administrator who provides support to all with an interest in the Code Modification process, but paying particular attention to under-represented parties, small market participants and consumer representatives.”

Additionally, we propose to make it possible for conclusions of certain elements of an SCR to be published at different points in time (see condition 27.18 in Annex A). This is to improve efficiency and flexibility, by being able to end parts of the modification suspense period and publish interim conclusions more quickly. We note that there may be additional measures that can be taken to improve the efficiency and flexibility of the SCR process, and welcome stakeholder input on this.

### Send back provisions

We propose to include and update the existing send back provisions and add these to the code manager licence (see condition 27.9 in Annex A). This process allows the Authority to send back a modification submitted for decision at the end of the modification process because of a flaw or lack of information in the modification report. Our proposals would seek to harmonise and update this process across codes. For example, we are proposing that the Authority would be able to set a timetable for a modification to be resubmitted for decision that the code manager will need to comply with. We also propose that, should the Authority consider that the code manager has not given due regard to the view of the SAF, Ofgem could send the modification proposal back to the code manager for this to be done.

We welcome views on how the send back provisions can be designed to be flexible and efficient, in particular we welcome input on whether the decision-making process should provide Ofgem more discretion (for example, allowing Ofgem to consent to parts of modification proposals).

### Self-governance process

Code modifications can follow an Authority consent or (where a modification meets criteria, involving a materiality test) a self-governance process. We propose to retain the self-governance and fast track self-governance processes that exist in the codes, with high-level requirements for this in the code manager licence (see condition 27.5 in Annex A). This will facilitate efficient decision making. We will update these processes to reflect new roles and responsibilities and, to ensure appropriate accountability, we propose to retain existing mechanisms to appeal self-governance decisions to the Authority and for objections to be raised to fast track self-governance modifications.

### Cross-code working

In chapter 1.4, 'Code manager objectives', we have proposed objectives that code managers will be required to facilitate to achieve in the course of carrying out their functions. These include carrying out the Code Manager Business to facilitate cross-code coordination and collaboration between Code Managers, Central System Delivery Bodies, SAFs and other code bodies. Ofgem's second implementation consultation includes proposals to facilitate cross-code working in the modification process. To help support these proposed cross-code working arrangements, we are consulting on a licence requirement that the code manager should raise a modification (where it is aware that this is required) where this is necessary to give effect to a modification of another code, or alternatively, progress a modification raised by another interested party on this matter in a timely manner (see condition 27.28 in Annex A).

## Consumer impact assessment

In existing arrangements, an assessment of the positive and negative impacts of a modification proposal on consumers should be completed by the code administrator.<sup>76</sup> We propose to enshrine this requirement in the code manager licence to ensure the consumer impact of code modifications is being assessed, alongside the relevant code objectives (see condition 27.8 in Annex A).

## Direct code change

The direct code change power can be used by the Authority in clearly defined circumstances and subject to appropriate checks.<sup>77</sup> Should the Authority decide to use its direct code change power, there is a risk to the efficiency of the process if code modification proposals are raised that are similar in scope to any direct code change being taken forward by the Authority. For this reason, we propose that, like the SCR process, the licence will set out that modifications cannot be raised that are in scope of a direct code change without the Authority's consent (see condition 27.17 in Annex A). Equally, modifications that are already inflight should be paused unless the Authority consents otherwise.

Like the SCR process, we also see a role for the code manager in supporting the Authority in the direct code change process, for example running workgroups and canvassing stakeholder views. For this reason, we propose that the Authority should be able to direct that the code manager supports the Authority in the direct code change process (see condition 27.15 and 27.16 in Annex A).

## Stakeholder Advisory Forum (SAF)

Following the publication of Ofgem's decision on its consultation on implementing code reform, we propose to set out the requirements regarding the high-level constitution of the SAF in the licence, reflecting existing arrangements in respect of panels (see condition 27.23 in Annex A).<sup>78</sup> This includes accommodating up to two consumer advocates on the forum, having an independent member acting as chair, and broader requirements to align with proposals in Ofgem's second implementation consultation.

We also propose that the key function of SAFs will be in the modification process, and to draw out this role in the code manager licence. However, we do not intend that this should limit other roles for SAFs, and included in Ofgem's second implementation consultation are proposals for additional SAF functions. We also consider that requiring the code to include quoracy arrangements for SAFs will provide assurance to stakeholders that the view provided by SAFs to the code manager on a proposed modification has appropriate weight.

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<sup>76</sup> Principle 15: Code Administrators shall endeavour to provide an assessment of the impacts of a Modification on the end consumer and on the drive for net zero.

<sup>77</sup> There are five grounds, four enduring and one transitional, in legislation when Ofgem could use this power, in circumstances where the normal process would not be appropriate: urgent changes that existing urgency provisions would struggle to address; changes where the code manager has, or may have, an adverse conflict of interest; changes that are required to deliver the strategic direction for codes and that are particularly complex, such as where they cut across multiple codes; and code consolidation

<sup>78</sup> [Implementation of energy code reform: decision | Ofgem](#): this includes that Ofgem intends to require that SAFs are constituted with a fixed impartial membership including independent parties and a pool of additional members.

## Consultation questions

**Q25:** To what extent do you agree with the proposals set out above on code maintenance and modification, including the proposals to update existing licence obligations and for new arrangements?

**Q26:** To what extent do you agree that the licence drafting in condition 27 of Annex A capture the intent of our proposed policy on Code maintenance and modification? Do you have any other views or comments on the licence drafting?

## 2. Code Modification Appeals to the Competition and Markets Authority (CMA)

### 2.1: Introduction and Overview of Code Modification Appeals

The ability to appeal an Ofgem decision about a code modification to the Competition and Markets Authority (CMA) helps to ensure that fair outcomes are achieved and that there is accountability in decision making. To reflect the new roles and responsibilities introduced by our reforms, and to standardise the approach, Ofgem are consulting on proposals with a view to updating the process to modify a code; detailed proposals can be found in Ofgem's second implementation consultation.<sup>79</sup> The code modification process aims to ensure the code remains agile and fit for purpose in the future. In parallel, the Department is reviewing the appeals process for parties seeking to challenge an Ofgem decision on a code modification, to ensure it is compatible with the new roles and responsibilities in the revised modification process.

#### **The Current Code Modification Process**

The code modification process exists to enable changes to a code to be made through open governance to better facilitate the relevant code objectives.

The parameters for the current code modification processes are set out in relevant licence conditions, with the detailed arrangements provided in relevant codes. The processes are broadly consistent with the Code Administration Code of Practice (CACoP)<sup>80</sup> which includes a high-level standard modification process. However, each code also contains its own detailed modification process and while there are similarities across the codes, there remains significant deviation in the detail and execution of the rules.

The current code modification process allows any eligible party to raise a modification at any time by submitting a proposal, including an assessment of why the modification would better facilitate the code objectives. Each code currently has a code panel (or equivalent voting mechanism) which oversees the development and assessment of proposed code modifications. To support this assessment, the Panel consult on the proposal and often establish a workgroup to collect more analysis. The code panel then recommend to Ofgem that a modification is either implemented or rejected, based on whether they consider it would better achieve the code objectives compared to the current provisions. Ofgem may decide to approve or reject the modification or also send it back in certain circumstances e.g. for more analysis.

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<sup>79</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)

<sup>80</sup> The CACoP was developed by code administrators and users as a result of Ofgem's code governance review. It aims to make the code modification process more transparent and help protect the interests of small market participants: [About Us: The CACoP | CACoP](#)

## Current Processes to Challenge Decisions: Appeals and Judicial Review

There are two routes to challenge Ofgem's decisions about code modifications. For some codes, this can only be done by raising a Judicial Review (JR) and for other codes, this can be done by appealing to the CMA (or where appeal is excluded by raising a JR). The code modification appeals process gives eligible parties who feel adversely impacted by a code modification decision the opportunity to challenge Ofgem decisions, on a wider basis than a JR, for review by the CMA.

The process of appealing to the CMA and raising a case for JR are not equivalent procedures. Whereas the CMA adjudicate on the merits of the decision in relation to the proposed modification and the code objectives, the courts examine the legality of the process followed to reach the decision.

After reviewing the modification decision, the CMA can overturn Ofgem's decision or pass it back to Ofgem for re-determination, if they consider the decision was wrong on one or more grounds. This process exists to ensure fairness and accountability within the system.

The ability to appeal an Ofgem decision to the CMA currently depends on whether Ofgem's decision follows the majority view of the code panel (or equivalent voting mechanism). If Ofgem disagree with the recommendation of the code panel, the decision can be appealed by eligible persons, with some exceptions set out in more detail further below.

## Proposals for the CMA Appeals Process

We are reviewing the appeals process due to the changes being made to the code governance framework, to ensure it remains fit for purpose. Revised roles and responsibilities in the code governance processes, including the disbanding of code panels and the creation of the licensed code manager role, mean changes are also required to the appeals process and the existing code modification appeals legislation<sup>81</sup> which refers to code panels and other committee processes, will need updating.

This chapter sets out our proposals for four key parts of the appeals process:

1. Codes in scope of the appeals process
2. Eligibility to appeal
3. Appeals triggers and exclusion criteria
4. Alternative modifications

Our aim is to ensure that the appeals process remains fit for purpose by providing appropriate routes for industry to challenge Ofgem decisions about code modifications and that legislation is updated to reflect the revised process subject to consultation feedback.

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<sup>81</sup> See s. 173 of the Energy Act 2004: [Energy Act 2004 | legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2004/31/section/173)

## Previous consultations

In previous consultations on energy code reform, the Department and Ofgem have committed to:

- Maintaining and updating the appeals process and legislation to ensure that it remains compatible with any new code modification arrangements.
- Creating an appeals framework that allows effective opportunities for different interests and views to be represented, whilst being as accessible, simple, rational, flexible, and independent as possible.
- Retaining the CMA as the body that will hear appeals of Ofgem's decisions on code modifications. Giving the code manager the responsibility to make recommendations to Ofgem on whether to approve proposed code modifications.
- Including Ofgem's direct code change decisions<sup>82</sup> within the scope of the appeals process.
- Aligning the timescales for this appeals process with the four-month timeframe that is currently in place for CMA appeals on Ofgem's licence modification decisions. The CMA also have the option to extend this timeline by one month if needed to allow flexibility for complex cases. This has now been implemented in primary legislation.

## Relevant Rules / Regulations

The Electricity and Gas Appeals (Designation and Exclusion) Order<sup>83</sup> sets out which codes are in scope of the code modification appeals process and which types of Ofgem decisions are excluded from the right of statutory appeal to the CMA. This Order has not been updated since 2014 and therefore does not reflect the consolidation of the Supply Point Administration Agreement (SPAA) and the Master Registration Agreement (MRA) into the Retail Energy Code (REC).<sup>84</sup> Ahead of proposing changes to legislation, we have considered the aspects of the current legislation that would become incompatible or obsolete as a result of code governance reform.

Subject to the stakeholder feedback received on the proposals outlined in this consultation, the Department plan to introduce a Statutory Instrument. We will issue an updated Order under the power given in the Energy Act 2004 (S173),<sup>85</sup> which will enshrine updates to the CMA appeals process in law.

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<sup>82</sup> See s. 192 of the Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2023/5/section/192)

<sup>83</sup> [Electricity and Gas Appeals \(Designation and Exclusion\) Order 2014/1293 | legislation.gov.uk](https://www.legislation.gov.uk/uksi/2014/1293)

<sup>84</sup> [Retail Energy Code](https://www.legislation.gov.uk/uksi/2023/1293)

<sup>85</sup> [Energy Act 2004, Cross Heading: Appeals from GEMA decisions | legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2004/31/section/173)



## 2.2 Codes in scope of the appeals process

Currently, the Competition and Markets Authority (CMA) do not hear appeals about all codes, as not all codes are designated as in scope of the CMA appeal process in the Electricity and Gas Appeals (Designation and Exclusion) Order 2014 (Article 3),<sup>86</sup>. In this section, we have considered whether the existing list of codes in scope of appeal as per the Order should be amended going forwards.

Some energy codes deal primarily with technical matters, some with commercial matters, and others deal with a mix of the two. For the purposes of simplicity, the terms ‘commercial’ and ‘technical’ are used as shorthand in this document, however we acknowledge that this categorisation generalises and is not straightforward. ‘Commercial’ energy codes are generally concerned with the rules and interactions between buyers and sellers in commercial markets. ‘Technical’ energy codes are generally more concerned with technical matters e.g. the technical specifications for connecting to the grid, therefore the CMA’s authority to adjudicate on them is a step removed.

The codes that fall into each group are outlined in the table below.

Codes under the current Designation and Exclusions Order 2014 <sup>87</sup>		
In Scope / Out of Scope of CMA appeal	Commercial Codes	Technical Codes
In-Scope of appeal (under the current Order)	<ul style="list-style-type: none"> <li>Balancing and Settlement Code (BSC)<sup>88</sup></li> <li>Connection and Use of System Code (CUSC)<sup>89</sup></li> <li>Network Code<sup>90</sup></li> <li>Uniform Network Code (UNC)<sup>91</sup></li> <li>IGT Uniform Network Code (IGT-UNC)<sup>92</sup></li> <li>Supply Point Administration Agreement (SPAA) (now part of the Retail Energy Code)</li> <li>Master Registration Agreement (MRA) (now part of the Retail Energy Code)</li> <li>Distribution Connection and Use of System Agreement (DCUSA)<sup>93</sup></li> <li>Smart Energy Code (SEC).<sup>94</sup></li> </ul>	

<sup>86</sup> [Electricity and Gas Appeals \(Designation and Exclusion\) Order 2014 \(Order 1293\), Article 3 | legislation.gov.uk](#)

<sup>87</sup> [Electricity and Gas Appeals \(Designation and Exclusion\) Order 2014 \(Order 1293\), legislation.gov.uk](#)

<sup>88</sup> [Balancing and Settlement Code | Elexon](#)

<sup>89</sup> [Connection and Use of System Code | National Energy System Operator \(NESO\)](#)

<sup>90</sup> [Joint Office of Gas Transporters](#)

<sup>91</sup> [Joint Office of Gas Transporters](#)

<sup>92</sup> [Independent Gas Transporters' \(IGT\) Uniform Network Code \(UNC\)](#)

<sup>93</sup> [Distribution Connection and Use of System Agreement \(DCUSA\)](#)

<sup>94</sup> [Smart Energy Code \(SEC\)](#)



Out of Scope of appeal (under the current Order)	Retail Energy Code (REC) <sup>95</sup>	<ul style="list-style-type: none"> <li>• Grid Code (GC)<sup>96</sup></li> <li>• Distribution Code (DC)<sup>97</sup></li> <li>• System Operator-Transmission Owner Code (STC)<sup>98</sup></li> <li>• SQSS<sup>99</sup></li> </ul>
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## Code Consolidation

When considering which codes should be in scope of appeals to the CMA under the new framework, we have considered the current nature of commercial and technical codes and their potential future nature following code consolidation. In Ofgem's recent decision on code consolidation,<sup>100</sup> Ofgem confirmed that they intend to proceed with the consolidation of eight codes as part of energy code reform:

- The Grid Code, Distribution Code, System Operator Transmission Owner Code and the Security and Quality of Supply Standard into the new electricity technical code.
- The Connection and Use of System Code and Distribution Use of System Agreement into the new electricity commercial code.
- The Uniform Network Code and Independent Gas Transporter UNC into the gas network code.

Under both options set out below, we are proposing that code consolidation should not change the scope of appeal, and that once designated, that code, in whatever form it takes in the future, will retain its appealable status in the current code form (e.g. a current commercial code will remain designated and appealable to the CMA).

## Direct Code Modifications

The Energy Act 2023 (S192)<sup>101</sup> provides Ofgem with powers to make direct code changes under specific circumstances: (including urgency, conflict of interest, nature of the modification, code consolidation, and consequential change).

Note that all direct code modifications (where Ofgem directly modifies a code which has been designated<sup>102</sup>) are subject to CMA appeal under this legislation. This includes modifications to

<sup>95</sup> [Retail Energy Code | RECCo](#)

<sup>96</sup> [Grid Code \(GC\) | National Energy System Operator \(NESO\)](#)

<sup>97</sup> [Distribution Code of Licensed Distribution Network Operators of Great Britain \(DCODE\)](#)

<sup>98</sup> [System Operator Transmission Owner Code \(STC\) | National Energy System Operator \(NESO\)](#)

<sup>99</sup> NESO: [Security and Quality of Supply Standard \(SQSS\)](#)

<sup>100</sup> [Implementation of energy code reform: decision | Ofgem](#)

<sup>101</sup> See s. 192, Energy Act 2023: [Energy Act 2023 | legislation.gov.uk](#)

<sup>102</sup> Schedule 14, part 10<sup>102</sup> of the Energy Act 2023 amended the Energy Act 2004 (S173),<sup>102</sup> which relates to appeals to the CMA, to bring 'designated documents' into scope. This ensures that the appeal process applies

technical codes. Therefore, if Ofgem decide to directly change a technical code, these decisions will be open to appeal to the CMA.

This legislation provides a wider right of appeal to the CMA than in normal circumstances when codes follow the proposed new modification process. This was considered justifiable because of the potential for direct code modifications to follow a more restrictive process than normal modifications. However, if this proves to be overly burdensome for the CMA, we would consider further legislative change. We will monitor appeal/JR activity following the transition to code management to assess whether we need to consider changes to primary legislation.

We plan to work closely with the CMA on future arrangements for assessing the merits of Ofgem's technical code modification decisions that the CMA could encounter via direct code changes and the expertise needed to make these assessments.

## Proposals and analysis

When considering options, we have considered what has changed since the previous codes were designated as in scope of appeals in 2014 and whether this creates a strong argument for changing which codes are in scope going forwards. We have also considered the success and constraints of the current process and existing routes to challenge decisions (inclusive of the appeals process and the JR process). Our aim is for the appeals process to be efficient and to achieve a fair outcome for stakeholders.

### Option 1 (preferred option): Maintain the existing (or equivalent) commercial codes in scope of the appeals process.

In this option, our proposals include:

- Maintaining the current list of commercial codes in scope of the CMA appeals process.
- Updating the Designation and Exclusion Order 2014 in light of the Master Registration Agreement (MRA) and Supply Point Administration Agreement (SPAA) being consolidated into the REC. The REC would be listed in legislation in line with other commercial codes.
- Maintaining the current list of technical codes out of scope of the CMA appeals process (except for when Direct Code Modifications are made, as outlined above). JR will exist as a route of challenge for all decisions about these codes as it does for all decisions made by a public body.

This is our preferred option. We believe that maintaining the status quo and bringing the REC into scope remains fit for purpose and strikes a good balance between the timely and efficient delivery of code changes and accountability of decision making, ensuring a fair outcome for stakeholders.

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when Ofgem directly modifies a code using the new power. A 'designated document' for the purpose of the 2023 Act requires a separate designation process to that under the 2004 Act. Therefore, although the appeals process will apply when Ofgem directly modifies a code, it's only in relation to those codes that have been designated as per the 2023 Act.

The CMA is an independent non-ministerial UK government department and is the UK's principal competition and consumer protection authority. The CMA helps people, businesses, and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA has expertise in economics, finance, law and delivery, but does not have expertise in other technical matters. As commercial codes deal with interactions between competitors, such as the rules and interactions between buyers and sellers in commercial markets, the CMA has relevant experience and knowledge of these matters. We therefore consider that the CMA remains the appropriate body to adjudicate on these appeal decisions.

While the CMA will have a small role to play in adjudicating all commercial and technical codes amended via Ofgem's direct code change powers, we consider they do not have significant technical expertise or resource to adjudicate regularly on a high volume of decisions relating to technical codes. Technical codes were not previously designated as being eligible for appeal to the CMA given the limited commercial impact of most modifications, and the limited industry support for their designation at the time. Commercial codes were previously designated as being in scope for appeal to the CMA due to the different nature of these codes and them being more compatible with the skill set and remit of the CMA.

The nature of technical and commercial codes has not materially changed since their conception, or since the 2014 Order. There are no plans to change the commercial and/or technical provisions in codes as part of the wider code governance framework of reforms, including post consolidation. Therefore, in general (noting direct code changes are an exemption), we feel that the previous rationale for not designating technical codes in scope of appeals to the CMA still stands.

Decisions relating to technical codes will still be able to be challenged via JR, providing accountability by ensuring that these decisions have been made lawfully and fairly, promoting good administrative practice and encouraging Ofgem to make well-reasoned, clear and comprehensive decisions.

The REC is not referred to as a designated document in the existing Order 2014 because it is a new code which has succeeded the former SPAA and MRA. These predecessors of the REC are currently listed as in scope of appeals in legislation, therefore the addition of the REC as their successor mirrors the original intent of the Order. The REC also includes provisions out with the MRA and SPAA: i.e. Smart Meter Installation Code of Practice (SMICoP) and Green Deal Arrangements Agreement (GDAA). Although the CMA has never made a decision about a modification relating to the REC, it has made decisions about previous iterations of this code (the MRA and SPAA) which were designated in the current order. The REC is a commercial code; therefore, it is materially different from a technical code and fits better within the CMA's competence.

As set out above, we propose that code consolidation should not change the scope of appeal, and that once designated, that code, in whatever form it takes in the future, will retain its appealable status in the current code form. The table below shows what codes will look like

post code consolidation and our proposals as to whether they will be in or out of scope of the appeals process under this option.

Codes Post-Consolidation		
In scope/ out of scope	Commercial Codes	Technical Codes
In-Scope of appeal (post code consolidation)	<ul style="list-style-type: none"> <li>• BSC</li> <li>• Electricity commercial code (consolidated from the CUSC and DCUSA)</li> <li>• Gas network code (consolidated from the UNC and IGT UNC)</li> <li>• SEC</li> <li>• REC</li> </ul>	
Out of Scope of appeal (post consolidation)		<ul style="list-style-type: none"> <li>• Electricity technical code (consolidated from the GC, DC, STC and SQSS)</li> </ul>

As option 1 generally maintains the status quo, we deem this proposal will have a low impact on industry but will result in clarity, specifically through the inclusion of the REC.

**Option 2: Extend the list of codes which are in scope of appeals to the CMA to include all codes, inclusive of technical codes.**

Alternatively, we could extend the list of codes which are in scope of appeals to the CMA to include all codes. This option could result in more consistency, as all codes would be treated the same, and accountability, as a CMA merits review considers the details of a proposed modification before adjudicating (whereas in a Judicial Review process the courts judge on whether the decision has been unlawful or irrational without regard to the specific modification).

If this option were taken forward, the inclusion of all codes being open to appeal would be a significant change from existing policy. A simultaneous increase in the volume and type of appeal would likely place undue burden on the CMA which would require additional expertise and resources to manage. While this burden could be reduced to some extent, by working with the CMA to plan resourcing, challenges would remain. We anticipate that costs incurred by the CMA could include direct costs through upskilling or the acquisition of technical expertise, plus less tangible costs such as reallocation of staff amidst headcount restrictions and appeal costs initially being absorbed into BAU budgets.

Therefore option 2 is not our preference as we believe that including all codes within scope of appeals to the CMA would add little extra benefit to industry due to the different nature of these codes and also create challenges for the CMA. Industry will still have routes to challenge decisions about all codes which in turn benefits consumers.

We welcome stakeholder feedback on our proposal to maintain the status quo and keep commercial codes in scope of the appeals process, bring the REC into scope so that it aligns with other commercial codes and keep technical codes out of scope of this process, other than when direct code modifications are made to them.

### **Consultation questions:**

**Q27:** To what extent do you agree that legislation should be updated, bringing the REC into scope to reflect its creation as the successor of the MRA and SPAA?

**Q28:** To what extent do you agree with our preference for Option 1: to maintain the status quo by preserving the CMA appeal route for 'commercial' codes and keeping 'technical' codes out of scope?

## 2.3 Eligibility to appeal

Eligibility to appeal is currently limited to those whose interests are materially affected by a code modification decision, or organisations which represent them (for example consumer groups or trade associations). It enables affected persons to directly challenge decisions.

The Energy Act 2004<sup>103</sup> sets out who can appeal Ofgem's decision on a code modification. This includes:

- A person whose interests are materially affected by it.
- A body or association representing persons whose interests are affected.
- The CMA can refuse permission for an appeal where the appeal is brought for reasons that are trivial or vexatious; or the appeal has no reasonable prospect of success

We have considered whether there were any grounds for altering eligibility to appeal by considering the following questions:

- 1) Are there new persons that should have appeal rights but don't; or
- 2) Are there existing persons with appeal rights that shouldn't have them.

### Summary of Proposal

We have concluded that there is no requirement to alter eligibility criteria and so do not propose any change. All proposals as part of code governance reform relate to governance, processes or code categorisation rather than making any changes to the classes of party to a code or the scope of any code. We consider the existing test to be appropriate and sufficiently flexible to capture the new bodies that could become involved or affected by code modification decisions. We welcome stakeholder views on this.

### Consultation question

**Q29:** To what extent do you agree with our position that the current eligibility criteria for who can bring an appeal to the CMA should remain unchanged?

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<sup>103</sup> [Section 173, Energy Act 2004 | legislation.gov.uk](#)

## 2.4 Appeals Triggers/Exclusion Criteria

### Scope

Exclusion criteria determine which code modification decisions are excluded from the scope of being appealable to the CMA (note that JR will still be available as a route to challenge decisions). Introducing limits to the appeals process via exclusion criteria represents a balanced process in which appellants have the right to appeal a decision when there is a defined misalignment of views, however it prevents every decision from being subject to appeal.

Currently, the Electricity and Gas Appeals (Designation and Exclusion) Order 2014 (Article 4)<sup>104</sup> stipulates that the right of appeal for designated codes can be excluded in two scenarios:

1. If Ofgem agree with the majority recommendation of the code's governing panel (under BSC, CUSC, UNC, IGT-UNC), or the recommendation of a 'relevant body' or Panel 'decision' (under SEC), or the 'deemed recommendation' of voting parties (under DCUSA).
2. If Ofgem determines that the delay caused by the appeal process is likely to have a material adverse effect on the availability of electricity or gas for consumers in Great Britain.

We consider it sensible and appropriate to retain exclusion criteria to, as a minimum, safeguard the security of energy supply in Great Britain. Therefore, we do not intend to update the second exclusion criterion. We intend to retain the first exclusion criterion and update it, as code panels will cease to exist. Subject to feedback and consultation, we propose that the updated exclusion criteria will be embedded in a new statutory instrument.

In existing arrangements, the code modification process aims to achieve consensus between code parties and the code modification appeal process is triggered when there is disagreement between Ofgem and code panels (or an equivalent voting mechanism) and therefore a lack of consensus.

We consider that a difference of opinion between Ofgem and another informed body remains a clear and appropriate basis of triggering an appeal, indicating a lack of consensus and the need for a broader merits review by the CMA. We consider that an informed body would have access to the same level of information on proposed modifications as Ofgem and possess or have access to relevant expertise to assess the merits of each proposal in detail. Therefore, we do not intend to change this fundamental part of the appeals trigger but are seeking to confirm whose views should replace the code panel to be compared with Ofgem's to form the basis of the appeal trigger.

<sup>104</sup> [Electricity and Gas Appeals \(Designation and Exclusion\) Order 2014 \(Order 1293\), Article 4b | legislation.gov.uk](https://www.legislation.gov.uk)

We note our earlier decision<sup>105</sup> that the code manager will provide a recommendation to Ofgem on a modification as part of the modification process. That decision does not of itself address the question of whose views should be compared with Ofgem's as a criterion for appeal exclusion. In addition to the code manager, there are other persons involved in the code modification process, such as the SAF who, being well informed on the modification and holding the relevant expertise, could also be a candidate to provide a view on a modification to be compared with Ofgem's.

### The Code Manager and the Stakeholder Advisory Forum

Ofgem previously set out<sup>106</sup> that a key mechanism toward ensuring that stakeholder views are heard and accounted for within code manager recommendations will be the introduction of a SAF for each code. In the new code governance framework, Ofgem, the code manager and the SAF will interact regularly. Ofgem's recent consultation<sup>107</sup> includes further proposals in relation to the SAF including them having a fixed, impartial membership of stakeholders and parties acting impartially, plus a pool of additional members. Fixed membership will enable institutional memory and expertise.

The SAF will be a critical feature of the decision-making process when a modification is raised by bringing their expertise and knowledge to the development of modification as it moves through the process. They will also provide advice to the code manager on how modifications should be progressed, help identify impacted stakeholders and provide their assessment on whether the code modification should be implemented.

In the options analysis below, we propose that code managers be required in licence conditions to consult with SAFs ahead of making certain decisions, and to demonstrate how they have given due regard to SAF views, including any minority views. Our proposed standard licence conditions provide more detail about the SAF constitution and procedures. Proposals relating to the SAF, code manager and licence conditions are subject to consultation and decision.

## Proposals and analysis

Our analysis below relates to the first exclusion criterion 'the right of appeal can be excluded when Ofgem agree with the majority recommendation of the code panel (or equivalent voting mechanism).' The options analysis below compares two viable options: the views of the code manager or the SAF being the basis of the appeals trigger.

### Option 1 (preferred): The Code Manager's view forms the basis of the appeals trigger

The view of the code manager forming the basis of the appeals trigger and their agreement or disagreement with Ofgem would indicate a clear consensus or lack of consensus about the code modification proposals.

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<sup>105</sup> [Consultation outcome: Energy code reform: governance framework | GOV.UK](#)

<sup>106</sup> [Decision: Implementation of energy code reform | Ofgem](#)

<sup>107</sup> [Energy Code Reform: Second Implementation Consultation | Ofgem](#)



The importance of the independent code manager role cannot be overstated; its independence from industry minimises the risk of the code manager having a vested interest in the code modification process and its independence from Ofgem will ensure that, the appeal exclusion criterion is based on two bodies having separately and independently reached the same view about a modification (in the case of the code manager, having taken account of the views of stakeholders).

We have taken on board previously raised concerns about the independence of decision making if the code manager views formed the basis of the appeals trigger. We have developed the following requirements to be included in standard licence conditions to support independent decision making:

- The establishment of the SAF (as described above), with a core function of advising the code manager on proposed code modifications.
- A requirement for the code manager to obtain, and have due regard to, the views of SAF (as to whether a proposed modification facilitates the relevant code objectives) when assessing modifications.
- That the code manager's modification report should set out the views and reasoning of the SAF on the modification, how the code manager has taken account of those views in forming its own recommendation, and where the views are different, an explanation of the difference.
- That (instead of deciding on the proposed modification) Ofgem may send a modification report back to the code manager where Ofgem is not satisfied that a report evidences the due regard by the code manager to the SAF's views.
- That the SAF and the code manager must make their assessments of a proposed modification without regard to whether or not it flows from an SDS.

This is our preferred option. The code manager will provide a recommendation to Ofgem on a modification as part of a modification process. Therefore, it is the natural replacement for the code panel in the appeals trigger which is currently based on disagreement with a recommendation. This option also aligns with the goals of CGR<sup>108</sup> by empowering the code manager.

The code manager role is unique, occupying space between both stakeholders and Ofgem therefore they will be able to consider many competing factors when presenting a view that the SAF may not. Where there are different impacts to consider, the SAF will not have the same tools, a framework or the power to balance the competing impacts and considerations that the code manager will.

### Option 2: The views of the SAF form the basis of the appeals trigger

The SAF view is likely to represent code parties, industry and other stakeholders (such as consumer groups) well, and so disagreement between the SAF and Ofgem would indicate a clear lack of consensus about a code modification proposal and the impact of a decision on

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<sup>108</sup> [Energy Code Reform | Ofgem](#)

stakeholders. Each SAF will be key to ensuring that stakeholder views are heard, however the SAF will not be empowered in the same way that the code manager will be.

We consider that the SAF views being the basis of the appeal trigger would undermine one of the core policies of CGR, which is to have an empowered code manager, therefore we consider the SAF option to be less desirable than the code manager option.

We welcome stakeholder views on our proposal of taking forward Option 1, that appeals are excluded when Ofgem agree with the code manager's recommendation.

## **Consultation questions**

**Q30:** To what extent do you agree with our preferred option that appeals should be triggered when Ofgem disagree with the code manager's recommendation?

**Q31:** To what extent do you agree that, subject to feedback and consultation, these exclusion criteria should be embedded in a new statutory instrument?

## 2.5 Alternative code modifications

When proposing modifications to industry codes, alternative solutions can be raised and are developed in parallel with the original proposal, with a final decision made after industry consultation and voting.

Each code currently sets out who can raise a modification (the ‘Proposer’). This modification is the original modification. The codes also allow for alternative modifications to the Proposer’s solution (the ‘original’) to be raised that would address the same issue identified by the Proposer. The following currently varies between codes:

- Who can raise alternatives (e.g. code party or workgroup).
- The criteria for considering and including an alternative code modification.

In making a recommendation to Ofgem, the code panel (or equivalent voting mechanism) assess whether the original and any alternative solution better facilitates the code objectives. Depending on the code, when alternatives are raised the panel can make a range of recommendations to Ofgem:

- A single code modification recommendation that better facilitates the code objectives
- Multiple code modification recommendations that better facilitate the code objectives but do not identify a single preference
- Multiple code modification recommendations that better facilitate the code objectives but identify a preference

The Designation and Exclusion Order<sup>109</sup> is not prescriptive about whether an appeal route is available in circumstances where there are multiple recommendations and Ofgem does not approve any of them. We are looking to address this ambiguity as part of this reform and clearly establish the rights of appeal that should apply in the case of multiple alternative solutions being proposed to the same identified issue.

### Proposals and analysis

In the options analysis below, we have considered the need to strike the right balance between achieving fairness and accountability through the appeals process, the pace of change (not drastically increasing the volume of appeals which could increase the resource needs on Ofgem), and enabling flexibility in decision making. Getting this balance wrong could potentially result in a negative impact on consumers.

In the revised process, the code manager will adopt the responsibility previously held by the code panel. In each of the options outlined below, all proposed modifications (original and alternatives) will be provided so Ofgem can choose the solution that it considers best delivers against the code objectives with full transparency when making a final decision. How a code manager must present its recommendation to Ofgem when alternative modifications exist will be specified in SLCs (Annex A, Section 27). The code manager must also provide a full

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<sup>109</sup> [The Electricity and Gas Appeals \(Designation and Exclusion Order\) \(Order 1293\) | legislation.gov.uk](#)

analysis with their recommendation in line with the SLCs and share industry and stakeholder advisory forum views with Ofgem.

### Option 1: The Code Manager recommends one preferred modification for approval

In this option, when sending all modification options (original and alternatives) to Ofgem, the code manager must identify **one preferred modification** which best facilitates the code objectives. The code manager would recommend that Ofgem approve the code manager's preferred option, rejecting the rest. The code manager could also recommend rejection of all proposed modification options (i.e. where none better facilitate the code objectives than the status quo).

#### What this would mean for appeals to the CMA

- a. Appeal would be possible if Ofgem approve any modification for which the code manager recommended rejection.
- b. Appeal would be possible if, where the code manager recommends approval of one modification, Ofgem did not approve it.
- c. Appeal would not be possible if Ofgem agree with the code manager and approve the one modification that the code manager recommends. In this circumstance, the route to challenge the decision would be by way of JR rather than CMA appeal.

### Option 2: The Code Manager recommends multiple suitable modifications for approval

In this option, when sending all modification options (original and alternatives) to Ofgem, the code manager would recommend that Ofgem approve **any one of the modification options** that the code manager considers better facilitates the code objectives than the status quo, rejecting the rest. This option allows the code manager to recommend multiple alternatives even if it considers one is materially better than the other modifications in facilitating the code objectives. The code manager could also recommend rejection of all proposed modification options (in a circumstance where none better facilitate the code objectives).

#### What this would mean for appeals to the CMA

- a. Appeal would be possible if Ofgem approve any modification for which the Code Manager recommended rejection.
- b. Appeal would be possible if, where the code manager recommended more than one modification for approval, Ofgem rejected them all. In this event, the CMA have broad powers to decide how the appeal is heard (i.e. separately, resulting in up to 4 separate appeals or collectively as one proposal).
- c. Appeal would not be possible if Ofgem agree with the code manager and approve any of the modifications that the code manager recommends. In this circumstance, the route to challenge the decision would be by way of Judicial Review rather than CMA appeal.

**Option 3 (preferred option):** The Code Manager has discretion to recommend more than one modification for approval, but only where they are considered equally better than others in facilitating code objectives

In this option, when sending all modification options (original and alternatives) to Ofgem, where the code manager believes that one (or more) modifications better facilitate the code objectives and are materially better than the other modifications, the code manager would:

- Recommend that Ofgem approve that **single modification** in line with option 1 (where it was only one that was materially better) or;
- Recommend that Ofgem approve any **one of the materially better modifications** (where there are e.g. 2 or 3 modifications which are equally good and better than the others), in line with option 2.

To summarise, possible courses of action that the code manager could take under this option include<sup>110</sup>:

1. Recommend that **none** of the proposals are made where the code manager does not consider that any of the proposals better facilitate achievement of the relevant code objectives when compared to the existing provisions of the code.
2. Recommend that a **single** proposal is made where the code manager considers that proposal, as compared to all other alternatives, better facilitates achievement of the relevant code objectives, and when compared to the existing provisions of the code.
3. Recommend **multiple** proposals where the code manager has multiple preferences and considers that more than one of the proposed modifications could be materially better at facilitating achievement of the relevant code objectives than the other proposals and when compared to the existing provisions of the code<sup>111</sup>.

#### What this would mean for appeals to the CMA

- a) Appeal would be possible if Ofgem approved any modification for which the code manager recommended rejection.
- b) Appeal would be possible if, where the code manager recommended approval of one modification, Ofgem did not approve it.
- c) Appeal would be possible if, where the code manager recommended more than one modification for approval, Ofgem rejected all of them. In this event, the CMA have broad powers to decide how the appeal is heard (i.e. separately, resulting in up to multiple separate appeals or collectively as one proposal).
- d) Appeal would not be possible if Ofgem agree with the code manager and approve one of the modifications that the code manager recommends. In this circumstance, the route to challenge the decision would be by way of Judicial Review rather than CMA appeal.

This is our preferred option because it provides the most flexibility for both the code manager and Ofgem when making a recommendation and coming to a decision. It also empowers the

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<sup>110</sup> In response to the recommending action that the code manager makes under any of the options, Ofgem has the power to send back reports if they are not satisfied in accordance with any of the conditions set out in the condition 27.9 in Annex A (Details of Ofgem's send back provisions can be found in Chapter 1, Section 1.13).

<sup>111</sup> In the case of option 3, Ofgem may send the report back to the code manager where it is not satisfied with the code manager's analysis of the ranking.

code manager by enabling them to make the decision about how many modifications to recommend for approval.

We consider that option 1, requiring the code manager to choose one preferred modification to recommend, could force the code manager to identify a preferred modification where it may genuinely believe that two or more modifications are equally beneficial in better facilitating achievement of the relevant code objectives when compared to the existing provisions of the code.

We consider that option 2, which allows the code manager to provide multiple recommendations provides a good level of flexibility. However, we consider option 3 to be slightly preferable as it would require the code manager to state one or more preferences. Stating one or more preferences for proposed modifications that the code manager believes would better facilitate the code objectives than the status quo and the reasons why each proposal is preferable would ensure the code manager's expert and independent view is fully reflected in its recommendation. This should encourage the code manager to carry out full and detailed analysis of all modifications, ensuring Ofgem is equipped with the analysis and evidence it needs to make the best possible decision.

We welcome stakeholder feedback on our proposal to take forward option 3.

### **Consultation question:**

**Q32:** To what extent do you agree with our proposal to take forward option 3 which gives the code manager the discretion to recommend more than one modification for approval.

### 3. Consultation Questions

The full set of consultation questions in this document are below.

**Q1:** To what extent do you agree with the draft end-to-end code manager licence? For example, do you think there any licence conditions missing, or whether there any inconsistencies or duplication?

**Q2:** To what extent do you agree with our proposal that the code manager licence will include a mechanism for code parties, Citizens Advice and Consumer Scotland to appeal code managers' budgets to Ofgem? Should this also include Citizens Advice Scotland?

**Q3:** To what extent do you agree the licence drafting provided in condition 21 of Annex A delivers the intent of our proposed policy on budget appeals? Do you have any other views or comments on the licence drafting?

**Q4:** To what extent do you agree with the proposals set out above on conflicts of interest, including the proposals to include exceptions in the licence?

**Q5:** To what extent do you agree that the revised licence drafting in conditions 15-19 of Annex A delivers the intent of our proposed policy on conflicts of interest? Do you have any other views or comments on the licence drafting?

**Q6:** To what extent do you agree with the proposed objectives? Are there other objectives you think should be included?

**Q7:** To what extent do you agree that the draft code manager licence condition in condition 3 of Annex A delivers the intent of our proposed policy on code manager objectives? Do you have any other views or comments on the licence drafting?

**Q8:** To what extent do you agree with the policy proposals on delivery plans set out above, including the timing, contents and requirement to execute the plan?

**Q9:** To what extent do you agree that the licence drafting in condition 29 of Annex A deliver the intent of our proposed policy on delivery plans? Do you have any other views or comments on the licence drafting?

**Q10:** To what extent do you agree with the proposals set out above on controls of the business?

**Q11:** To what extent do you agree that the licence drafting in conditions 4-6 and 8-9 of Annex A delivers the intent of our proposed policy on controls on the business? Do you have any other views or comments on the licence drafting?

**Q12:** To what extent do you agree with the proposals set out above on procurement of services?

**Q13:** To what extent do you agree that the licence drafting in condition 7 of Annex A delivers the intent of our proposed policy on procurement of services? Do you have any other views or comments on the licence drafting?

**Q14:** To what extent do you agree with the proposals set out above on optional charging?

**Q15:** To what extent do you agree that the licence drafting in condition 24 of Annex A delivers the intent of our proposed policy on optional charging? Do you have any other views or comments on the licence drafting?

**Q16:** To what extent do you agree with our proposal to introduce a “minimum acceptable performance standard” in the code manager licence?

**Q17:** To what extent do you agree with our proposals regarding remuneration, including introducing a licence requirement for the code manager to implement a remuneration policy, linking bonus remuneration of Senior Staff to performance and compliance and whether the sufficiently independent directors and/or SAF should have a role in reviewing the remuneration policy?

**Q18:** To what extent do you agree that the licence drafting in conditions 25 and 26 of Annex A delivers the intent of our proposed policy on Performance? Do you have any other views or comments on the licence drafting?

**Q19:** To what extent do you agree with our proposals regarding the provision of information, and co-operation with, the Authority?

**Q20:** To what extent do you agree that the licence drafting in condition 30 of Annex A captures the intent of our proposed policy on Provision of information, and co-operation with, the Authority? Do you have any other views or comments on the licence drafting?

**Q21:** To what extent do you agree with our preferred option 1 (principles-based licence condition)?

**Q22:** To what extent do you agree that the licence drafting in condition 28 of Annex A delivers our policy intent for Ease of use of the code option 1? Do you have any other views or comments on the licence drafting?

**Q23:** To what extent do you agree with the policy proposals set out above on end of licence arrangements, including the proposals relating to IPR? Are there any other assets you consider should be addressed in handover plans?

**Q24:** To what extent do you agree that the licence drafting in conditions 31 and 32 in Annex A capture the intent of our proposed policy on End of licence? Do you have any other views or comments on the licence drafting?

**Q25:** To what extent do you agree with the proposals set out above on code maintenance and modification, including the proposals to update existing licence obligations and for new arrangements?

**Q26:** To what extent do you agree that the licence drafting in condition 27 of Annex A capture the intent of our proposed policy on Code maintenance and modification? Do you have any other views or comments on the licence drafting?

**Q27:** To what extent do you agree that legislation should be updated, bringing the REC into scope to reflect its creation as the successor of the MRA and SPAA?

**Q28:** To what extent do you agree with our preference to maintain the status quo by preserving the CMA appeal route for ‘commercial’ codes and keeping ‘technical’ codes out of scope?



**Q29:** To what extent do you agree with our position that the current eligibility criteria for who can bring an appeal to the CMA should remain unchanged?

**Q30:** To what extent do you agree with our preferred option that appeals should be triggered when Ofgem disagree with the code manager's recommendation?

**Q31:** To what extent do you agree that, subject to feedback and consultation, these exclusion criteria should be embedded in a new statutory instrument?

**Q32:** To what extent do you agree with our proposal to take forward option 3 which gives the code manager the discretion to recommend more than one modification for approval?

## 4. Next steps

The responses received as part of this consultation will be used as additional evidence to inform policy decisions on energy code reform.

Our consultation response, including a summary of the responses received, will be published in due course. Subject to the stakeholder feedback received on the proposals outlined in this consultation, Ofgem will finalise the Standard Licence Conditions which will be designated by the Secretary of State. Furthermore, the Department plan to introduce a Statutory Instrument which will enshrine updates to the CMA appeals process in law.

Alongside this joint consultation, Ofgem is also undertaking various independent workstreams to implement the new framework, including a second implementation consultation, developing the process for delivering the annual strategic direction statement, and preparing for the first code manager appointment.

## Appendix 1: Licence skeleton from the March 2024 consultation

In Ofgem's December 2022 call for input, Ofgem identified 17 areas of licence content grouped under the following categories:

- Governance and conduct
- Funding and incentives
- Deliverables and reporting

In the March 2024 consultation, we summarised our views on the licence content, which we referred to as the 'licence skeleton'. The skeleton, with an additional column noting any updates that have been made ahead of this consultation, can be found below. The sections highlighted in green were consulted on in the March 2024 consultation.

### Proposed Licence Skeleton

Section	Licence condition content	2025 updates
Nature and conduct of the Licensee's business	The relevant business of the licensee (and any general objectives)	<p>"Relevant business" is now part of the definitions rather than a condition in the licence.</p> <p>We are consulting on code manager objectives (chapter 1.4 of this consultation).</p>
	General controls of the business (inc. risk management, organisational structure and controls, corporate governance, any requirements on board structure/composition as well as any ongoing 'fit and proper' requirements regarding, e.g., directors of the code manager)	Please refer to chapter 1.6 in this consultation.
	Data handling	In March 2024, Ofgem published an open letter setting out its intention to embed data best practice into the codes. <sup>112</sup> It subsequently engaged stakeholders and intends to publish, later in 2025, a statutory consultation on licence modifications (to the code owner conditions) to achieve this. We do not anticipate having a standalone

<sup>112</sup> [Open Letter regarding Data Best Practice and its future in Codes | Ofgem](#)

Section	Licence condition content	2025 updates
		code manager data handling licence condition, but we do expect to reflect any changes made to the code owner conditions into the equivalent code manager condition.
Financial and operational controls	Availability of all necessary resources	
	Indebtedness and transfer of funds	
	Assurance of the financial stability of the licensee	
	Prohibition on cross-subsidies	
	Not-for-profit requirement	
Arrangements for the Licensee's independence	Prohibition on engaging in preferential or discriminatory behaviour	
	Requirement to not prevent nor distort competition	Updated drafting, please refer to chapter 1.3 in this consultation.
	Sufficiently independent directors	
	Restriction on activity and investment	
	Restriction on the licensee becoming a related undertaking	
	Ultimate controller undertaking	
	Protection of confidential information	We propose to not have this as a distinct licence condition. We consider this will be sufficiently covered through a combination of the proposed licence conditions (such as regarding corporate governance), data protection legislation and data handling requirements in the codes.
	Compliance obligations <sup>113</sup>	We propose to not have this as a distinct licence condition. Specific

<sup>113</sup> I.e., what is required for the code manager to demonstrate it is complying with independence requirements, e.g., what information it needs to have if the authority requests, what mechanisms needs to be in place etc.)

Section	Licence condition content	2025 updates
		reporting and compliance requirements set out in “Provision of information to, and co-operation with, the Authority” (chapter 1.10 in this consultation) and individual licence conditions.
Funding, charging and financial incentives	Budgets	Updated drafting and a new section on budget appeals. Please refer to chapter 1.2 in this consultation.
	Incentives and any links to revenues	This has been renamed (performance incentives and remuneration) and expanded since the last consultation with a couple of new proposals (please refer to chapter 1.9 in this consultation). To note this is also proposed to be its own section in the licence.
	Code manager cost recovery methodology	To note, “optional charging” has been added as a licence condition in this section. Please refer to chapter 1.8 in this consultation.
	Code manager cost recovery statements	
Governance, including stakeholder engagement and cooperation	Code maintenance and modification	Revisited and expanded on in this consultation (please refer to chapter 1.13). Please note the “Governance” section has been merged with “Planning, delivery and reporting”, it’s now called “Governance, delivery and reporting”.
	Cooperation and cross-code working	Decision to incorporate in licence condition above.
Planning, delivery, and reporting	Production of a delivery plan consistent with the strategic direction	There is now only one delivery plan licence condition covering both production of, and compliance with, the delivery plan. Please refer to chapter 1.5 in this consultation.
	Complying with the delivery plan and reporting on progress	As above.
	Obligations towards Ofgem and the Department	Changed to “Provision of information to, and co-operation with, the

Section	Licence condition content	2025 updates
		Authority". See chapter 1.10 in this consultation.
	Ease of use of the code	Please see chapter 1.11 in this consultation.
Arrangements for intervention and continuity	Transitional arrangements	Any transitional arrangements will be addressed in special conditions for each code manager.
	Management orders for the licensee	Propose to not incorporate as a licence condition. Instead covered as part of "performance incentives" (chapter 1.9 in this consultation) and "end of licence" (chapter 1.12 in this consultation)
	End of licence term arrangements, intellectual property rights, and code manager of last resort arrangements	Please refer to chapter 1.12 in this consultation.

## Appendix 2: Table with provisions that address code manager performance

As set out in the 2024 government response, code managers will be required to ensure that the relevant code contains a set of performance metrics, which they must report on their performance against. In addition to performance metrics, there are several licence conditions that will have a direct or indirect impact on code manager performance, an overview of these can be found below.

Policy area	Description	Impact on performance
Incentives	Licence will require KPIs to be in place in the code (Ofgem could potentially introduce an initial set of metrics), and for the code manager to report on this to Ofgem and SAF.	Having KPIs in the code will create reputational incentives for good performance.
Controls of the business <i>(subject to responses to this consultation)</i>	Please refer to chapter 1.6. This includes: <ul style="list-style-type: none"> <li>Fit and proper requirement</li> <li>Chair independence</li> <li>Director term limits</li> </ul>	Indirectly address performance by preventing unsuitable senior staff from joining the code manager.  The term limits also provide a route for replacing poorly performing non-executive directors.
Various licence conditions that require minimum standards for outputs	For example: <ul style="list-style-type: none"> <li>Code manager objectives <i>(subject to responses to this consultation)</i></li> <li>Budget setting</li> <li>Delivery plan requirements <i>(subject to responses to this consultation)</i></li> <li>Cost recovery methodology/statement</li> <li>Procurement requirements <i>(subject to responses to this consultation)</i></li> </ul>	Objectives will place obligations on CM to, for example, be open and transparent, economic and efficient.  Some high-level obligations on the quality of the budget, delivery plan, cost recovery methodology etc. For example, the products being economic and efficient, complete and coherent etc.

This publication is available from: [www.gov.uk/government/consultations/energy-code-reform-code-manager-licence-conditions-and-code-modification-appeals-to-the-cma](http://www.gov.uk/government/consultations/energy-code-reform-code-manager-licence-conditions-and-code-modification-appeals-to-the-cma)

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