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Making a positive difference
for energy consumers

Energy Code Reform:

Government and Ofgem Response to the
Consultation on Code Manager Licence
Conditions and Code Modification Appeals to
the CMA



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Introduction

Britain's energy sector continues to evolve rapidly as we make progress towards delivering the government's Mission to make Britain a clean energy superpower¹. This long-term ambition is supported by our journey to achieve Clean Power by 2030² and accelerate to Net Zero by 2050³. To attain a low carbon energy system the sector rules and governing institutions must evolve to support the transition. The electricity and gas systems need to allow for any challenges to be efficiently and effectively overcome, while empowering the uptake of new opportunities that will benefit consumers.

Energy Code Reform is modernising Britain's energy regulation by replacing complex, outdated governance with a simpler, more agile and forward-looking framework. Many of the rules that govern the operation of the energy system sit within industry codes. These codes set the rules for a wide range of commercial and technical activities from how parties connect to the electricity and gas networks, to how consumers switch suppliers, to who can access consumption data.

These rules need to keep pace with the transformation of our energy system. However, collectively, they currently form a complex and fragmented landscape that can slow innovation, limit competition and hold back investment. Many of the policy and market improvements designed to deliver consumer benefits depend on changes to the codes, but progress can be delayed by friction and competing interests within the current governance arrangements.

Energy Code Reform is a joint programme between government and Ofgem to address these issues and turn energy codes into an effective engine for wider system change. It is replacing the current industry governance process for updating the codes with a new framework, as enabled by the Energy Act 2023⁴. The reform supports Ofgem's Market Strategy and Vision, as part of the low-cost transition. By empowering independent code managers, strengthening strategic direction and improving the change process, system change can be delivered quickly and with greater confidence.

On 1 May 2025, government and Ofgem launched a joint consultation on the proposed Standard Licence Conditions (SLCs) for code managers and key policy updates underpinning code modification appeals to the Competition and Markets Authority (CMA)⁵. This document serves as the joint government and Ofgem response to that consultation. It summarises the responses received and sets out the policy proposals we intend to take forward.

¹ [Make Britain a Clean Energy Superpower](#) | UK Government

² [Clean Power 2030 Action Plan](#) | UK Government

³ As stipulated in The Climate Change Act 2008 (2050 Target Amendment) Order 2019 | [legislation.gov.uk](#)

⁴ Energy Act 2023, Part 6 | [legislation.gov.uk](#)

⁵ [Energy code reform: Code manager licence conditions and code modification appeals to the CMA](#) | UK Government and Ofgem

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Overview of the Consultation Proposals

Two key policy areas were covered in the May 2025 consultation⁶:

- **Code manager licence conditions:** Our proposals on the high-level contents of the code manager licence and the full end-to-end licence.
- **Code modification appeals to the CMA:** Our proposals to update key areas of the process for an eligible party to appeal an Ofgem code modification decision to the CMA.

Code Manager Licence Conditions

The options for code manager **budget appeals** were revisited and consulted on, as well as some further updates to the Standard Licence Conditions (SLCs) on preventing code manager **conflicts of interest**.

The May 2025 consultation further proposed that code managers will be required to facilitate achievement of core **objectives** while carrying out their role, as well as to develop **delivery plans** which ensure the codes' strategic development. It was proposed that the code manager licence will include **controls on the business**, to ensure that code managers are financially stable and appropriately resourced. To protect against adverse consequences where licence functions are outsourced, we proposed restrictions and requirements around **procurement**.

The consultation proposed **optional charging** arrangements for code managers to charge on a 'user pay' basis and set out measures to **ensure code managers' good performance, as well as preventing poor performance**. We also consulted on proposals around the **provision of information to, and co-operation with, 'the Authority' (Ofgem)**, with the aims of engendering a co-operative relationship between Ofgem and code managers and ensuring Ofgem can access the information it needs to carry out its role as regulator.

The consultation set out options for requirements on the code manager to ensure the codes are accessible and **easy to use**, along with proposals to ensure a smooth transition at the **end of licence** in the event of a handover to a successor. Finally, we consulted on licence obligations on **code maintenance and modification**.

Code Modification Appeals to the CMA

The consultation set out proposals for the updated code modifications appeals process to the Competition and Markets Authority (CMA). It proposed retaining the existing **codes which are**

⁶ [Energy code reform: Code manager licence conditions and code modification appeals to the CMA](#) | UK Government and Ofgem

in scope of appeals and bringing the Retail Energy Code (REC) in to scope. No changes to **eligibility criteria** were proposed, as the new appeals process does not introduce new appellants or remove existing rights. The consultation proposed that the code manager's recommendation would replace that of the code panel (a role which will cease to exist), to form the basis of the **appeal trigger**. Finally, options were consulted on around how **alternative code modifications** are handled and the implications for appeals under the new governance framework.

Overview of the Consultation Process

The consultation period ran from 1 May to 27 June 2025, during which a webinar and Q&A session was held with around 80 key stakeholders and interested parties. These included code administrators, code panel members, consumer and advocacy groups, and wider industry participants.

The consultation received 31 written responses. The responses were from a broad range of organisations including, but not limited to, energy suppliers, energy transmission and distribution companies, code administrators, code panels, trade association groups, and technical service providers.

The consultation asked for views on 32 questions spanning 17 policy areas. Given the large number of comments received, this document focuses on the most common or relevant points for each consultation question, rather than summarising every point made. However, government and Ofgem have carefully considered all responses. The evidence and views provided have informed our approach to decisions and next steps.

In most instances we have not used the exact or absolute numbers of respondents when reporting views received to each consultation question. Instead, we have used the following reporting categories:

- 'Most' is used when referring to more than 50 per cent of those that provided a response to the question.
- 'Many' is used when referring to 21-50 per cent of those that provided a response to the question.
- 'Some' is used when referring to 11-20 per cent of those that provided a response to the question.
- 'A few' is used when referring to up to 10 per cent of those that provided a response to the question.

This is a joint consultation response document from the Department for Energy Security and Net Zero (the ‘government’) and Ofgem⁷, and so the use of ‘we’ or ‘our’ refers to both parties collectively. Where a statement made in this document applies to either organisation individually, this is stated explicitly.

Overview of Decisions

We have made the following decisions on the Code Manager Licence:

- **Overview of the code manager licence:** We intend to proceed with the proposed overall licence structure, noting the updates to the individual areas set out in this consultation response. Additionally, we have made numerous minor changes throughout the Standard Licence Conditions (SLCs) to ensure clarity, consistency and alignment with our policy intent.
- **Code manager budgets (follow up from the October 2024 consultation response⁸):** We intend to proceed with the proposed licence requirements requiring that the relevant code contains a budget appeal mechanism. The licence will specify who can raise an appeal and what the grounds for appeal are.
- **Conflicts of interest (follow up from October 2024 consultation response):** We intend to proceed with the proposed updates to the SLCs, with minor changes to the drafting. This includes the 50% sufficiently independent director requirement being in the licence (rather than another document like the code), introducing a ‘treasury management’ exception to the ‘restrictions on investment’ SLC, adding an exception route (through Authority consent) to the ‘sufficiently independent director’ SLC, and the procurement restriction regarding contracts with a relevant conflict of interest.
- **Code manager objectives:** We intend to proceed with the proposed code manager objectives as consulted on, with some updates to the licence drafting, including replacing ‘relevant business’ with ‘code manager business’.
- **Delivery plans:** Regarding the content of the plan, we intend to proceed with the proposed licence requirements with some minor changes. Regarding the sequencing of the delivery plan and budget publications, we are intending to reduce the prescriptiveness of the timings, only requiring that the final delivery plan and budget are published annually by 31 March following, at a minimum, a 21-day consultation period. As a result of this, we are also intending to reduce the notice period for updating the cost recovery statement from three months to one month, to align with the less prescriptive approach.

⁷ Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (the Authority), 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 and the Authority are used interchangeably.

⁸ [Energy code reform: code manager licensing and secondary legislation](#) | UK Government and Ofgem

- **Controls on the business:** We intend to proceed with the proposed licence requirements on controls on the business. For non-executive director term limits, we intend to proceed with a three-year term limit with the option of reappointment.
- **Procurement:** We intend to proceed with the proposed restrictions on procurement, with some minor changes and clarifications to the drafting.
- **Optional charging:** We intend to update the name of this SLC to ‘usage-based charges’, as we consider it better reflects the policy intent. We intend to proceed with the preferred approach of setting out high-level requirements for issuing these charges in the licence and tweaking the drafting to further clarify when they can be issued.
- **Performance:** We intend to proceed with introducing both the ‘minimum acceptable performance’ and ‘remuneration policy’ licence requirements in the code manager licence, with some tweaks to the licence drafting to reflect stakeholder feedback and clarify the policy intent.
- **Provision of information to, and co-operation with, the Authority:** We intend to proceed with incorporating this SLC in the final licence with a revised structure, which more effectively conveys the policy intent.
- **Ease of use of the code:** We intend to proceed with introducing a principles-based SLC for the ease of use of the code, over the more prescriptive option.
- **End of licence:** We intend to proceed with introducing these SLCs but with changes to the licence drafting to address some of the points raised through responses to the consultation and to reflect lessons learned from other licences.
- **Code maintenance and modification:** We intend to proceed with the code maintenance and modification SLCs as set out in the consultation, with some minor changes to the drafting.

We have made the following decisions on updates to the code modification appeals process to the Competition and Markets Authority (CMA):

- **Codes in scope of the appeals process:** We intend to retain the existing codes which are in scope for appeals to the CMA process and to bring the Retail Energy Code (REC) in to scope.
- **Eligibility to appeal:** We intend to retain the existing eligibility criteria to appeal a code modification to those whose interests are materially affected by a decision or organisations which represent them.
- **Appeals triggers and exclusion criteria:** We will proceed with updating 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 code modifications:** We intend to proceed with requiring the code manager to provide a single modification recommendation for approval. This is a change to our original preferred position where the code manager would have had 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 the code objectives.

Key Programme Activities and Next Steps

Energy Code Reform introduces several improvements to the current code governance framework, including Ofgem licensing new code managers who will be responsible for leading code modifications and decision-making and ensuring that the codes develop in line with Ofgem's annual Strategic Direction Statement (SDS). Industry expertise will remain at the heart of the framework, shaping and developing robust code change proposals and playing a vital role in the process through new stakeholder advisory forums.

The publication of this consultation response is a key milestone towards implementing the new framework. Shortly following this publication, the code manager Standard Licence Conditions (SLCs) will be determined by the Secretary of State⁹, which will be followed by an Ofgem statutory consultation on special and amended conditions for the Phase 1 code manager licences. Furthermore, the government plans to introduce a statutory instrument which will enshrine updates to the Competition and Markets Authority (CMA) appeals process in law by the end of 2026.

The ambitious end goals of the Energy Code Reform programme have required a complex policy development and delivery pipeline over a multi-year timeline. To date, a wide array of activities have occurred to support Ofgem's and government's progression towards implementing the benefits of the reforms, with key activities including:

- **Strategic Direction Statement (SDS):** Ofgem publishing an annual SDS, setting out a clear and ambitious direction for how industry codes must evolve to deliver strategic priorities that support consumer outcomes and the transition to Net Zero. Ofgem will publish the consultation on the second SDS (SDS-2) in April 2026.
- **Code manager selection:** Ofgem selecting code managers for each code. Ofgem issued a minded-to grant notice for Phase 1 code managers in August 2025 and recently published an expression of interest for Phase 2 code managers¹⁰.
- **Code governance framework implementation:** Ofgem needs to turn the high-level design of the new governance framework into detailed licence and code modifications to bring the new framework into effect. Ofgem's second implementation consultation

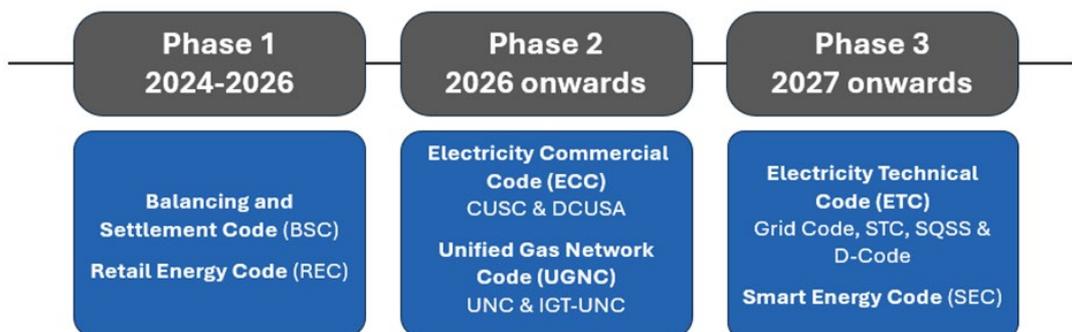
⁹ Determination is the process in which the Secretary of State exercises their authority under [Sections 33 and 81 of the Utilities Act 2000](#) to formalise the code manager Standard Licence Conditions through bringing them into legal effect.

¹⁰ [Expression of interest invitation: code manager candidates](#) | Ofgem

decision¹¹ and upcoming Phase 1 consultation covering, transitional measures and consequential changes¹² will help to deliver this.

Given the scale of the reforms, we will be delivering the new governance framework in three phases as seen in figure 1 below. Phase 1, covering the BSC and REC, is planned to go live from November 2026.

Figure 1: Three Phase Implementation Timeline



The work on the code manager SLCs and baseline code text will lay the foundation for all three phases of implementation. The baseline code text will establish a consistent approach to the code modification process across all codes. Alongside this foundational work, Ofgem is preparing the specific licence conditions and consequential code and licence changes necessary to transition the Phase 1 codes into the new framework. We are aiming to designate the Phase 1 codes and appoint the Phase 1 code managers by the end of 2026. To do this, the code manager licence and revised code text will need to be finalised, and Ofgem will need to complete the process to appoint the code managers for the REC and the BSC.

Context and related publications

Below is a summary of consultations and decisions that have been published to date:

- [Energy code reform: guidance on code manager selection](#) (March 2026)
- [Implementation of energy code reform: consultation on template code text](#) (March 2026)
- [Implementation of energy code reform: second decision](#) (March 2026)
- [Energy code reform: competitive code manager selection](#) (December 2025)
- [Establishing a harmonised prioritisation process in the industry codes: statutory consultation](#) (November 2025)
- [Decision on the Preliminary Strategic Direction Statement and governance arrangements for industry codes](#) (August 2025)

¹¹ [Energy code reform: second implementation consultation](#) | Ofgem

¹² Due to published by the end of March 2026.

- [The Code Manager Selection \(Competitive\) Regulations 2025](#) (June 2025)
- [Decision on code manager selection](#) (May 2025)
- [Energy code reform: Code manager licence conditions and code modification appeals to the CMA](#) (May 2025)
- [Energy code reform: second implementation consultation](#) (April 2025)
- [The Code Manager Selection Regulations 2024](#) (October 2024)
- [Energy Code Reform: Government response to consultation on code manager licensing and secondary legislation](#) (October 2024)
- [Implementation of energy code reform: decision](#) (August 2024)
- [Energy Act 2023](#)
- [Call for Input: Energy Code Governance Reform](#) (December 2022)
- [Government response to the consultation on Energy Code Reform](#) (April 2022)
- [Design and Delivery of the Energy Code Reform: consultation](#) (July 2021)

1. Code Manager Licence

Background

1.1 Introduction and overview of Code Manager Licence

Question 1: 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?

What the consultation said

We summarised previous decisions on introducing the code manager as the new body established to govern the code, replacing current code panels and code administrators, and we explained that under the Energy Act 2023, code management will be a licensable activity.

We consulted on a complete draft of the standard licence conditions (SLCs) and the policy behind them, and asked respondents for their views on the end-to-end licence. We noted that ahead of the Secretary of State determining¹³ the SLCs, the detailed drafting of the SLCs would be refined, in response to stakeholder feedback to both this consultation and Ofgem's second consultation on the implementation of Energy Code Reform¹⁴. We noted that we would also consider refinements as part of our ongoing review of the SLCs, to ensure that they are clear, consistent and aligned with best practice.

What you said

Most respondents agreed with the overall licence drafting. Some respondents gave suggestions to improve or clarify specific conditions, which we will address in the relevant sections throughout this response document.

There were some general points made on the licence. A few respondents argued for more scrutiny of the code manager, either by Ofgem and/or the Stakeholder Advisory Forum (SAF). Similarly, a few respondents questioned how the SLCs would be enforced and the code manager held accountable.

Our response

We intend to proceed with the overarching draft end-to-end SLCs as proposed (see Annex A – Code Manager Standard Licence Conditions), noting that there are updates and additions to some of the individual SLCs following consideration of the consultation responses and further

¹³ 'Determination' is the process in which the Secretary of State exercises their authority under [Sections 33 and 81 of the Utilities Act 2000](#) to formalise the code manager SLCs through bringing them into legal effect.

¹⁴ [Energy code reform: second implementation consultation](#) | Ofgem

analysis. Additionally, we have made numerous minor changes throughout the SLCs to ensure clarity, consistency and alignment with our policy intent. We have not narrated in detail every individual amendment, but we have explained the reasons for making refinements to the overarching conditions. For example, in section 1.4 (Code manager objectives) we explain the overall approach to licence updates.

Accountability and scrutiny of the code manager

We consider that there are a wide range of tools in the licence, as well as in the code, to ensure accountability and scrutiny of the code manager. In addition to being held to account on, and reporting against, its performance framework set out in the code, the code manager is required to engage Ofgem and stakeholders on various deliverables, including annual budgets and delivery plans. Code managers will be required to publish regulatory accounts, their remuneration policy, cost recovery statements and business handover plans. There is a general objective on the code manager to be transparent, and it will also need to perform at a 'minimum acceptable standard'.

Ofgem's approach to supervising code manager performance and outcomes

The aim of Ofgem's approach to supervising code manager performance and outcomes is to facilitate high performance in relation to the highest priority outcomes. Code managers will be accountable for demonstrating how they meet objectives and performance indicators. The proposed regulatory model provides a range of levers to drive compliance and address poor performance. Ofgem expects its oversight of code managers will provide a balance between constructive support and challenge, delivered through structured engagement and backed up by compliance and enforcement levers. Ofgem's approach will be guided by four core principles:

- **Outcome-orientated:** Ofgem's approach to oversight will focus on outcomes.
- **Transparency and accountability as default:** The regulatory framework embeds this accountability for code managers, in particular the proposed licence requirement for the code manager to consult and report on performance.
- **Promote high performance:** Ofgem will work in partnership with code managers to support innovation and drive continuous improvement.
- **Improve code user experience and collaboration:** Consistency across codes and improvements to user experience will be a central consideration in Ofgem's oversight and approach to performance management.

As noted, responses that relate to specific proposed conditions will be addressed in the relevant sections below.

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

Question 2: 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?

Question 3: 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?

What the consultation said

We proposed a licence requirement that code managers must 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 manager's annual budget.¹⁵ The primary mechanism for stakeholder challenge should be through open and transparent engagement with the code manager. However, an appeal process provides a further route for challenge on defined grounds to an independent decision maker, should stakeholder comments not be adequately addressed through the consultation process.

We proposed key features to be included in the licence, informed in part by existing appeal processes in codes and licences. The proposed Standard Licence Condition (SLC) enables code parties, Citizens Advice and Consumer Scotland to raise a budget appeal. The budget appeal must be specific to one or more cost items, which means a cost item can be appealed without impacting the wider budget. We sought feedback on whether to add Citizens Advice Scotland to the list of parties that can appeal a budget.

Ofgem will assess appeals and, where the appeal is upheld, may issue a direction to the code manager to revise the annual budget and work plan. The Authority can dismiss an appeal where it considers that it is trivial or vexatious or does not meet appeal grounds.

The proposed SLC set out grounds on which an appeal may be raised, including where a cost item:

- Was not presented in the draft budget or draft work plan in accordance with the requirements for those documents specified in the licence.

¹⁵ 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.

- Was not properly consulted upon in accordance with the proposed budget SLC (SLC 20), or where the code manager failed to have reasonable regard to the consultation responses submitted.
- Is not a recoverable cost.
- Is a manifestly inappropriate provision for the activity in question.
- 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, energy licences, and/or law.

We also set out an alternative (non-preferred) option to have no appeal mechanism and to rely on a proposed Ofgem power to direct code managers to revisit the budget and take actions specified in the direction. These actions would include, but not be limited to, providing additional evidence or recalculating certain cost categories.

What you said

Most respondents agreed with the proposal to introduce an appeal mechanism. There was specific agreement with the requirement for appeals to be made against one or more individual cost items, allowing code managers to carry out functions that are not related to the appeal while the outcome of the appeal is determined.

A few respondents disagreed with introducing a budget appeal mechanism. A few respondents said that a budget appeal process would not add value to the objectives of the planned reform.

A few respondents supported adding Citizens Advice Scotland as an eligible appellant, and a few opposed this.

A few respondents suggested that the Balancing and Settlement Code's (BSC) current budget governance arrangements are proportionate and that consultation and collaboration with the Authority, Stakeholder Advisory Forum (SAF), industry and consumer bodies is essential. They stated that the board of the code manager should be ultimately responsible for approving the annual budget. They referred to modification P416¹⁶, which attempted to introduce appeals to budget line items, and was rejected by the BSC panel and Ofgem. The rationale for Ofgem's decision included that the proposed appeal mechanism could have resulted in missed opportunities to resolve potential issues earlier in the budget process, leading to inefficiencies, and that Ofgem did not agree with the proposer's view that P416 would facilitate improved cross-code alignment.

Our response

We have considered feedback and intend to introduce a budget appeal mechanism as consulted upon.

¹⁶ [P416 Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code](#) | Elexon

Proportionality and value of an appeal process

The proposed safeguards, including the grounds for appeal and the ability for Ofgem to dismiss trivial or vexatious appeals, should ensure that the process is proportionate and used appropriately. Although the P416 modification was rejected by Ofgem, we note it was specific to the BSC arrangements for a body that was not licensed, and there was no direct accountability to Ofgem. This differs under the new arrangements, where code managers are held accountable through the licence. We are also developing a process that applies to all code managers across all in-scope codes, providing cross-code consistency.

We consider that the proposed appeal process is proportionate and adds value by providing a further route for stakeholders to challenge and find improvements to code manager budgets. This could include where their comments have not been adequately addressed through the consultation process or where other issues are identified.

In response to the view expressed that a budget appeal process would not add value to the existing objectives, our view is that the budget appeal process is relevant to the code manager objective 3.4(d), which requires implementation of the code as economically and efficiently as is reasonably practicable.

Updates to the licence drafting

We have removed the licence drafting related to the alternative (non-preferred) option of Ofgem being able to unilaterally direct code managers to revisit the budget and take actions specified in the direction. The alternative places too great an onus on Ofgem to scrutinise budgets, whereas an appeal mechanism allows code parties and other parties to identify and raise issues with the published budget.

We intend to proceed with including Citizens Advice Scotland in the list of parties who can appeal a budget, to ensure consistency and noting the support from stakeholders.

1.3 Conflicts of interest (follow up)

Question 4: 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?

Question 5: 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?

What the consultation said

In the October 2024 consultation response¹⁷, we decided to proceed with incorporating a package of standard licence conditions (SLCs) intended to address and mitigate conflicts of

¹⁷ [Energy code reform: code manager licensing and secondary legislation](#) | UK Government and Ofgem

interest, noting that we would follow up on some of the detailed proposals. This was done in the May 2025 consultation¹⁸, where we proposed the following:

- **50% Sufficiently Independent Directors (SIDs):** The requirement to adhere to 50% independent directors should be included in the licence (rather than another document like the code).
- **Exceptions in the SLCs:** The process for receiving exceptions to specific licence conditions is described in the interpretation section of the code manager licence. We proposed to not have any exceptions to ‘restrictions on activity’ and ‘restriction on becoming a related undertaking’ in the SLCs (noting these can still be granted through Authority consent on a case-by-case basis), but to introduce a ‘treasury management’ exception to ‘restriction on investment’. Additionally, we sought input on introducing a ‘de minimis’ exception to ‘restriction on investment’, noting that we were initially not minded to introduce this.
- **Exception route for additional SLCs:** We proposed that the ‘sufficiently independent directors’ SLC, and the SLC prohibiting procurement of third parties with a relevant conflict of interest, should include a process for receiving an exception. This would be through Authority approval on a case-by-case basis. We considered that this would promote flexibility and the ability to work effectively in new or unforeseen circumstances, and is in line with standard practice.
- **Updated licence drafting:** We proposed an adjustment to the wording of the SLC prohibiting prevention or distortion of competition, narrowing the scope of the condition to better align with our policy intent. We also proposed expanding the restrictions on becoming a related undertaking, to more effectively prevent conflicts of interest.

What you said

Most respondents agreed with the proposals. Some respondents emphasised the importance of mitigating conflicts of interest, in part due to the high level of control that the code manager will have over the development of the relevant code.

There were some comments regarding the details of the drafting, including a few respondents questioning whether it was still relevant to have the minimum of two SIDs, as we have increased the threshold to 50% of directors needing to be sufficiently independent.

There were some responses concerning the proposed exceptions process. A few respondents thought that there should be a default exception in the ‘restrictions on activity’ SLC for Central System Delivery Body (CSDB) roles, whereas a few other respondents requested clarity around the scope of the code manager role more broadly. Some respondents explicitly

¹⁸ [Energy code reform: Code manager licence conditions and code modification appeals to the CMA](#) | UK Government and Ofgem

supported introducing a 'de minimis' exception to the 'restriction on investment' SLC, whereas some respondents opposed the treasury management exception to this SLC, noting that allowing this could be an unnecessary distraction from the code manager's core role and activities. However, some respondents explicitly supported the treasury management exception, with a few respondents requesting that we add a requirement for the code manager to 'act prudently' when exercising this exception. A few respondents requested that code parties are consulted during the process where the Authority's consent to an exception to 'restriction on investment' is requested.

Some respondents requested that the practicality of the independence requirements is reviewed and that they capture the right thing in light of the actual practices of prospective code managers. There were also some requests for the licence to be clear about how the requirements apply during the transition phase.

There were a couple of broader points on conflicts of interest. A few respondents provided views on how these requirements might apply to potential prospective code managers. A few respondents had concerns about Ofgem's role in the framework, and that there may not be enough oversight of the code managers. Finally, a few respondents called for a condition requiring the code manager to be independent from Ofgem.

Our response

We intend to proceed with our proposed SLCs in all four areas related to conflicts of interest, with minor changes to the drafting. This includes removing the requirement for at least two independent directors in the SID SLC. This requirement was primarily to ensure that there would not be only one SID on the board, when the requirement was 20% rather than 50%. Since the threshold has increased to 50%, we agree with respondents that this is enough to ensure a sufficiently impartial board and that a single SID's voice would not be diluted.

Exceptions

We intend to proceed with the treasury management exception to the 'restriction on investment' SLC. We note the concern raised that such an exception could lead to the code manager becoming distracted from their core role. We consider there to be sufficient protections in the licence to prevent this, including the code manager needing to be not-for-profit, economic and efficient, as well as transparent. We consider that the exception can allow for helpful flexibility in code managers managing their finances efficiently. We do not intend to add a requirement to 'act prudently' when exercising the treasury management exception, as we do not consider that this adds value in practice.

We intend to proceed with our original proposal not to introduce a 'de minimis' exception to the restriction on investment SLC. Noting that the original intention of the exception was to manage property portfolios that the network companies inherited, we do not think this would be applicable to the code managers. However, should it be needed for a specific code manager candidate, this may be considered by Ofgem on a case-by-case basis.

Regarding ‘restriction on activity’, we do not think that CSDB roles should be allowed by default through the SLCs and intend to proceed with our original proposal that this is assessed on a case-by-case basis. We continue to consider that this is the best approach, and that the responsibility should be on the code manager to demonstrate that the additional activity does not pose a risk of conflicts of interest. Similarly, the scope of the code manager role will be considered on a case-by-case basis, depending on the prospective code manager.

We do not intend to include an express requirement to consult code parties each time there is a request for the Authority’s consent to an exception to the ‘restriction on investment’ SLC. Ofgem intends to consider such requests on a case-by-case basis and in doing so may, at its discretion, seek input from industry where it considers it appropriate to do so. Ofgem would also consult on any proposed licence modifications in accordance with its public law duties.

Practical implementation and transition

We continue to consider that the proposed SLCs addressing conflicts of interest provide a comprehensive set of standard protections, in terms of ensuring the independence of the code manager. These include restrictions on activity, investment and ownership, independence on the code manager board, and requirements to not discriminate nor distort competition. How these will be implemented in practice, and any required transitional arrangements, will be further considered as part of the code manager selection process. Additionally, as mentioned in the response to chapter 1, it will be considered as part of the outcomes-based regulatory approach that Ofgem intends to take.

Code manager independence from Ofgem

On the point about adding an SLC addressing independence from Ofgem, we consider that existing licence requirements and other safeguards are sufficient in addressing this. Both Ofgem and the code manager have clearly defined roles and expectations. In performing the code manager function, the code manager will need to facilitate achievement of the code manager objectives (as described in section 1.4), which emphasise full and prompt implementation of the code and collaboration with other code parties, as well as conducting business transparently. Ofgem has its principal objectives which inform the scope of its role. Both the code manager and Ofgem need to assess code modifications against the code objectives, prior to making a recommendation or decision. This, alongside the broader conflicts-of-interest licence requirements (including the prohibition on discriminating between any persons), provides comprehensive protections against confusion of roles, and ensures code manager independence from Ofgem.

1.4 Code manager objectives

Question 6: To what extent do you agree with the proposed objectives? Are there other objectives you think should be included?

Question 7: 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?

What the consultation said

We proposed that code manager standard licence conditions (SLCs) 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 objectives¹⁹.

We proposed that the licence contains the following code manager objectives:

- 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, Stakeholder Advisory Forums and other code bodies.
- To conduct its relevant business 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.
- The promotion of positive outcomes for energy consumers.
- The delivery of the strategic priorities set out in the relevant sections of the current Strategic Direction Statement (SDS).
- 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

These objectives are intended to apply across code managers' day-to-day operations and not to other decisions or assessments made against specific criteria set out in the relevant codes.

What you said

Most respondents who commented supported the proposal. Some respondents had mixed views and raised implementation or drafting concerns, including:

- A lack of hierarchy of objectives, as this creates the potential for conflict between objectives where they cannot all be pursued equally or simultaneously.

¹⁹ 'Code manager business' means the business carried out by the licensee in performance of the licensed Activity.

- The drafting of specific objectives. A few respondents requested specified terms be defined, including ‘positive consumer outcomes’ and ‘facilitating innovation’. A few also thought the terms ‘fair’ and ‘innovation’ may be open to interpretation.
- How the objectives fit with the code manager’s wider role. For instance, there may be code managers with obligations in relation to non-code manager services (that is, permitted business) under the code. Some objectives impose duties in relation to the relevant code as a whole, not just the licensed activities under the code.

Some respondents suggested additional objectives, including:

- General security and cybersecurity, capturing the impact of artificial intelligence (AI) on future energy systems and the importance of secure data handling.
- Carrying out performance assurance and its security duties via a proportionate approach.
- Actively engaging with stakeholders.
- A growth and competition duty.
- Ensuring system safety and operational integrity.

Our response

We intend to proceed with introducing into the code manager SLCs the set of objectives consulted upon, which the code manager must try to achieve while carrying out their ‘code manager business’.

Updates to licence drafting

The revised SLCs replace the terms ‘relevant business’ with ‘code manager business’, in the objective regarding conducting business transparently and openly and the objective regarding innovation. ‘Relevant business’ captures a wider scope of business not applicable to this objective, whereas ‘code manager business’ is specific to the activity we intend to capture.

Additional objectives suggested by respondents

We have considered stakeholder feedback on possible additional objectives, but have concluded they are not needed. We consider that these are either captured through existing requirements, are not applicable to all codes, or are too specific where the intent of objectives is to be overarching. The objectives are intended to be guiding principles for the code manager in carrying out its code manager business. Some of the suggested additional objectives are closer to functions and activities, rather than guiding principles. In response to the additional objectives suggested by respondents, we do not consider these are needed, for the following reasons:

- **Cybersecurity:** The General Data Protection Regulation (GDPR) addresses aspects of cyber security, relating to secure data handling of individuals data. In addition, Ofgem consulted on embedding Data Best Practice (DBP) guidance into the codes²⁰. Ofgem has consulted on proposals to modify the Smart Meter Communications Licence and will continue engagement through code panels, and will publish a further consultation to clarify how DBP obligations will apply to licensed code managers in the future²¹.
- **Performance assurance:** We do not consider that performance assurance is appropriate for an objective, as the objectives are intended to be high-level guiding principles. Performance assurance is better captured under more detailed arrangements set out in the codes themselves. The Energy Code Reform Phase 1: Transitional Measures and Consequential Changes consultation (due for publication by the end of March 2026) will address performance assurance requirements for code managers.
- **Actively engaging with stakeholders:** Stakeholder engagement is adequately captured by existing code requirements, particularly consultation on the code modifications, budget and work plan, delivery plan, and the performance report.
- **Growth and competition duty:** This is captured by a combination of the existing code and licence objectives, particularly the objective to achieve strategic priorities in the SDS. All codes currently have promoting effective competition as an objective. Ofgem has a statutory duty regarding promoting economic growth. In drafting the SDS, Ofgem will have regard to its general statutory duties, including those in relation to growth and competition.
- **Ensure system safety and operational integrity:** This objective is too specific to be included within the list of objectives. This objective relates primarily to network codes, whereas the intention is to have a set of objectives that have applicability to all code managers.

Hierarchy of objectives

We also note the suggestion that there should be a hierarchy of objectives and the request for clarification of specific terms. We do not propose to introduce a hierarchy of objectives as they are intended to be considered holistically, and we consider each objective is important to achieving the aims of code reform.

1.5 Delivery plans

Question 8: 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?

²⁰ [Data Best Practice guidance](#) | Ofgem

²¹ [Expansion of Data Best Practice \(DBP\) as a code obligation: Decision](#) | Ofgem

Question 9: To what extent do you agree that the licence drafting in condition 29 of Annex A delivers the intent of our proposed policy on delivery plans? Do you have any other views or comments on the licence drafting?

What the consultation said

We proposed that code managers would be required to publish an annual delivery plan, setting out how they would implement the requirements of Ofgem's Strategic Direction Statement (SDS). We explained the sequencing of the SDS, annual budgets and delivery plans, noting that there would be benefits in drafting and publishing the annual budget and delivery plan together. We therefore proposed that the draft delivery plan would be published alongside the draft annual budget, on or before 1 November of the preceding financial year. Additionally, we proposed a 28-day consultation period, followed by final publication no more than 56 days after the publication of the delivery plan draft. We proposed that the code manager must take all reasonable steps to comply with the final version of the plan.

In setting the delivery plan's contents, we aimed for a balance between clarity of expectations and flexibility to allow the code manager control over delivery of the strategic direction. We proposed that delivery plans should cover at least the 12 months following publication, and should include 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 each. We proposed that the code manager must address all SDS elements that relate to their code, unless they include a robust justification for omitting one or more elements. To help address any uncertainty in what the SDS will require, we proposed explicitly allowing the delivery plan to include multiple possible scenarios of changes to the SDS and the code manager's proposed course of action in each one. We have permitted the code manager to diverge from the plan in exceptional circumstances, so long as there is a clear explanation and justification for this divergence from the published SDS.

Finally, we proposed that Ofgem may issue a licence direction, where necessary, to change the contents of the delivery plan. In addition, we proposed that Ofgem may produce guidance on the content or structure of the delivery plan, and that the licence would oblige the code manager to comply with this guidance.

What you said

Most respondents agreed with the proposals, including the timing, contents and flexible requirement to follow through on the plan. A few respondents agreed that the draft delivery plan should be published with the draft annual budget, but disagreed with the publication date of no later than 1 November. They also expressed concerns with the other dates in the proposed budget publication timelines, particularly the 1 January deadline for a second draft, as this falls on a UK bank holiday. A few respondents suggested that code managers should have flexibility in setting these deadlines, which could allow them to better align with the codes.

A few respondents disagreed with the requirement for a 'robust justification' where SDS elements pertaining to the relevant code are omitted. They raised a concern that this would lead to disproportionate or unnecessary obligations on the code manager in practice.

A few respondents asked for clearer rules as to what constitutes 'all reasonable steps' to deliver the plan; for example, whether code managers will be expected to raise code modifications to deliver the plan if the relevant code parties have not done so. A few respondents suggested changing the requirement to 'reasonable endeavours'. A few respondents asked what steps would be taken to ensure that, in the process of implementing the plan, requests made to code parties are reasonable.

All respondents agreed with or expressed no view on allowing the code manager to include multiple scenarios in the plan. However, some requested more clarity on when and how this should be done. A few respondents suggested that a RAID (Risks, Assumptions, Issues and Dependencies) log might be more efficient and effective at keeping the plan adaptable to uncertainty. Similarly, while our proposed contents for the delivery plan were well-received, a few respondents suggested additional contents to support management of risk and clarity of planning.

Finally, a few respondents requested clarification on the consultation process and whether it would be reopened if Ofgem issued a direction to make changes to the delivery plan post-consultation.

Our response

Sequencing of consulting and publishing

In line with our consultation proposals, we intend to proceed with a licence requirement for the code manager to publish a draft delivery plan each year with the draft annual budget. We have considered the prescription on timings and publication dates across the annual budget, delivery plan and cost recovery statement SCLs. We consider that the proposed level of prescription placed unnecessary restrictions on code managers.

We believe that reducing prescription on timings will provide greater flexibility for code managers, enabling the licence requirements to, where appropriate, be adopted with established practices, and will avoid requirements that are difficult to meet in practice, while maintaining clear and effective governance arrangements.

As a result of this feedback, we are proceeding with the following changes to the SLCs:

- Removing the prescription on specific publication dates for the budgets and delivery plan, specifically the requirements to publish drafts by 1 November and 1 January. We are retaining the requirement to publish the budget and delivery plan on the same date.

- Reducing the minimum consultation period for the annual budget and delivery plan from 28 days to 21 days. We still consider that a set number of days is beneficial for clarity but note that 28 days may remove some of the flexibility that the overall reduced prescription brings.
- Removing the prescriptive requirements relating to amendments to budgets (Part F of the SLC).
- Reducing the minimum notice period for changes to the cost recovery statement from three months to one month, to ensure that charging arrangements remain aligned with the revised budget and delivery plan timetable.

Please see standard condition 20 on budgets, standard condition 29 on delivery plans, and standard condition 23 on the cost recovery statement in the annex for the full publication requirements.

Delivery of the SDS

We note the importance of delivery plans for progressing the SDS, and therefore the importance of appropriate justification where SDS elements relating to the relevant code are omitted from the delivery plan. However, it is our intention that the resource dedicated to justifications is reasonable and proportionate. We have updated the licence wording from 'robust justification' to 'clear, evidence-based reasoning' to align with this policy intent.

We intend to retain the requirement for the code manager to take 'all reasonable steps' to comply with the delivery plan once finalised. We note that most respondents did not raise any objections to this proposal, and we consider that the importance of SDS delivery justifies this level of requirement, as opposed to the more flexible 'reasonable endeavours'. We acknowledge the questions raised as to what would constitute 'all reasonable steps'. What is considered reasonable will depend on the circumstances. Noting that raising code modifications is part of the new code manager role, we consider this would be a reasonable step to take in some circumstances, but there may be circumstances where it is not. For example, it may not be reasonable where Ofgem has proposed or has decided to implement a code modification using its direct code modification powers under section 192 of the Energy Act 2023²².

The role of code parties in carrying out the delivery plan was consulted on as part of the first implementation consultation²³. Ofgem consulted on proposed drafting for a co-operation SLC, to be included in the licences of code parties. This condition would allow code managers to reasonably request information from a licensee to plan, develop or deliver SDS-related modifications. Ofgem intends to consult on the legal drafting of the co-operation condition and refined reasonableness criteria in due course.

²² Energy Act 2023, Section 192 | legislation.gov.uk

²³ [Energy code reform: implementation consultation](#) | Ofgem

We intend to retain the option for delivery plans to include multiple scenarios on a voluntary basis to account for any uncertainty, noting that no respondents suggested this option should be removed. However, we note the suggestion of a RAID log and consider that code managers may find this useful to include in delivery plans. Likewise, we will not add any compulsory contents to the delivery plan SLC at this stage, but we remain open to including them in guidance as best practice emerges.

Directions from Ofgem

We intend to proceed with including provisions that allow Ofgem to issue directions on the contents of the delivery plan. This will enable Ofgem to ensure that the plans contain all necessary details related to implementing the SDS. We also intend to include provisions that reflect our intent that code managers should comply with guidance issued by Ofgem, regarding the structure and contents of the delivery plan. This could be a useful tool for Ofgem, including where best practice has emerged and it is considered useful for all delivery plans to align with that best practice. However, we consider that use of the word 'guidance' could be confusing where the obligation is mandating compliance, and so the licence instead requires compliance with a direction on the structure and contents of the delivery plan.

1.6 Controls on the business

Question 10: To what extent do you agree with the proposals set out above on controls on the business?

Question 11: 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?

What the consultation said

We consulted on a number of controls on code managers' business. Similar provisions are present in existing energy licences.

We proposed introducing these controls on the business:

- **Corporate governance:** Requirement to comply with the main principles of 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.
- **Fit and proper requirement:** An ongoing fit and proper requirement for persons in a position of significant managerial responsibility or influence.

- **Chair independence requirements:** Chair appointments must meet the requirements of the ‘sufficiently independent director’ Standard Licence Conditions (SLCs).
- **Non-executive directors term limits:** Non-executive directors appointed for a limited period, with the possibility of reappointment.

We previously considered introducing a requirement to appoint a compliance officer, and requirements on the board’s appointment and expertise, but we proposed not to introduce these.

What you said

Overall, our consultation proposals on controls on the business were well received. Most respondents agreed with the proposed controls. A few respondents specifically mentioned support for the UK Corporate Governance Code as a standard and the proposed term limits with the option of reappointment.

Some respondents had suggestions for improvement and others requested clarification of the proposed requirements. The feedback received included:

- **Corporate Governance:** A few respondents sought clarity on how to comply with the UK Corporate Governance provisions, particularly the ‘comply or explain’ principle.
- **Term limit for non-executive directors:** A few respondents noted that the term cap may not align with how organisations are managed, as expertise may be concentrated among a small number of individuals and teams. Another respondent suggested a term limit of three years, with the option to extend for another term.
- **Compliance officer:** Respondents’ viewpoints on not requiring a mandatory compliance officer were mixed. A few respondents thought the appointment of a compliance officer should be mandatory to ensure adherence to licence obligations and manage conflicts of interest, whereas a few respondents agreed with our proposal that it should be voluntary.
- **Fit and proper:** A few respondents agreed with aligning the fit and proper requirements with those consulted on in Ofgem’s recent consultation on introducing a general fit and proper requirement²⁴, to ensure consistency across licences. A few respondents noted that the scope of offences should not include minor offences, such as driving offences, and considered that insolvency history should only be relevant if it occurred during a period where the individual held a position of significant managerial responsibility.

Our response

Corporate governance

We intend to introduce the requirement for code managers to comply with the principles of the UK Corporate Governance Code and issue an annual statement setting out how they have

²⁴ [Introducing a general ongoing fit and proper requirement](#) | Ofgem

complied. Our view is that a high-level principles-based approach is appropriate for the licence, as it provides flexibility to tailor the approach to compliance to suit the particular circumstances. The licence drafting refers to ‘relevant principles’, meaning the licence holder has the option of explaining why a principle is not relevant to their business.

In response to respondent feedback, the ‘comply or explain’ provision is standard practice for Corporate Governance Code provisions. We do not intend to take a different approach to that anticipated for any other company required to comply with the code provisions. We note that existing guidance on how to comply with the UK Corporate Governance Code is available on the Financial Reporting Council website²⁵.

Operational capability

We intend to proceed with introducing this condition as consulted upon, as it will mitigate the risk of code managers being asset-light and having minimal internal capacity.

Financial reporting

We intend to introduce this condition as consulted upon, with the due date set at 31 July in line with other Ofgem licences.

Fit and proper requirement

We intend to introduce this requirement as consulted upon. In future, we will consider aligning the wording with the proposed wording in the consultation on introducing a general ongoing fit and proper requirement. The consultation proposed introducing a continuous standard, requiring all licensees to ensure that senior personnel remain suitable for their roles beyond the initial application stage. The policy and proposed wording are currently under development, and we will consider aligning with this wording when it is finalised.

Chair independence requirements

We intend to include this condition in the final licence as it will reinforce independent decision-making and avoid bias towards code parties and affiliates of the code manager.

Non-executive directors term limits

We intend to introduce this condition with a three-year term limit and the option to reappoint directors. This will help ensure independence in appointment, balanced with retaining specialist expertise.

We do not intend to have a prescriptive limit on the number of times a director can be reappointed. However, code managers will need to comply with the relevant principles in the UK Corporate Governance Code. We note that ‘section 2: division of responsibilities’ of the Code lists factors that are likely to impair independence, which includes having served on the board for more than nine years from the date of their first appointment.

²⁵ [UK Corporate Governance Code 2024](#) | Financial Reporting Council

In response to respondent feedback on whether the term limit proposal aligns with how code manager organisations are managed, we note that code managers are not public body structures and that multiple code manager organisations have this organisational structure.

Compliance officers

We consider that the original rationale behind not recommending a compliance officer still stands. We initially considered whether to make the appointment of a compliance officer mandatory, as is the case for certain entities regulated by the Electricity Distribution Licence. A compliance officer was made mandatory for entities with vertically integrated undertakings²⁶ as they have higher risks regarding conflicts of interest. Code managers will not necessarily be vertically integrated and so we do not believe a compliance officer should be mandated by default. Where a code manager is vertically integrated, Ofgem could consider introducing amended or special SLCs to address the risks this poses.

Board appointments and expertise

We continue to consider that we do not need to introduce further controls around board appointment and expertise, as they are adequately captured by other SLCs (refer to section 1.3: conflicts of interest).

1.7 Procurement

Question 12: To what extent do you agree with the proposals set out above on procurement of services?

Question 13: 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?

What the consultation said

We proposed to allow code managers to procure third parties to provide services, including ancillary services and support for code manager functions, provided that the suggested licence requirements are met. We proposed that procured third parties must be of good standing and cannot have a 'relevant conflict of interest' (which means financial or other interests that might prejudice the code manager's discharge of its functions under its licence), unless the Authority otherwise consents.

To ensure continued compliance with the licence requirements, and to protect continuity of code manager services, we proposed that, when procuring, a code manager must enter into (or accept a novation of) a contract with each third-party provider, which must include:

²⁶ A vertically integrated undertaking performs at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity.

- Appropriate controls on further subcontracting.
- Appropriate provisions regarding liability for any loss or damage that the third party causes the code manager to incur, such as fines that are given because of a licence breach that the third-party causes.
- Agreements on intellectual property rights to support the effectiveness and efficiency of the business, including making sure that the code manager, and any successor code manager, will have access to all the intellectual property that they need to be able to complete their role.
- Any other agreements necessary to ensure that the code manager is able to meet the Standard Licence Conditions (SLC) related to the service being procured, and has the capability at all times to carry out their complete role.

We proposed that the onus would be on the code manager to consider what provisions, protections and controls are appropriate for each contract.

What you said

Most respondents agreed with our proposals.

Our proposal to disallow contracts with a relevant conflict of interest, except with Authority consent, received mixed views. A few respondents questioned the practicality of this requirement, for example in cases where a third party provides niche services that are not readily available elsewhere. On the other hand, many respondents were supportive of regulations aiming to prevent the negative consequences of conflicts of interest. A few respondents suggested that code parties' consent, as well as that of the Authority, should be required before granting an exception. A few respondents suggested that for some conflicts of interest, such as where a potential contractor is a commercial affiliate of the code manager, the contract should be prohibited with no scope for exceptions.

We received requests for clarity on the definition of 'appropriate' for the mandatory contract contents. A few respondents queried how this would apply to ancillary services compared to procurement of support with key code manager functions. Similarly, a few stakeholders requested clarity on whether the procurement condition would apply to existing contracts.

No respondents explicitly supported the recommendation to include a contractual agreement allowing code managers to pass on fines that third party providers cause them to incur, and a few noted their disagreement with it. This contractual agreement was considered too disruptive for existing contracts, and potentially unenforceable.

While most respondents agreed with this licence requirement being high-level and principles-based, a few respondents argued that this created a loophole, allowing code managers to outsource all or most of their work to potentially for-profit, unregulated companies. They suggested a cap on outsourcing at no more than 20% of the code manager's work.

A few respondents questioned how compliance with the procurement condition would be monitored, and how any non-compliance would be addressed.

A few respondents suggested expanding the requirement for procured third parties to be of good standing, for example by requiring that the code manager has regard to capability and capacity of the third party, and ensuring that they have the expertise for the role.

Our response

We intend to proceed with the procurement SLC, which we consider to be proportionate and aligned with best practice. We intend to make minor changes, taking into account consultation feedback, as we explain below.

Application to existing contracts

We intend to include any existing contracts under the procurement condition. We have adjusted the requirement to 'enter' a contract with all third parties, instead requiring that the code manager 'be a party to' a contract. This is to clarify that it applies to all types of contracts, whether existing, novated or otherwise. The reason for this is that we consider the procurement requirements to be high-level and not overly restrictive for contracts that currently work well. Furthermore, we consider that the procurement requirements protect continued compliance with the SLCs and continuity of code manager services, in ways which are important even for contracts that have been effective under a previous model. We note that the code manager selection process includes a pre-licence grant implementation and assurance phase, during which code manager candidates will work with the Authority to ensure readiness for potential licence grant. This period can be used to agree any timelines to bring existing contracts into compliance or, if necessary and appropriate, to discuss exceptions to certain parts of the condition.

Exceptions and conflicts of interest

For contracts that are entered into after licence grant, a code manager will only need to seek an Authority exception if the contract presents a relevant conflict of interest; that is, one that would or could impact the code manager's ability to fulfil their role transparently and objectively. This requirement also applies on an ongoing basis and includes situations where a change in circumstances relating to an existing contract results in a relevant conflict of interest. In these cases, we consider that it would be too onerous to require separate consent for the exception from code parties. However, the Authority will consider all appropriate steps before granting an exception, including consulting code parties if proportionate and relevant.

Clarity on appropriate controls and provisions

With regards to 'appropriate' provisions in third-party contracts, we deliberately left this to code manager discretion. We expect that when deciding what is 'appropriate,' the code manager will consider the likelihood of disruptions to the services being procured, and the impact that this would have on their ability to meet SLCs. Therefore, one of the factors the code manager should consider is whether the service being contracted is essential or ancillary to fulfilment of

the licence. We have expanded on the wording of this requirement in the licence, setting out high-level considerations we expect the code manager to account for when deciding what is appropriate for each contract. It is possible that for some contracts, no controls, or only limited controls, are required. This might include where a provider only offers standardised terms of a contract and where there are no viable alternative providers or solutions.

Liability and fines

We have removed the reference to passing on fines to third parties from the liability requirements, reducing prescription and allowing the code manager more flexibility on what to include in their contracts. We will continue to require that all third-party contracts should include appropriate provisions regarding liability for loss or damages caused by the third party. This includes existing contracts.

Level of prescription

Finally, we intend to proceed with a principles-based approach to the procurement condition overall, particularly with regards to the following:

- We do not intend to expand on the ‘good standing’ requirement within the licence, which is intended to be reasonably high-level and set out the essential requirements.
- We recognise the need for having effective enforcement systems in place to support the procurement condition and the licence as a whole. We consider that this is out of scope of the SLCs. Ofgem’s approach to licence monitoring is being developed (see section 1.1).

Regarding the proportion of work that code managers can outsource, we consider that an arbitrary cap would have significant disadvantages that would outweigh the benefits. In particular, it may have negative implications for the code manager’s autonomy in operating the organisation. We also note that most respondents supported the principles-based approach.

Risk of code manager outsourcing to for-profit companies

In terms of the code manager outsourcing all or most work to for-profit, unregulated companies, we consider that the likelihood of this is low, due to a lack of incentive for them to do this. Under the proposed SLCs, the code manager will not be able to procure a related undertaking as a third-party contractor, or any other company with a relevant conflict of interest (unless mitigated). Combined with the non-profit requirement on all code managers, this ensures that they would not benefit financially from extensive outsourcing.

Additionally, we have extended the licence obligation regarding their ability to continue to meet relevant licence requirements when procuring, to require that they need to meet all SLCs while procuring, not just those related to the function being outsourced. This includes a requirement for code managers who outsource functions to be able to meet the objectives of the licensee (SLC 3), such as efficient, transparent and fair implementation of the relevant code, and the promotion of positive outcomes for energy consumers. We consider that this will mitigate the impact of any licensed activity being outsourced to for-profit, unregulated companies.

Additionally, the code managers will be required by SLC 6 to have ‘robust internal capability, systems and processes’ which also places some limitations on how much can be outsourced.

1.8 Optional charging

Question 14: To what extent do you agree with the proposals set out above on optional charging?

Question 15: 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?

What the consultation said

We consulted on our proposed approach for ‘optional charging’. This 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 core charges, which would be calculated in line with the cost recovery methodology, with the costs spread out across parties. Optional charges, in this context, would still be recovering costs for the code manager business, and would not fund activities outside of this.

We consulted on the following options:

- **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.

Under our preferred approach, optional charges would only be allowed when the criteria in the licence are met. These relate to cost reflectivity, efficient use of the code manager’s services and proportionality. Additionally, optional charges would not be permitted where the relevant code explicitly requires funding through core charges, or where the activity benefits all code parties or a defined group of them.

What you said

Most respondents agreed with introducing optional charging and our preferred approach of having high-level safeguards in the licence. A few respondents preferred the alternative approach of not saying anything in the licence.

There were some comments regarding the clarity and detail of the drafting, and the practical implementation of optional charges. A few respondents preferred the term ‘usage-based charging’, which they felt better described the purpose of the condition.

Some respondents asked for clearer distinctions between core and optional charges, including examples and more explanation of proportionality, cost reflectivity, and how charging should operate for individual users versus groups of users. A few respondents questioned whether the drafting unduly restricted differentiated charging for defined user groups.

A few respondents suggested adding 'value for money' as an additional criterion, and a few suggested that Stakeholder Advisory Forum (SAF) approval should be required for providing services funded by optional charges.

Some respondents questioned whether activities subject to optional charges should be designated explicitly in the code, or whether optional charges should be required to be underpinned by a methodology. A few respondents asked whether optional charges would be open to appeal, whether they could be negotiated, and how they would be monitored.

Our response

We intend to proceed with introducing the Standard Licence Condition (SLC) on optional charging. We agree that 'usage-based charging' more clearly conveys the purpose of the condition and we have renamed it accordingly in the final licence drafting.

Restricting usage-based charges when it benefits all, or a group of, parties

We note the feedback regarding the drafting restricting 'usage-based' (optional) charging when the charge benefits all, or a group of, parties, and that this might be restrictive. To clarify, core charges may encompass charges that only apply to a single (or multiple) user group(s). For example, if a code manager operates a service that is only used by suppliers, and it recovers the costs of operating this service from suppliers alone (with the amount paid by each supplier determined by a methodology that allocates costs by, for example, market share), then this would be classed as a core charge. However, if the code manager also issued a charge to an individual supplier each time they used the service, this would be classed as an optional (or usage-based) charge.

Additional criteria

We do not intend to add new criteria around 'value for money' or SAF approval to the SLC. We consider that 'value for money' is captured by existing clauses around efficiency and cost-reflectivity. We consider that SAF approval would be unduly burdensome and prevent flexibility in issuing these charges, noting that the existing protections, both directly in this SLC and in the code manager licence more broadly, should prevent misuse. For example, usage-based charges need to be cost-reflective and should only be issued when it is proportionate to do so, and there is the broader code manager objective to be economic and efficient.

Clarifying the drafting

We agree with some of the points made on the drafting and have refined the SLC in light of this. For example, we have clarified that the intention is not necessarily to 'better facilitate' proportionality and cost reflectivity, but that issuing the usage-based charges needs to be

proportionate, and that the charge needs to be cost-reflective. The charges still need to ‘better facilitate’ efficiency, for example where a code party has discretion over whether (and to what extent) it uses a service.

Licence requirement on a methodology

We continue to consider that there does not need to be a licence requirement on usage-based charges being underpinned by a methodology or specified in the code (noting that they may be in some instances). The intention is that these charges should add flexibility to how the code manager recovers costs for providing services, and we consider that requiring a methodology may counteract this. Additionally, we consider that the requirement for the charges to be cost-reflective also reduces the need for a methodology. We anticipate that core charges will be the default and will cover the majority of charges.

Monitoring and challenging usage-based charges

We note the comments on monitoring and potential appeals of usage-based charges. We do not consider that any additions to the licence are needed to address this. On monitoring, we anticipate that, at a high-level, usage-based charges will be captured in the code manager’s budget, and therefore part of the consultation process, which provides transparency to both stakeholders and Ofgem. Regarding a potential appeal mechanism, we consider there to be sufficient existing safeguards in the licence. The code manager should not have an incentive to inflate costs as they are required to be not-for-profit. Their general objective to be transparent and economic and efficient, as well as the requirement for usage-based charges to be cost-reflective, is also likely to reduce the need for an appeal process.

1.9 Performance

Question 16: To what extent do you agree with our proposal to introduce a ‘minimum acceptable performance standard’ in the code manager licence?

Question 17: 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 Stakeholder Advisory Forum (SAF) should have a role in reviewing the remuneration policy?

Question 18: 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?

What the consultation said

In addition to the proposed licence requirements from the 2024 consultation response²⁷, we proposed two Standard Licence Conditions (SLCs) to address code manager performance:

- **Minimum acceptable performance standard:** the code manager must at least perform to a ‘minimum acceptable standard’, which would consider performance against the metrics in the code, and stakeholder and Authority feedback.
- **Remuneration policy requirements:** the code manager must implement a remuneration policy, where any performance-related remuneration of senior staff must consider performance against the performance metrics and feedback, as well as any compliance and enforcement actions. The proposed condition did not specify the detail of how the policy should look in practice, leaving this to the code manager.

What you said

Most respondents supported both the ‘minimum acceptable performance’ and ‘remuneration policy’ SLCs. Some mentioned that the ‘minimum acceptable performance’ standard was a necessary safeguard to ensure consistently acceptable performance.

For both SLCs, there were some concerns about the detail of the drafting and whether the proposed requirements were clear enough.

Regarding the ‘minimum acceptable performance’, some respondents thought that more clarity was needed on what constitutes ‘minimum acceptable’ performance. For example, who determines if the standard is met and how performance will be measured? A few respondents recommended that Ofgem provide guidance and illustrative examples on how to comply with the standards. A few respondents suggested having a regulatory reporting pack to support consistent monitoring. A few said the framework should distinguish between minor issues and sustained underperformance.

Most who provided a response supported the proposed remuneration policy, particularly the link to performance and compliance. There were mixed views on the roles of sufficiently independent directors (SIDs) and the Stakeholder Advisory Forum (SAF) in reviewing the policy. There was broad support for SIDs inputting on the policy, but there were some concerns that the requirement could be too prescriptive and prevent existing practices that work well. Those who opposed SAF involvement cited lack of expertise or potential duplication of board functions, whereas those who supported it noted increased transparency and influence of code parties.

²⁷ [Energy code reform: code manager licensing and secondary legislation](#) | UK Government and Ofgem

A few respondents suggested additional considerations, such as capping pay increases at a similar level to public bodies and ensuring any bonus losses occur in the same year as underperformance, to provide the right incentives.

A few respondents raised concerns regarding the practical implications of how the remuneration policy would apply to senior staff that may be involved in multiple functions that the code manager undertakes (under their 'permitted business'), and not just the code manager function. It was also noted that the requirement to set out the total amount of bonuses awarded in the budget may negatively impact accuracy of awarding bonuses in accordance with performance, as budgets are determined in advance. A few respondents also raised concerns regarding privacy, noting that code managers should not be required to set out individuals' performance or bonuses in their policy.

There were some broader comments relating to the code manager performance requirements previously consulted on in the 2024 consultation²⁸. Regarding assessment of performance and the metrics, some respondents mentioned that stakeholder feedback should play a central role in performance assessment. A few respondents thought SAFs should be involved in reviewing and shaping performance standards. A few stakeholders thought that the annual assessment of code manager performance should be conducted by independent bodies.

Regarding standards and implementation, some respondents thought there would be a risk of inconsistent standards across codes if each code manager defines their own metrics. Another stakeholder recommended setting key performance indicators (KPIs) in a subsidiary document to allow flexibility. Some respondents raised concerns about how the standards are introduced and implemented. A few respondents said code managers should not be allowed to modify performance indicators to suit their own interests. A few respondents suggested that there should be a SLC requiring continuous improvement.

Our response

We intend to proceed with introducing both the 'minimum acceptable performance' and 'remuneration policy' licence requirements in the code manager licence, with some tweaks to the licence drafting to better reflect the policy intent. Please note that we have changed the title from 'remuneration framework' to 'remuneration policy' as we consider this to better capture the requirements in the condition.

We continue to consider that these SLCs will contribute to incentivising good performance in the code manager and will also provide routes for addressing poor performance. We also note the broad levels of support from respondents. Below, we provide more details on the changes we intend to make.

²⁸ [Energy code reform: code manager licensing and secondary legislation](#) | UK Government and Ofgem

Minimum acceptable performance

We acknowledge the concerns regarding what exactly is meant by 'minimum acceptable performance'. The proposed SLC 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. The intention of the condition is to allow for a holistic assessment of the code manager's performance, without arbitrary thresholds leading to breaches of the licence. However, we have tweaked the drafting to clarify that the policy intent is to address ongoing and/or significant poor performance.

Remuneration policy

In response to stakeholder concerns that the current licence drafting could require disclosure of individual employee performance and bonuses, we have refined the drafting to ensure it is clear that the intention is that the framework only describes methods for setting bonuses, not the bonuses or performance assessments for specific individuals.

We have updated the drafting to address the concern that the requirement to consult the SIDs may be too prescriptive. The licence now requires the code manager to consult at least two people that would meet the requirements of a SID of the code manager. This retains the original policy intent but adds flexibility.

In response to the questions over whether the SAF should be involved in reviewing the remuneration framework, our view is that they do not appear to be best placed to do this. The SAF's expertise will more likely be on the code and the modifications to it, rather than on the organisational matters of the code manager. We agree that scrutiny and independent input on the framework is important, but we consider that the above requirement on SIDs (or equivalent) being consulted, alongside the framework being published, addresses this.

In response to the concerns regarding how the remuneration policy applies to senior staff where they are involved in other roles, we agree that clarifications in the licence around this would be useful. We have updated the SLC to specify that the remuneration policy requirements only apply to code manager business. The detail of how the policy interacts with board members' involvement in other roles of the code manager (noting that it is only executive directors that are covered by the licence requirement), and the practical implementation of it, will be up to the code manager to decide, noting the transparency requirements.

We note the suggestion that if the total amount on bonuses were set out in the budget, this could negatively impact the accuracy of awarding bonuses in line with performance. We agree with the reasoning and have therefore removed this requirement from the licence drafting, noting that the code manager will still be subject to requirements regarding transparency and economic efficiency of the budget, and that we expect staffing costs more broadly to be set out.

General comments on performance

Regarding the point on Ofgem publishing a 'regulatory reporting pack' for code managers, we do not consider that this needs to be included at this stage, but we did consider whether a licence provision to enable a potential future publication would be useful. Rather than adding a specific licence requirement on a 'regulatory reporting pack', we consider it more beneficial to add a clause to the interpretation section of the licence stating that the licensee must have regard to any guidance published by the Authority on the SLCs. This clause would cover a broader spectrum of publications, and we consider that the additional flexibility makes it a preferable option to only introducing requirements relating to a 'regulatory reporting pack'.

Regarding the suggestion to introduce an SLC on continuous improvement, we appreciate the intent behind the suggestion and agree that the code managers need to be incentivised to perform well. We are not convinced that a licence requirement is the best route to achieve this, and we consider that the incentive to perform well and to improve performance should be part of the broader performance framework. The details of the performance framework will be consulted on in the upcoming 'Energy Code Reform Phase 1: Transitional Measures and Consequential Changes' consultation.

Similarly, for the remainder of the points concerning the details of the performance framework, how it will be implemented and how code managers will be assessed against it, we refer to the Energy Code Reform Phase 1: Transitional Measures and Consequential Changes consultation, as the detail of this will sit in the code and not the licence and will not be addressed here.

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

Question 19: To what extent do you agree with our proposals regarding the provision of information, and co-operation with, the Authority?

Question 20: 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?

What the consultation said

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

We proposed that the code manager must provide information that the Authority requires to carry out its functions. We considered that this would allow Ofgem to monitor compliance and performance, including through obtaining information on the operation of the code. We noted that the condition would be supplementary to other conditions which allow Ofgem to request specific information.

We also proposed that the licence requires the code manager to be open and co-operative 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 from performing its licence obligations, or 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 proposed that the code manager 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.

What you said

Our overall consultation proposals on the provision of information to, and co-operation with, the Authority were well received. Most respondents supported the proposal, and some respondents had suggestions for improvement.

A few respondents thought the current wording of the provision, which specifies that the Authority can request any information it may reasonably require, was broad and they requested that this provision be deleted. They requested that the provision specify which information the Authority can request, which would limit the scope of these requests to avoid undue burden on the licence holder.

A few respondents suggested that Ofgem set time frames for when they should receive information from licence holders, and a few suggested that Ofgem specify how long it can hold information received.

Our response

We intend to proceed with incorporating this Standard Licence Condition (SLC) in the final licence with a revised structure. The new structure streamlines the condition by combining Part A and Part B. The drafting clarifies the requirement consulted on that the code manager be required to provide any advice and guidance requested by Ofgem. It also specifies that the code manager must provide Ofgem with information it may reasonably require to perform its functions under legislation, which captures the advice and guidance that Ofgem would request.

Our response to specific suggestions is set out below.

Providing clarity over scope of information requests

We do not propose to progress the respondent suggestion to provide clarity over the scope of information requests, as the licence has existing limitations on the scope of information that Ofgem can request. A code manager would not be required to provide information if they could not be compelled to produce or give the information in evidence in civil proceedings before a court.

In addition, the Electricity Act 1989²⁹ and Gas Act 1986³⁰ require the Authority to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at the cases in which action is needed. This principle will apply to how Ofgem administers its ability to request information under the SLCs, requiring any requests to be proportionate and targeted to cases in which action is needed.

Timeframes for receipt of information

We considered respondents' suggestions on setting time frames for when Ofgem should receive information from licence holders and how long it can hold information. We propose no changes in response, as we consider they are adequately captured under existing requirements under the Electricity Act 1989, Gas Act 1986, UK General Data Protection Regulation³¹ (UK GDPR), and Data Protection Act 2018³².

As noted above, the Electricity Act and Gas Act require Ofgem to have regard to the principles under which regulatory activities should be proportionate and targeted only at the cases in which action is needed. For complex requests, Ofgem may consider discussing with the code manager what is reasonable before issuing the request. As a public body, Ofgem is also subject to controls on how long it can store information. The UK GDPR and Data Protection Act 2018 note that public bodies must not keep personal data longer than needed for the purpose it was collected. They must define documented retention schedules, regularly review data, and ensure deletion or anonymisation once it is no longer needed.

1.11 Ease of use of the code

Question 21: To what extent do you agree with our preferred option 1 (principles-based licence condition)?

²⁹ Electricity Act 1989, Section 3(a) | legislation.gov.uk

³⁰ Gas Act 1986, Section 5(a) | legislation.gov.uk

³¹ United Kingdom General Data Protection Legislation | legislation.gov.uk

³² Data Protection Act 2018 | legislation.gov.uk

Question 22: 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?

What the consultation said

We proposed to introduce a principles-based Standard Licence Condition (SLC) requiring the code manager to ensure that its code and related materials are as easy as practicable to access, understand and engage with. We also proposed that code managers, in meeting the principles, must have regard to guidance if published by Ofgem and any relevant best practice.

We also set out an alternative (non-preferred) option to have a prescriptive SLC, outlining detailed requirements the licensee would need to follow, such as having a digitalised code, use of plain language, that the website that hosts the code is easy to navigate and so on.

What you said

Most respondents agreed with our proposals to include a principles-based SLC for the ease of use of the code.

A few respondents preferred the option of a more prescriptive SLC, with some preferring a mix of a principles-based and prescriptive SLC. Those who supported either a mix of principles-based and prescriptive or a more prescriptive condition expressed that this would provide more consistency between the codes as well as providing more clarity on what is expected of the code manager.

Our response

We intend to proceed with introducing a principles-based SLC for the ease of use of the code. We believe that having a principles-based condition will allow code managers flexibility in making the codes easy to use, while also providing Ofgem with the flexibility to prescribe more detail through guidance. Compared to a prescriptive approach, it should encourage code managers to take a holistic approach to ensuring the code is easy to use.

We recognise that there were a small number of respondents who expressed a preference for a mix of a principles-based and prescriptive condition. We have concerns that this could lead to long and cumbersome SLCs that risk locking in outdated or rigid approaches to making the code easy to use. For example, if we prescribed what is required in terms of digitalising codes, this could make it difficult for code managers to reflect changes in technology and user needs in the future. We believe a principles-based condition will be more flexible and allow code managers to adapt their approach over time.

We understand that this preferred option might provide less certainty to the code managers on what is expected from them. We believe that this lack of certainty could be mitigated by providing more specific direction via the Strategic Direction Statement (SDS). Additionally, Ofgem anticipates having ongoing engagement with code managers as part of the regulatory

approach (please refer to section 1.1 for more detail on this). Finally, where deemed necessary, Ofgem could issue guidance, noting that the licence obliges code managers to have due regard to any related guidance when complying with the ease of use condition.

1.12 End of licence

Question 23: 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?

What the consultation said

We proposed that during a handover period, the outgoing code manager must make arrangements to ensure a smooth handover to their successor.

We proposed that the outgoing code manager must arrange for the novation of all contracts and intellectual property rights that their successor will need for the role. To support this, we proposed that the code manager must have in place a Business Handover Plan (BHP), detailing how they will meet the requirements of a smooth handover. The BHP must be consulted on, approved by the Authority and reviewed and updated as necessary. The BHP requirement was divided into mandatory and 'other appropriate' contents for the BHP. The mandatory matters encompass the handing over of intellectual property rights, expenditure records, and contracts, while the 'other appropriate' contents broaden the plan to include matters such as methods for risk management and the transfer of knowledge and information.

We consulted on what other assets, if any, the outgoing code manager should be required to transfer to their successor.

What you said

Most respondents agreed with our proposals, while many provided mixed agree and disagree answers.

Many respondents agreed with the importance of the BHP and supported the mandatory contents we proposed, such as provisions for securing the novation of contracts and intellectual property rights. Some respondents suggested additional mandatory contents, covering dispute resolution, retention of expertise, and recovery of exceptional costs related to the handover. Several respondents were in favour of regular reviews of the BHP, as opposed to only requiring reviews when changes are expected. Some respondents provided suggested

time periods for when the plans should be reviewed, which included one year, three years, and five years.

A few respondents requested further information about the events leading up to a handover period, such as the revocation process.

Many respondents agreed with the requirement to novate intellectual property rights, but a few questioned the practicality of this requirement, for example where intellectual property is shared. Some respondents suggested additional assets to be included as part of a mandatory novation or handover, including:

- Tools and software: operational artefacts, source code and documents for digital tools used, website and website content.
- Data continuity, data models and tools.
- Expertise: knowledge, staff members.
- Materials: templates, legal drafting, stakeholder engagement materials, guidance documents.
- Reporting: meeting notes, archived modifications, change reports.

Our response

We intend to proceed with including this Standard Licence Condition (SLC) in the final licence, noting most respondents supported its inclusion. We consider that it will help to ensure a smooth handover of code manager responsibilities, should Ofgem revoke a code manager licence. We have changed the licence drafting to address some of the points raised through responses to the consultation and to reflect lessons learned from other licences.

BHP review requirements

We intend to update the requirement to review the BHP not less than once every five years. This would be in addition to the ongoing requirement on the code manager to keep the plan under review and update it as needed. A backstop five-year review period ensures the requirement is not onerous on code managers, while providing assurance that the obligations and risks involved in the handover plan are regularly reviewed and managed. In completing a review, the licensee would also be required to send a report to Ofgem affirming that the plan has been reviewed along with any changes made. We note support for regular reviews of the BHP and consider that a requirement to review the BHP every five years is proportionate and reasonable. We also consider that providing a report to Ofgem will increase transparency and accountability, helping to ensure that knowledge of the plan is kept up to date within the code manager business and that communication around the suitability of the plan is ongoing.

Risk novation requirement

We also intend to retain the requirement to hand over intellectual property rights that the successor code manager will need for the Relevant Business³³. However, we have added a requirement that the BHP sets out any risks to the practicality of this novation, and their mitigations. Since the BHP is subject to consultation and Ofgem approval, this provides an opportunity for Ofgem to ensure there are sufficient mitigations to risks related to the handover. We also note the requirement that any third-party contracts must ensure the code manager's successor can access intellectual property for the role (SLC 7.11). Further, the code manager must have sufficient control over assets to carry out the role (SLC 6.3). We consider that this provides appropriate safeguards where intellectual property ownership is shared with a third party.

Provision for Liabilities

In considering lessons learned across industry licences, we identified a risk that the outgoing licensee could have unpaid liabilities. This could lead to disputes with the successor licensee and may impact on the smooth handover of the business. We note that SLC 31 requires that the BHP contains all details necessary for an effective handover. We have updated this to also reference the handover being 'orderly', which aligns with the intent of the condition. While this provision acts as a catch-all in terms of the contents of the BHP, for completeness we have also added a condition to the list of other appropriate content in SLC 31.21. This addition requires the code manager to, as appropriate, set out as part of the handover plan how the successor licensee would be indemnified for liability and the cost of legal proceedings related to the licensee's conduct before the transfer date. We consider that this addition aligns with the intent of the condition, which is to ensure an orderly handover.

Ability for Ofgem to direct changes to handover plan

Another gap in the drafting consulted upon is that Ofgem's ability to direct changes to the handover plan was limited to when the licensee is seeking its initial approval of the draft plan. We have updated SLC 31 to allow Ofgem to direct changes to the handover plan on an ongoing basis. This ensures that Ofgem will have consistent powers through the life of the licence and so can, where appropriate, direct updates to the BHP to ensure it will enable an orderly handover of the business.

Suggestions for additional content

We note that respondents suggested additional assets to be included as part of a mandatory novation or handover. With the exception of staff members, we consider that the proposed licence requirements for the novation by the licensee of intellectual property rights to its successors encompasses most of these suggested assets. In addition, the BHP must include

³³ Relevant Business means the Code Manager Business and any Permitted Business carried out by the Licensee.

all requirements for an orderly handover, which are likely to include the suggestions raised by respondents.

In response to the suggestion that the BHP contain provisions for the transfer of staff, we consider that this will, as appropriate, be captured by the general responsibility to facilitate a smooth handover. They cannot take any actions that would prejudice their successor's ability to take on code manager responsibilities, which is intended to capture disrupting the transfer of appropriate staff. In addition, the Transfer of Undertakings (Protection of Employment) Regulations may play a role in supporting such transfers.

Similarly, with regards to the suggested additional mandatory contents of the BHP, we note that the BHP must include all requirements for an orderly handover. That said, we consider that the suggested content is largely already captured by the 'other appropriate' contents set out in the draft condition (SLC 31.20). For example, a few respondents suggested an annex containing all the records and documents that the successor code manager would need. We consider that the same function would be met by including an explanation of where to find all code manager-related documents, as encouraged in Section F of the proposed condition. Due to this, we do not consider additional mandatory contents necessary and intend to proceed with the proposed mandatory contents. We have strengthened the requirement around 'other appropriate' contents, such that they must be included unless the code manager justifies their omission. This will ensure that risk management and other relevant areas are appropriately detailed in the BHP, with an opportunity to agree stronger provisions through the consultation and approval process.

We acknowledge the request for more details on the revocation process and intend to set out further details on revocation events in Ofgem's upcoming consultation on Energy Code Reform Phase 1: Transitional Measures and Consequential Changes.

1.13 Code maintenance and modification

Question 25: 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?

Question 26: To what extent do you agree that the licence drafting in condition 27 of Annex A capture the policy intent set out in this proposal? Do you have any other views or comments on the licence drafting?

What the consultation said

We proposed licence obligations relating to core requirements of the code modification process. We reviewed and considered obligations in existing energy licence conditions (code owner conditions) as well as aligning with Ofgem's proposals on the updated modification

process in the second implementation consultation. We consulted on proposals to update and amend existing licence provisions, as well as to introduce new provisions.

Role of the code manager

We set out our proposals for code managers to act as a critical friend and, where practicable, ensure that the views of less well-resourced participants who are impacted by a modification proposal are considered in the assessment of that modification, through engagement with wider stakeholders. We also proposed that code managers will be required to provide secretariat support to the Stakeholder Advisory Forum (SAF) to ensure it is able to operate effectively.

Code manager assessment of modification proposals

We set out our proposals for the code manager to prepare a report setting out its assessment of a modification against the relevant code objectives and the reasons for its recommendation. In making its assessment, we also proposed that the code manager must have regard to the views of the SAF and that the views of SAF must be recorded in the modification report. We proposed that where there is misalignment between the view of SAF and the code manager, this should be explained by the code manager to help provide transparency to stakeholders.

Significant Code Review (SCR) process

We set out that the current Significant Code Review (SCR) process provides a tool for Ofgem to initiate wide-ranging and holistic change and to implement reform to a code-based issue. We considered, in light of the new framework introduced by Energy Code Reform, whether any changes should be made to the SCR process, particularly around the role of the code manager. We proposed standard licence conditions (SLCs) to reflect the SCR process, including that the Authority can direct code managers to raise an SCR-related code modification proposal and can direct the code manager to support them during the SCR phase. Additionally, we proposed to make it possible for conclusions of certain elements of an SCR to be published at different points in time, to improve efficiency and flexibility.

Send back provisions

We set out our proposal to include and update existing send back provisions in the code manager licence. We proposed that the Authority would be able to set a timetable for a modification to be resubmitted for decision, which the code manager would need to comply with. We also proposed 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. In our consultation, we set out that we would welcome any views on how the send back provisions can be designed to be flexible and efficient, in particular 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

We proposed to retain the self-governance and fast-track governance processes that currently exist in codes in the code manager licence, in order to facilitate efficient decision making. We also proposed to retain the existing mechanisms to appeal self-governance decisions to the Authority, to ensure appropriate accountability.

Cross code working

We set out our proposals that the code manager should raise a modification, where it is aware that this is required, to give effect to a modification of another code, or alternatively, to progress a modification raised by another interested party on this matter in a timely manner.

Consumer impact assessment

We proposed to enshrine in the code manager licence the requirement for the code manager to assess the positive and negative impacts on consumers of code modifications.

Direct code change

We set out that the direct code change power can be used by the Authority in clearly defined circumstances and subject to appropriate checks. If the Authority decides to use its direct code change powers, there is a risk that modification proposals are raised that are similar in scope to the direct code change being taken forward by the Authority, which could cause confusion and affect the integrity of the modification process. Therefore, we proposed that modifications that are in scope of an active direct modification cannot be raised without the Authority's consent. Equally, modification proposals that are already in flight, and are in scope of a direct modification, should be paused unless the Authority consents otherwise. Like the SCR process, we proposed that the Authority should be able to direct that the code manager supports the Authority in the direct code change process.

Stakeholder advisory forum (SAF)

We set out the high-level requirements on SAF constitution in the licence, which included accommodating up to two consumer advocates on the forum and having an independent member acting as chair. We proposed that a key function of the forum is in the modification process and set this out clearly in the code manager licence.

What you said

Most respondents agreed with our proposals.

There were some comments from respondents on the requirements for code managers to carry out consumer impact assessments, however only a few respondents disagreed with their introduction in the code manager licence. Respondents expressed concerns about the resource required to produce consumer impact assessments compared to their added value and whether this was proportionate. There were also comments about ensuring that consistent

methodologies are used across different codes and how code managers can account for complex short- and long-term trade-offs for consumers.

There were some comments on send back provisions and whether the decision-making process should provide Ofgem with more discretion, for example, allowing Ofgem to consent to parts of modification proposals. There was very little support for the proposal for allowing Ofgem to consent to parts of a modification proposal. A few respondents were supportive of the aim of making the provisions more flexible, but all respondents raised concerns about the impact of accepting only elements of a proposal, which may have unintended consequences, particularly if the impacts of the change have not been fully assessed and considered.

There were a few comments on the code manager's role as a critical friend in relation to smaller parties and how this would work in practice. There were queries whether terms such as 'less well-resourced code parties' and 'small participants and innovators', which appear in the licence wording, should be defined to avoid code managers adopting an inconsistent approach, and some participants being able to gain an advantage from this.

Our response

We intend to proceed with the code maintenance and modification SLCs as set out in the consultation, with some minor changes as set out below. The SLCs are intended to reflect the new roles and responsibilities created by Energy Code Reform and were well supported by respondents.

We think that consumer impact assessments are important to ensure that the effect of modification proposals has been thoroughly examined; however, we accept that they could add burden in certain circumstances. However, we believe that the wording of the SLC provides sufficient flexibility for code managers to decide how detailed their assessment should be, based on the detail and scope of the code modification in question. More detail on consumer impact assessments in the code modification process was set out in the proposed code text template³⁴, published alongside the second implementation consultation response document³⁵. We therefore intend to proceed with this SLC as it was consulted on.

There were no suggestions from respondents on how to make send back provisions more flexible and so we do not intend to make any changes to this SLC.

The Code Administration Code of Practice (CACoP)³⁶ currently contains a principle that code administrators should act as critical friends, so this requirement is already established within the codes. We think that trying to define terms such as 'less well-resourced code parties' and 'small participants and innovators' would be overly restrictive and so we do not intend to make any changes to this SLC.

³⁴ [Implementation of energy code reform: template code text](#) | Ofgem

³⁵ [Implementation of energy code reform: second decision](#) | Ofgem

³⁶ [Code Administration Code of Practice](#) | CACoP

Changes to the SLCs resulting from the second implementation consultation

The second implementation consultation decision was published on 6 March 2026 and should be read alongside this section. The second implementation consultation decision set out Ofgem's response to 'chapter 2: Future code modification process' and 'chapter 3: Stakeholder advisory forum (SAF)' and set out a consultation on the proposed code text for the new code modification process and arrangements for the SAF.

The code manager SLCs set out the formal obligations that code managers must abide by as a licensed entity. These licences require compliance with the codes, which are the rules that govern the energy industry. The codes provide more detail on the implementation and delivery of certain processes, in this case the code modification and SAF processes.

This consultation and the second implementation consultation contained some policy overlap in relation to the code modification and SAF processes. Some of the responses to this consultation were more applicable to the policy detail set out in the second implementation consultation, while some of the responses to the second implementation consultation related to the code maintenance and modification SLCs.

To ensure clarity, all responses that relate to the detailed implementation of the code modification and SAF processes were addressed in the second implementation consultation decision, while responses that relate to the code manager code maintenance and modification SLCs are addressed in this document, regardless of which consultation they were written in response to.

Before the first code managers are appointed, we are working towards publishing the relevant code text as well as the SLCs. The second implementation decision sets out Ofgem's policy positions, which are reflected in the proposed code text which is currently open for consultation. These policy positions have also informed the SLCs, which have been updated to ensure alignment with the proposed code text. The drafting of the SLCs will be kept under review and may be subject to change, depending on Ofgem's decision in respect of the form and implementation of the proposed code text. The proposed code text has been drafted following stakeholder input through the second implementation consultation and has been reviewed by industry expert readers. However, the finalised SLCs should not be taken as a pre-judgement of the outcome of the consultation on the proposed code text. If the final relevant code text impacts any of the SLCs set out in this publication, Ofgem would re-assess the situation as appropriate and consult on any necessary changes at a later date.

The changes to the SLCs to ensure alignment with the second implementation decision are as follows:

- Provision for withdrawals.
- Removal of the limit on alternatives.
- Additional appeal routes.

In addition to the changes detailed below, there have been minor changes to the drafting of the code maintenance and modification SLCs to improve readability and clarity.

Provision for withdrawals

Ofgem set out in the second implementation consultation decision³⁷ that they intended to take forward its proposal that a code manager can withdraw an issue or a modification proposal in two scenarios:

- If the proposer requests that the code manager or another code party takes ownership of an issue or modification proposal and (i) neither agrees to take on ownership, and (ii) the original proposer does not wish to retain ownership.
- If the proposer of an issue or modification fails to engage with the code manager or acts in a manner which prevents the code manager from being able to ensure progress of the modification.

We know from stakeholder feedback that having a route to withdraw an issue or modification proposal, in certain circumstances, is important to ensure that proposers can withdraw their issue or modification if they change their mind, and that code managers have the discretion to remove issues or modifications from the process that are failing to progress through a lack of engagement from the proposer. We have therefore added a provision to the SLCs 27.5(g) that allows for the code manager to withdraw an issue or modification proposal in circumstances defined by the code.

Limit on alternatives

In the second implementation consultation³⁸ Ofgem proposed introducing a limit of three alternative modifications. Following feedback from stakeholders, in the second implementation decision it set out a revised policy position of adopting a principles-based approach instead. Ofgem proposed that alternatives would have to meet the following criteria in order to be accepted into the process:

- Alternatives must address the original issue.
- Alternatives must have a rationale and demonstrate clear improvements over the existing code.
- Alternatives must be sufficiently different in outcome from the original proposal and from each other.

The full details for this process and the rationale for this change are set out in paragraphs 2.188-2.194 of the second implementation decision. In order to align with this change to the policy position, we have updated SLC 27.5(h).

³⁷ [Implementation of energy code reform: second decision](#) | Ofgem

³⁸ [Energy code reform: second implementation consultation](#) | Ofgem

Appeal routes

Throughout the modification proposal process, there are multiple decisions that will be made by the code manager. In the second implementation consultation decision, Ofgem set out that it had carefully considered all the code manager decision points within the modification process and whether any of the decisions warranted including an appeal route. It examined the role of industry voice to raise concerns, balanced with our aim of empowering code managers to make decisions efficiently.

Full details of the appeals routes within the code modification process can be found in the second implementation consultation decision.

To align the code maintenance and modification SLCs with the proposed code text, we have added an appeal route for (i) when the code manager rejects a designation request from a non-code party in order to raise a modification proposal and (ii) when the code manager has made a final decision to refuse a modification proposal.

(i) Ofgem set out in the second implementation decision that it intended to take forward its proposal that, in cases where the code manager rejects a designation request from a non-code party to raise a modification proposal, the non-code party can appeal this decision to the Authority. This provision has been added at 27.11(a).

(ii) Ofgem also proposed to add an appeal route to the Authority when the code manager has made a final decision to refuse a modification proposal, following an assessment against the assessment criteria and in consultation with the SAF. This provision has been added at 27.11(b(i)).

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

2.1 Background

Section 173 of the Energy Act 2004³⁹ gives affected parties the right to appeal Ofgem decisions on energy code modifications to the Competition and Markets Authority (CMA). It states that the right to appeal applies to energy codes that have been outlined (or designated) by the Secretary of State, through a statutory instrument or order. The existing order, which details which codes are in scope of the right to appeal and which types of Ofgem decisions are excluded from the right of appeal to the CMA, is the Electricity and Gas Appeals (Designation and Exclusion) Order (2014)⁴⁰ ('the Order'). The Order has not been updated since 2014 and therefore does not reflect recent changes to codes or upcoming changes to governance structures.

The ability to appeal Ofgem code modification decisions to the CMA helps to ensure that fair outcomes are achieved and that there is accountability in decision making. It affords eligible parties who feel adversely impacted by a code modification decision the opportunity to challenge the merits of that decision, on a wider basis than a judicial review (JR) through the courts. Due to wider changes being made to the code governance framework, including the replacement of code panels and code administrators with code managers and the updating of governance arrangements underpinning the code modification process⁴¹, the government must update the appeals process for parties seeking to challenge an Ofgem decision on a code modification.

The May 2025 consultation set out proposals for updating the design and regulations across four key areas: codes in scope of appeal, eligibility to appeal, appeals triggers and exclusion criteria, and alternative code modifications. The overall objective of these proposals was to ensure that the reformed appeals process:

- Has clear roles and responsibilities.
- Is compatible with the revised roles and responsibilities introduced by our reforms.
- Is compatible with the revised code modification process.
- Standardises the appeals process.
- Is inclusive of new codes.
- Is fit for the future of code consolidation.

³⁹ Energy Act 2004, Section 173 | legislation.gov.uk

⁴⁰ The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 | legislation.gov.uk

⁴¹ [Energy code reform: second implementation consultation](#) | Ofgem

- Removes ambiguity.
- Retains safeguards for the availability of electricity and gas.
- Provides sufficient flexibility in decision making.

The government plans to issue an updated Order under the power given in the Energy Act 2004, to enshrine updates to the code modification appeals process in law.

2.2 Codes in scope of the appeals process

Retail Energy Code (REC) appeals status

Question 27: 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 [Master Registration Agreement] MRA and [Supply Point Administrative Regime] SPAA?

What the consultation said

The consultation outlined which codes are currently in scope of the code modification appeals process to the Competition and Markets Authority (CMA), under the current Electricity and Gas Appeals (Designation and Exclusion) Order 2014 ('the Order').

Additionally, the consultation specifically highlighted the Supply Point Administrative Regime (SPAA) and the Master Registration Agreement (MRA) and acknowledged that these codes became obsolete when the Retail Energy Code (REC) was introduced in 2019. The replacement of the SPAA and MRA with the REC introduced ambiguity around the appealable status of all three codes, as:

- Although the SPAA and MRA remain listed in scope in legislation, their defunct nature has meant that these codes could no longer be practically appealed.
- The REC was not formally added to the Order alongside its introduction and so modifications to the REC cannot be appealed.

The consultation therefore proposed bringing the REC into scope, as we considered that its inclusion mirrors the original intent of the Order and is necessary to correct the identified administrative oversight.

What you said

Almost all respondents who answered this question agreed that legislation should be updated to bring the REC into scope of code modification appeals to the CMA. A few respondents had no view or were neutral and did not expand on their reasoning.

Many respondents agreed that including the REC in legislation would mirror the original Order and would provide needed continuity, by restoring previously held appeal rights. Respondents

agreed that alignment of the REC with other codes would be sensible, pragmatic and consistent and they highlighted the benefits of standardised governance.

Our response

We intend to bring the REC into scope of appeals to the CMA. We agree with stakeholders that this is a pragmatic and logical approach, given that the REC is the successor to the two former codes which were within scope. We consider that its inclusion will mirror the original intent of the Order.

Commercial and technical codes appeals status

Question 28: 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?

What the consultation said

The consultation considered which codes should be in scope of appeals to the CMA, under the new framework. It outlined our view that apart from the REC, bringing any additional codes into scope would add little extra benefit to industry and would create challenges for the CMA, due to the different nature of these codes. The consultation noted a general distinction between ‘commercial’ codes, which are currently in scope, and ‘technical’ codes, which are currently out of scope.

The consultation outlined the two routes available to challenge decisions: appeal to the CMA (for commercial codes) and the judicial review (JR) process via the courts (for all codes). The consultation set out our proposal to keep commercial codes in scope of appeals to the CMA and technical codes out of scope, except when Ofgem makes direct modifications to them⁴².

The consultation acknowledged that new direct code change powers granted to Ofgem under the Energy Act 2023 (‘the Act’)⁴³ represent an exception to our preferred policy position, as Ofgem’s direct decisions on modifications to all codes (including those classified as technical) can be appealed. This decision was taken during the development of the Act, to ensure that there are sufficient routes for industry input and challenge to Ofgem modification decisions, where these have been taken outside of the standard code modification process.

In the consultation, the government committed to working closely with the CMA to assess the impact and merits of this policy, monitoring appeal and JR activity following the transition, and to considering further changes to legislation if necessary.

The consultation also explained that code consolidation will not impact which codes are in scope of appeal to the CMA, as like-minded codes are being combined by design. Therefore,

⁴² This exception is made within the meaning of Energy Act 2023, Section 192(6) | legislation.gov.uk

⁴³ Energy Act 2004, Section 173(2C) (added by Schedule 14 of the Energy Act 2023) | legislation.gov.uk

the commonality shared between the codes also extends to their broad commercial or technical classification, for the purposes of establishing which codes can have their modifications appealed to the CMA.

Lastly, the consultation outlined our intention to issue an updated Order to set out which codes are in scope, following stakeholder feedback received in this consultation.

What you said

This question generated mixed views. Although many respondents agreed with our proposals, more overall either disagreed with them or had reservations.

Many respondents agreed that commercial codes should stay in scope of code modification appeals to the CMA, with the CMA remaining the adjudicating body. Respondents noted that maintaining the distinction between commercial and technical appeal routes is a pragmatic approach, which reflects the nature of the different issues these codes address and accounts for the CMA's expertise and resources.

Some respondents also explicitly supported the exclusion of technical codes from the scope. Agreement on this point generally stemmed from the view that the CMA is an appropriate adjudicator on commercial matters but may not have the expertise for technical matters.

However, many respondents disagreed with the proposals. These respondents cited concerns about the lack of an appropriate merits-based appeals route for technical codes.

Some respondents felt that standardising the process across all codes would protect consumer interests, ensure good regulatory outcomes, and improve accountability, fairness and transparency.

A few respondents noted that some codes are hybrid and contain both technical and commercial elements. They requested greater clarity on how hybrid and overlapping codes would be classified and handled.

Respondents acknowledged that the CMA might not be the best body to make decisions about technical codes, but suggested that in this case, a more appropriate body should be identified to take on the role instead.

A few respondents caveated that irrespective of the decision taken, the scope of appeals should be reviewed regularly to ensure there remains an effective route for challenging significant decisions.

Our response

We intend to continue with the existing approach, whereby only modifications to the codes identified as commercial codes are within the scope of appeals to the CMA.

We acknowledge stakeholders' desire for technical codes to have a merits-based appeals route, and we recognise that there are disadvantages to maintaining the status quo, particularly in relation to the crossover between technical and commercial codes. However, we consider that our goal of updating the appeals system to one that is fair and balanced, in the context of wider code governance reforms can be best achieved at present by working within the practical limitations of the existing appeals mechanism. We note stakeholders' suggestion that although the CMA is not suited to take on technical appeals, an alternative body could be identified or set up to fulfil this role.

Our pragmatic decision is based on the views that:

- The CMA does not have the appropriate capability and resourcing to review decisions about technical codes on a sustained basis, without impacting the operations of other key CMA functions.
- The resourcing and extensive timeline needed to design and implement a new bespoke appeals route for modifications to technical codes would likely delay the progression of Energy Code Reform overall. This would conflict with our commitment to protect the interests of industry and consumers, as all parties would have to wait longer to benefit from the reforms.

The Department for Business and Trade (DBT) is currently considering the appeals landscape as a whole and may seek views on what benefits could be delivered through increased consistency in appeals across regulated sectors. Pausing our reforms to wait for the outcome of this work would delay other Energy Code Reform workstreams disproportionately. We have therefore decided to continue with the status quo, but we acknowledge the drawbacks in the current approach and intend to keep the scope of appeals under review, at least until DBT's review has progressed further.

Additionally, we recognise that there is some inconsistency in our proposal that any direct code modifications made by Ofgem, whether to commercial or technical codes, are within scope of appeal to the CMA. However, it is the government's view that the importance of being able to appeal a direct modification outweighs considerations about the CMA's in-house experience and that this can, in these cases, be addressed by the CMA obtaining expert advice on an ad hoc basis. This is aided by the fact that we consider that there will be a lower volume of direct modifications than standard modifications. We will work closely with the CMA to keep this approach under review and, if it proves not to be appropriate, we will consider further legislative change in future.

2.3 Eligibility to appeal

Question 29: 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?

What the consultation said

The consultation considered whether existing eligibility criteria should be updated and explained that eligibility to appeal is limited to those whose interests are materially affected by a code modification decision, or organisations which represent them, as per the Energy Act 2004⁴⁴. It also explained that the CMA can refuse permission for an appeal where it is brought for reasons that are trivial or vexatious, or where the appeal has no reasonable prospect of success.

The consultation outlined our considerations when assessing eligibility. We considered if there were any new persons that should gain appeal rights to challenge an Ofgem code modification decision (that is, to expand the eligibility criteria) and if any existing persons currently holding appeals rights should have that ability removed (that is, to limit the eligibility criteria further).

The consultation stated that our preferred position was to maintain the existing eligibility criteria, as the current eligibility test was considered to be appropriate and sufficiently flexible to capture any new bodies that have a vested interest in, or could be affected by, code modification decisions. Therefore, we proposed to make no changes to the eligibility criteria.

What you said

There was very strong support for keeping the CMA appeal eligibility criteria unchanged. Most respondents saw the existing approach as clear, inclusive, and fit for purpose, since the new governance framework makes no changes to the classes of parties that are affected by code modifications.

Our response

We confirm that eligibility to appeal a code modification decision will remain unchanged from current arrangements. An eligible party will be a person, or a body/association representing persons, whose interests are materially affected by the code modification. In line with stakeholder responses, we consider that the existing eligibility test is fit for purpose and sufficiently flexible to capture the new bodies that could become affected by code modification decisions in the future.

⁴⁴ Energy Act 2004, Section 173(3) | [legislation.gov.uk](https://www.legislation.gov.uk)

2.4 Appeals Triggers / Exclusion Criteria

Question 30: To what extent do you agree with our preferred option that appeals should be triggered when Ofgem disagrees with the code manager's recommendation?

Question 31: To what extent do you agree that, subject to feedback and consultation, these exclusion criteria should be embedded in a new statutory instrument?

What the consultation said

The consultation stated our intention to retain the fundamental basis of the appeals trigger, which is a disagreement between two informed bodies: currently a code panel (or equivalent voting mechanism) and Ofgem. We consider this to be a clear signal of a lack of consensus and therefore an appropriate trigger for the appeals process. However, as code panels will be disbanded under these governance reforms, the consultation sought to determine whose view should replace that of the code panel, to provide a recommendation for Ofgem to consider when making a decision.

The consultation outlined existing exclusion criteria in the Electricity and Gas Appeals (Designation and Exclusion) Order 2014⁴⁵, which introduce limits to the appeals process in two scenarios: when there is agreement between two informed bodies, or when the delay caused by the appeal process could impact the availability of electricity or gas for consumers in Great Britain. The consultation explained that our preference is to retain the exclusion criteria relating to energy security and to update the exclusion criteria referring to code panels, as this role will cease to exist.

Our preferred option in the consultation was that the code manager should replace the code panel as the informed body whose recommendation is to be compared with Ofgem's decision, and which may form the basis of the appeals trigger. The consultation set out our view that this approach, by empowering the code manager, best aligns with the goals of the Energy Code Reform programme. The code manager will hold a unique position in the new framework, having the tools and autonomy to balance competing considerations and reach a final, informed decision.

The consultation also acknowledged a previous concern relating to code manager independence in decision making and included an overview of how we have sought to address this, by developing relevant requirements in the Standard Licence Conditions (SLCs).

The consultation explained that following consultation and stakeholder feedback, we intend to embed updated exclusion criteria in a new statutory instrument.

⁴⁵The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 | [legislation.gov.uk](https://www.legislation.gov.uk)

What you said

Most respondents disagreed with our proposal in question 30, that appeals should be triggered when Ofgem disagrees with the code manager's recommendation. Objections centred on concerns about code manager independence, the narrowing of appeal rights, and a perceived reduction in the voice of industry within the code modification process.

Many respondents wanted the views of the Stakeholder Advisory Forum (SAF), rather than those of the code manager, to form the basis of the appeals trigger. They felt that this approach would better reflect the current process, enable more accurate representation of stakeholder views, and ensure that the SAF's expertise and vested interest in the impacts of code modifications are accounted for.

Many respondents believed that the proposals unfairly narrow the scope for legitimate appeals, disenfranchising industry parties. Respondents proposed that there should be a route for code parties to challenge the code manager's recommendations and Ofgem decisions directly – either if a code party believes that the SAF's perspective has not been properly considered (the view of some respondents) or in any circumstances (the view of a few respondents). It was further suggested that the right to appeal should be triggered where there is any disagreement across Ofgem, the code manager and the SAF. Some respondents questioned our rationale that a code manager would be undermined by the SAF triggering an appeal. Additionally, some argued that even if all code modification decisions could be appealed, the expense of the appeals process would discourage code parties from bringing a high volume of challenges.

Many respondents expressed concern that code managers would not be fully independent, due in part to the requirement for code managers to be licensed and accountable to Ofgem. Additionally, many highlighted that where a code manager has initiated a code modification, Ofgem will be deciding based on the recommendation of the recommender (the code manager), rather than on a broader stakeholder consensus, which respondents considered would lead to a lack of independence. Respondents noted that this scenario might occur more frequently in future, because the reforms will empower code managers to propose modifications. Some felt that code parties should have recourse to appeal in this situation, or suggested that where code managers raise a modification, the SAF's recommendation (not the code manager's) should be compared with Ofgem's decision, to remove any conflict of interest.

However, many respondents did agree with our proposed approach. They considered that it would adequately safeguard code manager independence, citing the proposed licence obligations on the code manager to consider the SAF's views which, together with the diverse makeup of the SAF, they felt would ensure a robust set of checks and balances on decision-making. These respondents took the view that an empowered code manager would be the natural successor to the code panel, uniquely placed to make an informed recommendation.

A few respondents agreed with our proposals in principle but suggested that an appeal should also be permitted in certain circumstances: if the SAF view has not been properly considered,

if exceptional circumstances are outlined, or if the modification has a disproportionate financial, material, or operational impact on a code party.

Lastly, on question 31, respondents agreed in principle that legislation should be updated and noted that a new statutory instrument would provide legal clarity and ensure consistency. A few respondents stated that they found case for or against making a new statutory instrument unclear and requested greater clarity.

Our response

We intend to proceed with the preferred approach in the consultation, whereby an appeal is allowed if Ofgem disagrees with the code manager's recommendation. This is in line with the code manager taking on the role of the current code panel (under the existing arrangements), in recommending code modifications to Ofgem. Disagreement between the code manager and Ofgem, as two informed bodies, will form the basis of an appeals trigger.

We note stakeholder concerns that this approach will reduce the voice of industry. However, we do not believe that stakeholder influence will be unfairly lessened. Rather, we consider that this decision will facilitate some of the key goals of Energy Code Reform, by increasing representation opportunities for smaller parties and ensuring independent oversight by the code manager. Under the new governance arrangements, the code manager will have a unique and independent role, which requires it to sit at the heart of the recommendation process.

We recognise the importance of safeguarding code manager independence and of ensuring that industry perspectives are fairly considered in the code modification process. We consider that we will achieve this via:

- **Conflict of interest measures:** Code manager SLCs will contain conflict-of-interest measures, to ensure that code managers have sufficient independence (including from Ofgem)⁴⁶.
- **Ofgem's 'send back' provision:** Where a code manager is found not to have adequately considered the SAF's views or to have acted unfairly or self-interestedly, Ofgem will have a stronger send back provision. This will address the concern raised by stakeholders⁴⁷.
- **The role of the SAF:** To ensure that industry views are fully considered in the code modification process, we intend to introduce a new requirement for the SAF to provide its views on the proposed modification in writing. This must be included in the code manager's recommendation report to Ofgem⁴⁸.

⁴⁶ See section 1.3 for more details on the code manager conflict of interest measures.

⁴⁷ See section 1.13 for more details on Ofgem's send back provision.

⁴⁸ See section 1.13 for more details on the role of the SAF in the code manager assessment of modification proposals.

The government intends to embed the updated exclusion criteria in a new statutory instrument.

2.5 Alternative code modifications

Question 32: 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?

What the consultation said

Under the existing arrangements, there are complexities with the interpretation of the Electricity and Gas Appeals (Designation and Exclusion) Order 2014⁴⁹, in circumstances where multiple alternative code modifications are proposed to the same identified issue, in terms of what constitutes the majority recommendation. Our consultation proposals aimed to address any ambiguity and establish the rights of appeal that should apply in circumstances where multiple code modification options are presented by a code manager.

The consultation explained that our preferred option was to give the code manager the discretion to choose how many modifications to recommend to Ofgem. It stated that the recommended proposals must be equally better than other modifications and the status quo in facilitating code objectives. The consultation outlined the possible courses of action that the code manager could take: the code manager could recommend approval of a single modification, multiple modifications, or none of the proposed modifications.

The consultation also set out what this would mean for appeal rights:

- Appeal would be possible if Ofgem approved any modification for which the code manager recommended rejection.
- Appeal would be possible if, where the code manager recommended approval of one modification, Ofgem did not approve it.
- 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 has broad powers to decide how the appeal is heard (this could be separately, resulting in up to multiple separate appeals, or collectively as one proposal).
- Appeal would not be possible if Ofgem agreed with the code manager and approved one of the modifications that the code manager had recommended. In this circumstance, the route to challenge the decision would be via judicial review (JR), rather than CMA appeal.

⁴⁹ The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 | [legislation.gov.uk](https://www.legislation.gov.uk)

The consultation explained our view that this adds clarity and removes ambiguity and that it strikes a good balance between achieving fairness and accountability, enabling flexibility in decision making and ensuring a prompt pace of change.

What you said

There was not a clear consensus from respondents as to whether code managers should have discretion to recommend more than one modification for approval to Ofgem, where these are equally beneficial in meeting the code objectives.

Many respondents supported the proposal, viewing it as flexible, pragmatic and aligned with the complexity of modern code governance. Respondents felt the approach struck a balance between option 1 in the consultation (where the code manager recommends one preferred modification for approval) and option 2 (where the code manager recommends multiple suitable modifications). Respondents noted that appeals should only arise if Ofgem were to agree to a modification which was not endorsed by the code manager.

On the other hand, many respondents considered that this approach could undermine the role of an empowered code manager, by allowing them to defer accountability to Ofgem and avoid difficult decisions. Respondents noted that code managers should have sufficient expertise and judgment to make a single recommendation, with a few suggesting that multiple recommendations could indicate underdeveloped proposals or weak stakeholder engagement. Many called for code managers to be required to recommend one clear preferred option, together with analysis on cost, feasibility, impact and alignment with strategic goals. Some requested that SAF input should be explicitly factored in.

Our response

Following stakeholder feedback, we now intend to take forward option 1 from the consultation, whereby the code manager will be able to recommend only one modification for approval. This represents a change from our previously preferred position of option 3, which would have given the code manager discretion to recommend more than one modification for approval to Ofgem (where these are equally beneficial in meeting the code objectives). On balance, we consider that option 1 is simpler and better aligned with the goals of energy code reform, by empowering and requiring the code manager to make clear recommendations.

It is important that code modifications can progress through the system at pace. It is uncertain which approach would best facilitate this and will likely depend on the specific modification. However, we consider that our intended approach will ensure a simple process that empowers code managers to make decisive recommendations.

Having the code manager recommend one modification to Ofgem would promote:

- **Simplicity and efficiency within the code modification process:** In their responses, some stakeholders requested clarity on how appeal rights would be affected if a code

manager could make multiple recommendations. The options for appeal will be clearer if the code manager makes just one recommendation to Ofgem.

- **Code manager accountability:** Allowing a code manager to suggest multiple alternatives could impact upon how thorough an assessment the code manager carries out. Obliging the code manager to make a single recommendation should encourage them to assess all alternatives thoroughly, such that they make an informed choice when opting for one over the others. This supports the goal of empowering the code manager, who should have sufficient expertise and judgment to make a single recommendation.
- **Engagement throughout the code modification process:** Code managers will be empowered to oversee a rigorous, effective code modification process, reducing the need for multiple similar alternatives to be put forward at the end of the process. Ofgem's involvement throughout the code modification design phase should ensure that it is already familiar with the options by the time it receives the code manager's recommendation, making it well-placed to make a prompt assessment. If completed effectively, the code modification process is designed to evaluate alternatives thoroughly, and we consider that a single recommendation to Ofgem should be the natural conclusion of this.

For code modification appeal rights to the CMA, this means:

- Appeal would be possible if Ofgem approves any modification for which the code manager did not recommend.
- Appeal would not be possible if Ofgem agrees with the code manager and approves 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.

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

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