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RE: Consultation on Reforming the Energy Industry Codes

September 16, 2019

Uniper

Uniper is an international energy company with around 12,000 employees and operations in 40 countries. In the UK, Uniper operates a flexible and diverse generation portfolio, sufficient to power around six million homes. With our seven-strong fleet of power stations and our flexible, fast-cycle gas storage facility, we support the energy transition and make a tangible contribution to Britain's energy supply security.

Uniper also offers a broad range of commercial activities through its Engineering Services division, while the well-established Uniper Engineering Academy delivers high-quality technical training and government-accredited apprenticeship programmes for the utility, manufacturing and heavy industry sectors, at its purpose-built facilities near Nottingham.

We have addressed each of the questions in turn below. Our views in summary:

- Industry Codes have a critical role to play in maintaining the integrity of the energy markets and support investment in the energy systems. It is important that the market rules facilitate new entrants and afford appropriate protection for all market participants.
- Whilst we see a case for incremental reform of Code governance, including streamlining of Code administration, we have significant concerns about the shift to a model where Code signatories have restricted input to regulatory changes.
- We are concerned about the impact that some of these proposals could have on investor confidence in the UK energy market. The existing Codes provide a framework that sets out clear rights and responsibilities. If this clarity is removed by over-simplification of Codes or replaced by more general rules, there is the potential to deter rather than encourage investment, due to greater market uncertainty or risk.



- The creation of new functions with overlapping roles and responsibilities, such as the strategic body, and increasing the resource requirements of Code Administrators risks driving more bureaucracy and costs, which will ultimately be paid for by consumers.

Background and scope of this review

1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? If you disagree, please explain what you consider the outcomes should be.

Providing strategic direction

We see some potential benefits of this change, particularly with progressing changes where there are multiple, conflicting stakeholder interests. However, our key concern is that introducing a new body, which likely lacks the independence of an Economic Regulator, risks politicising the Industry Codes. Checks and balances would be required in order to protect such a body from undue influence. In the absence of this, we would be very concerned about the ability of a strategic body to deliver effective competition in the market.

In order to avoid overlapping powers and responsibilities, there would need to be clear separation of the strategic body from both Government and Ofgem. In practice, we would envisage such a strategic body taking on certain roles and staff resources of both Ofgem and BEIS and reporting directly to Parliament. This would help ensure accountability and independence.

The specific powers and mechanisms through which the strategic body would influence the Code change process would also have to be specifically drafted, including any provisions for dealing with failures to deliver the strategic direction and legal appeal routes for affected stakeholders.

Empowered and accountable Code management

We agree that this is an area where improvements could be made, in particular to ensure consistency in terms of resources, accountability and costs to industry. There is currently a large disparity in the funding arrangements and associated resources between Code Administrators. There is also a lack of harmonisation in administrative processes, which can be challenging to understand for both new and existing market participants.

In determining the appropriate standard for all Code Administrators to meet, consideration needs to be given to the costs. For example, moving all Code Administrators to the current Exelon standard, which is the most expensive across all Codes, would have significant cost implications for industry. Indeed, the proposed changes would mean an even more enhanced role for Code Administrators in becoming Code Managers, which would imply additional cost being incurred. Whilst we recognise that Exelon provides a good service to Code parties, which may be justified given the importance of the market arrangements covered by the Code it administers, we are unconvinced that all Code Administrators need to operate at this level or incur the same amount of resources and cost.



The recovery of costs associated with Code Administrators also needs to be given further thought, particularly for existing Code signatories who could see increased costs of operating the market, with less say in how it is run.

Independent decision making

We believe this is an unnecessary step. This reform represents a significant change to industry governance and would be moving in the opposite direction from previous Ofgem reviews, which have moved towards more, not less self-governance. The introduction of industry self-governance has resulted in shorter development periods and quicker implementation for non-contentious proposals, enabling benefits to be realised sooner.

We disagree with the assertion that industry participants control the changes to Codes. For the majority of Code change proposals, particularly those with significant commercial or consumer impact, the final decision maker is Ofgem. Ofgem assesses these proposals against the Code relevant objectives, also taking into account its wider statutory duties, including its primary duty of protecting the interests of consumers.

In a market that continues to grow and evolve, we believe that independent, accountable decision making will be more important than ever. Code changes can have significant costs and benefits associated with them and accordingly large competition impacts. Such changes required a high level of independent rigor when being assessed. We are not convinced that a new decision making body, whether that is a strategic body, Code Administrator, or “Integrated Rule Making Body” would have any more accountability than the existing Economic Regulator and therefore it would seem appropriate to leave the decision making powers on Code changes with Ofgem.

Code simplification and consolidation

Simplification

We agree that a review of Code drafting could be useful given the high level of continual change and the different authors of legal text. There may be potential to simplify or re-write confusing sections of Codes. However, it is unclear who would decide what remains in the Code and what can be removed. Reviewing any significant section of any Code will require substantial resources of both industry experts and Lawyers. Nonetheless, we believe the current governance framework can facilitate this, either through an SCR, a Review Group or Modification Proposal.

The Codes are effectively multilateral contracts which have grown and evolved over many years, often adapting in response to previously unforeseen issues or problems. We are concerned that if the current level of detail is removed, ambiguity may replace certainty, leading to potential disputes between Code signatories. Furthermore, it should be recognised that signatories such as Shippers, Suppliers and Generators have to operate in a market with monopoly service providers - Grid operators. The existing Codes ensure there is a fair distribution of rights and responsibilities with appropriate oversight from Ofgem. If the proposed governance changes result in a re-balancing of risk amongst industry participants through watered down obligations or unclear roles, we have concerns about how this might impact the efficiency of the wholesale market.

There is a real risk that if the Codes become increasingly ambiguous, more complaints and cases will be directed at Ofgem or the legal system to resolve, in an attempt to



regain certainty. It is clear to us that any model which relies more on regulatory principles and guidance rather than detailed rules is likely to result in constant interpretation issues, which will require arbitration to resolve. As a result, we do not see how such a model would necessarily be any more efficient or less costly than the current arrangements. Overall, we do not believe this would be a step forward for the regulatory environment and ultimately may deliver industry change more slowly than at present.

Consolidation

In retail markets, there are clear similarities in the way the gas and electricity markets function. With the creation of the Retail Energy Code (REC) there will be a dual-fuel, Supplier licence-only code.

At the wholesale level, however, we see no benefits in joining together gas and electricity Codes. The wholesale markets for gas and electricity may interact to some extent, but they have very different characteristics. There is little evidence that bringing the Codes together would improve efficiency. Combining the Codes would mean a smaller number of Codes, but with the same number of provisions contained within them overall. Wholesale market arrangements also currently reflect the legal separation between National Grid's ESO and the Gas Transmission SO.

We believe that merging the wholesale Codes would just introduce more bureaucracy for parties seeking changes which affect only the gas or only the electricity market. In practice, few Code changes have significant impacts in both gas and electricity markets. Where they do, we believe that the existing, or a revised, SCR process could manage this appropriately.

2. Do you agree with the problems we have identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes? Yes/No/Don't know. Please explain.

and

3. Do you have additional evidence on the performance of the current framework?

We offer the following comments against the issues identified in the consultation:

Fragmentation and lack of co-ordination- *No single organisation under the existing framework is responsible for looking at the opportunities the energy transition might create for consumers.*

We agree that due to restrictions in duties or powers or because of legitimate commercial incentives, Government, Ofgem and Industry participants may not always be taking the broadest view possible of the energy market and systems. However, identifying potential opportunities is a very different proposition to actually realising that opportunity. To achieve the latter requires investors. This needs regulatory stability and certainty. If the Code rules are constantly changed to accommodate new business models, it is likely that some investors will look to other international energy markets where there is a greater degree of stability.

Many Code changes put forward are often creative solutions to difficult or unforeseen problems, or to help facilitate new investment. These incremental changes are critical to maintaining an efficient energy market and must not be automatically subsumed by



potentially wider strategic aims or objectives. Further thought needs to be given to how these important changes can continue under some of the options for reform proposed.

Lack of incentive for change - *The existing governance framework is primarily industry led, which can result in conflicting interests or a lack of incentives on industry to make changes that are in the interests of consumers.*

We disagree with this finding. Ofgem already has substantial powers to initiate and, if necessary, implement changes to Industry Codes via the Significant Code Review (SCR) process and using certain statutory powers. We would also note that for the vast majority of proposals in the wholesale market, Ofgem remains the final decision maker.

Whilst industry typically initiates change proposals, these are usually to address a specific issue or defect of the Codes. A key part of the industry development process is to assess the impact on consumers. If there are negative impacts this is clearly identified. Furthermore, we observe that a large number of Code change proposals, particularly in the retail market, are in response to issues or problems identified by a customer, which the Shipper / Supplier is then progressing on their behalf. We also note recent changes under the BSC, which now allow non-Code parties to raise changes. We believe this change could conceivably be extended to all Codes and should be given time to bed in, before implementing more significant changes.

It may be the case that there is some degree of industry resistance to change, particularly where it is on a large scale. We would reflect that in many cases, this is due to industry flagging legitimate issues that need to be considered, in order to minimise risk to the market and/or consumers. It should be recognised, however, that whilst change can at times be slow, huge structural changes to the energy market rules have been delivered under the current framework, such as NETA and BETTA.

Indeed, there are many examples of the industry working well collaboratively, implementing major changes not initiated by market participants, but driven by legislative obligations or Ofgem policy. A good example is the change to the timing of the Gas Day, which was an obligation under EU Regulations. This change seemed innocuous, but had large impacts on industry processes and contracts linked to the UNC. In this case, although BEIS facilitated industry discussions, the detailed work to implement the complex changes required was funded by a group of Shippers. It resulted in a robust solution, which was implemented on schedule. It should also be noted that the Shippers funding the work were not the only Shippers affected, as it had market-wide impacts.

We observe that currently, some Codes are more inclusive than others. The UNC, CUSC and Grid Code welcomes observers to Panel meetings and invites them, where appropriate to contribute. This is something that perhaps could be rolled out to other Codes.

Complexity - *The codes are lengthy and difficult to understand; there are multiple codes and a large number of code modification proposals being progressed at any given time.*

We agree that the Industry Codes can sometimes be complex and difficult to navigate and the lack of harmonisation in the governance processes across Codes can make it difficult to understand the complete end-to-end change process. Previous governance reviews have gone some way towards standardising the administrative approach, but many differences remain.



The Codes have developed and evolved over years and in some cases decades, adapting to new circumstances, obligations and issues. However, whilst some may perceive them as lengthy and difficult to understand, others would reflect that the detail is necessary to enable a credible and efficient marketplace, where the rights and responsibilities of parties are clear and unambiguous.

We would also highlight that the example from the CUSC, used in this consultation to highlight the potential reduction in Code rules that could be achieved, could overstate the benefits that could be realised from simplification of the Codes. As a party to the CUSC, our view is that the section concerned is a particularly repetitive section of Code. It is therefore an extreme example, rather than a reflection of how either the rest of the CUSC is drafted, or indeed other Industry Codes. Consequently, there should be a much lower expectation of the potential reduction in length of Codes that could be achieved by just a simple review. Moreover, we believe many obvious drafting errors or duplication will have already been corrected by self-governance changes.

In the wholesale context, there is often inadequate consideration and analysis of cross-market impacts, which are often only addressed by Ofgem when taking its final decision. However, it must be recognised that Ofgem's statutory duties are much wider than the more narrow objectives of the Industry Codes and that parties are operating within the rules as laid out. A recent example is the gas transmission charging review (UNC Mod 0678) where primacy was given to the potential benefits that gas customers could see from the change, without due consideration, in our view, of the impact on electricity consumers.

We do believe that there should be greater emphasis on cross-Code thinking in the governance arrangements. This could be achieved relatively simply, by harmonising the relevant objectives and introducing a new relevant objective in each Code to consider other markets. For example, the BSC / CUSC could have an objective to consider the impact on the gas market and UNC to consider the impact on the electricity market.

4. Do you agree with our proposed scope reform? If not, which additional codes or systems do you think should be included/excluded?

and

5. Are there any codes or systems that we should only apply a limited set of reforms to?

At this stage, we believe all Codes should be in scope of potential reform.

2 Vision & options

6. Do you agree that the four areas for reform are required? Please provide reasons for your position and evidence where possible.

No.

We are unconvinced by the case for a new strategic body, a function we believe can already be discharged under the existing institutional framework. If such a body was to be created, it would require checks and balances to protect it from undue influence and to ensure its independence.

We support a review of Code administration and management and believe that more could be done to align processes and procedures across Codes. However, careful



thought needs to be given to the appropriate level of resources required, that will in turn drive the cost of code administration, which ultimately is paid for by consumers.

We disagree that there is a need for more independent decision making. For the majority of Code change proposals, Ofgem remains the final decision maker and as an Economic Regulator, it is afforded protection from undue influence. We struggle to see how any of the new bodies proposed could achieve greater independence than Ofgem when making decisions on Code change proposals.

We are unconvinced by the proposals on Code simplification and consolidation in respect of the wholesale energy market. We believe the potential benefits of a quick simplification exercise could be over-stated and unrealistic. More extensive simplification of the Codes will require significant resources to achieve a workable and coherent set of rules. We do not believe there is evidence to support the consolidation of gas and electricity wholesale codes, particularly in light of the current legal separation of the Gas and Electricity System Operators.

7. Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible.

and

8. Which model do you believe will best deliver on our desired outcomes? Please explain.

We have concerns that the introduction of a new body (under either model), potentially sitting somewhere between Ofgem and Government, could lack the requisite independence in order to make good quality regulatory decisions. For example, it is unclear how such a body would handle potential conflicts between views of Government and views of Ofgem. Unless there is very clear separation of roles and responsibilities, the outcome could be to delay, rather than expedite industry change.

If the new body was to report to Government with the primary purposes of implementing the Government's vision and policy, we would have significant concerns about the potential politicisation of Industry Codes. There is a risk, particularly in periods of political instability that the Codes become too easy to change, resulting in "flip flopping" of key rules in response to a change in policy or vision. This could significantly increase the costs of operating the market to the potential detriment of customers. It would also introduce additional regulatory uncertainty in the market, undermining investor confidence.

9. Do you agree with the changes to the role of code signatories we are proposing?

No. We have concerns that minimising or limiting industry input to change proposals is likely to result in poorly designed and over-simplified proposals. There is good evidence, at least in the wholesale market context, that the industry is capable of working collaboratively to achieve major industry changes, even where it results in additional costs to the affected parties.

3 Providing strategic direction

10. Do you agree there is a missing strategic function for codes development in the energy sector and introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction?



And

Who is best placed to fulfil the strategic function and why?

No, we do not see the need for a new strategic body. Government already receives independent advice from bodies such as the Committee on Climate Change and National Infrastructure Commission on strategic direction. The overall strategic direction should come from Government. It should set the direction through policy and implement this through primary and secondary legislation. If the Codes need to change as a consequence of the policy direction this should be considered in the accompanying legislation and any implementation plan.

The ability to set a strategic direction already exists for Ofgem and has been utilised in the form of Significant Code Reviews (SCR). This can be utilised to support necessary changes following on from any implementing legislation. We believe there are important lessons to be learnt from all of the SCRs undertaken to date, which should be addressed either through a revised SCR process or when designing the approach a new strategic body could adopt. These lessons include:

- We have seen through participation in several SCRs, that the strategic direction given at the outset often looks very different from the final policy decision at the end of the process. In our view, this is because the current SCR process does not always provide for in-depth consultation and engagement before the initial direction is set. As a result, it is only once the industry engagement begins that potential flaws or obstacles become clear.
- The current SCR process consistently underestimates the length of time required for thorough industry development of proposals. SCRs, when first introduced, were expected to last 6-12 months. However, current and past SCRs have significantly exceeded that timeframe. This is despite significant industry and Ofgem resources being dedicated to the process. For any party undertaking a strategic role, early industry engagement and willingness to adapt aspects of proposals in response to feedback is very important. In our view, it is reasonable to expect that a better quality solution to a particular problem can be achieved by utilising the extensive industry expertise that exists, rather than relying on a few individuals within an organisation to do so, whether that is BEIS, Ofgem or a new strategic body.

11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?

We believe there are two specific circumstances when setting strategic direction may be of use:

1. Where there are multiple competing interests that may make achieving a particular outcome difficult (such as network charging), then a strategic vision at the outset may narrow the scope for potential solutions.
2. Implementing obligations as set out in Primary or Secondary Legislation.

An enhanced strategic function could also be useful, for example, in identifying which parts of the Codes would need to change, examining Code interactions and setting out a draft plan to help coordinate changes. Given these limited circumstances, however, we would question the value for money of creating an entirely new function with the associated expertise and resources this would require.



If a new strategic body is created, we are clear that this body should be guaranteed independence from both Government and Regulator influence. To achieve this, the body must report to Parliament.

We do not believe the Electricity System Operator (ESO) should, or could, undertake this role for the entire wholesale market. This is because under current licence arrangements, the ESO is looking only at the electricity market and there clearly needs to be a view across both gas and electricity markets, with an equal weighting. Furthermore, we have fundamental concerns that the ESO is currently struggling to deliver against its objectives and taking on this additional, significant role would divert attention and resources away from its core responsibilities.

If a Code Administrator were to undertake this role, then we would have concerns about their ability to remain impartial to all Code signatories. This is a fundamental requirement under the current arrangements and something Ofgem has been keen to reinforce in past governance reviews. On the other hand, a Code Administrator may potentially be more willing to adapt and develop proposals when working with industry. However, the Code Administrator would need to be well resourced with experts to ensure that any shift in direction is well understood and justified, rather than simply reacting to special pleading by certain parties. Furthermore, we would question whether they could achieve sufficient independence to undertake this role, if they are licenced by Ofgem.

12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?

In terms of unintended consequences, one concern we have is that in the absence of an industry workgroup development process, industry engagement would simply move from workgroups to the door of the strategic body or BEIS / Ofgem. Open meetings of industry workgroups provide a transparent and accountable means of debating industry-wide topics. If this becomes bilateral and effectively behind closed doors, then we would have concerns about the transparency of the strategic priority setting process.

The role of Code Panels is unclear under many of the models proposed and it appears that they may cease to exist. Code Panels have been perceived by some parties to lack independence and impartiality, which is often driven by the perception that the incumbents have a stranglehold on Panel seats. In practice, industry committees and Panels are filled by volunteers and many struggle to get members and often have unfilled vacancies.

If there is a dissatisfaction with the perceived independence of Panels and their role in making recommendations on Proposals, then rather than incurring additional costs trying to resolve the issue (such as introducing salaried Independent Panel members) perhaps a different approach needs to be taken. One potential improvement would be to remove from all Code Panels the role of making a recommendation on whether to implement a proposal. This would be on the assumption that all proposals would then be eligible for appeal to the CMA. In our view, the focus of Code Panels should be on promoting and delivering efficient Code governance, ensuring that an even-handed approach is taken to all proposals, regardless of the content. We also note that Code Administrators often use Code Panels (or Panel members) as a sounding board on difficult or unforeseen issues, and removing this possibility may lead to less desirable outcomes for Code parties.

13. What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)? .

There are significant risks with setting out on a certain strategic path before all the detailed regulatory issues have been considered. A consultative board may help address some concerns, but it is likely it would be operating largely above the detail associated with Industry Codes. It would also add costs and, depending on the structure, potentially consume further industry time and resources. The strategic direction should come from government, supported by legislation and an implementation plan if changes to the Codes are required.

However a strategic direction is to be set, it is critical that the voice of industry is heard. Rather than encouraging parties to engage in the energy market it may actually restrict the willingness to do so, if they feel that their views will not be taken into account. Maintaining an even-handed and proportionate approach to regulatory change should be key objectives for a body tasked with setting strategic direction of Codes.

14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address? (for example, impact on vulnerable consumers)? Yes/No/Don't know. Please explain.

Setting a clear and stable strategy assumes continuity in Government policy and vision. Investing in the energy sector requires long term policy stability. We would not want to see the strategic direction constantly changing in response to political pressure and there would need to be appropriate safeguards put in place to prevent this. Nevertheless, the strategic direction should come from Government.

We are also concerned that delivery of a certain strategic direction may consume significant amounts of industry time, leaving little or no capacity to deal with the day-to-day change process. Some such changes may be able to deliver benefits in terms of enhanced competition or for consumers, but risk being subsumed or even prevented by the new process for implementing strategic change, which could take priority.

4. Empowered and accountable code management & independent decision making

We agree, that in general the resources and expertise in Code Administrators could be improved and, where appropriate, aligned in terms of budget and funding mechanisms. We note that the current arrangements for Code Administrators vary significantly, from the well-funded and resourced model of Elexon, which employs analysts to work on specific BSC proposals, to the significantly lower cost model of the Joint Office, which operates on a fraction of the budget of Elexon and delivers more of a core administration role. In both cases, we believe the Code Administrators deliver efficiently given their available budget and obligations.

It must be acknowledged, however, that an expansion of the tasks and responsibilities of all Code Administrators to the current Elexon standard would also come at increased costs to the industry, which will need to be paid for by consumers. We offer no view on whether this is a desirable outcome, but it is key that all industry parties are exposed to their fair share of the costs of Code administration, including parties who may not be



parties to the Code, but who drive costs of code administration (analysis, legal drafting, etc) by proposing changes.

We support a review of the funding of all Code Administrators and how their costs are recovered.

15. Do you agree that in addition to the current responsibilities that code administrators have, that the code manager function should also have the following responsibilities:

a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;

Under the current arrangements, Code Administrators are expected to act impartially and as a “critical friend”. We are concerned that this valuable resource would be lost if the Code Administrator is expected to proactively seek out change. There is a significant difference between a Code Administrator making suggestions for changes and raising, developing and potentially implementing their own proposal. In doing so, they may also be perceived as picking winners in the market.

We can foresee a more useful role being to actively identify relevant sections of Code impacted by a Proposal and highlight interactions with other Codes. This may reduce workgroup time, which currently can be spent highlighting such issues for the Proposer to consider.

Analysis and Legal Drafting

We agree that more needs to be done to harmonise the level of support and in particular, analysis that Code Administrators are required to undertake. For example, under the UNC, all analysis is left to Code signatories to provide, which often results in limited, and potentially biased, evidence being presented. On the other hand, under the BSC, an independent Elexon Analyst is expected to undertake much of the analysis work, which we would expect to result in a more complete picture of the market and consumer impact.

The information provided to support a proposal may still be limited by issues of commercial confidentiality, which restricts or prohibits the ability of parties to share sensitive information in an open industry forum. Under the current arrangements, parties can choose to share this with Ofgem, or Ofgem can issue an information request using licence obligations. Parties may be less willing to provide commercially sensitive information, which could heavily influence the decision, if it is unclear how it will be handled or used; for example, by a Code Administrator lacking the appropriate checks and balances.

In terms of legal drafting, we believe that bringing this role under the control of the Code Administrator would be an improvement, particularly for the UNC where the task is currently divided between the Gas Networks. Using a single legal drafting resource will ensure text is prepared impartially, regardless of the proposal and consistently, in terms of style and speed. At present, we find both of these characteristics lacking in the UNC. We further note that this change will require a change to Network Operator licences and if current arrangements are rolled over into the next five year price controls for National Grid NTS and Distribution Networks, then it may not be possible to achieve central provision of legal text by the Code Administrator. We therefore urge Ofgem to consider this issue now, in setting the price control allowances for RIIO-T2.



b. making decisions on some changes, or making recommendations to the strategic body; and

A decision and recommendation making function would significantly increase the resource requirements for Code Administrators, as it would require a high level of expertise and knowledge.

If this is proposed as a replacement for Code Panels implementing certain proposals, then we have major concerns about accountability, as it could effectively be one licenced entity making decisions which directly impact other licence holders. There would need to be effective checks and balances to ensure that the level of rigour currently applied to decision making remains. Poor quality regulatory decisions are likely to result in decisions being challenged, either by appeal or Judicial Review.

c. prioritising which changes are progressed.

Code Panels already largely fulfil this role, by determining whether a proposal should proceed to workgroup (and for how long) or go straight to consultation. Consideration is also given to existing proposals and allocation of limited resources of industry to support meetings and determine consultation response timescales. All of this has the practical effect of prioritising change.

For the same reasons outlined above, we are concerned that a Code Administrator, acting in isolation would not have a sufficiently broad view of industry to make decisions at least as good quality, or better than Code Panels.

16. What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?

We recognise that there is a current disjoint between Code changes being approved by Ofgem and then being implemented, particularly where they require IT system changes. For example, under the UNC, Ofgem is the final decision maker on a Modification Proposal, but the determination as to when to implement it rests with the Network Operators. Consequently, proposers may find it frustrating that despite their proposal being approved by Ofgem, there remains uncertainty as to when the solution will be delivered. We believe there are improvements that could be made in this area.

In terms of managing the whole change process end-to-end, given the current market set-up and the complex critical IT infrastructure it relies on, we see foresee very limited interest in taking on both administration of the Codes and delivery of systems by parties other than the incumbents (Xoserve/NGG in Gas and Elexon/NGESO in Electricity).

17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)?

We think there is a case for the processes associated with code changes to be aligned.

18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract?



Making Code Management a licenced activity would introduce more transparency and accountability of Code Managers. However, we believe that Ofgem should be the only party issuing and enforcing licences to operate in the Energy market.

19. Are there more effective ways that a code manager function's accountability to the strategic body could be enshrined other than in a licence or contract? Please explain.

We think the existing licencing arrangements through Ofgem are sufficient.

20. Do you agree that we should not consider further a model whereby code managers are accountable to industry?

It may be difficult to have a single industry view on what accountability looks like. We believe that licencing and enforcement has the potential to deliver accountability, by holding Code Administrators to the terms of their licence. We would expect licencees to act impartially, deliver timely and efficient services and provide value for money. Indirectly, this could have the effect of holding Code Administrators to account to their stakeholders, including consumers.

21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition?

A competitive tender should be used to ascertain value for money, but this approach assumes that there would be multiple parties interested in participating. We believe that there is likely to be a small pool of parties that are able to provide the necessary resources and knowledge for each Code. Currently, Code Administrators are specialists in their own Code arrangements and we are concerned that giving all Codes to one party could spread resources too thinly. Furthermore, if the remit was to include delivery of IT solutions, the pool of potential providers is likely to be extremely limited. As a result, we would expect any tender to be for a reasonable period of time (e.g. a five year minimum) to avoid the inevitable disruption to the market that a change of Code Administrator would bring.

22. Do you think the code manager function should be established by the strategic body creating a body or bodies? If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability?

We believe that they should be licenced by Ofgem, in line with other energy industry participants. This is an area of expertise best suited to Ofgem.

23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further: a. requiring an existing licensee to become the code manager; and/or b. requiring a licensee (or group of licensees) to create the code manager?

Code Administrators are specialists in their own Code arrangements. It is hard to see how this can be replicated by a single body unless the existing Code Administrators are



removed from their current structures and consolidated in to a single entity. This would potentially add complexity to implementing such a change.

24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function? Please explain.

A licencing approach with budgetary scrutiny by Ofgem should address most concerns.

25. Are there any factors that: a. would stop parties (including code administrators) from becoming a code manager b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers).

Under the current arrangements, we believe that Network companies exercise significant influence over the operation of some Code Administrators. In the case of the UNC, this is due to legacy funding arrangements of Code Administration. Taking Code Administration away from the direct control and ownership of Networks would be an improvement in terms of transparency and accountability.

26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?

We have no particular view on the specific mechanism, but we firmly believe that all market participants should pay their fair share of the costs of Code Administration. This will also need to include consideration of how parties who may not be signatories to the Code drive costs of Code Administration by raising proposals.

We recommend that further thought is given to funding Code Administration by levying a fixed charge per supply point. This could make costs significantly more transparent for both industry parties and consumers.

5 Code simplification & consolidation

27. Are there any quick wins that could be realised in terms of code consolidation and simplification?

No. As highlighted above, the example from the CUSC used in this consultation overstates the potential reduction in Code rules that could be achieved from simplification. As a party to the CUSC, our view is that the section of CUSC concerned is well known to be very repetitive and therefore open to rationalisation. It is, therefore, an extreme example rather than a reflection of how the rest of the CUSC is drafted or indeed the text of other Codes. As a result, there should be a much lower expectation of the potential reduction in length of Codes that could be achieved by just a simple review. We also believe many obvious drafting errors or duplication will have already been corrected by self-governance changes.

The fundamental problem with any simplification exercise is who decides what stays in the Code and what is removed. Whilst removing detail from the Codes might seem beneficial from an accessibility point of view, the reason the Codes have grown to be so detailed is to provide clarity on the legal rights and obligations of signatories in a



number of different circumstances, including the rights of redress parties have if these are not met. Codes have evolved over time because proposals are often raised to cover issues and instances not previously foreseen when they were first put in place. If this detail is removed, ambiguity is introduced, which is likely to lead to more legal disputes between Code parties or complaints to Ofgem.

28. How many codes would best deliver on the outcomes we are seeking under these reforms?

We do not consider it to be a question of how many is the “right” number, but to look for opportunities to join codes where it can be justified on an objective cost / benefit basis. Simply joining Codes together without doing anything further is likely to slow the governance process down, rather than speeding it up.

29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?

And

30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve?

We would have concerns about a single Code Administrator covering all Codes, as it presents issues about value for money and whether any of the existing Code Administrators, or a new party, would have the requisite skills, capacity and infrastructure to provide the service.

31. Do you agree that the codes should be digitalised?

We agree that this could enhance accessibility for parties and consumers. The Code Administrators should have the obligation to always keep them up to date and error free.

Consideration should also be given to addressing potential liability issues if a digitalised Code produced an incorrect or misleading answer on the rights or obligations of a particular party or parties, resulting in a Code breach which impacted on other parties or customers.

6 Monitoring and compliance

32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?

Previous governance reviews have tended towards more, not less self-governance by industry. In practice, this has resulted in relatively simple and non-contentious changes to Codes being made quickly and efficiently. Furthermore, there has been increased focus in recent years on compliance monitoring by peers, for example, in regard of settlement.

In our view, establishing an effective compliance department within Code Administrators or a strategic body would require significant resources, particularly if it is to take on many of the compliance functions currently carried out by industry peers. It would require significant initial and on-going investment in IT systems, knowledge and expertise and legal resources. As Ofgem already has such a function and has the



relevant skills and expertise in this area, we see no reason to change the current arrangements. It should be clear that Ofgem is the party responsible for enforcement activities in the energy markets.

33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.

and

34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation? Please explain.

Please note this question only applies in respect of Model 2 (integrated rule-making body).

We do not believe either model is the best option for improving industry compliance. Improvements can be made to the existing institutional framework to improve monitoring and compliance, but that ultimate responsibility should sit with Ofgem.