

# Balancing & Settlement Code Panel

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September 2021

Dear Ofgem and BEIS,

## **CONSULTATION ON THE DESIGN AND DELIVERY OF THE ENERGY CODE REFORM**

BEIS and Ofgem should be congratulated for bringing the issues presented by the Energy Codes to the forefront of our industry's minds and being prepared to legislate to bring about necessary changes. Although the Codes generally stay in the background, the Codes are the foundation, underpinning the industry's operation and it is vital that they provide for, and motivate, effective functioning of participants and the market.

Achieving Net Zero will bring its own challenges and we want the Codes to facilitate and support this. We also recognise that the current arrangements have several shortcomings – both within individual Codes as well as in combination.

Please note that the views expressed in our submission are those of the vast majority of the Panel, and do not seek to represent those of Elexon or Parties to the BSC and that we want to emphasise that all our comments are made in a genuine attempt to help the cause of the Review.

We have concerns that the scope of the questions in Section 10 is highly constrained. They do not appear constructed to invite debate and consideration of many very important issues that could be solved in different ways. Our detailed response to each questions is appended, together with an overview of the Panel's current membership. Below we summarise our considerations and concerns:

- We strongly believe that Code simplification and consolidation is still the most effective way to achieve many of the ambitions of the Review, including importantly reducing the cost burden on consumers. To be able to do this in a timely manner we urge BEIS and Ofgem to put forward options for Code consolidation as a matter of priority.
- The proposals should meet the criteria and logic proposed by BEIS in its post-Brexit Better Regulation consultation. In particular measures need to be “proportional”, “using non-regulatory options where possible” and “recognise what works” to address clearly identified issues. If this were to be done, we believe far more effective, lower cost, and less burdensome solutions would be proposed.
- We want to highlight once again that many of the identified issues are specific to individual Codes (or their Administrators) and not widespread, as might be inferred from the consultation. Yet the proposed solutions (abolition of Panels, licensing, tendering, etc) will apply to all Codes. We urge Ofgem to consider a more targeted, approach to the roll-out of the measures, and priority given to the worst-performing Code Managers/ Administrators and quick wins.
- The Impact Assessment suggest these proposals need far greater scrutiny and likely considerable revision: apart from having a negative net benefit of -£295m the benefits are the identical in both cases. Given the importance of the non-monetised benefits, it does not explore any options for achieving them at lower cost and risk. We recommend that a further IA is made to evaluate the more targeted and proportionate approach we advocate.

## Balancing & Settlement Code Panel

On a more specific level:

1. We fully support the intention of Ofgem carrying out the Strategic Body role and providing occasional high level strategic direction to the industry. However, greater powers than that should be kept to a minimum and only address specific shortcomings in the Codes. We have experienced Ofgem itself regularly suffering from resourcing problems, taking an inordinately long time on occasions to reach conclusions on some Code decisions. We believe Code changes should be a collaborative exercise where Ofgem is fully engaged with the change process;
2. Licensing all the Codes to ensure that the Strategic Body's plan is delivered is an unnecessary extension of regulation. Ofgem already has many tools to influence and direct the industry, and licensing should only be considered where there are intractable problems. Licence regimes will also present serious governance problems for the not-for-profit organisations like Elexon and the REC, and the commercial risk of non-compliance penalties could well result in higher costs to customers. We do not see evidence that regulating the Codes will improve their performance, yet this seems to be a central tenet of the proposals. Ofgem should consider ways in which it could use its current powers and resources more cost-effectively instead;
3. The BSC has benefitted a great deal from its independence of ownership over the years, and this should become a common feature across all Codes – any conflict of interest of the Code Managers (CMs) through ownership, or arguably through profit motive should be removed. In a similar vein, we have very deep concerns that the FSO can take the IRMB role as this would raise far too many conflicts of interest and we believe a strong independent Board has also been part of Elexon's success;
4. We completely agree that the Codes need industry knowledge and expertise to develop them. However, many BSC Panel members have serious concerns that, at a time when all companies are downsizing, industry involvement will be fundamentally weakened if Stakeholder Forums were to replace Panels and workgroups. There is a distinct possibility of losing a lot of the collaborative working practices we see in the BSC today. The BSC already makes a great deal of effort to engage with "those not in the room", and we know this is not an easy task;
5. Any appeal route for industry participants under the proposals needs to be effective, accessible and provide an independent route to the governance structure in it i.e. outwith Ofgem. We suggest that the CMA represents a more practical and appropriate body for appeal than Judicial Review, allowing examination of policy rather than just points of law, given the UK has economic and not legal regulators;
6. Despite the importance of Performance Assurance to the industry, the consultation pays little attention to the impact on it: its governance, responsibilities and authorities. In the BSC the current arrangements reflect the communal benefits of maintaining standards, but the proposed CMs are likely to be put in far more adversarial positions with non-performing Parties;
7. The Panel believes that tendering for CMs is unnecessary and possibly very detrimental: it can only delay Code consolidation and will be fraught with unintended consequences, not least those due to the different funding models of the different Codes. Running such a major tendering process will add costs to the industry that are unlikely to be offset by any cost savings, and we believe Ofgem significantly underestimates the resources need to run such a process. As industry parties involved with many Codes, the Panel also has concerns that many value-added aspects of Code Bodies will be lost;

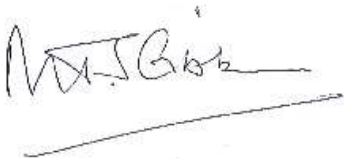
## Balancing & Settlement Code Panel

8. We fully support a more inclusive process by allowing parties outside the Code signatories to raise changes; Code Managers should oversee this process. We would also like to see Panel (or Stakeholder Forum) membership reviewed to add non-signatory groups (such as small generators to the BSC) and industrial customers, whom we believe will play a crucial role in net zero achievement;

While we applaud the ambition of the Review and recognise the issues it is trying to address, there are more effective ways to achieve most of its objectives, and not simply adopt a 'one-size-fits-all' approach.

We strongly urge Ofgem to instead take a more targeted approach and reconsider addressing merging and simplifying the Codes as an early step.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Gibbons', with a long horizontal line extending from the end.

Michael Gibbons CBE, FEI  
BSC Panel Chair

A handwritten signature in blue ink, appearing to read 'Phil Hare'.

Dr. Phil Hare  
BSC Panel Deputy Chair

# Balancing & Settlement Code Panel

## APPENDIX 1 – BSC Members

Below we include brief biographies of our Panel members to show the wealth of national and international experience as well as their active engagement with the industry on technical and commercial issues. Their background means that their opinions on the issues facing the Code can be relevant, innovative and robust, and the make-up of the Panel, required by the Code, fosters balanced decisions.

### **Michael Gibbons CBE FEI Chairman**

Michael was appointed as the Chairman of the ELEXON Board and Balancing and Settlement Code (BSC) Panel in October 2013 and reappointed for three more years in November 2016. He brings with him a wide range of industry experience, having spent 11 years at director level with Powergen.



### **Dr Phil Hare Independent Panel Member and Vice Chair**

Phil has over thirty years' experience in the energy industry and is a Senior Associate with Pöyry Management Consulting. He joined the Panel in 2014.

In a long career in the Executive Committee at Pöyry, Phil advised on many aspects of Europe's electricity industry, especially working at Board level with companies entering new geographies and moving into new business areas. Under his guidance Pöyry spearheaded the full understanding of intermittency on power markets. In more recent years his work focused on how deployment of renewables will fundamentally affect the nature of the industry.



Before joining Pöyry he held a variety of senior management posts over fourteen years at Powergen plc (latterly EON-UK) in both strategy roles as well as and operational wholesale and retail businesses.

### **Prof. Derek Bunn Independent Panel Member**

Derek W. Bunn is Professor of Decision Sciences at London Business School. Author of over 200 research papers and books in the areas of forecasting, econometrics, decision analysis and energy economics, he has been Editor of the Journal of Forecasting since 1984, a previous Editor of Energy Economics, and Founding Editor of the Journal of Energy Markets.



He has advised many international companies and government agencies in the energy sector as well as expert evidence in arbitration and litigation.

## Balancing & Settlement Code Panel

### **Diane Dowdell**

#### **Industry Panel Member**

Between 1994 and 2002 Diane worked at Eastern Natural Gas (later TXU) where she helped develop Eastern into one of the country's leading gas trading businesses. She innovated some of the first UK NBP gas supply agreements to power station developments and later moved into negotiating structured electricity and gas deals that culminated in the world's first ever Virtual Tolling Agreement with Enron in 1997. In 1998 Diane joined Entergy Wholesale Operations where, as Head of Commercial Operations, she was involved with negotiating fuel and electricity contracts for Entergy's Power developments both in the UK and Europe where she gained widespread experience of the European Gas and Electricity markets.



Diane joined Tradelink Solutions in 2003 as Commercial Director. Originally employing 4 staff Diane has helped develop the TLS Energy Group of companies into an independent vertically integrated energy company employing over 50 staff and comprising TLS Hydro, TradeLink Solutions Ltd and LoCo2 Energy Supply Ltd. TradeLink Solutions provides consulting, training and commercial services to energy companies, predominantly in the renewable energy sector.

### **Lisa Waters**

#### **Industry Panel Member**

Lisa is a founding Director of Waters Wye Associates (WWA) a specialist energy consultancy specialising in GB gas, power and retail issues. She is an economist with over twenty years' experience in the energy sector, and as well as the BSC works on codes such as the CUSC, DCUSA and Grid Code.



She has worked with a wide variety of energy companies, from gas and coal generators to smaller scale renewables and ancillary service providers, as well as representing customers, working for non-physical traders and new market entrants.

Having worked in and with a wide variety of businesses Lisa has a broad experience in the corporate decision-making process. Her work is commercially focused bring support to numerous generators (using a wide variety of technologies), traders, suppliers and investors.

Working as part of clients' teams, Lisa has provided full regulatory services covering; BSC and CUSC accession, construction and connection agreements, ancillary services contracts, systems qualification and registrations, on-going interface with codes (BSC, Grid Code, CUSC, DCUSA, etc.) and National Grid; market monitoring and development of HMG policy such as the CM, CfDs, EU ETS, IED, etc.

## Balancing & Settlement Code Panel

### **Mark Bellman**

#### **Industry Panel Member**

Mark is a Chartered Management Accountant with 30 years' experience in the power utility business. He is currently Head of Energy Settlement for ScottishPower Retail.

During his career he has implemented multi-£m systems as project manager, delivered ScottishPower's Retail BETTA Programme and managed the build and use of IT systems across a range of operations. He has a wealth of experience in energy settlement both from operational and financial perspectives and is familiar with industry codes and change processes.

Recently he has been more involved in the gas industry, on the Performance Assurance Committee and UNC Mod Panel amongst others.



### **Andrew Colley**

#### **Industry Panel Member**

Andrew joined the energy industry in 1988, and has accumulated extensive operational, development and management experience within the wholesale trading and settlement arrangements in the 30 years since; with involvement in most of the key stages of GB electricity market liberalisation and reform in that period, from privatisation to Electricity Market Reform etc.

Currently working within the Energy Economics and Market Development team at SSE, Andrew's responsibilities include management and development of GB wholesale electricity trading arrangements and Industry Code governance. He maintains an active role in development of Industry Code modifications, with extensive involvement in BSC, CUSC and Grid Code modification workgroups.

Andrew is a member of the Credit Committee and has previously served on the Imbalance Settlement Group Committee, Trading Disputes Committee and Q8 Committee. He has also previously served as an Industry Panel Member from 2010-2016, accepting Panel Sponsor duties for the Trading Disputes Committee and Performance Assurance Board during this time. As such he has a broad experience to understand how the BSC Panel and its appointed Committees support the governance of the Balancing Settlement Code and industry Trading Arrangements.



## Balancing & Settlement Code Panel

### **Rhys Kealley**

#### **Industry Panel Member**

Rhys first started in the energy sector in Western Australia in 1999 with the Government department responsible for structural energy market reform. He supported the taskforce to disaggregate the state-owned monopoly electricity supplier, and he chaired a workgroup with independent generators to design the first electricity balancing market for the state.



He then had roles in long-term demand forecasting for the Victorian Energy Networks Corporation, and as a power and utilities analyst for EY and PwC focussing on the transitions in the energy sector.

Rhys joined British Gas in 2017 to lead on energy market reform for the Energy Settlements team and is now the Head of Energy Market Design for Centrica Business Services. He is responsible for drafting consultation responses and change proposals, coordinating process and system changes in response to gas and electricity industry releases, and he has delivered strategic settlement projects unlocking the benefits of smart meter data at British Gas.

He also represents Centrica & British Gas at a range of energy industry and regulatory forums and has been an independent industry representative for Ofgem's Market-wide Half-Hourly Settlement Design Advisory Board.

### **Tom Edwards**

#### **Industry Panel Member**

Tom has been working in the electricity industry for five years. His roles include engaging with policy and regulatory change and advising clients in the supply and generation markets on market entry and regulatory change. Tom is currently employed by Cornwall Energy a leading independent consultant and provider of market intelligence on the UK energy sector.



### **Andy Manning,**

#### **Consumer Panel Member**

Andy joined Citizens Advice in April 2021 as Principal Economic Regulation Specialist. He leads the Energy, Networks and Systems team. The team seeks to ensure that consumers receive the services they require from the energy network companies at good value for money, and that the energy system works well for consumers. Andy sits on the Ofgem Challenge Group that assesses network companies' business plans.



Andy has worked in the energy industry for over 20 years, working for Centrica and RWEpower before joining Citizens Advice. This was in a variety of commercial and regulatory roles, mainly focused on network regulation and system governance.

## Balancing & Settlement Code Panel

### **Ed Rees**

#### **Consumer Panel Member**

Ed joined Citizens Advice in 2018. In the Energy Networks and Services team his work focuses on price controls, code governance, innovation and vulnerability. He sits on multiple code governance and advisory groups advocating for consumer protections.



Before joining Citizens Advice, Ed was a policy advisor for Smart Energy GB. He led projects on the implications of smart meters for energy saving and sustainability. Ed also previously led the production of the Westminster eForum and Media Forum policy events. He is a Politics Masters graduate in regulation and governance from the University of Exeter.

### **Jon Wisdom**

#### **NGESO Panel Member**

Jon joined the energy industry in 2005 holding leadership roles across regulatory and commercial functions at RWE npower before joining National Grid Electricity System Operator in 2016. He has extensive experience of the impacts that industry changes can have on the end consumer in both gas and electricity markets as a result of his roles in gas and electricity settlement, customer pricing, network charge forecasting and energy hedging. In his current role he is responsible for leading regulatory development within the NGESO including the NGESO's input to Ofgem's reviews of charging in the market. He is the NGESO Panel Member for both the BSC and the CUSC.



### **Fungai Madzivadondo**

#### **DSO Representative**

Fungai joined Energy Networks Association in 2020. In her role she engages with policy and regulatory change and sits on multiple code governance groups representing electricity network operators.



Fungai has worked in the energy industry for 10 years. In her previous roles She has worked with EDF Energy and a number of Code Administrators leading on industry code changes under the DCUSA, SPAA, SMICoP and BSC. Fungai previously led on developing and implementing changes and reporting requirements for the Theft Risk Assessment service (TRAS) and Energy Theft Tip Off Service (ETTOS).



## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>1. To what extent do you agree with our proposals on the licensing of a code manager for in-scope engineering standards, and why?</p>	<p>We agree that the in-scope engineering standards need to be included. They need to be governed alongside the Code where they most naturally fit. This will hopefully ensure the changes are introduced in a coherent, coordinated way.</p> <p>At a more general level though, we remain of the view that licensing overall can be a time-consuming practice which also has the potential to increase cost and complexity [from the 2019 response]. We believe Ofgem should consider ways in which it could use its current powers and resources more effectively instead.</p> <p>However, if the licensing is to be taken further, we believe the following considerations need to be taken into account:</p> <ul style="list-style-type: none"><li>• Licensing could present serious governance problems for NFP CMs such as Elexon and REC: for example, creating a new need to be financially secure against potential licence penalties without balance sheet support;</li><li>• Factoring in the commercial risk of non-compliance penalties could result in higher costs to consumers</li><li>• The resources required by Ofgem to administer and operate the licences</li><li>• Unintended consequences, such as Code Bodies being overly driven by licence concerns rather than taking a wider view.</li></ul>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>2. What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this may be the subject of future consultation?</p>	<p>We remain of the same opinion we shared with the Codes Review team in 2019, that having the same organisation in charge of the rules (Code) and the corresponding system works well. This end-to-end model allows faster and more aligned change processes.</p> <p>In our experience, having Elexon in charge of the system changes works very well because it aligns their responsibility with its authority – i.e. it has a strong incentive to make it all work.</p> <p>For several years, Elexon has held the top position in Ofgem Annual Code, Administrators’ Performance Survey and, in many ways, it is regarded by the industry as the gold standard. We are disappointed that Elexon’s successful business model is not being followed as the baseline.</p> <p>If Elexon were to be regulated then there is possibly some sense to make systems part of the licence too, but there needs to be evidence that such a measure is proportionate. Future consultations need to provide analysis to examine different business models, how they demonstrate desirable behaviours and the degree to which they achieve them.</p> <p>At a more general level, we have concerns that a prescriptive uniform cross-code approach to regulation would make management of/investment in the systems far less flexible and take longer to implement because of the inevitable delays in gaining regulatory approval.</p> <p>There is no consideration in the proposals as to how the licences for the systems would be enforced, although it is implicit that there would need to be penalties/incentives for their performance. This will be no easy task and fraught with pitfalls, as running the systems involves a highly complex interaction of development and current operations, further exacerbated by the impact of new Code modifications. We suggest that licencing the systems would not be “proportional”, where this could create considerable effort in regulatory oversight by Ofgem and the relevant Code Managers.</p> <p>There needs to be a clear route to address Code Manager performance issues perceived by stakeholders, industry and consumer representatives. In the BSC this is achieved by the constitution changes put in place in P325. Industry views should be key to supporting Ofgem in assessing Code Manager performance (as they do currently via administrator surveys). However, there is no detail on how this will operate and this presents a risk for stakeholders. The Panel has long argued that the Code Administrators’ Performance Survey should lead to action plans for the worse performers.</p> <p>Ofgem will need to resource up to manage all the licences and we suggest that this has been underestimated.</p>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>3. To what extent do you agree with the detailed roles and responsibilities of the strategic function as set out above [as in #3.2.4], and why?</p>	<p>Ofgem should carry out the Strategic Function, but this should be limited to an occasional steer to the industry. Budgetary provision for this should be allowed so that Ofgem is able to engage with the relevant stakeholders.</p> <p>We recognise the desirability of Codes having a clear steer and the need to get changes implemented without delay. Nevertheless it is right that changes are subject to due checks and balances and these proposals do not examine the risks of unwanted delays of un-needed modifications (for whatever reason).</p> <p>That no SPS has yet been designated since the 2013 Energy Act is indicative of a cumbersome cascade of policy with Ofgem having to work either in a vacuum (we are concerned that there is no specific guidance on the Codes, and arguably many of the objectives of this reform, in the recent publication), or being delayed in issuing any strategic direction. Thought needs to be given to a situation when an SPS is delayed, or becomes clearly obsolete. Can the SB have some emergency powers to direct the industry in this case?</p> <p>In considering the strategic direction of the Codes, we suggest that the consultation needs to more broadly consider the role and inclusion of the FSO in informing the strategic direction. It seems to be downplayed when we would argue that the direction of travel of the industry is of greater interaction of markets and networks.</p> <p>We would argue that Ofgem already has considerable powers to influence the Code Bodies and Code modifications and any additional enforcement measures should only target problem areas. Ofgem should more actively and proactively engage in the Code Bodies' activities – Ofgem staff attending meetings need to be briefed and able to make decisions. While we do recognise some of the problem areas identified in the review, there are also many examples of good performance that we think will be adversely affected by these proposals. We suggest that licensing all the Codes is not necessary and could have many unforeseen consequences.</p> <p>We would question in what instances it is proportionate for Ofgem to direct Code changes as described. Although it is stated that it would only be used as a backstop, the conditions under which that would happen need to be clearly defined.</p> <p>In a similar vein it is not clear when Ofgem would direct Code Bodies instead of using SCR process – this is important as, while we don't actually know what they will be, we anticipate that the ways in which the Codes will most help achievement of Net Zero will require cross-Code coordination, and clarity on how such situations will be dealt with is important.</p> <p>Although not explicitly stated, licensing regimes may well lead to Code Managers operating under price-cap regimes. We strongly argue that this would add an unnecessary inflexibility to their operations. One of the reasons that Elexon has performed so well in Ofgem's annual survey is its flexibility to resource according to industry needs. The consultation needs to include clear proposals on the Strategic Function's constitution, how the Code Managers will be held to account, and full descriptions of the roles and responsibilities of both the SF and the CMs if this is to be meaningful.</p>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>4. To what extent do you agree with the roles and responsibilities of the Code Manager function as set out above [in #3.2.2 for Option 1], and why?</p>	<p>We recognise the long lead times associated with legislative changes, but one of our biggest concerns about these proposals is that they miss the opportunity (or prove a diversion) to simplify the Codes by merging them in a meaningful way. In our opinion the proposals are likely to crystallise many of the divisions between the Codes and further delay much needed simplification.</p> <p>The Review should also consider the degree to which it is necessary for all the Codes to make substantial changes to get to the Code Manager structure as described in the consultation, and how Ofgem may use its discretion to focus on the less well performing Codes, leaving the well-performing ones as they are for the time being.</p> <p>It is worth remembering that the stated objectives in the 2019 consultation were to provide “...empowered and accountable code management, independent decision-making and code simplification and consolidation...” There is distinct danger that these will fade away once direct licensing of CMs kicks in because of a) the enforcement powers Ofgem will have, and b) the partial (at least) cutting of ties with industry, and the CMs retracting to relatively passive administration. We are concerned that industry parties will seek opportunities to bypass the CMs and lobby individuals at Ofgem – it is quite possible that the CMs will find themselves stuck in the middle of Parties and the SF – with little real power to adjudicate – and find themselves resorting to even more consultations which add little extra value other than to satisfy the SB’s oversight.</p> <p>The governance of the BSC was constructed in NETA to achieve many of the objectives of this Review (measures include: not-for-profit; independent Panel members, etc etc) – and with great success. We suggest that similar changes could be implement this much faster in other Codes and with far less risk.</p> <p>As now, Code Managers will need industry expertise to function, and there is a real danger of them trying to bring this in-house to ensure a level engagement with industry parties (and carrying higher costs). Furthermore, our experience is that while CMs originate generally carry out Code housekeeping very well, they struggle with taking advocacy positions, especially when Parties don’t agree.</p> <p>More specifically:</p> <ul style="list-style-type: none"> <li>• <u>Delivery Plans</u>. “Code Managers to develop and publish a delivery plan consistent with the strategic direction”. We agree with it (Elexon already publishes a detailed Business Plan and Budget every year, outlining how Mods and projects help deliver the industry priorities). However, we believe there needs to be an understanding that it needs to be proportionate in its detail, and avoid unwarranted inflexibility. There is a danger that the CMs spend an inordinate amount of time going through a continual plan/consult cycle to satisfy Licence requirements. A far more</li> </ul>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<p>efficient process would be for the SB, working closely with the Code Bodies, to develop just one plan for all the Codes in a single consolidated way so that it is “joined-up” by its very nature;</p> <ul style="list-style-type: none"> <li>• <u>Proposing Code Changes</u>. [“Any interested person, including Code Managers, would be able to propose a code change”]. As long as the industry is still able to propose changes to the codes (for which they would still continue to pay) having a CM to be able to raise a modification should not present a problem. There does not currently appear to be provision to avoid any potential conflict of interests created by Code Manager initiated modifications (specific measures should address ownership conflicts of interests).</li> <li>• <u>Prioritising code changes</u>. [“Code Managers would prioritise code changes as they are proposed, developed, and implemented, to ensure there is a suitable focus on delivering the strategic direction”]. These should be allowed only in rare circumstances to achieve key strategic goals. Although some Codes currently allow prioritisation of modifications we continue to be concerned that such power can be misused to delay them (actively or passively) or fast track ones which suit the CM. Resource shortages are often mooted as a reason to delay modifications, whereas we argue that Code Bodies should be sufficiently resourced.</li> <li>• <u>Managing the code change process</u>. [“Code managers would at least retain the same broad duties currently carried out by code administrators”.] No comment. Exelon does all of this already.</li> <li>• <u>Cross-code coordination</u>. The BSC Panel and Exelon continue to encourage and promote working across Codes in a highly pragmatic sense where many of the benefits of a modification fall outside the BSC. At the moment the Codes do not have applicable objectives to encourage cross-Code coordination, yet this is a clear option which while not guaranteed to succeed will put strong incentives on each Code to work with others, and suggest it is considered as a proportional measure which is quick to implement. The objective to confirm to EU Directives has many parallels.</li> </ul> <p>We continue to argue that merging selected Codes will be the most effective way of improving cross-Code coordination, and that this should be the first step in reforming the Codes.</p> <p>In the Retail Energy Code three service providers are expected to coordinate themselves, work alongside each other, and share best practices. This model needs to be assessed as to whether the expected ways of working (sharing and coordinating) have realised the intended benefits.</p> <ul style="list-style-type: none"> <li>• <u>Cost benefit assessments</u>: it seems an inefficient duplication that after a Modification’s Impact Assessment is carried out by the Code Manager it is then reviewed by the Strategic Body and potentially repeated and revised. We suggest that the responsibility for setting the standards and requirements of the IA should be the Strategic Body’s to avoid wasted time and costs by producing an IA that serves both the CM and the SB.</li> <li>• <u>Decision-making</u>. [“all decisions currently taken by Panels would be taken by Code Managers”]. For this proposal Code Managers will have to ensure that they have sufficient expertise to make robust decisions across a wide range of disciplines in a way that does not lead to a high level of appeals, or then managed in more burdensome consultative machinery. By reason of its wide breadth of industry experience, high proportion of independent</li> </ul>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<p>members, and including consumer representation the BSC Panel is well respected. While we recognise concern that in some Codes industry can obfuscate Modification to its own advance, no evidence has been presented of any bias towards Parties in the BSC, and we believe that constituting Panels in such a way (representation from different industry sectors including Citizens Advice, high proportion of independents etc) for all Codes would be a very quick win. A pragmatic further step could be to constitute the Panels as formal advisory bodies to the Code Managers (Code Managers themselves may wish to do this, but this could be constituted in the Review's proposals); this would meet any concerns that commercial interests are adversely affecting each Code's decisions, and preserve the valuable input that the Panels can provide. This formal advisory role of the Panel should be an opportunity to support or challenge a Code Manager directly by providing a summary of stakeholder views to Ofgem. This role will incentivise good stakeholder engagement from Code Managers and provides an opportunity for direct representation to Ofgem of well-considered and debated industry view, such as they currently get through existing code modifications</p>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>5. To what extent do you agree with the proposed roles and responsibilities of stakeholders as set out above [in #3.2.5 for Option 1], including the role of the stakeholder advisory forum, and why?</p>	<p>Very little information on the actual roles and responsibilities is described in the proposals. The consultations states (p44 “The detailed arrangements would be considered in a future consultation, including on the composition of each forum, how they would be chaired, how they would appropriately consider the views of all relevant stakeholders, and how and when a forum would be consulted by code managers). In the absence of such important detail we can only make high level comments at this stage:</p> <ul style="list-style-type: none"> <li>• We are concerned that the structure of the Stakeholder Forum will mean that in the Codes where there is a tradition of collaborative participation, this will be gradually become more adversarial, and Parties will tend to participate only where they have a direct benefit.</li> <li>• We completely agree with the aspiration that the Codes reflect the needs of smaller businesses and innovators, and believe that initiatives like the Sandboxes are a very positive development. However we don’t believe replacing work groups with SFs will lead to an increased levels of participation/engagement from them. Reaching out to “those not in the room” has been historically difficult for all the Codes. Even Ofgem’s own 2019 Code Review had virtually no responses directly from this category of stakeholder: industry associations can help fill this gap, but if so they do now, and changing to the Code Manager won’t improve things. It is our belief that the number of Codes is a bigger barrier rather than their inherent complexity, and we suggest that it is better to consolidate Codes so at least there are fewer to engage with.</li> <li>• The Panel believes that, if Stakeholder Forums were to be created, they need to be broadly representative of the relevant industry sector. For example, in the BSC there may be a need to bring more expertise on small generators. To some extent this flexibility is possible within the BSC Panel through the Chair-appointed independents and allowing consultants to take seats on the Panel and that similar arrangements could be adopted for other Codes. While the BSC Panel does designate some seats to certain sectors (e.g. generators, suppliers), it is worth remembering that industry’s deep concerns over entrenchment led to the electoral process when the BSC was originally constituted.</li> <li>• At a time when even the larger companies are cutting staff numbers, the ability of the industry to engage is likely to be less in the future – we have some concerns that the ultimate decision-making role of the CM will give greater bias/politicisation in the SF. The consultation seems to suggest that the contribution of incumbents in the industry as often unhelpful, when actually they have a lot of the experience and expertise which is largely given in good faith to make sure the modifications are practical right down to an operational and legal level of detail.</li> </ul>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<ul style="list-style-type: none"> <li>The proposals are based on the premise that all Codes' Workgroups take up a lot of time – but in the BSC the average number of workgroups per modification is less than five. We urge Ofgem to develop measures to improve the Codes where Workgroup participation is onerous.</li> <li>Ofgem's annual customer survey provides good evidence that stakeholders feel arrangements in the BSC Panel are a good example of Code behaviour and industry engagement, and the Review's proposals should target bringing the other Codes up to the same performance.</li> </ul>
6. In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how decisions by the code manager would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body?	<p>We assume that Ofgem will continue to approve all Code modifications apart from self-governance ones</p> <p>In general we are concerned that Ofgem, even at the level of individual staff, will be lobbied directly in these new arrangements, and that they are not sufficiently removed.</p> <p>We do not think it appropriate that Ofgem as the point of appeal when it is also the main line of authority. This would contravene principles of good governance that suggest the route of appeal is beyond the lines of authority.</p>
7. In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant decisions by the code manager function would be appealable to Ofgem, with a potential prior review route via an internal body?	<p>The majority of the Panel are even more concerned about the potential conflicts of interest between the FSO and the Codes it is responsible for.</p> <p>Ofgem should consider the performance of the relevant Code Bodies in its annual Code Administrators' performance survey. We would suggest that this should be an important starting point in considering what progress is needed and where.</p> <p>Otherwise similar issues to Q6.</p>



## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

8. Do you have any views on the two proposed options for appealing decisions made by Ofgem on material code changes in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?	<p>For both options 1 and 2 both the Competitions Market Authority (CMA) and Judicial Review (JR) appeal routes are needed; the CMA for when the economic Regulator being challenged, and JR as a route to suggest that the Regulator has made the wrong decision.</p> <p>There should be no arbitrary limitations to appeals. Everything should be appealable to the CMA.</p>
9. Do you have any thoughts on other potential appeal routes?	<p>The Current arrangements put Ofgem at a suitable distance for it to deal with most appeals.</p> <p>We have a general unease that the proposed appeal routes could be open to abuse – with appeals being lodged to delay modifications which have distributional impacts. We believe it will be difficult for Ofgem to summarily dismiss any such appeals and feel obliged to launch further consultations before issuing any appeal decision – in itself achieving any aims to cause delay.</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>10. To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?</p>	<p>Before touching on the negative arguments, we agree that Ofgem already has the expertise and relevant objectives, powers and duties that would have otherwise be timely and costly to impose those to a new body.</p> <p>We have already stated that we believe that Ofgem’s role as SB should be limited to high level guidance to the industry as to the strategic priorities of the industry and that these proposals are not proportional – indeed there does not appear to be any considerations of more proportional measures which target identified problems/Codes. We suggest that Ofgem already has considerable powers and should use them proactively.</p> <p>Our main concern is that there is no evidence to show that this will be an improvement on the current situation, and arguably quite the reverse could happen: historically several Ofgem-driven initiatives have taken a very long time to implement, and for many reasons.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Project TransmiT was started in 2010. Ofgem defined the solution, which was then found to be technically not implementable. It took to 2016 to implement that change.</li> <li>• Delays continue with the current charging reviews. Ofgem has been asked for its views on the DNO charging mods for the past 5 months, but its representatives have not even attended recent meetings. The proposals need to be clear whose responsibility is it to deal with DNO/DSO, initiatives similar to TCR etc? Where is the line between economic regulation (including new markets) and running the system?</li> <li>• CMP317/327 (Removing Generator Residual and excluding assets required for connection), was raised at Ofgem’s request. While all the many options developed were deemed by Ofgem as inadequate, many Panel members believe that the root of the problem was little practical guidance being issued by Ofgem as to what would be acceptable. Eventually it was sent to CMA for adjudication, and although SSE lost that case, it is now being taken to Judicial Review;</li> <li>• Uniform Network Code (UNC) 621A/B/C/D/E/F/H/J/K/L which had its origins in the TAR and Ofgem setting out its requirements, but ultimately all the many alternatives were rejected by Ofgem. Many Panel members believe that the root of the problems was little practical guidance being issued by Ofgem as to what would be acceptable;</li> </ul> <p>In the BSC we have experienced protracted (and unexplained) delays to approval to Mods like P390 (almost 10 months).</p> <p>In order to address such drawbacks to Ofgem’s fulfilling its obligations we believe service standards would need to be introduced for <u>every</u> role and part of the process, including Ofgem, SB, and CMs. In this context, Ofgem’s own Key Performance Indicators, despite being recently updated are not particularly clear, and especially given the proposed reforms, more could be done for industry to hold Ofgem to account.</p>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<p>A simple 'quick-win' would be to better align all the Codes' and Ofgem's licence objectives and keep this under review.</p> <p>At this stage, Ofgem has not provided evidence on the management changes, resources and working practices that it intends introducing to implement the changes it proposes. We believe these are likely to be quite extensive, and industry deserves more detail if they are to be credible.</p>
<p>11. To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as the strategic body, and why? [P 59-60 states "The high-level proposed monitoring and evaluation approach would be in line with the relationship set out within the 2019 Framework document<sup>37</sup> between BEIS and Ofgem, following the existing mechanisms in place. This sets out that there is a clear responsibility on Ofgem to inform government of its progress in helping to achieve government policy objectives, that Ofgem needs to produce an annual report about its activities and also to publish an annual forward work programme on upcoming direction and activity, which can be scrutinised by government." ]</p>	<p>We are not convinced that BEIS will be sufficiently engaged in the Codes to provide active and consistent monitoring and evaluation as proposed, particularly in regard to how industry stakeholders' views will be sought and documented. Furthermore Ofgem should propose mechanisms which overcome the obvious conflicts of interest that arise from its position as a Regulator.</p> <p>As a bare minimum any monitoring process needs to include the timelines/milestones for major decisions and if those milestones are not achieved, there needs to be at least a lessons-learnt exercise to understand the reasons for that. Ofgem's performance would need to be just as accountable as all the other organisations involved, yet we have found it very difficult in several BSC mods to extract suitable explanations or even revised deadlines when processing BSC modifications.</p> <p>We also have concern that the SB also needs to be judged on Mods (especially major ones) that aren't actually used, or are brought in too early. One of the great values of the current industry-led modification is that it tends to mean Mods brought forward when really needed. There is some danger of the SB and the CMs being driven to introduce Modifications earlier than necessary.</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>12. To what extent do you agree with the ways we propose that the strategic body select code managers, and why?</p>	<p>The Panel believes that tendering for CMs is unnecessary and possibly very detrimental: it can only delay Code consolidation and will be fraught with unintended consequences, not least those due to the different funding models of the different Codes. Running such a major tendering process will add costs to the industry that are unlikely to be offset by any cost savings, and we believe Ofgem significantly underestimates the resources need to run such a process.</p> <p>We question the wisdom of Ofgem taking accountability for a significant portion of industry costs in this way – what is the justification for regulatory intervention when the more general direction of travel from BEIS is to only make regulatory interventions when really necessary?</p> <p>More specifically the proposals need to address the following problems:</p> <ul style="list-style-type: none"><li>• How the selection will factor in price, quality and service levels when there are a range of funding models;</li><li>• How the tenures will be chosen. They will need to be long enough to make them attractive to bidders and reduce the relative cost of mounting the bid, but making them longer will make Code consolidation much harder;</li><li>• Inevitably the Code Managers will start seeing each other as competitors for future tenders and are less likely to share best practices between them, or cooperate if they feel that it is not in their best interests;</li><li>• Licencing regimes will have to embrace not-for-profit funding structures in some Codes. Such entities will almost certainly have to buy additional Professional Indemnity insurances as they are not able to maintain balance sheet reserves to deal with potential penalties. Even these may leave residual exposure and have significant cash flow implications for BSC Parties.</li><li>• How Ofgem will resource the tender process, which we believe will be very complex. In our view this will probably require external resources from Ofgem at the very least.</li><li>• What is the evidence that the tendering process will actually reduce industry costs, or improve Code performance? It could equally well be argued that participating in the tendering process and factoring in the inevitable new commercial risks will result in higher costs.</li></ul>
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## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>13. To what extent do you agree with our proposed approach to code manager funding, and why?</p>	<p>It is fair that the industry bears the cost of running the Code Bodies, although as stated previously, we believe that this should be accompanied by industry also having that accountability.</p> <p>The BSC has delivered value for money for the past 20 years in its not-for-profit model, and its transparent consultative approach to budget formulation which provide suitable checks and balances on the resources and plans for Elexon.</p> <p>We are concerned that, while the budgeting process has a superficial attraction of ensuring strong cost controls in the CMs, it will also lack the flexibility for CMs to adjust resources to meet the business needs.</p> <p>In the BSC we support the efforts that Elexon makes to engage with Parties to ensure that they fully understand their obligations and support them in achieving this. We have some concerns that Code Managers will be driven to start charging for these to the detriment of all participants. Ofgem need to justify how the proposed arrangements create the right balance of cost vs value in setting CMs budgets when tendering is introduced, or why it would not be more effective to target Code Bodies that are not performing in this regard.</p>
<p>14. To what extent do you agree with our proposal that the strategic body should be accountable for code manager budgets, and why? p68 - A future consultation will consider the detailed requirements for code managers in setting budgets, for example considering how the strategic body would exercise its oversight and how stakeholders would be consulted</p>	<p>Further details are needed as per consultation's statement on p 68, and at this stage it is difficult to comment constructively.</p> <p>However, at face value the industry is being asked to issue a blank check for Ofgem/CMs to fill with no way of controlling the spend on CM function. In line with our response to Q14 we believe this may lead to a disproportionately high non-controllable cost of regulation to the industry. It is generally accepted that the cost of regulation is directly linked to innovation levels in different business sectors. BEIS and Ofgem have to bear in mind such consequences when designing the new basis for the UK's energy industry regulation.</p> <p>As stated before, different funding structures in the Codes have not been taken into account when drafting this document, and we are astonished that such a fundamental point does not appear to have been considered at this stage.</p> <p>We would like to see arrangements adopted that have an underlying principle of the CMs being accountable to the industry for their budgets. This is currently the case with the BSC budget and business planning, and other Codes should move to this. We do not believe that management of the Codes should be driven by profit motives.</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>15. To what extent do you support the proposed operating model and accountability structure for option 2, where the FSO takes on the role of the IRMB, and why? The consultation argues about ESO's code management skills but based on experience could they take the role of the IRMB?</p>	<p>The majority of the Panel have great concerns that the FSO takes over the role of the IRMB:</p> <ul style="list-style-type: none"> <li>• The FSO implementation introduces a major risk to the implementation timescales for Code Reform;</li> <li>• Although we recognise its management of the Grid Code and the CUSC, we do not believe it a) has an overwhelmingly exemplary record of managing these (see Ofgem's own customer surveys) and b) resources and expertise suitable for running the other Codes</li> <li>• Strong governance precautions will need to be put in place to mitigate many conflicts of interest, either actively or passively.</li> </ul>
<p>16. Overall, which of the two options do you think would be best placed to reform code governance, and why?</p>	<p>As in our 2019 response, we advocated a variant of Model 1 with Ofgem acting as the Strategic Body but without significantly changing other governance processes, and proposing that some Code consolidation could be seen as a pragmatic first step.</p> <p>Our reasons for this were that they could be implemented relatively fast, and were proportionate measures to the problems identified by the Review.</p> <p>The wider changes argued for in both Options 1 and 2 are likely to prolong Code complexity, and a much more targeted approach to specific problems is likely to much more effective than the Regulatory interventions proposed.</p>
<p>17. To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?</p>	<p>We suggest that the costs for the new Code Manager function need to be seen as falling in two areas:</p> <ul style="list-style-type: none"> <li>• On Ofgem to carry out a) its interaction with the Code Managers, including operating their licences and b) the tender processes</li> <li>• On the Code Managers themselves in carrying out their new roles, to the extent they are outlined in these proposals.</li> </ul> <p>We believe that the costs to Ofgem will be far in excess of the £2mpa because of the resource requirements to run the tender process – unless they are for a very long time period. There is a strong risk that Ofgem's costs will be significantly greater if the consultations become more prevalent, and if appeals get used more.</p> <p>At £35mpa for the CMs themselves, it equates to approx. £3mpa per Code, but there is little evidence of how this is built up. We have some concerns that the Code Managers will need to recruit from a relatively small talent pool, and as per our comments for Ofgem there is a risk that the consultative processes will become far more onerous.</p> <p>The costs for Code Managers is based on a CMA report which is now five years old. Since then, the BSC Panel has dealt with many of its recommendations e.g. instigated housekeeping changes, introduced the BSC Sandbox Procedure,</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<p>introduced designation for non-BSC Parties to raise Modifications as well as aligning with the UK Industrial Strategy by increasing data accessibility. Such changes need to be recognised, and an RFI issued to all Code Bodies to obtain more accurate cost information.</p> <p>We believe that the IA is not acceptable in its current form and should be redone.</p>
<p>18. To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why? Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?</p>	<p>These case studies present a one-sided view of the problems facing the industry, and that a more even-handed review would have included modifications that Ofgem had originated – not just because they are a proxy for the role as SB in directing Modifications but also as an indication of the effectiveness of “top-down” originated modifications. For completeness we reproduce the examples in Q10:</p> <ul style="list-style-type: none"> <li>• Project TransmiT was started in 2010. Ofgem defined the solution, which was then found to be technically not implementable. It took to 2016 to implement that change.</li> <li>• Delays continue with the current charging reviews. Ofgem have been asked for their views on the DNO charging mods for the past 5 months, but its representatives have not even attended recent meetings. The proposals need to be clear whose responsibility is it to deal with DNO/DSO, initiatives similar to TCR etc? Where is the line between economic regulation (including new markets) and running the system?</li> <li>• CMP317/32 (Removing Generator Residual and excluding assets required for connection), was raised at Ofgem’s request. All the many options developed were deemed by Ofgem as inadequate, but little guidance issued as to what would be acceptable. Eventually it was sent to CMA for adjudication, although but SSE lost that case, it is now being taken to Judicial Review;</li> <li>• Uniform Network Code (UNC) 621A/B/C/D/E/F/H/J/K/L which had its origins in the TAR and Ofgem setting out its requirements, but ultimately all the many alternatives were rejected by Ofgem.</li> </ul> <p>That the consultation can only cite one problem in the electricity codes – P272 – which goes back over ten years, can also be taken as a guidance that they generally work, even when the benefits lie in different Codes. Many Panel members believe that Ofgem’s failure to provide the sort of strategic guidance in developing solutions to Smartest Energy’s Modification Proposal was a more fundamental problem. In Q2, we suggest that responsibility the Impact Assessment (a key point of difference by the Panel and Ofgem in P272) is moved to Ofgem (or the SF) to eliminate such problems in the future in a simple and pragmatic way.</p> <p>In recent years the BSC Panel has approved Modifications that effectively mirrored Grid Code and CUSC Mods (for example P419/CMP318 which are currently being processed), giving them the benefit of the doubt as to whether they</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

	<p>met the strict letter of the current Applicable Objectives. Ofgem can easily add an applicable objective to all Codes to cooperate to meet industry strategic direction, in a very comparable way it dealt with EU Directive compliance.</p> <p>Any Codes in which commercial interests of the stakeholders are dominating their business decisions are best tackled by targeted measures, and in many ways we believe that those the BSC was constituted with at NETA have stood it in good stead.</p>
<p>19. To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment? Are there further cost savings to industry that should be included?</p>	<p>The Impact Assessment should present different alternatives for comparison. We are concerned that both Option 1 and Option 2 have essentially the same benefits.</p> <p>Given the large reliance on unmonetised benefits, we are very concerned that the IA does not examine them in more detail. It should compare consider how more targeted and proportionate actions in individual Codes and Code Bodies can contribute towards the objectives and the risks involved.</p> <p>The impact assessment is not acceptable in its current form and should be redone.</p>
<p>20. Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?</p>	<p>There are many industry developments that are likely to go on in the next few years that require large amounts if industry efforts in the Code Bodies and in the industry. That much of the expertise for all the industry change is drawn from a relatively small resource pool needs be to recognised in these proposals. In our view, it puts even stronger importance on the need to make measures highly targeted to known problems and to avoid widespread upheaval.</p> <p>We suggest interactions with the following are taken into account:</p> <ul style="list-style-type: none"> <li>• Faster Switching</li> <li>• MHHS Programme</li> <li>• DNO/DSO transition</li> <li>• Review of Retail Market</li> <li>• Review of DCC licence arrangements</li> </ul>



## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>21. Are there any implementation issues, risks or transition considerations we should take into account? How could these impact code reform?</p>	<p>We have outlined great concern that the risks involved in these proposals have been greatly underestimated which will greatly affect the implementation timescales and their likely impact.</p> <p>Our opinion remains that the context of a great deal of other industry change should have put even more emphasis on creating a set of targeted proposals to tackle the most important and pressing problems presented by the current structure of the Codes.</p> <p>While we have included these in more detail in our response to other questions, for completeness we list the following areas are fully considered:</p> <ul style="list-style-type: none"> <li>• Resources in industry Parties to make the transition and engage in the new arrangements;</li> <li>• Shortage of resourcing requirements in Ofgem to provide the SB function, interact with the CMs and run the tendering process, indeed the general dependence on Ofgem to play its part;</li> <li>• That issuing licences makes Code consolidation and simplification actually harder to achieve and prolongs the current complexity;</li> <li>• Interactions with the many other industry developments outline in Q20;</li> </ul>
<p>22. We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of policy impacts</p>	<p>None identified</p>

## Consultation on the Design and Delivery of the Energy Code Reform ..

### Appendix 2 BSC Panel Members Views

<p>23. Do you have any other comments that might aid the consultation process as a whole?</p>	<p>One aspect of the proposals that has not been examined in any significant detail are the resources and expertise requirements in Ofgem, the CMs and the industry stakeholders.</p> <p>Smaller players, SMEs and new entrants by their very nature focus on the immediate business challenges facing them and we do not see this changing. While large companies have historically had the profit headroom to engage in the Codes (e.g. join workgroups), these companies have downsized to a degree that now they have to be far more selective. In short, there is likely to be shortage of expertise available to implement these proposals effectively. This shortage of skills could well turn into a “robbing Peter to pay Paul”. More specifically:</p> <ul style="list-style-type: none"><li>• We are concerned that Ofgem currently lacks the expertise to over-ride the Code Managers and their Stakeholder Forums to directly change the Codes, even more so when there are complex cross-code issues at play. Where would it recruit this from?</li><li>• We have some concern that the SB will recruit for its new activities from the CMs – as detailed expertise will be needed to scrutinise each CM plan and consultation process.</li></ul> <p>We believe that the consultation should have considered how the proposals affect Code Consolidation and simplification and the measures which could take to ensure that these are given the priority they need.</p> <p>Although Performance Assurance is an important aspect of the industry, these proposals do not consider the impact it will have on it, or propose how suitable governance measures will be put in place.</p>
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