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To Whom It May Concern,

Ofgem and BEIS joint review of energy industry codes

Citizens Advice has statutory responsibilities for representing the interests of energy consumers in Great Britain. This response is completely non-confidential and may be published on your websites.

We have membership and voting rights on a number of the modification panels and can raise modifications on most codes. We are one of the few organisations to have a holistic view of codes. As we work in the interests of consumers as set out by our statutory functions we have no vested interest in the outcomes of codes processes. We are broadly in support of the intentions behind this review and are pleased to respond to this consultation. Below we have replied to some of the specific consultation questions. Prior to this, we also provide some comments that are relevant to this consultation and the intended industry changes.

1. Proactive assessment

We are broadly in agreement that there are numerous changes needed to the existing codes framework in order for them to be fit for the present and future. We also acknowledge some of the groundwork that has already been done to assess the existing arrangements (e.g. the CACoP and the code administrators' performance surveys). Some aspects of the existing codes function very well and it is important not to lose sight of this valuable practice in the coming reforms. Our view is that BEIS/Ofgem should be identifying best practice as is currently carried out in the existing codes and feeding this into the next stage of the process. Many examples of best practice will have been identified in responses to this consultation and to previous Ofgem code reform consultations.

In addition to assessing current best practice we encourage BEIS/Ofgem to carry out interviews key individuals (including existing code managers, panel members and assurance committee members) in order to proactively and specifically identify where consumer value is being delivered best and how.

2. Proactive consultation with smaller parties and new entrants

We consider it crucial that BEIS/Ofgem ensures that there has been proactively engagement and consultation with existing non-major stakeholders. These should include (but are not limited to) smaller suppliers, generators, energy asset owners, payment systems, innovators and third-party intermediaries.

The consultation document highlights the issue that the existing code arrangements may not align with or inhibit new business models for smaller parties or new entrants to the market (pp. 42-43). This is also the case for parties who lack regulatory resource. However, given that these parties are relatively less likely to respond to this consultation (compared with existing/larger parties), it is vital that their views and experience of the existing code arrangements (and what they need in the future) are taken into account when building any new system.

We were encouraged to learn (at the early September workshops) that BEIS/Ofgem staff have proactively consulted and engaged with some of the associated trade bodies of these non-major stakeholders. However, it is our firm view that if the future code arrangements are to function optimally and deliver the best possible consumer outcomes, then BEIS/Ofgem must proactively engage and consult at a wider and more granular level as part of this work.

3. Strategic function

We would welcome further discussions as to how Citizens Advice - as the statutory body for energy consumers in Great Britain - could assist in ensuring the strategic function delivers outcomes that are valuable and optimal for consumers. Whether this function sits in a separate strategic body (Model 1) or is bundled with the code management in an Integrated Rule Making Body (Model 2), the eventual consumer outcomes from this function could be optimised if Citizens Advice provided a formal advisory role in it, coupled with clear expectations and support from code managers.

4. Net zero targets

We welcome the intentions for the new code arrangements to facilitate timely change and innovation, and (as with BEIS/Ofgem) we consider that the strategic function (wherever it sits) could be a key driver in facilitating the path to net zero emissions. Meeting net zero targets in an efficient manner is an objective clearly in consumers' interests and should be a central component of future code arrangements, we think it should form part of the relevant objectives for all new codes.

It is important that we establish how exactly the proposed strategic function can best provide this support and direction, and encourage BEIS/Ofgem to tackle this issue directly when they next consult on these codes reforms.

Below we provide responses to some of the specific questions asked in the consultation document.

Background and scope

Question 1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? Yes/No/Don't know. Please explain. If you disagree, please explain what you consider the outcomes should be.

Yes - particularly the central focus on codes delivering better outcomes for consumers in the context of a transition to a net zero future.

Question 2. Do you agree with the problems we've 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?

In reviewing the responses to this consultation, and through proactively consulting with other relevant stakeholders (see comments 1 and 2 at the start of this response), we would encourage BEIS/Ofgem to provide a definition of the *types* of code change that it sees as currently working well (as well as those that don't) and in what situations. This will help to steer the types of adjustments that are needed to the existing arrangements, and define where they need to be applied. There are aspects of the existing arrangements, such as for some of the smaller and more day-to-day code changes that perform very well. It's not practical for all strategic change to be dealt with via a strategic code review, which can be resource intensive and potentially cumbersome. However, larger and more controversial changes are sometimes poorly suited to the way that the codes currently function.

A good example of this is UNC Mods 0621 and 0678. In the Final Modification Report[1] (FMR) for 0621, it stated that "All Panel Members felt the review should have been undertaken as an SCR." The existing UNC code arrangements are not well suited to the types of change that 0621 was attempting to deliver, and a higher level of authority direction would likely have avoided the various governance issues encountered (including large numbers of Alternative Mods and limited supportive analyses). It is important that associated lessons are well understood and learnt from such situations (see comment 1 at the start of this response), especially where a Mod's aims are working in limited timeframes. This feedback was given to Ofgem in the FMR, including stating that "In future, early strategic consideration should be given to such situations where many Alternatives are potentially to be encountered." However, despite this, the process was simply attempted again via 0678, resulting in much the same outcome. Clearly, for industry changes such as this, the existing arrangements do not suffice. We also think it would be helpful for BEIS/Ofgem to articulate more clearly the types of code change that it sees as not currently suited to the existing code arrangements.

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[1] UNC 0621 FMR (19 July 2018) Version 2.0. Available:
https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/page/2018-07/Part%20I%20Final%20Modification%20Report%200621%200621ABCDEFHJKL%20v3.0.pdf

Question 4. Do you agree with our proposed scope of reform?

Whilst they are significantly different and out of the proposed scope, it would be helpful for BEIS/Ofgem to articulate how it sees other relevant (and often emerging) areas that are related to energy that could be regulated (e.g. EV charging standards and new energy technology installation codes) interacting with any new code arrangements.

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

There would potentially be relatively limited need for reform to the REC if option B for code consolidation (resulting in three dual fuel codes) is taken forward, depending on the sequencing and timing of reforms.

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

Yes, we agree with the four areas of reform. We agree that better coordination of the codes is important, especially in the context of ongoing disruptive change in the industry over the coming years.

We have strongly supported the other reforms (an empowered code manager, independent decision making and code simplification) during the development of the Retail Energy Code (REC)[2], and agree that they are desirable across the wider codes framework. These changes should promote innovation and open up the codes to non-incumbent industry participants and other stakeholders who have traditionally struggled to engage and secure support for change. They should also make the codes more efficient, flexible and agile. They should also enable much stronger oversight of compliance, a key area of weakness in some of the existing codes.

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[2] Various Citizens Advice consultation responses on REC governance

7. Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible. – further detail can be found on each model in the chapters that follow.

In response to question 10, we set out that Ofgem may be best placed to provide the strategic oversight function, to ensure coherent policymaking for the sector. However, we are concerned that Ofgem would not be well placed to provide a code manager role. This would require work on detailed, technical areas which are outside of its core competencies. It would also be the biggest departure in relation to the independence of the code framework, and would make the funding of the code management function less independent, which could risk delivery quality. We therefore think that if an integrated approach was followed, this might be best delivered by a new body, with the attendant risks set out in chapter 3 of the consultation.

Furthermore, although there may be some benefits to an integrated approach in relation to coordination, these could also be achieved to some extent through some of the other decisions made around code consolidation and the number of code managers, with resulting impacts on the number of other organisations the strategic body has to interface with.

8. Which model do you believe will best deliver on our desired outcomes? Please explain. NB: – further detail can be found on each model in the chapters that follow.

Not answered.

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

Yes. These changes are broadly aligned with the changes in roles that have been developed as part of the REC, which we generally support. We are less clear on the rationale for moving all code modification powers away from signatories (see question 15), as they may be well placed to decide day-to-day code changes. A balance must be struck in order that participants feel it continues to be worthwhile participating in the codes and providing an expert view on changes, without being able to stymie and frustrate change.

Providing strategic direction

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

We agree that introducing a strategic function could be a way to address the existing lack of strategic direction (however this is not necessary for all types of code change, see answer to Question 2 above). At this stage in the consultation process we do not have a preferred body for fulfilling this function, and that should be determined with the market problems and solution requirements in mind. Regarding the options proposed in the consultation document, the ESO option is the least attractive if one of the objectives is ensuring independence from industry.

The consultation envisages that the strategic function may have a significant policy making remit, for example, that it may approve all significant modifications. This may in effect create a secondary regulator, if Ofgem is not chosen to carry out the role, given how many regulatory rules and incentives sit within the industry codes. This comes with significant risk of conflict, both in terms of where the boundaries sit between Ofgem and this new body, and of the possibility that they may adopt inconsistent positions. It should be noted that while licence conditions tend to contain higher level obligations than the industry codes do, that there are no hard and fast rules on what should sit in licences and what should sit in codes. This creates some risk of duplication or overlap. There are also accountability issues that would need to be worked through. For example, there is an existing route of appeal to the Competition and Markets Authority for eligible modification decisions made by Ofgem. Would this be expanded to the strategic function?

Further, in the event of a major strategic initiative involving both licence and code changes, it would be important that the framework that was adopted did not frustrate or impede the delivery of that change. This appears to be more of a risk if different bodies are responsible for different tiers of regulation than it would be if one body is responsible for both. This may suggest that Ofgem is best placed to carry out this role, if it is implemented.

Question 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)?

Mirroring the approach taken with the REC, we consider bringing in external voices from outside the energy industry as a broadly positive move. Where board members or panel chairs members have been brought in from outside the energy industry in the current codes this has generally been a positive move. Additionally, and as mentioned in comment 3 at the start of this response, there may be a role for Citizens Advice in ensuring that consumer outcomes are fully considered in the strategic function and its direction. We would welcome industry views on this, which could be collected when BEIS/Ofgem next consult on these codes reforms (see chapter 7).

BEIS has existing powers, under the Energy Act 2013, to issue a Strategy and Policy Statement ('SPS'), to set out the Government's strategic priorities and other main considerations of its energy policy, the policy outcomes to be achieved as a result of the implementation of that policy, and the roles and responsibilities of those who are involved in implementing that policy. The Act imposed new duties on Ofgem to have regard to the strategic priorities when carrying out its regulatory functions and to carry out those functions in the way it considers is best calculated to further the delivery of the specified policy outcomes. Although an SPS was consulted on in 2014, one has never been adopted. In recent Parliamentary questions on its intentions regarding an SPS, the government declined to indicate whether it is minded to introduce one, noting simply that it is a discretionary tool.[3]

It would be useful for BEIS to further draw out the potential relationship between the strategic direction it is proposing for the codes and the wider strategic direction it might set for the sector through an SPS.

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[3] See eg PQ257383 or 264292. https://tinyurl.com/y5ro6zlx

Empowered and accountable code management & independent decision making

Question 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;*

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

> *c. prioritising which changes are progressed.*

Yes/No/Don't know. Please explain.

We agree with responsibilities (a) and (c), in line with those developed for the code manager as part of the REC. We think this works well on the codes that currently do this, for example Elexon's white paper on Meter Splitting (although it required another party to raise the mod).

We would like to see a more clearly developed rationale for giving the code manager decision or recommendation powers. In the REC model minor changes are approved by a panel made up of signatories and independent members, which makes a recommendation to Ofgem if changes have material impacts on consumers or competition. This will enable a level of challenge and scrutiny of the work of the manager in developing the modification, and could help foster industry buy-in, whereas in the proposed responsibilities list there could be a concern that the manager will mark its own homework. This risk is magnified in the integrated model, in which there isn't separate oversight of the manager function.

Question 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?

Where modifications span multiple codes it's important that the objectives of the codes align. One of the reasons that strategic change can snag is that a change being made in one code (eg for settlement) may be less easily justified in a code focussed on connection, and vice versa. The strategic direction can help here, as could better alignment of objectives.

Question 17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)? Yes/No/Don't know. Please explain.

Not answered.

Question 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? Yes/No/Don't know. Please explain.

Yes, the code manager should be ultimately accountable to the strategic body. This would be analogous to the model set out in the REC, in which the Manager is held accountable to the REC Board, which is in turn accountable to Ofgem. We would expect the strategic body to take account of the views of a wide range of stakeholders, including code parties, in assessing the code manager performance.

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

Not answered.

Question 20. Do you agree that we should not consider further a model whereby the code manager function is accountable to industry? Yes/No/Don't know. Please explain.

Yes. We agree that this would fundamentally contradict the aim of establishing an independent code manager function.

Question 21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition? Yes/No/Don't know. Please explain.

We agree that there are already a range of code administrators who may be well placed to enter a competitive procurement process for the code manager function. A well-run competition should result in a high quality service at an efficient cost. We think that any competitive process should be open to a wide range of code management approaches including not for profit. We think the outcome of a competitive process should focus on the greatest benefit for consumers, not simply the code manager that can perform the

function for the lowest cost. Providing an efficient and high quality service has a much greater potential benefit to the industry and to ultimately to consumers than simply providing the lowest cost code manager.

If there is a different code manager for each code there could be an option to re-run procurement of the function periodically, with a reasonable pool of experienced candidates (depending on the number of codes).

Question 22. Do you think the code manager function should be established by the strategic body creating a body or bodies? Yes/No/Don't know. Please explain. If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability? Yes/No/Don't know. Please explain.

If the code managers were established by the strategic body, it would be vital that Ofgem ensured that the strategic body had the expertise and resources to carry out this function to a high standard, and that the body consulted with stakeholders throughout the process.

Question 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?*
>
> *Yes/No/Don't know. Please explain.*

Not answered.

Question 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?

The level of oversight necessary and the practicality of different options will to some extent depend on the number of codes and whether these have different managers. If there is a single manager (for either a single code or for multiple codes) there will be no comparator bodies, and strong oversight will be vital. Other models which better enable regular procurement and comparison may allow for less detailed oversight. Regardless, it is vital that the model offers - and is seen by industry and stakeholders to offer - value for

money. The process should avoid the mistakes of the past where participants with privileged monopoly roles see high profit margins for low risk activities.

As per our answer 21, value for money - whilst important - shouldn't be the only measure of value delivered by the code manager function. We encourage BEIS/Ofgem to consult more broadly about how non-monetary inputs and outputs (particularly those relating to consumers) can be best observed and valued.

For example, in addition to financial efficiency the new code arrangements should facilitate innovation; ensure fairness for consumers; promote thorough and inclusive consultations around new Mods; and reduce negative impacts of incumbent/industry bias. Until we know with more clarity what we want to measure (as an indicator of success), it won't be possible to finalise how to measure them (and a measure of financial efficiency is unlikely to suffice for all).

In addition to this, there may be some benefits to assessing (see comment 1 at the start of this response) and then aligning some of the relevant objectives across the codes.

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)?*

Not answered.

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

We consider the eventual decision around the funding model to be of significant importance. The specific code manager functions chosen by BEIS/Ofgem will play a big part in selecting the correct funding model, so we look forward to more clarity around this in the next consultation.

In the meantime, it is worth highlighting a 2015 IGov discussion paper[4] which touches on this issue. Some views from a cross industry workshop (on the future of code governance) were that mechanisms should be put in place to ensure administrators could be held to account (e.g. through time limited contracts requiring retendering for the work every few years).

Code simplification & consolidation

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

Not answered.

28. How many codes would best deliver on the outcomes we are seeking under these reforms?
Not answered.

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

At this stage in the consultation process, we do not have a strong view on which option would best deliver the best consumer outcomes. That said, we find it difficult to conceive of a model in which a single code manager role would not have to be unpinned by a necessary spread of more specific code roles (these may collaborate better than if they were separate bodies, but their existence could in effect undermine the objective of having a single code manager role). Further, having multiple code managers would allow for continual comparisons (and associated improvements) to be made, and would better enable regular procurement of the management function. For a useful run down of the pros and cons of different options, we refer you to a recent publication by Cornwall Insight[5].

30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.

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[4] IGov (2015) Codes Governance and Reform Discussion Paper. Available: http://projects.exeter.ac.uk/igov/wp-content/uploads/2015/11/Energy-Codes-Discussion-Note-Nov-2015-updated.pdf
[5] Cornwall Insight (2019) Elexon - Code Consolidation Insight Study. Available: https://www.elexon.co.uk/documents/industry-insights/cornwall-insight-study-for-elexon-on-options-for-reforming-the-energy-codes/

We do not have a firm view, but at this stage option B seems to carry fewer risks and greater benefits.

Option A (a single unified code) would represent the biggest departure from the status quo, and would require the greatest upheaval in transitioning to the new approach. This could take longer, delaying some of the benefits of code reform. It would also have the biggest challenge in relation to managing stakeholders, as it would cover all market participants. Making the code work effectively for all of them could present a major challenge.

Option B (three code approach) builds on and complements the work that has already been done in developing the REC. It also retains a degree of specialisation and focus for each code, and will mean that participants will not necessarily need to interface with all three codes. Bringing together all codes in a dual fuel manner may enable better harmonisation between gas and electricity processes, which could eventually result in a more seamless consumer experience and simplicity for participants. This should be an area of more detailed consideration.

Option C (single retail code and separate fuel 'upstream' codes) would retain a more complex (but specialised) code landscape which could be complex for participants and reduce the opportunities for harmonisation across fuels.

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

Yes, and we are very supportive of the proposed use of golden thread signposting. The digitalisation process needs to be focused on open and easy access, particularly given the increasing range of third parties engaged with the energy system.

Monitoring and compliance

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

We support stronger oversight of code compliance as one of the outcomes for the review. We agree that there should be more independent oversight than has traditionally been

the case, whether this is through the manager putting in place the compliance process or actually managing and running this process too. There are likely to be benefits to industry involvement in the process to ensure that best practice is shared and non-compliance is avoided.

We would strongly encourage BEIS/Ofgem to include this question in the proactive interviews we suggest are undertaken as the next stage in this reform process (see comment 1 at the start of this response).

We note that the UNC's PAC is only made up of shipper and transporter members, and not "other parties such as independent members, academics and consumer representatives" as stated in section 6.2 of the consultation document. Whilst this is something that we would welcome on the UNC, this matter only adds weight to the argument for BEIS/Ofgem needing to conduct a more thorough assessment of the current state of play (see comment 1 at the start of this response).

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

Not answered.

Question 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 rulemaking body).

Not answered.

Please contact me if you wish to discuss anything in this response in more detail.

Yours sincerely

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