Lesley Nugent
By E-mail to: industrycodes@ofgem.gov.uk

18 December 2015

Dear Lesley,

Code Governance Review (Phase 3) Initial Proposals – ELEXON response

ELEXON is the code administrator responsible for managing the balancing and settlement arrangements set out in the Balancing and Settlement Code (BSC). We welcome the opportunity to comment on Ofgem's initial proposals regarding its third review of industry code governance.

While industry code panels and code administrators such as ELEXON were established as reactive entities, we agree that a more pro-active and strategic approach is needed. As you note, we have developed a forward view of significant programmes and industry change to inform the work of the Balancing and Settlement Code (BSC) Panel (see the BSC Panel Strategic Work Plan). We are pleased that this initiative has been well received.

We support the collation of an industry wide change programme (or forward view) and believe there is merit in establishing a cross-code expert group to consider the roadmap of changes.

We believe that code panels and code administrators have an important role to play, engaging with each other and with energy companies to support the efficient and effective delivery of innovations and improvements where changes to industry codes are required.

We support the principle of self-governance and believe that it is important to clarify the types of change that may be subject to the self-governance process. In this context, reviewing the materiality criteria for such changes seems sensible.

We also support early engagement in the consideration of industry code changes by Ofgem to help ensure that assessment work meets the Authority's needs, thereby reducing the risk of delays arising from duplication of effort or because further work needs to be undertaken.

Our responses to the specific consultation questions are set out in an appendix to this letter. The views expressed in this response are those of ELEXON Ltd, and do not seek to represent those of the BSC Panel or Parties to the BSC.

We support initiatives to improve industry code governance and we would be happy to discuss our response with you. If you would like to discuss any areas of our response, please contact me or Adam Richardson, Design Authority, on 020 7380 4117, or by e-mail at adam.richardson@elexon.co.uk

Yours sincerely,

Mark Bygraves
CEO, ELEXON

List of enclosures

APPENDIX A: Response to individual consultation questions

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CHAPTER: Two (SCR Process)

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?

Qualified yes.

In our response to Ofgem's summer 2015 consultation on a potential third review of code governance we questioned whether there is a need to undergo the full code modification process if the processes for defining, assessing and consulting on required changes can be accommodated in a co-ordinated fashion under the SCR.

However, we also believe it is important for industry parties to continue to be closely involved in the development of any modifications arising from an SCR.

Using Ofgem-led expert groups to consider more detailed aspects of potential changes[1] will only yield benefits in relation to industry code change if these matters are sufficiently defined and assessed via appropriate engagement with industry experts. Such engagement could mitigate the need for subsequent detailed assessment under the relevant industry code procedures.

If this were to be the case, we believe it would be possible for industry code modifications arising from an SCR to be considered directly by an industry code panel without further assessment. We believe such an approach could be effective in reducing the risk of duplicated effort and extended timescales.

We strongly agree that industry code panels must continue to have a role in voting on recommendations associated with Modifications arising from SCRs. This is an important check and balance in the existing industry code governance[2].

Question 2: Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?

Qualified yes.

We believe it is important for Ofgem to engage early in the change process so as ensure that assessment work meets the Authority's needs. This should include a clear steer on any matters arising from an SCR.

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[1] For example, business process design, systems impacts, regulatory design, commercial elements and the overall delivery strategy.

[2] For example, the provisions of the Electricity Act offer the opportunity for Authority decisions to be appealed to the CMA in the event that the Authority approves a Modification which was recommended for rejection by the BSC Panel.

Early engagement and a clear steer from Ofgem would provide code administrators and code panels with a clear set of requirements under which to manage such change and a context in which to co-ordinate with Ofgem on progress, as necessary.

If a steer were to be provided, we believe that it should:

- clearly set out the desired outcomes, indicating:
  - what might need to change;
  - any existing features that must be preserved;
- articulate the success criteria associated with each outcome (i.e. how the desired outcomes would be measured and/or tracked by Ofgem); and
- describe the expected timescales in relation to the outcomes (i.e. the target(s) for desired outcomes to be realised).

We believe that code panels and administrators should be able to prioritise and manage change (including any SCR changes submitted into the industry process) in a strategic manner after taking account of an overall forward view on industry change and the programme of change under their respective code(s). The timetable for any SCR changes submitted into the industry process should be, in the first instance, set by code panels in the normal manner (i.e. taking account of the scope, complexity and urgency of the change) in the context of any steer provided by Ofgem.

Backstop provisions can be used to ensure that the Authority can step in to control the timetable should it feel the relevant code panel's progression of the change is inappropriate. In our view, sufficient Authority oversight to control the timetable for change already exists under the BSC[3]. We believe equivalent provisions should be consistent across industry codes.

Question 3: Do you have any comments on the licence drafting set out in Appendix 3?

No. However, we note that the licence drafting is provided by way of an example and we would welcome the opportunity to comment on the text that Ofgem ultimately proposes.

Question 4: Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

Yes.

[3] The BSC already constrains the time available for assessing Modifications and the Authority may object to any extension above these defined limits (or any subsequent extension to an agreed timetable). The Authority must also approve any amendment to an approved implementation date.

We can see merit in Ofgem being able to raise Modification Proposals. Indeed, there is little difference between this approach and that where Ofgem directs a licensee to raise a change. Both routes are driven by Ofgem, albeit the first might be said to be more transparent.

We note that the consultation states option 2A would give Ofgem more power over the code modification legal text. We assume, therefore, that the solution to such Ofgem raised Modifications would be owned by Ofgem, consistent with the existing principle of proposer ownership for Modifications raised by code parties. This, however, would not preclude the Modification Workgroup from developing its own alternative solutions.

Importantly, given Ofgem's role in assessing and approving Modifications, we believe it is essential for industry code panels continue to have a role in voting on recommendations associated with Modifications arising from SCRs. As noted elsewhere in our response, this is an important check and balance in the existing industry code governance[4].

Question 5: Do you have any other proposals for changes to the SCR process?

No

CHAPTER: Three (Self Governance Process)

Question 1: Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?

Yes. We support self-governance as a principle and believe treating this mechanism as the default process will potentially reduce the volume of change that is put to the Authority, leaving the Authority to consider recommendations from code panels on only the more material changes and, we assume, determinations in respect of Modifications that might be considered as Urgent Modifications[5].

However, we remain concerned that the self-governance criteria themselves (as they pertain to the BSC) restrict many changes from being considered under the self-governance process. For example, the current self-governance criteria (as set out in Condition C3 of the Transmission Licence and also reflected in the BSC) require that:

- changes must not discriminate between different classes of parties and must be unlikely to have a material impact on:
    - existing or future electricity consumers;
    - competition;

[4] For example, the provisions of the Electricity Act offer the opportunity for Authority decisions to be appealed to the CMA in the event that the Authority approves a Modification which was recommended for rejection by the BSC Panel.

[5] We note there is a distinction between Modifications which may be determined as Urgent after taking account of the guidance published by Ofgem and those Modifications which may be considered under the existing Fast Track Self-Governance route.

- the operation of the national electricity transmission system;
- matters relating to sustainable development, safety, security of supply and the management of market or network emergencies; and
- industry code governance / modification procedures.

It is hard to see how any but the simplest of changes could fail to meet at least one of these stated criteria, particularly since, to be assessed as better than the existing baseline, changes should deliver [material] benefits in respect of the various Applicable Code Objectives (which include competition and operation of the national electricity transmission system).

The above criteria must be relaxed in order to facilitate an increase in the number of Modifications being considered under the self-governance provisions.

We suggest the criteria could be amended to require that:

- in the view of the relevant code panel, changes must not unduly discriminate between different classes of parties and must be unlikely to have a significant material impact on:
  - existing or future electricity consumers;
  - competition;
  - the operation of the national electricity transmission system;
  - matters relating to sustainable development, safety, security of supply and the management of market or network emergencies; and
  - industry code governance / modification procedures.

In this way, sufficient flexibility is built into the criteria to enable code panels to consider self-governance as the standard route.

We believe it would be important to ensure that the route to appeal (to Ofgem) any self-governance decision was well advertised and that Ofgem was sufficiently involved in the code change process to be able to take changes out of the self-governance process where it felt they were sufficiently material.

Question 2: Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?

Qualified yes.

We note that guidance may be beneficial. The key element would appear to be an understanding of what material impact means in relation to each aspect of the criteria. However, we are concerned that such guidance could become an actual or perceived set of, more detailed, complicated and prescriptive criteria.

Question 3: Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?

No.

We believe that Ofgem must play a part in developing guidance in relation to the self-governance criteria since the criteria exist to meet Ofgem's desire to filter out the most material changes. Consequently, while code panels and code administrators may be well-positioned to provide support in developing guidelines, any guidelines should be approved by Ofgem.

Question 4: Do you have any other proposals that may improve the self-governance processes under the codes?

No.

CHAPTER: Four (Code Administration)

Question 1: Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

No.

The CACoP can be an effective tool for describing the minimum required standard. It may help to incentivise code administrators to improve to this basic standard. However, it doesn't drive improvement over and above this minimum unless it is monitored and continually reviewed and revised by introducing enhanced minimum expectations.

While we support the continued review and refinement of guidance, we are cautious that guidance should not become so detailed and prescriptive as to constrain innovation.

We believe that 'ensuring best practice' implies active review and monitoring of code bodies' performance in relation to the role of Critical Friend. This (as well as citing examples of good performance) would be more effective in driving behaviour and improvement than ever-more prescriptive guidance.

Question 2: Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.

We agree with the proposal that the critical friend function should be clearly advertised on both Ofgem's and code administrators' websites. This should include easy access to the Code Administration Code of Practice itself and could include an outline of how the code administrator supports the guidelines associated with being a critical friend.

The principle of critical friend and the function of the code administrator in this respect should also be highlighted to attendees at Modification Workgroups.

We believe that the role of Critical Friend is embedded in ELEXON's delivery of code administration services. Feedback we have received from customers indicates this is welcome and that we are seen as an impartial, trusted advisor.

Question 3: Could a self-governance process be introduced for the CACoP?

No.

We question whether this is appropriate given that the purpose of the CACoP is to establish minimum expectations in relation to code administration. In this regard, it is not appropriate for code administrators/panels to set their own minimum standards by raising and approving changes to the CACoP without Ofgem oversight. We question if such an approach is consistent with the self-governance criteria which currently prevent changes that impact industry code governance from being considered as self-governance.

Question 4: How often should the CACoP be reviewed?

We believe there is no need to prescribe any regular review cycle. Instead, reviews could be initiated by code administrators, code panels or Ofgem where a business need arises.

It could be that an obligation to consider a review is triggered after a customer survey so that code panels are determining a need to make changes based on the views of industry. Such an approach would require coordination in the timings of customer surveys across codes and code administrators.

Question 5: Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?

No.

We currently publish the CACoP on the 'Change' landing page of the ELEXON website. It's not clear what added benefit would arise from altering this document link to a link to a separate web-site.

Question 6: How could the quantitative metrics be improved?

We report CACoP Principle 12 metrics on a quarterly basis in the Change Report to the BSC Panel, this includes the results of the annual customer survey that we commission which provides information on satisfaction in relation to our performance with respect to the change process.

Some of these metrics offer context. For example, the 'number of consultations progressed' tells the reader something about the volume of change activity but it is not a measure of performance (of either the code panel or the code administrator).

Other metrics highlight the challenge in measuring performance. For example, the 'average number of respondents to consultations' figure does not recognise that the number of responses might be indicative of the nature of the change. Industry parties may choose not to respond to simple, straightforward changes, preferring instead to deploy their limited resources providing feedback on changes which have wide-ranging, commercial impacts. We suggest that one is neither better than the other but it would be

concerning if wide-ranging commercial changes gathered little feedback. The numbers alone cannot make this distinction.

Some metrics are easier to consider as pure performance indicators. These include:

- Number of Modification Reports submitted for decision in line with the original IWA timetable (i.e. that recommended by the code administrator);
- Number of extensions to the timetable requested;
- Number of consultations for which implementation cost estimates were available;
- Number of consultations with a glossary and plain English summary included;
- Number of reports 'sent back' by the Authority;
- Percentage difference between the budgeted and actual implementation cost; and
- Number and percentage of surveyed respondents 'satisfied' or better by the code administrator's assistance in the change process.

We note that CACoP Principle 12 contains no specifications for how these figures should be compiled. This makes comparison of these metrics between code administrators very difficult (if not impossible) as the basis of the reporting across code administrators may not be the same.

In order to be an effective benchmarking tool, we believe the CACoP should make a distinction between performance indicators and other, more general metrics. The detailed calculation of the performance indicators and metrics should be set out in the CACoP to ensure consistency.

The metrics themselves should be published centrally in a consistent format based on standardised submissions from each code administrator.

Question 7: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

Yes.

We would support a central survey regarding code administration and believe code administrators and code panels should have input to the development of any such survey.

We believe the survey should be conducted by a professional research organisation appointed by Ofgem.

Question 8: Do you agree that the modification process and template should be standardised across all codes?

<u>Raising a Change</u>

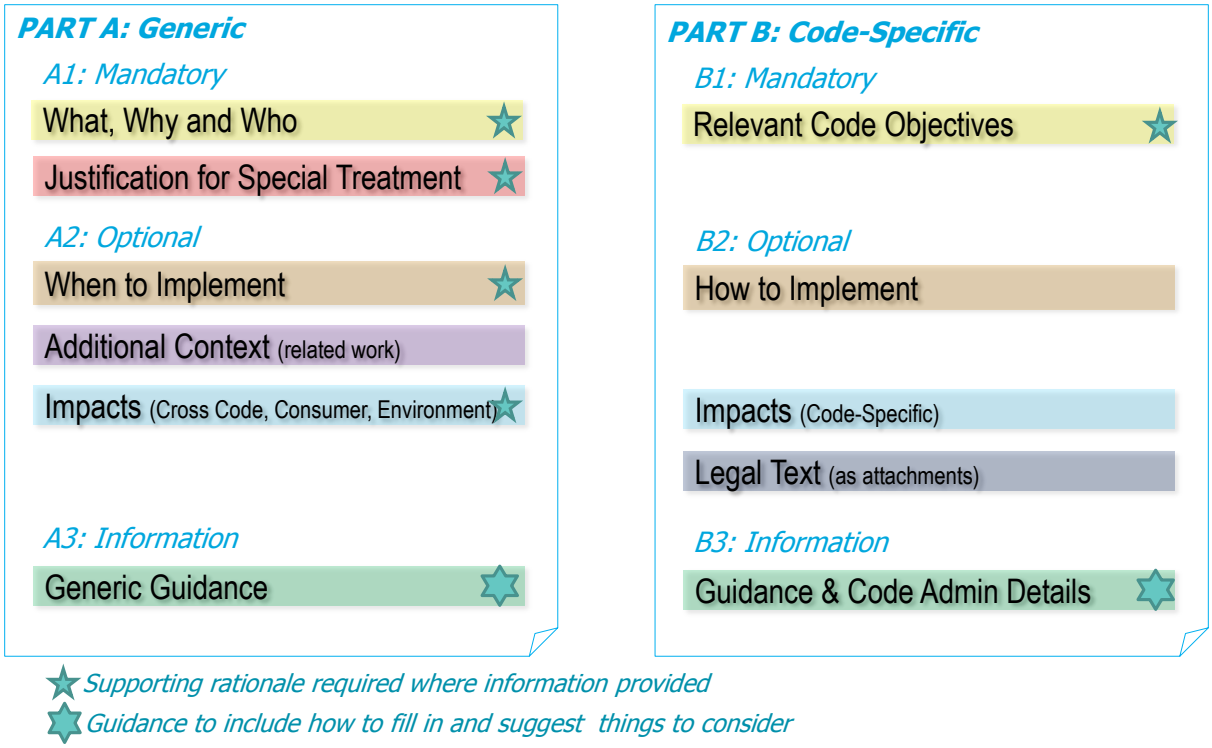
Yes.

We believe that modification documentation should make it as easy as possible for code parties to raise considered changes. Consistent modification form templates would help

in this regard. They should also facilitate access to guidance and encourage code parties to engage with the relevant code administrator ahead of raising a change.
However, we also recognise there are differences between codes (in relation to both content and structure) and modification form templates would need to take this into account.

We would suggest that a standard modification form template could comprise two parts. Part A would be generic across all codes, Part B would be code-specific. Each part would contain some mandatory information and some optional information that could help in the initial assessment. Mandatory information should comprise information that is in the control of the proposer and is relatively straightforward to complete. Aspects of the proposed change that might be expected to evolve through an assessment process or which would be difficult to know without detailed, expert knowledge should be optional.

For example:



Progressing a Change

While there are differences, the overall, broad processes for considering changes are similar under each code: changes are raised, assessed by experts, consulted on, considered by a code panel / Ofgem (or both) and then, if approved, implemented.

The report documentation used by those code administrators that were involved in the first review of code governance are based on a consistent template (with minor variations to accommodate the requirements of each code). We believe these templates remain fit for purpose and could be used by other code administrators.

Question 9: Is it appropriate that all panel chairs be completely independent of industry?

Yes.

Question 10: Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Yes.

Question 11: Should DCUSA voting be undertaken by panel, rather than all parties?

No comment.

Question 12: Should code administrators provide a chair for workgroups?

Yes. This is consistent with current operating practice under the BSC.

Question 13: Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Yes.

We agree that providing for consumer impacts to be considered when changes are raised would help to ensure that consumer interests are discussed and published.

However, we note Ofgem's view (in paragraph 4.61 of the consultation document) that 'it may not be possible for Ofgem to make a decision based on this [consumer impacts] analysis and, therefore, [Ofgem] would have to carry out another impact assessment, and so duplicate much of the work of industry'.

Consumer impacts and benefits are not currently featured in the Applicable BSC Objectives. We believe this limits the extent to which any detailed analysis and assessment of consumer impacts could be legitimately explored under the BSC.

Consequently, while it may be appropriate to mandate the inclusion of views and high-level considerations in modification documentation, it would be inappropriate to mandate that further analysis be undertaken without a clear obligation to consider such impacts under an Applicable Objective and without suitable provisions to mitigate the risk of duplication.

Question 14: Do you agree with the housekeeping changes we have proposed?

Yes.

CHAPTER: Five (Charging Methodologies)

This section of the consultation relates to charging methodologies set out in the UNC, CUSC and the DCUSA. As the code administrator for the BSC we have not commented on proposals in relation to these charging methodologies.

Question 1: Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?

N/A

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

N/A

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

N/A

Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

N/A

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

N/A

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

N/A

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

N/A