

Department for Business, Energy & Industrial Strategy and Ofgem - Reforming Industry Codes consultation

Joint response by Community Energy England and Community Energy Wales
September 2019

INTRODUCTION

1. This is a joint response by Community Energy England and Community Energy Wales, who together represent over 290 community energy groups and associated organisations across England and Wales involved in the delivery of community-based energy projects that range from the generation of renewable electricity and heat, to the energy efficiency retrofit of buildings, to helping households combat fuel poverty.
2. Our shared vision is of strong, well informed and capable communities, able to take advantage of their renewable energy resources and address their energy issues in a way that builds a more localised, democratic and sustainable energy system.
3. Community energy refers to the delivery of community led renewable energy, energy demand reduction and energy supply projects, whether wholly owned and/or controlled by communities or through partnership with commercial or public sector partners.
4. Given the extreme urgency and huge scale of the energy transformation that is needed the 'do nothing' option is not an option. We need to enable innovation as much as possible whilst protecting and increasing benefit for consumers, especially those who might be adversely impacted in the process.
5. Many of our members, deprived of a business model for community energy generation by the ending of FiTs, the export tariff, the Urban Community Energy Fund and tax relief have been very active in energy efficiency and conservation and innovation projects. Several have Ofgem Sandbox projects.
6. Community energy (along with many other smaller players) feel unable to participate in the code setting process. Even the Sandbox asks 'what codes are you likely to break' requiring a knowledge of the regulatory system that, without assistance, is impossible for a community energy organisation.
7. We agree that 'action is necessary to create a regulatory framework capable of delivering the changes required to move to a clean, smart and consumer-led energy system, in line with the Industrial and Clean Growth Strategies.'

8. Community energy has a greater ability to facilitate and deliver consumer-led change than most of the other market players. Claire Perry, Minister for Energy and Climate Change at that time, stated that ‘community energy is a key cornerstone of government’s ambition for transition to a low-carbon, smart energy system’
9. We agree that the reforms need to remove the dominance of the incumbent large energy companies and include small, disrupter companies and community energy organisations that are likely to be bringing innovation to the energy system. Community energy brings multiple social benefits that are not valued or enabled by Ofgem or the Codes.
10. In delivering regulation for a cost-effective, future-appropriate energy system, Ofgem, BEIS and other bodies involved in the future need to proactively seek to benefit all consumers rather than just ‘protecting consumers’. This means fundamental changes to BEIS guidelines allowing priority to be given to zero or low-carbon energy and social and environmental benefit to be a material consideration in regulatory decision.
11. Ofgem and BEIS need to use Social and Environmental Cost Benefit Analysis to better analyse ‘benefit to the consumer’ and to help prioritise policy and code change decisions.
12. These considerations also need to be built into RIIO2 guidelines.
13. ‘Future consumers’ are included in Ofgem guidelines. Welsh and Scottish legislations enable future consumers to be considered on a par or perhaps even as more important (as there will be more of them and they are more at threat from consequences of current decision) than current consumers. This ‘future generations’ focus should be embedded in the remit of any strategic body.
14. A report prepared for DECC in 2014 found *“community projects installed offer between 12-13 times as much community value re-invested back into local areas as would be achieved through 100% commercial models. The estimate is based purely on an assessment of economic value, when full social and wider environmental returns are factored in the benefits will be substantially higher.”*¹
15. ‘Technology neutrality’ militates against this. In pursuing an urgent transition to zero-carbon, local, smart, flexible, consumer-led energy system not all energy technologies are created equal. A flexibility or capacity option that treats diesel generators on a par with a community owned battery connected to smart management is not facilitating the transition.

¹ Community Renewable Electricity Generation: Potential Sector Growth to 2020, Report to DECC, Peter Capener, 2014

RESPONSE

Providing strategic direction

16. CEE supports the creation of a strategic body and the empowerment of accountable code management.
17. There is an urgent need for a body that is in touch with cutting edge developments in the industry and that can convene all parties to explore the implications for the energy system and what regulations are needed to facilitate it. It should be able to feed back to government to inform energy policy and not simply be designing regulation to fit a government vision created at some point in the past.
18. The Strategy body needs to have an 'innovation facilitation arm' that can understand future trends and support small innovators and disrupter players to better understand code and licence issues.

The delivery models

19. The two models proposed each appear to have advantages and potential drawbacks. We do not have enough information to make a definitive judgement. The issues we see with each model are as follows:
 20. Model 1: Advantages.
 - a. The strategic body is independent and not so embedded in the code writing process that it can't do the blue-sky thinking that being truly responsive to and even anticipatory of cutting-edge developments will require. It could be convened by a body whose remit is to do holistic thinking at the edge of system development.
 21. Model 1: Disadvantages
 - a. The strategic body if separately convened could be seen as out of touch with exigencies of the business of code writing. If it is above the code managers in hierarchy it could provoke conflict which a more collaborative iterative approach might avoid.
 - b. If it is convened in a separate place and by a separate body it will necessitate additional layers of bureaucracy, communication, harmonising systems, etc which can reduce efficiency.
 22. Model 2: Advantages

- a. It could increase collaboration between the strategy people and the code managers increasing mutual understanding.
- b. It could increase operating efficiency and speed of response and the necessary to and fro discussions in the process of designing code to fit an innovation.

23. Model 2 Disadvantages

- a. It could exclude the participation of more radical and independent strategic bodies.
- b. The strategy and foresight function could be compromised by being too close to the code writing function, proposing strategy that is within the realm of what is perceived as possible within easy modification of the current code rather than what is required by the development that are coming down the line or the genuine requirements of urgent need for transformation.
- c. Even if the above is the perception rather than the reality this will not help encourage participation of the genuine innovators.

24. CEE does not have a view of which model is preferable as there are many trade-offs and imponderables.

25. Whichever model is adopted we propose that the strategic function is either held or convened by a strategy and innovation focussed entity that is not so embedded in the culture of Business as Usual.

Code management & independent decision making

26. We do feel that the Strategic and Code Management function however constituted should not sit within Ofgem. Ofgem is too close to the process of regulation and operate within the realm of what is currently possible. The speed of change must be able to imagine and prepare for the currently impossible. As stated in one of Ofgem's recent codes workshops, the huge changes that have taken place within the telecoms industry and Ofcom may be a source of good practice. Technicians and sociologists will be needed to shape interventions that encourage behaviour change. Behaviour change is essential for 60% of Committee on Climate Change's recommended interventions for reaching zero-carbon. Community energy is uniquely equipped to advocate for and facilitate this engagement with the energy system.

27. Nor is Ofgem an organisation geared to the necessary agility or speed of change. Another participant at the workshop with experience as a code administrator said the current process can be hijacked by people in the room representing organisations that

don't want the code change. "Feet-draggers dominate", "No-one works together" "The code administrator has now power". "Getting consensus is very hard".

28. Neither do we feel it should be within National Grid ESO. It is a large commercial company and likely to favour the incumbents and proposers of incremental change rather than the disrupters and small and local participants who might make life difficult or less profitable for the centralised model.
29. Another workshop participant said, "We need a mindset change". This is not going to come about if it is principally the large incumbents who can afford to be around the table. There needs to be equal representation on the panel (even if this costs money to achieve) of the various stakeholders, including small energy businesses, innovators, the community and consumer. If the Strategic Body has consulted these stakeholders in a code modification adequately, it is possible that the representative from the Strategic Body could represent their interests through the code modification process. Equally, investment in good tele-conferencing equipment, so that these stakeholders can participate time-efficiently and without needing to travel, was mentioned as being vital in the workshop. There will have to be consideration of remuneration for participants from community organisation and smaller player who will not have the resources to participate.
30. We are worried that a process designed to streamline could introduce another layer of management if the code manager is a layer above the code administrator. Elsewhere in the consultation it mentions, 'enhanced responsibilities of code managers. In addition to the current tasks of code administrators' which seems to imply that the code manager will also be the code administrator.
31. The code manager will hold a lot of power (Identifying, proposing and developing changes (analysis, legal drafting etc.), including: understanding the impacts; Making decisions on some changes, or making recommendations to the Strategic Body; Prioritising which changes are progressed.)
32. Accountability of the code manager will be vital to the success of the new system. Their decisions need to be transparent and endorsed by a representative panel and there need to be safeguards against undue influence from well-resourced stakeholders whose interests may be against change. They need to use Social and Environmental Cost Benefit Analysis to better analyse and prioritise code change decisions.
33. The code manager also needs to have the skills to build consensus in code management around a new culture of change and new aims for the energy system and to bang heads together where people are blocking for reasons of vested interest.

34. CEE endorses the need for better coordination and consolidation of the current codes. 11,000 pages across 11 codes held by different bodies is unwieldy and impenetrable. The challenge of getting codes to work together should be an opportunity to rationalise, consolidate and update.
35. We support the idea of a single Codes Portal. There should be active support for this for less experienced participants.
36. There needs to be mentoring available from code experts for smaller players who must negotiate the codes (or propose changes to them) to be able to participate and innovate. This is also true of those participating in Sandboxes (of which there need to be many more to speed up change).

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FURTHER INFORMATION

Community Energy England (CEE) was established in 2014 to provide a voice for the community energy sector, primarily in England. Membership totals over 220 organisations. Many of the member organisations are community energy groups, but membership extends across a wide range of organisations that work with and support the community energy sector.

www.communityenergyengland.org

Community Energy Wales (CEW) brings together a network of practitioners and a membership of over 70 organisations who work with and within the communities of Wales to develop renewable energy generation and energy efficiency schemes.

www.communityenergywales.org.uk

Four stated objectives of the change

1. Providing strategic direction: ensuring the regulatory framework is forward looking and is informed by the Government's vision for the energy system. We propose creating a new function that can take account of that high-level vision and translate it into a strategic direction for codes that promotes the interests of consumers. This is intended to address the current fragmentation and lack of co-ordination between the codes.
2. Empowered and accountable code management: a mechanism for ensuring that the strategic direction is delivered through appropriate changes to codes and that these changes are progressed in a clear and logical manner across codes. We consider this could be achieved through the creation of an empowered code manager function that has the right expertise, resources and powers to oversee the change process; monitor compliance with code obligations and decide on appropriate measures in the event of non-compliance.
3. Independent decision-making: rebalancing decision-making away from industry control, to arrangements that are agile and responsive to change and work in the interests of existing and future customers, where the right incentives drive the design of rules and systems, while continuing to draw on industry input and expertise.
4. Code simplification and consolidation: to improve accessibility: simplify and consolidate codes, removing unnecessary content, and ensuring codes are suitably adaptive to a changing industry. This could enable innovation and lower barriers to entry by making codes clearer, more transparent, and accessible. Fewer and simpler codes would also be easier to rapidly change in response to strategic priorities.

Consultation Questions

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.

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? Yes/No/Don't know. Please explain.
3. Do you have additional evidence on the performance of the current framework?
4. Do you agree with our proposed scope of reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?
5. Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.
6. Do you agree that the four areas for reform are required? Please provide reasons for your position and evidence where possible.
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.
8. Which model do you believe will best deliver on our desired outcomes? Please explain.
9. Do you agree with the changes to the role of code signatories we are proposing?
10. Do you agree there is a missing strategic function for codes 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? Yes/No/Don't know. Please explain. Who is best placed to fulfil the strategic function and why?
11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?
12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?
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)?
14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address (for example, impact on vulnerable consumers)? Yes/No/Don't know. Please explain.
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?
 - 15.1. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;
 - 15.2. making decisions on some changes, or making recommendations to the strategic body; and
 - 15.3. prioritising which changes are progressed.
 Yes/No/Don't know. Please explain.
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?
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.
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.

[Please note questions 19- 26 only apply in respect of Model 1 (code managers and a strategic body)].

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.
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.
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.
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.
23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further:
 - 23.1. requiring an existing licensee to become the code manager; and/or
 - 23.2. requiring a licensee (or group of licensees) to create the code manager?Yes/No/Don't know. Please explain.
24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function? Please explain.
25. Are there any factors that:
 - 25.1. would stop parties (including code administrators) from becoming a code manager?
 - 25.2. 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)?
26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?

5 Code simplification & consolidation

27. Are there any quick wins that could be realised in terms of code consolidation and simplification?
28. How many codes would best deliver on the outcomes we are seeking under these reforms?
29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?
30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.
31. Do you agree that the codes should be digitalised? Yes/No/Don't know. Please explain.
32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?
33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.
34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation? Please explain. Please note this question only applies in respect of Model 2 (integrated rule-making body).

1 Background and scope of this review

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.

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

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

4. Do you agree with our proposed scope reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?

5. Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.

2 Vision & options

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

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.

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.

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

3 Providing strategic direction

10. Do you agree there is a missing strategic function for codes development in the energy sector and introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction? Yes/No/Don't know. Please explain.

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

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

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

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)?

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

4 Empowered and accountable code management & independent decision making

15. Do you agree that in addition to the current responsibilities that code administrators have, that a. 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.

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?

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.

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.

Please note questions 19- 26 only apply in respect of Model 1 (code manager function and a strategic body).

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

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

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.

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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.

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.

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

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)?

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

5 Code simplification & consolidation

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

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

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

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

31. Do you agree that the codes should be digitalised? Yes/No/Don't know. Please explain.

6 Monitoring and compliance

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

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

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

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