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Sent by email

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RE : Consultation on the Design and Delivery of the Energy Code Reform

Thank you for the opportunity to respond to the joint BEIS and Ofgem consultation on the Design and Delivery of the Energy Code Reform.

The Retail Energy Code Company (RECCo) was formed as the corporate vehicle for ensuring the proper, effective, and efficient implementation and ongoing management of Retail Energy Code (REC). We have done this in part by competitively procuring services from a number of 'best in class' providers to form the REC Code Manager function.

The Code Manager will proactively deliver the operational elements of the REC, to implement strategies and maintain service excellence within an innovative and continuous service improvement framework. We have therefore had early opportunity to implement many of the initiatives that are now being proposed for the other industry codes. We will in due course be happy to share with you the lessons now being learnt from the operation of those arrangements if these would help inform the next stage(s) of your proposed reforms.

Our detailed response to each of the consultation questions are set out in the appendix to this letter. In summary, we welcome the efforts being made to improve upon energy code governance and particularly to ensure that the governance arrangements can serve to facilitate the industry's response to the challenges posed by a transition to net-zero. However, we do not consider that the reform of code management and provision of a clearer strategic direction are necessarily complementary proposals or in any way mutually dependent.

We further consider the bundling of proposals and proposed manner of giving effect to them through legislation may unnecessarily delay reforms which could more efficiently be achieved, whether in whole or part, through other means. In the context of facilitating net-zero or meeting

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the government's more imminent target of reducing emissions by two-thirds by 2030, the pace of reform should be a higher weighting than the preferred manner.

We appreciate that you will consider these, and all other points raised in response to this consultation and would be happy to discuss further any aspect of our response.

Yours Sincerely

Jon Dixon
Director, Strategy and Development
Retail Energy Code Company Limited

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Annex: Response to specific consultation questions

1. To what extent do you agree with our proposals on the licensing of a code manager for in-scope engineering standards, and why?
Industry code governance has been under periodic review by Ofgem since it launched the first Code Governance Review in 2007.[1] Whilst that initial review focused on the CUSC, BSC and UNC, Ofgem did subsequently recognise that at least in the case of environmental assessments, its proposals should extend to codes such as the Grid Code and Distribution Code. However, it did not include all documents referenced in licence, such as the Security and Quality of Supply Standard (SQSS), which arguably share many of the same characteristics and effect upon parties as those industry codes which were in scope. The Licence modification from this first Code Governance Review came into effect 2010. When a second phase of the Code Governance Review was launched in 2013, the scope of the proposals was again targeted on a small number of codes rather than applicable across the board. It may be informative to revisit the rationale for this targeting or exclusion of certain codes from the original reviews as some of that thinking may still be relevant. Considering the current challenges that the industry faces and the over-riding driver for these proposals in helping to facilitate net-zero, we agree that engineering standards should be within scope of the reforms. While such standards have an important role to play in ensuring an efficient and robust network, they also have the capacity to drive inappropriate cost, stymie innovation and hinder competition. It is therefore appropriate that they are subject to robust governance comparable to the more obviously commercial areas of industry arrangements. Perhaps more importantly in the context of the decarbonisation agenda, it may be important to re-examine and challenge well established conventional thinking on the standards that are necessary and appropriate for the effective functioning of the network, in order to recognise the new reality and give greater weighting to emerging priorities over those of the past. Although we would agree that the engineering standards should appropriately come under the jurisdiction of a code manager in the sense that it is now being applied to the other industry codes, we do not consider that this requires those code managers to be licensed. These are distinct proposals and in no way mutually dependent upon each other.

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?
To the extent the central system delivery bodies are natural monopolies it is sensible to consider whether they should be licensed. In addition to the dependency that the industry places on the day-to-day efficacy of those central systems operations, the data that they control or may otherwise have access to is increasingly valuable to a range of stakeholders. It is important that there is equitable access to that data, subject to appropriate controls.

[1] https://www.ofgem.gov.uk/sites/default/files/docs/2007/11/open-letter-announcing-governance-review.pdf

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Despite operating under the same legislative framework, we have seen each of the central system operators adopt very differing attitudes to the data they control and/or process, with some taking welcome steps to open-up access to the data while others lag-behind or seek to monetise access through commercial offerings.

However, we do not agree that the licensing of the central bodies is necessarily the most effective means of improving the responsiveness or accountability of those organisations. Licenses and regulations generally are in effect a substitute for the consumer power that would ordinarily determine outcomes in a properly functioning market. To that extent, it would only be necessary to licence the central system operators if they cannot be effectively governed and made accountable to their customers through other means.

Early industry feedback from the workshop held as part of Ofgem's ongoing review of the DCC regulatory arrangements suggests that its licence and price control framework have not been wholly effective in balancing the risks associated with service delivery or controlling costs. This may in part be addressed through a switch from ex-post to an ex-ante price control, but we believe that neither model is ideally applicable to the characteristics of the DCC systems, as compared to the other infrastructure providers whom Ofgem regulates, or the communications networks regulated by Ofcom. There should be greater scope for budget setting through negotiated settlement with the parties who use and fund the service, rather than a regulator that may have an incomplete knowledge of their needs and/or appetite for risk when balancing factors such as certainty of pricing versus adaptability to change. We are also concerned that the costs associated with services such as switching will be a relatively minor aspect of the DCC's costs, and potentially require a disproportionate amount of regulatory effort in order to scrutinise them effectively, as compared to a contract process that may be geared to that specific purpose.

To the extent that industry licensees will be subject to the direction of the strategic body, if the central service providers are sufficiently accountable to their users it should not be necessary for those central system providers to also be licensed and accountable to the strategic body. Indeed, this could weaken rather than strengthen the model, fostering multiple dependencies rather than a single line of accountability.

Combining, or maintaining the role of code manager with that of systems provider and/or design authority may create conflicting incentives. Whatever governance model is adopted, it will be important to ensure that any decision to expand an organisation's role and associated budget is demonstrably the best option available and in interests of the wider industry.

3. To what extent do you agree with the proposed roles and responsibilities of the strategic function, as set out above, and why?

We broadly agree with the aims of the proposed roles and responsibilities insofar as they seek to provide greater strategic direction to the industry and to expedite change that is consistent with that direction, but as set out more fully in response to Q23, we do not consider that this is necessarily the best way to achieve those outcomes.

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4. To what extent do you agree with the proposed roles and responsibilities of the code manager function as set out above, and why?
We broadly agree with the proposed roles and responsibilities of the code manager and note that there is a high degree of consistency with those which have recently been given effect with the implementation of version 2.0 of the REC as part of Retail Code Consolidation. However, we consider that the roles and responsibilities could be introduced with targeted modifications to the relevant codes and/or the licence which underpins them, rather than needing to await legislation and/or the separate introduction of a strategic body.

5. To what extent do you agree with the proposed roles and responsibilities of stakeholders as set out above, including the role of the stakeholder advisory forums, and why?
We agree that the influence of the Panel's on their respective change processes should be reviewed. Under the REC we have sought to limit the number and type of decisions that would be taken by the panel. Matters of a more procedural nature or those requiring an independent assessment, such as the relevant priority of a given proposal, are now taken by the Code Manager. This is intended to negate the vested interests that might otherwise influence Panel decisions, perhaps favouring the status quo over change. However, it would be inappropriate to wholly disenfranchise parties from the decision-making model. It is not clear that replacing the Panels with a stakeholder advisory forum would itself have any material effect on the process. Any decision which is to be referred to the Authority rather than determined under self-governance are already limited to a recommendation only, which is not binding upon the Authority. While this recommendation can act as a useful proxy for the views of wider industry parties, it should not influence the Authority's decision, which must be taken with regard to the code relevant objectives and its own statutory duties. However, the recommendation also serves a useful function in narrowing down the number of decisions that may be subject to appeal to the CMA. It is not clear from the proposals what would replace this filter in the absence of a Panel recommendation, though the costs associated with the appeals process are likely to deter appeals against all but the most material and contentious of proposals. We expect that the CMA would also retain discretion not to allow appeals which it considers to be trivial or vexatious.

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?
We agree that any proposals to reform the decision-making model of the industry codes must retain the right of appeal, as there should not be a diminution of existing checks and balances. However, we do not consider that it would be appropriate for the code managers day to day operations and low materiality change decisions should be overseen by the strategic body as a matter of course. This would undermine the position of the code manager and may have the perverse incentive of reducing quality rather than improving it, i.e., an inclination to pass things through in the knowledge that there will be a further quality check to pick up any issues. This

could also undermine the position of the strategic body as they may be perceived to be jointly culpable for any issues that arise post-decision either on its merits or the quality of output, irrespective of how much input the strategic body has had in practice. E.g., wherever the issue may have arisen, the senior member of that *team* carries responsibility for it. It would be better for the strategic body to remain at arms-length from the code managers' decisions unless by exception any of them are appealed to it.

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?

It is not clear what value there would be in a further internal review by the IRMB once a decision has been made, i.e., irrespective of the outcome of that review the Code Manager would not be able to *unmake* the decision, and it is highly unlikely that any post-decision review by the same organisation, effectively *marking its own homework*, would do anything to dissuade any aggrieved party from pursuing the appeal through to Ofgem.

Whilst there may be merit in having contentious decisions reviewed by a separate internal team, this would more sensibly be undertaken ahead of the final decision being taken, critically assessing the rationale for the decision from the perspective of a potential challenger.

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)?

Our understanding is that any decision of Ofgem could in any case be subject to judicial review, so that is not in effect an option for this consultation to offer or to rule out. However, recourse to a judicial review would also be prohibitively expensive for many parties relative to the impact that any change may have upon them individually and would be limited to matters where the appellant considered Ofgem's decision to be wrong in law. It was for these reasons that the government introduced the right of appeal through the Energy Act 2004. We further believe that the right to appeal a decision of the Authority (used interchangeably with Ofgem in the consultation) to the CMA would also continue to exist by virtue of statutory instrument designating those codes for the purposes of Section 173 of that Act.[2]

In contrast, decisions taken by the IRMB would not be captured under the existing appeal mechanism (or to the extent that it is not a public body, be subject to judicial review). In the absence of an appeal route being created, parties seeking to overturn a decision would have to seek remedy through the courts. Enabling such matters to be appealed to the Authority in the first instance may avoid such litigation and enable matters to be resolved through the more conventional routes mentioned above. We would welcome clarification of whether a decision of

[2] The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 currently designates a number of industry codes for this purpose, including the SPAA and MRA. Following the completion of Retail Code Consolidation, it may now be appropriate to amend the Order, replacing those legacy documents with reference to the Retail Energy Code.

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the Authority to deny or uphold an appeal against a decision of the IRMB would be considered final, or itself subject to further appeal to the CMA.

9. Do you have any thoughts on other potential appeal routes?
As noted above, appeal seem preferable to litigation. Retaining the CMA as the appellate body seems to be appropriate given their general expertise and ability to second sectoral knowledge as and when required. However, the traditional function of the CMA has been to promote competition and generally protect consumers from the harm that may arise from a diminution in competition, whether through mergers or some systemic market failure. It is apparent that the strategic body will have a primary objective of delivering the government's strategic vision for the energy industry, including achieving net-zero by 2050. These objectives appear to be wider, and potentially conflict with the CMA's historic duties, albeit all could be argued to be in the consumers' long-term interests. It may be necessary to revise the CMA's statutory remit in order to better align it with those of the strategic body, though the appeal rules already anticipate that the CMA should consider the same objectives as the Authority as the original decision maker. We would welcome clarification on whether the appeal rules would remain the same, requiring the CMA to assess proposals against the same criteria as the strategic body.

10. To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?
As noted in the consultation much of the operating model including the ability of the secretary of state to issue guidance to the Authority and the powers of the Authority to discharge its duties in line with that guidance are already in place. It may therefore be appropriate to consider the factors that have prevented Ofgem from undertaking more of a strategic role in the past, or indeed have prevented the government from asking it to do so. The relatively small increase in the proposed Ofgem budget suggests that this was not due to a resource constraint alone. For instance, as UNC621 originated from Ofgem[3] it may be helpful to review whether this could have been more effectively as a Significant Code Review, or the principles required to be met by the modification first enshrined in the National Grid Gas Transporters, providing additional *tramlines* within which a compliant modification could be developed.

11. To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as the strategic body, and why?
Should these proposals be adopted, we agree that Ofgem should be held accountable for the efficacy with which it performs the role of strategic body in the same way as it is for performance of its existing duties. It would be inappropriate for there to be differing levels of accountability for different duties as that could give rise to a prioritisation of resource or management attention that was not originally intended. We recognise that is not the focus of this consultation to determine whether Ofgem is sufficiently accountable to its wider stakeholders more generally.

[3] See Impact Assessment Case Study 2: Gas Transmission Charging Review (GTCR)

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12. To what extent do you agree with the ways we propose that the strategic body selects code managers, and why?
We agree that it would be sensible for Ofgem to retain discretion over the ways it selects the code manager, as it is unlikely that a one size fits all approach would deliver optimum outcomes. However, it will also be important to ensure that decisions are taken against wholly objective criteria and may themselves be subject to appeal. This would go some way to mitigating against potential issues such as *regulatory capture* arising. To the extent that the codes are creatures of the licence, the vires to pursue each of these options could also be provided for in licence without the need of primary legislation. Given the inevitable timescales involved, we consider that legislation should only be pursued if necessary, with alternative means such as licence modification being definitively proven to be inadequate. This would also appear to be in line with the principles of better regulation.

13. To what extent do you agree with our proposed approach to code manager funding, and why?
The proposal for the funding of code managers follows the well-established precedent of other industry codes including the REC and we agree that this would continue to be appropriate. This provides much greater flexibility and better targeting of cost recovery than might be the case through other mechanism such as a levy on licensees. If Code Managers are to be licensed on an enduring basis, it may be appropriate to require that they be not-for-profit, while continuing to all for their outsourced service providers be remain for-profit. This should ensure that the Code Manager retains flexibility and the right incentives over decision on whether to *make or buy* the services required by code parties and wider stakeholders.

14. To what extent do you support our proposal that the strategic body should be accountable for code manager budgets, and why?
We disagree. Only a small part of the budget will directly relate to the strategic function, and that body will have little knowledge of or interest in the more day to day operational aspects of the role. Code parties will be far better informed and positioned to hold the Code Manager to account, or conversely to agree to additional expenditure on value-added functions and services which may be of little interest or value to the strategic body, but nonetheless desired by code parties.

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?
We recognise that this option is not the preferred model, irrespective of the fact that this proposal also predicated on the outcome of the separate consultation on the creation of the Future System Operator. At a high level we would agree that this option would be less effective than option 1, carrying many of the drawbacks of combining potentially conflicting roles that may be inherent in either proposal, but without much of the potential benefit that Ofgem as the energy regulator could

bring to the role. While we consider that the FSO must be well-placed to provide the strategic thinking and direction expected of the strategic body, there appears to be no addition benefit to the FSO in also undertaking code manager role, as the material change in which it may have a strategic interest will still be directed towards Ofgem, while the non-material changes would simply be a distraction from its core activity.

16. Overall, which of the two options do you think would be best placed to reform code governance, and why?

While we are not entirely in favour of either options, we agree that of the two, Option 1 has more merit.

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?

The Impact Assessment suggests a negative cost benefit from either reform option, with costs being £33m-£37m against a benefit of only £2m. Whilst we do not wholly agree with that assessment (see our answer to Q19), the estimated costs of the code manager function do not appear to be out of proportion to those of existing codes bodies which they may replace.

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?

The case studies do highlight some of the problems with the legacy regimes but are not typical and could have been addressed through more targeted improvements to the relevant code rules. They do not of themselves seem to support the conclusion that a strategic body is necessary. UNC621 suffered primarily through the legacy inability of the Joint Office to procure (and of other parties to share) the sort of independent legal advice that would have identified the compliance issues at an earlier stage and informed the subsequent development of proposals. Although the vested commercial interests of parties may initially generate several competing options, the access to independent advice combined with more robust rules around the treatment of alternative proposals may have restricted the number of proposals that the Joint Office and subsequently Ofgem had to contend with and allowed the preferred option to emerge much earlier.

To the extent that this, or some of the other issues highlighted in the case studies remain a risk to the timely progression of future change proposals, they would require only a discrete change to the modification rules building upon lessons learnt and/or recognised best practice rather than the significant intervention represented by these proposals.

Given the scale and associated cost of this intervention, a better acid test of the efficacy of the current arrangements may be the publication of a strategic direction that BEIS and/or Ofgem would like to make, pending the outcome of the legislative changes, together with a worked example of why that proposal cannot be effectively delivered through existing or more readily enhanced code arrangements. Whilst we recognise that some proposals could not be

implemented through code changes alone, such a direction could be further underpinned through modifications to licence. Even if BEIS remains minded to purpose the proposals for a strategic body, this may allow for the earlier delivery of some initiatives than the proposed timeline.

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?

It may have been appropriate – and may continue to be if a further version is produced – for the impact assessment to separate out the costs and benefits associated with the development of the code management function from those attributable to the strategic body. Whilst we recognise the overlap due to the proposed models – the introduction of these separate functions is in no way mutually dependent.

As drafted, we consider that costs set out in the Impact Assessment may be overstated to the extent that they would in large part be a substitute for, rather than in addition to, the current baseline cost to industry of administering the codes.

We do not agree with the stated benefits set out in the impact assessment or that there are the only two (broadly, a reduction in cost to parties of reading code change material and/or attending meetings) that could be monetised. Both are discretionary costs which a party could already avoid, albeit at the risk of being disengaged from the change process. Also, the cost of engaging in the process have lessened through a reduced dependence of face-to-face meeting and improving quality of code documents and analysis. While some of this has been a necessary reaction to new ways of working during the pandemic, we believe that remote access to meetings will continue to be a standard feature rather than the exception. Even pre-pandemic, the REC had been designed around predominantly remote access meetings.

More generally, the suggested benefits should be realised through improving working practices, facilitated through collaboration and lesson-learning between code managers/administrators and better working practices. These are not dependent upon/attributable to these proposals (and therefore need not await their outcome).

However, even discounting savings as above, we consider that the potential benefits may also have been understated. Material cost savings can be obtained through the competitive procurement of code management and other support services. Whilst there can also be downsides to this, these proposals may be a catalyst for a degree of out-sourcing or at least periodic market-testing that may not otherwise take place to ensure the relative efficiency of in-house services.

Given the *de facto* monopoly positions of several central bodies, who operate under a range of different corporate structures, it will be important to ensure that these decisions are made objectively and transparently. Such structures can result in significant value leaving the industry, potentially outweighing the benefit they provide. In some cases, it may be appropriate to prohibit the outsourcing of services to a parent or affiliate company unless it is as a result of a competitive

procurement, or otherwise ensure that (a reasonable proportion of) the benefits of sourcing decisions are captured for code parties and ultimately consumers.

Notwithstanding the above, we consider that the benefits case should appropriately extend to capture some of the benefit that could arise from the implementation of change earlier than might otherwise have been the case. It will be important not to double count or improperly attribute the benefit of the change itself, but as noted in respect of P272, delays in implementation can result in foregone benefit.

We are not convinced that the creation of a strategic body would of itself expedite change. We consider that at least some of the delays are due to the extent that Ofgem is required to act in a prudent manner. While it is of course subject to statutory and public law requirements to consult and follow due process, its reluctance and/or inability to intervene early or make decisions which carry a degree of risk may also be in part cultural. There are examples of where this approach is changing, for instance the direction of travel of some current projects is being undertaken on a *no regrets* basis. However, that trade-off of risks is not always as apparent in relation to some code decisions. etc. In order to embrace more of a *fail fast and learn fast* approach for instance, cultural change may be required not just within Ofgem, but in what the rest of the industry reasonably expects of them.

Many regulatory decisions create winners and losers, meaning there is no appropriate trade-off as Ofgem may be open to challenge either way. But there may be some decisions where the incentives of and impacts upon stakeholders are more aligned and the industry might appropriately accept that its desire for quick decision may require its recognition of greater fallibility. The universal impact of accelerating climate change and need for a wholescale effort to deliver net-zero may prove to be one area where the costs of doing nothing or falling into *paralysis by analysis* outweigh those of doing something, even if not yet demonstrably the optimum option.

In other cases, the timelines for Ofgem decision making may be dictated by the availability of (and inability to readily augment) its own resource. Given that the external impact of any delay will be many orders of magnitude greater than any cost to Ofgem itself, we consider that any reforms should properly consider and mitigate these local and temporal constraints. Simply adding to the organisational budget will not itself achieve this.

Given the asymmetry in the cost administering the change process versus the more speculative but potentially much higher benefits of individual change proposals, consideration should be given to establishing the industry's *willingness to pay* for an expedited process. We consider that this should apply to both the code arrangements and within reason, to Ofgem itself. While code managers should be able to bring in additional resource as required in order to meet the needs of competing priorities, we recognise that this may not be practicable for Ofgem.

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Whilst the c.1,200 Ofgem staff[4] are not homogeneous and readily substitutable, and some pieces of work obviously require a depth of knowledge or expertise that cannot be instantly replicated or added to, but the progression of some potentially impactful decisions can be constrained by the availability of a very small number of people. Therefore, to the extent that timelines are being extended due to a resource constraint, the *willingness to pay* for something to be delivered early may relate to something else being deferred. While recognising that Ofgem must also balance what are in many cases opposing vested interests, we consider that there may be greater opportunity to match the prioritisation of its work with the needs of external parties. Previously unscheduled work such as reacting to modification proposals submitted to it for decision must be properly weighted against scheduled projects. This may extend to the incentives upon the individuals themselves and the extent to which any reward scheme can accommodate such flexibility.

If nothing else, a reasonably determined *willingness to pay* value would be very helpful in more accurately assessing the relative cost and benefit of any proposed reforms to code governance, in much the same way as the benefits of HS2 are measured not on the cost of the travel, but on the value passengers' place on their own time.

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?

Apart from giving recognition to the current market arrangements, including the ongoing development of the industry codes and the provision of services pursuant to them, the current focus appears to be on Ofgem-led initiatives.

A wider review of relevant developments might suitably include any initiatives that are already being pursued by the energy industry (or more widely) which are expected to have a tangible impact on delivering net-zero, and consideration of whether changing the industry governance arrangements at this stage help or hinder their delivery (see our answer to Q23). RECCo is working with the REC Code Manager (and intends to collaborate more widely) to produce a holistic *codes roadmap* aimed at identifying all relevant projects on change horizon, with a view to avoiding clashes and generally helping stakeholders to better manage their change plans. We intend to share this roadmap widely and would be happy work with Ofgem and BEIS to assess whether it may be a useful tool to share with any strategic body, etc.

There may be a risk that projects that would have progressed independently could be delayed whilst awaiting further certainty or government/regulatory intervention (i.e., in the hope of support in their delivery) that may or may not come, subject to the outcome of these proposals. It may be helpful if there is a clear message that notwithstanding these proposals, industry participants should aggressively pursue the decarbonisation agenda on a 'no regrets' basis under the prevailing governance framework.

[4] Ofgem annual report and account 2020-21

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21. Are there any implementation issues, risks or transition considerations we should take into account? How could these impact code reform?
We consider that the greater part of the outcomes proposed by the reforms could be achieved with existing powers and without the need for primary legislation (see answer to Q23). This would enable the Secretary of State and/or Ofgem to give effect to policies that would make a meaningful contribution to achieving net-zero much sooner than would be the case if the proposal implementation plan is followed. This would also negate the risk that time could not be found in the parliamentary diary to make the legislative changes in the timeline proposed and/or that they would not secure the necessary parliamentary support.

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.
It is not obvious that the proposals would have any differing impacts upon such groups, unless the strategic body is also tasked with pursuing societal policies.

23. do you have any other comments that might aid the consultation process as a whole?
We set out below some general comments on the proposals: <u>Timetable</u> A key concern with the proposals is that the pace of change, perhaps necessitated by the proposed means of delivery through legislation, does not match the urgency with which the issues associated with net-zero must be addressed. It is notable that the UK parliament declared a 'climate emergency' in May 2019, followed closely by the passing into law of the requirement for the UK to bring all greenhouse gas emissions to net-zero by 2050. It is understandable the dealing with the Covid-19 pandemic had an impact on BEIS and Ofgem's ability to follow up on the July 2019 consultation, with the summary of responses to that document being published December 2020. Whilst that delay does not appear to have had a material impact on the expected delivery timescales for these reforms, originally expected to be in the "mid-2020's" and now somewhere between 2024 and 2026 depending upon the model decided upon, none of these options match the pace of change required to meet the challenge of net-zero, let alone the 68% reduction in emissions by 2030.[5] While we recognise that these timelines do not suggest that relevant actions cannot and should not be taken in the meantime, there appears to be little in the proposals that could not be achieved now, or at least much sooner than 2024 by utilising the existing regulatory framework. For instance, it is proposed that activities of any strategic body would follow the priorities and policy outcomes communicated by the government through a Strategy and Policy Statement (SPS)

[5] From 1990 levels

issued by the Secretary of State. As acknowledged in the consultation paper, these powers already exist, having been included in the Energy Act 2013, though no SPS has yet been designated. Whilst we recognise that the Secretary of State's ability does not currently extend to other organisations that may undertake the role of strategic body, this is a moot point if the preferred model is adopted.

If the alternative model 2 is adopted and/or the FSO is not subject to a SPS, a similar outcome to above could be achieved, as an SPS could still be issued to Ofgem and backed-off through modification to the FSO's licence, as necessary. This ability to give effect through licence modifications to any strategic direction contained with a SPS would also extend to all other energy licensees.

Even in the absence licence modifications, it is likely that relevant parties would have due regard to any strategic plan issued by Ofgem pursuant to a SPS. In order to fully evaluate the necessity and value of the proposed additional powers, it may be helpful to set out how this would differ in practice to the current forward work plans (FWPs), and why the FWPs could not already serve that purpose.

In summary, we do consider that the government needs to await the passing of legislation before issuing the sort of strategic direction envisaged in the proposals, or for Ofgem and the wider energy industry to act upon it in an effective and timely manner. There may be as much, if not more, dependency on a change to regulatory custom and practice as there is on the regulations themselves. Even in a scenario where legislative change does prove necessary, setting out the strategic direction now would give greater certainty to industry and its investors, and potentially allow for a head start on any change that will subsequently be mandated.

<u>Alternative model</u>

We are concerned that neither of the proposed models would facilitate the sort of whole-of-government approach that meeting the challenge of net-zero requires. Although Ofgem is the regulator of the gas and electricity markets, the scope of its role is limited by the Electricity and Gas Acts as amended and does not encompass many of the existing providers of heat and energy (e.g., LPG, district heating), let alone the emerging sectors that will have an important part to play. The scope of any future strategy should not be restricted due to the powers and competencies of any given quango. Instead, the strategic body should be flexible and adapt as necessary to give meaningful effect to emerging strategic vision and direction.

In much the same way as the Competition and Markets Authority can second staff from other bodies such as relevant competition authorities when undertaking a market investigation (as it did with several Ofgem staff during its Energy Market Investigation), the strategic body should bring in expertise from any relevant fields. However, even if its plans are wholly credible having been informed by such expertise, the strategic body may still require leverage beyond Ofgem's current remit.

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As noted in the consultation, Ofgem is not itself a statutory body. Ofgem currently only has powers to the extent that they are delegated to it by the Gas and Electricity Markets Authority (GEMA) though reference to the two bodies is often entirely interchangeable. We assume that even if Ofgem in effect forms the strategic body, any new powers provided to it would similarly be given to GEMA in statute and then delegated to Ofgem.

It should be possible for other government departments and agencies to similarly delegate powers to the strategic body, as necessary for the specific purposes of fulfilling its intended strategic role. Even if this could not be achieved under the current framework of each relevant body, we believe that revisions to their ability to delegate powers may not require the sort of legislative changes envisaged by the current proposals (particularly those relating to the creation of a wholly new body) and would also be more future-proofed, allowing the focus of strategic to evolve without need of further legislation.

Such a model would also allow for the regulatory and financial burden imposed by the strategic body to shift and/or be reduced as elements of the strategic are fulfilled and others come to the fore. For instance, this may allow for a better targeting of costs, potentially shifting the burden from energy consumers which is in essence a regressive tax, to other sectors if they are the more direct beneficiaries and/or focus of the strategy. E.g., if part of the strategy involved electric vehicles, some funding for the strategic body and its work could come from the manufacturers or motorists (i.e., via the Department of Transport). This should better facilitate cross-departmental working and potentially mitigate against public finances being used on non-complementary or even conflicting initiatives. As elements of the strategy are fulfilled, the delegation of authority could cease, meaning that the scope of regulation can be *right sized* negating some of the issues that may arise from the powers and budget of any given body constantly incrementing, and potentially distracting from its original purpose.