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# CMA Code Governance: info request to industry participants

## Views of the Energy Policy Group, University of Exeter

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### 1. Introduction

The University of Exeter Energy Policy Group (EPG), and in particular the Innovation and Governance project (IGov) within the EPG, has been very involved in the ongoing CMA Energy Market Investigation. Our original submission to the CMA's Statement of Issues paper highlighted the problem of Codes in relation to competition and innovation within the GB Energy System. We then gave oral evidence, the summary of which is now up on the CMA's website. We then commented on the Updated Issues and finally we gave our views on the Provisional Findings and Possible Remedies paper. We have also written various blogs (e.g. here and here).

Separately from this we organised an industry workshop on Code Governance in October 2015 (which a member of the CMA energy investigation team attended). The details of this workshop can be found here. We also produced a presentation for that workshop; provided a discussion paper summarising the key issues and points which came out of the workshop; and we are now finalising a more detailed working paper on what we think should happen in terms of future code governance (Lockwood et al, 2016)[1]. The latter working paper will consider what needs to be done to ensure Codes are part of a solution for a move to a sustainable, secure, affordable energy system rather than a block to change, one aspect of which is a dampening of competition.

The discussion paper from our recent workshop concluded: '*Thus while the CMA and Ofgem [Code] reviews are welcome, we argue that they do not necessarily address the much broader range of views currently on offer, as evidenced by the discussion in this workshop, including fundamental questions around self-regulation. Therefore we argue that the Government should instigate a more thorough review of code governance, including potential changes to the architecture within the context of wider changes to energy sector governance'*.

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[1] Lockwood et al 2016: Innovation and energy industry codes in Great Britain. This paper will be available from: http://projects.exeter.ac.uk/igov/category/events/igov-events/code-governance/

## 2. IGov Approach for Code Governance Reform

We are very pleased to provide our view on the various questions asked by the CMA on Code Governance. Our answers are given below but firstly we explain the IGov team's current approach to Code Governance reform, noting that this is still in draft form. We introduce it at this point so that we can refer back to it in our answers below.

We have two figures below, Figure 1 is a high level diagram for proposed energy governance in GB, and Figure 2 provides a more detailed view about proposed Code governance. The IGov energy governance proposal, in brief, is that there should be an overseeing energy body which both advises on and oversees execution of Government energy policy. We call this an Energy Policy Committee, because we see it as analogous to the Monetary Policy Committee. This Energy Policy Committee is directed by the Minister, and has an economic regulator and an Integrated Independent System Operator (IISO) working to it. The economic regulator is different from Ofgem in that its Duties are only in relation to economics[2]. The IISO is given responsibility from DECC via the Energy Policy Committee to enable the technical transformation of the energy system so that it reduces emissions by 80% by 2050, as specified in the Climate Change Act 2008 and the Committee on Climate Change (CCC) reports, and to maintain security and affordability whilst doing that. The IISO would, for example, decide what technical changes were required to network and market rules and for the energy system transformation. We then argue that a single Code Body would work out the necessary modifications, and there would be a process for consultation of this with industry. There would also be a Process of Appeal for those who disagreed on the Code Modifications. The Economic Regulator would regulate the networks based on IISO / Code Body decisions, and ensure the code modification compliance.

We see an advantage in bringing the services currently provided by several Code Administrators into a new Code Body. This would be an improvement in having both expertise on each code and the ability to work together across codes. It becomes easier to understand how modifications may impact on a number of different codes simultaneously. Equally, the opportunities for simplifying and consolidating codes becomes much more straightforward when the governance of the codes sits within one organisation, working to one governance model. Finally, it would be possible to develop a much more effective information service, or one-stop-shop, to advise new entrants and other actors on the Codes and compliance with them.

This is not self-regulation of Codes and reflects a view that codes are technical requirements. The economic regulator is not involved in the modification process. Many of the answers to the questions below derive from this basic framework.

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[2] Ofgem may well continue to exist but with different Duties so that it becomes an economic regulator. To avoid confusion, however, we have called this body economic regulator.

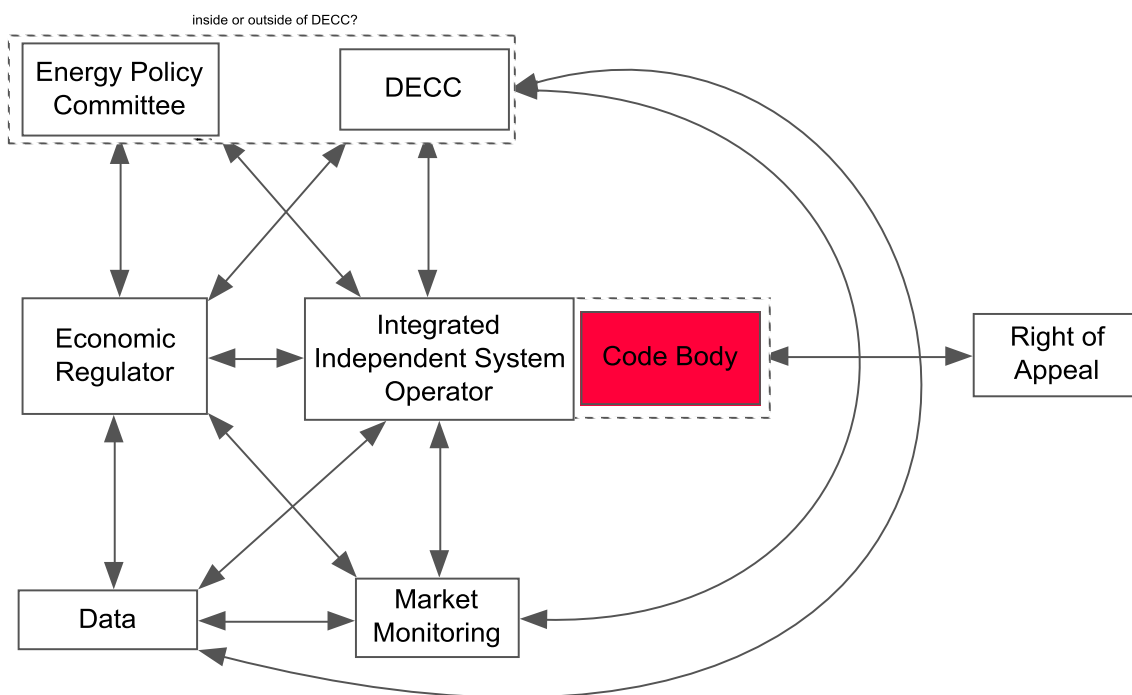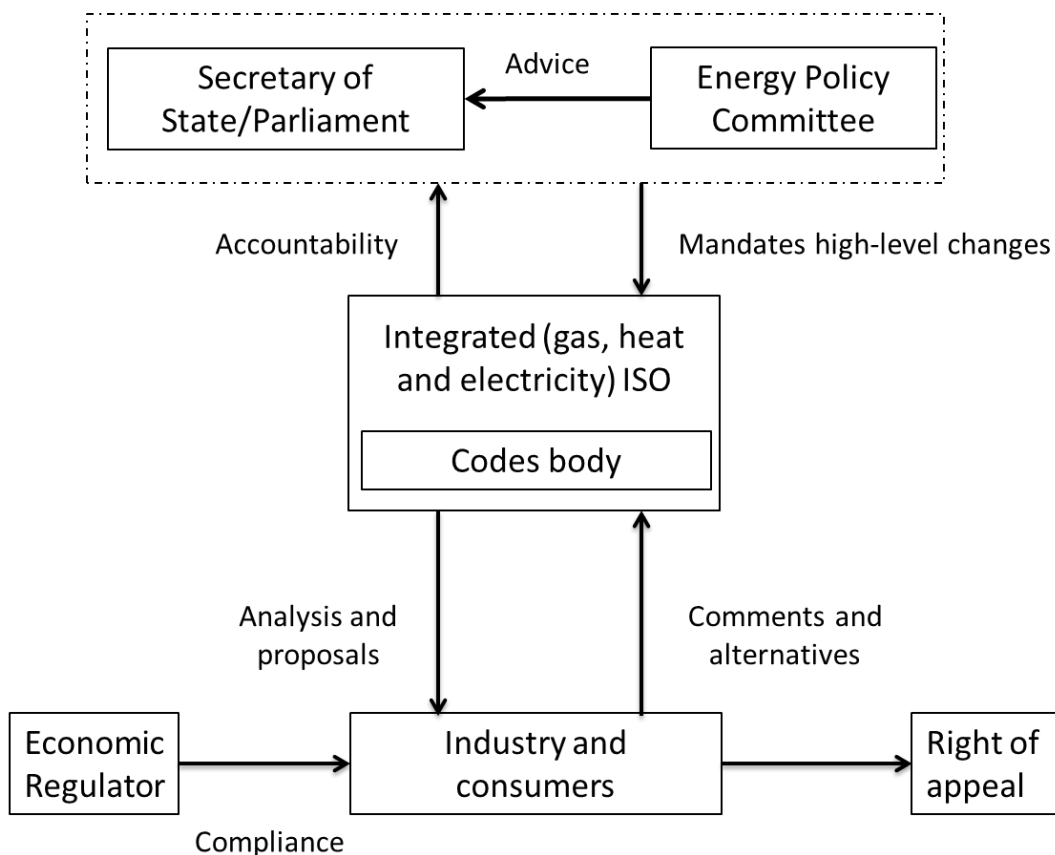**Figure 1: Codes in the wider governance landscape**

inside or outside of DECC?

| Energy Policy Committee | DECC |

| Economic Regulator | Integrated Independent System Operator | Code Body | Right of Appeal |

| Data | Market Monitoring |

**Figure 2: A possible model for code governance**

| Secretary of State/Parliament | ← Advice | Energy Policy Committee |

Accountability

Mandates high-level changes

| Integrated (gas, heat and electricity) ISO |
| Codes body |

Analysis and proposals

Comments and alternatives

| Economic Regulator | → | Industry and consumers | → | Right of appeal |

Compliance

### 3. Code Governance: info request to industry participants

**Strategic Steer**

1. *Ofgem has put to us that it may provide in the future a steer as to its expectations for the way in which codes would need to develop to keep pace with technology and policy developments. If Ofgem were to provide stakeholders with such a 'strategic steer for codes', what content (in relation to substance and level of detail) do you think would need to be provided for such a document to be of practical use for code administrators and the industry?*

At our recent Codes Governance Workshop, the EPG put forward a [Draft Institutional Diagram](#) for its' preferred Code Governance, as discussed above in the section 1. Since then, we have slightly amended our views, as shown in Figure 1 and 2 above. Within the Discussion Paper that followed the workshop we highlighted what Ofgem has said it will do. We argue that these incremental changes, such as a steer, are insufficient for the problems in the current Code Governance process. In this respect, as the Discussion Paper concludes, we would hope that Ofgem would support the Government in having 'a more thorough review of code governance, including potential changes to the architecture within the context of wider changes to energy sector governance'.

As we set out in section 2 above, we do not think that the Economic Regulator should be involved in any future Code Governance, other than in regulating the decisions and ensuring compliance.

We argue that the Strategic 'Steer' comes from the IISO via the Energy Agency and DECC, having taken account of the CCC Reports. Thus, the IISO sets the transformation and security agenda for networks and markets, and asks the Code Body to work out what modifications are needed to enable this across the Codes. The Code Body then manages this process, the industry are able to comment, and a decision is made. The economic regulator then regulates networks to ensure this happens, and to ensure compliance.

**Annual work plan**

2. *If Ofgem provided a 'strategic steer for codes' (see question 1 above), would it be feasible to require each of the code administrators to work with the relevant code panel (and Ofgem, as the case may be) to develop a forward work plan annually to deliver against that steer?*

As said in answer to Q1, and above, we do not think that Ofgem providing a steer is sufficient or appropriate. The current Code process is a fundamental block to innovation and competition within the energy system. It cannot be righted by incremental changes. We think that a single Code Body should be part of an IISO, and it would be for the IISO to develop a forward work plan for the Code Body. The Agenda for the IISO would be developed between the Energy Policy Committee and the IISO, having taken account of the CCC Reports. The economic regulator and ensurer of compliance should not be part of the process.

**Initiation of modification proposals (MPs)**

3. *If code administrators were granted the power to initiate MPs, would such a change improve the efficiency of the modification and governance arrangements, or allow the code administrators to perform the role of critical friend more effectively?*
   o *In your view, should the basis of such a power be general, or restricted to certain circumstances (eg MPs proposed must seek to improve the modification arrangements or delivery of Ofgem's strategic steer for codes (see question 1 above)).*

Our view is that the IISO should have responsibility for the transformation (and security) of the system to meet the 80% carbon dioxide cuts as set out by the CCC. One dimension of this would be to ensure that

Codes fit with that necessary transformation. The Code Body would then bring forward the necessary modifications. There would be a process allowing the industry to discuss them – but in effect, the Code Body would become the key initiator of MPs and manager of the process.

**Prioritisation of MPs**

4.  *If code administrators had the power to prioritise (in relation to resourcing and timing) the development of certain MPs (eg MPs that impact on consumers and/or competition or are relevant to the strategic steer for codes (see question 1 above)), would such a change improve the efficiency of the governance arrangements?*

Yes, we would argue that the ability of the Code Body to bring forward MPs would manage the process of changing the Codes would improve efficiency of the process.

**Self-governance**

5.  *We have noted that Ofgem considers that up to 50% of MPs could go through the self-governance process (against the actual rate of 30% at the moment). What are the nature of the concerns that code panels have which prevents them from submitting a MP for self-governance currently? What is your view of Ofgem's proposal to make self-governance the default process?*

As said above, we argue that self-regulation is one of the central reasons why the current Code governance process is so unfit for purpose. We argue that self-regulation should stop entirely and be replaced by the IISO overseeing system transformation and ensuring Codes are altered to enable that to happen. The Code Body becomes manager of that process.

**Scoping of analysis**

6.  *Recommendations from Code Panels must be approved by Ofgem, which therefore must be satisfied with the scope of the analysis underpinning these recommendations. Do you see some value in having earlier involvement from Ofgem in the scoping of such analysis? If so, how could that process work?*

We do not think that the economic regulator needs, or should be, part of this. We think Code governance should change as a result of a process involving the IISO, Code Body and industry – with a right of appeal. The economic regulator is involved only to the extent it regulates the networks and monitors the markets to ensure Codes are fulfilled and compliance is observed. This maintains a separation between those which are putting the Codes in place or modifying them and the body which is ensuring compliance.

**Performance of analysis**

7.  *If code administrators were required to sit as the 'independent chairman' for modification work groups, would such a change improve the efficiency of the modification work groups?*

We think there should be one Code Body, overseeing a number of Codes. At the moment, there are broadly 17 Codes, and we also think these Codes should be streamlined. A forward agenda would be set as a result of discussions between the Energy Policy Committee, DECC, CCC and IISO. There would then be discussions between the Energy Policy Committee and the IISO about the transformation and security needs of networks and markets. The IISO would then ask the Code Body to come up with its assessment of what modifications were needed to enable that transformation. They, the Code Body, in effect would have undertaken the background work to understand the impacts etc of the MP – for example, impact on consumers;

environment; particular stakeholders etc.  There would therefore be no need for modification groups – which is part of the current process of self-regulation which we disagree with. In this sense, the Code Body would be the independent Chairperson (or Manager) of the MPs. Industry would debate the proposed MPs within a process – for example, possibly there would be an open meeting for each (or a bundle of) MPs and submissions could be made to the Code Body on the proposed MP by industry. However, the Code Body would have the authority to make a decision. At this point, the industry could appeal.

The central point is that, at the moment, the Code change process, because of self regulation, gives Codes a great deal of importance. However, if that process alters so that Codes are seen simply as part of the technical make up of the system, as appears to be the case in most other European countries, then, arguably,  the way that industry interacts with them will alter.

**General project management**

8. *Do you think that, in certain circumstances, the code administrator should act as project manager for the delivery of code changes? Or is it preferable to appoint an independent third party (as in Project Nexus)? Is your view the same in relation to both the development and implementation stages?*

In our view, the Code Body should in effect be the project manager for the delivery of Code Changes. They should be the body which works out what Codes changes are needed; produce the report as to why; what its impacts would be (for example, on customers, security, environment, cost and so on). The Code Body should be well enough resourced to do this. In this way, we do not think that having an independent third party would help, rather we think it would add complexity.

9. *Do you think that delivery of complex/significant MPs would be made more efficient by the introduction of clearer roles and powers in relation to the project management of the implementation phase (eg similar to the aim of UNC MP 0549 proposed by Gazprom)? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?*
   o *Do you think that the use of such powers would be improved by the existence of a central mechanism intended to aid coordination across codes (eg the 'project board' considered below in question* **Error! Reference source not found.***)?*

In our view, it is the current arrangements which create such complexity around Code Governance. Simplifying the process, including by ending self-regulation (and thereby the modification / panel and working group process) would help enormously. We support: the Code Body bringing forward MPs in line with IISO vision, undertaking the explanatory work around it; having an open meeting to discuss it; taking submissions from stakeholders; and then taking a decision on it, with the possibility of appeal.  We think this would be much more efficient.

We can imagine that there will be transformation goals which will impact many Codes. An example of this might be changing Codes to enable certain percentages of electric vehicles by certain dates, to also include demand side response capability from those electric vehicles. In that situation, it seems sensible to us that the Code Body would be able to create a project team for Electric Vehicle Code Governance to alter all necessary Codes to aid coordination.

10. *Similar to question **Error! Reference source not found.** above, do you think that the efficiency of the analysis performed by the modification work groups could be improved by introducing clearer roles and powers in relation to the project management of such analysis (similar in nature to the role and powers granted to PwC in the context of Nexus)? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?*
    o *Do you think that the use of such powers would be improved by the existence of a central mechanism intended to aid coordination across codes (eg the 'project board' considered below in question **Error! Reference source not found.**)?*

See answers above. Yes, we think the efficiency of the analysis and the project management would be much improved if undertaken by the Code Body. We do not think that bringing in external organisations would benefit this – we think it would make it more complex and less efficient.

11. *Do you think that stronger means to monitor and police compliance with timetables (eg through the power to impose liquidated damages for missed 'milestones' (as per UNC MP 0550 proposed by RWE Npower)), would improve the delivery process of MPs? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?*

We think our process would enable a timetable to be much more easily maintained.

**Compliance with substantive provisions of the codes**

12. *Do you think compliance by code parties with the substantive provisions of relevant industry codes should be monitored more closely? In your view, what should be the relative roles of Ofgem and code administrators in performing this possible function? How would this change improve the general functioning of the codes regime?*

We argue that the Code Body manages the process to ensure code modification. The economic regulator then regulates that, and ensures compliance. This creates a separation between the body managing change and compliance. Moreover we do not think our economic regulator should be involved with policy.

**Expert/standing panels**

13. *Do you see any value in the creation of a 'project board' that would sit between Ofgem, code administrators, and/or code panels, and which would be primarily intended as a means to promote coordination within the code process? If so, what would be the appropriate composition and powers of such a project board?*

Again, we think this is adding complexity. We do not see the need for a project board made up of external people.

We think the Code Body is responsible for bringing forward code modifications and managing that process. As said above, there may be some projects which are big, such as electric vehicles, which may need several modification changes across several Codes and in that situation we can imagine a project team within the Code Body to ensure coordination across Codes. We do not think it is helpful to have external experts come in – in part because this gets back to self regulation which we think is so harmful. Codes are a technical part of the system and should be no more than that.

14. *If the project board (as described above in question **Error! Reference source not found.***) or the individual code administrators were given formal powers to: (i) perform certain aspects of analysis required during the development stage; and/or (ii) assist or review the analysis performed by other entities during the development stage; would either of the above changes improve the efficiency of the modification arrangements?*

Yes, as said above we think the Code Body should have the resources to be able to undertake the background analysis on any code modification. We think this would improve the efficiency of the process.

**Implementation**

15. *Who takes the lead on translating the legal text of an approved MP into instructions on how to change the relevant systems?*

We think the Code Body should do this.

**Incentives**

16. *Do you think that the performance metrics set out in CACoP Principle 12 are an effective benchmarking system? Do you have any suggestions for improving those performance metrics?*
17. *Is the CACoP an effective means to establish and extend industry best practice for code administrators?*

In the energy governance we have set out in Figure 1 and 2, we have an IISO which is given responsibility for certain roles, and the Code Body sits within the ISSO. Although not exactly the same, we have modelled the role of the IISO on Energienet in Denmark. Denmark is conducting a review of Energienet at the moment. So while we agree that the IISO and the Code Body should work to certain performance metrics, we would not wish to go into details here of what those metrics should be until we have seen the Review report of energienet, which we imagine would be very helpful for this purpose.

Because we do not agree at all with self-regulation, we have put forward a new model. All institutions need to be accountable, and the Code Body is no different from that principle.