

Appendix 11.2: Codes and regulatory governance

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Introduction

1. In general, the supply and acquisition of gas and electricity in Great Britain (GB) including, in particular, generation, transmission, distribution and supply, is subject to a complex regulatory framework, at both EU and national level.¹ The regulatory framework has been fundamental in shaping the nature of competition in both wholesale and retail energy markets. The rules and regulations that comprise this framework are set out variously in legislation, in licence conditions and in industry codes.
2. In this appendix we are considering whether certain aspects of the regulatory framework, and its governance, risk affecting competition either through distorting incentives, increasing barriers to entry, or stifling innovation.
3. In the Updated Issues Statement, we identified two main issues that we wished to investigate further, which are:
 - (a) whether the number of codes in electricity adds to barriers to entry and/or expansion; and
 - (b) whether the current system of industry code governance acts as a barrier to pro-competitive innovation and change (see paragraphs 53 to 139 below).

¹ See Appendix 2.1: Legal and regulatory framework.

4. For the purpose of this appendix, we have considered a number of regulatory interventions discussed in more detail in Sections 5 and 7, as well as certain case studies² relating to industry codes modification proposals (MPs) listed below (see also Annex A of this Appendix):
 - (a) Compulsory half hourly settlement for non-domestic customers (P272).
 - (b) Project Nexus.
 - (c) 17-day switching.
 - (d) Transmission losses.
 - (e) Gas Significant Code Review (SCR).
 - (f) Electricity Balancing Significant Code Review (EBSCR).
5. Moreover, we explore in this appendix whether, in certain instances, a lack of coordination between Ofgem and DECC might have led to inefficient or delayed implementation of policy decisions, for instance through code modifications.

Background: regulation in the GB energy markets

Overview of GB system of energy regulation

6. In general, in the GB energy sector primary and secondary legislation is used to set the high-level objectives and the structure of the regulatory framework, while more detailed rules are set out in licence conditions and industry codes.³
7. The current regulatory system of licensing was established in the act of privatising the energy markets through the GA86 and the EA89. Unless an exemption applies, a licence is required to carry out:
 - generation of electricity;
 - shipping of gas;
 - transmission;
 - distribution;

² These were prepared with the assistance of Cornwall Energy. See [Notice of appointment of an external consultant to conduct case studies on industry codes' modification processes](#).

³ See DECC 2011 Ofgem Review.

- supply;
 - the operation of an interconnector; and
 - the operation of a smart meter communication service.⁴
8. In addition, licensees are subject to a series of industry codes which set out technical and commercial rules. We discuss these codes, and their governance, in more detail in this appendix.

Shared competence of UK and EU institutions⁵ to regulate GB energy markets

9. The GB regulatory framework for energy has been shaped by various EU interventions. The Treaty on European Union (TEU),⁶ as amended in 2009, formally established the shared competency of EU institutions and the individual Member States to legislate on the subject matter of energy.⁷ However, a number of policies affecting the energy market were previously adopted by EU institutions (see Appendix 2.1: Legal and Regulatory Framework for a description of the key EU policies), and in particular with a view to promoting liberalisation and decarbonisation across the EU.
10. Pursuant to enacted Regulations,⁸ the EU institutions established energy regulators (the European Network of Transmission System Operators for Electricity⁹ (ENTSO-E), the European Network of Transmission System Operators for Gas¹⁰ (ENTSO-G) and the Agency for the Cooperation of Economic Regulators¹¹ (ACER)) for the purpose of supporting, developing and enforcing legislation concerning energy. This secondary legislation also required the creation of binding European network codes for the purpose of facilitating a fully liberalised internal energy market. The European network codes, which are at different stages of development, will have to be

⁴ See Appendix 2.1: Legal and Regulatory Framework.

⁵ In this appendix, reference to the 'EU institutions' should be interpreted to include reference to the European Parliament, the European Council and the European Commission.

⁶ Article 4(2) of the TEU.

⁷ See Appendix 2.1: Legal and regulatory framework.

⁸ Regulations (EC) 713/2009 and 714/2009.

⁹ ENTSO-E is governed by a general assembly representing the 41 electricity TSOs operating within the EU and by a management board consisting of 12 elected members. NGET is the sole GB TSO to appoint a representative to the general assembly of ENTSO-E. We note that the current president of the management board of ENTSO-E is an employee of NGET.

¹⁰ ENTSO-G is governed by a general assembly representing the 44 gas TSOs operating within the EU and by a management board consisting of 12 elected members. NGG is the sole GB TSO to appoint a representative to the general assembly of ENTSO-G.

¹¹ ACER is composed of permanent staff seconded by certain of the national regulatory authorities for energy. Its governing body is the Board of Regulators, which is composed of senior representatives from the national regulatory authorities of each of the 28 Member States.

transposed into national law in the coming years, with the result that any conflicting provisions within the current GB industry codes, licence conditions and legislation will have to be amended.¹²

11. A number of parties, including Ofgem, stated that the implementation of these European network codes will have a significant impact on the GB regulatory framework. European network codes contain complex technical provisions that cut across various pieces of legislation, licence conditions and GB industry codes. A significant amount of resources, as well as close coordination between DECC, Ofgem and the industry, will therefore be necessary in order to identify the areas where change is needed and to ensure a consistent and efficient implementation. This circumstance might exacerbate some of the issues identified in Section 11.

The system of industry codes

12. As stated above, regulation of a number of technical and commercial aspects of the energy markets is governed by industry codes, which are managed by industry participants.
13. For electricity, this includes:
 - (a) BSC;
 - (b) CUSC;
 - (c) STC;
 - (d) DCUSA;
 - (e) MRA;
 - (f) GC; and
 - (g) DC.
14. For gas, this includes:
 - (a) UNC;
 - (b) iGT UNC; and

¹² We note that an employee of Ofgem is the current chairman of the electricity working group at ACER, which is the body within ACER that is mainly concerned with the development of the electricity European network codes.

- (c) SPAA.
15. Other codes (although not considered in this appendix) include:
- (a) SEC; and
 - (b) GDAA.

Purpose and function of the industry codes

16. Industry codes serve to collate the technical standards and commercial terms and conditions that apply to industry participants, according to the specific nature of the activity or transaction. The industry codes standardise the technical standards applicable to all industry participants and the terms and conditions that serve as the basis of commercial industry transactions. Annex B provides an overview of the different categories of licensees subject to each industry code.

Industry codes as a basis of limited self-regulation

17. We observe that Ofgem has not included the full substantive provisions of the industry codes within licence conditions. We note that:
- (a) industry participants appear to be better equipped than Ofgem or DECC to administer such technical and commercial matters;¹³ and
 - (b) by their nature, technical standards and commercial rules constantly evolve to reflect industry developments and this could put severe pressure on Ofgem's resources, due to its statutory duty¹⁴ to initiate a consultation process every time it modifies licence conditions.
18. Ofgem has chosen to incorporate the industry codes into licence conditions by reference and, in effect, has established the substantive provisions of the industry codes as a domain of limited industry self-regulation within the wider regulatory framework.

Industry codes as a common basis for industry transactions

19. The industry has an inherent incentive to monitor the development of industry codes since these provide terms and conditions that serve as the basis of

¹³ The industry codes complement the substantive provisions included within the SLCs for each category of licensee, which mainly concern the interaction between licensees and Ofgem as well as between licensees and end consumers.

¹⁴ Section 23 of GA86 and section 11A of EA89.

commercial transactions between industry participants. Industry codes are given contractual force between parties to each code through multilateral contracts known as framework agreements. DECC formally appoints the framework agreement and each party signs an accession agreement by which it formally gains rights, duties and obligations pursuant to the provisions of the industry code to which the framework agreement relates. This means that parties can, in certain circumstances, take action against other parties where those parties are not complying with the relevant industry code.

20. Gemserv, in its response to the Codes Working Paper, emphasised that the presence of industry codes improves the transparency of market transactions¹⁵ and avoids the situation in which companies compete for business through a 'race to the bottom'.¹⁶

Ofgem's power to modify and enforce industry codes

21. Ofgem has the general power to modify SLCs¹⁷ but does not have an equivalent power to modify industry codes directly.¹⁸ It plays, however, a key role within the modification arrangements of each of the industry codes as it must approve or reject any material MP (see below).
22. DECC's ability to influence the industry codes is concentrated in its power to designate¹⁹ the initial version of each industry code, with the result that once an industry code is formally designated DECC has no further ability to influence its content. Through the choice of this arrangement, Ofgem and DECC have signalled that the industry will be responsible for the ongoing substantive development of the industry codes.
23. Governance and modification rules for each of the industry codes are set out in the codes themselves. However, the industry has not been granted free rein to guide the development of the industry codes. Ofgem has set out a formal structure which industry must follow in developing the industry codes through the inclusion of the following provisions within SLCs:

¹⁵ Industry codes effectively serve as a series of accessible 'common contracts' which obviate the need or ability for market participants to negotiate bilateral contracts behind closed doors.

¹⁶ Industry codes remove the incentive for parties to use lower standards as a means to obtain additional business by setting common standards for most commercial interactions between market participants.

¹⁷ Section 23 of GA86 and section 11A of EA89.

¹⁸ This statement is subject to one exception, found in section 36C of GA86, which gives Ofgem the power to modify the UNC for the purpose of implementing modifications related to security of supply objectives.

¹⁹ For each industry code, DECC or Ofgem formally designated the first version of the industry code document so as to formally 'hook' the substantive provisions of the industry code to the SLC which incorporates that industry code.

- (a) **A list of objectives unique to each industry code.**²⁰ Prescribed objectives serve to define the purpose of each industry code and to ensure that the industry codes develop in a way that is consistent with the wider system of regulation.²¹
- (b) **A set of common modification and governance processes.** These processes include mechanisms which are intended to ensure adequate representation of stakeholders, to increase accessibility and transparency of information and increase process efficiency. The aim is to ensure that the industry codes are not susceptible to being changed in a way that might promote the interests of certain categories of industry participant rather than the interest of the market as a whole.
24. Having modified SLCs to require licensees to maintain, become party to, or comply with, certain industry codes, Ofgem can sanction an industry participant for breach of an industry code as it can for the breach of any licence condition (see paragraph 149 below).
25. By way of exception to the above, provisions in primary legislation²² grant powers to Ofgem to direct the network owner licensee to make changes to the UNC which improve gas security of supply – see paragraph 106 below.

Nature and format of the industry codes

26. As set out above, the electricity and gas markets are each subject to a different configuration of industry codes, with the most noticeable difference arising from the number of industry codes that apply specifically to electricity (seven) compared to gas (three). It has been submitted to us that the reason for this contrast is that electricity industry codes are ‘single purpose’ by nature and should be categorised into two groups, which are:
- (a) ‘technical codes,’ which cover technical standards; and
- (b) ‘commercial codes,’ which cover commercial terms and conditions.²³
27. Ofgem has not endorsed such a formal classification of the electricity industry codes into different categories. That being said, Ofgem appears to have

²⁰ The objectives of each industry code are based on the duties of transmission and distribution licensees which are set out in section 9 of GA86 and section 9 of EA89.

²¹ The prescribed objectives for each industry code must be considered as part of the assessment of each MP in the context of that industry code (for details see paragraph 115 below).

²² Section 36C of the GA86.

²³ This distinction does not appear to exist in the context of the gas markets, where each industry code contains both technical standards and commercial terms and conditions and can thus be considered ‘dual purpose’ under this method of categorisation.

established substantively different governance and modification processes for the ‘commercial’ and ‘technical’ codes. This appendix adopts the categorisation of electricity industry codes into technical codes and commercial codes as a means to facilitate the discussion, in each context, of Ofgem’s intervention and the outcomes of such intervention. Below, we provide a brief introduction to the substance of the electricity and gas industry codes before describing the in-depth analysis of industry code governance and modification arrangements that we have undertaken.²⁴

Electricity industry codes

28. While we adopt the nominal classification of the electricity industry codes into technical and commercial codes for the purposes of this paper, the following overview of each ‘category’ of industry code indicates that there is a certain degree of substantive overlap between these two ‘categories’:
- (a) The ‘**technical codes**’, including the GC and DC, have the principal aim of ensuring an efficient transmission, distribution and supply of energy. ENW, a distribution network owner and party to the DC, has submitted to us that the technical codes primarily²⁵ set out mandatory infrastructure requirements for firms to connect to the transmission and distribution networks, in contrast to the other industry codes which govern the commercial relationships between energy companies. While the main focus of the technical codes is on technical infrastructure requirements, these codes also have cost implications for their members, and so are therefore commercial to a limited extent.
 - (b) The ‘**commercial codes**’, including the BSC, CUSC, STC, DCUSA and MRA were developed by DECC as a means to set out the foundational rules and regulations necessary for an increasingly liberalised energy sector. The commercial codes were developed in two main stages, to establish the regulatory infrastructure necessary for the efficient functioning of NETA²⁶ and BETTA,²⁷ respectively. The commercial codes have a broader scope, which includes both technical aspects and the commercial relationships between licensees. Some of these provisions may interact directly with policy choices made by Ofgem or DECC, which

²⁴ Details about the purpose of each code are set out in paragraphs 47–49 of Appendix 2.1: Legal and regulatory framework.

²⁵ ENW noted in its submission that the technical codes set out certain legal and technical standard compliance issues. See ENW submission.

²⁶ Both the BSC and MRA were introduced in order to facilitate implementation of NETA.

²⁷ The STC was implemented in anticipation of the implementation of BETTA.

means that code MPs are in certain circumstances necessary to implement such policies.

Gas industry codes

29. The bulk of code regulation in the context of the gas markets is achieved through one single code, the UNC (which in turns contains a number of technical appendices). The UNC forms the basis of the commercial and operational arrangements between transporters, shippers and all other network users, including storage operators. NGG, as system operator, is required to balance the NTS. A streamlined version of the UNC, the iGT UNC, applies to independent gas transporters. In addition to the UNC, certain licensees must also comply with the SPAA, which governs certain supplier-to-supplier procedures and is intended to effect efficient transfers of consumers between suppliers.²⁸

Format

30. The comprehensive nature of the industry codes is reflected in their complexity and length; the shortest, the MRA, is over 300 pages, and the longest, the CUSC, is over 1100 pages in terms of the 'core' sections of each of the codes. In general, each code is supplemented by a number of, typically lengthy, mandatory subsidiary documents and schedules.²⁹

Number of industry codes in electricity as a barrier to entry

Views of the parties

31. In our Updated Issues Statement, we solicited views from parties on whether the fragmentation of industry codes relating to the electricity markets, compared to the gas markets (where the bulk of code regulation is carried out through the UNC), has had the effect of raising barriers to entry or expansion for independent generators or suppliers. As an example, we noted that collateral requirements under each industry code might lead to unnecessary duplication of costs.
32. In the responses to our Updated Issues Statement, several parties argued that the complexity of the industry codes reflected the complexity of the industry, and was not a fundamental barrier to entry or innovation. Ofgem told

²⁸ Suppliers and transporters must comply with its terms.

²⁹ For instance, the BSC is supplemented by 66 different 'BSC Procedure' documents, which each contain additional technical rules concerning an activity covered by the BSC.

us that while this complexity posed a barrier to entry and innovation, Ofgem's primary concerns arose from the industry-led code change processes and the difficulty of driving through reforms that benefited consumers. Several parties noted that the consolidation of substantive provisions into one single code (as for gas) would have limited benefits. Some parties observed, however, that certain limited areas might benefit from some form of 'streamlining' coordination, pointing in particular to three broad categories of concerns, which are:

- (a) the number of panel meetings, procedures and industry credit/collateral rules to be followed and understood, which might add to the administrative burden on parties;
- (b) the risk of duplication in relation to collateral requirements; and
- (c) the difficulties arising when MPs have a consequential impact on other codes ('cross-code modifications').

33. Gemserv, the code administrator for the MRA, stated that there was a case for codes to be differentiated on the basis of whether they concerned upstream or downstream market operations, as a means to avoid possible conflicts of interest between them during decision making, and that this would help to improve the simplicity, consistency and accessibility of the codes, which ultimately could lead to some code consolidation.
34. On the first concern (the sheer number of rules and procedures to be followed and understood), Ofgem noted that it had taken action to reduce the costs associated with industry code compliance by introducing the Licence Lite option,³⁰ which helps new suppliers to enter the electricity supply markets. Indeed, under this regime, entrants may partner with an existing larger supplier as an alternate form of compliance with certain of the industry codes (specifically the MRA, DCUSA, CUSC and BSC).³¹
35. Centrica also argued that, to save resources, parties could use collective participation and representation arrangements (eg Energy UK provides GC representation on behalf of smaller generators and Cornwall Energy represents the interests of smaller suppliers at various fora).

³⁰ Ofgem introduced the Licence Lite option by modifying electricity supply SLC 11.3. See Ofgem (April 2015), ['Licence Lite': 11.3 operating guidance](#).

³¹ At the time of Ofgem's response to the updated issues statement, although no supplier was operating under this arrangement, a number of partial applications have been received – including from the Greater London Authority.

36. ENW noted that the DC panel has always taken care not to apply compliance requirements on small players wherever possible, unless there were valid technical or legal reasons.
37. As regards the risk of duplication in relation to collateral requirements, EDF Energy noted that any saving from rationalisation is likely to be modest – principally netting of the surpluses paid across the codes. Moreover, in 2014 DECC commissioned a report to Cornwall Energy³² which noted that no two codes were identical in their credit and collateral rules, although there were some similarities in principle in areas such as balancing or transmission and distribution (reflecting Ofgem’s best practice guidelines³³).

Our assessment

38. The general scheme of constrained industry self-regulation has led to a decentralised system for governance and development of the industry codes. As a result, each of the industry codes has bespoke governance and modification arrangements, which typically reflect factors such as the principal focus of the industry code (technical or commercial) and the number and category of the industry participants subject to the code. Although differences across codes may very well be justified, this means that industry participants must become acquainted not just with the substance of each of the industry codes but also with the unique governance and modification arrangements for each industry code. We agree in principle that such differences in governance and modification arrangements across codes might lead to an unnecessary additional burden on parties, and in particular on smaller players, when they are not justified by the nature and purpose of each code.
39. We note that, in recent years, Ofgem has taken the initiative, through code governance reviews (CGRs) (discussed in more detail below in paragraphs 42 to 49) to harmonise certain governance and modification arrangements across codes. It has also given a more central role to code administrators which as a result must now assist (small) parties to navigate the different codes and processes (see Annex C of this appendix). We believe that these initiatives are helpful and note that Ofgem is currently consulting on a new phase of its CGR in order to assess, among other things, whether further harmonisation, or wider institutional reform, is required (see paragraphs 50 to 52 below).

³² See Cornwall Energy (July 2014), [Credit and collateral in the GB energy markets](#).

³³ See Ofgem (February 2005), [Best practice guidelines for gas and electricity network operator credit cover: Conclusions document](#).

40. Overall, it appears to us that, to some extent, the complexity of the code structure reflects the complexity of the industry and the technical and commercial relationships between industry participants. We do not believe that a consolidation of codes in electricity would per se have a positive impact on competition, but recognise the potential benefits of increasing harmonisation of certain governance and modification arrangements, as well as improving the coordination between code administrators. We therefore investigate these aspects further in this appendix.
41. As regards the specific issue relating to collateral requirements under industry codes, we note that a number of recent MPs³⁴ to improve the efficiency of the credit requirements are currently under investigation in the context of certain industry codes. In our view, some savings could be expected from cross-code coordination of collateral requirements if liabilities under one code tended to be negatively correlated with liabilities under another code. However, we do not think such savings are likely to be substantial since liabilities under the different codes in general rise with energy prices and energy demand. Finally, we note that collateral requirements under energy codes are significantly smaller than those under energy trading contracts³⁵. For these reasons, we do not intend to explore this issue further.

The code governance and modification arrangements

The CGR: Ofgem's intervention to rationalise the industry code governance and modification arrangements

42. In 2007, Ofgem launched a CGR which has led to the implementation – in two phases (2010 and 2013) – of measures seeking to improve the governance arrangements of the energy industry codes (see paragraphs 43 to 49 below). Ofgem is currently considering whether it should implement further measures to address the issues identified in the CGR (see paragraphs 50 to 52 below).

³⁴ For instance, BSC MP P308, which was raised on 14 June 2014 and is currently undergoing assessment, proposes to introduce a new method of securing credit under the BSC.

³⁵ See Appendix 10.3: Analysis of retail supply profitability.

Issues that led to the launch of the CGR

43. On 28 November 2007, Ofgem announced in an open letter to industry that it was initiating the CGR³⁶ and cited the following three reasons why such a review was needed:
- (a) Several significant changes had been made to Ofgem's statutory duties and objectives in recent years.³⁷
 - (b) There had been an influx of small players into various markets.³⁸
 - (c) Ofgem had concerns about the complexity of the code modification process and the effectiveness of certain governance mechanisms.
44. Based on the above, Ofgem's open letter sought views on whether the industry code arrangements represented an undue barrier to entry to smaller players and whether the codes arrangements could be simplified to reduce unnecessary regulatory burdens.
45. Following two years of consultation³⁹ and assessment, in March 2010 Ofgem concluded in its CGR final proposals document that there were two main deficiencies with the code arrangements as they stood at the time, which were:
- (a) the code governance arrangements incorporated an unnecessary amount of barriers and red tape;⁴⁰ and

³⁶ Ofgem (28 November 2007), [Open letter to industry participants, consumer representatives and other interested parties](#).

³⁷ In its CGR initiation letter, Ofgem cited three main changes to its statutory basis: (i) the Utilities Act 2000 introduced a requirement that Ofgem provide industry participants with appropriate reasons for its decisions, including those taken in the codes context; (ii) the 2003 Sustainable Energy Act introduced a requirement that Ofgem perform an impact assessment before taking any material decision concerning the energy markets; and (iii) the Energy Act 2004 introduced a right of appeal to the CMA on eligible Ofgem code modification decisions for industry participants and placed a duty on Ofgem to follow better regulation principles and consider sustainable development as a statutory objective.

³⁸ Namely, small suppliers as well as distributed and renewable generators. See Ofgem (June 2008) [Review of industry code governance – scope of the review](#).

³⁹ One of the main influences on the CGR was Ofgem's March 2008 commission of an independent critique of the code arrangements which was authored by the Brattle Group and law firm Simmons & Simmons. The main conclusion of that critique was that the existing code modification arrangements did not facilitate complex or cross-code changes. Brattle Group (June 2008), [Critique of the Industry Code Governance Arrangements](#), page 88.

⁴⁰ For instance, Ofgem cites the lack of a common, accessible and user-friendly template for raising MPs across codes. Ofgem (March 2010), [Code Governance Review – Final Proposals](#), page 1.

- (b) the code modification arrangements failed to support large scale and complex change.⁴¹

Remedies implemented under the CGR

46. In order to address these two main deficiencies, Ofgem decided to implement a package of remedies in two phases, which included principally the following measures:⁴²

- (a) The introduction of the SCR process to allow Ofgem to lead reviews of complex cross-code and licence issues, whereby Ofgem rather than the industry may be the originator of change and direct relevant licensees to develop and further promulgate code MPs in accordance with its directions.
- (b) The establishment of the Code Administration Code of Practice (CACoP), which sets out 12 high-level principles⁴³ developed jointly by Ofgem and code users. These principles concern the code governance⁴⁴ and modification processes,⁴⁵ which are individually governed by the code panel of each of the industry codes (see Annex D of this appendix).⁴⁶
- (c) The introduction of two self-governance modification procedures (regular and ‘fast-track’).
- (d) The incorporation of charging methodologies into certain industry codes.

47. Following the publication of Ofgem’s CGR Final Proposal in March 2010, Ofgem initiated CGR implementation phase 1 for the purpose of implementing

⁴¹ Ofgem cites case studies indicating that in recent years the consumer detriment flowing from inefficient code modification processes is in the amount of £100 million. Ofgem (March 2010), *Code Governance Review – Final Proposals*, page 1.

⁴² A secondary measure introduced by Ofgem through the CGR was the creation of a ‘send back’ power which allows Ofgem to return a MP recommendation (including one determined to be urgent) to the relevant code panel or network licensee(s) in the event that Ofgem concludes that it cannot make a decision based on the recommendation. Ofgem may issue a direction to the relevant code panel or network licensee(s) to the effect that the MP addressed in the recommendation requires further analysis or mere clarification.

⁴³ The first four principles of the CACoP require that the code administrators act as a ‘critical friend’ for small industry participants and ensure that all relevant code information is publicly accessible and written in plain English. The next eight principles generally require the code administrators to ensure that there is equal, legally informed and adequate treatment of all MPs and any suggested alternative solutions. Further, code administrators are to ensure that parties are aware and able to engage in the pre-modification and consultation processes and that the implementation of MPs gives affected entities a reasonable time to prepare. For details, see Annex C of this appendix.

⁴⁴ We note that before the introduction of the CACoP, the governance arrangements of the industry codes were not subject to any formal oversight.

⁴⁵ As noted above, Ofgem through its power to approve or reject MPs provides substantive oversight over the modification procedure(s) of each of the industry codes.

⁴⁶ The administrators of the industry codes must report on an annual basis against the key performance indicators set out in the CACoP.

the above policy measures to the three industry codes Ofgem considered most strategically important to a reform of the industry, namely the BSC, the CUSC and the UNC⁴⁷ (for details of the implementation method, see below).

48. In April 2012, Ofgem announced the launch of the second phase of CGR, during which it assessed the benefit of (i) extending the application of the measures implemented in the first phase of the CGR to the remaining industry codes;⁴⁸ and (ii) strengthening certain of the phase 1 measures. Ofgem published its CGR phase 2 final proposals in March 2013 and launched CGR implementation phase 2 in June 2013, leading to the extension of the CGR phase 1 final proposals to the remaining industry codes. The one exception to this process was that Ofgem decided against the introduction of both self-governance modification procedures (regular and fast-track) into the technical codes.⁴⁹ Ofgem explained that it was not minded to introduce either form of self-regulation modification procedure (regular or fast-track) into the technical codes because certain shared aspects of the modification procedure unique to the technical codes made it procedurally difficult to establish a self-governance modification procedure.⁵⁰
49. For the purpose of implementing the abovementioned CGR measures,⁵¹ Ofgem exercised its general power to modify the SLCs of licensed gas and electricity companies to issue directions to certain licensees.

Ongoing review of code governance under the CGR

50. The gas and electricity industry in GB is facing significant changes in the coming years, which will require a number of amendments to the industry codes. These changes include the roll out of smart meters, transition to a low carbon industry and implementation of the EU Third Energy Package,

⁴⁷ Ofgem (March 2013), [Code Governance Review \(phase\) 2 final proposals](#), page 6.

⁴⁸ Ofgem in CGR phase 2 considered the benefit of applying the CGR phase 1 final proposals to the gas SPAA and IGT UNC and to the electricity STC, MRA, GC, DC and DCUSA.

⁴⁹ Technically, Ofgem also chose not to introduce both self-governance modification procedures (regular and fast-track) into the SPAA and the MRA. This was because for each of those codes there was already a materiality test applied to code modifications to determine whether or not they needed to be submitted to Ofgem for rejection or approval. Therefore, in effect a self-governance modification procedure already existed for those codes.

⁵⁰ Ofgem (March 2013), [Code Governance Review \(phase\) 2 final proposals](#), page 14. More specifically, neither the GC nor the DC provides for the code panel to make a recommendation concerning each MP to Ofgem (under the GC, NGET submits recommendations and under the DC, the distribution network owners as a group submit recommendations) and as a result neither the GC nor the DC has an established process whereby a code panel could itself take a decision (as would be necessary in a hypothetical self-modification procedure under either of those codes). Ofgem additionally notes that it did not have the resource to assess a fundamental overhaul of the technical code modification procedures at a time when it was pressed to consider the impact of the pending European network codes on the GB industry codes. Ibid.

⁵¹ Ofgem published the phase 1 final licence changes in July 2010 and the phase 2 licence changes on 5 August 2013. We note that further textual changes to the modifications continued to be made for at least another 18 months. For instance, Ofgem gave its approval for CUSC CMP 195 in December 2011.

including European network codes. In view of the anticipated scale of these changes, Ofgem is concerned that the governance and modification arrangements set out in codes are not operating in the best interests of consumers, and is considering reforming them. It has therefore opened a consultation focused on the following areas:⁵²

- (a) Small suppliers' difficulties in engaging with the code change process.
- (b) Poor quality of industry analysis on complex code changes and the risks associated with the lack of coordinated modification arrangements across codes.
- (c) Ofgem's difficulties in driving through change where there may be industry opposition due to a lack of incentives for industry to engage in the change process, which can hinder the timely consideration of code modifications and delay the realisation of benefits for consumers.

51. In its response to our Code Working Paper, Ofgem stated that addressing the above issues would be likely to deliver greater benefits for consumers.
52. Ofgem has told us that it is also considering whether wider institutional reform, beyond the mere strengthening of the CGR measures, is required to address the systemic problems (see paragraph 45 above) that it has identified within the current system of constrained industry self-regulation via codes (also referred to as the system of 'industry-led code changes'). For example, Ofgem has suggested that options include creating a new statutory body (or bodies) which is responsible for the development and implementation of MPs that are beneficial to consumers. Ofgem noted that while one option includes giving this responsibility to Ofgem; its statutory remit, skill set and powers would need to be significantly altered in order to take on such a responsibility. It also noted that there are merits in formal separation between the regulator and the body developing and implementing industry code and system changes. Ofgem has noted that it has previously been given powers to direct changes to industry codes to implement specific policy objectives, and this may be something it would be appropriate for government to provide for current policy initiatives that require extensive code change ahead of any institutional reform.

⁵² Ofgem (May 2015), [Further review of industry governance](#).

Current governance arrangements

53. In this section, we set out our observations as to the substantive importance and general legal treatment of governance issues concerning the industry codes.
54. As noted above in paragraph 23 above, Ofgem has modified the relevant SLCs to require that each industry code contains a common governance structure which includes certain key entities, namely the code panel and the code administrator. We explore in particular the function and operation of those entities. This description will focus on the current configuration of those entities rather than on Ofgem's rationale for or method of reforming those entities through the CGR. The purpose of this description is to inform the assessment of whether this common governance structure might fail to ensure that all relevant industry participants are given a fair chance to participate in the governance and modification arrangements of those codes.

Industry code panels

55. Each industry code mandates the establishment of an internal management board (in this context termed a 'code panel') and contains provisions which set out the functions⁵³ and operation⁵⁴ of the code panel. For each of the commercial codes, the code panel is the sole decision-maker⁵⁵ within the governance structure of each industry code, which in practice means that the code panel takes decisions concerning the development and recommendation of MPs⁵⁶ to Ofgem. For the technical codes, the code panel has a subsidiary role, centred on keeping the code under review and issuing guidance, with the network owners holding decision making power with respect to the modification arrangements.
56. We note that any recommendation to approve or reject a MP (by a code panel in the context of the commercial codes and by the network owners in the context of the technical codes) is subject to direct substantive oversight by Ofgem, except for those MPs which qualify for one of the self-governance

⁵³ Typically, provisions within each industry code broadly prescribe that the function of its code panel is to ensure that the provisions of the industry code are given effect and to administer the industry code's modification procedure(s).

⁵⁴ Each industry code prescribes how the code panel is to be selected and composed (see below) as well as how the code panel is to meet and reach a binding decision.

⁵⁵ We note that code panels do not control the actual process of implementing approved MPs, which is typically left to a code secretary or external entity (such as Xoserve in the context of the UNC).

⁵⁶ The major exception to this trend is the BSC code panel, which is additionally tasked with setting the strategic direction of the BSC and establishing an annual budget.

modification procedures.⁵⁷ In all other decision making contexts, the code panel of each of the industry codes is subject only to the non-binding oversight provided by the code administrators (see section on code administrators below for details).

57. In this section we focus principally on governance issues relating to the composition of industry code panels. We discuss separately in the following sections other aspects of governance relating to the codes' modification arrangements leading to a decision being taken by the code panel (paragraphs 77 to 120 below).
58. Each industry code contains provisions that prescribe the composition⁵⁸ of its code panel and the method whereby code panel members can be selected by eligible code parties, which in practice is either by appointment, election⁵⁹ or a combination of the two methods.⁶⁰ The prescribed composition of each industry code panel tends to reflect whether the industry code impacts the electricity or gas markets as well as the specific level(s) of the electricity or gas markets so impacted.⁶¹
59. Over the last 25 years, the GB energy markets have undergone a process of increasing liberalisation which has led to a significant change in the structure of industry participation across those markets. For each of the commercial codes, the provisions which prescribe the composition of the code panel appear to have been modified appropriately over time so as to adequately reflect the changes in the structure of the various energy markets described above.
60. Table 1 below provides a breakdown, for each of the code panels,⁶² of the relative percentages of voting panel members and the total number of panel members appointed or elected by network users (eg suppliers and

⁵⁷ As discussed in paragraph 129 below, if Ofgem's decision conflicts with the relevant code panel's decision (either to approve or reject the MP in question) then Ofgem's decision is subject to a right of appeal established under the Energy Act 2004 to CMA (which, as explained above, is not available in the context of the technical codes or the STC).

⁵⁸ For details of the composition of each industry code panel, see Table 1 and Table 2.

⁵⁹ In a slightly different sense, individual code panel members are subject to oversight by code parties in contexts where code panel members are selected by means of an election. This is only the case in the context of the CUSC and the DCUSA.

⁶⁰ It is worth noting that the selection method for the DC is unique: each DC code panel member is nominated by the DC code panel chairman and approved by Ofgem, with the exception of the code panel members who represent Ofgem and the consumer representative body.

⁶¹ We note that the provision within each of the industry codes which prescribes the composition of the industry code is capable of modification via the ordinary or self-governance modification procedures.

⁶² For the MRA this table provides information about the MRA's Development Board, rather than the MRA Executive Council, as the MRA Development Board is main decision maker in the context of the MRA's modification arrangements.

generators), network owners and independent entities (eg regulators and consumer representative entities).

Table 1: Composition of code panels (network users, network owners/operators/independent entities)

Percentage of voting rights† (total number of code panel members)‡

<i>Code</i>	<i>Suppliers and/or generators*</i>	<i>Network owners/operators</i>	<i>Independent entities (regulators, consumer reps, other)</i>
BSC§	60 (6)	0 (1)	40 (5)
CUSC§	78 (7)	11 (2)	11 (3)
DCUSA#	40 (2)	60 (3)	0 (0)
STC	0 (0)	100 (8)	0 (2)
MRA	58 (7)	33 (4)	9 (1)
DC	31 (5)	44 (7)	25 (4)
GC#	40 (8)	50 (10)	10 (3)
SPAA	63 (5)	37 (3)	0 (0)
UNC	45 (5)	45 (5)	10 (2)
IGT UNC	50 (3)	50 (3)	0 (2)

Source: NGET, Gemserv, ENA, Elexon, the JO, Electralink.

*For the gas codes (ie SPAA, UNC and IGT UNC) this category includes shipper licensees. The total number of code panel members in this column should only be interpreted to include employees and former employees of independent firms as well as employees of consultancy firms appointed upon proposal of an independent firm.

†This should be interpreted as meaning voting rights only concerning decisions related to MPs.

‡Note that not all code panel members have voting rights, which results in the disparity that can be observed in certain instances between the number of code panel members for a certain category and the proportion of the voting rights held by that category.

§In the context of the BSC and CUSC the code panel chairman is entitled to vote in the event that a casting vote is needed.

The casting vote has not been factored into the percentages provided in this table.

#In the context of the DCUSA and GC, the code panel members do not vote on whether to recommend a MP to Ofgem. For the DCUSA, it is the code parties who vote on such matters, and for GC it is the network owner who decides such matters.

61. Table 1 indicates that, across the industry codes, there is generally a balance amongst the number of votes controlled by network users, network owners and independent entities. The table suggests that, in the context of certain industry codes, either network users as a group, or network owners as group, could potentially exercise their votes to cause the code panel to vote to recommend or not to recommend a MP: (i) in the context of the BSC, CUSC, MRA and SPAA, the network users elect or appoint a majority of voting panel members; and (ii) in the context of the DCUSA and the STC, the network owners elect or appoint a majority of voting panel members.
62. The joint exercise of votes presupposes that there must be a commonality of interests amongst the relevant network users or network owners, which is unlikely to occur often in practice, since such groups comprise individual members who are likely to have difference commercial incentives (eg as independent generators, independent suppliers, or as one of the Six Large Energy Firms with a particular generation fleet).
63. Table 2 below provides a further breakdown of those panel members who are entitled to vote on code modifications and appointed or elected by network users on the basis of whether the panel member is a current employee of one

of the Six Large Energy Firms, an independent supplier or an independent generator.

Table 2: Breakdown of code panel members employed by network users

Percentage of voting rights (number of code panel members)†

<i>Code</i>	<i>Six Large Energy Firms #</i>	<i>Independent suppliers*¶</i>	<i>Independent generators*</i>	<i>Proportion of independents (independents: Six Large Energy Firms)</i>
BSC‡	10 (1)	10 (1)	40 (4)	5:1
CUSC‡	44 (4)	0 (0)	22 (2)	1:2
DCUSA§	20 (1)	20 (1)	0 (0)	1:1
STC	0 (0)	0 (0)	0 (0)	1:1
MRA	50 (6)	0 (0)	9 (1)	1:6
DC	19 (3)	0 (0)	12.5 (2)	2:3
GC§	15 (3)	5 (1)	25 (4)	5:3
SPAA	50 (4)	12.5 (1)	0 (0)	1:4
UNC	40 (2)	60 (3)	0 (0)	3:2
iGT UNC	50 (3)	0 (0)	0 (0)	0

Source: NGET, Gemserv, ENA, Elexon, the JO, Electralink

*This includes employees and former employees of independent firms as well as employees of consultancy firms appointed upon proposal of an independent firm.

†Note that not all code panel members have voting rights, which results in the disparity that can be observed between the number of code panel members for a certain category and the proportion of the voting rights held by that category.

‡In the context of the BSC and CUSC the code panel chairman is entitled to vote in the event that a casting vote is needed. The casting vote has not been factored into the percentages provided by this table.

§In the context of the DCUSA and GC, the code panel members do not vote on whether to recommend a MP to Ofgem. For the DCUSA, it is the code parties who vote on such matters, and for GC it is the network owner who decides such matters.

¶In the context of the gas codes (ie SPAA, UNC and iGT UNC), this column should be interpreted as referring to independent shippers and not independent suppliers.

#In the context of the gas codes (ie SPAA, UNC and iGT UNC), this column should be interpreted as including shippers affiliated with the Six Large Energy Firms.

64. These tables reveal that the Six Large Energy Firms cannot act in concert to cause any code panel to reach a decision (eg to recommend a MP) which may favour their own interest. We note that the percentage of the voting panel members appointed or elected by the Six Large Energy Firms varies considerably amongst the industry codes: from a low of 10%⁶³ (one voting panel member out of ten total on the BSC code panel) to a high of 50% (six voting panel members out of 12 total on the MRA Development Board;⁶⁴ four voting panel members out of eight total on the SPAA code panel; three voting panel members out of six total on the iGT UNC code panel)⁶⁵, with a cross code average of 23% (27 panel members⁶⁶ out of 116 total members for all industry codes). Representation of the Six Large Energy Firms on the code panels of the technical codes is close to the cross code average: for the GC,

⁶³ We have chosen not to mention the lack of representation of the Six Large Energy Firms on the STC panel given that the scope of the STC only concerns network owners and operators.

⁶⁴ In the context of the MRA, the MRA Executive Council (which functions as the code panel) must establish a subcommittee (ie the MRA Development Board) for the purpose of governing modification arrangements.

⁶⁵ The function of the SPAA executive committee is the same as that generally set out as the function of the code panels in the context of the other industry codes.

⁶⁶ This number rises to 33 (30%) if code panel members formerly employed by the Six Large Energy Firms are included.

24% of the code panel members (five code panel members out of a total of 21) are employed by the Six Large Energy Firms and for the DC the number is 19% (three code panel members out of a total of 15).⁶⁷

65. We note that representation of independent suppliers and generators on certain (but certainly not all) panels is limited or even non-existent. To a certain extent, this follows from the scope of the relevant codes. Independent suppliers do not appoint or elect a single voting panel member to the code panel of six of the industry codes (MRA, CUSC, STC, UNC, iGT UNC and DC) and independent generators do not appoint or elect a single voting panel member to the code panel of five of the industry codes (DCUSA, STC, SPAA, UNC and iGT UNC). ENW has submitted to us that the prescribed composition of the code panels of the technical codes has not changed since they were first introduced at privatisation in 1990. There is an outstanding GC MP, GC0074, which seeks to address this issue in the context of the GC only. National Grid raised MP GC0074 on 9 April 2014, which has remained since July 2014 in the process of industry consultation.
66. Centrica noted that until the end of 2014 no small suppliers had put themselves forward to take up the dedicated SPAA panel seat. Some of the Six Large Energy Firms argued that the issue around governance was not so much one of bias in governance but one of participation, as small parties had to allocate their resources efficiently and 'choose their battles'. This was confirmed by independent suppliers (including First Utility that took up the dedicated SPAA panel seat in late 2014), which said that they did not have the resources to participate actively across all of the other codes. Some parties noted, however, that there were benefits in having panels which include participants of different scale (the BSC being cited as a positive example).

Our assessment

67. Our current view is that the current composition of panels seems to achieve a fair balance between representatives from the industry, network operators, regulators and consumer bodies, taking into consideration the nature of each code. Although we note that the composition of panels for technical codes does not reflect the current role of independent firms, in general the composition of industry panels does not show, in our view, a fundamental bias towards the Six Large Energy Firms which would allow those firms to

⁶⁷ In the context of the technical codes, we emphasise the total number of code panel members (rather than voting panel members) as they do not vote on whether to recommend a MP to Ofgem.

dominate code governance processes. We welcome however the MPs currently under development to improve the issues we have identified.

68. We do, however, have some concerns that relate to the costs for (smaller) suppliers and generators to play an active role in the governance of the code modification processes. This problem is susceptible to arise in the context of each of the codes and is one that is not entirely solved by means of ensuring the representation of independent suppliers and/or generators on code panels. Therefore, the governance structure of each industry codes should provide a mechanism designed to facilitate the engagement by independent firms, in particular with respect to changes that are required to achieve positive outcomes for consumers. Currently, in relation to each industry code, that mechanism is the code administrator.

Code administrators and delivery bodies

69. Each of the industry codes contains provisions which require that a private⁶⁸ entity be designated to the role of code administrator.
70. As discussed above in paragraph 46 above, following phase 1 of the CGR, Ofgem identified that the code governance arrangements as they stood at the time were inefficiently fragmented and overly complex, with the result that they formed a barrier against the engagement of smaller industry participants. One of the actions that Ofgem took to remedy this issue was to introduce the CACoP, which has the overarching objective of harmonising code governance arrangements and requires the code administrators⁶⁹ to ensure that the principles of the CACoP, which concern the procedural elements of the code governance and modification process, are adequately applied in the context of each of the industry codes. We note that the code administrators do not have the power to compel a code party to follow a particular course of conduct for the purpose of achieving compliance with the CACoP. It is therefore a responsibility of the parties to each code (and each code panel) to ensure that the necessary MPs are raised (and developed) in order to comply with the CACoP.

⁶⁸ We note that the code administrators are not established by provisions contained within the industry codes, unlike for the code panels. Therefore, the code administrators are typically independent entities which have a legal personality existing outside of the context of the industry codes.

⁶⁹ Each SLC that incorporates one of the industry codes contains provisions which require the relevant code administrator to 'have regard to, and in particular (to the extent relevant) be consistent with the principles contained in the [CACoP]'. We note that for one of the code administrators which is a licensed energy company (NGET, which holds an electricity transmission licence), this forms a legal requirement while for each of the other, non-licensed code administrators, this obligation is not a legal requirement.

71. The CACoP applies equally to each of the code administrators though due to the fact that the provisions of the industry codes prevail over conflicting CACoP principles it is possible that the function of the code administrators across the codes is not identical. The CACoP also establishes⁷⁰ an oversight mechanism whereby the code administrators are assessed annually against a series of performance metrics (eg how effectively they performed the ‘critical friend’ role⁷¹) by means of a survey of relevant code users. Under the CACoP, the code administrators must convene annually to perform a review of the contents and functioning of the CACoP.⁷²
72. The CACoP also formalises the role of the code administrator and places an obligation on the code administrator to act as a ‘critical friend’ of smaller industry participants and to issue guidance on how to engage in the code modification arrangements. A review of the relevant code administrator websites indicates that a majority of the code administrators have published guidance on how to engage with the codes since the introduction of the CACoP. We note that the exception to this general trend is the Energy Network Association, which has not yet published a guidance document to facilitate the engagement of industry participants with the DC governance and modification arrangements.
73. Generally, code administrators are the delivery body for the implementation of MPs, after approval by Ofgem (or the code panel in relation to self-governance processes). In some cases however, the delivery body is an independent body (for instance in relation to the UNC, Xoserve acts as the delivery body, whilst the Joint Office of Gas Transporters is the code administrator).

Our assessment

74. We note that there is no legal requirement that the code administrators be functionally or legally independent from the influence of industry participants⁷³ and that there is not a uniform process by which code administrators are designated to certain industry codes, such as by means of a competitive tender process. Gemserv argued that for code administrators to have an adequate incentive to drive efficiently tailored governance and modification arrangements the position of code administrator should be open to

⁷⁰ See CACoP Principle 12.

⁷¹ See Annex C of this appendix.

⁷² CACoP, Principle 4.

⁷³ For example, the Joint Office of Gas Transporters, which acts as the code administrator for the UNC, is composed entirely of secondees from the licensed gas transporters. As a further example, NGET acts as the code administrator for the CUSC, STC and GC.

competition. There also does not appear to be a consistent method (as to both who pays and how much) by which the code administrators are remunerated for the services that they provide. Similarly, there is no consistency in relation to working arrangements and corporate purpose (eg not-for-profit vs commercial entities).

75. These characteristics are likely to impact on the ability and incentives of code administrators to effectively and independently assist code parties (in particular, independent firms with limited resources to engage in code governance) and therefore to achieve the governance objectives set out in the CACoP. Moreover, for code administrators that are not subject to licence conditions, compliance with the CACoP is not a legal requirement and therefore Ofgem has limited powers to direct them or sanction them for poor performance against the CACoP objectives. Therefore, even after approval by Ofgem of a MP, there is a potential risk that implementation of approved MPs is delayed due to resource constraints or lack of incentives of the code administrator/delivery body.
76. In our view, code administrators acting as critical friends pursuant to the CACoP contribute to better code governance and help to improve independent firms' engagement in modification processes. We have, however, some concerns relating to the lack of accountability of code administrators with regards to Ofgem. We also note inconsistencies between code administrators with respect to their funding,⁷⁴ selection process and working arrangements. We would therefore support any attempt by Ofgem or the industry to extend best practice across all codes (including in relation to selection processes and remuneration) and/or to increase accountability of code administrators (and delivery bodies) with regards to Ofgem. For the reasons stated above, we do not intend to explore this issue further.

Single code modification issues

77. The GB energy industry is undergoing a period of significant change, driven by factors such as technological development (the smart meter agenda) and the enactment of legislation requiring the achievement of green objectives. In order for industry and consumers to capture the net benefits of such change, it is necessary that industry codes develop at the same rate as the energy industry. If those rates of development diverge, then it is possible for the

⁷⁴ Ofgem has told us that each of the code administrators is funded either by certain relevant licensees through their allowed revenue (eg the GC, CUSC, STC, DC, UNC and iGT UNC) or by directly charging the users of/parties to the relevant industry code (eg the DCUSA, BSC, MRA and SPAA).

industry codes to become a barrier to pro-competitive change and/or innovation. One possible cause of such a divergence is the inefficient working of the modification arrangements prescribed by each of the industry codes.⁷⁵

78. Certain MPs concern only a single industry code, but may be of significant strategic and commercial importance to the entire industry.⁷⁶ Their delay may result in substantial detriment to consumers and a lessening of competition in certain of the energy markets.
79. Our principal concern that we explore in this section is that current industry code modification arrangements might be inadequate for delivering major reforms which might be necessary to keep pace with wider policy and market developments. However, we recognise that this objective must be balanced against the need to ensure legal certainty and robust decision-making, which in turn requires a robust modification process that includes relevant impact assessments and consultation processes.
80. The development of each of the industry codes is the result of successful MPs that have been raised in the context of each industry code by certain eligible entities.⁷⁷ Prior to the CGR, for a MP to result in a material change⁷⁸ to one of the industry codes it had to pass through four stages:
 - (a) initiation (by means of a MP);
 - (b) development (including consultation) by industry;
 - (c) Ofgem approval; and
 - (d) implementation by industry.
81. Following the CGR, which introduced both the power for Ofgem to initiate a SCR and the self-governance modification procedure, there are now three discrete routes, set out in Table 3 below, by which a MP can result in a change to an industry code.

⁷⁵ We note that any potential inefficiencies identified within the modification arrangements of the industry codes may, in the context of the technical codes, be exacerbated by those governance issues described above.

⁷⁶ An example is BSC MP P272, which seeks to introduce domestic half hourly settlement, is a key precondition to the effective incorporation of smart meters by the energy industry.

⁷⁷ As described below, Ofgem may use its SCR power to conduct a prior additional stage of Ofgem-led development of a MP or a series of MP related to a similar issue.

⁷⁸ As described below, in the context of certain codes the self-governance modification procedure (regular and fast-track) allows non-material modifications to be developed and implemented by industry without the need for approval by Ofgem.

Table 3: Alternative processes for modifying codes

<i>Modification procedure</i>	<i>Modification stage</i>			
	<i>Initiation*</i>	<i>Development</i>	<i>Decision</i>	<i>Implementation</i>
Ordinary	Industry	Industry	Ofgem	Industry (network owner)† / code administrator/delivery bodies
Self-governance (regular and fast track)	Industry	Industry	Industry	Industry (network owner) / code administrator/delivery bodies
SCR	Ofgem	Ofgem first, then industry	Ofgem	Industry (network owner) / code administrator/delivery bodies

Source: Ofgem.

*The use of the word 'initiated' rather than 'proposed' is deliberate. In the context of the SCR modification procedure, it is Ofgem which initially researches an issue that later forms the basis of a MP that is formally proposed by an industry participant (which is technically directed to do so by Ofgem. For details on this process see below).

†As noted above, the SLCs which incorporate the industry codes into the licences of the network owners require the network owners to prepare and maintain in force the industry codes. Those same SLCs also specify that changes to the industry code can only be made by the network owner.

82. This section provides a chronological overview of the entities and mechanisms generally involved during each of the four main stages of the modification process (initiation, development, approval and implementation). This section mainly describes the ordinary modification process, as distinctions between the ordinary modification process and each of the SCR and self-governance procedures (regular and fast-track) mainly occur in the initiation and approval stages. Throughout this overview we set out our observations as to potential issues with the working or design of the arrangements described.

83. Subject to limited exceptions, Ofgem's role is limited to initiating a MP (if it elects to use its SCR power) and approving or rejecting MPs (subject to its power, at the end of the development process, to carry out further analysis or to send back to the code panel with the request to carry out further analysis, as discussed in paragraph 116 below).

Modification stage: Initiation

84. Each industry code prescribes that a certain entity or entities are entitled to raise a MP with respect to that industry code. The entities which are entitled to directly⁷⁹ propose a modification in the context of each industry code are set out in Table 4 below.

⁷⁹ It is necessary to make this distinction as in the context of technical codes certain entities are only entitled to 'suggest' MPs to the network owner licensee, as opposed to directly submitting them to the relevant code secretary.

Table 4: Right to raise a MP

Entity entitled to raise a MP in the context of industry code	Industry code						
	BSC	CUSC	STC	MRA	GC	DC	DCUSA
Code party/user	✓	✓*	✓	✓			✓
Code panel	✓†	✓†					
The relevant network owner‡	✓	✓			✓§	✓§	✓
The consumer bodies	✓	✓					✓
Ofgem¶	✓	✓	✓				✓
Parties to be designated by Ofgem	✓	✓	✓				✓
Other non-party entities to be designated by Ofgem	✓	✓		✓#			

Source: xx

*The CUSC also permits BSC Parties to make MPs. CUSC, section 8.16.

†In the context of the BSC and the CUSC, the code panel can only propose modifications that concern certain prescribed subjects.

‡Certain codes permit the licensee(s) which is/are responsible for maintaining the code in force to propose modifications. NGET is the licensee subject to such an obligation for the purposes of the BSC, CUSC, STC and GC (SLCs C3, C10, B12 and C14). The electricity distributor licensees collectively are required by the conditions of the electricity distribution licence to maintain in force the DC, DCUSA and MRA (SLCs 20, 21 and 23 respectively).

§The GC and DC permit code users (defined throughout the GC as certain users of the NETS and throughout the DC as users of a distribution network owner's distribution system), Ofgem and all other (non-NGET) electricity transmission licensees to suggest a MP to the network owner licensee (NGET and the distribution network owners, respectively). GCs General Conditions, 4.2 and DC General Conditions, 4.2. The GC code panel has submitted to us that over the last 6 years 57 MPs were 'suggested' to NGET, 41 of which were raised in turn by NGET as MPs. GCRP submission, 3.1.

¶Ofgem can raise MPs only where it reasonably considers such modifications are necessary to comply with or implement obligations under Regulation (EC) 714/2009 and/or any relevant legally binding decisions of the European Commission and/or ACER.

#An entity that fits the MRA definition of an 'interested industry participant' is entitled to propose modifications to certain priority provisions that concern the interaction of the MRA and BSC.

85. In general, in the context of each industry code, MPs must be submitted to the designated secretary⁸⁰ of that industry code. Each industry code prescribes what information the proposer must include within a MP⁸¹ and permits the secretary to reject non-compliant MPs. Code administrators are required by the CACoP to ensure that they are available to help all parties draft, review and discuss MPs.

86. Table 4 shows that the technical codes have relatively restrictive arrangements as to which entities are entitled to directly raise MPs. As a means to offset such restrictions, the relevant network owner(s) (NGET in the context of the GC and the distribution network owners collectively in the context of the DC) is/are required by SLCs placed in its/their licence to periodically review and raise appropriate MPs concerning the relevant industry code. In addition, provisions included within each of the technical

⁸⁰ Typically, the secretary of a particular industry code is an employee of the relevant code administrator.

⁸¹ This information ranges from factual information about the proposer to a subjective interpretation of why the proposer believes that the proposed modification would better facilitate the relevant code objectives. The amount of information that must be included within a MP varies amongst the industry codes.

codes place a similar requirement on the code panels. The GC Review Panel noted that other parties may however raise issues for consideration to the panel, which may send the issue to a working group before it is raised as formal MP. For instance, a GC MP was raised in July 2014 by parties wishing to introduce 'open governance' (including extending the right to raise MPs to all code parties) into the GC.

87. It has been submitted to us by RWE that [X]. We note that, as a result of such potential conflicts of interest, the arrangements in place for modifying the technical codes may distort or delay the development of the technical codes due to the fact that the network owners have no incentive to propose a modification which runs contrary to their own financial interests.
88. It is our view, therefore, that the ability of network users (eg suppliers, generators) to raise a MP might be significantly constrained when such proposal is not supported by the network owner. However, in view of the nature and scope of technical codes, and based on parties' responses, it seems unlikely that this constraint has any material impact on competition. We support however the MPs currently under review which aim at extending 'open governance' principles to technical codes.

Initiation: SCR

89. As a matter of policy, Ofgem gave itself the power to initiate SCRs in order to take the lead on complex and cross-code changes. Ofgem's SCR power allows Ofgem to determine that, for a certain period (namely, the duration of the relevant SCR), only it⁸² may research the question of how to address a defined issue or series of related issues (typically, how such an issue or set of issues should be dealt with by the relevant industry codes). Once Ofgem has finished its research into the particular issue or issues which formed the basis of the SCR, it can direct certain licensees (in practice, the relevant network owner(s)) to raise MPs that reflect the conclusions of its research (for procedural details see below).

⁸² Ofgem has changed SLCs to require that any MP (new or ongoing) which relates to the substantive issue considered by an ongoing SCR must either be stayed or rejected, as appropriate. Ofgem sets out in its guidance two potential exceptions: (i) MPs which meet the criteria to be considered 'urgent' (see above); and (ii) MPs specifically exempted by Ofgem. Ofgem also changed SLCs to require that code panels refer to Ofgem all MPs which may potentially concern the SCR issue for a final determination by Ofgem on the matter.

- *Substantive ‘triggers’ of a SCR*

90. Ofgem has indicated through guidance that the main⁸³ substantive ‘triggers’ for initiating a SCR are the introduction of new obligations under EU law and government-led policy initiatives which have not otherwise been given full effect by legislation. Ofgem has further set out in guidance that it will only launch a SCR to address an identified trigger if the underlying issues are significant in relation to Ofgem’s statutory duties and objectives and can be remedied mainly by code modifications.

- *Decision to initiate a SCR*

91. Ofgem has stated in guidance that, to the extent possible, it will publish the issues which may form the basis of future SCRs in its annual corporate plan in order to give stakeholders⁸⁴ due notice. Ofgem has further stated in its guidance that it will consult industry for six weeks before initiating a SCR, which period may be reduced by Ofgem if the issue is urgent or there are unforeseen circumstances. At the end of the consultation period, Ofgem will publish⁸⁵ a reasoned decision on whether or not to launch a SCR, and, if Ofgem has decided to launch a SCR, information as to the scope, start date and estimated impact of that SCR.

- *Ofgem-led consultation*

92. Once Ofgem has initiated a SCR, it will conduct a formal written consultation process, following which it will produce an initial conclusions document and, where necessary, conduct further written consultations. Ofgem has set itself a non-binding deadline of 12 months⁸⁶ in which to complete all necessary consultation and to publish a SCR final conclusions document. Given Ofgem’s general lack of power to directly change the industry codes (see paragraph 21 above), if Ofgem considers in its SCR final conclusions document that code changes are required it will accomplish this by issuing binding SCR directions⁸⁷ to the relevant network owner. SCR directions require the

⁸³ Ofgem lists secondary triggers as internal work streams, stakeholder representations and modifications proposed by industry.

⁸⁴ Ofgem will primarily seek views on: (i) the perceived need for the SCR; (ii) the proposed scope of the SCR; (iii) the scale of the work needed and the most appropriate route to progress the work; and (iv) what impact the SCR might have on the industry.

⁸⁵ This statement is also sent to each of the relevant code panels.

⁸⁶ In its SCR guidance document, Ofgem states that it may publish a revised timetable for the purpose of extending the consultation process at any point during the initial 12-month period.

⁸⁷ The requirement to follow a SCR direction issued by Ofgem is included as a condition within the licences of each of the network owners. As a matter of policy, Ofgem has stated that it may change the substance of a SCR direction in the event that it considers that the SCR direction is no longer appropriate or where new information comes to light after a SCR direction has been issued.

licensee(s) addressed to raise a MP or MPs (SCR MP(s)) containing certain prescribed information within a specified period of time.

93. Following Ofgem's direction, a SCR MP will be raised and will go through the development, approval and implementation process as per any other MP. This might include an industry's impact assessment of the proposal. Also, the industry may raise (and eventually recommend) alternative MPs to Ofgem for approval instead of the original SCR MP. This was the case, for instance, with the EBSCR, where the BSC panel recommended to reject the SCR MP initiated by Ofgem and to approve RWE's alternative MP. It follows that the use of SCR powers does not eliminate the risk that a SCR MP might be delayed during the development and implementation phase (see below).

Initiation: self-governance

94. The introduction of the self-governance procedures (regular and fast-track) did not alter the ability of industry participants or Ofgem to raise MPs in the context of any of the industry codes.

Modification stage: Development

Development: ordinary modification procedure

95. After receiving a MP that complies with the information requirement noted above, the secretary will add a discussion of that MP as an agenda point for the next code panel meeting. In general, during any discussion⁸⁸ of a MP the code panels must consider certain procedural issues, which are:
- (a) whether to stay or merge the MP;⁸⁹
 - (b) whether the MP meets the prescribed criteria⁹⁰ to be considered as 'urgent';

⁸⁸ Most of these issues are considered only during the code panel's first discussion of a new MP.

⁸⁹ The code panel must stay the development of any MP if the issue or issues addressed by the MP substantively overlaps with the issue or issues covered by an ongoing SCR conducted by Ofgem (see paragraph 89 above). The code panel may also choose to amalgamate a MP with other developing or proposed MPs that address the same substantive issue.

⁹⁰ Ofgem has stated in a guidance letter that urgent MPs should be linked to an imminent or current issue that if not addressed would: (i) cause significant commercial impact on parties or consumers; (ii) have a significant impact on safety and security of the gas or electricity systems; or (iii) cause a party to be in breach of relevant legal requirements.

- (c) whether to submit a statement to Ofgem for the purpose of determining if the MP in question qualifies for one of the two forms of self-governance (see below for details of self-governance);
- (d) whether to create a working group to develop the MP⁹¹ (see below for details concerning how working groups are established); and
- (e) whether to submit the MP directly to industry consultation or to require that further assessment of the MP be undertaken before the MP is submitted to industry consultation.

96. We note that, in theory, the general ability of code panels to exercise discretion concerning whether to require further assessment of a MP, and to decide on the composition of working groups, could potentially be abused⁹² by an individual code panel. This could be part of a deliberate tactic by that code panel to delay the development of a particular MP or to favour a particular group of industry participants. However, we have not seen evidence of code panels using such tactics, nor do we have reason to believe they have. That being said, the case studies discussed in Annex A clearly show that, in the absence of incentives to develop MPs, the timeline might extend as a result of (legitimate) challenges and alternative proposals being raised.⁹³ This is likely to be the case when the MP has large and uneven financial implications for parties.

- *Working groups*

97. In general, provisions within the industry codes require that the code panels define the function of each working group tasked with the development of one or more MPs, by issuing the working group binding terms of reference. These provisions prescribe, to varying degrees, the parameters which must be addressed in such terms of reference. Typically, working groups are responsible for researching the MP, developing alternatives to the original

⁹¹ Most industry codes grant their respective code panel the powers to establish a working group for the purpose of developing MPs and to delegate the responsibility of developing MPs to a working group established for that purpose (see below for details on working groups). We note that in general code panels almost always exercise their power to establish a working group.

⁹² This is to say that a code panel could choose to require further assessment of a MP on the basis of a motive other than that such further assessment would be necessary for the code panel to reach an informed decision on whether or not to recommend the MP to Ofgem (in the event that it constitutes a material change to the relevant industry code).

⁹³ In particular, we have also been told by Ofgem that in certain circumstances (eg P272) some parties who opposed the MP were less responsive than others in providing certain information that were relevant to the impact assessment. This is not surprising but could also be explained (and possibly justified) by the burden that gathering such information may represent on businesses.

MP⁹⁴ (together with those code parties entitled to raise MPs) and preparing the draft modification report which is sent to industry during the consultation process.

98. Code administrators are required by the CACoP to ensure that alternative and original MPs are developed equally by working groups.⁹⁵ Additionally, the CACoP requires code administrators to ensure that all interested industry participants are notified of working group meetings, that industry participants have access to all relevant information and that the views of small and underrepresented industry participants are articulated and debated at all working group meetings.
99. Most commercial codes prescribe, in general, the stakeholder representatives who are to compose each working group.⁹⁶ The GC requires that membership of each working group 'comprises a suitable cross-section of expertise from across the industry'.⁹⁷ We note that the DC does not contain provisions which prescribe the composition of working groups established in that context. In practice, the composition of working groups is established by code panels on a case by case basis depending on the availability of parties to allocate time and resources to a particular working group. We note further that, out of all the industry codes, only the BSC requires that the members of a working group adhere to a duty of impartiality and only the CUSC⁹⁸ requires that an independent chairman be appointed to lead each working group. The CUSC is also the only industry code that contains provisions that grant the code panel the power to remove a working group member who the code panel considers to be frustrating the development of a MP.
100. In theory, the general ability of code panels to exercise discretion in deciding whether to require further assessment of a MP could potentially be abused⁹⁹

⁹⁴ The CACoP establishes that there should be no limit to the number of alternatives that are developed to any particular MP. CACoP, Principle 7. We note that currently the BSC permits only one alternative to each MP to be developed. BSC section F, 2.6.2.

⁹⁵ CACoP, Principles 6 and 7. We note that currently in the context of the CUSC the chairman of a modification working group may unilaterally decide not to further develop an alternative MP. CUSC section 8, 8.20.15.

⁹⁶ For instance, each of the BSC, CUSC and DCUSA require that a working group is to consist of at 'least five members selected by the code panel for their relevant experience and/or expertise in the relevant subject-matter'. BSC section F, 2.4.4, CUSC section 8, 8.20.3 and DCUSA section 1C, 11.15, respectively. In the context of the DCUSA, working group members are not selected by the panel but volunteer from a wide range of invitees/interested parties.

⁹⁷ National Grid (December 2013), [Grid Code Modification Process Summary](#), page 5.

⁹⁸ The BSC panel prescribes that the BSC panel is to appoint by a majority decision the modification working group chairman and that the BSC panel members are each under an obligation to act impartially.

⁹⁹ This is to say that a code panel could choose to refer a MP to a working group on the basis of a motive other than that such further assessment would be necessary for the code panel to reach an informed decision on whether or not to recommend the MP to Ofgem (in the event that it constitutes a material change to the relevant industry code).

as part of a deliberate tactic by that code panel to delay the development of a particular MP.

101. However, we have not seen evidence of code panels using working groups to delay the modification process, nor evidence that a decision relating to the composition of a working group was seeking to favour a particular group of industry participants. Code governance processes are a resource intensive activity with the consequence that independent firms may decide not to participate on the grounds of resource constraints. Our concerns relate to the costs of participation in the modification process, which could in practice act as a barrier to the development of innovative business models for which a MP is required. This issue might be exacerbated in the coming years by the need to implement of EU network codes, which could consume industry resources and create congestion across the code modification processes (see paragraph 11 above).¹⁰⁰

- *Industry consultation*

102. All industry codes, with the exception of the BSC, require that each MP be submitted to a period of industry consultation. Typically, industry participants are sent a copy of the draft modification report which is produced by the working group in charge of developing the MP in question. The draft modification report covers a range of subjects, such as the MP's proposed implementation timetable and legal text. The CACoP requires that each consultation of a MP considers the issue of costs, unless doing so would cause 'unnecessary delay'.¹⁰¹ Additionally, the CACoP requires that any material changes to the legal text of a MP made by the working group be sent to industry for consultation.¹⁰² The process of consultation is administered by the code administrator. The code administrators are required by the CACoP to ensure that all consultations are open to all interested parties and that parties have a sufficient amount of time to consider the relevant information and provide an informed response. The CACoP establishes that the default consultation period for a MP must be at least 15 working days, with that mandatory default period reduced to at least five days for MPs which have qualified as urgent (see paragraph 95 above).¹⁰³

¹⁰⁰ ENW argued that an overall governance arrangement should have been instituted for the purpose of the implementation of EU network codes, as it is a politically driven change. We note, however, that the policy objective of the EU network codes is essentially to remove technical barriers that restrict trade between Member States and that it might therefore be consistent with the overall framework to rely on constrained industry self-regulation to implement detailed technical provisions.

¹⁰¹ CACoP, Principle 8.

¹⁰² CACoP, Principle 9.

¹⁰³ CACoP, Principle 10.

- *Recommendation to Ofgem*

103. For the commercial codes, the code panel is responsible for drafting and submitting to Ofgem a final modification report. The final modification report typically contains a recommendation on whether or not the MP should be approved, an assessment of the MP's ability to facilitate the achievement of the relevant code's prescribed objectives and the proposed implementation date.¹⁰⁴ In the context of the DCUSA, the code panel drafts the final modification report but leaves the issue of whether to recommend a MP to be determined by a vote of certain eligible code parties approved by Ofgem.¹⁰⁵ In the context of each of the technical codes, the network owner licensee(s) is/are responsible for drafting the final modification report rather than the code panel. Certain industry codes require that industry participants be consulted on the contents of the final modification report before it is sent to Ofgem.

Development: SCR

104. From the time that Ofgem issues a SCR direction until the relevant entity¹⁰⁶ submits its recommendation to Ofgem concerning whether or not to approve the SCR MP(s), Ofgem cannot control how the SCR MP is substantively developed through the ordinary modification procedure. Ofgem controls the procedural issue of whether or not a SCR MP reaches the decision stage in some form as it has changed SLCs to prohibit licensees from withdrawing a SCR MP without its consent. We note further that Ofgem has no power to set a binding timeframe for industry participants to progress a SCR MP through any stage of the ordinary modification process. This risk is only mitigated in part by the requirements set out in the CACoP by which the code administrator must administer the consultation process and ensure that parties have a sufficient amount of time to consider the relevant information and provide an informed response.

105. Centrica said that previous SCR processes have taken a long time due to the sheer complexity of the issues involved, the far reaching impact on the industry, the lack of clearly defined objectives at the outset, as well as in some cases the need for substantial revisions to initial analysis and impact assessments. This is confirmed, in particular for the BSC and the UNC, by data provided to us by code administrators (see Annex E of this appendix).

¹⁰⁴ A secondary measure introduced by the CGR requires that final modification reports also contain an assessment of the impact of the MP on the output of greenhouse gases by the relevant industry sector.

¹⁰⁵ The designated code parties which are eligible to vote on a particular MP are typically those affected by the anticipated outcome of the MP and must be approved by Ofgem before the vote occurs.

¹⁰⁶ As noted above, for the commercial codes the code panel submits MP recommendations to Ofgem while for the technical codes the network owner(s) perform this function.

Centrica therefore suggested that it would sometimes be helpful for Ofgem to provide a clearer directional steer in the early phases of a SCR rather than allowing the industry to conduct a detailed assessment of proposals which are ultimately rejected for reasons which were apparent at an early stage. It suggested that there might be inefficient duplication of work due to code administrators and Ofgem both carrying out an extensive evaluation and impact assessment of the same MPs.

106. We note that in one particular context, government has passed legislation¹⁰⁷ to grant Ofgem the power to direct the network operator of the gas NTS to modify the UNC, with the result that it could directly implement certain of its gas security of supply SCR final conclusions.¹⁰⁸ Effectively, this power allows Ofgem to carry out the development phase of the modification process, consulting ‘such persons as it considers appropriate’. The power granted to Ofgem is limited to modifications that will do either or both of the following:

(a) “*decrease the likelihood of a gas supply emergency occurring;*

(b) *decrease the duration or severity of a gas supply emergency which occurs”.*

107. To the extent that the objectives set out above reflect a clear policy choice taken by the UK government, it seems appropriate to have allowed Ofgem to lead the code modification process, including the consultation and impact assessments, in order to prevent any attempt by the industry to re-assess the expected benefits of the policy decision. We note however that the development and implementation of the MPs arising from the Gas SCR (see Annex A of this appendix) have taken a long time despite this specific power.

Development: self-governance

108. As noted above, in the context of certain industry codes the code panels can decide¹⁰⁹ that a MP meets the prescribed criteria (see below), set by Ofgem, to qualify either for the regular or fast-track self-governance modification procedure. Typically, code panels which decide that a particular MP qualifies for either form of self-governance procedure must issue a report to Ofgem

¹⁰⁷ Section 81 of the Energy Act 2011 amended section 36C of the GA86. Ofgem’s gas security of supply SCR [initiation letter](#) cites the impact of both DECC policy and the EU Gas Security of Supply Regulation (Regulation (EC) 994/2010) in leading to the introduction of this power.

¹⁰⁸ Ofgem exercised this power to make changes to UNC Transportation Principal Document section Q.

¹⁰⁹ The decision by a code panel to submit a MP to the regular self-governance procedure must be made by a majority of the code panel while the decision to send a MP the fast-track self-governance procedure must be made by a unanimous vote of the code panel.

and wait for Ofgem's approval¹¹⁰ before submitting the MP in question to the relevant self-governance procedure.

109. If Ofgem approves a MP for the regular self-governance procedure, that MP will progress through the ordinary modification procedure of the relevant industry code, as set out in general above, with the exception that Ofgem's approval is not required before the MP is implemented. If Ofgem approves a MP for fast-track self-governance, the code panel can immediately implement the MP without having to progress the MP through any other stage of the ordinary modification procedure.
110. Ofgem has prescribed in the relevant SLCs that the criteria for a MP to qualify for regular self-governance are that it must not act to discriminate between different classes of parties to the relevant industry code and must not have a material impact on:
 - (a) future and existing customers;
 - (b) competition within the industry;
 - (c) sustainable development or security of supply; and
 - (d) code governance or modification procedures.
111. The prescribed criteria for a MP to qualify for fast-track self-governance are the same as those for regular self-governance, as set out above, with the additional requirement that the MP must only concern factual changes to the relevant industry code.
112. We note that Ofgem decided not to introduce the self-governance modification procedure into the technical codes because there are no provisions that exist within those codes that permit the code panel to take decisions concerning MPs.¹¹¹ We note further that Ofgem stated during the CGR¹¹² that it did not have the resources to conduct a full overhaul of the technical code modification arrangements that would allow a self-governance modification procedure to function.
113. We have not assessed whether the absence of a self-governance mechanism within each of the technical codes has had a material impact on industry

¹¹⁰ Ofgem has set itself a non-binding deadline of 28 days to approve, reject or send back (see paragraph 116 below) the decision to the code panel for further analysis or clarification.

¹¹¹ As noted above, for the technical codes it is the network owner(s) which makes recommendations to Ofgem as to whether code modifications should be approved or rejected.

¹¹² Ofgem (March 2013), [Code Governance Review \(phase\) 2 final proposals](#), page 14.

participants. We believe however that, in principle, resource allocation efficiencies might arise from introducing a self-governance mechanism in technical codes. These benefits need to be balanced against the costs of implementation.

114. Ofgem recognised¹¹³ that the number of MPs that have been taken forward through self-governance modification procedures is not as high as anticipated and that there are variations in the use of the self-governance mechanism between the codes, but considers nonetheless that this reform has been successful as at least 30% of MPs across codes since CGR phase 2 have been delivered through self-governance.

Modification stage: Decision

Decision: ordinary modification procedure

115. For each industry code, Ofgem must approve or reject every materially important MP.¹¹⁴ As part of its decision to approve or reject a MP, Ofgem must consider whether it has sufficient information to take the decision, the prescribed objectives set out in the relevant industry code and its own wider statutory objectives, as set out in GA86 and EA89. RWE has submitted to us that, as a consequence of Ofgem's multiple statutory duties, when deciding on code modifications Ofgem promotes, supports or rejects those modifications for reasons other than economic efficiency. To support this conclusion, RWE cites two specific MPs relating to transmission losses (P229) and compulsory half-hourly settlement for non-domestic customers (P272) (see Annex A of this appendix for details on these cases studies): RWE argues that Ofgem rejected a MP (transmission losses) despite finding it to better facilitate the relevant code objectives, and approved a MP (P272) despite holding evidence that implementation of this MP would lower economic efficiency. This is a source of concern for us.
116. In general, in the event that Ofgem is of the opinion that it cannot reach a decision based on the final modification report (whether sent to it by a code panel or network licensee(s)), Ofgem can utilise its 'send back' power¹¹⁵ to return the final modification report to the issuing party with a request that it be either clarified or reassessed before being resubmitted. Ofgem can of course

¹¹³ See [Ofgem \(May 2015\), Further review of industry code governance](#).

¹¹⁴ This excludes those MPs which qualify for one of the self-governance modification procedures (see above paragraphs 108 to 114 above).

¹¹⁵ Ofgem granted itself the send back power following CGR implementation phase 1 (in the context of the BSC, CUSC and UNC) and phase 2 (in the context of the remaining industry codes).

carry out any further analysis that is required itself. Ofgem has set itself a non-binding target of reaching a decision on 90% of the MPs issued to it within 25 working days.¹¹⁶

Decision: SCR

117. The process which Ofgem must follow to approve or reject a SCR MP is the same as that process which is set out in the section above on the ordinary modification process.

Decision: self-governance

118. Ofgem must decide during the development stage whether to approve or reject any MP which is considered for either form of self-governance procedure, according to the criteria set out above. If Ofgem approves a MP for either regular or fast-track self-governance then it does not decide whether to approve that MP for implementation. If Ofgem does not approve a MP for either form of self-governance then it must take a final decision on whether to approve or reject that MP, as per the ordinary modification procedure set out above.

Modification stage: Implementation

Implementation: ordinary modification procedure

119. As Ofgem does not have the general power to directly modify the industry codes,¹¹⁷ in order to implement a MP which it has approved Ofgem must direct relevant licensees to make the resultant changes to the industry code(s) in question in line with the proposed implementation date set out in the final modification report.¹¹⁸ With the exception of National Grid, code administrators (or delivery bodies) are not licensees and therefore Ofgem has limited powers to direct them. Therefore, even after Ofgem approval, there is a potential risk that implementation of approved MPs may be delayed due to resource constraints or lack of sufficient incentives of the code administrator/delivery body. Code administrators are accountable to code parties, but Ofgem told us that it would be reluctant to hold code parties jointly responsible for a code administrator's failure to implement an approved MP.

¹¹⁶ Ofgem (December 2014) *Forward Work Programme 2015-2016*, Annex 2.

¹¹⁷ The one exception to this is that Ofgem has the power to directly modify the UNC to improve gas security of supply (see paragraph 106 above).

¹¹⁸ As noted above, industry participants must provide Ofgem with a proposed implementation date as part of the final modification report submitted to Ofgem during the decision stage.

Implementation: SCR

120. SCR MPs, which are likely to pursue a policy objective, are implemented in the same fashion as under the ordinary modification procedure. However, as noted above in paragraph 106 above, within the context of a SCR relating to gas security of supply, government has passed legislation to grant Ofgem the power¹¹⁹ to direct the operator of the gas NTS to modify the UNC in order to improve gas security of supply (see paragraph 106 above).

Implementation: self-governance

121. For MPs which have progressed through one of the self-governance modification procedures (fast-track or regular), the code panel has the power¹²⁰ to direct the network owner to make the resultant code changes.

Timeframe

- *Timeframe – industry development*

122. In our description of the development stage, we have identified a number of issues which might lead to delays in the development of MPs (see in particular paragraphs 96, 100 and 105 above).
123. Ofgem lacks the power to force a MP to progress through the development stage, except in the limited case relating to gas security of supply where primary legislation allows it to do so (see paragraph 106 above). Ofgem could possibly choose to impose mandatory timetables for the development of MPs within licence conditions but has chosen not to do so. We note, however, that such timetables would only apply to licensees and not to code administrators/delivery bodies which are generally responsible for the implementation phase. As part of the CACoP, Ofgem introduced a non-binding¹²¹ indicative modification timetable. In general, this modification timetable has not been incorporated through the code modification processes as a binding requirement into each of the codes. As a result, there is no overarching common timeframe for the development of MPs and the

¹¹⁹ Energy Act 2011, section 81 amended GA86, section 36C. Ofgem's gas security of supply SCR [initiation letter](#) declares that DECC policy and the EU Gas Security of Supply Regulation (994/2010), which requires stronger national gas security of supply measures, led to the introduction of Ofgem's GA86 section 36C power.

¹²⁰ As established in the relevant SLCs and in the provisions of each of the industry codes where a self-governance modification procedure has been established (namely, the commercial codes).

¹²¹ The one binding aspect of this timetable is that industry consultation of non-urgent MPs must be at least 15 working days.

timeframe which applies to a MP depends on the context in which it is developed (ie the industry code to which it applies).

124. Currently, none of the BSC, DC or GC contain provisions that require the completion of any part of the development process within a specific timeframe. In the context of each of the DCUSA and BSC, the code panel must set each working group a timeframe that takes into account the urgency, complexity and importance of the MP considered.¹²² The following industry codes contain binding timeframes for the completion of certain steps of the development stage of the modification process:¹²³
- (a) **STC**. Provisions within the STC require that the development phase be completed within two months, or within four months if the code panel establishes a working group.¹²⁴ The STC also contains provisions which require that the process of industry consultation and the preparation of the final modification report by the code panel together take no longer than six months.¹²⁵
 - (b) **DCUSA**: Provisions within the DCUSA require that the development phase (either by the code panel or a working group) be completed within three months. The DCUSA grants the code panel the power to grant an indefinite number of two month extensions to that three-month deadline. The granting of any extension by the code panel is subject to an Ofgem veto.¹²⁶
 - (c) **CUSC**: Provisions within the CUSC require the code panel to set a timetable for the completion of the modification process (excluding the time Ofgem takes to take a decision on whether to approve the MP and implementation) that should be no longer than four months.¹²⁷
- *Timeframe – Ofgem decision*

125. Ofgem is not subject to a statutory deadline within which it must reach a decision to approve or reject a MP. Pursuant to the indicative modification timetable published as part of the CACoP, Ofgem has imposed a non-binding

¹²² In the context of the CUSC and STC the code panel is generally required to act in a way that takes into account the 'urgency, complexity and importance' of each MP considered.

¹²³ Each of the codes listed does not contain provisions which state the consequences of not following a 'binding' timeframe.

¹²⁴ STC section B, 7.2.4.1.

¹²⁵ STC section B, 7.2.5.1.

¹²⁶ DCUSA section 1C, 11.11, 11.12.

¹²⁷ CUSC Section 8.19.1.

target on itself of reaching a decision within 25 working days for 90% of all MPs.¹²⁸

- *Timeframe – implementation*

126. None of the industry codes contains provisions which establish a general deadline for the implementation of approved MPs.

127. Data provided by code administrators show that the timeframe for implementing MPs that have gone through one of the self-governance modification procedures was not, on average, significantly shorter than implementation of MPs which followed the ordinary procedure.

- *Timeframe – urgent modification process*

128. The CACoP¹²⁹ requires each industry code to contain provisions which provide for an ‘urgent’ modification process whereby Ofgem, after receiving a request from the relevant code panel,¹³⁰ can instruct that a MP be progressed by deviating from any part of the ordinary modification process.¹³¹ Ofgem has permitted the MRA and the SPAA to follow a different approval process in which it is the code panel, rather than Ofgem, who makes the final decision as to whether a MP meets the criteria to qualify as ‘urgent.’ The criteria¹³² for urgency are strict, and as a result only a small fraction of MPs have been progressed as ‘urgent’. P272 is an example of a MP that qualified for ‘urgent’ status during the implementation stage, with the result that P272 is now being implemented by means of a staggered timeframe, with certain key elements to be in place in time to meet critical deadlines, and implementation of the remaining elements to follow at later dates. We note that currently the technical codes do not contain specific provisions providing for an urgent modification process.

¹²⁸ Ofgem (December 2014) *Forward Work Programme 2015-2016*, Annex 2. See Annex E of this appendix.

¹²⁹ CACoP Principle 11. See Annex E of this appendix.

¹³⁰ A request to qualify a MP for ‘urgent’ status can be initiated either by the code panel directly or by the code panel on the behalf of the proposer of the MP.

¹³¹ In practice, the result of ‘urgent’ status can be that the relevant MP follows either a truncated development process and/or an implementation schedule which prioritises certain elements of the MP.

¹³² Ofgem has stated in a guidance letter that the criterion which must be met for a MP to be treated as urgent is that the MP should be linked to an imminent or current issue that, if not addressed, would: (i) cause a significant commercial impact on parties or consumers; (ii) have a significant impact on safety and security of the gas or electricity systems; or (iii) cause a party to be in breach of relevant legal requirements.

Appeals

129. Section 173 of the Energy Act 2004 grants parties who are ‘materially affected’¹³³ by an Ofgem decision concerning certain designated documents a statutory right to appeal the relevant decision to the CMA. DECC, via a statutory instrument,¹³⁴ has designated each of the industry codes for the purpose of that appeal right, with the exception of the STC and the technical codes. Pursuant to that same statutory instrument, a decision by Ofgem concerning one of the designated industry codes cannot be appealed under section 173 of the Energy Act 2004 if the decision is consistent with a majority recommendation of the relevant code panel (either to approve or reject a MP). In addition to the above statutory appeal rights, parties can also exercise their rights to apply for judicial review of decisions by Ofgem by filing an appeal at the High Court.
130. In the context of the self-governance modification procedures, all affected parties have the right to appeal a code panel’s decision that a particular MP qualifies for some form of self-governance. Appeals are to be sent to Ofgem and the grounds for an appeal must be either that:
- (a) the appealing party would be unfairly prejudiced¹³⁵ by the outcome of the self-governance determination; or
 - (b) the implementation, or, as the case may be, rejection of the proposal does not better facilitate the applicable code objective(s).
131. On appeal, Ofgem may decide to quash the code panel’s decision, refer the matter back to the code panel for reconsideration, quash the decision and take the decision itself, or affirm the code panel decision/hold the appeal to be unsuccessful. Ofgem may also refuse to hear an appeal if it determines that the case is frivolous, vexatious or has no reasonable prospect of success.

Cross-code modification issues

132. Two types of situation can arise in which it is necessary for two or more MPs, independently developed in the context of two or more industry codes, to be implemented as close to simultaneously as possible. The first type of situation occurs when the introduction of a significant new technology, UK government policy or EU law clearly impacts several levels or elements of the gas or

¹³³ Energy Act 2004, section 173(3)(a).

¹³⁴ Electricity and Gas Appeals (Designation and Exclusion) Order 2014.

¹³⁵ Ofgem has defined that a party may reasonably argue ‘unfair prejudice’ in this context if the implementation of a MP could cause it to be in breach of its licence, the relevant code or any other legally binding agreement.

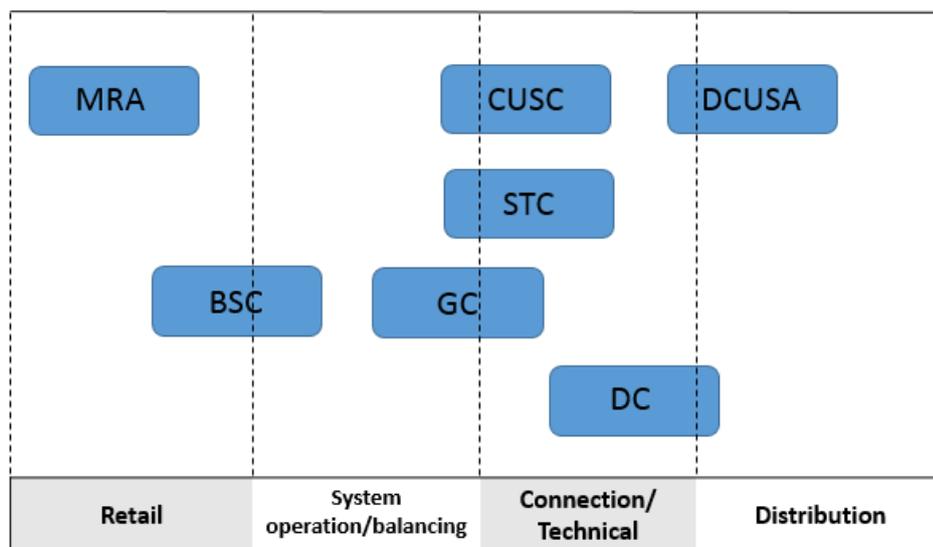
electricity markets. The second type of situation occurs when a MP which is developed under the auspices of an industry code's modification arrangements necessitates consequential changes to other industry codes, for example in order to maintain the consistency of certain defined terms and conditions. The current system by which industry codes develop, as described above, relies principally on the independent development of MPs in the context of a single industry code and does not contain a formal overarching change mechanism, aside from Ofgem's power and ability to initiate a SCR. As a result, it follows that each of the issues identified above in the section on single code modification applies equally to this context, and that coordination between MPs across codes adds a further layer of complexity. A sufficient level of coordination between code administrators (and where appropriate, Ofgem and DECC) is required to identify, develop and implement consequential changes across industry codes.

The substantive overlap amongst the industry codes

133. As noted above from paragraphs 13 to 14 above, the number of industry codes that apply specifically to the electricity markets (seven) is significantly higher than the number of industry codes which apply specifically to the gas markets (three).¹³⁶ In the context of the gas markets, the UNC provides the rules and regulations which govern almost all areas of those markets, with the result that it is relatively unlikely for cross-code changes involving other gas industry codes to be necessary. In contrast, the current system of electricity industry codes contains a number of areas where the industry codes substantively overlap to some extent, as illustrated by Figure 1 below:

¹³⁶ These numbers do not count the dual fuel SEC or GDAA.

Figure 1: Substantive grouping of electricity industry codes



Source: EDF Energy.

134. Another indication of the extent of the overlap amongst the electricity industry codes is that there are three electricity industry codes, namely, the BSC, CUSC and GC, which due to licence conditions must be complied with by all categories of electricity licensee.¹³⁷ Additionally, the DC must be complied with by all categories of electricity licensee except for interconnector licensees.

Cross-code modification measures

135. One of the principal conclusions of Ofgem's CGR was that the existing code arrangements did not adequately facilitate complex, cross-code changes. As a matter of policy, Ofgem chose to address this identified weakness by granting itself the power to initiate a SCR and strengthening the role of the code administrators rather than by altering the existing system of change coordination measures that exist within most of the industry codes.

Ofgem's SCR power

136. As described above from paragraphs 89 to 92 above, Ofgem can initiate a SCR in order to address any issue that it considers to be of sufficient importance to the industry. Following a completed SCR, Ofgem can, by issuing a binding direction, require one or more licensee(s)¹³⁸ to raise a SCR

¹³⁷ For details as to the industry codes to which each category of licensee must comply, see Annex B of this appendix.

¹³⁸ If Ofgem desires to initiate simultaneous change to three different industry codes, it has the choice to either: (i) issue a direction to three licensees which are each entitled to raise a MP in the context of one of the target

MP containing information stipulated by Ofgem. After Ofgem has issued such a direction, it controls neither the substantive development nor the procedural development of the resultant SCR MP, other than deciding whether or not it should be withdrawn.¹³⁹ As a result, a related ‘package’ of SCR MPs can develop at different rates due to the fact that they must independently progress through the modification arrangements of one or more industry codes. Ofgem can choose to wait to issue a decision to recommend (or reject) a SCR MP until every SCR MP within such a ‘package’ has been submitted to it which, in effect, equalises the development timeframe of those SCR MPs. However, we note that Ofgem has no power or ability to ensure that a ‘package’ of SCR MPs are implemented in tandem. We note further as a separate issue in this context that the SCR scheme relies on Ofgem to identify all of the SCR MPs which must be initiated following the completion of a SCR.

Role of code administrators

137. The code administrators have a limited role in facilitating the coordination of cross code developments. Under the CACoP,¹⁴⁰ if a code administrator determines that a MP, developed in the context of an industry code to which it performs the role of code administrator, directly or indirectly affects one or more other industry codes, that code administrator must contact the code administrator(s) of each of the affected industry codes. We note that the CACoP does not define the meaning of ‘contact’ and that, as a result, code administrators are under no obligation either to meet or to correspond as part of such contact. We note, as a separate issue, that National Grid, Elexon and Electralink (ie the code administrators for each of the BSC, CUSC, STC, GC, DCUSA and SPAA) jointly ran a bimonthly cross code electricity forum that ended in October 2013 and which appears not to have been replaced.¹⁴¹

Change coordination provisions

138. Coordination amongst the code panels in this context exists due to the inclusion of a ‘change coordination’ provision within most¹⁴² of the industry

industry codes; or (ii) issue a direction to one licensee which is entitled to raise a MP in the context of all three target industry codes.

¹³⁹ As noted above, licence conditions prevent licensees from withdrawing SCR MPs without Ofgem’s consent.

¹⁴⁰ CACoP, Principle 1.

¹⁴¹ We note that NGET established the GC Development Forum in April 2015 with the aim of helping industry parties to understand the technical issues related specifically to GC compliance.

¹⁴² The DC is the only industry code that includes no requirement that change coordination measures be established. However, we note further that coordination between the GC and DC can be achieved through the mechanism of the Industry Technical Codes Group (ITCG), which is comprised of representatives of the distribution network owners and advises both the GC Review Panel and the DC Review Panel. The DCUSA does

codes. The function of each change coordination provision is to require the code panel of that industry code to establish 'working arrangements' with a prescribed list of other code panels.¹⁴³ We note that for each industry code where such change coordination provisions are included, the term working arrangements is left undefined. The stated purpose of such provisions is to identify potential inconsistencies between the prescribed industry documents as well as to develop and implement appropriate MPs in a full and timely manner. As noted above, Ofgem has not established a periodic mechanism to require the code panels to convene in order to discuss general issues concerning modification arrangements, such as ongoing MPs.

139. Certain industry codes contain additional provisions that entitle the code panels of other industry codes to attend code panel and working group meetings or even to join the membership of the code panel. For instance, the DCUSA entitles representatives of the BSC panel, CUSC panel and STC panel to attend DCUSA panel meetings.

DECC's and Ofgem's respective roles and powers

140. As noted above, appropriate levels of coordination between DECC and Ofgem are necessary to avoid duplication of (or even conflicts between) regulatory interventions and ensure a swift and consistent implementation of policy decisions. We discuss below DECC's and Ofgem's respective roles and powers.

Description of DECC's and Ofgem's respective roles and powers

141. DECC, as a department of government, has the power to enact secondary legislation and the ability to initiate and drive the process of enacting primary legislation. Pursuant to that ability and power, DECC may cause legislation to be enacted that overrules any conflicting licence conditions, industry codes or Ofgem policies. DECC's powers in this regard are subject to EU legislation. Since 2010, government has used primary legislation¹⁴⁴ to greatly broaden DECC's powers to enact secondary legislation in order to implement policies concerning the electricity markets (in particular, those related to the EMR).

not have a specific change coordination provision, but does make it a general duty of the code panel to establish working arrangements with other relevant industry committees and panels. DCUSA section 1B 5.3.12.

¹⁴³ The code panels of the BSC, CUSC, STC and GC are additionally required to establish working arrangements with the Secretary of States and entities which operate under the Capacity Market and Contracts for Difference schemes.

¹⁴⁴ Namely, the Energy Act 2010, Energy Act 2011 and Energy Act 2013.

142. Pursuant to requirements established under the Third Package, Ofgem is the designated GB National Regulatory Authority and as a result, pursuant to EU law,¹⁴⁵ it must be 'legally distinct and functionally independent from any other public or private entity'.
143. However, we note that DECC has a number of direct and indirect powers that it can exercise to influence Ofgem's function and operation. In particular, it has the power:
- (a) to appoint the chairman of GEMA as well as other members of GEMA (after consulting with the chairman);¹⁴⁶
 - (b) pursuant to its ability to drive primary legislation, to cause Ofgem's statutory duties and objectives to be altered;
 - (c) pursuant to its ability to drive primary legislation and enact secondary legislation on certain subjects, to exert institutional pressure on Ofgem by threatening to act to address a certain issue in the event that Ofgem does not itself act to address the issue in question;¹⁴⁷
 - (d) pursuant to the powers granted to it in primary legislation, to modify directly licence conditions and to veto an Ofgem decision to modify licence conditions (including a decision by Ofgem to approve or reject a MP);¹⁴⁸ and
 - (e) to issue a general direction to Ofgem that it should regard certain considerations when prioritising the order in which it is to review the energy markets.¹⁴⁹
144. When using their powers under GA86 and EA89, both DECC and Ofgem must pursue the same principal objective. This objective leaves a wide margin of appreciation to DECC and Ofgem, which therefore could decide to take different approaches in seeking to achieve this objective.

¹⁴⁵ Each of article 35(4) of Directive 2009/72/EC and article 39(4) of Directive 2009/73/EC require that the Member States individually designate a National Regulatory Authority to regulate the electricity and gas markets, respectively (which may be the same entity, such as is the case in GB). See Appendix 2.1: Legal and regulatory framework.

¹⁴⁶ Schedule 1 of the Utilities Act 2000.

¹⁴⁷ Section 34(3)(b) of GA86 and section 47(2)(b) of EA89.

¹⁴⁸ Section 23(5) of GA86 and section 11A(5) of EA89.

¹⁴⁹ Section 34(3)(a) of GA86 and section 47(2)(a) of EA89.

145. Recognising the complexity of Ofgem’s statutory duties and objectives under GA86 and EA89, in 2013 DECC was granted by law the power to designate¹⁵⁰ a statutory Strategic Policy Statement (SPS)¹⁵¹ in order to provide Ofgem with a clear steer concerning the government’s long-term strategic vision.¹⁵² The objective of the SPS is to provide more clarity about the respective roles of Ofgem and government, the strategic context for Ofgem’s independent regulatory role, and greater confidence that policy and regulation will be consistent and coherent. This reform followed the 2011 Ofgem Review,¹⁵³ which found that the regulatory framework of the gas and electricity markets has struggled to keep pace with wider policy developments, in spite of governments attempts to address this issue by revising Ofgem’s duties. DECC published a draft SPS in August 2014, but has not yet exercised its power to designate that document. While GA86 and EA89 establish parameters for Ofgem’s regulatory action, it is important to note that primary legislation leaves Ofgem discretion to decide what constitutes the appropriate level of intervention in each regulatory context.¹⁵⁴
146. Ofgem has general duties¹⁵⁵ to keep the gas and electricity markets under review and to collect information necessary for the effective performance of its functions.
147. Licences are the primary means by which Ofgem regulates, and enforces obligations placed on, the relevant operators in the gas and electricity markets. For these purposes it has the general power to:
- (a) grant licences;¹⁵⁶
 - (b) modify any of the SLCs as it considers necessary;¹⁵⁷ and

¹⁵⁰ Ofgem must have regard to the strategic priorities set out in a designated SPS when carrying out its regulatory functions. Section 132 of Energy Act 2013.

¹⁵¹ Section 131 of Energy Act 2013.

¹⁵² Specifically, DECC must designate an SPS for the purpose of setting out: (i) the strategic priorities of government for energy policy; (ii) the outcomes to be achieved as a result of those policies; and (iii) the roles and responsibilities of the persons (whether the Secretary of State, Ofgem or other persons) involved in the implementation of those policies. Sections 131 to 138 inclusive of Energy Act 2013. The SPS designated pursuant to this power must be reviewed by the Secretary of State every five years. Section 134 of Energy Act 2013. The power to designate an SPS replaced the Secretary of State’s previous power, established under the Utilities Act 2000, to issue non-binding social and environmental guidance to Ofgem.

¹⁵³ DECC (July 2011), [Ofgem Review: Final Report](#).

¹⁵⁴ In certain contexts, this has resulted in a situation in which the powers of DECC and Ofgem overlap. For example, Ofgem’s general power under section 23 of GA86 and section 11A of EA89 to modify SLCs overlaps with the power granted to DECC under section 84 of the Energy Act 2008 to modify SLCs for the purpose of facilitating access or the efficient use of a transmission system.

¹⁵⁵ Section 34 of GA86 and section 47 of EA89, respectively.

¹⁵⁶ Section 7 of GA86 and section 6 of EA89.

¹⁵⁷ Section 8 of GA86 and section 8A of EA89.

- (c) modify the conditions of any licence, or the licences of all licensees of a certain category.¹⁵⁸
148. Ofgem has the power to sanction a licensee for the breach of any relevant licence condition or requirement by imposing a penalty of up to 10% of the annual turnover of the licensee. Ofgem also has powers to impose enforcement orders and, since 2014, consumer redress orders.
149. DECC has the power to alter the scope of licensable activities, thus permitting it to broaden or curtail the scope of the regulated energy sector.¹⁵⁹ Similarly, in specific instances, DECC may grant an exemption from the obligation to hold a licence under either GA86 or EA89.¹⁶⁰ Also, in limited circumstances set out by law, it may modify licence conditions for the purpose of implementing a particular policy objective (for instance policy objectives linked to liberalisation of the energy market, which it has used in the past to implement the NETA and BETTA reforms).¹⁶¹

Observations relating to Ofgem's and DECC's respective powers and responsibilities

150. Policy objectives may be implemented by a combination of measures taken by DECC (mainly through legislation), Ofgem (mainly through licence conditions) and the industry (through constrained self-regulation of codes). In principle, DECC is responsible for setting policy objectives. However, in view of its powers, duties and objectives, Ofgem inevitably takes decisions that develop further these policy objectives, and go beyond mere implementation. In practice, the delineation between the powers and roles of DECC, Ofgem and the industry are naturally blurred. However, this lack of clarity may be inevitable and independent regulation is going to be a hard model to sustain in an environment where policy goals are changing dramatically. It is not clear that this problem is avoidable.
151. Regulation must be implemented in a coherent manner and at a sufficient pace to react to market developments and wider policy changes, which suggests that it would be beneficial to centralise the powers to regulate in the hand of one authority. However, this should not be achieved by undermining the independence of Ofgem, which is essential to guarantee a fair playing

¹⁵⁸ Section 23 of GA86 and section 11A of EA89.

¹⁵⁹ Sections 43 and 88 of Utilities Act 2000 added new section 41C to GA86 and new section 56A to the EA89, respectively.

¹⁶⁰ Section 5 EA89 and section 6A GA86.

¹⁶¹ For instance, the legal basis for the development of the CUSC, the BSC and MRA is section 68 of the Utilities Act 2000 which granted DECC the power to modify any category of electricity SLC for the purpose of implementing NETA.

field. Also, the complexity of the industry, and the technical constraints that characterise it, mean that certain changes cannot be implemented by DECC or Ofgem without involving the industry in the design of these changes.

152. As set out in paragraph 143 above, DECC has a number of tools that it can use to influence Ofgem's action. However, short of regulating a particular area by way of statutory instruments, there are no formal powers for DECC to direct Ofgem to implement a specific change, nor clear formal processes for Ofgem and DECC to discuss transparently a strategy for the implementation of DECC's policies. There might also be instances where measures covering different areas of regulation adopted by DECC and Ofgem independently might overlap and possibly be inconsistent with each other.
153. In the following paragraphs we discuss three case studies illustrating situations in which implementation of policy goals was delayed (or sub-optimal) due to a lack of coordination between DECC, Ofgem and the industry.

Delayed implementation: 17-day switching and P272

154. These two case studies (Annex A of this appendix) relate to DECC's smart meter agenda. 17-day switching and half-hour settlement were seen as two measures necessary to deliver certain important benefits of smart meters. However, DECC decided not to implement these supporting measures itself by way of secondary legislation, instead leaving this task to Ofgem and the industry. In both cases, DECC amended SLCs to support its smart agenda. However, in the case of P272 it did not mandate the use of data from smart meters to settle Profile 5-8 customers. A long and costly industry modification process had to be initiated to allow for the use of data from smart meters to settle these customers. For 17-day switching, DECC's changes to SLCs could not be enforced. To rectify this issue, Ofgem had to amend SLCs to make three-week switching a licence obligation on suppliers rather than customers.
155. Both cases show that DECC used its power to only partially implement policy changes and that later intervention by Ofgem or industry was needed to fully implement these policy changes. If DECC had entirely delegated implementation to Ofgem, the latter could have arguably implemented more efficiently the necessary changes to allow faster switching and half-hourly settlement for Profile 5-8 customers.

Poorly coordinated regulatory interventions: capacity market and EBSCR

156. A good illustration of the interplay between DECC's and Ofgem's measures relates to the EBSCR reform carried out shortly after DECC's capacity market (see also Appendix 5.1: Wholesale electricity market rules). In this case, Ofgem intervention to reform cash-out rules, although covering a different aspect of the market, had a clear interaction with the capacity market. More specifically, both measures originally sought to remedy the 'missing money' problem. We note that the coexistence of these two mechanisms reflects two different approaches. On the one hand, DECC's capacity market seeks to resolve the problem by creating a competition for the market for capacity, while Ofgem, through the cash-out reform, sought to solve this problem through competition in the market for energy.
157. We understand that DECC and Ofgem have collaborated in order to ensure that these two measures would not lead to overcompensation of capacity providers. They reached the view that capacity providers would take into consideration future expected revenues under the reformed cash-out mechanism when bidding for capacity market contracts, in order to be more competitive in the auction. This point was not challenged by the European Commission within the context of its assessment of the capacity market under State aid rules.
158. In Section 5, we have however identified concerns arising from the interaction of the two measures which might lead to conservative bidding in the capacity market auctions (due to the uncertainty of future revenues under the reformed cash-out rules) and ultimately the overcompensation of certain capacity providers. We believe that a more coordinated solution to solve the 'missing money problem', with more transparency (and appropriate consultation phases), could have led to the development of solutions that are less complex and less likely to introduce unintended consequences.

Annex A: Code governance case studies

Introduction

1. In hearings, we identified that code changes that appear to make very good sense from the point of view of operating well-functioning gas and electricity markets or from the point of view of encouraging entry and innovation (eg changes to settlement arrangements for gas and electricity) have had a lot of trouble in being agreed and implemented
2. This led us in the UIS to formulate a new theory of harm that seeks to examine whether features of the code governance process or of the wider regulatory framework lead to an adverse effect on competition.
3. We have formulated two distinct hypotheses, which are:
 - (a) that code changes which have substantial financial consequences – and possibly differential impacts – for those ‘around the table’ tend to face many difficulties to get through the governance process in a timely way; and
 - (b) that unclear roles and responsibilities and lack of coordination between Ofgem and DECC has produced overlapping and possibly redundant code modifications.
4. We examine these hypotheses with the use of case studies.
5. We asked Cornwall Consulting to produce detailed case studies of the following modifications:
 - (a) P272.
 - (b) Project Nexus.
 - (c) The code modifications relating to transmission losses.
 - (d) 17-day switching.
 - (e) The gas SCR.
 - (f) EBSCR.
6. These were chosen with our hypotheses in mind:
 - (a) P272 – a possible example of a change whose principles are clear but which has been slow.

- (b) Project Nexus – a possible example of a change whose principles are clear but which has been slow.
- (c) The code modifications relating to losses – a possible example of slow change; also a possible example of Ofgem having to negotiate conflicting goals.
- (d) 17-day switching – a possible example of the code change mechanism operating smoothly when Ofgem exerts strong executive power (changes to standard supply licence conditions) and the threat of primary legislation is very present.
- (e) The gas SCR – a possible example of slow and difficult code and SLC changes when Ofgem exerts strong executive power.
- (f) EBSCR – a possible example of slow and difficult change even with the SCR modifications.

Lessons from the case studies

P272

Summary of the issues

7. In April 2009, DECC modified the standard conditions of the electricity supply licence.¹⁶² It mandated that from 6 April 2014 all meters for Profile 5-8¹⁶³ customers must be advanced, capable of recording half-hourly consumption data and of being read remotely. However, the supply licences did not mandate that half-hourly (HH) data is actually collected and used in settlement.
8. Before P272 was raised, the Profiling and Settlement Review Group (PSRC), a sub-committee of the BSC panel, considered how profiling and settlement arrangements could be modified to account for the development of smart and advanced meters. Its cost-benefit analysis,¹⁶⁴ published in December 2010, indicated that mandating HH settlement by 6 April 2014 for Profile 5-8 customers would incur costs of £35.1 million (central cost estimate) for the industry and deliver potential benefits of £85 million over the next five years. The analysis was based on the assumption that changes to the half-hourly

¹⁶² DECC exercised powers it has under section 88 of the Energy Act 2008 to effect these licence changes.

¹⁶³ These are larger non-domestic customers. These customers are currently settled based on estimates of their consumption. See Appendix 8.6: Gas and electricity settlement and metering.

¹⁶⁴ Elxon (2010), [Profiling and Settlement Review: cost benefit analysis](#).

distribution use of system (DUoS) charging regime would be implemented before April 2014.

9. Based on this analysis, the PSRC recommended that HH settlement should be mandated for Profile 5-8 customers. However, its recommendation was not taken forward by the BSC panel.

Summary of the process

10. SmartestEnergy, a small electricity supplier to large industrial and commercial organisations, raised P272 in May 2011.
11. Their proposal sought to mandate that Profile 5-8 customers must be settled using HH actual data from their advanced and smart meters rather than profiles by 1 April 2014.
12. In raising P272, SmartestEnergy identified the need to change the structure of the DUoS charges, as previously identified by the PSRC. Further, it considered that for HH settlement to be effective by April 2014, it was important for the two initiatives to be conducted in parallel.¹⁶⁵
13. In June 2011, a working group was set up by the BSC panel to consider P272. It carried out an industry impact assessment and held two working group assessment consultations.
14. During the course of the progression of P272, an alternative proposal was raised by the working group. It was identical to the original, apart from the implementation date, which was set at 1 April 2015.
15. On 12 January 2012, the working group stated that it was supportive of P272, but concluded that until the issues with DUoS were resolved, implementing P272 would not be viable.¹⁶⁶ It therefore recommended that P272 and its alternative should be rejected.
16. In March 2012, Ofgem asked the working group to undertake further scenario modelling and provide additional information so as to better understand and quantify the costs and benefits associated with P272. A new approach to

¹⁶⁵ A number of consequential MPs to other industry codes, including the BSC, DCUSA and CUSC, were necessitated by P272.

¹⁶⁶ A majority of the P272 modification working group, as reported in the [final modification report](#), considered that issues with DUoS charges and a lack of aggregated data were fundamental 'show-stoppers' for P272, and some modification working group members believed that until these issues had been addressed P272 could not be approved.

assessing the costs and benefits associated with P272 was developed by Elexon and the working group with guidance from Ofgem.¹⁶⁷

17. Based on responses to two consultations, the working group delivered a cost-benefit analysis report of P272 in November 2012.¹⁶⁸ This estimated that the costs would range from around £46 million to £199 million by the end of 2020 and that in the same period benefits of between £71 million and £198 million could be realised by industry.
18. The report said the wide spread of costs was due to the range of costs submitted by suppliers and, to a lesser extent, distribution businesses. The broad range of benefits was due to the uncertainty surrounding the hypotheses and the sensitivity to their assumptions in the cost benefit analysis model.
19. Given the uncertainty surrounding costs and benefits of P272, the BSC panel made its final recommendation that P272, and its alternative, should be rejected at its meeting on 13 December 2012.¹⁶⁹
20. Following the BSC's Panel recommendation to reject both proposals, Ofgem decided to undertake its own regulatory impact assessment and said, in October 2013, that it was 'minded to' approve the alternative modification.¹⁷⁰
21. Ofgem concluded that, for those impacts it quantified, the proposal was 'broadly cost-neutral' for consumers. However, it considered that its quantitative analysis provided a conservative estimate of the cost savings for consumers, particularly those from demand-side responses.
22. On 6 February 2014, Ofgem issued a direction to the BSC panel¹⁷¹ to consult on a new implementation date, as it considered DUoS charging arrangements were not fit for purpose¹⁷² to allow Profile Classes 5-8 to move from NHH to HH settlement. It recommended P272 should be targeted for implementation

¹⁶⁷ See BSC panel 8 March 2012.

¹⁶⁸ See BSC panel 8 November 2012.

¹⁶⁹ See BSC panel 13 December 2012.

¹⁷⁰ See Ofgem [Balancing and Settlement Code \(BSC\) P272: Mandatory half-hourly settlement for Profile Classes 5-8 – draft impact assessment for consultation](#).

¹⁷¹ See Ofgem, 6 February 2014.

¹⁷² Distribution network operators (DNOs) calculated DUoS charges for HH customers on a site-specific basis, one bill per Meter Point Administration Number (MPAN). If P272 were implemented without changes to the DUoS charging structure then all metering systems within Profile Classes 5-8 would need to be billed individually by DNOs. This had the potential to increase costs significantly. Further, HH metering systems typically incur higher charges than NHH, which would increase the costs to suppliers and provide a disincentive to move.

between April and June 2016. This was to allow its decision¹⁷³ to take full account of the ongoing proposed changes to DUoS charging arrangements.

23. Finally, on 29 October 2014 (nearly three and a half years after the initial MP), Ofgem approved¹⁷⁴ the P272 Alternative Modification for implementation on 1 April 2016.
24. The BSC panel has since written to Ofgem and asked (20 March 2015) to delay the implementation of P272 by 12 months. On 20 April 2015, Ofgem decided not to approve this extension request.¹⁷⁵
25. Following Ofgem's decision not to extend the implementation date of P272, RWE raised P322¹⁷⁶ to propose new arrangements for migrating Profile 5-8 customers to HH by 1 April 2016. Ofgem is currently considering their proposal.

What does the case study teach us about the governance process?

26. The modification process has been very slow. The implementation date of 1 April 2016, agreed by both industry and Ofgem, is now at risk.
27. The implementation of this modification requires significant changes to electricity suppliers' IT systems as well as changes to Elexon's central IT systems. The changes are also likely to have different commercial impacts on different players simply because of the composition of their customer portfolios. One supplier might by chance find itself with a high proportion of customers that are more expensive to serve on a HH settlement basis.
28. Additionally, the costs of the changes might be large and unevenly distributed between suppliers. Incumbents are likely to incur larger direct costs as their IT systems are older and will require major upgrades.¹⁷⁷
29. Together with Project Nexus (see below), P272 supports our hypothesis that the current system of constrained self-regulation of the industry codes does not work well when changes have substantial financial costs, which are unequally distributed between players.

¹⁷³ The regulator approved DCP179, which amended the DUoS tariff structure, in October 2014.

¹⁷⁴ See [Ofgem, 29 October 2014](#).

¹⁷⁵ See [Ofgem, 20 April 2015](#).

¹⁷⁶ See [Ofgem, 7 May 2015](#). P322 has been granted 'Urgent' status, which means Ofgem can deviate from the normal modification process.

¹⁷⁷ Some parties reported to us that the costs of implementing P272 are large and disproportionately distributed amongst the Six Large Energy Firms

30. This could disadvantage new entrants and small players, whose business models are built on providing new and innovative products, which require settlement processes based on actual data from smart meters. It is not clear, however, that the new entrants and small players would face any barriers if HH settlement were available on non-discriminatory terms to them without being mandated.
31. Moreover, it appears that a clearer split of roles and responsibilities between Ofgem and DECC could have avoided this long and costly modification process. DECC, had it seen the benefit of doing so, could have mandated that HH data had to be collected and used in settlement, when it modified licence conditions in 2009.

Project Nexus

Summary of the issues

32. Project Nexus is a long running work stream that looks to replace the UK Link system and introduce new gas settlement rules. The UK Link system, operated by Xoserve,¹⁷⁸ is primarily used for the charging and settlement process in the GB gas market.¹⁷⁹
33. Gas settlement systems have remained largely unchanged since the retail sector was opened to competition in the late 1990s.¹⁸⁰ Ofgem provided gas distribution networks with funding for the replacement of systems under the Gas Distribution Price Control 2013-17.¹⁸¹
34. The current settlement arrangements might lead to inaccurate charging of gas transportation and energy balancing costs for non-daily metered customers.¹⁸² This in turn might provide inaccurate price signals to suppliers and distort their incentives to introduce new products. It might particularly disadvantage

¹⁷⁸ Xoserve, owned by the five major gas transporters in Britain – National Grid, Northern Gas Networks, Scotland Gas Networks, Southern Gas Networks and Wales & West Utilities – and National Grid's gas transmission business, manages all the key data associated with the majority of Britain's 22 million gas meter points.

It provides energy allocation, invoicing and data services for gas transporters and shippers.

¹⁷⁹ For a discussion of gas settlement and metering processes in the GB market, please see Appendix 8.6: Gas and electricity settlement and metering.

¹⁸⁰ See Ofgem, [The GB gas retail market](#).

¹⁸¹ Ofgem (July 2012), [Open letter to gas distribution networks on Project Nexus gas settlement reforms](#), paragraph 4.

¹⁸² The current settlement process differs for daily and non-daily metered customers. Daily metered customers are settled on actual daily consumption. Customers who do not have their meter read on a daily basis (the vast majority of customers) are settled on estimated annual consumption quantities rather than actual consumption.

suppliers with a small and undiversified customer base, who could face higher charges.

35. When implemented, Project Nexus will supersede the existing settlement arrangements and replace them with a more up-to-date system. The main objectives of the changes are:
- (a) to reduce the discrepancy between actual and estimated annual gas consumption for non-daily metered customers;
 - (b) to ensure more accurate allocation of transportation network charges between gas shippers; and
 - (c) to ensure that the new systems can use information from smart and advanced meters and lead to more accurate invoicing and settlement.
36. Although in principle having a settlement system that is cost-reflective promotes competition and incentives suppliers to offer innovative products, the implementation of Project Nexus has faced many obstacles.

Summary of the process

37. The Project Nexus working group began meeting in 2009 and changes to the UK Link were debated extensively. In a four-year industry-wide consultation, gas shippers and gas transporters were asked about their requirements for the new system. A set of business requirements were developed and progressed through modifications of the UNC.¹⁸³
38. Six initial modifications, of which one was withdrawn and merged, were raised between August 2011 and September 2012 to enact the key requirements identified during the consultation process.¹⁸⁴
39. The UNC Panel and Ofgem have approved these modifications between January 2014 and March 2015¹⁸⁵ and an implementation date, 1 October 2015, has been agreed.¹⁸⁶
40. Major changes to the UNC will include:

¹⁸³ Xoserve (2014) [Business Requirements Definition](#) for Project Nexus.

¹⁸⁴ See [Joint Office of Gas Transporters for all modifications raised under Nexus](#).

¹⁸⁵ [Ofgem approved the last of these modifications on 15 March 2015](#).

¹⁸⁶ See [Ofgem \(2014\), Uniform Network Code \(UNC\) 432: Project Nexus – Gas Demand Estimation, Allocation, Settlement and Reconciliation reform](#).

- (a) four settlement products ('classes') for shippers to choose between – time-critical daily metered (DM), non-time-critical DM, batched daily and periodic meter readings;
 - (b) individual meter point reconciliation for all classes of meter point;
 - (c) apportionment of unidentified gas across all classes of site;
 - (d) monthly recalculation of annual quantities for all meters where a valid read has been successfully submitted by the shipper within the month; and
 - (e) retrospective adjustment when meter/read data is updated and the shipper wishes previous erroneously submitted data to be overwritten.
41. After the approval of these modifications, two more modifications about Nexus' implementation timetable were proposed by National Grid on 7 March and 26 August 2014. National Grid proposed to delay the implementation date of Project Nexus until 4 April 2016.¹⁸⁷
42. This followed concerns from Xoserve that the concurrent delivery of Project Nexus and the changes to Xoserve's systems, as part of the EU Capacity Allocation Management, posed an 'exceptionally high level of risks'.
43. More recently, Ofgem received representations from the industry that the 1 October 2015 implementation date is at risk. On 6 February 2015, it published an open letter¹⁸⁸ where it stated that it had decided to strengthen the governance, management and assurance of the project by:
- (a) procuring on behalf of industry, project management and assurance manager to provide independent advice on the delivery of Project Nexus; and
 - (b) setting up a new industry steering group with the mandate to make decisions or recommendations on Project Nexus implementation issues.
44. The new industry steering group has met three times since inception. On 1 May 2015, it received an interim report from PwC.¹⁸⁹ The report set out PwC's view that 1 October 2015 is unlikely to be a viable implementation date for

¹⁸⁷ See P0491 [Change Implementation Date of Project Nexus to 1 April 2016](#).

¹⁸⁸ Ofgem (February 2015), [Strengthening Project Nexus governance, management and assurance](#).

¹⁸⁹ See Ofgem, [18 May 2015](#).

Project Nexus. This is mainly due to organisations not having sufficient time to test their own systems in advance of joining market trials.

What does the case study teach us about the governance process?

45. The industry has been slow in reaching an agreement on the requirements for the new systems to replace UK Link, in agreeing modifications to the UNC and in implementing the changes agreed.
46. Although part of the delay can be attributed to the uncertainty relating to the roll out of smart-meters, as recognised by Ofgem¹⁹⁰ in its open letter to gas distribution networks on 31 July 2012, the delays since then are difficult to justify.
47. Following the CGR of 2010, Ofgem acquired powers to lead complex changes to industry codes but decided not to lead on the implementation of Project Nexus. In its open letter to gas distribution networks¹⁹¹ and its Smart Meters Work Programme,¹⁹² both published on 31 July 2012, it noted industry's commitment to the development of the reform options but it also expressed concerns at the slow pace of progress.
48. Industry's failure to make the necessary preparations to deliver Project Nexus follows a similar failure in the delivery of electricity settlement reform for Profile 5-8 customers on time (P272).
49. Like P272, Project Nexus is likely to have large distributional consequences and there is no reason for the majority of parties to agree or to promote change.
50. Further, the current price control regime might not provide sufficient incentives for the gas transporters to invest in a major upgrade of their systems.
51. The slow progress and the now likely delay to the implementation of Project Nexus have affected gas shippers and suppliers differently. Small players supplying a specific group of customers – pre-metered, for example – have been unable to benefit fully from offering new products and have therefore been adversely affected by the lack of progress.

¹⁹⁰ Ofgem (July 2012), [Open letter to gas distribution networks on Project Nexus gas settlement reforms](#), paragraph 4.

¹⁹¹ Ofgem (July 2012), [Open letter to gas distribution networks on Project Nexus gas settlement reforms](#), paragraph 4.

¹⁹² Ofgem (2012), [Promoting smarter energy markets: a work programme](#), page 28.

52. More executive powers over the implementation of major system changes by Ofgem could have avoided some of the delays of Project Nexus. Under the current industry governance structure, Ofgem has limited implementation powers.

17-day switching

Summary of the issues

53. When a customer decides to switch supplier, the current change of supplier processes involve a number of pieces of data being exchanged between the incumbent supplier and a newly appointed metering agent. The process differs between gas and electricity and is quite complex.¹⁹³
54. This complexity can lead to delays, errors and costs. This, in turn, may have an impact on customers' confidence and their propensity to switch.
55. In November 2011, in response to the third Energy Package, the government amended SLC 14A of the electricity and gas supply licences.¹⁹⁴ The changes required suppliers to introduce a term in their contracts with customers providing for switching to be made within 21 days.
56. Two years later, DECC, in its Annual Energy Statement 2013,¹⁹⁵ challenged the energy industry to deliver faster switching times without compromising quality of service, consumers rights or increasing the cost of bills.
57. On 3 December 2013, Ofgem issued a consultation on enforcing three week switching.¹⁹⁶ It proposed to modify SLC 14A and make it an explicit licence obligation on suppliers rather than a contractual requirement with consumers. Ofgem was concerned¹⁹⁷ that suppliers had not been consistently meeting the three week switching requirement and so proposed amending SLC 14A to require:
- (a) suppliers to take all reasonable steps to ensure that a customer's switch to a new supplier happens within three weeks; and

¹⁹³ Please see Appendix 8.6: Gas and electricity settlement and metering.

¹⁹⁴ See the [Electricity and Gas \(Internal Markets\) Regulations 2011](#).

¹⁹⁵ DECC (2013), [Annual Energy Statement](#).

¹⁹⁶ Ofgem, 3 December 2013, [Enforcing three week switching](#).

¹⁹⁷ Ofgem's own analysis, based on data provided by large domestic suppliers for the period Q1 2012 to Q1 2013, showed that the proportion of domestic switches taking longer than three weeks was over 20% in electricity and over 80% in gas. See: Ofgem (December 2013), [Enforcing three week switching](#).

(b) that the three weeks will start either at the end of the cooling-off period¹⁹⁸ or immediately after any agreement between the customer and the supplier to start the transfer during the cooling-off period.

58. On 9 April 2014, Ofgem published a statutory consultation on licence modifications to enforce three week switching.¹⁹⁹ This change was approved on 4 July 2014²⁰⁰ and implemented on 1 September 2014.
59. More recently, Ofgem has announced its decision to introduce next-day switching by 2019²⁰¹ and launch a SCR later this year.

Summary of the process

60. This policy drive to allow for faster switching resulted in a number of changes to gas and electricity industry codes.
61. Two modifications to gas industry codes were raised in January 2014.²⁰² Both were approved by the relevant Panels, received approval from Ofgem on 30 April 2014²⁰³ and were implemented on 7 November 2014.
62. Similarly for electricity, modifications were raised in November 2013,²⁰⁴ approved by the relevant Panels and by Ofgem, and then implemented on 6 November 2014.²⁰⁵
63. All together, these modifications reduced switching times for both gas and electricity from five weeks to 17 days.

What does the case study teach us about the governance process?

64. The process for these code modifications was relatively smooth and quick, compared to more complex issues such as Project Nexus and P272, analysed in the previous sections.

¹⁹⁸ A 'cooling-off' period grants a customer the right to withdraw from a contract without penalty during a defined window which starts on the date the contract is signed.

¹⁹⁹ Ofgem, 9 April 2014, [Statutory consultation on licence modifications to enforce three week switching and prevent erroneous transfers](#).

²⁰⁰ Ofgem, 4 July 2014, [Decision to modify the standard conditions of gas and electricity supply licences to enforce three week switching and prevent erroneous transfers](#).

²⁰¹ Ofgem (2015), [Moving to next day switching](#).

²⁰² See [P477 – Supply Point Registration – Facilitation of Faster Switching](#); and [iGT059DG – Supply Point Registration – Facilitation of Faster Switching](#).

²⁰³ See Ofgem, 30 April 2014, [Independent Gas Transporters Uniform Network Code \(iGT UNC\): Supply Point registration – facilitation of faster switching \(iGT059\)](#); and [Uniform Network Code \(UNC\) 477: Supply Point registration – facilitation of faster switching](#).

²⁰⁴ See, [MRA CP209 Amending Objection Resolution Period](#); [CP210 and CP211 Master Registration Agreement](#).

²⁰⁵ MRA CP209 was implemented earlier on [26 June 2014](#).

65. The initial change to the gas and electricity standard conditions mandated by the government was not successful in ensuring that customers could switch supplier within three weeks.
66. The following change to SLCs introduced by Ofgem and the threat of additional regulation by the government²⁰⁶ has probably driven the quick response from industry in this case. However, this was a relatively easy modification, with limited or no financial impacts for suppliers.
67. No impact assessment was undertaken by Ofgem or the industry during the industry codes modification process. Ofgem, in its initial consultation on enforcing three-week switching,²⁰⁷ considered that an additional impact assessment was not required. It concluded that its modifications to licence conditions would have not changed DECC's assessment that SLC 14A would have administration and system costs, but customers would benefit from faster switching and that better switching would improve competition.

Transmission losses

Summary of the issues

68. Under the current industry codes, the cost of electricity transmission losses²⁰⁸ are allocated to energy market participants in proportion to metered energy.
69. Losses are largely recovered by adjustments to BSC parties' metered volumes, which encourages electricity generators to produce approximately 1% more than contract, and suppliers to contract approximately 1% more than their customers demand.
70. The current methodology takes no account of the extent to which BSC parties contribute to overall transmission losses as a result of their locational decisions. There is no locational element to the metered volume adjustments, though competition and efficiency would be enhanced if there were.²⁰⁹

²⁰⁶ Under the Consumer Rights Directive (2011/83/EC).

²⁰⁷ Ofgem (December 2013), [Enforcing three week switching](#).

²⁰⁸ About 2% (CMA calculations, 2014) of total spending on electricity arise because energy is lost in transport at high transmission voltages. See Appendix 5.2: Locational pricing.

²⁰⁹ See the argument presented in Appendix 5.2 Locational pricing.

Summary of the process

71. Three attempts to introduce a location charging component under the BSC have been made between April 2002 and September 2011.²¹⁰ To date, all attempts have failed.
72. Three proposals were raised between April and October 2002 and one was approved by GEMA in January 2003.²¹¹ However, Ofgem's inability to meet the deadlines²¹² set by the BSC panel and its lack of powers to implement any of the modifications once these original deadlines had passed meant that the proposal could not be implemented.
73. Two years later, a series of four proposals were raised. The BSC panel voted to recommend rejection of all of them. Again Ofgem considered these proposals and was 'minded to approve' them, but failed to reach a decision within the timetable set by BSC panel. Ofgem had decided to conduct further analysis on the benefits of these modifications,²¹³ but the time required for the consultations led it once again to be challenged under judicial review.²¹⁴
74. There were two obstacles that had led to this series of failures:
 - (a) the imposition of timetables set rigidly by the BSC panel that committed Ofgem to a consultation process that was unrealistic;
 - (b) Ofgem's inability to extend timetables to assess and consult on proposals.²¹⁵
75. These obstacles were removed by the CGR of 2010.²¹⁶

²¹⁰ See Appendix 5.2: Locational pricing.

²¹¹ Ofgem (2003), [Introduction of zonal transmission losses on an average basis](#).

²¹² Ofgem's final decision was delayed by judicial review proceedings which were raised on the basis that the decision was procedurally flawed. See Ofgem (2004) for further details.

²¹³ Specifically, Ofgem had concerns over industry's assessment of the benefits of such proposals.

²¹⁴ In this case, one of the affected parties exercised its right to apply for the judicial review of Ofgem's decision on the grounds that Ofgem did not have the power to make a decision on the MP in question after the initial deadline set by the BSC panel for a decision had expired. The High Court accepted the party's challenge and held that Ofgem had no power to approve a MP to the BSC after an implementation or decision deadline set by the BSC panel had passed. We note that the BSC panel no longer has the power to set a binding implementation or decision deadline.

²¹⁵ Ofgem stated, in its letter of 17 July 2008, that it would not have appealed the judicial review decision. However, it said that the judgement raised important issues about governance decision making and implementation timetables and the flexibility available to Ofgem to consider BSC MPs, particularly where additional time was needed to evaluate concerns regarding the assessment of proposals.

²¹⁶ Specifically, the CGR of 2010 gave Ofgem a 'send-back' power whereby it could return a MP to the relevant code panel or network owner for further clarification or assessment.

76. A last attempt to modify the BSC to incorporate transmission losses was made in November 2008, when a MP was raised by RWE.²¹⁷ The BSC panel again recommended voting against the modifications as, amongst other things, it considered that the predicted benefits of the proposals might not be realised and that windfall gains and losses between generator and suppliers in the North and South might be disproportionate to the overall benefits.²¹⁸
77. Ofgem decided to undertake its own impact assessment and published it in May 2011.²¹⁹ It argued that the proposals would have large distributional impacts between individual generators and from consumers to suppliers. These had to be considered in the context of modest and uncertain benefits.²²⁰ Nevertheless, Ofgem judged that the MP did promote the BSC's objectives of promoting efficiency and competition.
78. However, it considered that the proposals might not operate in the interest of consumers and was not convinced that their approval would be in line with best regulatory practice.²²¹

What does the case study teach us about the governance process?

79. If Ofgem had not been bound by the timetable and implementation dates set by the BSC panel, modifications to the BSC would have probably been implemented when the MPs were raised for the first time.
80. The CGR of 2010 allowed more flexibility with timetables and gave Ofgem 'send-back' power. Ofgem rejected the most recent MP on other grounds, as discussed in some detail in Appendix 5.2: Locational pricing. Thus, the early modifications tell the story of a lack of executive power on the part of the regulator. The final modification never tested whether the changes of 2010 had resolved the earlier problems. We judge that it is unlikely, in view of the 2010 changes, that parties affected by a modification will be able to use timetables to frustrate code change progress in the future.

²¹⁷ [P229: Introduction of a seasonal Zonal Transmission Losses scheme.](#)

²¹⁸ Elexon (2008), [Modification P229: Introduction of a seasonal Zonal Transmission Losses scheme.](#)

²¹⁹ Ofgem (2011), [Impact assessment on RWE proposal P229 – seasonal zonal transmission losses scheme.](#)

²²⁰ See Section 4 and Appendix 5.2: Locational pricing for a critical assessment of Ofgem's arguments.

²²¹ We assess these arguments in some detail in Appendix 5.2 Locational pricing.

Gas SCR

Summary of the issues

81. In February 2010, Ofgem's Project Discovery²²² reported a number of concerns with the current gas arrangements, especially in the event of a gas emergency.
82. Almost a year later, in January 2011, Ofgem launched the Gas Security of Supply SCR.²²³ In its initial consultation paper said that its key objective for the review was to enhance security of gas supply by reducing the likelihood, severity and duration of a Gas Deficit Emergency.²²⁴
83. It also stated that the scope of the SCR would be the gas emergency cash-out price and, amongst the various options it intended to investigate and consult, considered:
 - (a) the case for introducing more dynamic cash-out prices in the event of a gas emergency, as to make these prices more reflective of market conditions. This would encourage gas suppliers/shippers to take out sufficient 'insurance', for example in the form of long-term contracts, storage capacity and demand-side responses (DSR);
 - (b) changes to the role of National Grid as system operator and the Network Emergency coordinator; and
 - (c) appropriately compensating (at the Value of Lost Load (VoLL)) firm customers if they were ever to be interrupted.
84. Ofgem noted that conclusions from its work were likely to involve modifications to the UNC and could lead to licence changes on the role of National Grid. It said it would implement the necessary code and licence modifications by directing changes to the UNC, pursuant to section 26C of the Gas Act 1986, and by making modifications to shipper and gas supply SLCs.

Summary of the process

85. The initial indicative timetable for the SCR envisaged a decision published in October 2011. However, that timescale slipped in July 2011²²⁵ when Ofgem

²²² Ofgem (2010), [Project Discovery – Options for delivering secure and sustainable energy supplies](#).

²²³ Ofgem (2011), [Launch Statement – Gas Security of Supply Significant Code Review](#).

²²⁴ A period when the supply of available gas is not sufficient to meet demand.

²²⁵ Ofgem (2011), [Update on Gas Security of Supply Significant Code Review](#).

said that it would issue a draft decision in autumn 2011 and then a final decision in spring 2012.

86. This reflected concerns raised by stakeholders in response to Ofgem's consultation. Stakeholders had concerns about the proposed pace of the SCR process, and considered, given the complexity of the issues being investigated, that there would not be sufficient time to consider the proposals under the original timetable.
87. In November 2011, Ofgem issued its draft policy decision and impact assessment.²²⁶ It considered that cash-out prices should be allowed to rise to an estimate of domestic customers' average daily VoLL (£20 per therm). It considered that its proposals should provide strong incentives to shippers and consequently suppliers to enter into interruptible contracts.
88. Ofgem's draft policy decision and the subsequent proposed final decision, published in July 2012, faced opposition from several parties. They were concerned about the effect of the proposals on the market and the potential for unintended consequences, which could expose shippers to unmanageable risks.
89. In July 2013, Ofgem published its updated proposed final decision where it modified some of its initial proposals in response to stakeholders' feedback. Amongst other things, it committed to exploring the use of the system operator to run DSR tenders to determine the VoLL of large consumers.
90. In its final proposals, issued in February 2014, Ofgem set out its final policy decision on a demand-side response mechanism as well as confirming its proposals on cash-out prices. It proposed the development of a centralised mechanism for DSR run by National Grid as the system operator.
91. Alongside its final decision, Ofgem issued a consultation on business rules on cash-out reform, draft text for UNC modifications, draft text for shipper and supplier licence changes and a draft licence obligation on National Grid Gas.
92. This was followed by a statutory consultation on changes to the gas transporter, shippers and supply licences in April 2014.
93. Finally, on 23 September 2014, Ofgem published its conclusions to the Gas SCR.

²²⁶ See Ofgem, [Gas SCR webpage](#) for documents mentioned in this sub-section.

94. The licence and UNC modifications will be effective on 1 October 2015 and National Grid is expected to run its first DSR trial tender over the summer²²⁷.

What does the case study teach us about the governance process?

95. The gas SCR process has been very long. It took Ofgem 45 months, since it launched the SCR (January 2011) to reach its final policy decision (February 2014), to direct and approve changes to the UNC and gas licences (September 2014).
96. Most of the delay can be attributed to the complexity of the reform package, which required several consultations, and the strong opposition from industry. During the SCR process Ofgem consulted extensively with industry stakeholders. Over 20 workshops and seminars were held between January 2011 and March 2014. Moreover, stakeholders had the opportunity to provide formal input during six separate consultations.²²⁸
97. Other factors might have also played a role in delaying the process. In a recent letter²²⁹ Ofgem recognised that it ‘might have underestimated the level of analysis and resource necessary for delivering the type of complex reforms that are undertaken forward under a SCR’.
98. While resistance to changes can be expected when there are large financial consequences for all the parties affected, findings from this case study also raise a question as to whether SCRs are the best instrument for delivering major reforms.
99. The Gas SCR package will now be implemented, but Ofgem had to use its power under the Gas Act to implement it.

²²⁷ Ofgem (20 May 2015), [Decision to direct National Grid Gas \(NGG\) to proceed with trialling a gas demand-side response \(DSR\) mechanism](#).

²²⁸ Ofgem (September 2014), [Gas Security of Supply Significant Code Review - Conclusions](#).

²²⁹ Ofgem (May 2015), [Further review of industry governance](#), Annex 1, paragraph 2.9.

EBSCR

Summary of the issues

100. In November 2011, Ofgem published a consultation on electricity cash-out, where it set out its concerns²³⁰ with current imbalances arrangements²³¹ and sought views on whether a SCR should be conducted and on its scope.
101. Respondents to this consultation agreed that there are problems with the current cash-out arrangements, but opinions differed on what the key issues are and what the scope of the SCR should be.
102. Based on the responses received, in March 2012, Ofgem published its decision to undertake the SCR with a wide ranging scope to allow it to consider issues beyond the immediate cash-out arrangements.
103. This was followed by Ofgem's EBSCR and an initial consultation on the options for reform on 1 August 2012. In the consultation, Ofgem recognised that the process would go beyond the normal 12 months period to around 18 months, from August 2012 to early 2014.
104. Between September 2012 and September 2013, Ofgem held five workshops where it discussed several aspects of the EBSCR with stakeholders. On 15 May 2014, it published its final policy decision and final policy decision impact assessment for the EBSCR.²³²

Summary of the process

105. Alongside the publication of the final decision, Ofgem, under new powers received after the CGR of 2010, issued a direction to National Grid to raise two BSC code modifications to implement its final policy decision.
106. National Grid raised P304 and P305²³³ on 25 May 2014. Two additional proposals, P314 and P316, were raised between September and November 2014, which sought to amend some aspects of the initial modifications proposed by National Grid.

²³⁰ See Ofgem, [Electricity Balancing Significant Code Review](#) webpage for all the documents mentioned in this sub-section.

²³¹ See Appendix 5.1: Wholesale electricity market rules.

²³² The final decision confirmed the regulator's intention to make cash out prices more marginal, to include a cost for disconnections in the prices, improve the way that reserve costs are priced and to move to a single cash-out price

²³³ See the [ELEXON website](#) for a description of these modifications.

107. A working group was set up for each proposal and all modifications were discussed extensively, with each group meeting between two and 12 times from May 2014 to April 2015. This was despite extensive industry consultation for Ofgem's proposals under the SCR powers. Why industry views had to be sought again for the very similar alternative modifications is not clear.
108. After extensive analysis, commissioned by the working groups (in addition to the impact assessments and other analysis conducted by Ofgem), the BSC panel recommended rejections of all proposals, except P316.
109. It argued that the modifications had differential financial impacts on parties, with a potential negative impact on independent suppliers and as such they would not facilitate promotion of competition. Further, it considered that the implementation of the proposals would also entail large financial costs for Elexon and National Grid, and it was not clear that these costs would outweigh benefits.^{234,235}
110. On 2 April 2015, Ofgem decided to approve P305 but rejected P316. This decision could have been appealed on its merits to the CMA, but it was not. Utilita, Ecotricity, Haven and First Utility²³⁶ all communicated with the CMA to say that they considered such an appeal, but that the financial risk of an adverse finding was dissuasively expensive. They asked us to consider whether an appeal process that was so burdensome to smaller players in particular was in the industry's interest.

What does the case study teach us about the governance process?

111. The timescale for completing the EBSCR has been longer than the indicative timetable anticipated by Ofgem (18 months). Both Ofgem's process, under SCR, and the industry-led modifications have taken longer than expected.
112. The overall process, since Ofgem's initial issue paper in November 2011, has taken 42 months to date, and yet it is not completed.
113. Significant financial resources (we do not have exact figures as these are not publically available) have been spent on analysing the impacts of the EBSCR. Both Ofgem and the BSC panel have undertaken their own analysis. Further additional costs have been borne by Code Administrators (again no access to

²³⁴ Section 5 provides our provisional view on whether the EBSCR reforms have had an adverse effect on competition.

²³⁵ See ELEXON (2015), [BSC panel meeting 12 March 2015](#).

²³⁶ More specifically, First Utility noted that the potential costs were too significant, and the outcome too uncertain given the modification in question was the outcome of an SCR.

publically available data) and industry parties for engaging in the modification process.

114. In our opinion, the SCR process has not worked well for delivering complex reforms, such as Electricity Balancing, that it was supposed to facilitate.
115. This case study supports our hypothesis that the current governance structure does not work when changes involve large and financial impacts on (all) parties.
116. Moreover, the interaction between the EBSCR and the electricity capacity market²³⁷ suggests a lack of coordination between Ofgem and DECC, which has led to poorly joined-up regulation.

Conclusions

117. When financial consequences of change for those around the table are significant, the governance process does not work well. All the case studies analysed support this hypothesis. This might have led to reduced product innovation (eg DSR and off-peak electricity tariffs) and adversely affected new entrants and small suppliers serving specific sub-groups of customers. Increasing Ofgem's executive power to implement major reforms might help fix this.
118. Our analysis also provides some support for our second hypothesis. The EBSCR, P272 and 17-day switching suggest an unclear division of roles and responsibilities between Ofgem and DECC. Specifically, EBSCR is an example where lack of coordination between Ofgem and DECC could lead to large payments from consumers to generators.
119. However, this lack of clarity may be inevitable; independent regulation is going to be a hard model to sustain in an environment where policy goals are changing dramatically for a sector. It is not clear that the problem we have found here is either systematic or avoidable.

²³⁷ See Section 5.

Annex B: Overview of categories of licensees subject to each industry code

Table 1: Gas

<i>Code</i>	<i>UNC</i>	<i>iGT UNC</i>	<i>SPAA</i>
<i>Code administrator</i>	<i>Joint office</i>	<i>Gemserv</i>	<i>Electralink</i>
<i>Licence</i>			
Transporter	X (SSC A11)	X (SLC 9)	-
Shipper	-	X (SLC 6)	-
Supply	-	-	X (SLC 30)
Interconnector	-	-	-

Source: Ofgem.

Note: An 'X' denotes that the category of licensee is subject to the code stated at the head of the column pursuant to a SLC applying to that category of licensee.

Table 2: Electricity

<i>Code</i>	<i>BSC</i>	<i>CUSC</i>	<i>GC</i>	<i>DC</i>	<i>DCUSA</i>	<i>STC</i>	<i>MRA</i>
<i>Code administrator</i>	<i>Elexon</i>	<i>NGET</i>	<i>NGET</i>	<i>ENA</i>	<i>Electralink</i>	<i>NGET</i>	<i>Gemserv</i>
<i>Licence</i>							
Generator	X (SLC 9)	X (SLC 19)	X (SLC 5)	X (SLC 6)	-	-	-
Transmission	X (SLC C3)	X (SLC C10)	X (SLC C14)	X (SLC C15)	-	X (SLC B12)	-
Distributor	X (SLC 20)	X (SLC 20)	X (SLC 20)	X (SLC 21)	X (SLC 20)	-	X (SLC 20)
Supply	X (SLC 11)	X (SLC 11)	X (SLC 11)	X (SLC 11)	X (SLC 11)	-	X (SLC 11)
Interconnector	X (SLC 3)	X (SLC 3)	X (SLC 3)	-	-	-	-

Source: Ofgem.

Note: An 'X' denotes that the category of licensee is subject to the code stated at the head of the column pursuant to a SLC applying to that category of licensee.

Annex C: Overview of principles set out in the Code Administration Code of Practice

Principles concerning general code administration

Principle 1: Code administrators shall be critical friends

1. Code administrators should act as a critical friend to ‘all with an interest in the code modification process’ and should pay particular attention to ‘underrepresented parties, small market participants and consumer representatives’. Code administrators should undertake a range of actions to fulfil the role of a ‘critical friend’, which include the following:
 - (a) **Actions to aid participation in the modification process.** Code administrators should provide education to all interested parties on the code modification process and include helpful explanatory information concerning the relevant codes on their websites. Additionally, code administrators should ensure that they are available to help all parties draft, review and discuss MPs.
 - (b) **Actions to ensure change coordination across codes where the implementation of a MP could cause inconsistencies between one industry code and another.** Code administrators are to contact other code administrators if a modification may affect the code that they administer (directly or indirectly).
 - (c) **Pro-active measures to champion the interests of small market participants and consumer representatives.** Code administrators should ensure that the viewpoints of underrepresented parties²³⁸ are ‘articulated and debated’ at working group and code panel meetings and included within reports produced by those bodies. Further, code administrators should take it upon themselves to raise ‘issues that are relevant to small market participants at the appropriate industry meetings’.

Principle 2: Documentation published by code administrators shall be in clear English

2. Code Administrators are to ensure that the purpose of each document published in the context of code modification is clear and that the language contained in modification documents is not overly technical. This principles

²³⁸ This term is not defined in the CACoP itself. Ofgem indicates in its CGR phase 1 final proposals that the term may refer to any party who is deemed by it to be resource-constrained or unable to engage in the code governance arrangements. Ofgem (March 2010), [Code Governance Review – Final Proposals](#), page 16.

also requires code administrators to ensure that a consistent structure for modification related documents is used, with consistent templates and contents.

Principle 3: Information will be promptly and publicly available to users

3. Code administrators should be transparent and make all non-confidential information related to modification processes available in a timely manner. Code administrators are also specifically required to:
 - (a) contact any trade organisations who may be impacted by a modification; and
 - (b) publish meeting dates for code modification working groups well in advance.

Principle 4: the CACoP will be reviewed periodically and subject to amendment by users

4. Under this principle, it is envisaged that at least once a year a 'group specifically convened for the purpose' will review the CACoP. Additional to this yearly meeting, code administrators are obliged to meet 'from time to time' in order to discuss:
 - (a) how the principles of the CACoP are being achieved;
 - (b) the results of Key Performance Indicator (KPI) reporting (see below); and
 - (c) best practice (undefined by the CACoP).
5. This principle states that any code administrator or code user may propose an amendment to the CACoP. Any proposed amendment must be consulted upon with all code administrators and code users and is subject to the approval of Ofgem.²³⁹

Principles concerning code modification

Principle 5: Code administrators shall support processes which enable users to access a 'pre-modification' process to discuss and develop modifications

6. Code administrators are to 'encourage industry debate' on shaping solutions. This is to be achieved 'through the use of open forums' and by code

²³⁹ Except for those MPs that Ofgem approves for one of the self-governance modification procedures (regular or fast-track).

administrators 'facilitating and advising users on issues'. Code administrators should also ensure that modification mechanisms are appropriately organised and that all notices, agendas, papers, presentations and minutes of relevant meetings are published online as early as practicable.

Principle 6: A proposer of a modification will retain ownership of the detail of their solution

7. Under this principle, only a proposer can amend their modification. Proposers also have the right to:
 - (a) withdraw their modification before the code panel has made its recommendation (any other user who has the right to propose a modification may adopt the withdrawn modification); and
 - (b) discuss the legal text of a modification before it is consulted upon.
8. This principle notes that while modification working groups have the power to develop alternative solutions they must also ensure the original solution is fully developed. Additionally, code administrators are obliged to manage the modification process and related documentation on behalf of industry in order to ensure that 'all views are captured and there is a consistency of approach to reporting'.

Principle 7: Code administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution

9. This principle grants code users an additional right to raise alternative solutions to a MP.²⁴⁰ Further, the principle states that there shall be no limit to the number of alternate solutions that may be proposed, that these must be raised 'prior or during the working group stage' and that they must be assessed 'with the same rigour' as the original proposed solution.

Principle 8: Estimates of implementation costs to central systems will be produced and consulted upon prior to a modification being recommended for approval

10. This principle makes it the default course that information relating to implementation costs is to be provided as part of the consultation process. The CACoP permits an exception to be made where the code panel considers that such a provision will cause 'unnecessary delay'. If information relating to implementation costs is provided, code administrators are obliged to ensure

²⁴⁰ This right is restricted to those code users who already have the right to raise a MP on their own behalf and is not granted to the proposer of the MP.

that it is provided in time for consultation and that it is provided in a consistent style.

Principle 9: Legal text will be produced and consulted upon prior to a modification being recommended for approval

11. Code administrators are to ensure that legal drafting of MPs is to be developed in time for consultation and that legal drafting is produced in a consistent style. This principle states that code panels may agree:
 - (a) not to produce the legal text of a modification in certain circumstances; and
 - (b) to bring minor corrections to the legal text at the time of making their final recommendation. Any changes made by the panel at this time which are not considered minor must be sent to the code administrator for the purpose of further consultation.

Principle 10: Modifications will be consulted upon and easily accessible to users, who will be given reasonable time to respond

12. All²⁴¹ modification processes are to include a consultation period that 'allows sufficient time for users to digest the information and provide a considered response'. To ensure the achievement of this objective, this principle requires:
 - (c) the default consultation period to be set at fifteen business days, with an obligation on code panels to extend this period in the event that the issue considered is complex;
 - (d) the default consultation period for an urgent modification to be set at five business days; and
 - (e) consultations to be open to all interested parties, not just code users.

Principle 11: There will be flexibility for implementation, to allow proportionate delivery time and realisation of benefits

13. Code administrators are to ensure that implementation dates 'allow sufficient time for all who are impacted, including the decision making body, to make necessary preparations'. To achieve this goal, code administrators should:

²⁴¹ With the exception of those modifications that are approved for the fast-track self-modification procedure.

- (a) ensure implementation approaches form part of the modification consultation;
- (b) ensure that the urgent modification process is not obstructed by ‘undue procedural barriers’; and
- (c) ensure that there is a process for handling housekeeping matters (either through a consent or fast-track self-governance process) that is cost efficient.

Principle 12: The code administrators will annually report on KPIs

14. Code administrators are to report the results of prescribed KPIs as part of the periodic review conducted in line with Principle 4. The KPIs include results that are to be collected via a customer survey which may be conducted by the code administrators jointly or by a third party appointed by the code administrators. The KPIs provided by the CACoP are shown in Figure 1 below.

Figure 1: List of KPIs for Principle 12

Activity	Measure
<i>Qualitative measures:</i>	
Critical Friend	Number and percentage of survey respondents who stated they were ‘satisfied’ or better with the assistance offered by the CA
<i>Quantitative measures:</i>	
Quality of assessment	Number and percentage of reports ‘sent back’ by the Authority
	Number and percentage of final decisions on which the Authority’s assessment: <ul style="list-style-type: none"> i) accords with the panel recommendation against the relevant objectives ii) conflicts with the panel recommendation owing to wider statutory considerations
Effective communication	Glossary and plain English summary to be provided with reports
	Average number of respondents to consultation
Efficient administration	Percentage of papers published outside of modification rules requirements
	Number and percentage of reports submitted to the authority in line with original timetable
	Number of extensions to timetable requested
	Average time between (non-urgent) proposal being raised and submitted for decision
	Average time between proposal being submitted for decision and decision being published
Implementation costs	Average time between decision and implementation (separately identifying systems and non-system changes)
	Number and percentage of reports for which implementation cost estimates were available for consultation
	Accuracy percentage difference (whether higher or lower) between estimated and actual implementation costs

Source: Ofgem (December 2013), [Code Administration Code of Practice, version 3](#).

Annex D: List of code administrators

Figure 1: List of current code administrators

Code	Acronym	Code Administrator	Industry sector	Modification Contact	Website
Balancing and Settlement Code	BSC	ELEXON	Electricity	elexon.change@elexon.co.uk 020 7380 4100	www.elexon.co.uk
Connection and Use of System Code	CUSC	National Grid Electricity Transmission plc	Electricity	CUSC.team@nationalgrid.com	www.nationalgrid.com/uk/Electricity/Codes/
Distribution Code	DCode	Energy Network Association	Electricity	david.spillett@energynetworks.org 020 7706 5124	www.dcode.org.uk
Distribution Connection Use of System Agreement	DCUSA	ElectraLink	Electricity	dcusa@electralink.co.uk Michael Walls, 0207 432 3017,	www.dcusa.co.uk
Grid Code	Grid Code	National Grid Electricity Transmission plc	Electricity	grid.code@nationalgrid.com	www.nationalgrid.com/uk/Electricity/Codes/
IGT Uniform Network Code	IGT UNC	Gemserv Ltd	Gas	IGTUNC@gemserv.com Modification Contact – Paul Roche (IGT UNC Representative) Telephone – 020 7090 1044	www.igt-unc.co.uk/
Master Registration	MRA	Gemserv Ltd	Electricity	helpdesk@gemserv.com	www.MRASCO.com
Agreement				Tel: +44 (0)20 7090 1029	
Smart Energy Code	SEC	Gemserv Ltd	Gas/Electricity	SECAS Helpdesk: 020 7090 7755 email: SECAS@gemserv.com	www.gemserv.com
Supply Point Administration Agreement	SPAA	ElectraLink	Gas	Beth Brown Telephone 0207 4323005	www.SPAA.co.uk
System Operator – Transmission Owner Code	STC	National Grid Electricity Transmission plc	Electricity	stc.team@nationalgrid.com	www.nationalgrid.com/uk/Electricity/Codes/
Uniform Network Code	UNC	Joint Office of Gas Transporters	Gas	enquiries@gasgovernance.co.uk 0121 2882107	www.gasgovernance.co.uk

Source: Ofgem (December 2013), [Code Administration Code of Practice](#), version 3.

Annex E: Industry code modification timeframes

Table 1: Modification timeframes and other illustrative statistics

<i>Indicator/Industry code</i>	<i>BSC</i> <i>(1)</i>	<i>CUSC</i> <i>(1)</i>	<i>UNC</i> <i>(1)</i>	<i>iGT UNC</i> <i>(2)</i>	<i>DCUSA</i> <i>(2)</i>	<i>GC</i> <i>(2)</i>	<i>STC</i> <i>(2)</i>	<i>DC</i> <i>(2)</i>	<i>MRA</i> <i>(2)</i>	
Ordinary modification procedure	Number of MPs raised	48*	60	161	6	32	3	2	7	106
	Number of alternative MPs raised	15	79	15	2	2	n/a	0	0	15
	Average number of days taken for Ofgem to reach a decision on whether to approve or reject a MP, where the recommendation from the Code Panel was unanimous	76	25	n/a	20	34	25	19.5	20	22
	Average number of days taken for Ofgem to reach a decision on whether to approve or reject a MP, where the recommendation from the Code Panel was not unanimous	24	72	n/a	25	31	n/a.	n/a	0	0
	Average number of days taken for Ofgem to take a decision on whether to approve or reject a MP, where one or more alternative MPs was proposed	56	82	n/a	25	27	n/a.	n/a	20	0
	Average number of days for a MP approved by Ofgem to be implemented by the network owner	152	31	104	123	25	25	5	20	21
Self-governance modification procedure	Number of MPs for which regular self-governance modification procedure approval was requested to Ofgem	11	13	n/a†	0	n/a§	n/a‡	0	n/a¶	0
	Number of MPs which qualified for the regular self-governance modification procedure	11	14	50	3	12	n/a‡	0	n/a¶	96
	Average number of days for a MP (which has qualified for regular self-governance) which has been approved by the code panel to be implemented by the network owner	64	47	22	59	53	n/a‡	n/a	20	90
	Average number of days for a MP (which has qualified for fast-track self-governance) which has been approved by the code panel to be implemented by the network owner	56	23	43	42	n/a¶	n/a‡	n/a	0	115.4

Source: NGET, Gemserv, ENA, Elexon, the JO, Electralink.

*Includes urgent modifications.

†UNC modifications are not required to apply to Ofgem – UNC Panel approves them, although Ofgem can object. This has not happened to date as Ofgem's views are taken into account by the UNC Modification Panel.

‡The GC does not have a regular self-governance or a fast-track self-governance process.

§An Ofgem representative is present at the DCUSA Panel meetings when the Panel decide whether a CP should be a part 1 (authority decision) or part 2 (self-governance) matter. The Ofgem representative will provide their view at the meeting.

¶DCUSA does not have fast-track self-governance MPs. There was one MP during the time period that was a part 2 matter (self-governance) which was raised as an urgent MP, however, it was deemed unnecessary and withdrawn from the process.

Notes:

1. In relation to the BSC, the CUSC and the UNC: this table only includes MPs raised after 1 June 2010.

2. In relation to the STC, the MRA, the DCUSA, the GC, the DC, the iGT UNC and the SPAA: this table only includes MPs raised after 1 December 2013.