Adapting regulation in a fast changing world
Setting the context

• New challenges need new approaches
  o significant changes since Utilities Act 2000 – 2003, 2008 and 2019 “targets”
  o public service, but ethics of public contract and social legitimacy dealt with implicitly
  o reality of politicisation and wider regulatory intrusion
  o better integration with governance, which needs rationalising

• Not just about social charter
  o clarity on wider and sometimes competing policy priorities
  o demonstrate customers are being treated fairly (“markets that work for all”)

• I will focus on energy where regulatory adaptability is being actively questioned and change promoted
  o long history with mixed lessons and unclear outcomes
  o First a bit about Pixie and a local perspective
Prognosis

From above growing view in energy that regulatory framework needs updating

- closer link between policy, regulation and codes (clean growth, industrial strategy, social equity, vulnerability)
- process that facilitates the participation of new types of player
  - adaption to social, economic, technological changes
- non-incremental changes in content across multiple codes

From below codes need overhaul

- slow to take decisions
- reactive to existing problems, rather than forward-looking in preparing for future changes (heat, transport etc.)
- overly complex with codes running to over 10,000 pages and weighing 50kg
- resource intensive, leading to a lack of inclusion and participation
- lack coordination and consistency preventing systemic changes to rules
- unwieldy - 11 codes, 6 administrators and 5 delivery bodies
A long history … (1)

- Utilities Act 2000 provided for establishment of GEMA but also social and environmental statutory guidance (SESG) (gas, section 10) (electricity, section 14)
  - various iterations since
  - most recently updated in 2011
- Ofgem has reported annually against this
- Ofgem review of 2010-11 recommended SESG “too vague” and should be replaced by new Strategy and Policy Statement (SPS)

- Energy Act 2013 provides for SPS:
  - set out strategic priorities in formulating energy policy
  - policy outcomes sought
  - implementation roles and responsibilities
- Ofgem must:
  - have regard to strategic priorities
  - report annually against SPS
  - set out in its forward work programme strategy for implementing the SPS
  - explain how it has contributed towards meeting policy outcomes
- To be reviewed every five years or after an election

SPS not adopted and SESG remains in place
A long history … (2)

• Feb 2008 Ofgem’s *Powering the energy debate*
• Led to initiation of Code Governance Review in November 2008
• Three phases and an important interlude:
  o Phase 1 2009-10, major policy reviews (SCRs), inclusion of charging methodologies, more self-governance, code of practice for 3 major codes
  o Phase 2 2012-13, extension to other codes, alignment of code administration
  o CMA retail market investigation where governance was found to have an adverse effect on competition
    ➢ additional powers for Ofgem, licensable activities, consultative board, independent adjudicator
  o Phase 3 June 2015-16 review of changes and further reforms
• But dropped by Ofgem early 2018
Joint energy codes review

- **Key focuses:**
  - process of providing strategic direction and making changes
  - purpose and content of codes
  - governance
  - transition

- A range of options being considered, with probability of a mixed solution:
  - process improvements to the status quo
  - substantial reform of the codes system
  - threat of “taking a different approach” – moving away from codes

- **November 2018:** joint review initiated
- **February:** initial consultation through workshops and webinar
- **May:** expect to issue consultation on proposals

There are clear interactions with other areas (e.g. the developing Retail Energy Code, Retail Market Review, Data Taskforce)

Work on the Codes Review expected to feed into the “summer” Energy Strategy white paper
Facing the “known unknowns”

“Disruptors”

“Incumbents”

• Energy Systems Catapult have set out the challenges well:
  o power sector being influenced by an increasing range of external social, technological, economic and political factors
  o it will need to encompass changes to physical energy flows, data flows and commercial value flows that to date have been governed by codes and regulations set in silos
  o system architecture needs to recognise new interfaces and procedures necessary to allow multi-party interactions
  o governance of change will need to be much more flexible and adaptive while maintaining the resilience for system and for all users, viz today’s net zero target report by CCC and probability of revisions to fourth and fifth carbon budgets
Some practical measures

- SPS (probably one for each economic regulator but within common framework), including updated social and environmental objectives (note net zero)
  - aspirational, not prescriptive (what we want to see)
  - clear statement of desired outcomes (where we want to get to)
  - backed up by shift to principles-based regulation and standards of conduct
  - don’t like concept of social licence to operate, but could remove doubt over what the deal is
  - licensed bodies expected to set out own compliance and programmes

- Requirement on regulators to report annually against the relevant SPS, probably with peer review
  - CCC-style model seems to be working well
  - potential role for National Infrastructure Commission?
  - note Scottish move of Just Transition Commission

- Clear, common objectives under codes aligned with SPS backed up by good practice guidelines/MoU

- Consolidation of codes where possible and code of practice for operators (critical friend)
  - Elexon has just published thoughts proposing three codes
  - irrespective of numbers, common good practice and procedural alignment
  - scorecards, incentives
Thank you for listening

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