

Guidance on Impact Assessments

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Overview:

This document provides guidance on Ofgem's approach to conducting impact assessments. The guidance has been revised to take account of best practice as it has developed, for instance in relation to sustainability issues, and it sets out Ofgem's approach to cost-benefit analysis.

Amongst other things, the guidance sets out the legislative background for producing impact assessments and outlines the basic framework that Ofgem will normally follow in producing them.

Whilst impact assessments are not determinative of the final policy decision that we make, they are a vital part of the policy-making process and provide a valuable framework for assessing the impact of important policy proposals.

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Context

This document provides guidance about how the Office of Gas and Electricity Markets (Ofgem) will conduct impact assessments (IAs). It replaces the previous guidance which was published in June 2005.

In December 2003 section 6 of the Sustainable Energy Act 2003 inserted section 5A into the Utilities Act 2000 (the Utilities Act). This new section placed a duty on the Gas and Electricity Markets Authority (the Authority)¹ to carry out IAs or to publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an IA. This duty applies where the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of its functions under Parts I of the Gas Act 1986 or the Electricity Act 1989 and it appears to the Authority that the proposal is "important" within the meaning of section 5A. The duty does not apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements of section 5A.

Conducting an assessment of impacts is an integral part of policy development and is not only about publishing reasons for a decision but about a structured approach to policy development and decision making. Effective consultation is at the heart of good policy development and that IAs have a significant role to play in this. An IA should, where appropriate, look at a range of possible options. To produce good quality IAs and help ensure Ofgem's policy development and resulting policy decisions are of the required quality, Ofgem will look to industry and other stakeholders to provide input through a process of constructive engagement.

Associated Documents

- "Sustainable Development Report", Ofgem, November 2007.
<http://www.ofgem.gov.uk/Sustainability/Documents1/Sustainable%20Development%20Report%20-%20Master%202007-10-30.pdf>.
- "Corporate Strategy and Plan 2007-2012", Ofgem, March 2007.
http://www.ofgem.gov.uk/About%20us/CorpPlan/Documents1/19247_2007%20Corp%20Plan.pdf.
- "Guidance on Impact Assessments - Revised Guidance", Ofgem, June 2005.
<http://www.ofgem.gov.uk/About%20us/CorpPlan/Documents1/10956-14805.pdf>.
- "A Review of Ofgem Regulatory Impact Assessments", George Yarrow, 2005.
<http://www.ofgem.gov.uk/About%20us/CorpPlan/Documents1/10954-14705.pdf>.

¹ Ofgem is the Office of Gas and Electricity Markets. Ofgem operates under the direction and governance of the Gas and Electricity Markets Authority (the Authority). The Authority's powers are provided for under different pieces of legislation, the key ones being the Gas Act 1986 (the Gas Act), the Electricity Act 1989 (the Electricity Act) and the Utilities Act 2000. In this document the terms Ofgem and Authority are used interchangeably.

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1. Introduction

1.1. Since December 2003 Ofgem has had a statutory duty to carry out, in certain circumstances, IAs concerning proposals which it considers to be “important” within the meaning of section 5A of the Utilities Act 2000 or to publish a statement setting out its reasons for thinking that it is unnecessary for it to do so. This document provides guidance about how Ofgem will conduct IAs.

1.2. IAs for those proposals likely to have the most significant impacts and effects will tend to be the most detailed and contain the most extensive analysis. Where Ofgem undertakes cost-benefit analysis, a key purpose will be to ascertain whether the costs of a proposal are proportionate to the benefits expected to result from it. IAs are not simply exercises in adding up costs and benefits and choosing the option that maximises the net benefit.

1.3. Ofgem considers that some issues are more amenable to realistic quantification than others. In many cases a properly justified quantification of costs and benefits may be hard to produce. Ofgem considers that IAs will always be a mixture of qualitative and quantitative assessments. Qualitative assessments do not indicate that an issue is less important. Rather, Ofgem wishes to avoid producing spurious quantification which could create a false impression of certainty. Where quantitative assessments are presented they will often be in the form of ranges and an indication will be given of the robustness of the assumptions.

Structure of the guidance

1.4. The rest of this document is structured in the following way:

- chapter 2 sets out the requirements for carrying out IAs under the Utilities Act 2000;
- chapter 3 outlines the circumstances in which Ofgem might additionally choose to carry out an IA;
- chapter 4 sets out Ofgem’s approach to consulting on IAs;
- chapter 5 sets out our approach to measuring impacts, costs and benefits;
- chapter 6 describes what an Ofgem IA will cover;
- chapter 7 sets out our approach for IAs relating to industry code and charging methodology proposals;
- appendix 1 summarises responses to the consultation;
- appendix 2 reproduces the current text of Ofgem's duty under the Utilities Act 2000 in full;

- appendix 3 lists other published guidance on IAs;
- appendix 4 summarises the Authority's duties and powers; and
- appendix 5 sets out how to comment on the consultation process, should you wish to do so.

1.5. Section 5A of the Utilities Act 2000 sets out when an IA must be produced and this is described in detail in chapter 2. The Authority's duty to have regard to the principles of best regulatory practice will also be relevant to its consideration of whether, when and how to undertake an IA. This is considered in chapter 3.

1.6. Any comments or questions about this guidance or comments or complaints about any IAs produced by Ofgem should be sent to:

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2. IAs produced under section 5A of the Utilities Act 2000

Chapter Summary

This chapter sets out the requirements on Ofgem when conducting IAs under section 5A of the Utilities Act 2000. In particular, it describes the sorts of criteria that Ofgem will consider when determining whether or not a proposal is important within the meaning of section 5A of the Utilities Act 2000.

2.1. Section 5A of the Utilities Act 2000 places a duty on the Authority to carry out IAs where:

- the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, and
- it appears to the Authority that the proposal is “important” within the meaning of section 5A.²

2.2. The section 5A duty does not apply where Ofgem considers that it is an urgent case and that it would be impracticable or inappropriate to comply with it. This could apply to urgent code modification proposals (see chapter 7).

2.3. Where section 5A applies the Authority must carry out and publish an IA, or publish a statement setting out the reasons that it considers that it is unnecessary for it to carry out an IA. Ofgem will consider on a case by case basis whether it will carry out and publish an IA or publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an IA.

2.4. While Ofgem interprets the section 5A duty as meaning that we must conduct such an IA where the terms of a proposal are clear, which is typically at the final proposals stage of policy making, we believe that it is in the interests of good policy-making, and consistent with better regulation principles, to conduct IAs at an early stage of policy development, where appropriate.

2.5. Section 5A requires that:

- an IA must include an assessment of the likely effects on the environment of implementing the proposal and relate to such other matters as the Authority considers appropriate;
- in determining the matters to which an IA should relate, the Authority must have regard to such general guidance which relates to the carrying out of IAs as it considers appropriate.

² The full, current text of section 5A is set out in appendix 1.

2.6. Where an IA is being produced under section 5A, Ofgem is required to consult about its proposal with the general public and any others who are likely to be significantly affected by the implementation of a proposal. Chapter 4 considers in more detail the arrangements for consultation.

Criteria for determining importance

2.7. Section 5A defines a proposal as “important” where its implementation would be likely to do one or more of the following:

- involve a major change in the activities carried on by the Authority;
- have a significant impact on persons engaged in the shipping, transportation or supply of gas conveyed through pipes or in the generation, transmission, distribution or supply of electricity;
- have a significant impact on persons engaged in commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes or with the generation, transmission, distribution or supply of electricity;
- have a significant impact on the general public in Great Britain or in a part of Great Britain; or
- have significant effects on the environment.

2.8. The following sections set out examples of those proposals which may, for each of the criteria set out in section 5A, indicate that a proposal is “important”.

Major change in Authority activities

2.9. Proposals which may involve a major change in the activities carried on by the Authority may include, for example, those where Ofgem exercises a significant new power or function for the first time or where Ofgem proposes important changes to the way in which it discharges a duty.

Significant impact on persons engaged in the shipping, transportation or supply of gas, the generation, transmission, distribution or supply of electricity, or in connected commercial activities

2.10. Proposals which are likely to result in “significant impacts” may include, for example, those where the implementation of the proposal would have significant costs for industry participants and/or persons engaged in connected commercial activities or those where the implementation of the proposal would affect the ability of industry participants to choose the price, quality, range or location of their gas and/or electricity or associated services.

Significant impact on the general public in Great Britain or part of Great Britain

2.11. "Significant impacts" may be likely, for example, where the implementation of a proposal significantly affects security and/or diversity of energy supplies; health and safety; gas or electricity prices; competition in British markets; sustainable economic growth and productivity; a sustainable energy system, energy efficiency, quality of service, social impacts including effects on fuel poverty, the disabled³ or race relations⁴.

Significant effects on the environment

2.12. Significant effects may be likely where, for example, a proposal is likely to:

- result in an appreciable increase or decrease in emissions of carbon dioxide or other greenhouse gases;
- result in an appreciable increase or decrease in emissions of other pollutants such as sulphur dioxide or oxides of nitrogen;
- affect government targets mentioned in the *Social and Environmental Guidance to the Authority* (particularly those relating to renewable energy, energy efficiency and combined heat and power);
- have a significant impact on visual or other amenity issues, especially in environmentally sensitive areas such as National Parks, Areas of Outstanding Natural Beauty or Sites of Special Scientific Interest; and/or have a significant effect on biodiversity⁵.

Matters to be included

2.13. IAs produced under section 5A of the Utilities Act must include an assessment of the likely effects of a proposal on the environment. They must also relate to such other matters as the Authority considers appropriate.

³ *Social and Environmental Guidance to the Gas and Electricity Markets Authority*, DTI, 2004. Note also the Disability Discrimination Act 2005, which requires Ofgem as a public authority not to discriminate against a disabled person in carrying out its functions.

⁴ Ofgem has a duty under the Race Relations (Amendment) Act 2000 to "identify those of our functions which we consider could affect different racial groups in different ways or affect good race relations".

⁵ The Natural Environment and Rural Communities Act 2006 requires Ofgem, as a public authority, in exercising its functions, to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

2.14. In determining the matters to be covered in a statutory IA, Ofgem must have regard to such general guidance on carrying out IAs as it considers appropriate. Appendix 2 contains a list of sources that Ofgem may, where it considers it appropriate, consult when producing an IA. The referenced sources have been taken into account in developing this guidance.

Consultation

2.15. Ofgem must provide an opportunity for making representations to members of the public and others who are likely to be affected to a significant extent by the implementation of a proposal. In publishing an IA under section 5A, Ofgem must set out how representations are to be made. Ofgem must not implement the proposal unless the consultation period has expired and the Authority has considered all the representations made in that period.

2.16. Ofgem may decide that a proposal is not "important" within the meaning of section 5A of the Utilities Act 2000 and so does not require an IA. In that event, Ofgem will, in line with good practice, summarise the proposal's impacts in any related consultation or decision document, and in that document will where appropriate explain why it considers that the proposal is not "important".

Decisions taken and IAs published

2.17. Ofgem is required to publish, in its Annual Report, a list of all those IAs that it has published in the preceding year. It is also required to set out in its Annual Report a summary of the decisions taken to which IAs relate.

2.18. In the interests of transparency the Better Regulation page of the Ofgem website contains a link to all the IAs published by Ofgem since 2003.

3. IAs outside the scope of section 5A of the Utilities Act 2000

Chapter Summary

This chapter outlines the circumstances in which Ofgem might choose to carry out an IA where it is not required by section 5A of the Utilities Act to do so. Carrying out an IA might not be required by section 5A but might under certain circumstances be consistent with good practice. This chapter sets out Ofgem's approach.

3.1. Ofgem may wish to carry out an IA that is not required by section 5A of the Utilities Act. For example, Ofgem may wish to publish an IA if it is beginning to develop policy in an area where in due course it may be making proposals that count as "important" within the meaning of section 5A.

3.2. Carrying out an IA in these circumstances is not a statutory requirement but can be in line with good practice. In deciding whether or not to carry out such an IA Ofgem will, in line with the principle of proportionality, seek to avoid placing unnecessary burdens on industry. Ofgem will also, where appropriate, have regard to any representations from interested parties to the effect that an IA is required or desirable.

3.3. IAs outside the scope of section 5A will, where appropriate, follow the standard Ofgem format. However, a proportionate approach to the analysis will be taken in each case.

Best regulatory practice

3.4. The Gas Act 1986 and the Electricity Act 1989 require Ofgem to have regard to best regulatory practice in carrying out its functions under Part 1 of these Acts. Ofgem must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and have regard to any other principles that appear to it to represent best regulatory practice.

3.5. The Better Regulation Executive has interpreted these principles as meaning:

- transparency: regulators should develop policy in an open manner and keep regulations as simple and user friendly as possible;
- accountability: regulators must justify decisions and subject them to public scrutiny;
- proportionality: regulators should only intervene when necessary, remedies should reflect the risk posed, and costs should be identified and minimised;
- consistency: rules and standards should be coherent and implemented fairly;

- targeting: regulations should focus on the problem and minimise side effects.

3.6. Regulatory best practice suggests, in particular, that Ofgem should consider the need for an IA at an early stage of the policy process. Ofgem recognises that carrying out an IA at the start of the process is likely to maximise the opportunity for interested parties to comment upon and improve the policy proposals. However, IAs for code modification proposals are likely to take place towards the end of the process.

3.7. Ofgem also recognises that the IA process can facilitate a better understanding of the consequences, or potential consequences, of policy options from the early stages of identifying a policy challenge, through the development of proposals, public consultation, final decision-making and post-implementation review. Consistent with our existing better regulation duty, in developing policy proposals we will continue to avoid placing unnecessary burdens on stakeholders.

The stages of IAs

3.8. IAs carried out under section 5A of the Utilities Act are concerned with formal proposals to exercise our functions; they are required before a decision is taken and/or the relevant function is exercised. However, as stated above, there will be instances where Ofgem may wish to carry out an IA even though an IA is not statutorily required or where the statutory requirement has not yet arisen.

3.9. In that event, the IA process will consist of the production and publication of such number of IAs as Ofgem considers appropriate. Usually this will mean at least:

- an initial IA produced at an early stage in policy development which represents Ofgem's initial thoughts about the impact of a policy; and
- a final IA which is the culmination of the process of consultation and policy development work. The final IA will seek to integrate the results of consultation with other strands of policy development. If the policy proposal is important within the meaning of section 5A, this final IA will normally constitute the statutory IA.

3.10. In some cases where, for example, responses to the initial IA indicate significant issues, impacts or options that have not been considered by Ofgem, there may be a need for an additional IA which builds on the initial IA.

3.11. This approach complements Ofgem's established consultation process. For example, an initial IA could be published with an initial proposals consultation document and then a final IA with a decision document. In some cases, however, there may be fewer stages of consultation and Ofgem may seek to incorporate the consideration of a number of "important" issues into one IA document. Alternatively, there may be many stages of consultation, for example during a price control review.

3.12. Ofgem may annex an IA to a related policy document. Alternatively, in some cases it may be appropriate to publish IAs as stand-alone documents; this is perhaps especially likely for IAs carried out in relation to industry code and charging methodology modification proposals (see chapter 7). Whichever arrangement is used, in order to minimise duplication and increase transparency we will endeavour to ensure that the IA refers to related passages within the main document and vice versa.

4. The consultation process

Chapter Summary

This chapter outlines Ofgem's approach to consulting on our IAs, whether informal or formal. The chapter restates our existing policy on the duration of consultations.

4.1. Consulting interested parties is a vital part of the process of developing a robust assessment of impacts. It ensures that policy making is open to influence by outside interests and new information. It should also improve the quality of our decisions, improve planning and prioritisation, build understanding of our work and enable progression towards a solution by consent.

4.2. The quality of our analysis will be greatly assisted by the quality of the input received, for example on the quantification of costs and benefits. Ofgem will be looking to affected parties to contribute, through the consultation process, to the development of the IA and policy.

4.3. Documents are published on our website www.ofgem.gov.uk and parties who have requested it are notified through an email distribution list. Ofgem may also in certain cases directly inform those parties who may be affected or who have a particular interest.

Informal consultation

4.4. In line with good practice Ofgem will undertake informal consultation, where appropriate, as policy is being developed, in advance of any IA that we publish.

4.5. Ofgem considers that early consideration of stakeholders' views on emerging policy proposals can help to stimulate debate and help to ensure that any IA is accurate, well-developed and explores all possible policy options. Informal consultation can also help to clarify whether, for a particular policy proposal, an IA is necessary or desirable.

4.6. Informal consultations can complement our written consultations and may take a variety of forms such as seminars, bilateral meetings with interested parties and special workshops for targeted audiences. Where informal consultation has taken place we will to the extent appropriate draw attention to it in a transparent manner in any formal consultation that we undertake.

Formal consultation

4.7. Ofgem is committed to a minimum consultation period of six weeks where possible and, where the period is shorter, to explain why. Ofgem may in certain

circumstances, and where practicable, provide more than the six week period for responses, for example where:

- the issues being consulted on are complex and/or likely to be controversial;
- policy is at a very early stage of development; or
- the consultation falls over a holiday period.

4.8. There may however be exceptions to this indicative timing where for example:

- consultation on a policy issue follows a timetable set down by the Gas Act, Electricity Act or associated licences or industry codes;
- consultation on a policy issue follows a timetable laid down by other bodies (for instance where we consult in order to inform the advice we give to the Office of Fair Trading on relevant mergers); or
- where Ofgem considers that issues need urgent attention.

4.9. Representations can be made by anyone including members of the public, consumer groups and gas or electricity market participants. Any representations received within the time period given in the consultation document, and which are not subsequently withdrawn, will be considered by Ofgem.

4.10. Ofgem will consider whether, in the light of any representations that are received, it is appropriate to continue with the proposal as proposed or whether it is necessary to amend its proposal. This, of course, is not possible in the case of code or charging methodology IAs, as Ofgem cannot make or amend code modification proposals (see chapter 7).

4.11. In many cases Ofgem will, in discharging a function under Part 1 of the Gas Act or Part 1 of the Electricity Act, be required to consult as part of a separate statutory duty. Where Ofgem has a requirement under the Gas or Electricity Acts to consult, for example when proposing the modification of licence conditions, it will normally seek to publish the IA as an annex to any consultation required under Part 1 of the Gas and Electricity Acts.

5. Ofgem's approach to measuring impacts, costs and benefits

Chapter Summary

This chapter outlines Ofgem's approach to measuring the impacts, costs and benefits of policy proposals.

5.1. In producing IAs we will aim to identify and set out the full range of impacts, costs and benefits of what is being proposed. We will also aim to assess the significance of the identified impacts, costs and benefits. In identifying and assessing these impacts, costs and benefits, the options will be identified relative to the same base case alternative, which in most cases will be the 'do nothing' option.

5.2. We will aim to quantify costs and benefits and to measure impacts to the extent that we reasonably and meaningfully can. However, we will avoid spurious accuracy in any quantification where there is little reliable information or where there is considerable uncertainty about either costs or potential benefits as this would create a false and misleading impression of certainty and could lead to the wrong conclusion being drawn. We may therefore include a list of unquantified costs and benefits as well as a number for the quantified costs and benefits, together with a discussion of whether the unquantified costs and benefits are, in our view, likely to be pivotal in the cost-benefit analysis assessment.

5.3. This is a particular challenge where, for example, markets are being opened up to competition. It is inherently difficult to predict with any accuracy the potential efficiency benefits that introducing a competitive process might bring or to quantify meaningfully the dynamic benefits of competition such as the scope for increased innovation and the introduction of new products, services and technologies.

5.4. Where, in such cases, quantitative assessments are included, they will often be presented as ranges, which may be broad. We will endeavour to explain the ranges used and to try to assess probabilities and the plausible margin of error or uncertainties associated with any forecast costs and benefits.

5.5. Where it is possible to identify with reasonable accuracy the costs of implementing a proposal but the benefits are harder to quantify, we will attempt to analyse what the level of benefits would have to be, given the identified range of costs, to justify the proposal and whether this appears plausible based on available information.

5.6. Where we use qualitative analysis, we will aim to explain and substantiate our findings as far as practicable. To the extent that qualitative benefits are associated with key principles such as non-discrimination and the promotion of competition, we will provide a transparent explanation and substantiation of how these principles are likely to translate into benefits for customers or the development of the market in practice.

5.7. A key function of cost-benefit analysis (CBA) is to test the proportionality of a proposal. CBA can be a useful tool for assessing whether an option's benefits meet or exceed its associated costs and for allowing alternative options to be compared in a meaningful way. However, while it can be important to determine whether the anticipated costs of a proposal are proportionate when considered alongside the anticipated benefits, Ofgem does not take its decisions simply on the basis of a narrow CBA alone.

5.8. In cases where there are wide ranges of uncertainty associated with costs and benefits or where the CBA shows only relatively small positive or negative results, we would expect to rely more on principles such as the promotion of competition and avoiding undue discrimination and qualitative (rather than quantitative) analysis. However, in all CBA we will clearly set out the reasons for our final decision and the weight we attach to any quantitative or qualitative analysis.

5.9. The depth and breadth of the analysis in our IAs will necessarily depend on the stage of policy development at which the IA is published. The analysis in an initial IA is likely to focus principally on the identification of problems that need to be addressed, possible options for doing so and their possible effects. As policy develops, however, the analysis should become more detailed.

5.10. In order to maximise the value of our analysis we will invite views from companies and other affected parties on the costs and benefits of policy options. Indeed, we will often be reliant on the cooperation of the industry either through providing information in consultation responses or in its own development of code modification proposals.

5.11. Ofgem will, however, expect views to be substantiated with firm evidence. We will carefully assess any representations we receive because the possibility exists that parties opposed to a particular policy option might exaggerate their view of the cost or downplay the potential benefits (and the reverse might occur if they support it).

5.12. We are committed to quantifying wherever possible the environmental impacts of proposals by, for example, using the appropriate cost of carbon. We will, as set out in chapter 6 below, use the new Government guidance on the shadow price of carbon wherever appropriate.

5.13. The IA summary will identify any areas where Ofgem intends to carry out further work to assess impacts, or where the views of respondents are sought. The summary will as appropriate include a table of costs and benefits (quantitative and qualitative) for each of the options under consideration.

5.14. In carrying out CBA, Ofgem will, where appropriate, have regard to guidance in the Treasury Green Book⁶. However, it should be noted that the Green Book is

⁶ The Treasury's Green Book, 'Appraisal and Evaluation in Central Government' is available at <http://greenbook.treasury.gov.uk>.

meant for the assessment of public policy and uses a social discount rate. For Ofgem, in some cases, it may be more appropriate to use a commercial rate or some weighted average of the two.

6. What an Ofgem IA will cover

Chapter Summary

This chapter outlines the format that Ofgem's IAs will take. Ofgem's IAs will, amongst other things, look at the impact of proposals on customers, competition, sustainable development and health and safety.

6.1. Section 5A requires that an IA must include an assessment of the likely effects on the environment of implementing the proposal and any other matters which Ofgem considers appropriate. Given Ofgem's statutory duties, Ofgem has decided that its IAs should, amongst other things, address, to the extent it considers appropriate, the impacts of a proposal on consumers, competition and sustainable development. The framework for Ofgem's IAs, as described below, reflects this.

6.2. In determining the matters which Ofgem considers should be included in an IA Ofgem must have regard to such general guidance about IAs as it considers appropriate. Appendix 2 references the guidance which Ofgem currently considers is most likely to be of relevance to its IAs as at the date of this guidance. However, the guidance which Ofgem considers appropriate will need to be kept under review and may change from time to time.

6.3. Ofgem will, in drafting its IAs, have regard to the principles of best regulatory practice. The length of the IAs and the amount of information in them will naturally depend on the stage of the policy and the information available.

6.4. Ofgem will seek to present analysis in a consistent format. This chapter sets out the format that Ofgem's IAs will follow and explains the sorts of issues that Ofgem will consider under each heading.

The format of Ofgem IAs

6.5. Ofgem's IAs will follow the format described below.

Summary

Key issues and objectives

Options

Impacts on consumers

Impacts on competition (including effects on small businesses)

Impacts on sustainable development

Impacts on health and safety

Risks and unintended consequences

Other impacts (including implementation costs)

Post-implementation review

Conclusion

Summary

6.6. IAs produced as stand-alone documents will normally contain a one or two page summary. The summary will normally describe the main issues and findings of the IA including a summary of qualitative and quantitative costs and benefits where available. It may not be possible to set out findings in an initial IA but any subsequent IA should do so as far as possible.

6.7. Where an IA is produced as part of a consultation or decision document, the executive summary of that document will normally highlight the main points of the IA.

Key issues and objectives

6.8. This section of an IA will describe the perceived deficiencies of the existing regulatory arrangements; identify the issues that a policy proposal seeks to address; explain the objectives of the policy proposal, and indicate which of Ofgem's duties and objectives are of particular relevance in the specific context of the proposal.

6.9. Ofgem's statutory duties are important in the evaluation of policy proposals because they set out the overall framework within which Ofgem makes decisions.

6.10. This section will avoid detailed discussion of the alternative proposals or measures that are to be evaluated; this detailed discussion will take place in the options section that will follow immediately afterwards.

Options

6.11. Where appropriate an IA will set out a range of options and proposals.⁷ Options presented in an initial IA may take the form of a list of alternatives, many of which can be discarded as policy develops. Where options are presented, the IA should seek to explain in a consistent way the contribution that each option would make to the policy objective (to the extent that it is known or clear). Interested parties will be invited not only to comment on the options presented but also to suggest alternatives that might better meet the stated objectives.

6.12. Where appropriate, Ofgem's IAs will consider a 'do nothing' option – in other words, maintaining the existing regulatory arrangements. An example of where it would not be appropriate for Ofgem to consider a 'do nothing' option is where we are developing proposals in response to a legislative requirement. Setting out a 'do nothing' option can form a baseline against which all other options will be assessed. It may be, in certain circumstances, that an option for consideration would be to 'do

⁷ It may not be appropriate to do so in certain circumstances, for example when considering industry code or charging methodology proposals, since Ofgem may not approve proposals other than those that have been formally tabled by external parties.

nothing now', monitor a situation and then review at some future stage if the accumulated evidence indicates that there is a need to do so. Where this is the case the IA will say so clearly.

6.13. For industry code and charging methodology modifications⁸, the options which are available are limited to those which have been proposed and which have been developed outside Ofgem, although there will normally be a baseline (in the form of the existing code requirements) against which a proposal can be compared.

6.14. Any initial list of options suggested both by Ofgem and/or respondents will be refined as policy develops. A final IA is likely to contain fewer policy options than the initial IA but the analysis should be more detailed for each option that remains.

Impacts on consumers

6.15. In line with its principal objective, Ofgem IAs will clearly explain how benefits and costs might impact upon present and future consumers. In particular, there will be a clear explanation of the nature and extent of the consumer benefits that might be delivered as a result of a particular policy change or code/charging methodology proposal.

6.16. This section will consider the impacts on consumers in aggregate. Examples of the impacts that we may refer to here include the impact on prices, quality of service, product innovation or network reliability. Ofgem will, in this section of an IA, be careful to cross-refer to other sections of the IA that deal with consumer impacts, such as any analysis of the impacts on low income or vulnerable customers that we may undertake as part of our analysis of the effects of a proposal on sustainable development. This will help ensure and demonstrate that neither costs nor benefits are double counted.

6.17. Whilst this section will aim to quantify costs and benefits wherever possible, Ofgem recognises that some consumer impacts may be difficult to quantify. As set out above, we will in these cases set out our reasons why we cannot use quantification and instead aim to provide a robust qualitative assessment, clearly setting out any value judgements or assumptions made.

Impacts on competition

6.18. Ofgem's IAs will assess whether there are significant positive or negative impacts on competition in relevant markets. Ofgem will assess the impact of proposals on existing market participants and on potential new entrants.

⁸ Further information about IAs in relation to industry code and charging methodology modification proposals is set out in chapter 7.

6.19. If any of the options are likely to have a significant impact on competition (either positive or negative), this impact will be included in the summary section on costs and benefits. The level and detail of the analysis will be proportionate to the likely impact on competition. Ofgem will, where appropriate, have regard to competition assessment guidance produced by the Office of Fair Trading.⁹

6.20. Ofgem will consider, as part of a competition assessment, whether a proposal would have substantially different effects on small or large firms or whether the proposal would affect new entrants differently. Ofgem will where appropriate consider impacts on small businesses including licensees and those carrying on unlicensed activities such as exempt generators.

Impacts on sustainable development

6.21. Ofgem considers that its IAs should explicitly assess the impact of proposals on sustainable development. Drawing on the UK Government's Sustainable Development Strategy, the Authority has identified five sustainable development themes that set out how Ofgem will contribute to the sustainability agenda.¹⁰ The themes are:

1. Managing the transition to a low carbon economy
2. Eradicating fuel poverty and protecting vulnerable consumers
3. Promoting energy savings
4. Ensuring a secure and reliable gas and electricity supply
5. Supporting improved environmental performance

6.22. Ofgem will use these themes as the framework for analysing the effects of a proposal on sustainable development. The following paragraphs outline the issues that Ofgem may consider in assessing the effects under each theme. Ofgem will take a proportionate approach to the analysis undertaken for each theme.

Managing the transition to a low carbon economy

6.23. Consistent with its commitment to managing the transition to a low carbon energy system, and in line with guidance issued by the Secretary of State¹¹, Ofgem will consider the impact of proposals on the level of greenhouse gas emissions by the gas and electricity sectors. Ofgem will in particular assess impacts on carbon dioxide emissions. Ofgem will, wherever possible and where relevant, use an agreed figure,

⁹ The OFT's guidance on how to carry out a competition assessment is available at http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf.

¹⁰ See Ofgem's second annual Sustainable Development Report, November 2007.

¹¹ The current *Social and Environmental Guidance to the Gas and Electricity Markets Authority* was issued on 23 February 2004.

or range of figures, to reflect the value of environmental damage in its decisions. However, where impacts are relatively minor, or where robust quantification is not available, it may be more appropriate for the IA to contain a qualitative assessment.

6.24. The IA will, where possible, base its quantification on physical amounts such as tonnes of carbon dioxide. In the case of emissions of greenhouse gases, quantities will be converted to tonnes of carbon equivalent using global warming potential figures. Ofgem will use a cost of carbon value to allow consistent assessment of the economic and environmental costs and benefits of alternative decisions. Ofgem will have regard to government guidance on the shadow price of carbon as part of this analysis.

6.25. We will use the new guidance on the shadow price of carbon wherever appropriate. We expect that it will be appropriate to use it in most cases, for example when valuing the benefits of an incentive to cut emissions from networks. However, it may not be appropriate to use the shadow price where it would involve double counting (for instance where the EU Emissions Trading Scheme applies or where a support mechanism already exists, such as the Renewables Obligation).

6.26. Ofgem will also consider whether a proposal is likely to have an impact on the emission of other greenhouse gases. Ofgem will, where relevant, consider any effects on methane leakage from the gas transmission and distribution systems and sulphur hexafluoride leakage from electricity transmission and distribution.

6.27. Ofgem will, where it considers it appropriate, consider the impact of a proposal on existing and new electricity generation from all low carbon and renewable sources such as nuclear, wave, wind or solar power or carbon capture and storage facilities. For example, Ofgem will consider, where relevant, whether a proposal would be likely to lead to an increase or a decrease in the amount of renewable generation connected to the electricity networks.

6.28. Ofgem will also, where appropriate, consider the impacts of proposals on renewable energy generation and embedded generation located close to sources of demand.

Eradicating fuel poverty and protecting vulnerable consumers

6.29. Ofgem IAs will consider whether a policy proposal gives rise to any material issues relating to unequal distribution of benefits or costs between consumer groups or within a group, for example between rural and urban customers.

6.30. Consistent with guidance issued by the Secretary of State, Ofgem will also consider the social impacts of policy proposals. Consistent with our statutory duties, Ofgem will have regard to the impacts on customers with low incomes. In this part of the IA, Ofgem may for instance consider the implications for fuel poverty, the impact on competition and vulnerable customers, and levels of debt and disconnection.

6.31. Where a proposal will have or would be expected to have a significant impact (positive or negative) on end-consumer bills this will be made clear in the costs and benefits section but, where appropriate, we will look in particular in this section at the impacts on lower income customers.

Promoting energy savings

6.32. Ofgem will, where it considers appropriate, consider and have regard to the impacts on:

- energy intensity, in particular whether the energy intensity of the gas and electricity sector would be increased (for example by increasing the amount of coal-fired electricity generation);
- energy savings, in particular whether energy savings might be derived from domestic or business customers;
- gas and electricity losses, in particular whether a proposal might reduce or increase the amount of gas or electricity lost from the networks during transmission and/or distribution.

Ensuring a secure and reliable gas and electricity supply

6.33. Ofgem will assess the impacts of proposals on security of supply. In most cases this will be a qualitative assessment. Ensuring reliable gas and electricity supplies for consumers at the point of use depends on a number of separate factors, which Ofgem will consider as appropriate. Ofgem will, if and to the extent it considers appropriate, look at impacts on:

- network investment (e.g. whether a proposal will promote efficient network development and investment and therefore security of supply);
- network reliability (such as the ability of the gas and electricity networks to deliver energy supplies as well as the management of the systems); and
- competition and the market's ability to provide security and diversity of supply (such as the adequacy of generation capacity and the availability of the fuels used by power stations and/or the availability of gas from domestic and imported sources).

Supporting improved environmental performance

6.34. As well as assessing the impact of a proposal on greenhouse gases, Ofgem will consider whether a proposal might have other environmental impacts. In line with its statutory duties, Ofgem will have regard to the effect on the environment of activities connected with generation, transmission, distribution or supply of electricity and the conveyance of gas through pipes.

6.35. As part of this, Ofgem may consider whether a proposal might have an impact on the air, water, land, wildlife, the countryside and the built environment as well as on people. Potential environmental impacts may include:

- air quality/acidification pollutants such as sulphur oxides (emitted from power stations), nitrogen oxides (emitted from power stations and gas compressor stations), and particulates;
- visual amenity caused by, for example, overhead lines and wind farms;
- pollution of land and of surface and ground waters as a result of oil leakage;
- generation of waste; and
- biodiversity.

6.36. Where possible and where relevant, the IA will quantify the environmental costs and benefits of any particular proposal and consider how large the potential environmental impacts are in relation to other costs and benefits of the proposal. There are a range of methods that can be used to quantify and compare impacts, including those based on monetary values or ranking.

6.37. Where impacts are relatively minor, then it may not be proportionate to attempt to undertake a quantitative appraisal of costs and benefits. In such cases the IA should instead contain a qualitative assessment. If Ofgem considers that the environmental effects of a proposal are not significant, the IA will say so explicitly.

6.38. In conducting an IA, Ofgem will ensure that environmental impacts are examined over different timescales. Some environmental impacts may arise immediately while others arise only in the long term.

Impacts on health and safety

6.39. The statutory framework within which Ofgem works includes the requirement for Ofgem to carry out certain of its functions in the manner which it considers best calculated to protect the public from certain dangers. The Health and Safety Executive and the Department for Business, Enterprise and Regulatory Reform's Engineering Inspectorate are key stakeholders during policy development.

6.40. Ofgem's IAs will contain a section on health and safety impacts where policy proposals may have significant health and safety implications. Where Ofgem considers that the health and safety aspects of a proposal are not significant, the IA will say so explicitly.

Risks and unintended consequences

6.41. Ofgem's IAs will contain a section addressing any risks or uncertainties associated with the policy options or proposals under consideration. Where possible significant risks and uncertainties will be identified, and where appropriate an analysis made of robustness to external shocks or flawed assumptions that could jeopardise the success of the policy option identified and lead to the outcome being other than forecast.

6.42. Where relevant an IA will set out the key uncertainties that may affect the impacts of a proposal. In particular, where costs and benefits are quantified, Ofgem may include an assessment of the robustness of the assumptions made.

Other impacts, costs and benefits

6.43. This section of the IA will to the extent appropriate assess the costs to industry participants of implementing a proposal. This will as appropriate cover one-off and ongoing costs, for example those caused by changes to information technology or staff training.

Post-implementation review

6.44. Each IA will set out Ofgem's intentions in respect of post-implementation review for a particular proposal. This section of the IA will set out how Ofgem will check industry compliance and how it will assess the success of the policy once it is implemented.

6.45. Each IA will state whether we intend to conduct a major post implementation review after a particular length of time or rely on routine monitoring. Ofgem may undertake a major review exercise where the policy area in question involves major structural changes or where the outcomes are more difficult to predict through our normal monitoring processes.

6.46. Where Ofgem decides to rely on routine monitoring, it will report on outcomes in its Annual Report. Where outcomes are not as expected, Ofgem will where appropriate flag its intention to conduct a major review.

6.47. Where an IA states that Ofgem is likely to conduct a major review of a decision, Ofgem will use the corporate planning process as the vehicle for further consideration of whether it is in fact needed. Any decision to undertake a major review would normally have a deliverable associated with that work. The results of any formal post-implementation review will be published.

6.48. Ofgem notes, in relation to industry code modifications, that it is for the code governing bodies to monitor the effects of proposals that have been implemented and for code signatories to table further modification proposals as necessary.

However, where and to the extent appropriate, Ofgem may undertake its own post-implementation review of code modifications.

Conclusion

6.49. Ofgem's IAs will have a concluding section. In final IAs, this may, where appropriate, set out which option we are minded to choose and why, by reference to the preceding sections of the IA.

6.50. Final decisions will be taken in the light of Ofgem's statutory duties. Carrying out an IA facilitates Ofgem meeting its statutory duties in a structured way.

7. Industry code and charging methodology IAs

Chapter Summary

This chapter provides guidance on IAs relating to the proposed modification of the industry codes and of network companies' charging methodologies.

7.1. Ofgem has duties in relation to the gas and electricity codes which form the basis of the core industry agreements to which all market participants must conform. The ability of industry code participants to propose changes in certain areas, for example in response to a changing commercial situation, is a fundamental part of the governance arrangements. The industry code modification¹² process is a mechanism available to industry to propose change over a range of policy areas including trading and transmission, supply, metering and governance.

7.2. Ofgem also has duties in relation to the charging methodologies developed by network operators for the use of their networks. Network operators are required by their licences to determine charging methodologies. Ofgem has the power to approve new charging methodologies and the power to veto any changes to a methodology that a licensee subsequently proposes.

7.3. Ofgem considers the merit of any industry code or charging methodology proposal, as appropriate, against relevant code and/or licence objectives and its statutory duties. In making a decision on industry code and charging methodology modifications Ofgem is exercising a Part 1 function and there may be circumstances in which the decision by Ofgem could be considered as being "important" within the meaning of section 5A of the Utilities Act 2000.

7.4. Ofgem recognises the need to integrate the requirement for IAs within the existing industry code and charging methodology modification process.

Whether modifications are "important"

7.5. Ofgem will judge whether any proposal is "important" within the meaning in section 5A of the Utilities Act 2000 on a case by case basis, as with any decision.

7.6. When it receives a new modification proposal Ofgem will make a provisional assessment of "importance" in line with the tests set out in section 5A. We may indicate where we are intending to carry out an IA on our website and invite parties to comment on our provisional assessment. The initial assessment of "importance" will be re-assessed in the light of the development of the proposal in the modification process.

¹² Throughout this document, the term "modifications" is used to also include amendments to the Connection and Use of System Code.

Consultation

7.7. Ofgem has to consult prior to reaching a decision on a proposal. The decision has to be made in a timely enough way so as not to jeopardise any industry code or charging methodology implementation dates which are set within the process.

7.8. There may, however, be circumstances where the need for Ofgem to agree a proposed industry code modification is considered to be so “urgent”¹³ as to prevent the production and publication of an IA, even if the proposal is considered to be “important”.

7.9. Where a proposal is not urgent, and is considered “important” for the purposes of section 5A, but there is a reason why Ofgem does not intend to carry out an IA, Ofgem will explain why. This is consistent with the requirement on Ofgem under section 5A (3)(b) to publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment.

7.10. Ofgem expects that in the case of industry code and charging methodology modification proposals there would normally be only one round of consultation on the IA. The stages of consultation described in chapter 3 would not, therefore, apply to such proposals. In those circumstances it is likely that there would only be one IA, setting out the summary of impacts and providing an opportunity for respondents to comment.

Scope of a modification IA

7.11. As set out in chapter 6, the options available for industry code modifications are usually limited and are developed outside of Ofgem. A modification IA will consider the impact of accepting a proposed modification as against the existing regulatory arrangements. Where appropriate the IA will set out Ofgem’s provisional thinking.

7.12. Modification IAs will consider the set of impacts described in chapter 6. IAs produced for the most significant proposals will normally be the most detailed and are likely to contain the most extensive analysis.

¹³ Urgent industry code modifications are likely to exhibit at least one of the following characteristics: there is a very real likelihood of significant commercial impact upon the transporter, industry parties, or customers if a proposed modification is not treated as urgent; safety and security of the network is likely to be impacted if a proposed modification is not treated as urgent; and the proposal is linked to an imminent date-related event.

Appendices

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Appendix 1 - Consultation responses

1.1. In December 2007, Ofgem published a consultation document on Proposed Revised Guidance on Impact Assessments. In that document we sought the views of respondents about on whether the proposed revisions were sensible and on whether they were any other changes that respondents would like to see.

1.2. We received responses from the following organisations.

List	Name
1	Better Regulation Executive
2	British Energy
3	Centrica
4	Electricity North West
5	EON UK
6	National Grid
7	SSE
8	Scottish Power

1.3. All the responses have been published on Ofgem's website www.ofgem.gov.uk and placed in Ofgem's library.

Key issues raised in the responses

Common format

1.4. Those respondents who commented agreed that Ofgem should use a common format for all the IAs that it publishes. The revised guidance confirms that Ofgem will adopt a common format for its IAs.

Assessing impacts on sustainable development

1.5. Respondents welcomed the increased emphasis on assessing the impacts of proposals on sustainable development. As part of this, they agreed that Ofgem should, where appropriate, have regard to the Government's guidance on valuing carbon emissions using the shadow price of carbon.

1.6. Ofgem will analyse the impacts of proposals on sustainable development in its IAs. Ofgem confirms that it will have regard to Government guidance on valuing carbon emissions and that it will where appropriate adopt the shadow price of carbon.

Ofgem's approach to cost-benefit analysis

1.7. Several respondents stated that Ofgem should make a greater commitment to quantifying the costs and benefits of proposals. These respondents were concerned that Ofgem would take decisions leading to net costs for customers. As stated in the guidance, Ofgem will aim to quantify costs and benefits and to measure impacts to the extent that we reasonably and meaningfully can. However, we will avoid spurious accuracy in any quantification where there is little reliable information or where there is considerable uncertainty about either costs or potential benefits. For the avoidance of doubt, Ofgem does not dismiss the importance of quantitative data. We simply recognise that there are limitations with relying on such data, for example when there are uncertainties relating to the assumptions that underpin the data.

1.8. One respondent observed that it was incorrect to attach less weight to cost-benefit analysis where there is uncertainty. That respondent noted that where a decision is finely balanced, the correct course was to improve the quality of the analysis rather than to revert to unquantified, subjective assessments. Where the cost-benefit analysis indicates that a decision is finely balanced, Ofgem will consider whether there is further information that could be collected to refine the analysis. However, we reiterate that it is not always necessary to show quantified 'net benefits' before proceeding with a proposal, particularly when quantification does not provide a definitive answer because of uncertainties with the quantification process. We were pleased to note that the Better Regulation Executive response acknowledged that it was not necessary always to demonstrate a net benefit.

Interpretation of the section 5A duty

1.9. Two respondents questioned Ofgem's interpretation of when it was required by section 5A of the Utilities Act 2000 to conduct an IA. They added that conducting an IA only at the end of the process ran against better regulation principles.

1.10. It remains our view that the section 5A duty requires us to carry out an IA only at the point at which we are proposing to exercise our functions and not at earlier stages of policy development. However, we fully recognise that it is desirable on better regulation grounds to carry out IAs at an early stage in the policy process and this is reflected in chapter 3 of the guidance. This however refers to policies that Ofgem itself is developing; it is not possible to carry out IAs at an early stage of the industry code modification development process. Code modification IAs are best carried out once the proposal has been submitted to Ofgem for a decision.

Duration of consultations

1.11. Whilst recognising that twelve-week consultations would not always be possible, some respondents stated that Ofgem should routinely give stakeholders longer to respond to IAs. They noted in this context the recommendations of the House of Lords Select Committee on the Regulators. One respondent noted that longer consultation durations would help the industry give Ofgem the information that it needs to make a robust decision.

1.12. Ofgem recognises the need to allow stakeholders sufficient time to respond to consultations. As stated in the guidance, wherever possible we will give stakeholders at least six weeks to respond to consultations. We may give longer than six weeks, for example where the issues being debated are especially complex, where policy is at a very early stage of development, or where the consultation falls over a holiday period.

Post-implementation reviews

1.13. Respondents generally welcomed the commitment to set out in our IAs either that we would conduct a major post implementation review after a particular length of time or else to rely on routine monitoring. Some respondents said that we should commit to undertake formal reviews for all proposals implemented following an IA.

1.14. The guidance confirms our intention to signal in our IAs how we plan to monitor the impact of a proposal that has been implemented. We believe that it would be disproportionate to carry a formal post-implementation review for every decision taken after an IA has been published. We wish to retain the flexibility, given our limited resources, to monitor certain decisions via routine market surveillance.

1.15. One respondent stated that we should publish our assessment of the impacts where we decide that a code modification proposal is urgent. The same respondent stated that we should report on the effects of such proposals in our annual report. We agree that transparency is important in this area and have published guidance on our criteria for determining whether a code modification proposal is urgent.¹⁴ As a matter of routine we also publish the reasons for any decision to grant urgent status to a modification proposal.

Impact on competition

1.16. One respondent said that the competition assessment should look first at the impact on existing market participants and then, separately, on potential new entrants. We have clarified the guidance to make clear that we will look at impacts on both existing and prospective market participants.

1.17. One respondent commented that Ofgem should assess the impacts of proposals on competition in European markets. At present Ofgem's duties relate only to the British market and consumers. We do not therefore intend to assess competition effects in other EU Member States. We note that the Third Package of energy legislation might give us duties in this area, which could mean that in future it will be appropriate for Ofgem to consider competition effects outside Britain. If we are in due course given new duties, we will consider how this guidance should be revised.

¹⁴ See <http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/2935-Urgency%20Criteria.pdf>.

Impact on low carbon generation

1.18. One respondent commented that Ofgem should assess the impact of proposals on all low carbon generation (including carbon capture and storage) and not only renewable generation. Ofgem agrees that it is desirable to assess the impact of proposals on all low carbon forms of generation. The guidance now makes clear that where appropriate we will do this.

Other issues

1.19. One respondent stated that we should clarify the circumstances in which we would decide not to conduct an IA for a non-urgent but important code modification proposal. The legislation permits Ofgem to take this approach but requires us in that event to publish a statement of reasons why. However, we would normally expect to conduct an IA for all important but non-urgent proposals.

1.20. One respondent said that we should develop clear criteria for determining whether a non-statutory IA will be done. In determining whether to carry out a non-statutory IA, Ofgem will have regard to the section 5A criteria for determining whether a proposal is important.

1.21. One respondent said that where Ofgem receives new information it should either publish it immediately or send it to the relevant code panel if it relates to a code modification proposal. The respondent stated that we should not retain the information and publish it in due course as part of a subsequent IA. We recognise the importance of transparency but do not believe that the guidance needs amending to reflect this.

1.22. One respondent said that we should commit in guidance to an outline timetable for producing code modification IAs. We do not believe that it is appropriate to commit to a timetable for producing code modification IAs. We are nonetheless committed to dealing with code modification proposals efficiently and have already undertaken to process code modification decisions within 25 working days for at least 70 per cent of proposals.

1.23. It was suggested that Ofgem should take forward the IA guidance as part of the broader review of code governance. However, given that many IAs are not related to the industry codes, we do not believe there is a need to do so. We have moved to publish the new IA guidance at the earliest opportunity because we believe that doing so will increase certainty for stakeholders as to how Ofgem will assess important policy proposals going forward.

Appendix 2 - Section 5A of the Utilities Act 2000

1.1. Section 6 of the Sustainable Energy Act 2003 introduced section 5A into the Utilities Act 2000. Section 6 of the Sustainable Energy Act 2003 is set out below.

6 Duty of Gas and Electricity Markets Authority to carry out impact assessments

After section 5 of the Utilities Act 2000 (c. 27) insert -

"5A Duty of Authority to carry out impact assessment

(1) This section applies where -

(a) the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of Part 1 of the 1986 Act or Part 1 of the 1989 Act; and

(b) it appears to it that the proposal is important;

but this section does not apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements of this section.

(2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following -

(a) involve a major change in the activities carried on by the Authority;

(b) have a significant impact on persons engaged in the shipping, transportation or supply of gas conveyed through pipes or in the generation, transmission, distribution or supply of electricity;

(c) have a significant impact on persons engaged in commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes or with the generation, transmission, distribution or supply of electricity;

(d) have a significant impact on the general public in Great Britain or in a part of Great Britain; or

(e) have significant effects on the environment.

- (3) Before implementing its proposal, the Authority must either -
- (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
 - (b) publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment.
- (4) An assessment carried out under this section must -
- (a) include an assessment of the likely effects on the environment of implementing the proposal; and
 - (b) relate to such other matters as the Authority considers appropriate.
- (5) In determining the matters to which an assessment under this section should relate, the Authority must have regard to such general guidance relating to the carrying out of impact assessments as it considers appropriate.
- (6) An assessment carried out under this section may take such form as the Authority considers appropriate.
- (7) Where the Authority publishes an assessment under this section -
- (a) it must provide an opportunity of making representations to the Authority about its proposal to members of the public and other persons who, in the Authority's opinion, are likely to be affected to a significant extent by the proposal's implementation;
 - (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
 - (c) the Authority must not implement its proposal unless the period for making representations about the proposal has expired and it has considered all the representations that were made in that period.
- (8) Where the Authority is required (apart from this section) -
- (a) to consult about a proposal to which this section applies, or
 - (b) to give a person an opportunity of making representations about it,
- the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.

(9) Every report under section 5(1) must set out -

(a) a list of the assessments under this section carried out during the financial year to which the report relates; and

(b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.

(10) The publication of anything under this section must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected if its proposal is implemented.

(11) References in sections 4AA, 4AB and 4A of the 1986 Act to functions of the Authority under Part 1 of that Act include references to any functions of the Authority under this section that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under Part 1 of the 1986 Act.

(12) References in sections 3A, 3B and 3C of the 1989 Act to functions of the Authority under Part 1 of that Act include references to any functions of the Authority under this section that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under Part 1 of the 1989 Act."

Appendix 3 - Published guidance on IAs

- 1.1. In May 2007 the Better Regulation Executive (BRE) published revised general guidance to Government departments on carrying out IAs. The document can be found at: http://bre.berr.gov.uk/regulation/ria/ia_guidance/.
- 1.2. In June 2007 the BRE published a detailed 'toolkit' for policy makers drafting IAs, which is available at: <http://bre.berr.gov.uk/regulation/ria/toolkit/>.
- 1.3. In August 2007 the Office of Fair Trading published revised guidance for carrying out a competition assessment as part of an IA. The guidance can be found at: http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft876.pdf.
- 1.4. The National Audit Office conducts annual evaluations of Government IAs. The latest report, for 2006-7, is available at: http://www.nao.org.uk/publications/nao_reports/06-07/0607606.pdf.
- 1.5. The Treasury Green Book 'Appraisal and Evaluation in Central Government' is a best practice guide to appraisal and evaluation of policies and capital projects. It focuses on CBA and highlights the importance of having confidence in the accuracy and timing of cost benefit data. It also emphasises the importance of keeping the range of options wide and the estimation of costs and benefits to a high level at the initial stages of an IA. It is available at: <http://greenbook.treasury.gov.uk/>.
- 1.6. In August 2007 Defra published guidance for departments on the value to be attached to emissions of carbon – the 'shadow price of carbon'. Available at <http://www.defra.gov.uk/environment/climatechange/research/carboncost/pdf/HowtouseSPC.pdf>, the Government intends to review this guidance every five years.

Appendix 4 - The Authority's duties and powers

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.¹⁵

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly¹⁶.

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them¹⁷; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.¹⁸

¹⁵ Entitled "Gas Supply" and "Electricity Supply" respectively.

¹⁶ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

¹⁷ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

¹⁸ The Authority may have regard to other descriptions of consumers.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed¹⁹ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
- contribute to the achievement of sustainable development; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain. The Authority is a designated National Competition Authority under the EC Modernisation Regulation²⁰ and is therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

¹⁹ Or persons authorised by exemptions to carry on any activity.

²⁰ Council Regulation (EC) 1/2003.

Appendix 5 - Feedback questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

- does the report adequately reflect your views? If not, why not?
- does the report offer a clear explanation as to why not all the views offered had been taken forward?
- did the report offer a clear explanation and justification for the decision? If not, how could this information have been better presented?
- do you have any comments about the overall tone and content of the report?
- was the report easy to read or could it have been better written?

1.2. Please send your comments to:

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