

**Draft guidance on impact assessments - Consultation document 172/04**

**Comments by E.ON UK**

We consider the use of Impact Assessments (IAs) to represent sound regulatory practice and are therefore supportive of the proposals contained within the document. Whilst welcoming Ofgem's commitment to provide as much opportunity as possible for consultation during policy development we wish to guard against the inefficient formalisation of additional IA development processes. Expediency and necessity should be the key considerations for Ofgem in deciding when IAs are appropriate.

Experience so far suggests that IAs are being treated more as procedural or bureaucratic duties. It is therefore, in our view, important to ensure that the IA procedure is tailored to the regulatory process that it is intended to complement so that unnecessary bureaucracy is not introduced and stakeholders obtain value from the whole exercise.

We note that the Authority only has a statutory requirement to consult on an IA for a proposed exercise of a function (5.12, pg. 13). We believe it is important to distinguish between those functions which Ofgem executes as part of specific code modification processes and those broader changes which are likely to result from policy development papers. It is reasonable to suggest that the latter functions will be substantially broader in scope and are therefore likely to require earlier informal consultation. Moreover, IAs relating to policy development such as a change to price control perhaps merit a greater level of consultation when compared to the former functions. The distinction between these two categories of function can be justified by the following rationale. IAs resulting from code modifications are likely to yield less in terms of original material. This is because

the modification processes are already designed to facilitate a high level of consultation. By the time that a report or recommendation reaches the Authority it is to be expected that most opinions will have been expressed and information submitted. Such proposals will also have been subjected to the rigour of modification or amendment group debate. Whilst we would still recognise the importance of final, formal IAs in these circumstances, the extensive examination of code modification or amendment proposals prior to a formal final Impact Assessment by Ofgem, will in most cases remove the need for some or all of the proposed IA consultation components (5.14, pg13).

The current process for code modification/amendment works well, although recently the sheer volume and timetable for consultations has undoubtedly led to concerns regarding “consultation fatigue”. Given that the existing processes for determining code modifications are already relatively efficient, and considering the benefits inherent within the industry code methodologies, Ofgem should seek to avoid adding further bureaucracy by imposing multiple IAs on the existing code change process.

However, in contrast, the broader issues considered during Ofgem’s exercise of its policy development function are likely to justify a more formalised IA development process. Policy development (e.g. for a price control) is a longer term process, requiring thorough examination prior to any permanent decisions. Consequently, under these circumstances we would like to suggest two additional IA components:

- Firstly, an initial ‘ideas evaluation stage’ at the front end of the current change process. This would essentially seek to establish whether a proposal is in principle a good idea before a commitment is given for further detailed work to be undertaken.

This could be prompted by, or ideally form part of the informal consultation described in paragraphs 5.12 and 5.13. This component would allow early sign on for industry stakeholders and early indication of likely problems. For instance, we believe many of the problems, which have since been associated with developing metering competition, could have been avoided, or at least alleviated, if such an evaluation had been completed. Fundamental to this process is the understanding by all concerned that rejection of the suggested development may be a valid outcome.

- Secondly, we believe that for high impact policy developments a post implementation assessment would help to evaluate whether a change has delivered what was originally intended, and represents 'value for money' given the costs which have actually been incurred. Such evaluation may provide useful lessons for future policy development and should be scheduled in the final proposals and impact assessment documents.

In conclusion, we believe that the process for developing IAs must complement the particular regulatory functions that they are intended to enhance. We believe that final decisions by the Authority on industry code changes and longer term policy development are two clearly different functions, which are best improved by two different approaches that reflect the needs of the different processes and seek to enhance them, rather than add additional bureaucracy.