

Michael Fewes,  
Ofgem,  
9 Millbank,  
London SW1P 3GE

Your reference: CD 172/04

Our reference:

09 September 2004

*Direct line:* 020 7717 6241

Dear Michael

## **DRAFT GUIDANCE ON IMPACT ASSESSMENTS**

The Health and Safety Executive (HSE) has read and noted the consultation document issued in July (172/04) outlining Ofgem's intentions with respect to undertaking Impact Assessments (IA) and welcomes the approach that is being proposed.

HSE is aware that Ofgem made a commitment in the Energy White Paper 2003 to carry out Regulatory Impact Assessments and has previously discussed the content of such assessments with Ofgem, requesting that any impact on health and safety should be considered alongside impacts on security of supply and the environment. One result of this debate was that Ofgem carried out a review of its internal Project Initiation Documents to ensure that any health and safety considerations are taken into account prior to project commencement.

It is noted that there is now a further statutory duty under the Sustainable Energy Act 2003 for Ofgem to carry out IAs. HSE agrees that IAs are an integral part of policy development and a structured method of assessing several possible options within a proposal, both via qualitative and quantitative comparison. Equally well a commitment to clarify the reasons for not carrying out an IA, in the interests of regulatory transparency, is also welcomed.

In Section 4 the definition of proposals considered to be important, and therefore subject to an IA, include those that have a significant impact on the general public of Great Britain. HSE believes that, as well as the examples given covering the effect of proposals on costs and security of supply, the effect of proposals on the health, safety and welfare of both the public and employees should also be considered and addressed. Admittedly, Section 6 does state that an IA will, where appropriate, include consideration of any impact on health and safety where this is significant and paragraph 6.16 also recognises both the HSE and the DTI Engineering Inspectorate as key consultees during policy development.

However, Ofgem's responsibilities extend further than this; HSE and DTI have legal duties with respect to the health and safety of both the public and those at work, but

it is worth pointing out that, under the Utilities Act 2000, Ofgem also has duties with respect to safety. It has a legal requirement to consult the Health and Safety Commission (HSC) over specific issues and take into account any advice given. The Authority is required under Section 11 to consult HSC about all gas safety issues, which may be relevant to the carrying out of any of its duties, and a similar requirement for electricity safety issues is contained within Section 15. Again these issues relate to both members of the public or persons employed in connection with any of those activities. These duties are highlighted in the Memorandum of Understanding between the Authority, HSC and HSE, which sets out the framework for the working arrangements between the bodies.

Ofgem's commitment to meeting its statutory safety duties, coupled with its established procedures for consultation, will help ensure that safety levels within the gas and electricity industries are maintained at an acceptable level. HSE considers a minimum acceptable level to be that which represents no increase in the level of risk arising from work activities. Ideally, new or modified undertakings should actually reduce the overall level of risk.

HSE will continue to respond to formal consultation documents issued by Ofgem where there is a potential impact on health and safety, but looks to Ofgem to identify, evaluate and address safety issues as early as possible. Ofgem's commitment to set a minimum consultation period of six weeks from January 2005 will also assist HSE to respond effectively to such issues. HSE will also seek to maintain its positive working relationship with Ofgem through more informal channels in order to proactively address issues at an early stage.

All of the above are important arrangements that will help ensure that both parties continue to work effectively together on issues of mutual concern.

Yours sincerely

**Mike Leppard**  
**Policy adviser**