

The Gas Forum



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Dear Michael,

Draft guidance on impact assessments

The Gas Forum has long called for cost-benefit analysis or Regulatory Impact Assessments (RIAs) to be used by Ofgem when assessing whether to implement change to the gas regime. We therefore welcomed the introduction of a requirement on Ofgem to conduct RIAs in relation to important issues. Ofgem considers that RIAs should form part of a structured approach to policy development and decision-making, a view with which the Forum concurs. However, we have concerns that the principles which the Authority has outlined have not been consistently and transparently applied.

Ofgem has stated its commitment to following the principles of best regulatory practice; indeed, it now has Gas Act obligations to do so, as well as those requirements of the Energy Act 2004, for example, that reform should be proportionate and targeted at cases where action is needed.

It is in the interests of Gas Forum members to have a workable, reasonable and practical approach to identifying the costs and benefits of any proposal. The Gas Forum has identified the framework (displayed below) for analysis of issues, of which the first stage is the most critical. We would expect a certain proportion of proposed pieces of work to be screened out and not continue to the second stage.

The Gas Forum has three particular areas of concern that we feel merit further attention from the Authority:

- The RIA process
- Impacts on Licensees
- Ofgem's approach

The RIA Process

RIAs have improved since first publication, but the Gas Forum believes the quality of some is not as high as we would expect. Many members of the Forum question whether the documents produced on the agency arrangements, offtake and interruptions for the proposed Distribution Network sale can accurately be labelled impact assessments, as they appear to be consultation documents: the wide variety of approaches being consulted upon and the fact that the Authority has recently decided to take forward an option not set out in the "RIA" contributes to this view.



Framework for analysis:

1 - Identification of issue

*Is there a problem? Is there substantive evidence? Is it material?
Is it market-wide? Are there existing powers that can be utilised?
Is the problem correctly identified?*

Seminar
Consultation close

2 - Outline of possible solutions

*Problem now clearly identified; issues raised about it
Additional analysis (if necessary) carried out by Ofgem
Workgroups if necessary to look at solutions
Workgroup terms of reference agreed by all*

3 - Focus on best solution(s)

*Workgroup identify favoured solution(s)
Consultation focus on whether best solution(s) have been found
More work on how to implement, if necessary*

4 - Final consultation

*Ofgem ask for information for the impact assessment from all affected parties
Regulatory Impact Assessment*

Authority decision

Impact on Licensees

Ofgem's agenda of work has a considerable direct and indirect impact on licensees. Shippers and suppliers do not have the option not to be involved if they wish to understand the market and changes to it. It appears that there is insufficient regard given to the workload that Ofgem is imposing on licensees. There are areas that require significant input within tight deadlines, such as the proposed Distribution Network sale, but more effort could be made to reduce the level and pace of work in other areas where discussions could be delayed.

We welcome Ofgem's decision to extend its standard consultation period to 6 weeks. However, it is still a relatively short period and it makes it extremely difficult for parties to be able to fully understand the issue and consult internally. Being able to get an industry view – where this is appropriate – is restricted by Ofgem's approach, particularly when there is work ongoing in other areas. We recommend that a minimum of 8 weeks is instead established and that explanation of shorter consultation periods, on the rare occasions this is necessary, is always under the name of a member of the Authority.

Ofgem appears to considerably underestimate the time required in considering further development of policy and, in particular, the time required to respond to requests for data on areas such as Shipper's costs. A policy should be introduced that allows participants at least four weeks to produce this information.

While there is value in workgroups being established, the growing number of these groups makes it very difficult for all to participate or even keep up with the workgroup activities. We are

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particularly concerned that Ofgem considers discussion in the workgroups to be a replacement for proper consultation. Publication of minutes and papers is insufficient for ensuring that all can keep abreast of discussions and fully understand the changes proposed and their potential wider implications. We suggest that Ofgem takes responsibility for producing monthly summaries of the key issues discussed in each group.

Furthermore, views on quite significant policy changes are being invited with very short turn-arounds (less than a week) and then being described as “discussed / agreed in workgroups”. This is inappropriate and could in some cases be misleading. It is important for significant policy changes that full consultation takes place. The Gas Forum has concerns that aspects of reform are being looked at in isolation with no opportunity for the industry to review end to end processes and consider their full impact. This leads to a fragmented approach and a significant risk when it comes to implementation that understanding and implications are compromised by “lack of time” or resource.

Ofgem’s Approach

When initially identifying a problem, it is essential for Ofgem to outline not only when it has previously looked at the issue but also what the responses of the industry and consumers were at this time. Issues and solutions have been repeatedly raised with little consideration of previous discussions. This can be frustrating for the industry participants who need to restate the issues.

We have some concerns that major areas of reform such as exit and interruption have been raised without RIAs and that problems and solutions have been presented at the same time. We would expect problem identification and definition to precede solution design. It is not acceptable to present industry with proposed changes based on Ofgem perception. We would expect industry and consumers to be reporting concerns to Ofgem for it to consider and examine rather than vice versa.

We would be encouraged if Ofgem set up procedures for monitoring the effectiveness of its consultation process and for dealing with complaints on consultation periods in the same way that the Department of Trade and Industry has. We suggest monitoring should be carried out by a department other than the one leading the investigation.

We would be pleased to discuss how practical improvements can be made to the process that will ultimately benefit Ofgem, the industry and consumers. Please contact Richard Gray, Secretary General of the Gas Forum on 020 7090 1015 should you wish to arrange a meeting to discuss any part of this letter.

Yours sincerely

Angela Love
Chairman
Gas Forum

cc: Gas Forum Members
John Neilson, Managing Director – Corporate Affairs, Ofgem