



The Office of Gas & Electricity Markets

Responses to the draft guidance on impact assessments July 2004 172/04

Introduction

In December 2003 section 6 of the Sustainable Energy Act 2003 placed a duty on the Gas and Electricity Markets Authority ("the Authority") to carry out Impact Assessments ("IAs") by inserting section 5A into the Utilities Act 2000 ("the Utilities Act"). In July 2004 Ofgem published draft guidance on impact assessments. Comments were invited on the proposals set out in the draft guidance and on the quality of IA's produced to date. We are grateful to those who responded. Details of non-confidential responses can be found on the Ofgem website.

Responses were generally supportive and welcomed Ofgem's attempts to ensure that the 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. A number of common themes were evident in responses. These themes are addressed below:

- **Consultation and communication**

Respondents expressed concern that the IA process should not unnecessarily increase the burden already imposed by workgroups and consultation documents. One respondent did, however, request that IA documents should also include discussions of relevant workgroups sponsored by Ofgem and that IAs should address all issues raised by workgroups on a point by point basis.

Some respondents indicated that Ofgem already generates a considerable workload and that while they welcomed the increased minimum period of 6 weeks they considered a period of 8 or more weeks would be more appropriate.

Respondents also suggested that Ofgem should, in line with Cabinet Office guidance, designate a consultation co-ordinator to support the consultation process and act as a point of contact for complaints and feedback on the consultation process¹.

Ofgem is committed to improving its openness and transparency when developing policy and believes that consultation processes are a vital part of this. In its summary of responses to Ofgem's proposed Corporate Plan 2004 -2007 Ofgem recognised "the significant work involved in responding to our consultations" and said we would aim for a minimum period of 6 weeks from January 2005². The guidance on impact assessments reiterates this commitment and confirms that where possible Ofgem hopes that the consultation period will be at least 6 weeks. This does not preclude a longer consultation period when it is practical to do so. Ofgem also

¹ The Cabinet Office Code of Practice on Consultation recommends that each department monitors consultation effectiveness through the use of a designated consultation co-ordinator.

² Summary of responses to Ofgem's proposed Corporate Plan 2004 -2007. Ofgem 109b/04

considers that the suggestion to designate a consultation co-ordinator for IAs does have some merit and a contact has been appointed within Corporate Affairs. In future Ofgem's consultation and IA documents will include the name of this contact to which comments or complaints about the way in which the consultation has been conducted can be sent.

- **Retrospective review of IAs for major policy initiatives**

Two respondents suggested that Ofgem should revisit IAs after the implementation of the proposed policy or code modification to ensure that assumptions made and impacts anticipated were correct. One respondent cited in support the House of Lords Select Committee on the Constitution report which recommended pre and post regulation RIAs³.

While there is no requirement for Ofgem under Section 5A Utilities Act 2000 to conduct post implementation reviews of IAs, Ofgem has previously reviewed the implementation of major policies such as the New Electricity Trading Arrangements⁴ and the removal of supply price controls⁵. Ofgem will continue to conduct reviews of the implementation of major policies where appropriate.

- **What constitutes an "important" proposal**

Several respondents raised concerns about the considerable discretion that the proposed guidance afforded Ofgem in deciding whether a proposal is important and requested that Ofgem clarify those circumstances when a proposal will be seen as important. A number of respondents provided Ofgem with what they considered to be suitable criteria. One respondent also asked Ofgem to set out a mechanism for those cases where Ofgem and market participants or the public disagree about whether a proposal is important.

Ofgem recognises respondents' concerns about the decision whether a policy proposal is "important" but considers that the decision about whether a proposal is "important" has to be made on a case by case basis. The guidance is not meant to be prescriptive but presents a framework which Ofgem will follow in most cases. Some guidance about what may be seen as "important" is however available. Ofgem has set out broad criteria about importance in the guidance. In addition there is now a series of precedents that have been set by the publication of IAs. Ofgem notes that, to date, it has received few, if any, representations that it should publish an IA when it had not intended to do so.

- **Quantification of costs and benefits**

The draft guidance made clear Ofgem's belief that some areas are more amenable to robust quantification than others and that Ofgem is keen to avoid spurious quantification. Some respondents, however, considered that there is nevertheless scope for Ofgem to improve its quantitative analysis. In particular one respondent considered that the guidance should make clear that costs are more readily quantifiable than benefits. Ofgem accepts that there is indeed scope for improvement and considers that costs are in many cases more readily quantified than

³ House of Lords Select Committee on the Constitution Report. 6 May 2004.

⁴ The review of the first year of NETA. A review document. Vol1. Ofgem 48/02.

⁵ Ofgem has published a number of reviews of competition following the removal of retail price controls including most recently the "Domestic competitive market review. April 2004." Ofgem 78/04.

benefits. However, as was highlighted in the draft guidance, Ofgem is reliant on the assistance of industry to produce a robust quantification of all aspects of a proposal.

- **Code Modifications**

Respondents raised concerns about the IA process and code modifications. Concern was expressed that the volume of consultations may lead to “consultation fatigue”. One respondent asked Ofgem to clarify whether an IA for a code Modification will set out Ofgem’s provisional thinking on whether it is minded to accept or reject a modification proposal. In most cases we shall do so. The guidance also includes a commitment that Ofgem will indicate on our website when we are intending to carry out an IA. This will allow interested parties to make timely representations about whether an IA should be published in a particular case.

- **Views on IAs produced to date**

Respondents considered that Ofgem’s IAs have improved over time and that the majority are well laid out. A number of respondents did however criticise individual RIAs. Ofgem will consider the views of all respondents about the quality and format of previous RIAs and IAs as well as future IAs. The appointment of a designated contact for IAs within Corporate Affairs should help to ensure that feedback provided by respondents about the IA process is considered carefully as part of our desire to keep improving the quality of Ofgem’s policy development and decision making.