

BY EMAIL

Andy,

Marie asked me to give my view on Ofgem's proposed revised guidance on impact assessments.

I am impressed with the overall guidance, especially chapter 3 and 4 about best regulatory practice and the consultation process. I also think chapter 5 strikes the right balance between added value of cost-benefit analysis and its difficulties in monetising cost and benefits. I do, however, have some comments.

IAs produced under section 5A of the Utilities Act 2000

I have the feeling that chapter 2 and 3 of the guidance have been written by a lawyer and economist respectively. Chapter 2 takes a rather legalistic approach by setting out requirements, criteria and definitions on when to do an impact assessment. For example, paragraph 2.4 surprised me a bit by stating that 'Ofgem has interpreted 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 proposal stage of policy-making'.

I think what the Utilities Act envisages Ofgem to do is very much the same as set out in chapter 3 about best regulatory practices: indeed, 'a process that [can] facilitate a better understanding of the consequences, or potential consequences, of policy options from the early stage of identifying a policy challenge, ...and post implementation review' (par 3.7). This is very much the aim of the impact assessment process.

Stakeholders may get confused about the difference between these two ways to conduct an impact assessment. Naturally, I have preference for the latter.

Risk and unintended consequences

You might want to refer here to the concept of 'optimism bias' as elaborated in the Green Book.

Summary Sheet

2.4 states that 'the emphasis on quantified data is inappropriate for an economic regulator such as Ofgem as we have to take decisions based on our statutory duties and not solely and strictly on a 'net benefit' test'.

Government also does not take policy decisions on a 'net benefit' test. For example, the recent Energy Bill has a couple of impact assessments that have a negative net present value but have been taken for other reasons. The aim of the summary sheet is to make the reasons for a decision transparent, not whether the numbers are positive or negative.

The Government does not dismiss quantified data as inappropriate as quantified data is only one of arguments - there may be more - to base a policy decision upon. Furthermore, it may look a bit odd for Ofgem, as an economic regulator, to express so strongly the inappropriateness of quantified [economic] data. Moreover, the wording is a bit at odds with chapter 5.

Happy to discuss.

Regards,

Arjan