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Dear Andy

Proposed revised guidance on impact assessments 301/07

We welcome the opportunity to comment on Ofgem's proposed revision to its guidance on impact assessments (IAs). We assume that the review of the existing guidance was prompted, at least in part, by the recent report by the House of Lords Select Committee on Regulators as we have noted that some of the recommendations from that report touch on areas covered by the guidance. We understand that the government is still to respond to the Committee's report and when it does so, this could potentially be another source of general guidance to which Ofgem might have regard.

Our response to the specific questions posed in this consultation is set out below.

Do you agree that the proposed changes are sensible?

Overall, we welcome the proposed additions to and rearrangement of the previous guidance. In particular, we support the addition of a section in IAs on impacts on consumers and the inclusion within the IA framework of changes to network use of system charging methodologies, on a similar basis to that of industry Code modifications. We also welcome the greater emphasis on cost/benefit analysis, sustainable development and post-implementation review; we comment on each area in turn below, followed by some more detailed drafting points.

On cost/benefit analysis, we believe that this is an important part of the discipline of the IA process for important policy decisions. We are therefore a little surprised that Ofgem, at paragraph 2.4, suggests that the "emphasis on quantified data is inappropriate for an economic regulator such as Ofgem". We understand that the wider statutory duties of economic regulators may require consideration of other objectives, such that decisions are not taken merely on a "net

benefit” basis. However, it is essential, in our view, that Ofgem properly evaluates the likely cost of its policy options.

On sustainable development, we support the detailed range of considerations that Ofgem has set out in its new section under this heading. We have two specific detailed comments. Firstly, paragraph 6.22 discusses evaluating environmental damage and this is obviously considering environmental issues from the perspective of cost. We suggest that the environmental **benefits** are also explicitly evaluated where, for example, an option under consideration prevents new damage or prevents existing damage from continuing. Secondly, we suggest it is worth noting under this heading that the UK has obligations under the Renewables Directive 2001/77/EC to “ensure that the charging of transmission and distribution fees does not discriminate against electricity produced from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions and regions of low population density.”

With regard to post-implementation review, we note that the Select Committee made a number of specific recommendations in this area, which we would expect Ofgem to follow and it may be worthwhile to add some of the measures specifically into the text of the guidance, for example that any post-implementation evaluation will be publicly available. The detailed comments on this subject appear in section 6 of the proposed guidance and, in relation to paragraph 6.47, we suggest that the primary responsibility for post-implementation review of industry Code modifications should actually rest with Ofgem as it has wider statutory duties to consider than the Code governing bodies do, albeit that Ofgem may be able to draw on monitoring that these bodies have carried out.

We note that Ofgem has proposed that it uses a common format for IAs, whether undertaken on a statutory basis or not. We support this and agree that comments under a particular heading can be succinct if little impact is expected under that heading.

We have the following comments on some detailed aspects of the proposed new guidance.

- Paragraph 2.4 comments that IAs would be conducted when the terms of a proposal are clear “which is typically at the final proposals stage”. This seems somewhat at odds with the expectation set at paragraph 3.6 in the section on best regulatory practice that “carrying out an IA at the start of the process is likely to ... improve the policy proposals”. We support an early start to preparation of the IA so that stakeholders are given maximum opportunity to provide information that helps to indicate relative costs and benefits and so that Ofgem’s own work can be focussed on the most worthwhile options in the light of this developing cost/benefit assessment.
- The reference to chapter 6 at paragraph 4.10 of the proposed guidance appears to actually refer to chapter 7.
- The appendix to the revised guidance lists all the IAs that Ofgem have carried out to date. This list is growing quite long and it may be appropriate only to list those produced since

the last guidance was issued, given that the earlier version of the guidance should continue to be available and Ofgem also lists IAs in its annual report.

Are there any other changes you would like to see?

The principal area where we would like to see further changes to Ofgem's guidance is in relation to the standard length of time allowed for consultation responses. We are disappointed that the wording of the guidance around paragraph 4.7 has been changed only slightly since the last version of the guidance. We have commented on previous occasions that a consultation period greater than 6 weeks would often be appropriate and we note that the Select Committee has explicitly recommended "at least a 12 week consultation period ... to give industry a reasonable amount of time to respond". Realistic response times would also help industry to provide Ofgem with the information that it states is required (paragraphs 5.11/12) in order to assist Ofgem's own analysis of costs and benefits as part of the IA process.

We recognise that there are times when it would be sensible to specify a shorter response time - for example, where the consultation timetable is dictated by other bodies. However, a greater period of time, on average, to respond to consultations would also allow industry to plan and resource its input to the wide range of consultations that Ofgem produces, reflecting the range of policy initiatives that are current at any one time. On that theme, we consider that industry Code consultations could often do with longer response periods, where these are complex. In fact, if there is normally to be only one round of consultation for an industry Code or charging methodology consultation (as set out in paragraph 7.11), it would seem particularly important to allow sufficient time for stake-holder input.

We have also detected a lack of consistency in how long it takes Ofgem to produce an IA for a Code modification proposal. We would therefore like to see Ofgem commit to an outline timetable in the guidance document on how long this part of the process should normally take. This would allow stakeholders to plan accordingly and it would also obviously then be helpful if Ofgem could clearly signal where variations to the standard timetable were expected or become needed during the process. We believe this would help stakeholders to resource appropriately to respond to these types of consultations.

I hope these comments are helpful.

Yours sincerely

Rob McDonald
Director of Regulation