

Guidance on Ofgem's Approach to Conducting Impact Assessments

Proposed Guidance

Reference: 37/13

Publication date: 18 March 2013

Contact: Mark Wagstaff

Team: Better Regulation

Tel: 020 7901 0500

Email: Mark.Wagstaff@ofgem.gov.uk

Overview:

This document sets out proposed text amending our 2009 Guidance on Impact Assessments. Subject to consultation and stakeholder feedback, we intend to adopt these proposals in 2013.

When we consider and reach decisions, it is important that we act in the manner best calculated to protect existing and future consumers. This means balancing the benefits of any action we take against the costs that may be imposed on consumers by the companies that we regulate as a result of those requirements. Impact assessment (IA) is a tool to help explain the effects of regulatory proposals which impact on consumers, industry participants and social and environmental issues. Whilst IAs do not determine a final decision, they form a vital part of the decision-making process and provide a structured framework for understanding the impacts associated with important proposals.

Our guidance on our approach to conducting IAs addresses those matters to which the Authority must have regard in reaching its decisions, reflects best practice and ensures that our approach to developing the evidence underpinning our decision making continues to be proportionate, consistent and transparent.

Context

Ofgem's¹ priority is to protect and to make a positive difference for all energy consumers. We work to promote value for money, security of supply and sustainability for present and future consumers. We do this through the supervision and development of markets, regulation and the delivery of government schemes.

We work effectively with, but independently of, government, the energy industry and other stakeholders. We do so within a legal framework determined by the UK government and the European Union.

In view of the above, our approach to Impact Assessment (IA) ensures that we:

- fulfil our principal objective and statutory duties including having regard to our Social and Environmental Guidance²
- meet our objectives to promote a competitive, secure and environmentally sustainable internal European energy market, as required by the Third Package³, and have due regard to the impact of our policies on groups sharing protected characteristics, as required by the Equality Act 2010
- reflect the principles of Better Regulation: transparency, accountability, consistency, targeted action and proportionality
- protect the interests of future (as well as existing) consumers by systematically assessing long-term, hard-to-monetise considerations.

Associated documents

We have issued a consultation (open until 10 June 2013) on these proposed revisions to our guidance on conducting impact assessment:

http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=13&refer=ABOUT_US/BETTERREG/IA

Following the consultation period, Ofgem will consider responses and issue revised guidance and a date from which the new guidance will apply. Until the revised guidance takes effect, the 2009 Ofgem Guidance on Impact Assessments remains extant:

"Guidance on Impact Assessments" Ofgem, December 2009 (Reference No. 151/09)
<http://www.ofgem.gov.uk/About%20us/BetterReg/IA/Documents1/REVISED%20GUIDANCE%20ON%20IMPACT%20ASSESSMENTS%2015%20DECEMBER%202009.pdf>

¹ The terms "Ofgem" and "the Authority" are used interchangeably in this document. Ofgem is the office of the Gas and Electricity Markets Authority (GEMA). GEMA was established under section 1 of the Utilities Act 2000.

² <http://www.ofgem.gov.uk/About%20us/Documents1/file37517.pdf>

³ In this document, the "Third Package" refers collectively to Directive 2009/73/EC concerning common rules for the internal market in natural gas (the Gas Directive) and Directive 2009/72/EC concerning common rules for the internal market in electricity ("Electricity Directive").

Contents

Executive Summary	4
1. Introduction and overview	5
What form will an Ofgem IA take?	5
Structure of the guidance	6
Contacting Ofgem	6
2. When Ofgem will undertake an Impact Assessment	8
Screening	8
Section 5A IAs and determining “importance”	8
Criteria for determining importance	9
Impact Assessments produced outside the scope of s.5A	10
Best Regulatory Practice	11
Modification Impact Assessments	11
Multi-stage Impact Assessments	13
When we won’t undertake an Impact Assessment	14
3. Approach to impact assessment	15
Approach to impact assessment – indicative stages	15
Stage 1 - Development of proposal objectives	16
Stage 2 - Development of initial options, including high level consideration of risks, external drivers and unintended consequences	17
Stage 3 - Iterative development and refinement of options, including consideration of competition and consumers	17
Monetised, aggregate cost-benefit analysis	19
Distributional effects	20
Long-term, hard-to-monetise considerations	21
Consideration of competition and consumers	22
Stage 4 - Preferred option(s)	24
Stage 5 - Consultation	25
Stage 6 – Post-implementation arrangements	25
4. Consultation	26
Formal consultation	27
Summary of consultation approaches	28
Appendix 1 – Supplementary IA Guidance	30

Executive Summary

Ofgem's principal objective is to protect consumers' interests. Consistent with our duties, we consider whether any regulatory requirement we are proposing to introduce is the best way to protect consumers, now and in the future, having regard to the needs of vulnerable consumers, the need to contribute to sustainable development and the principles of better regulation. One of the ways we do this is to consider the potential impacts arising from our policies through a structured assessment. Since December 2003 Ofgem has had a duty to carry out Impact Assessments (IAs) for proposals which we consider to be "important" within the meaning of section 5A of the Utilities Act 2000, or to publish a statement setting out our reasons for not undertaking an IA.

We consider Impact Assessment to be a continuous process, which should inform and be informed by developing policies. Whilst a clear structure and process for considering impacts is important, the nature of our decision making often involves the development of a wide range of documents, and it is important that the assessment of impacts is not read in isolation from these. Consequently, our IAs will often be embedded within or cross-referenced to the main document in question, although where appropriate we may choose to publish a separate IA.

Chapter 1 explains that the form of an Ofgem IA may vary depending on what is appropriate and most useful for our stakeholders. To ensure consistency, the approach set out in the guidance will be summarised, either by a cross-referenced IA annex, or an executive summary drawing together the key features of a proposal.

Chapter 2 explains the criteria determining when we will undertake IAs. This includes IAs required under our statutory duties, IAs in line with best practice, and IAs required to help the Authority in considering the wider issues associated with an industry code and / or charging methodology modification proposal (which may or may not be required by statute), as well as situations where IAs are not produced.

Chapter 3 sets out in detail our proposed approach to considering the impacts of proposals, including post-implementation arrangements. The chapter details how we propose to consider the key domains of monetised aggregate cost-benefit analysis, distributional effects and long-run, hard-to-monetise (strategic and sustainability) aspects in an integrated manner. This section also widens the consideration of competition issues to include Third Package obligations. Each domain of analysis is further underpinned by consideration of the implications of protecting the interests of future as well as existing consumers and competition impacts.

Chapter 4 sets out Ofgem's approach to consulting on IAs in line with our consultation policy. This includes an explanation of our four, eight and twelve week consultation periods, and a summary of the consultation approach taken for each type of IA.

Appendix 1 lists guidance we may choose to have regard to when conducting IAs.

This document sets out proposed text amending Ofgem's 2009 guidance on IAs. Subject to consultation and stakeholder feedback, we intend to adopt these proposals in 2013.

1. Introduction and overview

Chapter Summary

The form of an Ofgem IA may vary depending on what is appropriate and most useful for our stakeholders. However, to ensure consistency, the approach set out in the guidance will always be summarised, either by a cross-referenced IA annex, or an executive summary drawing together the key features of a proposal; as it is important that the assessment of impacts is not read in isolation from any associated documents.

- 1.1. Since December 2003 Ofgem has had a statutory duty⁴, when proposing to exercise its functions under Part 1 of the Gas Act 1986 or the Electricity Act 1989, to carry out Impact Assessments (IAs) or to publish a statement setting out its reasons for not undertaking an IA. The duty applies to proposals which we consider to be "important" within the meaning of section 5A of the Utilities Act 2000. Our approach to determining what is "important" within the meaning of section 5A is set out in chapter 2.
- 1.2. Ofgem's principal objective is to act in the manner best calculated to protect consumers' interests, now and in the future. Our duties require us to have regard to the needs of vulnerable consumers, the need to contribute to sustainable development and the principles of better regulation (among other things).
- 1.3. Whilst impact assessments themselves do not determine a final decision, they form a vital part of the decision-making process and provide a structured framework for understanding the impacts associated with important proposals.

What form will an Ofgem IA take?

- 1.4. Impact assessment is a continuous process, which should inform and be informed by developing policies. Whilst a clear structure and process for considering impacts is important, the nature of our decision making often involves the development of a wide range of documents (eg initial proposals, open letters, discussion documents, consultations), and it is important that the assessment of impacts is not read in isolation from any associated documents. However, where appropriate, we may still publish a separate IA document.
- 1.5. We think it is important to tailor our analysis to the scale and material impacts of a proposal. This means that the way we present our analysis may vary, depending on what is appropriate and most useful for our stakeholders. However, to ensure consistency, the approach set out in chapter 3 will always

⁴ Section 5A of the Utilities Act 2000 was inserted by section 6 of the Sustainable Energy Act 2003.

be summarised, either by a cross-referenced IA annex or an executive summary drawing together the key features of a proposal. This flexible approach allows us and our stakeholders to focus on how the assessment of impacts relates to the detail of a proposal. We aim for comparability between assessments, but we do not intend to produce additional documents that simply duplicate what has already been published.

- 1.6. A typical approach to this could be to use an IA 'annex'. This annex is likely to be quite short, serving to signpost particular sections of analysis within the main document. Alternatively, in some cases it may be appropriate to publish IAs as stand-alone documents. Whichever arrangement is used, in order to minimise duplication and increase transparency we will endeavour to ensure that the IA refers to related passages within the main document and vice versa.
- 1.7. Whilst the form of an IA may vary, in line with better regulation principles⁵ we will always strive to:
 - provide a concise, accessible summary of the impacts identified, including the qualitative and quantitative costs and benefits where available
 - maintain transparency of process
 - minimise duplication
 - provide consistency and comparability between the way in which we consider impacts across proposals.

Structure of the guidance

- 1.8. The guidance document is structured in the following way (elaborated in Figure 1 overleaf):
 - Chapter 2 sets out the various forms of IA and explains the criteria determining when we will undertake IAs.
 - Chapter 3 sets out our approach to assessing the impacts of a proposal, providing an indicative structure for all forms of IA.
 - Chapter 4 sets out Ofgem's approach to consulting on IAs.
 - Appendix 1 lists useful references / published guidance on conducting IAs.

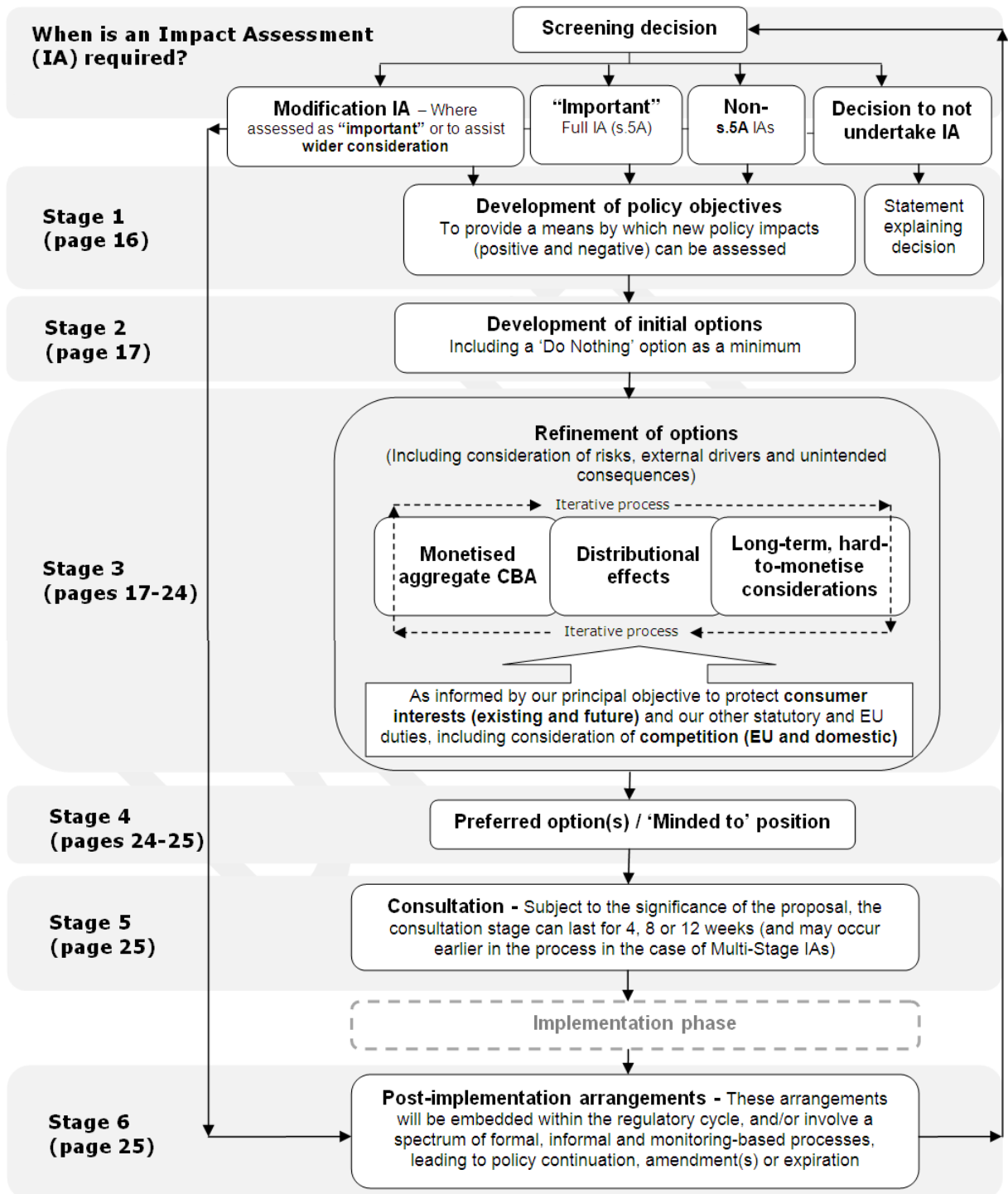
Contacting Ofgem

- 1.9. Any comments or questions about this guidance, or comments or complaints about any IAs produced by Ofgem, should be sent to:

Mark Wagstaff
Better Regulation
Ofgem
9 Millbank
London
SW1P 3GE
Tel: 020 7901 0500
Email: mark.wagstaff@ofgem.gov.uk

⁵ See page 11 for details

Figure 1: Ofgem’s approach to Impact Assessment (IA)



2. When Ofgem will undertake an Impact Assessment

Chapter Summary

This chapter explains the criteria determining when we will undertake IAs. This includes IAs required under our statutory duties, IAs in line with best practice, and IAs required to help the Authority in considering the wider issues associated with an industry code and / or charging methodology modification proposal, as well as situations where IAs are not produced.

Screening

- 2.1. In considering whether to produce an impact assessment (IA), a screening decision will be made to determine whether:
 - an IA is required under our statutory duties (**s.5A IA**)
 - an IA would be beneficial to the proposal development process / in line with best practice (**non-s.5A IA**)
 - an IA is required to help the Authority in considering the wider issues associated with an industry code and/or charging methodology modification proposal (**Modification IA**)⁶
 - no IA will be produced⁷.
- 2.2. All Ofgem IAs aim to be of comparable quality and robustness, the screening decision mainly reflects the particular focus and appropriate depth of analysis.

Section 5A IAs and determining "importance"

- 2.3. Section 5A of the Utilities Act 2000 places a duty on the Authority to carry out IAs where:
 - the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989; and
 - it appears to the Authority that the proposal is "important" within the meaning of section 5A.
- 2.4. The section 5A duty may not apply where Ofgem considers that it is an urgent case and that it would be impracticable or inappropriate to comply with the

⁶ This may be an s.5A IA or a non-s.5A IA, depending on the nature of the proposal.

⁷ Although we may not choose to carry out an impact assessment in every instance, it is likely that we will still communicate our activities and planned intentions through open letters, workshops and more formal public consultations (see chapter 4). In this way, anyone with an interest in our policy development will still have an opportunity to share their views on the impacts of our proposed activity.



Guidance on Ofgem’s Approach to Conducting Impact Assessments

duty. This could be the case for urgent code modification proposals, although even where a code modification is deemed to be urgent, it may still be appropriate to do an IA.

- 2.5. Where section 5A applies the Authority must carry out and publish an IA, or publish a statement setting out the reasons that it considers that it is unnecessary for it to carry out an IA.
- 2.6. We believe that it is in the interests of good policy-making, and consistent with better regulation principles, to begin an assessment of impacts at an early stage of proposal development, which may include producing a draft IA where practical⁸.
- 2.7. Section 5A requires that:
 - an IA must include an assessment of the likely effects on the environment of implementing the proposal and relate to such other matters as the Authority considers appropriate
 - in determining the matters to which an IA should relate, the Authority must have regard to such general guidance which relates to the carrying out of IAs as it considers appropriate. This guidance is intended to meet that requirement. More information on other guidance we may, in appropriate cases, have regard to, can be found in Appendix 1.

Criteria for determining importance

- 2.8. The table below sets out examples of those proposals which may, for each of the criteria set out in section 5A, indicate that a proposal is “important”.

<i>Major change in the activities carried out by the Authority</i>	Proposals which may involve a major change in the activities carried out by the Authority may include, for example, those where Ofgem exercises a significant new power or function for the first time or where Ofgem proposes important changes to the way in which it discharges a duty.
<i>Significant impact on persons engaged in the shipping, transportation or supply of gas, the generation, transmission, distribution or supply of electricity, or in connected commercial activities</i>	Proposals which are likely to result in “significant impacts” may include, for example, those where the implementation of the proposal would have significant costs for industry participants and/or persons engaged in connected commercial activities or those where the implementation of the proposal would affect the ability of industry participants to choose the price, quality, range or location of their gas and/or electricity or associated services.
<i>Significant impact on the general public in Great Britain or part of Great Britain</i>	“Significant impacts” may be likely, for example, where the implementation of a proposal significantly affects: security and/or diversity of energy supplies; health and safety; gas or electricity prices;

⁸ Section 5A does not contain specific requirements about the timing of the IA. It may, in some circumstances, be carried out only once the terms of a proposal are clear (which is typically at the first proposal stage of decision making).

	competition in British markets; sustainable economic growth and productivity; a sustainable energy system, energy efficiency, quality of service, social impacts including effects on fuel poverty, people with disabilities ⁹ and/or with protected characteristics ¹⁰ .
<i>Significant effects on the environment</i>	<p>Significant effects may be likely where, for example, a proposal is likely to:</p> <ul style="list-style-type: none"> • result in an appreciable increase or decrease in emissions of carbon dioxide or other greenhouse gases • materially affect government objectives described in the Social and Environmental Guidance to Ofgem (particularly those relating to energy efficiency, distributed energy and innovation), and / or • have a significant impact on visual or other amenity issues, especially in environmentally sensitive areas such as National Parks, Areas of Outstanding Natural Beauty or Sites of Special Scientific Interest, and/or have a significant effect on biodiversity¹¹.

Impact Assessments produced outside the scope of s.5A

2.9. Ofgem may wish to carry out an IA even where it is not required by section 5A of the Utilities Act 2000. For example, we may wish to publish an IA if we are beginning to develop proposals in an area where, in due course, we may ultimately be making proposals that are “important” within the meaning of section 5A.

2.10. Carrying out an IA in these circumstances is not a statutory requirement but is in line with good practice. In deciding whether or not to carry out such an IA we will have regard to the principles of transparency, accountability, proportionality, consistency and targeted action, in line with our general duties. We will also, where appropriate, have regard to any representations from interested parties to the effect that an IA is required or desirable.

2.11. IAs outside the scope of section 5A will, where appropriate, consistently follow the approach set out in this guidance. A proportionate approach to the analysis will be taken in each case.

⁹ As per the Social and Environmental Guidance referenced in footnote 2.

¹⁰ Ofgem’s general duties require that, in performing our duties, we must have regard to the needs of consumers of pensionable age; those that have a disability; those that are chronically sick; those on low incomes; and those living in rural areas. Furthermore, as a public authority, Ofgem is subject to the Public Sector Equality Duty, set out in s. 149 of the Equality Act 2010.

¹¹ The Natural Environment and Rural Communities Act 2006 requires Ofgem to have regard, so far as is consistent with the proper exercise of its functions, to the purpose of conserving biodiversity.

Best Regulatory Practice

- 2.12. The Gas Act 1986 and the Electricity Act 1989 require Ofgem to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and have regard to any other principles that appear to it to represent best regulatory practice.
- 2.13. The Better Regulation Executive has interpreted these principles as meaning:
- transparency: regulators should develop policy in an open manner and keep regulations as simple and user friendly as possible
 - accountability: regulators must justify decisions and subject them to public scrutiny
 - proportionality: regulators should only intervene when necessary, remedies should reflect the risk posed, and costs should be identified and minimised
 - consistency: rules and standards should be coherent and implemented fairly
 - targeting: rules and standards should focus on the problem and minimise side effects.
- 2.14. We will have regard to this interpretation in our approach to IAs.
- 2.15. We recognise that carrying out an IA at the start of the process is likely to maximise the opportunity for interested parties to comment upon and improve the proposals. However, we note that the use of IAs for code modification proposals is likely to take place towards the end of the process, given that these are industry-led.

Modification Impact Assessments

- 2.16. Ofgem has duties in relation to the gas and electricity industry codes which are the contractual arrangements that underpin the electricity and gas wholesale and retail markets. Licensees are required to maintain, become party to, or comply with the industry codes in accordance with the conditions of their licence. The industry code modification¹² process is a mechanism available to industry to propose change to a range of policy areas covered within the codes, including trading and transmission, supply, metering and governance arrangements¹³. Ofgem also has duties in relation to the methodologies developed by network companies that they use for charging

¹² Reference to 'modification' includes industry code processes where alternative descriptions are used, eg Change Proposals raised under the Distribution Connection and Use of System Agreement.

¹³ Ofgem will undertake Significant Code Reviews (SCRs) from time to time. SCRs provide a role for Ofgem to holistically review a code based issue for some commercial industry codes. An SCR may or may not include an IA. We have published separate guidance on the launch and conduct of Significant Code Reviews:
http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/Guidance_intiating%20and%20conducting%20SCRs_final%20draft_110810.pdf

customers for connecting to, and using, their networks. Network companies are required by their licences to have in place charging methodologies, and a number of charging methodologies are now governed by the various industry codes. Ofgem decides whether modifications to codes, including charging methodologies, should be approved¹⁴.

- 2.17. Ofgem considers the merit of any industry code (which includes proposed changes to charging methodologies) against the relevant code objectives and, where appropriate, its principal objective and statutory duties. Following implementation of the Third Package, a number of GB industry codes and charging methodologies have seen their objectives revised to include a new objective regarding compliance with binding decisions of the Agency for the Cooperation of Energy Regulators (ACER) and of the European Commission. In practice, these aspects will need to be taken into account during code and/or charging methodology modification panel deliberations and by Ofgem in reaching a decision on the modification proposal(s).
- 2.18. This consideration against code objectives, principal objectives and statutory duties will equally apply to Ofgem when it is itself making modification proposals in connection with modifications it considers are necessary to comply with or implement relevant binding decisions of ACER and of the European Commission. This consideration will be especially important for proposals with clear cross-border impacts, but also apply more widely across all proposals.
- 2.19. The definition of the interests of consumers under the Gas Act and under the Electricity Act 1989 include their interests in the fulfilment by the Authority (when carrying out its functions as the designated regulatory authority for GB) of the objectives set out in the Electricity Directive and the Gas Directive (which include the objective of promoting the internal market in energy). Further, following Third Package implementation Ofgem must carry out its functions under Part 1 Of the Gas Act 1986 and under Part 1 of the Electricity Act 1989 in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Gas Directive and the Electricity Directive, the Gas Regulation (Regulation 715/2009), the Electricity Regulation (Regulation 714/2000) or the ACER Regulation (Regulation 713/2009).
- 2.20. There may be circumstances in which the decision by Ofgem could be considered as being "important" within the meaning of section 5A of the Utilities Act 2000. We will judge whether any proposal is "important" within the meaning in section 5A of the Utilities Act 2000 on a case by case basis.
- 2.21. Once a modification is with Ofgem for decision and if we have decided to undertake an IA, the modification IA will consider the impact of accepting or rejecting a proposed modification set out against the existing regulatory arrangements (the current code baseline). Where appropriate the IA will set out our provisional thinking on whether to approve or reject the modification.

¹⁴ Consultation processes for modification IAs are set out in chapter 4.

- 2.22. Modification IAs will consider the set of impacts (described in chapter 3) that are relevant to the modification, with the level of analysis tailored to the particular circumstances of the code modification. These may differ to situations where Ofgem is bringing forward a proposal.
- 2.23. Many modification proposals refer to very specific aspects of industry arrangements. For some modification proposals, we might not consider it necessary to publish a full IA. For example, in cases where the impacts of a modification would be limited to a specific issue, it would be proportionate for us to seek views only on that issue. For other modification proposals, we might not consider it necessary to publish an IA. For example, if we consider that the industry has conducted a suitable impact assessment and consultation process whilst developing the proposal, then a further IA by us would not add value.

Multi-stage Impact Assessments

- 2.24. Ofgem recognises that a systematic assessment of impacts can facilitate a better understanding of the consequences, or potential consequences, of proposal options from the early stages of identifying a challenge, through the development of proposals, and public consultation, to final decision making and implementation.
- 2.25. For all IAs, whether or not they are carried out under section 5A, it may assist the proposal development process to produce and publish a number of IAs. In some cases, this will mean:
- an initial IA produced at an early stage in proposal development which represents Ofgem's initial thoughts about the impact of a proposal; and
 - a final IA which is the culmination of the process of consultation and proposal development work. The final IA will seek to integrate the results of consultation with other strands of proposal development. If the proposal is important within the meaning of section 5A, this final IA may constitute the statutory IA.
- 2.26. In some cases where, for example, responses to the initial IA indicate significant issues, impacts or options that have not been considered by Ofgem, further consideration may be required as appropriate.
- 2.27. This approach complements Ofgem's established consultation process¹⁵. For example, an initial IA could be published with initial proposals and then a final IA with a decision document. In some cases, however, there may be fewer stages of consultation and Ofgem may seek to incorporate the consideration of a number of "important" issues into one IA document, for example for proposed modifications to industry codes. Alternatively, there may be many

15

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=5&refer>About%20us/BetterReg>

stages of consultation, for example during a price control review. The iteration of impacts should evolve through the stages of a project, as feedback from consultation becomes available.

- 2.28. Consistent with our duty to have regard to the principles of good regulation, in developing proposals we will continue consider how best to explain our proposals and their impacts and capture views from stakeholders without placing an unnecessary burden on stakeholders.

When we won't undertake an Impact Assessment

- 2.29. Ofgem may decide that a proposal is not "important" within the meaning of section 5A and so does not require a statutory IA. Where we also consider there is no need to undertake a non-statutory IA we will state our reasons.
- 2.30. Circumstances in which we would not expect to produce impact assessments include:
- urgency and / or where carrying out an IA would be impractical or inappropriate
 - carrying out formal enforcement action (the Gas and Electricity Acts set out specific procedural steps for our enforcement functions)
 - using our formal powers to resolve complaints or disputes
 - implementing primary or secondary legislation which has been approved by Parliament and already subject to impact assessment by the sponsoring government department, except where we have significant discretion about how to implement the statutory requirement
 - publishing proposals which draw together a range of options which have been subject to separate consultation or impact assessment.

3. Approach to impact assessment

Chapter Summary

This chapter sets out in detail our proposed approach to considering the impacts of proposals, including post-implementation arrangements. We propose to consider the key domains of monetised aggregate cost-benefit analysis, distributional effects and long-run, hard-to-monetise (strategic and sustainability) aspects in an integrated manner. This section also widens the consideration of competition issues to include Third Package obligations and the avoidance of 'lock-in'/presumption towards existing systems when considering the interests of future consumers. Each domain of analysis is further underpinned by consideration of the implications of protecting the interests of future as well as existing consumers and competition impacts.

- 3.1. In making regulatory decisions we must select the option which is best calculated to protect existing and future consumers, in line with our principal objective and general duties. By encouraging a process of identification and analysis of a range of options, Impact Assessments (IAs) play an important role in informing the decision making process.
- 3.2. To ensure that our analysis is based on proper evidence and reflects a dynamic approach to proposal development, we would typically expect to initiate an IA at an early stage of a proposal. Even though a wide range of evidence may not be available at that early stage, the IA structure provides a rigorous tool to examine the issues at hand.
- 3.3. In order to maximise the value of our analysis, we may invite views from companies, consumer groups and other affected parties on the costs and benefits of proposal options. We will develop this evidence with the cooperation of industry, either through its provision of information in consultation responses or in its own development of code modification proposals (including, where appropriate, robust quantitative and qualitative analysis).
- 3.4. In carrying out IAs we will, where appropriate, have regard to relevant guidance including Treasury Green Book and Better Regulation Executive guidelines (see Appendix 1). Where we consider impacts to be non-significant, we will state this clearly alongside our reasoning.

Approach to impact assessment – indicative stages

- 3.5. The process of impact assessment will normally involve six stages:

Stage 1: Articulation of the proposal objectives, with reference to Ofgem's statutory duties and objectives.

- Stage 2:** Development of an initial range of options and proposals, informed by the original proposal objectives, with reference to consideration of risks, wider implications and unintended consequences.
- Stage 3:** Against this backdrop, development and refinement of a more detailed set of options, with impacts, costs and benefits iteratively assessed across the three broad categories of:
- (i) monetised, aggregate cost-benefit analysis (CBA)
 - (ii) distributional impacts
 - (iii) long-term, hard-to-monetise (strategic and sustainability) considerations
- as informed by our principal objective to protect consumers (existing and future) and our other statutory and EU duties, including considerations of competition (EU and domestic).
- Stage 4:** IAs will conclude by setting out, where appropriate, which option(s) we are minded to recommend and why (by reference to the preceding stages of assessment and analysis).
- Stage 5:** Consultation and stakeholder engagement, as set out in chapter 4.
- Stage 6:** Description of any post-implementation monitoring or evaluation as appropriate.

3.6. These stages are explained in more detail below.

Stage 1 - Development of proposal objectives

- 3.7. The initial stage of an IA process focuses on defining the issues and proposal objectives, in order to provide a means by which new impacts (both positive and negative) can be assessed. This section of an IA should describe the perceived deficiencies of the existing regulatory arrangements; identify the issues that a proposal seeks to address; explain the objectives of the proposal; and indicate which of Ofgem's duties and objectives are of particular relevance to the policy area.
- 3.8. Ofgem's statutory duties are important when developing proposal objectives because they form the overall framework within which we make decisions.

Stage 2 - Development of initial options, including high level consideration of risks, external drivers and unintended consequences

- 3.9. Where appropriate, the IA process will develop an initial set of options (including a 'do nothing' option where this is a plausible option), with reference to a high level consideration of risks¹⁶ (including external drivers and 'shocks'), unintended consequences, and wider implications.
- 3.10. This high level consideration will, where possible, seek to identify the most significant risks and uncertainties in order to gauge their effect on the viability of options, and / or highlight any early requirement for consultation and evidence gathering. The use of scenarios can assist in addressing uncertainty around high level risks, drivers and consequences, and help to draw parameters around the range of issues considered. The risk profile of a proposal should be considered at every stage of the decision making process. This includes when choosing the most appropriate type of intervention or way of working with regulated businesses, and in targeting compliance checks post-implementation.
- 3.11. This stage also provides an opportunity to consider whether a regulatory intervention is required, or whether an alternative approach may be more suitable.

Stage 3 - Iterative development and refinement of options, including consideration of competition and consumers

- 3.12. Where appropriate, the next stage of the IA process will involve the development of a more detailed range of options¹⁷. In the majority of cases¹⁸, options will represent alternatives to either a reference case or a 'do nothing' option.
- 3.13. The identified options will be further refined, with the full range of impacts, costs and benefits iteratively assessed within the three broad categories of:
- (i) monetised, aggregate cost-benefit analysis (CBA)**
 - (ii) distributional effects**
 - (iii) long-term, hard-to-monetise (strategic and sustainability) considerations.**

¹⁶ Our statutory responsibilities include a requirement to carry out certain of our functions in a manner best calculated to protect the public from certain dangers. Ofgem IAs will contain an assessment of health and safety implications, and take account of any advice given by the Health and Safety Executive, where this is relevant to the policy in question.

¹⁷ This may not be appropriate in certain circumstances, for example when considering industry code or charging methodology proposals, since Ofgem may not approve proposals other than those that have been formally tabled by external parties.

¹⁸ An example of where it would not be appropriate for Ofgem to consider a 'do nothing' option is where we are developing proposals in response to a legislative requirement.

- 3.14. This iterative assessment will be underpinned by our principal objective to protect **consumer interests (existing and future)** and our other statutory and EU duties, including consideration of **competition (EU and domestic)**.
- 3.15. Options initially presented may take the form of a list of alternatives, many of which may be discarded as proposals develop. Where options are presented, the IA should seek to explain in a consistent way the contribution that each option would make to the proposal objective (to the extent that it is known or clear). Interested parties may be invited not only to comment on the options presented but also to suggest alternatives that might better meet the stated objectives.
- 3.16. This process should also include consideration of specific, realistic options that may be enabled or precluded by a decision, or optionality in terms of timing (eg risks and benefits of deferring a decision) to help ensure that a decision retains as much flexibility as possible to help accommodate future uncertainty¹⁹.
- 3.17. Where appropriate, our IAs will consider a 'do nothing' option; in other words, maintaining the existing regulatory arrangements. Setting out a 'do nothing' option can form a baseline against which all other options are assessed. Alternatively, it may be, in certain circumstances, that an option for consideration would be to 'do nothing now', monitor a situation and then review at some future stage if the accumulated evidence indicates that there is a need to do so. Where this is the case the IA will say so clearly.
- 3.18. For industry code and charging methodology modifications²⁰ the options which are available are limited to those which have been proposed and developed through the code governance processes, and are comparable against the existing baseline (set out in the existing code requirements). We also have the ability to direct the code owner to make a modification as part of a Significant Code Review, and can propose code modifications to ensure compliance with the Gas Regulation, Electricity Regulation or relevant legally binding decisions of ACER and of the European Commission.
- 3.19. Having set out more detailed options, the IA process will again consider (on a more in-depth basis) the range of risks (including external drivers and

¹⁹ In some cases, it can be possible and appropriate to use Real Options theory to estimate an economic value associated with optionality considerations. This does however require a much fuller view of the potential follow-on options, the timescales on which subsequent options might be implemented, and some quantification of the riskiness of a project's cash-flow and the probabilities of different circumstances which might lead to subsequent options being exercised. Where quantification is not possible, qualitative consideration of optionality can still provide important information. Some examples are illustrated in the separate Ofgem discussion paper on Real Options and Investment Decision-making (March 2012): <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=354&refer=Networks/GasDistr/RIIO-GD1/ConRes>

²⁰ Further information about IAs in relation to industry code and charging methodology modification proposals is set out in chapter 2.

'shocks'), unintended consequences and wider implications associated with the identified options.

- 3.20. This consideration will, where possible, seek to identify the most significant risks and uncertainties in order to gauge their effect on the preferred option. It will also acknowledge where the preferred option might have knock-on effects or wider implications. For example, we may seek to identify any impacts on markets or sectors linked with or reactive to the subject of the proposal. Where appropriate, this analysis will set out the key uncertainties and assumptions used in the analysis in a transparent manner, including (where costs and benefits are quantified) an accompanying assessment of the robustness of the assumptions made.
- 3.21. Consideration of options at this stage will also examine the costs to industry participants of implementing a proposal. This may cover one-off and ongoing costs, for example those caused by changes to information technology or staff training, and any risks that, for example, industry may not be able to deliver a proposal within acceptable timescales or without wider cost implications.
- 3.22. In formulating detailed options, the IA process will consider aggregate **monetised costs and benefits, distributional effects and long-term, hard-to-monetise (strategic and sustainability) issues**, and undergo a process of iteration across these areas in order to consider issues efficiently and avoid duplication or double-counting. Further guidance on these categories is set out below.

Monetised, aggregate cost-benefit analysis

- 3.23. We will aim to quantify costs and benefits and to measure impacts to the extent that we reasonably and meaningfully can. We will seek data from relevant sources where we do not already hold it. However, we will seek to avoid spurious accuracy in any quantification where there is little reliable information or where there is considerable uncertainty about either costs or potential benefits, as it could create an impression of certainty where it does not exist.
- 3.24. There are several areas in which quantification is particularly complex, as set out on the following pages. In the case of markets being opened up to competition, for example, it is inherently difficult to predict with any accuracy the potential efficiency benefits that introducing a competitive process might bring, or to quantify meaningfully the dynamic benefits of competition such as the scope for increased innovation and the introduction of new products, services and technologies. We will aim where possible to demonstrate our assessment of the nature and extent of these benefits, including setting out any circumstances necessary for such benefits to arise.
- 3.25. Where, in such cases, quantitative assessments are included, they will often be presented as ranges, which may be broad. We will endeavour to explain the ranges used and to try to assess probabilities and the plausible margin of

error or uncertainties associated with any forecast costs and benefits. We are also committed to quantifying, where possible, the environmental impacts (and benefits) of proposals, with reference to government guidance (eg valuing carbon²¹) where appropriate²².

- 3.26. Where it is possible to identify with reasonable accuracy the costs of implementing a proposal but the benefits are harder to quantify or monetise, we will attempt to analyse what the level of benefits would have to be, given the identified range of costs, to justify the proposal and whether this appears plausible based on available information.
- 3.27. We may therefore include unquantified, and / or measured but non-monetised, costs and benefits as well as a number for the monetised costs and benefits, together with a discussion of the extent to which the unquantified / non-monetised costs and benefits are, in our view, likely to be pivotal in the cost-benefit analysis assessment. This is explored further later in the guidance. Where we do this we will set out clearly the process we have followed.
- 3.28. A key function of cost-benefit analysis is to test the proportionality of a proposal. CBA offers a robust tool for assessing whether an option's benefits meet or exceed its associated costs, and for allowing alternative options to be compared in a meaningful way. However, there are several areas in which quantification is particularly complex, and where issues cannot be considered in aggregate, or are long-term, uncertain and / or qualitative in nature. For these areas, such as distributional impacts and various strategic and sustainability-related goals, we will use structured, transparent non-monetised approaches as set out below.

Distributional effects

- 3.29. Our proposals will typically have distributional implications²³, and Ofgem has a duty to consider these areas; these cannot always be adequately captured through aggregate monetisation of impacts precisely because they concern distributional effects.
- 3.30. Where relevant, our IAs will consider distributional effects that arise in relation to socio-economic groupings, commercial interests and geographical regions,

²¹ For an indication of our approach to this, see the relevant reference in Appendix 1.

²² Ofgem has published guidance on the treatment of carbon costs in relation to the code objectives. Following this, we imposed a licence requirement as part of the Code Governance Review Final Proposals (in respect of modifications the impact of which is likely to be material) to conduct an assessment of the quantifiable impact of the proposal on greenhouse gas emissions. This should be conducted in accordance with such guidance on the treatment of carbon costs and evaluation of greenhouse gas emissions as maybe issued by the Authority from time to time. For details, please refer to Appendix 1.

²³ By "distributional implications" we mean that the effects of our proposals may be experienced differently by different groups or individuals.

in order to consider the total scope and scale of distributional effects in relation to the proposal being assessed.

- 3.31. In considering socio-economic effects, we will also have regard to the impact of our proposals and decisions on individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas, and other customers in vulnerable situations, as well as the wider range of groups with protected characteristics²⁴, as proportionate to the proposal in question and our functions.
- 3.32. The potential for an option to directly or indirectly cause or exacerbate consumer vulnerability will also be considered, as will the positive effects of a proposal empowering consumers in vulnerable situations.
- 3.33. We will have regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010. The elements likely to be of most relevance to Ofgem's proposals are the elimination of discrimination and advancing equality of opportunity, particularly in relation to disability and age. Our consideration of these issues is likely to overlap with our consideration of the distributional impacts of the proposals in question.

Long-term, hard-to-monetise considerations

- 3.34. Ofgem is required to have regard to the need to contribute to the achievement of sustainable development. Many of the areas traditionally considered under sustainable development are challenging to monetise, making them difficult to incorporate within an aggregate monetised CBA.
- 3.35. In order to systematically take account of factors that are difficult to meaningfully monetise and are either complex, very long-term and/or inherently unpredictable, we will assess the implications for each option against strategic and long-term sustainability considerations.
- 3.36. Strategic considerations (eg to the mid 2020s) include contributing to government's work on tackling fuel poverty²⁵ and ensuring a secure and reliable gas and electricity supply whilst playing a key role in the wider transition to the low carbon economy.
- 3.37. Longer-term sustainability considerations (eg out to 2050) include considering the consistency of our proposals with GB low-carbon pathways and wider sustainability goals, resilience to external shocks including climate change and flexibility in terms of technology and market participant diversity.

²⁴ As per the Equality Act 2010.

²⁵ Fuel poverty more broadly is already addressed under the consideration of distributional effects; the focus here should be on the potential risk of extreme energy prices and volatility.

3.38. The distinction between these assessments is not rigid. In particular, the sustainability considerations may also usefully be informed by analysis of the mid-term strategic factors. We will use these considerations in analysing the consistency of a proposal against our duty to contribute to sustainable development.

3.39. In qualitatively assessing the effects under each area, we will apply:

(1) A stress and security assessment of the potential implications of an option(s) on:

- **Security of supply** failure in electricity and gas supplies, and consideration of the interactions between the two fuel sources
- **Potential risk of extreme energy prices and volatility** to a degree which might affect personal security (eg winter deaths), even when the likelihood of these events arising may be very small
- **Risks to the UK's legally binding energy targets**, to ensure that our decisions do not impede the UK's achievement of government targets mentioned in the Social and Environmental Guidance, and to assess potential contributions of our decisions to these targets, taking account of our legal duties and objectives under both UK and European law.

(2) A natural asset and greenhouse gas (GHG) assessment of potential implications over the longer term (drawing on learning by doing and supply chain development²⁶, and pathway dependence and 'lock-in' considerations²⁷) on:

- **Consistency with the UK's 2050 GHG target** (which is estimated to require a 90% reduction in GHG emissions from the electricity and gas sectors) assessing likely impact on CO₂ and other GHG emissions
- **Complementary assessment of cumulative GHG** emissions implications, which helps reveal optionality and timing implications
- Interactions of the energy system with **wider environmental assets** (such as biodiversity, landscape, land use, water, air quality and soils) as appropriate to the specific decisions in question, and the ability of the energy system to adapt to a changing climate²⁸.

3.40. Where possible, we will aim to cross-refer these strategic and sustainability considerations to other relevant sections of the IA to avoid double-counting and as part of the iterative process.

Consideration of competition and consumers

²⁶ This refers to the cost reductions and other learning and capacity related benefits that may occur in the future, related to a decision. Unit costs typically decline with experience, which may lower future costs to UK consumers of developments that incur costs today.

²⁷ This refers to an evaluation of what a decision may imply for the future direction of travel of the UK energy system and, in particular, whether it tends to 'lock in' or 'lock out' certain alternatives. This assessment involves an awareness of the intended destination and incorporates consideration of the effects of system inertia.

²⁸ Consistent with earlier references to path dependence, consideration of climate risk and adaptation measures early in the policy development process helps ensure maximum flexibility in policy design (and subsequent delivery), identification of interdependency risks with other sectors and avoidance of 'mal-adaptation' and the costly 'lock-in' of infrastructure.

- 3.41. Consideration of competition and consumers is fundamental to Ofgem's purpose as market regulator and protector of consumer interests. These considerations are relevant to all Ofgem IAs, proportionate to the proposal under consideration.
- 3.42. This approach reflects our expanded duties under the Third Package, but also recognises that competition impacts go beyond market issues and interact with consumers and wider strategic goals (such as value for money, security of supply and sustainability)²⁹.
- 3.43. In conducting an IA, we will be careful to cross-refer to other sections of the IA that deal with consumer or competition impacts, to help ensure and demonstrate that neither costs nor benefits are double counted.

Impacts on existing and future consumers

- 3.44. Protecting consumers is Ofgem's principal objective, and in developing and refining options our IAs will clearly explain how costs and benefits might accrue differently between existing and future consumers³⁰ (in aggregate terms). In particular, there will be a clear explanation of the nature and extent of the consumer benefits that might be delivered as a result of a particular policy change.
- 3.45. We consider the needs of all consumers. In considering domestic consumers we pay particular regard to those in vulnerable situations. We recognise that domestic consumers may require more or different protection than non-domestic consumers. Similarly, we recognise that different types of non-domestic customers may have different needs and consequently we may also pay regard to the needs of small-to-medium enterprises.
- 3.46. We will, in considering impacts on existing and future consumers, be careful to cross-refer to other sections of the IA that deal with these areas. For example, certain proposals may require consideration of impacts beyond an aggregate analysis, and we will consider effects on socio-economic groupings, commercial interests and geographical regions as appropriate, whilst consideration of pathway dependence and system resilience helps to consider the interests of future consumers.

Competition impacts

- 3.47. Our assessment will include consideration of whether an option will contribute to effective competition, including whether a proposal would have substantially different effects on small or large firms or whether the proposal

²⁹ This approach is summarised in Figure 1. An additional example would be consideration of the consumer, network and system balancing benefits of energy efficiency and flexible demand measures.

³⁰ Examples of the impacts that we may refer to here include the impact on prices, quality of service, product innovation or network reliability.

would affect new entrants differently. This competition assessment will also help to fulfil some of Ofgem's objectives in carrying out its regulatory tasks as the national regulatory authority (NRA) in GB, as set out in the Third Package³¹.

- 3.48. In practice, this means that Ofgem will consider whether a proposal is likely to have cross border effects, and if so, will assess it against the requirements of the Third Package (when carrying out its Third Package regulatory tasks), including those relating to:
- promotion of market opening for all customers and suppliers and ensuring appropriate conditions for the effective and reliable operation of the networks
 - development of properly functioning regional markets with the Community
 - elimination of restrictions on trade, including developing appropriate cross border transmission capacities
 - facilitation of access to the network for new generation capacity
 - ensuring that system operators and users are granted appropriate incentives to increase efficiencies in system performance.
- 3.49. In addition, there may be broader, indirect and/or long-term consequences of an option on competition. These consequences may:
- restrict or facilitate the use of existing technologies, systems or institutional structures
 - facilitate niche markets or provide hybrid possibilities that encourage the emergence of new technologies
 - create or reinforce dependency on existing infrastructure - by definition, existing infrastructure accommodates incumbent technologies most closely, which can lead to high switching costs to use alternative technologies. For example, use of alternative technologies may better protect the interests of future consumers, but at a current cost.
- 3.50. Our assessments will, where and to the extent appropriate, aim to consider these impacts.
- 3.51. In some areas our decisions may exert very long-term influences on the evolution of the UK energy system, and on its competitiveness. In this instance, the long-term sustainability assessment should cross-refer to assessments of competition impacts to consider more enduring implications for the long-run trajectory of the UK system (to the extent that these are reasonably ascertainable) and whether these impacts indicate a more or a less sustainable direction.

Stage 4 - Preferred option(s)

- 3.52. Our IA process will ordinarily conclude by setting out, where appropriate, which option(s) we are minded to recommend and why (evidenced in the

³¹ The full list of objectives can be found in Article 36(a) to (h) of the Electricity Directive 2009/72 and 40(a) to (h) of the Gas Directive 2009/73.

preceding stages of the IA). We will clearly set out the reasons for our preferred option(s) and the weight we attach to any quantitative or qualitative analysis.

- 3.53. The 'minded to' option represents a provisional view: it does not determine a final decision. In meeting our principal objective, we need to consider the balance of costs, benefits, risks and opportunities between current and future consumers, taking into account other relevant factors. These are ultimately matters for the Authority to determine.

Stage 5 - Consultation

- 3.54. Consultation is a vital part of the process of understanding and properly assessing impacts. Depending on the type of IA being undertaken (and the stage of the proposal under development) we may choose to consult in different ways, on a number of occasions or as a single exercise. Chapter 4 sets out our approach to consultation.

Stage 6 – Post-implementation arrangements

- 3.55. It is important to re-consider an IA after a decision has been implemented; as such, each IA will set out our intentions in respect of post-implementation arrangements. Post-implementation monitoring can occur across a spectrum of approaches, including desk-based review, consultation with stakeholders and more formal evaluations. Similarly, we may choose to undertake thematic reviews across a sample of IAs rather than focussing in detail on single instances / particular policy areas.
- 3.56. We may however choose to undertake a major review where the policy area in question involves major structural changes or where the outcomes are more difficult to assess through our normal monitoring processes. In these instances, we will state clearly whether we intend to conduct a major post-implementation review after a particular length of time or rely on routine monitoring. Any decision to undertake a major review would normally have a deliverable associated with that work, and the results of any formal post-implementation review will be published.
- 3.57. We report on our impact assessment activities in our annual report.
- 3.58. We note, in relation to industry code modifications, that it is for the code governing bodies and industry to monitor the effects of proposals that have been implemented, and that further modification proposals as necessary can be raised³².

³² However, where and to the extent appropriate, Ofgem may undertake its own post-implementation review of code modifications, proportionate to the issue in question. This would be a rare occurrence, and would likely take the form of a Significant Code Review, as

4. Consultation

Chapter Summary

Our approach to consulting on IAs is in line with our broader consultation policy. Consultation periods may be four, eight or twelve weeks depending on the degree of urgency, complexity, impact and likely interest in the proposal, and the approach will vary depending on the type of IA in question.

- 4.1. Consultation is a vital part of the process of developing a robust assessment of impacts. It ensures that proposal development is open to new information and ideas from outside interests. The quality of our analysis is greatly assisted by the quality of the input received. Ofgem welcomes input from those affected by or with an interest in our proposals, through the consultation process.
- 4.2. We aim to conduct consultation on all of our proposed decisions in a way that is targeted at and easily accessible to those with an interest in our proposals, be they large or small companies, consumer groups or individuals. In line with this aim, when we consider impacts associated with a proposal, we will strive to do so consistently against the approach set out in chapter 3. We will, on request, make every effort to provide documents in alternative formats to aid accessibility.
- 4.3. Documents are published on our website³³ and interested parties can request electronic notification of new publications. Ofgem may, and in certain cases must, directly inform those parties who may be affected or who have a particular interest in the proposal³⁴.
- 4.4. Representations can be made by anyone including members of the public, consumer groups and gas or electricity market participants. Any representations received within the time period given in the consultation document, and which are not subsequently withdrawn, will be considered by Ofgem.
- 4.5. We will give appropriate consideration to all responses received within the deadline and, focusing especially on the evidence that respondents provide in support of their views, will prepare a summary for the Authority (or other group responsible for taking the decision).

discussed in footnote 13.

³³ www.ofgem.gov.uk

³⁴ We also publish a consultation forward plan on our website:
<http://www.ofgem.gov.uk/CustomPages/Pages/upcoming-consultations.aspx>

- 4.6. Ofgem is required to publish, in its Annual Report, a list of all IAs that it has published in the preceding year. It is also required to set out in its Annual Report a summary of the decisions taken to which IAs relate.

Formal consultation

- 4.7. Our consultation policy is based on three distinct consultation periods, which we will aim to follow as far as possible, relevant to the proposal in question. Each period described below recognises a differing degree of urgency, complexity, impact and likely interest in the proposal. The periods are:
- Twelve weeks for consultations on issues that are expected to be of wide significance and interest. This is the maximum consultation period that we would normally expect to allow.
 - Eight weeks for consultations on issues that are less likely to have a very wide impact or be the subject of substantial interest. This will be the usual timescale for consultations on a subject matter where no earlier, related formal consultation or other reasonable stakeholder engagement has occurred.
 - Four weeks for consultations on issues that are urgent, or which represent minor changes to existing policies, or where we are working to a timescale which is constrained by a licence or other regulatory or statutory requirement, or set by a third party.
- 4.8. Consultations that follow on from earlier consultations on the same matter are likely to fall into the four week category unless the matter is of wide significance and interest. In such cases we may consult for between four and eight weeks or longer. Where consultations coincide with a holiday period we may, unless the matter is urgent, allow a longer period for consultation.
- 4.9. For more information on our consultation lengths and general approach, please see the document "Guidance on Ofgem's approach to consultation"³⁵.
- 4.10. Ofgem will consider whether, in the light of any representations that are received, it is appropriate to continue with the proposal as is or whether it is necessary to amend it. This is not possible in the case of code or charging methodology IAs, as Ofgem cannot make or amend code modification proposals except in very limited circumstances (to ensure compliance with the Gas Regulation, with the Electricity Regulation or with relevant legally binding decisions of ACER and of the European Commission decisions or under a significant code review process). It is important that the industry bodies conduct appropriate consultations and IAs before concluding their proposals.
- 4.11. In specific cases Ofgem will, in discharging a function under Part 1 of the Gas Act or Part 1 of the Electricity Act, be required to consult as part of a separate statutory duty. Where Ofgem has a requirement under the Gas Act or Electricity Act to consult, for example when proposing the modification of licence conditions, it will normally seek to publish the IA both in the earlier

³⁵ See footnote 15.

stages of proposal development and informal consultation, and as an annex to any consultation required under Part 1 of the Gas and Electricity Acts. Our guidance on consultation timescales is not intended to displace any statutory, regulatory or licence-based consultation period.

Summary of consultation approaches

Stage	Approach to consultation
<i>Screening</i>	<p>We do not intend to formally consult on our decision as to whether a proposal is “important” under section 5A. However we will, where appropriate, have regard to any representations from interested parties to the effect that an IA is required or desirable.</p>
<i>IAs produced under section 5A</i>	<p>Ofgem will generally consult with anyone likely to be significantly affected by the implementation of a proposal. We will provide an opportunity for making representations to members of the public and others who are likely to be affected to a significant extent by the implementation of a proposal. In publishing an IA under section 5A, Ofgem must set out how representations on the IA are to be made. Ofgem will not implement the proposal unless the consultation period has expired and the Authority has considered all the representations made on the consultation and IA within that period.</p> <p>There may, however, be circumstances where proposals are considered to be so “urgent” as to prevent the production and publication of an IA, even if the proposal is considered to be “important”.</p> <p>Where a proposal is not urgent and is considered “important” for the purposes of section 5A, but there is a reason we do not intend to carry out an IA, we will explain why. This is in accordance with the requirement in section 5A (3)(b) to publish a statement setting out our reasons for thinking that it is unnecessary for us to carry out an assessment.</p>
<i>IAs produced outside the scope of section 5A</i>	<p>Where appropriate we will aim to reflect the consultation requirements set out for statutory IAs and will, in any event, follow the approach set out in our consultation policy.</p>
<i>Modification IAs</i>	<p>Where section 5A is engaged (or where notwithstanding that 5A is not engaged, Ofgem proposes to carry out an IA), Ofgem expects that in the case of industry code and charging methodology modification proposals there would normally be only one round of consultation on the IA, as any such proposals will have already been subject to an industry-led consultation process. As a matter of good practice, we aim to make a decision in a timely way after the IA consultation closes and be mindful of any industry code or charging methodology implementation dates which</p>

	<p>may have been set within the code governance process. The stages of consultation described in chapter 3 would not, therefore, apply to such proposals. In those circumstances it is likely that there would only be one IA, setting out the summary of impacts and providing an opportunity for respondents to comment.</p>
<i>Multi-stage IAs</i>	<p>In line with good practice, we will undertake informal consultation and engagement, where appropriate, as proposals are being developed and in advance of any IA that we publish. Early consideration of stakeholders’ views on proposals helps to ensure that any consultation process explores all options. It can also help to clarify whether, for a particular proposal, it is necessary or desirable to carry out an impact assessment.</p> <p>We may complement our written consultations with variety of more direct forms of consultation such as seminars, bilateral meetings with interested parties and special workshops for targeted audiences. Where such consultation has taken place we will, to the extent appropriate, draw attention to it in a transparent manner in any written consultation that we undertake.</p>
<i>When we won’t do an IA</i>	<p>We will, in line with good practice, summarise the proposal’s impacts in any related consultation or decision document, and in that document will where appropriate explain why we consider that the proposal is not "important".</p>

Appendix 1 – Supplementary IA Guidance

This appendix does not form part of Ofgem's formal Impact Assessment guidance. It is included as a compilation of official and best-practice guidance to assist in the preparation and drafting of IAs.

As guidance continuously develops, this appendix is designed to be periodically updated to allow updated / new official guidance to be incorporated where these updates do not substantially alter the nature of the guidance in the main document.

As such, this appendix will always carry a 'last updated' date to indicate which version should be used.

HM Treasury, The Green Book: Appraisal and Evaluation in Central Government (2003)

http://www.hm-treasury.gov.uk/data_greenbook_index.htm

Ofgem guidance on the treatment of carbon costs in relation to the code objectives (2012)

http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/GHG_guidance_July2010update_final_080710.pdf

Better Regulation Executive (BRE), guidance and toolkits

<http://webarchive.nationalarchives.gov.uk/20070807081150/http://www.betterregulation.gov.uk/>

Ofgem, Strengthening strategic and sustainability considerations in Ofgem decision-making (2012)

<http://www.ofgem.gov.uk/Sustainability/Documents1/Discussion%20Paper%20%20Strengthening%20strategic%20and%20sustainability%20considerations%20in%20Ofgem%20decision%20making.pdf>

This appendix was last updated in March 2013.