



HM Government

Encouraging innovation in regulated utilities: consultation

October 2018



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Forewords

Foreword from the Exchequer Secretary to the Treasury

Innovation can present businesses with tremendous opportunities to improve the way they operate and the services they deliver. Technologies such as robotics and automation have the potential to drive down costs, increase efficiencies and offer an improved service to customers at a competitive price. Likewise, AI and the smart use of data can help improve coordination across networks and industries, delivering efficiencies and helping to support vulnerable consumers.

The UK has led the way in developing a model of economic regulation which has since been replicated around the world. Following the privatisation of the energy, water and telecoms sectors, we have established a system of private ownership overseen by independent regulators.

However, when the utilities were privatised and the regulators were established in the 1980s, the economic and technological context was vastly different. The digital revolution had yet to fully begin and challenges such as decarbonisation had yet to become a major priority for government. When regulators were first set up, lowering costs was the overriding priority, and innovation was not always hard-wired into their objectives.

When faced with the current pace of technological change, it is important to ask whether there is more government and regulators can do to build on existing best practice and further encourage innovation and investment in our core utilities. Responses to this consultation will help to shape how our regulated utilities respond and adapt to future change and ensure they deliver a better, more innovative service for the consumer and the economy.

I would encourage everyone with an interest in supporting innovation in our core utilities to respond to the consultation.



Robert Jenrick

Exchequer Secretary to the Treasury

Foreword from the Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility

Innovation transforms lives and economies, improving products, services and experiences for consumers. The UK ranks in the top five in the Global Innovation Index. We need to make the most of our strengths so that we can be at the forefront of emerging technologies and industries in the years ahead. It is at the heart of our Industrial Strategy – through greater innovation and higher productivity – we can earn more, raising living standards, providing funds to support our public services and improving the quality of life for all our citizens.

Innovation is even more important in sectors that provide essential services to communities across the country and underpin our growing economy.

There have already been impressive improvements in these sectors – including, for example, Ofgem’s creation of a new model for energy innovators, that has helped bring new business models to market.

The potential for innovation raises further opportunities as well as challenges. Through promoting innovation, we can harness the potential identified in our Industrial Strategy. This is why we want to see continued innovation in, and across, the economically regulated sectors – namely the electricity, gas, water and telecommunications sectors.

Through our Regulators’ Pioneer Fund, we can strengthen our regulatory system and ensure that it keeps pace with the innovation and technological advances needed to power our economy now and in the future. The regulators who oversee these sectors already play hugely important roles in protecting consumers and creating the frameworks and conditions to enable innovation. But there is more that can be done.

I welcome views on what more could be done, by the government or regulators, to build on the excellent work already going on, to encourage innovation.



Kelly Tolhurst

Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility

Chapter 1

Introduction

- 1.1 This consultation aims to build the government's understanding of whether there are opportunities to further encourage new innovative methods and technologies in the utilities sectors to improve outcomes for consumers. It seeks views on whether there is a case for taking action to further strengthen the regulatory approach to encouraging innovation and what the best ways to do this might be.
- 1.2 The UK has led the way in developing a model of politically independent economic regulation which has been replicated around the world. Beginning with the privatisation of the utilities sectors, the UK pioneered a model whereby private owners are overseen by strong, independent regulators accountable to Parliament. Consumers have benefited through lower prices and high levels of private investment. The wider economy has benefited as industries which comprised a significant part of GDP experienced significant productivity gains.
- 1.3 A shared characteristic between the energy and water markets, is that they rely on networks where there are strong natural monopoly elements. The economic regulators for our core utilities are Ofwat for water and Ofgem for gas and electricity. In addition, telecoms, regulated by Ofcom, is increasingly being regarded as a core utility and for the purposes of this document is treated as such.¹ In telecoms, BT is subject to regulation, due to the significant market power Ofcom regards it as holding in several markets.
- 1.4 Regulators are responsible for ensuring these important sectors function effectively for consumers. They do this in different ways – by introducing competition where possible or seeking to replicate competitive pressures, for example through the use of price controls. Regulators also ensure there is sufficient investment to meet future needs. Independence is a key feature, with companies and investors confident of a stable regime which will allow them to earn fair returns over the long term.
- 1.5 The Industrial Strategy and Digital Charter set out the government's ambition to be the world's most innovative economy and lead the world in innovation-friendly regulation. Progress has already been made to help regulators develop innovative approaches to get new products and services to market. A £10 million Regulators' Pioneer Fund is funding unique projects that will unlock the opportunities identified in the Industrial Strategy. For example, this fund will finance a 'Future Services Lab' led by Ofgem and the Energy Systems Catapult. This will enable the trialling of alternative retail

¹ Please refer to paragraph 2.4 for details of recent government and industry action in telecoms.

models. A new Regulators' Innovation Network will meet for the first time in autumn 2018, providing a forum for regulators to share knowledge and experience of responding to the challenges posed by new technologies and emerging or disruptive industries. This consultation focuses on what further action is required to support innovation in the regulated utilities sectors.

- 1.6 Since privatisation in the 1980s, the system of private ownership underpinned by strong economic regulation has delivered some significant improvements in outcomes in these sectors. For example, in the water sector customers are 100 times less likely to be affected by low pressure than they were before privatisation.² In the energy sector, the number and length of power cuts on local electricity networks has almost halved since 2002. While recognising this success, the government is committed to ensuring that there is sufficient investment in these vital sectors, and that consumer service continues to improve.
- 1.7 Most utility networks in electricity, gas and water are run as regional monopolies. Due to the high value of network assets, it would be economically inefficient to have several networks operating in one area. Such networks are heavily regulated to ensure that the network companies do not take advantage of a captive market reliant on a vital service. At the retail level, where companies are providing the goods that the network transports and the services to use those goods, there is a more competitive market, although there is still room for improvement. Companies directly compete for business from consumers and they are less heavily regulated than the utility networks, although still have rules that must be met in providing a vital service to their customers.
- 1.8 Initially competitive pressures for networks were replicated primarily through the 'RPI-X' model. Firms were incentivised to deliver efficiencies and reduce costs. However, as the UK model of regulation has evolved it has been largely successful at finding new ways to simulate or introduce competition to improve outcomes for consumers.
- 1.9 In the 1990s, retail competition was introduced to the energy market. Currently, around 70 gas and electricity suppliers in GB compete for domestic customers. Unbundling the 'local loop' in telecoms allowed new suppliers to provide a broadband connection to consumers using their own equipment on BT's infrastructure. More recently, Ofcom agreed changes to create a legally separate Openreach from BT to address their concerns that BT had the incentive and ability to influence strategic investment decisions that could favour BT's retail divisions over other downstream competitors. Similarly, Ofgem has agreed the legal separation of the Electricity System Operator from National Grid as a transmission owner. Ofgem has also found ever increasing ways to tender the construction and maintenance of components of the electricity grid, lowering costs for bill payers.
- 1.10 While the UK's model of economic regulation has been successful, one element of the competitive free market which, at the network level, it might be argued has been harder to replicate has been innovation.

² Cathryn Ross Speech to the Moody's UK Water Sector Conference, 2017.

Box 1.A: Defining innovation

'Innovation involves the creation and diffusion of new products, processes and methods. It encompasses a wide range of activities including R&D, organisational changes, training, testing, marketing and design.'³

- 1.11 Innovation is a major driver of increases in consumer well-being over the long term. When companies find a way to dramatically increase efficiency, or to offer new services consumers didn't even know they wanted, consumer welfare can be boosted significantly.
- 1.12 Driving productivity growth in the wider economy is an important challenge faced by government. In the energy and water sectors, where there remain natural monopoly elements, the economic regulators play a core role in targeting which outcomes to prioritise. Taking steps to encourage innovation is therefore possible, and many regulators have specific programmes to support this. Government is interested in whether there is a case for further strengthening regulators' approaches to encouraging innovation in these sectors. Where appropriate, government wants regulators to be agile in allowing for the implementation of modern methods and proactive in looking to encourage new innovations, in order to further improve consumer service.
- 1.13 While specific schemes may have benefits and there may be value in sharing best practice across sectors and between regulators, the government is also interested in what more can be done to support and promote innovation in these sectors. For example, this could include whether giving regulators statutory innovation objectives is an effective way to fundamentally hard-wire pro-innovation thinking into their work and boost firms' abilities to innovate for the benefit of consumers.

³ OECD, 2015 – The Innovation Imperative Contributing to Productivity, Growth and Well-Being. Available at: <http://dx.doi.org/10.1787/9789264239814-en>

Chapter 2

Innovation in the regulated utilities

- 2.1 This chapter covers the ways in which the utility regulators currently encourage innovation in their sectors. Regulators have developed several initiatives in recent years. Government is interested in what effect these have on levels of innovation; how to further build on these initiatives; how best practice might be shared across regulators; and how we can clearly link improvements in innovation to improvements in customer outcomes. This section explores the overarching themes and outlines consultation questions relating to how regulators may be able to build on progress in this area.
- 2.2 Future challenges in each sector will require the development of new methods and systems. The UK's Industrial Strategy identifies four grand challenges, focusing on global trends which will transform our future. These are:
- 1 the need to put the UK at the forefront of the AI and data revolution
 - 2 harnessing the power of innovation to meet the needs of an ageing society
 - 3 maximising the advantages for UK industry from the shift to clean growth
 - 4 becoming a world leader in shaping the future of mobility.
- 2.3 The National Infrastructure Assessment (NIA) also outlined some of the significant long-term challenges these sectors will face, such as government needing to respond to an increasing risk of drought in the future and improve transport networks in UK cities between now and 2050. For the water sector, the NIA identified a need for a twin-track approach combining demand management with long-term investment, in order to ensure increased drought resilience. The Chancellor has subsequently commissioned the National Infrastructure Commission (NIC) to undertake a study setting out what the longer-term challenges to regulated utilities might be and how our regulatory model might need to adapt to meet these.¹ While the NIC study will consider how the regulatory model as a whole may need to adapt in the face of some of the long-term challenges touched upon in the NIA, this consultation takes a focussed look on innovation. It will seek to identify whether there is a case for any changes to boost the current approach to encouraging innovation in the short term.

¹ National Infrastructure Commission, 2018. Available at: www.nic.org.uk/news/new-regulation-study-to-help-find-the-right-conditions-for-future-infrastructure-innovation

- 2.4 The government has also recently published the Future Telecoms Infrastructure Review (FTIR), which considered how best to deliver the government's targets for the rollout of full fibre broadband and 5G. It concluded that the most effective approach was to promote network competition wherever possible, and set out the policy and regulatory changes required to support this approach. Network competition provides strong incentives for firms to innovate, become more efficient and reduce costs. This in turn should mean positive outcomes for consumers. This consultation recognises the strategic direction taken by the FTIR and its recommendations which the government is focussed on delivering, by working with Ofcom and the industry.
- 2.5 Regulators have a role to play in responding to emerging trends in their sector, whilst ensuring that bill payers' money isn't invested in technologies which have limited use. In markets where natural monopoly elements remain, regulators need to incentivise companies to innovate to deliver a better service to customers at an affordable price.
- 2.6 The government wants to build on recent positive action. We see effective development and adoption of innovation as increasingly important to respond to future challenges and technological change.
- 2.7 Innovation can carry some risk, and significant investment is often required to develop new approaches and technologies. In the regulated sectors, bill payers bear some of the risk associated with innovation. Regulators must ensure that innovation is proportionate and good value for money. Consumers can also stand to gain through improvements in service and efficiencies driving down cost. Creating the right incentives for companies to innovate in the ways they would in a competitive market, while protecting interests of customers reliant on a monopoly service, is therefore in bill payers' interests.

Understanding barriers and opportunities for greater innovation

- 2.8 This consultation welcomes evidence on whether there are regulatory barriers to further innovation within the utilities sectors. For example: what additional incentives there could be to innovate and whether regulatory frameworks enable new entrants or new business models. We would be especially interested in responses from businesses and academics on these questions.
- 2.9 Government is also interested in the ways in which regulators might better encourage innovation in their sectors and why some sectors perform better than others, for example in terms of uptake of new technology and investment in research and development. We would welcome views on ways innovation can be supported more effectively or lessons from other sectors can be shared. We are particularly interested to hear from regulators and business on this question.

Box 2.A: Understanding the barriers and opportunities for greater innovation – Questions

- 1 What barriers, if any, are there to the development and implementation of innovative technologies and methods in the utilities sectors?
- 2 What are the best way(s) for utility regulators to further promote innovation in their sectors, while ensuring the interests of consumers (present and future) are protected?
- 3 What barriers, if any, are there to innovative sector specific and cross-sector business models?

Policy and implementation

2.10 Regulators have adopted a variety of approaches to stimulating innovation in their sectors. These are summarised below.

Box 2.B: Ofgem's approach to encouraging innovation

Ofgem has played a central role in fostering innovation within the energy sector and turning the benefits of innovation into business-as-usual practice.

For example, Ofgem's Innovation Link offers support to businesses looking to launch new products/services. Where regulation prevents the launch of a product, Ofgem's 'Regulatory Sandbox' can enable trials, without the burden of normal regulatory rules.

In energy networks, Ofgem has facilitated a rapid increase in innovation. From 2010-2015 the Low Carbon Network Fund sponsored projects worth c.£250 million with benefits worth 4.5 to 6.5 times more than its cost.² In the current network price controls, innovation is a core part of the regulatory business model, including through the Network Innovation Allowance and the Network Innovation Competition. Ofgem is now preparing for the next set of price controls, including integrating innovation findings into the business-as-usual practices of the network companies, and how best to facilitate further innovation.

² Ofgem, 2016 - An Independent Evaluation of the LCNF. Available at: www.ofgem.gov.uk/system/files/docs/2016/11/evaluation_of_the_lcnf_0.pdf

Box 2.C: Ofwat's approach to encouraging innovation

Incentivising innovation is one of the leading four main themes in the 2019 price review (PR19). Through the price review process, Ofwat has set a strong incentive framework to drive innovation in water companies. Ofwat has proposed that it will promote innovation through enhanced rewards for frontier-shifting performance set out in companies' business plans. Cost outperformance incentives push companies to deliver services more efficiently and outcome delivery incentives provide outperformance payments to companies that deliver significant service improvements. Likewise, there are underperformance penalties for companies who do not keep up.

Ofwat also held a campaign in February 2018 to encourage a discussion within the sector about the benefits that innovation can bring for customers and the environment.

Box 2.D: Ofcom's approach to encouraging innovation

Ofcom's annual plans refer to its role of developing the best possible regulatory environment to encourage investment and innovation in high quality digital infrastructure. In 2018 for example, it decided that BT should be required to make its telegraph poles and underground ducts available to rival operators wishing to install full fibre broadband networks. This will make it quicker, easier and cheaper for BT's competitors to innovate and build their own networks. Following the publication of the FTIR, Ofcom has committed to consulting on requiring BT to open up Openreach's ducts and poles even further on an unrestricted basis.

- 2.11 As these examples set out, there is a wide range of ways in which regulators can encourage innovation. While recognising there are some fundamental differences between the water, telecoms and energy markets, we would welcome views on whether and how best practice can be replicated between regulators.
- 2.12 Another way in which regulators and regulators frameworks can boost innovation is by being agile in responding to technological change. This ensures that newly developed technology can be effectively rolled out in their sector and customers benefit from the improved service. An important question may be whether regulators have sufficient in-house expertise on the implications and opportunities posed by new technologies, such as Artificial Intelligence and smart use of data. We are therefore interested in whether the utility regulators have the right tools and expertise to respond to technological change to promote innovation efficiently in their sectors. We would welcome any examples of what works well in other sectors and other countries.
- 2.13 Where regulators implement price controls to simulate competitive pressures, they have an important opportunity to challenge companies to innovate. We would welcome views on the extent to which companies are

incentivised to innovate as part of this process, and also whether companies are rewarded for demonstrating a willingness to innovate in their plans. Furthermore, we are interested in how best to measure the benefits of innovation, and how to link improvements in outcomes to uptake of new technologies and development of novel approaches.

Box 2.E: Policy and implementation – Questions

- 4 How have utility regulators most successfully encouraged innovation in their sectors?
- 5 What additional tools and expertise, if any, do utility regulators need to respond to technological change and promote innovation in their industries?

Statutory duties for regulators

- 2.14 Economic regulators have statutory duties, which are frequently divided into one or more primary objectives and a number of secondary objectives. This section outlines the key primary and secondary duties for the utility regulators and discusses the extent to which they refer to innovation.
- 2.15 Ofgem’s principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems.³ The regulator is generally required to carry out its functions in a way that will best further their principal objective, and where appropriate by promoting competition. In performing these duties, Ofgem must have regard to a number of other factors such as the need to secure that license holders are able to finance their activities and the need to contribute to sustainable development. Innovation is not explicitly included within these factors, though as outlined above, Ofgem is doing a considerable amount of work to promote innovation within its area.
- 2.16 Likewise, the duties for Ofwat’s work as the economic regulator of the water sector are set out in the Water Industry Act 1991 (as amended). Ofwat has a number of main duties, for example Ofwat must carry out its work in a way that will ‘best secure that water and sewerage companies can properly carry out their licensed activities’ and ‘protect the interests of consumers, wherever appropriate by promoting competition’.⁴ Subject to these main duties, Ofwat also must also consider other objectives such as: promoting economy and efficiency by water companies and contributing to sustainable development. Similar to Ofgem, whilst innovation has been a theme of Ofwat’s most recent, ongoing price review there is no obligation for it to encourage innovation set out in its statutory duties.
- 2.17 Ofcom has two principal duties: to further the interests of citizens and consumers in communications services; and to further the interests of

³ Ofgem, 2013 – Powers and duties of GEMA. Available at: www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema

⁴ Ofwat, 2018 – Our duties. Available at: www.ofwat.gov.uk/about-us/our-duties

consumers in relevant markets, where appropriate by promoting competition.⁵ As with the other regulators, there is also a list of factors Ofcom needs to take into account when carrying out these duties, one of which is considering “the desirability of encouraging investment and innovation in relevant markets”. Ofcom’s secondary statutory duty to consider encouraging innovation puts greater emphasis on this outcome being important for the sector.

- 2.18 The government is interested in whether giving regulators a statutory innovation objective is an effective way to fundamentally hard-wire pro-innovation thinking within the energy and water sectors. So rather than the consideration of innovation just being present in specific pro-innovation policies, can a duty help guide regulators’ general thinking and decision making?
- 2.19 We would also welcome views about what other measures might support a new duty. For example, could regulators benefit from building upon best practice sharing by agreeing common principles for driving innovation in their sectors? Could a general innovation duty be supported by the requirement to report on innovation on a periodic basis? We would be particularly interested to hear from regulators and academics on these questions.

Box 2.F: Regulators statutory duties – Questions

- 6 To what extent would a statutory duty to promote innovation help regulators focus further on encouraging greater development and adoption of innovation in their sectors?
- 7 What other measures might support an innovation duty in helping regulators to focus on encouraging innovation in their sectors?

⁵ Communications Act 2013. Available at: <http://www.legislation.gov.uk/ukpga/2003/21/section/3>

Chapter 3

The consultation process

- 3.1 The purpose of the consultation is to seek view on the merits and design of any suitable options for developing measures to increase levels of innovation in the utilities sector.

How to respond

- 3.2 Please respond to this consultation by 15 January 2019 by emailing innovationconsultation@hmtreasury.gov.uk

Alternatively send responses to:

Innovation consultation
Growth and Productivity Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

- 3.3 A summary of the questions in this consultation is included in Annex A.
- 3.4 When responding please say if you are a business, individual, regulator, or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

HMG consultations – processing of personal data

- 3.5 This notice sets out how we will use your personal data, and your rights under the Data Protection Act 2018.

Your data (Data Subject Categories)

- 3.6 The personal information relates to members of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

- 3.7 Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions.
- 3.8 It is possible that respondents will volunteer additional identifying information about themselves or third parties.

Purpose

- 3.9 The personal information is processed for the purpose of obtaining opinions of members of the public and representatives of organisations and

companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Legal basis of processing

- 3.10 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the HM Treasury. The task is consulting on departmental policies or proposals, or obtaining data, in order to develop good effective policies.

Who we share your responses with (Recipients)

- 3.11 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- 3.12 If you want the information that you provide to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.
- 3.13 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.
- 3.14 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates.¹
- 3.15 As the personal information is stored in our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

- 3.16 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
- 3.17 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Special data categories

- 3.18 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

¹ UK Government Organisations, 2018 – <https://www.gov.uk/government/organisations>

Basis for processing special category data

- 3.19 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.
- 3.20 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Your rights

- you have the right to request information about how your personal data are processed, and to request a copy of that personal data
- you have the right to request that any inaccuracies in your personal data are rectified without delay
- you have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- you have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted
- you have the right to object to the processing of your personal data where it is processed for direct marketing purposes

Complaints

- 3.21 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk
- 3.22 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

03031231113

casework@ico.org.uk

- 3.23 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

- 3.24 The data controller for your personal data is HM Treasury. The contact details for the data controller are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

020 7270 5000

public.enquiries@hmtreasury.gov.uk

The contact details for the data controller's Data Protection Officer (DPO) are:

DPO
1 Horse Guards Road
London
SW1A 2HQ
London

privacy@hmtreasury.gov.uk

Consultation principles

- 3.25 This consultation is being run in accordance with the government's [consultation principles](#).

Annex A

Summary of consultation questions

Understanding the barriers and opportunities for greater innovation

- 1 What barriers, if any, are there to the development and implementation of innovative technologies and methods in the utilities sectors?
- 2 What are the best way(s) for utility regulators to further promote innovation in their sectors, while ensuring the interests of consumers (present and future) are protected?
- 3 What barriers, if any, are there to innovative sector specific and cross-sector business models?

Policy and implementation

- 4 How have utility regulators most successfully encouraged innovation in their sectors?
- 5 What additional tools and expertise, if any, do utility regulators need to respond to technological change and promote innovation in their industries?

Regulators statutory duties

- 6 To what extent would a statutory duty to promote innovation help regulators focus further on encouraging greater development and adoption of innovation in their sectors?
- 7 What other measures might support an innovation duty in helping regulators to focus on encouraging innovation in their sectors?

Annex B

Summary of regulators statutory duties

Ofgem

- B.1** Ofgem’s principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases in the security of the supply of gas and electricity to them and in the fulfilment by Ofgem, when carrying out its functions as the designated regulatory authority for Great Britain.
- B.2** Ofgem is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with:
- the shipping, transportation or supply of gas conveyed through pipes;
 - the generation, transmission, distribution or supply of electricity;
 - the provision or use of electricity interconnectors
- B.3** Before deciding to carry out its functions in a particular manner with a view to promoting competition, Ofgem will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner (whether or not it would promote competition) in which Ofgem could carry out those functions which would better protect those interests.
- B.4** In performing these duties, Ofgem must have regard to:
- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met
 - the need to secure that all reasonable demands for electricity are met
 - the need to secure that licence holders are able to finance the activities which are the subject of obligations on them
 - the need to contribute to the achievement of sustainable development
- B.5** In performing these duties, Ofgem must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.

- B.6** Subject to the above, Ofgem is required to carry out the functions referred to in the manner which it considers is best calculated to:
- promote efficiency and economy on the part of those licensed under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems
 - protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity
 - secure a diverse and viable long-term energy supply, and shall, in carrying out those functions, have regard to the effect on the environment
- B.7** In carrying out these functions Ofgem must also 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 any other principles that appear to it to represent the best regulatory practice
 - certain statutory guidance on social and environmental matters issued by the Secretary of State

Ofcom

- B.8** Ofcom has a principal duty to further the interests of both citizens and consumers. Ofcom operates within a statutory framework created primarily by the Communications Act 2003 (the Act). Its principal duty is to:
- further the interests of citizens in relation to communications matters
 - further the interests of consumers in relevant markets, where appropriate by promoting competition
- B.9** This means Ofcom may have to make trade-offs between the interests of individual consumers and the interests of society as a whole. For example, placing obligations on broadcasters to provide public service broadcasting and thereby promote a more inclusive society may not be in the interests of consumers who choose not to watch such programmes.
- B.10** The act also specifies certain outcomes which Ofcom must aim to achieve:
- the optimal use for wireless telegraphy of the electro-magnetic spectrum
 - the availability throughout the United Kingdom of a wide range of electronic communications services
 - the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests
 - the maintenance of a sufficient plurality of providers of different television and radio services
 - the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services

B.11 There are also a number of outcomes which the Act specifies as desirable for Ofcom to achieve:

- promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom
- promoting competition in relevant markets
- promoting and facilitating the development and use of effective forms of self-regulation
- encouraging investment and innovation in relevant markets
- encouraging the availability and use of high speed data transfer services throughout the United Kingdom
- preventing crime and disorder

B.12 Ofcom also has a large number of specific statutory duties which they are required to fulfil. Over 250 separate functions are mandated by the Communications Act, and over a hundred by the Broadcasting Acts.

Ofwat

B.13 The duties for Ofwat work as the economic regulator of the water sector are set out in the Water Industry Act 1991 as amended. Ofwat must carry out its work as an economic regulator in the way it considers will best:

- further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition
- secure that water companies (meaning water and sewerage undertakers) properly carry out their statutory functions
- secure that water companies can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their statutory functions
- secure that water supply licensees and sewerage licensees properly carry out their licensed activities and statutory functions
- further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems; and to secure that they take steps to enable them, in the long term, to meet the need for water suppliers and wastewater services

B.14 Further to these primary duties, Ofwat must also regulate in the way it considers will best:

- promote economy and efficiency by water companies in their work
- secure that no undue preference or discrimination is shown by water companies in fixing charges
- secure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or by water supply licensees

- secure that consumers' interests are protected where water companies sell land
- ensure that consumers' interests are protected in relation to any unregulated activities of water companies
- contribute to the achievement of sustainable development

B.15 Ofwat must also have regard to the principles of best regulatory practice. These include that regulatory activities should be transparent, accountable, proportionate, consistent and targeted. Ofwat must also act in accordance with the statutory strategic policy statements published by Defra and the Welsh Government.

HM Treasury contacts

This document can be downloaded from
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