

BIS | Department for Business
Innovation & Skills

**PRINCIPLES FOR ECONOMIC
REGULATION**

Summary of responses to
the call for evidence

APRIL 2011

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Background

Introduction

1. The National Infrastructure Plan announced the Government's desire to initiate a debate about how the high-level design and operation of the frameworks of economic regulation. In particular, the Government proposed to establish a set of cross-sector Principles for Economic Regulation, which seek to:
 - reaffirm the importance of, and the Government's commitment to, stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth;
 - set the framework for delivering greater clarity about the respective roles of Government, regulators and producers, and greater coherence in an increasingly complex and interlinked policy context; and
 - set out the characteristics of a successful framework for economic regulation to guide policy makers in assessing future developments.
2. A call for evidence¹ was issued on 7 January 2011 seeking views on the Principles and on how best to apply these across the regulated sectors.

Analysis of respondents

3. A total of 61 responses were received and a breakdown by respondent type and sector is provided below. A complete list of respondents can be found in Annex A.

Analysis of respondents by type

Respondent by type	Number	Percentage
Academic/Professional Institutions/Think tanks	8	13%
Regulators	7	11%
Public Sector Bodies	7	11%
Industry – Business	26	43%
Non-Governmental Organisations (NGOs)	2	3%
Consumer Groups	3	5%

¹ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/11-519-principles-economic-regulation-call-for-evidence.pdf>

Respondent by type	Number	Percentage
Trade Associations	7	11%
Other	1	2%
Total	61	100%

Analysis of respondents by sector

Respondent by type	Number	Percentage
Energy	12	20%
Post	1	2%
Telecommunications	13	21%
Transport	7	11%
Water	10	16%
Multi-sector	10	16%
Other	8	13%
Total	61	100%

Detailed summary of responses

4. The call for evidence contained ten questions on which views were sought. A summary of the comments expressed by respondents is set out below.

Question 1

Do these principles sufficiently encapsulate the characteristics of a successful framework for economic regulation? If not, how could they be improved?

5. There was, amongst respondents from all types and sectors, broad support for the principles. Most felt the principles are “welcome”, “appropriate and comprehensive”, “sound guiding values”, “captur(ing) the characteristics needed for successful economic regulation”, “well drafted”, “more useful than the necessarily generic BRTF principles (of good regulation)”, “a helpful development in the debate on the role of economic regulation”, “timely”.
6. It was suggested that “Taken as a whole, the principles and reasoning set out in the call for evidence represent a clear and sensible restatement of the principles of economic regulation as they should apply. Many of the principles are embedded in the current regulatory framework in energy but, as set out in the detailed response, we feel that some of those principles seem to have been forgotten in the evolution of the regulatory regime over recent years”.
7. Some respondents suggested minor amendments to the wording of the principles, or emphasised which principles should have, in their eyes, more pre-eminence. For example, proportionality, consistency within (rather than between sectors), independence, financial viability and consumer protection were areas that some respondents felt could have greater prominence.
8. There were a number of respondents who questioned how the draft principles related to the existing principles of good regulation articulated by the Better Regulation Task Force in 1997. A number suggested some amendments to capture the spirit of the BRTF principles more fully.
9. Of the 61 respondents, only three respondents expressed negative views. One respondent, a consultancy practice, believed the principles were “of little value” on the grounds that it is “hard to imagine anyone disagreeing with any of them”. Another, a consumer advocacy group, was concerned because there was “only one mention of the need for consumer protection” in the principles. The third argued that “the proposed principles do not sufficiently encapsulate the characteristics of a successful framework for economic regulation and need significant further thought and redrafting. Hence applying these principles would not deliver greater clarity. In particular (...), application of them in their current form might well increase rather than reduce policy and regulatory uncertainty”.

Question 2

Would their application deliver greater clarity about the respective roles of Government, regulators and producers, and greater policy coherence, and hence reduce uncertainty generated by the lack of clarity?

10. Reflecting the broad support for the principles, most respondents, by type or sector, believed the application of the principles would deliver greater clarity of the respective roles of Government and regulators. One regulated company stated “economic regulation is one of the most important areas of risk to which energy companies are exposed, and that any further clarity over the development of economic regulation is welcome”.
11. A number saw them playing a useful role in guiding future decision making, e.g. “we would hope that each government department would use the final principles to guide any future decisions it takes in the regulated sectors” and “We would recommend that the principles are used as a starting point in the design of regulatory arrangements as they are established and reviewed from time to time. In energy, the outcome of DECC’s “Ofgem Review” – recently the subject of a call for evidence itself – should embrace these principles explicitly”.
12. While supporting the objective of providing greater clarity, some respondents were unable to state whether their application would reduce uncertainty, as more details would be needed on the application of the principles before making that assessment. Some cautioned against a one-size-fits-all approach to their application.
13. One respondent (a consumer advocacy group) believed the principles failed to address the lack of “overall coherent policy process agreed between Government and regulators to ensure that problems in the market are promptly and effectively resolved”.
14. One regulator believed that the principles should “more fully endorse the model of an independent economic regulator that is fully accountable to Parliament”; another thought that “independence of the regulator and a requirement to ensure the financial viability of companies” should be additional principles.
15. One respondent considered that the lack of prominence given to competition policy or the Competition Commission was an area of weakness. He also expressed reservations about “how Ministers (individually and/or collectively) can be induced or persuaded to provide coherent and consistent guidance” and “what is expected (and/or intended) to happen if they do not give clear, public and consistent guidance”.

Question 3

Is the division of responsibilities, currently divided between regulator and Government, sufficiently clear?

- Does the regulatory framework allocate responsibilities to regulators that are inherently political in nature and which should be taken by Government?
- Are there areas where the Government should step back, having set out its objectives, and leave the regulator to take decisions?

16. Businesses in the telecoms sector tended to believe there is a clear division of roles between Government and regulator, partly thanks to the transposition of EU directives. Other respondents, however, offer more mixed views. Water companies for example indicate that “the division of responsibility has become blurred in recent years”, that some regulators seem to have taken a more active role in “driving or making policy” and that “the pattern since privatisation has been for regulators’ duties to grow”.
17. There is a broad consensus amongst respondents about the appropriate division of responsibilities:
- It “is for Ministers to establish policy and for economic regulators to carry out their duties in a manner consistent with delivering Government policy”. Also “It is clear that the government should set the strategic policy framework and that the regulator should interpret and implement policies independent from the government, but within the bounds of the framework, in consultation with the industry and in line with the principles of better regulation”;
 - “...the regulator should be dealing with day-to-day issues and technical issues of an economic and engineering nature without government interference and without government attempting to micro-manage industry and affecting the independence of the regulator”;
 - “The Government should take an increased role in determining policy and trade-offs in areas such as environmental policy, carbon emissions, climate change adaptation, competition and social charges”;
 - “There must be clarity about how government and regulators plan to work together, and government should set the strategic framework in which they want regulators in each sector to operate. This might mean every government department publishing a strategic policy document for each regulated area within its remit. These would spell out the Government’s vision and objectives for the sector in the forthcoming parliamentary term; what it intends to do to give effect to that vision; what it expects the regulator to do; and how it intends to ensure co-ordination across different streams of work. This would be about direction-setting rather than detailed implementation and would, we believe, enable greater accountability”.
18. Within this framework, there are two visions as to where current failings lie. Some believe that the main issue is when Government “does not provide support for the

regulator to do their job properly, because they do not set clear political direction for the regulator how to interpret its duties and use its powers”. Other emphasise the need for regulatory independence, as a red line that should not be crossed.

19. Some considered responses stated that there is not always a clear rule to divide the roles and responsibilities of Government and regulators. In these grey areas, the emphasis should be put on transparency.

Question 4

How clearly is the division of responsibilities articulated, for example through statutory duties, in a way that provides the necessary focus?

- Are regulators’ duties easy to understand and clearly prioritised?
- Is the range of issues regulators are required to consider too broad?
- To what extent should regulators’ duties be more outcomes-focused and avoid specifying means, tools or inputs to achieve policy goals?

20. Respondents from all backgrounds highlighted that the division of responsibilities between Government and regulators is not always clearly defined. A Non-Governmental Organisation stated that they “frequently see examples of Government and Regulators treading upon one another’s’ toes”. A regulated business stated that “on the whole, the pattern since privatisation has been for regulators’ duties to grow. Inevitably, this creates the need for more trade-offs to be performed by the regulator in excising their functions”. As a think tank summed up, this “creates uncertainty as to what balance regulators are likely to strike”.
21. A number identified that a piecemeal evolution of responsibilities has resulted in regulators with an overly broad remit. For example, a regulated energy company said “We therefore agree that the range of issues Ofgem is required to consider has become too broad, and there is a need to re-focus on objectives and duties that are consistent with Ofgem’s role as an economic regulator. As part of this, Government should also clearly set out the limits of the regulator’s responsibilities and powers”.
22. Clarifying roles need not undermine the independence of the regulator. A regulated company argued “We do not believe that clarifying government’s role in strategic decision making need undermine the independence of regulation. In fact, we believe it can strengthen independence by creating clearer and more certain boundaries”. Another suggested “There is a case for a much simpler set of duties focused on economic outcomes with additional features, such as social obligations or environmental duties, fed in through a policy framework set by Government from time to time.”
23. There was an overwhelming support for outcomes-based duties. One regulator stressed that it is important “to give the flexibility to adopt the best means to secure delivery of policy goals”. Another regulator highlighted that “a more focused approach

on the delivery of the outcomes sought by Government and wider society will deliver better results than specifying means and tools”. A regulated company argued that regulators should have “freedom through the framework to specify the best means of achieving an outcome”. Another stated “The government should set policy, but it is for the regulator to decide how to implement it”. Only one respondent expressed doubts as to whether it is possible to make regulatory duties more outcome-focused.

Question 5

To what extent is the decision making of the regulators sufficiently transparent (for example in consultation practice, publication of the reasons for decisions and accessibility of tools and models) to enable sectors to predict likely outcomes and scrutinise decisions?

24. A number of respondents highlighted the importance of transparency in regulatory decision making.
25. Respondents from the telecoms sector believed that “Ofcom’s regulatory decision making is generally transparent at the stage of publishing consultation documents and statements” and more generally that “UK regulators have a solid record on transparency and engagement with the regulated sectors”. However, it was suggested that “in the past stakeholders have not had sufficient detail and have had to place considerable trust in the regulator in order to secure the correct outcome”.
26. Other respondents, particularly from the water sector, believed that “transparency in Ofwat’s approach to regulation has reduced as the approach to regulation has become increasingly complex” and that “regulators should either adopt the Government’s Code of Practice on Consultation or, where this is not appropriate, set out their own guidelines”. It was suggested that “Regulators should also set out meaningful impact assessments as part of their decision making process”. As one regulated company said, “the ideal should be that investors can reasonably predict a new decision by considering the evidence of current decisions. If investors feel that the presented justification is simply a construct to justify a deeper objective (such as lower short-term prices) they are likely to demand a higher return”.
27. It was felt there is a need to bring more clarity to the role consultation has played in affecting decision making. A water company, for example, argued “Whilst there is extensive consultation on water regulatory issues it is not always clear that consultation has had any impact on decision-making. There is a need to set out the consideration given to evidence and why arguments which have been put forward have been rejected”.
28. A regulator also highlighted that transparency “has to take into account effective communication with stakeholders. There is some concern amongst stakeholders that “transparency often simply means publishing long technical documents”, which are difficult or costly to engage with”.

29. A consumer advocacy group believed that “regulators are often too business-focused in their decision making, and often do not adequately consider the need to protect consumers”.

Question 6

Are the existing appeal mechanisms appropriate, in terms of the:

- bodies with the right to appeal/object
- appeal-hearing body
- basis of appeal
- role of government?

30. Regulated firms expressed a strong preference not to extend rights to appeal beyond the licence holder, as “giving broad rights has the potential to introduce unnecessary costs in the regime and may result in the (appeal hearing body) being the default regulator”.
31. The Competition Commission stated that it might be appropriate to consider “giving wider rights to third parties to appeal”. Should this be the case, a regulator stated that “the relevant body would need to be representative of all consumers, independent of the regulator and Government, and have sufficient resources and expertise to mount a credible challenge”.
32. On the basis for appeal, many respondents defended the need for an appeal based on “the substance as well as on the processes of regulatory decisions”, although a regulator warned that “it would not be appropriate to allow a company to refer individual components of a price review in isolation”.
33. With regards to the appeal-hearing body, one respondent expressed a preference for appeals being heard by specialist bodies, such as the Competition Commission or the Competition Appeals Tribunal (CAT), rather than the High Court. A multi-sector regulator expressed a desire to “clarify and make consistent across sectors which appeals are referred to which (...) bodies”.
34. A regulated firm suggested the creation of a specific tribunal that would give non-binding advice on issues such as the “economic regulator’s use of its powers such as data requirements or enforcement activity up to the point at which formal legislative powers are being used”. This would, in their opinion, speed up the appeal process for this type of decisions and leave the more formal route for price setting or competitive market issues.
35. There was near universal agreement that the Government’s role in any appeal process should be extremely limited. For example:

- A regulator stated that “Government should not be able to appeal decisions made by regulators. To give Government a role in making appeals would call into question the independence of regulators and have an impact on the stability of the sectors. Investors may be discouraged if they thought there was a risk that regulator’s decisions could be appealed by Government”;
 - A regulated company did “not think that Government should involve itself in appeals against regulatory decisions”. Another argued “The Government’s role is primarily in providing appropriate guidance on any policy issues that may affect a regulator’s decision and in ensuring that the regulator’s legislative framework is appropriate”;
 - Another regulator stated that “the role of government in economic regulation should be limited to design of the regime rather than as an active participant with appeal rights” and that “political involvement in regulatory decisions is a retrograde step”. Similarly, an industry representative organisation stated “we do not think that the government should involve itself in appeals against regulatory decisions. Its primary role should be to enshrine in law an appeals mechanism which operates in a proportionate and effective manner and which delivers results with appropriate speed and cost efficiency”;
 - A trade association believed that “Government’s role in any appeal process is only to support the appeal process by ensuring that adequate resources are available to the appellate bodies. Other than that Government has no role to play in an appeal process”.
36. Only one respondent (a local authority) felt that “that it is vital that government – and where necessary its partners in local government – should be at the heart of any appeal or monitoring process of the economic regulatory system.”

Question 7

How effective are mechanisms to review the operation and delivery of economic regulation?

- Should periodic reviews of sector regulation and the role of the regulators be undertaken, to identify possible areas for improvement and provide greater confidence in the framework?
- Who should undertake such reviews? Should they be by an independent third party, for example, to provide an external challenge and how frequently should they be undertaken?

37. There is broad support for periodic reviews of the operation and delivery of economic regulation:

- A company in the telecommunications sector stated that “outside reviews of the effectiveness of regulators would be appropriate”;
 - A local authority believed that “regulatory system should be subject to regular review”;
 - A water company stated that it “is appropriate to hold broader reviews of whether sectoral regulation is fit for purpose from time to time”;
 - A think tank believed that “it would be useful to establish a general framework for such a review, aligned with government policy statements, major sectoral legislation and parliamentary oversight timetables” and that “reviews should inform the development of statements of policy and legislative initiatives”. Reviews would “bolster independence and add to the creditability with which delineations of accountability are made”;
 - An energy company suggested “There could be benefits from streamlining the current review process since in recent years reviews have been undertaken by various different bodies on an apparently ad hoc basis, exacerbating regulatory uncertainty”.
38. While a few respondents believed that there are “advantages to holding such reviews on a more discretionary basis as and when it appears appropriate”, most agreed that the “establishment of a system of periodic reviews would clearly have some benefit in terms of removing the process from political interference”. Respondents agreed that such reviews should not be conducted too frequently and should not encroach on the independence of the regulator. However, there were differing views about the appropriate frequency for review:
- A Non-Governmental Organisation stated that it was important to “avoid too-frequent detailed change for sectors”;
 - An airport operator “would not advocate reviews of regulation taking place too frequently and to an artificial timetable”;
 - Academics stated that “neither their frequency nor their nature should be such as to increase uncertainty in the market. It is unlikely that a frequency greater than once in ten years would be appropriate”. This was echoed by a telecommunications company who suggested that “major reviews of sector regulation should take place only infrequently and that ten years between such reviews would be appropriate”;
 - Another respondent from the telecoms sector suggested “Three year intervals would seem like an appropriate level of frequency for such reviews, striking the correct balance between the need to undertake such reviews, without them becoming a never ending event”;

- A regulated energy company argued “If such a requirement was to be created, reviews should be infrequent but all encompassing. The cycle should be regular (say every five years) with the ability to add reviews (or adjust the timing) to take account of major policy reviews which might lead to a significant change in objectives. To encourage consistency, any reviews should have an explicit bias towards minimum necessary change”;
 - A think tank stated that “regular review on a timescale of perhaps five or seven years would be useful in helping to ensure effective regulation, but without undermining regulatory independence”;
 - A regulated company argued “It would be important to avoid creating an expectation that reviews will lead to change when in fact none may be needed. In our view reviews should be undertaken no more than once per term of Government (i.e. five years) to minimise regulatory uncertainty”;
 - A regulator warned that “Government should think very carefully about its own role here, and how its various policy initiatives in respect of regulation sit together, with particular regard to how it will control the potential for increased uncertainty that its various reviews could have on markets and investors”.
39. External input by a third party is viewed positively by respondents, although a regulator argued that this independent party should “have expert knowledge of the latest developments in the regulatory field”. A number of respondents welcomed the approach taken by Defra in its review of Ofwat, for example “we believe that the approach recently taken towards Defra’s Review of Ofwat and CCWater appears to have worked well. This involves appointing a third party, who is capable of maintaining the confidence of all stakeholders, to report findings independently and transparently to the sponsoring department”.
40. As an alternative to reviews led by Government, a water company proposed that “an existing or new Select Committee of the House (could) conduct periodic reviews of the performance of the economic regulators, supported by the National Audit Office”. A number of other respondents similarly highlighted that Parliament’s role was key: “The NAO plays – and should continue to play – a major role... Parliamentary Select Committees could usefully be involved in the commissioning and discussion of such reviews.”
41. Alternatively, it was suggested that “a simpler approach maybe to design a reporting framework for the regulators. This should contain key performance indicators, a report on compliance with BIS principles, as set out here, a report on market trends and details of what efforts the regulator has made to foster or promote competition”.

Question 8

What is the optimum way of balancing the need to make the frameworks stable and predictable, coherent with broader public policy and able to adapt to

changes in sectors and technologies?

- What effect has the evolution of regulators' responsibilities had on the predictability of the framework and the attractiveness of the sectors to investors?
- How effectively does Government articulate the broader policy priorities under which regulators carry out their statutory functions? What is the impact on regulatory decision making and does this deliver a coherent overall regime?
- How effective have changes to statutory duties been in adapting the focus of regulators to emerging priorities?
- What restraint should Government impose on itself in the frequency of changes to the framework and policy priorities?
- Would a more formalised, pre-announced process (such as a Government strategy statement) for articulating policy priorities, reviewing the effectiveness of regulation and implementing changes on a cyclical but infrequent basis be beneficial in balancing these three principles in particular?

42. One regulator's response neatly summarises a view held more generally by respondents: "Predictability and adaptability can be balanced by ensuring there is clarity for investors about who exercises which role and what might cause change to the regulatory framework".
43. An airport operator characterised the current approach to changing regulatory frameworks as "'ad hoc' in their nature", whilst another airport operator underlined that with "frequent policy change, the predictability of the framework would be undermined". A regulator stated that "the cumulative effect on investor confidence of incremental change over time may be greater than each amendment when considered in isolation".
44. A regulator argued "As change can foster regulatory uncertainty, it should only take place when necessary and with the risk to stability considered". A think tank believed that "uncertainty over political decisions is often a greater disincentive for investment" than regulatory risk. A regulated energy company stated "We accept that Governments have a right to change policy frameworks but the frequency of change will be reflected in the risk perceived by investors".
45. On this basis, many respondents would "support a more formalized pre-announced process" and "welcome a clear statement from Government on its overall strategic approach". Respondents, particularly from the water sector, argued "regulatory decisions (including those in the price setting process) should take place within the context of a long term strategic vision. There has in the past been a lack of long term vision in regulatory decisions". A longer strategic policy context "would also insulate

the process from short term interventions” and “enshrining regulatory decisions in the context of a long term strategy would give certainty and security to investors and consumers alike”.

46. A regulated energy company summarised the issue as “The market needs to be confident that the government will maintain a consistent energy policy over time, without sudden and unexpected changes that could undermine investments, and that this policy will feed through into a stable regulatory framework... Flexibility to be able to adapt the regulatory regime to accommodate changes in technology is of course important, but as described above, frequent change should be avoided as it will undermine investor confidence”.
47. A telecommunications sector respondent suggested “Government will want set out its position on new issues and market developments. It is equally important therefore that there is clarity and transparency for stakeholders with regard to policy development and legislative change. This might be a helpful way forward if it were to both give more certainty as to when Government would make policy statements and bring together Government announcements in one place”. Another reinforced this point: “A government strategy statement may be a sensible way to introduce such changes, helping to maintain industry and consumer confidence, while at the same time ensuring the United Kingdom is able to take advantage of the latest technology”.
48. The key for a cross-sector think tank would be to “safeguard regulatory independence, while attempting to find a mechanism whereby Government can reasonably exercise its prerogative to determine public policy objectives, without creating a high degree of unpredictability”. Academics agree with this last point: “the reviews themselves should be designed so far as possible not to increase uncertainty in the markets.” A telecommunication company stated that changes to the “underlying statutory frameworks should only occur where there is adequate consultation and clear signposting”.
49. Although agreeing with the need to review the frameworks on a regular basis, a few respondents saw less benefit in “a formalised pre-announced process for changes to or reviews”.
50. A consumer body cautioned against placing too much emphasis on the principle of predictability: “...competitive markets always involve a degree of instability and unpredictability – new entrants and innovation can prove highly disruptive for incumbents, but this instability is generally in the interests of the economy and consumers. While recognising that some infrastructure provided by regulated business is so important that it cannot be allowed to fail, it would be a mistake for regulators to shield regulated businesses from market conditions, poor decisions or failure to innovate”.
51. One respondent expressed concern that ambiguities about the boundary between policy and regulation might result in greater uncertainty if this approach were followed.

Question 9

Are there sufficient and efficient mechanisms in place to facilitate cross-sector work by regulators?

- Should regulators' approach to similar issues (e.g. aspects of the price control, promoting competition and addressing consumer impacts including affordability) be more coordinated?
- Would shared non-executive board members across regulators helpfully reinforce collaboration, learning and coherence in approach?

52. There was a mixed response to this question. A number of respondents supported stronger cross-sector working between regulators. However, there was also caution expressed to recognise the particular differences between the sectors and that a one-size-fits-all approach was unlikely to be appropriate. Typical of the views expressed is the following, made by an energy company: "Currently, there is the potential for perverse incentives created by inconsistent decisions in different regulatory frameworks. Investors will target the most profitable sectors. This could result in underinvestment in specific infrastructure areas and this has been seen in different Weighted Cost of Capital decisions taken by Ofgem and Ofwat. However, this should not diminish the differences that exist between sector regulators as a consequence of the very real differences between the characteristics of the sectors they regulate". A similar view was given by a regulator: "There are doubtless ways to enhance these structures and additional opportunities for regulators to work more closely together to improve consistency. Good economic regulation should nonetheless be tailored to the market. Cross-sector work achieves the most when it responds to genuinely shared issues".
53. For those who saw value in joint-working, there is a difference of opinions between those who think no changes to the current working relationships between regulators are needed (there is "no reason to formalise these structures" as a regulator put it) and those who held the view that more collaborative working is needed but that it should not be imposed. The latter position is held not just by some regulators, but also by other respondents, such as a Non-Governmental Organisation that stated that "Regulators should state how they plan to achieve this, without having mechanisms imposed upon them" or a regulated company who argued "...a distinction needs to be made between, on the one hand, facilitating exchange of both information and best practice between regulators and, on the other hand, a more top-down pressure on regulators to conform in particular ways."
54. A number of respondents pointed to past good examples of cross sector working, for example "Regulators do talk to each other, not least on the obvious issues of common concern – cost of capital, for example. Ofgem and Ofwat have, in the past, worked formally together on the issue of financeability. In addition, there is evidence that a more general 'benchmarking competition' between regulators has always been at work". Only a minority of respondents thought that cross sector work should in some way be formalised and the role of Joint Regulators Group re-examined.

55. Some respondents questioned the merit in a more consistent approach to regulation across sectors:

- A water company stated that “there are sufficient differences between the regulated sectors to justify keeping separate, independent economic regulators” and that “independence requires (regulators) to retain the potential to form different views on the best approach to take for the sector they are responsible for”;
- Another water company stated that “sector characteristics will mean absolute uniformity is unlikely or even desirable”;
- A telecommunications company believed that “though there may be some potential for collaboration the approach to economic regulation needs to differ between sectors”;
- An airport operator opined that “care needs to be taken to understand the characteristics and peculiarities of the respective sectors before leaping entirely to homogenous approaches”;
- A regulated energy company argued that “inter-sectoral coherence is probably a less urgent objective than intra-sectoral coherence”.

56. Opinions were also divided between those who believed sharing Non Executive Directors (NED) would bring benefits (indeed some pointed out that ORR and Ofwat share one NED) and those who think this would be “duplicative and potentially not cost-effective”. A relatively consistent point was that “relevant industry and commercial experience is more important than having a cross-regulator view”. Others pointed out that more secondments between regulators would be beneficial, while one respondent pointed out that “some crossover of knowledge and experience takes place through regulator staff attending conferences and training events, and through the transfer of staff between regulators, and to and from the regulatory departments of regulated industries”.

Question 10

How cost-effective are the regulatory frameworks overall in terms of regulatory burdens, benefits delivered and efficiency of regulatory institutions?

57. Academics pointed out that it is extremely difficult to conduct cost benefit analysis of the regulators, for example because “of the unmeasurable effect of deterrence which is a key outcome of effective regulation”.

58. However, regulated firms, particularly in the water sector, expressed concerns about the growth in the administrative burden of price regulation. One water company’s “annual return to Ofwat for 2009/10 comprised 129 pages of tables and 748 pages of commentary. This compares to the June Return submitted in 1993/94 which

comprised 38 pages of tables and 51 pages of commentary. The increase is therefore in the region of ten fold”. One quoted a 2009 Water UK report which said “Companies estimate that they spent approximately £100m in additional costs and directly employed additional labour equivalent to over 500 employee-years in order to comply with the regulatory requirements of PR09”. Some concerns about this administrative burden were also expressed by respondents in other sectors, for example in the energy sector “There is significant overlap and duplication of reporting, with energy suppliers having to provide very similar information to fulfil slightly different objectives” and “We face larger information requests than ever before which consequently increase our costs”. One summarised the situation as “Too often, minor additional requirements are placed on companies and the costs ignored because they are individually small. However, the cumulative long-term effect may be large and will be rolled into consumer costs at subsequent price reviews”.

59. Assessing cost-effectiveness was recognised as being a potentially complex exercise. It was suggested that “Any brief for a body charged with systematically reviewing the cost-effectiveness of regulators would need to include the need to analyse the performance of regulators in ways which would, first, facilitate the linking of outputs to costs and, second, enable comparisons between the performance of different regulators – much in the same way as Ofgem and Ofwat attempt such benchmarking analysis of the network companies”.
60. One regulator gave a sobering comment in that respect: this “may appear an unreasonable burden but the “regulatory contracts” arising from these plans were worth several £ billions to these larger companies. When a price review is viewed as a contract worth circa £1 million per page submitted to the regulator, the burden looks a lot smaller!”

Annex – List of respondents

Respondents	
Arqiva	Machester Airports Group
BA	Mail Competition Forum
BAA	Mobile Broadband Group
BBL Company	National Grid
Dr Alex Bowen and Dr. Simon Dietz	Northern Ireland Authority for Utility Regulation
BT	Northumbrian Water Ltd
CAA	Ofcom
Cable&Wireless Worldwide	Ofgem
Centre for Competition Policy	Ofqual
Centrica	OFT
Cisco	Ofwat
Citizens Advice	Oil & Gas UK
Competition Commission	ORR
Consumer Council for Water	Pearson
Consumer Focus	Phone Ability
Conwall County Council	Scottish Government
E.ON UK	Severn Trent Water
easyJet	South West Water
EDF Energy	Mr David Starkie
Electricity North West	Mr Jon Stern
Energy Networks Association	TalkTalk
Europe Economics	Tees Valley Unlimited
European Policy Forum	Three
Everything Everywhere	UKCTA
Federation of Awarding Bodies	United Utilities
FTI	Veolia Water
Fuel Poverty Advisory Group	Water UK
Institute of Economic Affairs	Waterwise
Isle of Wight Council	Wessex Water
ITV	One confidential response
Kent County Council	

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