

# Collaboration between Economic Regulators

Options for embedding joint working between economic  
regulators – Response form

A copy of this consultation can be found at:

<https://www.gov.uk/government/consultations/xxxx>

#### Confidentiality and disclosure of responses

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 00/00/0000

Please return completed forms to:

UKRN Consultation  
Competition and Consumer Policy Directorate  
Department of Business, Innovation and Skills  
3<sup>rd</sup> Floor – Victoria  
1 Victoria Street  
London  
SW1H 0ET

Alternatively you can email your response to

Email: UKRNconsultation@bis.gsi.gov.uk

#### Your details

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Organisation EDF Energy

Job title

Address: Grosvenor Place London SW1Y 4LR

Telephone number:

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Please tick the box below that best describes you as a respondent to this consultation

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
<input checked="" type="checkbox"/>	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

## Role of the UKRN

**Question 1.** Do you have any views or experiences – on cooperation between regulators, particularly under the previous JRG regime and before the UKRN was established? ( para 1.7 – 1.14)

Comments:

It is difficult to comment on the workings of the JRG as we had no meaningful engagement with it and it produced relatively limited outputs. For example, we are unable to determine what precise impact the JRG has had on Ofgem's regulatory practice (the economic regulator of particular relevance to EDF Energy).

**Question 2.** Are there any specific areas where cooperation amongst the regulators could bring greater benefits and/or protections for consumers? Please provide any examples that you think will help demonstrate your argument (Para 2.1 – 2.10)

Comments:

EDF Energy supports the UKRNs objectives, listed under para 1.11 of BIS's consultation paper.

- Coherent and consistent economic regulation across sectors
- Affordability and empowerment
- A positive environment for efficient investment
- Efficient regulation
- Promotion of competition in the interests of consumers
- Better understanding of the effectiveness of economic regulation

While the focus of these will likely to be on cross-sectoral issues, EDF Energy believes that robust collaboration can, and should, form an important part of the wider governance framework for UK economic regulators even where the regulatory framework appears to be sector specific.

EDF Energy notes that economic regulators operate in a complex environment which necessarily gives them considerable scope for discretion. Such a wide scope raises issues about governance (e.g. what choice within a wide range of choices is made?), and about the extent to which behaviour can be moderated through statutory duties and guidance (which by necessity are relatively high level). EDF Energy also notes that the ability to exercise wide discretion can also pose a challenge for regulators in the context of strong media and political interest in their decisions.

EDF Energy believes that closer co-operation can be part of the solution because regulators can provide mutual support in helping to find appropriate trade-offs. For example, in identifying the right balance between regulation and non-intervention in markets. We believe this can be achieved through the sharing of best practice (for example in replacing prescriptive regulation with principles based regulation), and also by the UKRN acting as a forum for optimising the concurrency arrangements with the CMA (including the balancing of use of regulatory and competition powers).

EDF Energy also believes that it would be helpful if the economic regulators could forge better links with environmental regulators. For example, water abstraction reform by DEFRA is a good example

of where consequences of regulation can move beyond having an impact on any one independent power plant to influence the functioning of the market and ultimately have an impact on security of electricity supply.

**Question 3.** Is there evidence of areas where sharing best practice and developing more consistency between sectors would benefit investors, regulated companies and/or consumers? (Para 2.1 – 2.10)

Comments:

We believe there are areas of improvement beyond those mentioned in paragraph 2.9 (p16) of the consultation which we support. EDF Energy believes that collaboration between regulators has real value, in developing solutions to common problems, for example:

1. Reconciling multiple statutory objectives;
2. Understanding the impacts on consumer affordability of utility bills across sectors;
3. Making trade offs between different customer groups (e.g. rural/urban, vulnerable groups etc)
4. Developing a common approach to cost of capital in regulated monopolies;
5. Sharing best practice in customer engagement (which we note is a project for 2014/15);
6. Developing a framework for policy evaluation.

Furthermore, peer to peer review is also a value creating activity. The UKRN could challenge and review major changes in regulatory practice of its members before they are implemented in the policy development phase.

**Question 4.** Are there specific areas where better cross-regulator cooperation could improve infrastructure delivery or incentivise the more efficient use of infrastructure assets or networks? Please provide any examples that you think will help demonstrate your argument. (Para 2.1 – 2.10)

Comments:

Other sector regulators may have an impact on investment in energy infrastructure such as for example, Natural England, Scottish Environment Protection Agency and Ofwat. Currently regulators and Government agencies are not required to consider, as part of their decision making process, any cross utilities impact, but it would help if they did. For example, amenity value has to be set against the wider environmental benefits of decarbonisation.

Furthermore, regulation in one sector can simply become a pass through cost for another. For example, the Eels Regulations risk placing upward pressure on electricity generator costs.

Options for supporting and encouraging cooperation

**Question 5.** Do you believe that Government should take further steps to support and encourage cooperation between regulators? If so, what would be your favoured approach and what benefits do you think this would bring? Please include, if appropriate, any issues which you consider may inhibit cross-sector cooperation. (Para 3.1 – 3.20)

Comments:

The effectiveness of the UKRN based solutions common to Airports, Rail, Energy and Financial Services based will be based on a number of factors including

- a. The legal primary duties and legal constraints placed on the regulators allow for common solutions;
- b. Shared industry characteristics;
- c. Consumers expectations and willingness to pay for different utilities;
- d. The extent to which different methodologies followed by regulators might lead to the same or similar outcomes therefore mitigating the need to cooperate.

While we believe that there is clearly scope for cooperation the extent to which this will happen will vary between different groups of regulators. We therefore suggest that the UKRN as it is proposed has struck the right balance between driving for best practice and the limitations of this initiative outlined above. This will be with the caveat that the UKRN will engage with the regulated industries and consumers which did not seem to be a strong feature of the JRG.

**Question 6.** Do you have any views on the advantages and / or disadvantages of each of the three options identified? Do you have a preferred option? (Para 3.1 – 3.20)

Comments:

EDF Energy believes that robust cooperation will only occur if the participating parties mutually want to co-operate. We therefore favour option 1, but backed up with a clear expectation from government that it will monitor success. Given the difficulty of establishing whether robust collaboration has taken place, we see little value in options 2 (guidance) and 3 (mandation).

We also believe it is sensible to allow the principal changes which mark the UKRN out from the JRG to bed in before any review of the effectiveness of the new arrangement can be made.

EDF Energy could accept Option 2 but would suggest that if incorrectly implemented it could potentially impair the regulators independence as much as it may clarify how they may cooperate.

**Question 7.** What are your views on how best to implement each of the three options identified without becoming overly burdensome or impacting regulatory stability? (Para 3.1 – 3.20)

Comments:

We see no implementation issues for option 1. For options 2 and 3 we suggest the following:

1. Degree of prescription of guidance and the extent to which the guidance might be binding could be difficult to define. What happens if a regulator refuses to co-operate for example?
2. The timing and duration of guidance. How often would it change? How flexible would it be to changes in the regulatory climate etc?
3. Finally it might be difficult to develop a legal definition of effective “cooperation” if option 3 is adopted?

**Question 8.** Are there any other options which the Government has not identified in paragraph 3.3. If you identify any, what are the advantages and disadvantages of such options? (Para 3.1 – 3.20)

Comments:

We have not identified any other options.





## Annex D: Consultation Principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>



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