

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>

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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
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Alternatively you can email your response to

Email: UKRNconsultation@bis.gsi.gov.uk

Your details

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Job title
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Telephone number:

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

<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	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 would have been difficult for us to have a view on the JRG regime, as we agree with the consultation that JRG produced no external outputs and did not have any meaningful engagement with external parties.

Energy UK's position has consistently been that more collaboration between regulators is required, to avoid creating complicated obligations and license conditions without taking on board the lessons learned from other industries. For example, when the energy retailers were working with Ofgem on complaints and complaints reports, we asked for, and led on, engagement with the banking sector, to learn from their experience.

We continue to believe in independent regulation which will benefit consumers, businesses and the economy by balancing the promotion of competition and intervention in the market. However, in the case of Ofgem, we believe that government and the regulator have developed, over time, an increasing bias towards *ex ante* and heavily prescriptive intervention in energy markets. Energy UK believes that closer collaboration will lead to better outcomes, if combined with a constant re-evaluation of regulatory activities, with a guiding principle of promoting competition to lead to improved outcomes for consumers. We believe that intervention should only be used in limited circumstances where strictly necessary.

Overall, we support the principles of proportionate regulation with clear objectives that support competition, and we would urge the UKRN to embed these principles within its remit. We would caution against an interventionist stance which can increase customer and supplier costs, reduce innovation and effectively weaken competition to the detriment of customers. While we support sharing of best practice, we do recognise that some approaches may not be suitable for cross-sector adoption.

Finally, we would expect that BIS will consider the statutory duties of each regulator and how those can be balanced with the UKRN. For example, there is the DECC Strategy and Policy Statement (SPS) and the fact that Ofgem will need to have regard to the strategic priorities set out in the SPS when carrying out its regulatory functions. We would generally expect that BIS would work with all relevant Departments to ensure that the UKRN works well with each regulator's statutory duties.

Potential benefits of joint working and cooperation

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:

It would be helpful if economic regulators could forge better links with environmental regulators to avoid the introduction of regulatory barriers to economic growth. A positive example of this is Ofwat's work with the water companies and the Environment Agency to support Defra's proposals for the reform of the water abstraction licensing regime.

We also believe that one of the most important aspects of regulation is a rigorous assessment of the impacts of regulatory intervention. To that end we would encourage UKRN to share best practice on doing Impact Assessments of sufficient rigour and quality, to a level that would be acceptable by the National Audit Office.

Additionally, we believe that the work of regulators should be accessible, to aid understanding, participation and collaboration from a variety of stakeholders, including consumers. We would suggest therefore that the UKRN can act as a forum to share best practice on how regulatory interventions can be clearly explained to a variety of audiences, without assuming prior knowledge. We would point to the work of the Financial Conduct Authority (FCA) in this matter, which produces versions of communications materials suitable for regulated companies, stakeholders and consumers.

Finally, we also hope that the UKRN will help regulators to share best practice with regards to the usability and clarity of their websites. Again, we would point to the FCA website, which explains functions and decisions clearly, without supposing pre-existing knowledge of the rules, while retaining specialised and technical sections for regulated companies.

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 that there are several areas where sharing best practice and developing more consistency could bring greater benefits. However, we would like to stress that by benefits we mean simplified regulation, promotion of competition and enabling innovation which will ultimately work for consumers. We would caution against an interpretation of consistency that leads to a cross-application of more interventionist rules.

We note that the consultation mentions consumer engagement, bills and affordability as potential areas of cooperation. We would agree that bills should not only be transparent but also better understood by customers; any proposals to improve this would be beneficial regardless of which regulated industry is under consideration. We reiterate, however, the danger of extended and prescriptive regulation that reduces the scope for commercial differentiation and innovation which leads to benefits for customers in a competitive market.

We would like to stress the risk of regulators working together on various areas, without taking feedback from industry and consumer bodies. Regulators tend to have a specific – and at times narrow – view of the industries they regulate. Without obtaining feedback from stakeholders, there is a risk that regulators work on something considered as best practice only by themselves and not by industry or consumers. UKRN should also be accountable to stakeholders and transparent regarding the decisions it makes. We would suggest that stakeholders from the industry and consumer bodies are invited on occasion to the UKRN to discuss best practice and the impact of regulation on the market and consumers.

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:

We recommend that all regulators whose work impacts on the energy sector (Ofgem, Environment Agency, Natural Resources Wales, Scottish Environment Protection Agency, Natural England, Ofwat, the Oil and Gas Authority currently being set up) should consider security of supply, affordability and decarbonisation as objectives within their remit. This approach will aid the delivery and maintenance of energy infrastructure. In recent years the electricity generation sector has seen a significant rise in costs arising from environmental regulation, such as the Eels regulation (powers to the Environment Agency to implement measures for the recovery of European eel stocks), which in turn puts upwards pressure on cost of new infrastructure and may therefore affect affordability and security of supply.

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)

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)

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 believe that the Government is responsible for setting the policy objectives for regulators, while at the same time safeguarding the independence of regulators. To create statutory duties or publish guidance could very well hinder the regulators' ability to make independent and timely decisions and introduce additional complexity. Therefore we have a clear preference for Option 1: Monitor progress and work with the UKRN.

However, following a certain amount of time, it might become preferable for the Government to encourage closer cooperation by other means. In that case we believe that Option 2: Guidance on cooperation is preferable, but only if the risk of hindering the regulators' ability to make independent decisions is clearly controlled and mitigated against.

If the Government does decide to publish a guidance document, the Government should also recognise the differences between regulators. For example, Ofgem has the SPS obligations and in the energy industry, the networks are fully regulated whereas energy supply is not.

It is imperative for the UKRN to be transparent and inclusive. Industry representatives and consumer bodies should not be excluded from the process. There should be a clear requirement or obligation to promote inclusivity in the discussions, to ensure that any regulatory best practice is also considered to be beneficial to the actual industry players as well.

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:

No.

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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