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Consultation on collaboration between economic regulators

Thank you for the opportunity to comment on HM Government's options to embed joint working between economic regulators. This letter is Ofgem's formal response to the consultation. We have also contributed to a joint response with other regulators, developed through the UKRN Office. Our preference is for Option 1, monitor progress and work with UKRN.

It may be useful to reflect on why government feels it needs to consult on this matter. We appear to be at a point in time where government is paying closer attention both to the mechanisms of economic regulation and to the value which regulation adds, for consumers and the wider economy. This is very encouraging as we know that independent economic regulation provides the stability, certainty and predictable risk environment which makes the UK an attractive destination for investment. This is of particular importance in the energy sector, given the intense technological changes underway in generation, networks and in consumer engagement with the market through smart meters. The caution expressed in Principles for Economic Regulation around how investors might price the risk of political intervention is, if anything, even more relevant today.

In the few months since UKRN launched, it has shown potential to become a mechanism to drive consistency in regulation and a key means for government to engage with regulators collectively. UKRN's strong governance, coupled with a flexible approach to joint working, enables a range of positive and effective interactions which, arguably, could be lost in a narrower framework of a statutory duty to cooperate. As regulators, our general approach is to allow our initiatives to bed in before we consider whether anything else needs to be done. That analogy holds here. Option 1 gives time for our collaborative approach to become rooted in day to day practice. It gives regulators flexibility to participate in the work that is of most relevance to their sectors, an especial benefit given the diversity of size and interests among the regulators. It also enables us to understand where improvements could be made to how we work together.

Option 2 is potentially problematic as it is not clear what status any government guidance would have, nor how that guidance would interact with (in our sector) the Strategy and Policy Statement, and with guidance or requirements in other sectors. It seems potentially a risky endeavour for the centre to opine on outcomes it would like regulators to achieve, unless there is strong collective support from sponsor departments and coherence with other objectives.

On option 3, the UKRN joint response sets out very cogently the potentially counterproductive effects of adding a new duty to the complex lists of obligations which statute already places on regulators. I will not rehearse those arguments again here, except to note two points. When regulators make decisions they need to balance their duties and, sometimes, make trade-offs between different aims. A duty to cooperate would be one duty among many and would not necessarily have sufficient priority in every case to deliver the outcomes which government seeks.

A statutory duty needs to be weighed and interpreted by each regulator, in context of its legal framework. This creates the likelihood that collaboration in general, or in specific instances, might be accorded differing levels of importance by regulators, which could hamper the delivery of UKRN's projects. By contrast, the current approach enables us to accord UKRN work appropriate priority in an outcome-focused way. The second point to note is that paragraph 3.17 of the consultation states that any statutory duty would have to be clear on what types of cooperation government is seeking to encourage. The limitation of any potential duty to 'economic regulation functions' (however defined in each case) or to regulators that set price controls (as suggested in paragraph 3.18) seriously impairs the rationale for cooperation, which is that regulators work together on those things that matter most for consumers, investors and businesses in their sectors. I would venture to suggest that this wording in the consultation document is one of the strongest arguments against option 3.

The strong and productive relationships we have established between regulators, and the open and positive engagement we enjoy across government attests both to the heightened significance of economic regulation and to the strength of the arrangements established through UKRN. Our strong view is that the right approach is to let these arrangements settle and take stock of lessons learned this time next year. It may be that, through experience, improvements will become apparent. If so, we can consider these in due time, when we have better understanding of any practical steps that might strengthen the ways in which regulators work together.

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