

BERR | Department for Business
Enterprise & Regulatory Reform

**SOCIAL AND ENVIRONMENTAL
GUIDANCE TO THE GAS AND
ELECTRICITY MARKETS
AUTHORITY**

A Consultation Document

JUNE 2008

SOCIAL AND ENVIRONMENTAL GUIDANCE TO THE GAS AND
ELECTRICITY MARKETS AUTHORITY: **CONSULTATION DOCUMENT**

26 June 2008

Why is the Government conducting this consultation?

This consultation seeks views on proposed revised statutory guidance to the Gas and Electricity Markets Authority as to the contribution the Authority should make towards the attainment of the Government's social and environmental policies. The revised guidance seeks to ensure that the Authority continues to make a contribution on current policies, appropriate to its functions and statutory remit, including policies on carbon emissions, renewable energy and fuel poverty. This consultation is not intended to define new policy in those areas.

Issued: 26 June 2008

Respond by: 26 September 2008

Enquiries to: Department for Business, Enterprise & Regulatory Reform
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 5000
Email: ofgem.guidance@berr.gsi.gov.uk

This consultation is relevant to: Ofgem licence holders and other energy companies, representative bodies of the energy industry, consumer bodies, and social and environmental interest organisations.

SOCIAL AND ENVIRONMENTAL GUIDANCE TO THE GAS AND ELECTRICITY MARKETS AUTHORITY: CONSULTATION DOCUMENT

Contents

Introduction – what this consultation concerns	4
Key issues	4
Responding to the Consultation	6
Consultation questions	8
Draft Statutory Social and Environmental Guidance to the Gas and Electricity Markets Authority	
Introduction	9
Government Social and Environmental Policies	10
The Authority’s principal objective and duties	11
Environmental issues	12
Social issues	15
Better regulation	16
Accountability	16
Annex A - Code of practice on consultation	17
Annex B - Organisations contacted	18

Introduction - What this consultation concerns

1. This consultation concerns revised guidance from the Government to the regulator of the gas and electricity markets, as to how the regulator should contribute to the achievement of the Government's social and environmental aims, in carrying out its functions under its statutory remit.

2. Ofgem (the Office of gas and electricity markets) regulates the gas and electricity industries in Great Britain. Ofgem operates under the direction and governance of GEMA (the Gas and Electricity Markets Authority). The regulator was established to be demonstrably independent of Government to ensure that the regulatory process is free from political interference and to avoid creating unacceptable levels of uncertainty in the markets. In regulating GB electricity and gas markets, the Authority can also make a very effective contribution to the achievement of wider public policy goals, specifically social and environmental ones. The relevant legislation therefore provides for the Government to issue this guidance to the Authority, and the Authority is required to have regard to the guidance when discharging its statutory functions.

3. This consultation invites comments on new draft guidance. The Government believes that this guidance should last several years, so as to provide regulatory certainty, but that it should be modified periodically when appropriate, to reflect new aims in social and environmental policies and new challenges which arise in the delivery of those policies.

4. This guidance would replace the current guidance, which came into force in February 2004. Since that time the Government has set out its response to current challenges in energy policy in the Energy White Paper of 2007, has established new targets for reducing emissions of greenhouse gases, and is developing a new strategy to increase the proportion of energy from renewable sources used in the UK. In addition, the Government has identified some specific areas where action can help significantly towards the achievement of social and environmental aims. Therefore the Government believes that it is now appropriate to issue new guidance.

Key issues

5. The environmental section focuses on achieving targets on both renewables penetration and emission reductions, and in that context makes clear expectations of action to improve access to the electricity networks for new generation, including nuclear and other low carbon generation. It also highlights other important areas of development relating to the networks, and indicates that Ofgem should look for opportunities to facilitate the transition to a low carbon gas and electricity system.

6. The environmental section also sets out the Authority's potential contribution in:

- removing unnecessary regulatory and market barriers to the economic deployment of Distributed Energy technologies;
- ensuring that any provision of smart metering is implemented in an efficient and timely manner;
- energy efficiency;
- working with industry to promote technological innovation.

7. The guidance indicates the Government's expectation that Ofgem should include values for the shadow price for carbon when assessing policy options.

8. On social issues the guidance seeks to ensure that Ofgem monitors the market and:

- takes steps to ensure that vulnerable people can benefit from the competitive market;
- addresses issues which represent particular threats to people on low incomes;
- helps to ensure that consumers do not suffer undue discrimination due to payment method; and
- reports on supply companies' social programmes including establishing guidelines for determining what can be included under the voluntary agreement reached in April 2008, and, as part of that, setting out recommended good practice.

9. The draft guidance also includes an expectation that Ofgem reports to Ministers in writing and face to face on how it has taken account of the guidance in its activities on an annual basis, replacing a requirement for annual reports alone. This provides a formal opportunity for the Authority to explain its contribution, and for the Government to discuss the ongoing development of relevant policies and the effectiveness of mechanisms with the Regulator.

10. The guidance relates only to the implementation of existing Government policy. It does not impose any new policies or burdens, therefore no dedicated impact assessment will be provided.

11. Where the Government wishes to implement specific social or environmental measures which would have significant financial implications for consumers or for the regulated companies, these will be implemented by Ministers, rather than the Authority, by means of specific primary or secondary legislation. The Government does not seek to do this through this guidance.

Responding to the consultation

How to respond

This consultation opened on 26 June 2008. The last date for responses is 26 September 2008.

Consultation responses should be sent by post, fax or e-mail to:

Leon Finn
Department for Business, Enterprise and Regulatory Reform
Energy Regulatory Framework
Bay 138
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 4699
Fax: 020 7215 2809
ofgem.guidance@berr.gsi.gov.uk

We do not intend to acknowledge receipt of individual responses unless specifically requested.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those organisations and individuals who have been contacted about this consultation is provided in Annex B. We would welcome suggestions for others who you think may wish to be involved in this consultation process.

Additional copies

You may make copies of this document without seeking permission. Printed copies of the consultation document can be obtained on request from:

BERR Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030

An electronic version can be downloaded from the Department's website at:
<http://www.berr.gov.uk/consultations/index.html>

Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other 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, amongst other things, with 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 this 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 the Department.

Help with queries

Queries on the issues raised in this consultation should be addressed to

Leon Finn
Department for Business, Enterprise and Regulatory Reform
Energy Regulatory Framework
Bay 138
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 4699
Fax: 020 7215 2809
ofgem.guidance@berr.gsi.gov.uk

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Vanessa Singhateh
Consultation Co-ordinator
Department for Business, Enterprise and Regulatory Reform
Better Regulation Team
1 Victoria Street
London SW1H 0ET
E-mail: vanessa.singhateh@berr.gsi.gov.uk
Tel: 020 7215 2293

A copy of the Code of Practice on Consultation can be found in Annex A.

Consultation questions

1. Do you agree that it is appropriate for the Government to provide new guidance to the Authority on its contribution to the achievement of the Government's relevant social and environmental aims at this time?

2. Do you agree with the guidance provided on contributing to the achievement of Government policy aims on

- a) Networks**
- b) Energy Efficiency**
- c) Distributed Energy**
- d) Smart Meters**
- e) Technology and Innovation**

3. Do you agree with the guidance provided on contributing to the achievement of Government policy aims on social issues?

4. Do you agree that the Authority should have regard where appropriate to the Government's Green Book guidance, including ensuring that policy options are assessed using values for the shadow price of carbon within the range recommended by the Government Economic Service?

5. Do you believe that guidance should identify other aspects of Government social and environmental policies, to indicate that the Authority should make a contribution to the attainment of those?

Draft Social and Environmental Guidance to the Gas and Electricity Markets Authority

Introduction

1. Section 4AB of the Gas Act 1986 and section 3B of the Electricity Act 1989 provide that

“The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance”

and that the Gas and Electricity Markets Authority (the Authority) “...shall, in carrying out its functions ...have regard to any guidance issued”.

2. The guidance is set out below. It replaces existing guidance and seeks to support the implementation of the Government’s energy strategy. The Authority is therefore required to have regard to the guidance when discharging the statutory functions to which its principal objective and general duties apply.
3. The Authority’s principal objective is to protect the interests of consumers wherever appropriate by promoting effective competition. The Authority has several general duties, which relate amongst other things to security of supply, the protection of vulnerable customers, sustainable development and better regulation.
4. The Secretary of State has the power to issue further guidance as he sees fit but the Government believes regulatory certainty is important and therefore in principle proposes that the guidance should last for several years. However, it may be necessary to revisit the guidance in the light of any revised social or environmental targets that may be set, particularly at an EU level.
5. The Government considers that the guidance is consistent with the Authority's statutory duties and responsibilities. If, however, at any point, the Authority foresees any actual or potential difficulties in reconciling the energy policy goals and targets set out in this guidance with its own regulatory responsibilities or policies, the Government encourages the Authority to seek early discussion of such issues.

Government social and environmental policies

1. The Government sees two principal long term challenges in energy policy: tackling climate change by reducing carbon dioxide emissions within the UK and abroad; and ensuring secure and affordable energy as the UK becomes increasingly dependent, in its consumption of fossil fuels, on imports.

2. Within this context the Government's social and environmental energy goals are to:

- increase renewable electricity generation to 10% of electricity by 2010; play our part in achieving the EU target of 20% of energy obtained from renewable sources by 2020 (the Commission has proposed a potential target of 15% for the UK);
- reduce UK carbon dioxide emissions by at least 26% by 2020 and 60% by 2050, and to meet our share of Europe's 20% reduction in all greenhouse gas emissions by 2020; establish and implement carbon emissions budgets for the UK to chart the trajectory necessary for achieving these targets;
- eliminate fuel poverty as far as reasonably practicable among vulnerable households in England by 2010 and among all households in England, Scotland and Northern Ireland by 2016 (2018 in Wales); and
- contribute to a 20% reduction in EU energy consumption by 2020

3. Therefore over the next decade and beyond the UK will need to increase very significantly the proportion of its energy which is derived from renewable, nuclear, or other low carbon sources. This will require deployment of a range of technologies, some new, which will need connection to the existing networks and may also have implications for the operation of those networks. Energy efficiency can also contribute: it will be important for energy generators, suppliers and those involved in transmission and distribution to adopt best practice energy efficiency measures. It will be important to ensure that the UK energy infrastructure and systems are resilient to possible changes in the climate in the medium and long term.

4. Given the long lead times for the development, consenting and delivery of both network infrastructure and renewable and low carbon generation, urgent action is required to deliver the investment necessary for the UK to meet the European targets. As part of this, streamlining the processes by which new generation will gain access to these networks will thus be crucial.

5. The Government considers that the Authority has an important role, consistent with its principal objective, general duties and functions, in bringing about an energy system that encourages substantial carbon emission reductions in line with the above targets. This role will include but not be limited to the Authority making an appropriate contribution to:

- enabling timely delivery of an effective offshore transmission regime;
- enabling timely investment in any necessary transmission capacity;
- ensuring timely connection to the transmission and distribution networks for new generation, including renewable, nuclear and other low carbon generation, consistent with maintaining continued security of supply;
- eliminating unnecessary regulatory and market barriers to the economic deployment of distributed energy;
- further progress towards the Government's statutory target of eliminating fuel poverty by 2016-18 as far as reasonably practicable, as set out in the Government's Fuel Poverty Strategy; and
- ensuring that infrastructure and networks are sufficiently resilient to future climate impacts to maintain security of supply.

The Authority's principal objective and duties

6. The Authority's principal objective is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition. The Authority must have regard to the need to secure that all reasonable demands for gas and electricity are met, and that licensees can finance their regulated activities. It must also have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, and residing in rural areas.

7. Subject to those duties, the Authority is required to carry out its functions in the manner which it considers is best calculated, amongst other aims, to contribute to the achievement of sustainable development and to secure a diverse and viable long-term energy supply. The Authority shall, in carrying out its functions, have regard to the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity. The Authority must also have regard to the principles of best regulatory practice and must have regard to statutory guidance on social and environmental matters issued by the Secretary of State for Business, Enterprise and Regulatory Reform.

8. The Government considers the Authority's duties to have regard to the interests of vulnerable consumers and contribute to the achievement of sustainable development to be essential elements of its remit and to be the basis upon which the Authority should make an appropriate contribution to the achievement of the Government's social and environmental objectives.

9. The Government recognises that the Authority may carry out its functions by incentivising industry participants such as the Great Britain System Operator, the transmission and distribution network companies and others to act in particular ways rather than by intervening directly in the market.

Environmental issues

10. Meeting these goals is critical for the Government's strategy on sustainability. Given the Authority's duty to contribute to the achievement of sustainable development, the Government expects the Authority to exercise its duties and powers (consistent with its principal objective and general duties including its sustainable development duty and its duty to secure a diverse and viable long-term energy supply) in the manner best calculated to support these goals.

Networks

11. The appropriate development of networks is key to achieving the transition to a lower carbon energy system while maintaining security of supply. The Government expects the Authority, within the parameters of its principal objective and general duties, to carry out its functions in relation to industry governance, charging or other regulatory arrangements, in the manner best calculated to bring about:

- improved access to electricity networks for new generation, including renewable, nuclear and other low carbon forms of generation. Within its statutory remit, the Authority should identify any aspects of the regulatory framework which could act as an undue barrier to meeting the 2020 renewable energy targets and pursue the necessary changes to that framework with a view to overcoming these;
- better resilience within electricity and gas network and infrastructure to be able to adapt to changes in the climate arising from global warming;
- an early start by network companies in identifying and planning necessary works, in dialogue with developers, to ensure that those plans are better placed in relation to new generation, including renewable, nuclear and other low carbon developments. The Government expects

this to mean that more preparatory work will need to take place before firm commitments are given by generators;

- developer confidence in the network connection process. The Authority is asked to take appropriate steps to enable new generation, including renewable, nuclear and other low carbon forms of generation, to connect to the networks and supply electricity in a timeframe consistent with their development programme; and
- the involvement and consultation by network companies of developers of new generation, including renewable, nuclear and other low carbon projects in the elaboration of their investment plans, including setting the plans out for developers so that network connection decisions can be made with clear knowledge of current and future network capability, to a timescale consistent with meeting the UK's 2020 target.

12. In addition the Government expects the Authority to do all it can to ensure that the regulatory regime for offshore electricity transmission is delivered to the agreed timetable in line with Government decisions, and that the tender process delivers new Offshore Transmission Operators (OFTOs) as quickly as possible.

13. The Government expects the Authority to look for opportunities, within its role and the scope of its powers, to facilitate the transition to a low carbon gas and electricity system in Great Britain. This will require considering the sector as a whole and ensuring that the relative costs and benefits of different approaches, such as better demand management, are fairly allocated.

Energy Efficiency

14. Energy efficiency has a critical role to play in meeting our carbon emission reduction targets in 2020 and 2050 in a cost-effective way. The Government expects the Authority, within the scope of its powers and responsibilities, to help secure energy efficiency targets set by Government by making sure that the appropriate incentives exist for energy generators, suppliers and those involved in transmission and distribution to pursue the most cost-effective delivery of their goals by adopting best practice energy efficiency measures.

Distributed energy

15. Progress towards the Government's low carbon energy goals will be facilitated if full advantage can be taken of the opportunities afforded by distributed energy (DE) technologies such as low and zero carbon microgeneration and community CHP. The Government expects that the Authority will, within the scope of its powers and responsibilities and in

conjunction with Government where appropriate, remove unnecessary regulatory and market barriers to the economic deployment of these technologies, such that:

- flexible market and licensing arrangements are made available for distributed generators and the costs and risks of trading and participating in these arrangements are proportionate;
- cost-reflective network charging methodologies for rewarding embedded generation are developed promptly; and
- the market is closely monitored such that their lack of market power does not result in distributed generators suffering unfair treatment.

Smart Meters

16. Smart meters can provide consumers and suppliers with detailed and accurate data about energy use. This has potential to contribute to energy efficiency, to improve the operation of the energy supply markets, and to enable more advanced forms of dynamic demand management. Given its remit, the Authority will have a key role to play in any provision of smart metering to ensure that the policy is implemented in an efficient and timely manner.

Technology and Innovation

17. Tackling climate change and ensuring continued security of energy supplies in the future will require significant investments in GB gas and electricity networks. Through its network price controls, and promotion of open and competitive markets, the Authority has an important role to play in enabling both the investment itself and expenditure on innovation to support new designs and approaches.

18. The growth in low carbon technologies will require not only expansion of the networks, but also new ways of managing them. The Government expects the Authority to work effectively with the network companies to promote the research and development, and trialling, of new approaches that would deliver carbon emission reductions, through increasing the efficiency of the distribution and transmission networks, facilitating the growth in low carbon and demand reduction technologies, and encouraging desired behaviour changes in business and residential consumers.

Social Issues

19. The Government is committed to tackling fuel poverty and has set itself the targets referred to above. Given this, the Government expects the Authority to take a strong lead, consistent with its principal objective and general duties, in co-ordinating activity to help consumers on low incomes (or who are otherwise vulnerable to fuel poverty) to benefit from competitive markets, particularly by helping consumers take advantage of the best tariffs available and by monitoring the development of companies' social programmes, and so help tackle fuel poverty.

20. Ofgem should:

- monitor the operation of the market, make recommendations and take appropriate steps to help ensure that
 - vulnerable consumers are able to benefit from competition;
 - working with new NCC as appropriate, vulnerable consumers have access to high quality and easily comparable information on different tariff offers and appropriate advice on the benefits of changing supplier; and
 - there are no unnecessary barriers to switching;
- address issues which have a particular impact on consumers with low incomes, such as debt, disconnection, mis-selling, quality of service and, in particular, help to ensure that consumers, including those using prepayment meters, do not suffer any undue economic disadvantage as a result of their payment method;
- monitor and report on supply companies' social programmes including establishing guidelines for determining what can be included under the voluntary agreement reached in April 2008, and, as part of that, setting out recommended good practice; and
- keep under review the incentives for encouraging gas network extensions.

General

21. Where the Government wishes to implement specific social or environmental measures which would have significant financial implications for consumers or for the regulated companies, these will be implemented by Ministers, rather than the Authority, by means of specific primary or secondary legislation. The Government does not seek to do this through this guidance.

Better Regulation

22. The Authority has a duty to have regard to better regulation principles in regulatory decision making. The Government expects that the Authority will use Impact Assessments wherever appropriate and ensure that short- and long-term social, environmental and economic factors are taken into account in its regulatory decision making, having regard where appropriate to the Government's Green Book guidance. In particular, the Authority should ensure that policy options are assessed using values for the shadow price of carbon within the range recommended by the Government Economic Service.

Accountability

23. The Government expects the Authority to demonstrate how it has helped the Government make progress towards the targets and aims set out in this Guidance and requests that the Authority do so in writing for publication on an annual basis. The Authority also needs to be informed of the ongoing development of relevant Government and international policy objectives and mechanisms. Ministers and Members of the Authority shall meet at least annually to discuss how the Authority's actions and priorities, within its existing resources, contribute to Government targets and how Government policies and mechanisms bear on the Authority's work in these areas.

Annex A – The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Annex B – Organisations contacted

Statutory consultees: GEMA (the Gas and Electricity Markets Authority); National Consumer Council; Ofgem licence holders; such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.

Other organisations contacted (not an exclusive list):

Association of Electricity Producers
BEAMA
British Wind Energy Association
Business Council for Sustainable Energy
Carbon Trust
Citizens Advice
Cogent
Consumers Association
CPRE
eaga plc
Energy Action Scotland
Energy Industries Council
Energy Institute
Energy Networks Association
Energy Retail Association
Energy Saving Trust
Energy Services and Technology Association
Energy Systems Trade Association
Energywatch
Environment Agency
Friends of the Earth
Fuel Poverty Advisory Group
Gas Forum
Green Alliance
Greenpeace
Help the Aged
Institute of Gas Engineers & Managers
Local Government Association
Major Energy Users Council
Micropower Council
National Energy Action
National Right to Fuel
Natural England
Nuclear Industry Association
Public Utilities Access Forum
Regional Development Agencies
Renewable Energy Association

Renewables Advisory Board
RSPB
Scottish Executive
Scottish Renewables
Society of British Gas Industries
Sustainable Development Commission
UKAEA
Welsh Assembly Government