

<p>Title: Post Implementation Review of the Third Energy Package</p> <p>PIR No: BEIS029(PIR)-18-ESNM</p> <p>Lead department or agency: BEIS</p> <p>Other departments or agencies: N/A</p> <p>Contact for enquiries: Rose.GallowayGreen@beis.gov.uk</p> <p>With contributions from: Christopher Thomson; Charlie Colborn; Nat Martin; Amy Richards; Anel Nzeba</p>	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Primary legislation
	Type of review: Statutory - other
	Date of implementation: 09/11/2011
	Date review due (if applicable): 09/11/2016
Summary	

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

The key objectives of the Third Package were to enhance consumer protection, improve the functioning of the energy markets and increase security of supply. At the time of implementation, the energy market in Great Britain (GB) was already one of the most competitive markets in Europe, and many of the arrangements in the Third Package had already been implemented in GB. Where GB was judged to be non-compliant, the Government opted to take a light-touch approach to ensure that it does the minimum required to comply with the Third Package, to ensure that GB could gain the maximum benefits from implementation of the Third Package, at minimum cost.

The UK implemented seven measures, with the overarching aim of meeting the Third Package objectives. Further detail of each measure and its post implementation review is provided in the evidence base sections. The measures introduced are:

1. Articles Concerning the National Regulatory Authority (NRA)
2. Articles concerning provision of consumer information
3. Licence Modification Appeals
4. Gas Storage and LNG facility impacts
5. Customers right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching
6. Transmission and Distribution Networks
7. Provision of third party access to licence exempt electricity and gas networks

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

Our post implementation review suggests that the objectives of each measure have been met by the review date. Further details on each measure are provided in the evidence sections.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The evidence has been collected in a light-touch manner and with minimum resources. A team of analysts in BEIS (formerly DECC) lead on the review of each measure, coordinated by one policy colleague between April and August 2016. The approach has been considered proportional as the measures were not expected to have high impact on the market and were considered not contentious.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

The approach taken to evaluation has been to compare the actual effects of each measure to those that were estimated in the initial impact assessments. Data has been collected firstly with an internal evidence review of public and internally held material undertaken by BEIS (formerly DECC) analysts. This was followed by a call for evidence with key stakeholders, including all those involved, directly or indirectly, in the implementation of the policies: Ofgem, National Grid, Citizens Advice and the Energy Ombudsman. Views were also sought from the CMA in regard to their investigation of energy markets. The review also posed specific questions about the costs and effects of the policies, how they had been implemented, as well as providing an opportunity for views on the impacts or effectiveness of the measures.

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

Based on the evidence collected, it can be concluded that the GB is compliant with all measures implemented. Further details on each measure are provided in the evidence base sections. We have found no evidence of unintended effects.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

1. Articles Concerning the National Regulatory Authority (NRA)

Costs

These measures collectively increased Ofgem's duties, a number of which are monitoring. The additional costs, at a high level, were considered to be monitoring costs; enforcement costs and additional costs from intensified European cooperation. The costs were considered to be small, partly because Ofgem already undertook substantial activity in these areas, and therefore were not monetised as part of the IA.

Benefits

The benefits of the policy were expected to be better decision making and potentially reduced overall costs for consumers and businesses derived from increased independence, accountability, transparency of the regulator, and improved cooperation between European regulators. While it is reasonable to believe that improvements in regularity integrity and cross border cooperation would improve outcomes for consumers, it was considered very difficult to isolate and monetise this effect. Given the GB's developed regulatory environment the impact was deemed likely to be small. No attempt was made to monetise benefits as part of the IA as a result.

2. Articles concerning provision of consumer information

Costs

The monetised costs were not expected to be large. The cost estimate covers the necessary system changes in the eventuality that all the suppliers are not compliant with the obligation to hold 5 years' worth of transaction data. The costs would be closer to zero depending on the level of compliance amongst suppliers before the changes.

It was considered that additional costs for suppliers might arise from including updated meter readings in an annual statement; customers contacting them requesting them to pass their consumption data to another supplier; and potentially more customers utilising the dispute mechanism. The cost of the Energy consumer checklist was expected to be in the range of £20-25,000. The original impact assessment assumed that the record keeping would cost no more than £2.5m over 10 years as an upper bound, with the best estimate at £1.25m¹.

Benefits

There would be a direct benefit to consumers who would be able to use their consumption information to take advantage of more suitable tariffs, and improve their services as a result of access to information about dispute settlement mechanisms, for compiling and keeping the checklist under review.

3. Licence Modification Appeals

The table below details the costs and benefits of the policy estimated and presented in the initial impact assessment.

<i>£m PV , 2010 prices, 20 yr appraisal period</i>				
£Million (PV)	Low Case		Best Estimate	High Case
Costs	-100.6		-21.3	-10.9
Benefits	0.0		8.1	13.6
Net impact	-106.6		-13.2	2.8

The monetised costs of the policy were estimated to fall principally on Ofgem, the CMA, and business that made appeals. These parties were expected to incur administrative and legal costs of, respectively, defending, hearing and making an appeal. The benefits of this policy were expected to partially offset these costs, reflecting the costs of the system the changes replaced, as this would no longer be used and its costs avoided. The key non monetised impacts were higher quality decision making, and an increase in competition.

¹ 2010 prices

4. Gas Storage and LNG facility impacts

The annual cost of enforcing the relevant parts of the Package is £67,000. Other regulator costs are marginal. There are potential costs to businesses from the loss of economies of scope, providing data and altering services and access rights but these were not monetised.

Benefits include increased competition, greater movement of gas between markets and reduced the market power of certain market participants. These were not monetised.

5. Customers right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching

Costs

The costs to industry of improving systems were estimated at around £1.5m to cover initial system changes and ongoing costs arising from increased information checking at early stages of the switching process. The initial costs to Ofgem of amending terms and conditions were expected to be no more than £0.5m.

Benefits

The original Impact Assessment expected there to be a direct benefit to switching customers who could take advantage of their new gas and/or electricity tariff in a reduced time although it recognised that this was a transfer. The IA also suggested that there may be additional, intangible benefits to consumers as these measures were designed to improve the switching process for consumers which could lead to greater competition in the supply industry.

6. Transmission and Distribution Networks

Costs

The Impact Assessment assumed that there would be some small additional administration costs for Ofgem regarding certifying TSOs in line with the processes set out in the Package, enforcement costs or costs associated with facilitating the consultation of system users. The Impact Assessment assumed these costs to be minimal.

Effects on businesses were expected to take the form of additional administration costs to licensees. In addition licensees might also experience some administration costs in making an application which might be one to twenty times the application fee costs (application fees ranged from £350 to £1050). When applying these costs to the 25 networks companies assumed to be requiring a transmission ownership certification, an additional administrative burden to the private sector in the range of £17,500 to about £550,000. For those seeking derogations the Impact Assessment assumed costs to be higher, potentially in the range of £100k per derogation. As three transmission owners were expected to seek derogations at the time of the regulation, the derogation costs were estimated at £300,000.

Therefore, the total cost of the certification process is estimated at around £850,000.

Benefits

The Impact Assessment identified non-monetised potential benefits from the regulation such as greater competition in the market, greater levels of research and innovation in the electricity sector and reduced market concentration.

7. Provision of third party access to licence exempt electricity and gas networks

Costs

Ofgem estimated that the annual cost of having to approve tariffs and methodologies was about £71,000 in current prices and £1m present value to 2030. The total cost of switching was estimated to be £75m in present value terms.

Benefits

The provision of third party access to private networks was expected to lead to an increase in competition because customers will be able to switch supplier. The IA also assumed energy savings of 155,000 MWh or 2.55% savings resulting from the smart/advanced meters roll out deemed to play a role in enabling businesses to save energy. The IA also made a switching rate assumption of 13%, consistent with the Ofgem Energy Supply Probe findings for small businesses.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

1. Articles Concerning the National Regulatory Authority (NRA)

Costs

We were not able to obtain any monetised information on costs as part of the evaluation; however no evidence came to light during our consultation that the cost of the measures were materially different from the small impact suggested in the impact assessment, or that there were any new costs.

Benefits

We consider that the benefits of the policy are consistent with those in the IA. Again, we have not been able to monetise these. The evidence available does indicate that there has been a great deal of intra-European cooperation since implementation. Although there is considerable uncertainty as to the net effects of the policies, we may tentatively assume some improvements in consumer outcomes have occurred, but perhaps to a lesser extent than envisaged by the IA.

2. Articles concerning provision of consumer information

Costs

We were not able to obtain any monetised information on costs as part of the evaluation; however no evidence came to light during our consultation that the cost of the measures were materially different from the small impact suggested in the impact assessment, or that there were any new costs.

Benefits

We consider that the benefits of the policy are consistent with those in the IA. Again, we have not been able to monetise these.

3. Licence Modification Appeals

The costs and benefits of the policy estimated in the evaluation are detailed in the table below. We updated the appraisal in the impact assessment using actual cost data and information on the number of appeals made over the last 5 years. The costs include legal fees but not internal management or administration. This is consistent with the impact assessment.

<i>£m PV , 2010 prices, 20 yr appraisal period</i>				
Party Effected	IA estimate (central case) (£m)	Evaluation evidence (£m)	Difference (£m)	
Costs	-21.3	-17	-4.3	
Benefits	8.1	8.1	-	
Net impact	-13.2	-8.9	-4.3	

Overall, the costs of the policy are £4.3m lower than the central case of the impact assessment predicted. The drivers of this are a smaller number of appeals made than had been initially assumed. There have been 0.4 appeals annually since the change was implemented, rather than one appeal per year, as assumed in the original IA. In terms of non-monetised impacts, qualitative evidence gathered from stakeholders largely reinforces the impacts detailed in the initial assessment. However, it is difficult to ascertain the scale of these benefits.

4. Gas Storage and LNG facility impacts

The enforcement costs are confirmed as £67,000. Additional costs to businesses are minimal.

Although it is not possible to accurately assess whether the stated benefits were achieved, stakeholders expect that these benefits arose. Gas market participants have a positive view of the Package.

5. Customers right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching

Costs

We were not able to obtain any monetised information on costs as part of the evaluation; however no evidence came to light during our consultation that the cost of the measures were materially different from the small impact suggested in the impact assessment, or that there were any new costs.

Benefits

We consider that the benefits of the policy are consistent with those in the IA. Again, we have not been able to monetise these.

6. Transmission and Distribution Networks

Costs

Ofgem has provided its actual costs of providing TSOs with a certification. They estimate the annual cost to be £266k on certification. This cost includes the certification provision of electricity and gas TOs as well as an external legal adviser £100k per annum.

Ofgem also confirmed the application fees costs ranging from £350 to £1050, for all licences granted by Ofgem. However, evidence collected from Ofgem do not confirm the assumption made that administration costs of making an application could cost between one to twenty times the application fees to applicants. This therefore makes it hard to match estimated administration costs to the actual costs to TSOs.

Benefits

Evidence sought from Ofgem and online researches haven't provided additional insights into the non-monetised benefits deemed to be brought forward by the regulation. There isn't clear evidence to support the assumption that the Package has promoted greater competition and stronger security of supply in networks.

7. Provision of third party access to licence exempt electricity and gas networks

Costs

Evidence collected from Ofgem shows the actual costs to Ofgem of approving tariffs/methodologies were of £205,238.54 (2010 prices) present value to 2030. Actual costs to Ofgem are significantly lower than the £1million previously forecasted by Ofgem in the Impact Assessment. The actual total cost of switching depends on the number of customers who actually switched as a result of the regulation. Ofgem was unable to provide further insights on the total actual cost of switching as the evidence base is thin.

Benefits

Precisely because these networks are licence-exempt, it is difficult to know how wide the sector was, the degree to which third party access was already provided, the likelihood of customers switching and the potential savings achieved. Even though it is fair to say that the gas and electricity networks have grown into more competitive markets, it is very difficult to disentangle the impact of the provision of third party access to licence exempt GB electricity and gas networks on competition and energy savings

6. Assessment of risks or uncertainties in evidence base / Other issues to note

The risks and uncertainty identified in the evidence base of each measure is outlined in the separate sections of the document. Overall, the main risk identified with the overall approach taken is that analysts have not had the opportunity to consult with industry participants, such as energy companies. This represented a limitation in the evidence available to analysts when evaluating each measure.

7. Lessons for future Impact Assessments

Key lessons include the importance of IAs clearly stating the level of uncertainty around the cost benefit analysis and quality of evidence. This has proved useful when it came to assess the extent by which implementation of the single measures has achieved its policy objectives and helped BEIS analysts to better target information sought from external stakeholders.

Another point is the importance of IAs establishing a monitoring approach or pointing evaluators towards relevant data source for future analysis, especially in case where the data are not readily available.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

Based on the review conducted, it is recommended that the policies remain in place.

Sign-off For Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed:



Date: 23/07/2018

1. Articles Concerning the National Regulatory Authority (NRA)

Evidence Base

What were the policy objectives and the intended effects?

This post implementation review focuses on the Third Package elements introduced with regards the National Regulatory Authority. It consists of several measures, but the high level objective for the collective policies was to ensure GB compliance with the Third Package by:

- Reinforcing the independence and transparency of the national regulatory authority (NRA)
- Promote inter European regulatory cooperation

The intended effects are to ensure the integrity of the regulator and therefore **increase the quality of governance and regulation**. This, combined with increased obligations to cooperate with other European regulators should aid the functioning of both the national and EU internal market. Indirectly, this could lead to reduced costs for consumers and promote industry efficiency.

The following list details those articles of the directives that required GB to make changes in order to ensure compliance with the third package. These are articles of the EU legislation which were transposed into GB law.

- a. Article 35 of the Electricity directive / 39 of the Gas directive requires:

The designation of a single regulatory authority, this authority will represent the UK at the Agency for Cooperation of European Regulators (ACER). A provision was also made to allow separate regulators at regional or geographically separate regions.

Requires the formal independence of regulatory authorities by, amongst other measures, ensuring persons responsible for its management do not have financial interests nor take instructions that may compromise their independence.

Requires rotating appointments to the board of the regulatory authority. The board or management must be appointed for a period of 5 to 7 years, renewable once. An appropriate rotation scheme must be put in place.

- b. Article 36 of the Electricity Directive / article 40 of the Gas Directive

This article **formalises several high level objectives which the regulatory authority must take reasonable measures to pursue within the framework of their powers set out in Art. 37 of the Electricity Directive/ 41 of the Gas directive**, and in close consultation with other national authorities. It is worth noting that many of these objectives were already a key part of Ofgem's decision making calculus.

- c. Article 37 of the Electricity Directive / article 41 of the Gas directive Article Sets out various new duties of the regulatory authority, but principally:

- i) Preventing cross subsidies across the supply chain
- ii) Ensuring transparent access to networks and cross border infrastructure
- iii) Certify those operating unbundling models under the Third Package

- iv) Ensuring that Ofgem consults, as appropriate, other national authorities and the transmission system operator when carrying out its duties

Ofgem already undertook these functions to some extent before the Third Package.

Article 37 also requires the GB government to ensure Ofgem has powers **carry out its duties and impose dissuasive penalties** on undertakings not in compliance with Third Package obligations.

It requires Ofgem to undertake various monitoring duties including investment plans of transmission systems operators, network security, competition, and transparency.

It broadens the scope of complaints that can be made to the NRA, complaints can be made against transmission system operators, interconnectors, distribution operators (DNO's) and Liquefied Natural Gas and gas storage operators.

Ensures the NRA **has powers to initiate code modifications** where necessary to implement ACER or Commission decisions

- d. Article 38 of the Electricity Directive/ 42 of the Gas Directive

Sets out obligations for cross border cooperation. Ofgem must consult and cooperate with other regulatory authorities and ACER; including coordinating on the development of network codes and governance of congestion.

How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The objectives and intended effects are expected to have been fully delivered by the review date. Options were implemented as set out in table 1 below, which brought the regulations into force in November 2011. Ofgem could have acted upon these straight away by incorporating any new obligations into its processes, bringing about the intended effects detailed in the previous section. Therefore, the intended effects were expected to be delivered by the review date.

Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The detail of evidence gathered has sought to at least match that of the impact assessment. Due to the nature of these changes, which are largely aimed at formalising the high level objectives, processes and governance of the regulator, there is little evidence available to provide monetised impact estimates. We have sought qualitative evidence on the effect of the changes from Ofgem and provided the opportunity for other key stakeholders to comment. This exercise was conducted using internal staff at BEIS (formerly DECC) who coordinated the collection of evidence with the help staff of several external stakeholders, who trawled for relevant evidence and collated the responses to our consultation questions.

This approach is proportional given fact that no major changes occurred from the policy, with the changes made not expected to impose anything more than minor transition costs and perhaps some monitoring costs.

Developing a more detailed picture to isolate the exact effects of the policy, particularly the benefits and wider impacts of the policy, would be a complex and costly exercise that would be disproportional to the level of change brought about by these regulations.

Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Evaluation Approach

This initial approach to consultation was that of an impact evaluation in that we sought to build a picture of any costs or benefits arising from the policy changes. Using this, a view may be taken as to whether the regulation has been more burdensome or indeed beneficial than expected. However due to the relatively 'high level' nature of the policies, a greater focus has been placed on checking the extent and effectiveness of the policy implementation.

We also incorporate some aspects of process evaluation, as we have sought to consult stakeholders on the means through which the policy has been implemented.

Approach to stakeholders

An internal evidence review of public and internally held material has been undertaken, followed by a consultation with key stakeholders involved in the implementation of the policy – particularly Ofgem whom the articles of this policy are targeted towards. We asked specific questions about the costs and effects of the policy, and provided an opportunity for them to express any other views. We also undertook a wider consultation with other key industry stakeholders, who were offered the opportunity to provide comments. An in house review of online evidence has also taken place

To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

The objective of the measures was to increase the independence and transparency of the regulator whilst improving cross European cooperation on regulatory matters.

To the extent that fully implementing the articles set out in the previous section improves transparency and the ability of the regulator to cooperate across borders, the regulation appears to have achieved its objectives. This is because, in almost all cases, there is strong evidence of ongoing compliance and strong implementation of the directive. This is detailed in table 1 below.

During our consultation, no evidence of unintended effects emerged.

Table 1: Implementation of Articles concerning the regulatory Authority and evidence of compliance

Article	Action taken to implement article	Evidence of Compliance
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35 / 39

Confirm Ofgem as the designated independent NRA for GB, and NAIUR for northern Ireland. The Designated NRA has a responsibility to cooperate with ACER

Written into [GB legislation](#). Ofgem are regular member of ACER working groups

Impose an obligation on Ofgem to ensure staff have no financial interests or take instructions that compromises their independence.

Ofgem have incorporated this into their corporate governance and management procedures, see [this document](#) for details

Ofgem to have a rotating board on fixed term appointments

BEIS Ministers are responsible for the appointment of Ofgem board members and these are made in accordance with the EU requirements

36 / 40

Ofgem’s obligation to pay regard to the objectives of a regulatory authority set out in article 36, and an obligation to consult closely with other national regulatory authorities written into GB law

Ofgem’s principal objectives, contained in legislation,² gives explicit recognition to the objectives set out in article 36³

37 / 41

Updated legislation to include the following new duties:

- i) Preventing cross subsidies across the supply chain
- ii) Ensure transparent access to networks and cross border infrastructure
- iii) Certify those operating unbundling models in the Third Package
- iv) Ensuring that Ofgem consults with other NRA’s and the system operator when carrying out its duties

- i) Relevant firms are subject to licences that prohibit this behaviour, Ofgem monitors this actively and as of its most recent report (for 2014) was not aware of any cross-subsidisation⁴
- ii) This measure is now reflected in standard licence terms. licensees must submit charging and access methodologies to Ofgem and these must be objective, transparent, and non-discriminatory
- iii) Ofgem have awarded multiple certifications, and continue to monitor and review the status of these.
- iv) Ofgem provide several examples of cooperation:
Close collaboration with the Irish regulator to develop common trading arrangements for Moyle and EWIC interconnectors.

2S.3A(1A)(c) [Electricity Act 1989](#) and s.4A(1A)(c) [Gas act 1986](#)

3 See: <https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>.

4 http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/NATIONAL_REPORTS/National_Reporting_2015/NR_En/C15_NR_GB-EN.pdf, p 17

<p>Enable Ofgem to require information for all relevant EU monitoring requirements</p> <p>Extending regulations to allow complaints against TNO's, Interconnectors, and DNO's.</p> <p>Require Ofgem to report annually to the Commission and ACER</p> <p>Make Ofgem able to initiate code modifications when necessary to implement ACER or Commission decisions</p>	<p>Cooperation with Irish, French and Dutch NRAs to certify TSOs, including interconnector operators, as compliant with the ownership unbundling requirements.</p> <p>Ofgem collects all of this information and reports annually to the European Commission Ofgem also poses statutory information request powers (See Gas Act A34)</p> <p>Ofgem have made a determination on one complaint of this nature, demonstrating the functioning of this new capacity.</p> <p>Ofgem has reported annually and publishes its reports on its website.</p> <p>Few actual occurrences, however Ofgem have successfully implemented European legislation, for example Capacity Allocation Mechanisms (CAM) Powers within standard licence conditions (e.g. Standard Licence Condition 9(8) of the Gas transporters licence.</p>
<p>38 / 42 Introduce a general duty to consult and share information with other NRA's and ACER on third package regulatory tasks (amongst other matters).</p>	<p>Ofgem is an active member of ACER's Board of Regulators and participates actively to the discussions and actions being decided and implemented at working level (i.e. working groups). Ofgem has on several occasions sent a member of staff for secondment in ACER. Furthermore Ofgem is also an active member of the Council of European Energy Regulators (CEER.)</p>

Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

Costs & benefits – outline

These measures collectively increased Ofgem's duties, a number of which are monitoring. The additional costs of the measures were considered to be:

Costs

Article 35 measures

- Costs to Ofgem attending ACER meetings
- Costs of any additional consultation with other regulatory authorities. (These were not predicted to be large as Ofgem previously undertook close consultation with other regulators.)
- Some enforcement costs of ensuring staff do not have interests that compromise their independence.

Article 36 measures

- Some very small costs of ensuring compliance with the additional objectives set out.

Article 37 measures

- Some enforcement costs for the various new duties set out, these would only be exercised by Ofgem where the benefit to customers outweighed the costs. There may be some administrative cost to business and Ofgem as Ofgem is empowered to collect more information.
- There may be some additional costs for Ofgem to handle and make determinations on complaints. Ofgem did not expect a significant increase in complaints, and that the cost therefore would be marginal.
- The costs of reporting to the commission were not considered to pose more than negligible costs as this can largely be absorbed into other reporting activity.

Article 38 measures

- Costs of additional consultation with other NRA's and sharing information with ACER. Again additional costs are not anticipated to be large as ACER replaces another body ERGEG (European Regulators Group for Electricity and Gas) that Ofgem previously was a part.

In sum, these measures bring about some additional compliance costs for Ofgem in monitoring and closer cooperation, as well as changing a few internal processes. However Ofgem previously undertook extensive monitoring and cooperation in these areas, and therefore the additional costs or benefits of these measures was not expected to be significant. These costs were not monetised in the initial impact assessment.

Benefits

All articles

The effects that the collective provisions were assumed to deliver were: increased independence, accountability, and transparency of the regulator, and improved cooperation between European regulators

The impact assessment did not monetise the benefits associated with these measures. However, all else equal, we would expect some intangible benefits from the measures in the form of increased integrity of the regulator and a better functioning internal market. This could lead to better decision making and reduced overall costs for consumers.

What have been the actual costs and benefits of the regulation and its effects on business?

Costs

We were not able to obtain any monetised information on costs as part of the evaluation; however no evidence came to light during our consultation that the cost of the measures has been anything more than the small impact suggested in the impact assessment. Ofgem did

not report to us that the articles resulted in any significant impact. A few changes would have created slight costs but their impact is seen as limited.

Benefits

The main benefits are likely to be improved outcomes for consumers and a potential for lower bills, consistent with the IA. It is not possible to build a causal link between this policy and improvement in outcomes for consumers, as there are multiple factors and policies that impact on these market outcomes, of which this policy is likely to be a very small part of. The evidence submitted to us by Ofgem does indicate that there has been a great deal of intra-European cooperation since implementation, and Ofgem have effectively exercised their new responsibilities. All else equal, we would tentatively conclude that some marginal improvement in outcomes for consumers could occur, assuming that there is a link between improved regulatory decisions and competition.

However it may be possible that article 36, which sets out Ofgem's objectives, may have a detrimental effect on competition. The Competition and Markets Authority set out in their energy markets investigation⁵ that Ofgem's statutory objectives and duties may constrain its ability to promote effective competition. This is because Ofgem face a number of competing demands, which have progressively downgraded the importance of competition. The third package directive was significant in entrenching Ofgem's commitment to multiple objectives.

Again it is not possible to establish the significance of this in limiting competition; it is likely to be a very marginal effect. However, all else equal it may lead to the articles concerning the regulatory authority to be less beneficial than thought in the initial impact assessment.

The regulations primarily affect Ofgem, and direct effects on business are likely to be very small, limited to the costs of providing Ofgem with some additional monitoring data.

Assessment of risks or uncertainties in evidence base / Other issues to note

Although the data collection approach is considered proportionate, and is considered to have targeted the most significant stakeholders, the lack of an open consultation limits the amount of evidence available to form conclusions.

Secondly, a true counterfactual is difficult to establish. Although the articles formalise several duties and objectives, it seems likely that Ofgem would regardless have mind to many of the objectives set down by the directives when undertaking its activities. For example, it seems unlikely that Ofgem would not undertake any cross European collaboration if it was not for these changes. (The implication is that costs for Ofgem to undertake collaborative activity are not completely a result these changes)

Though there will be some additional costs to fulfil the monitoring obligations of the directives, Ofgem already undertake substantial amounts of monitoring so much of the information required to fulfil these obligations would in many cases be available to Ofgem

⁵ <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf> p.76

regardless. We do not know how much this mitigates against the additional costs of market monitoring derived from the third package.

Finally, a lack of qualitative evidence also adds to uncertainty over the impacts. We asked Ofgem to comment on the extent to which these articles had improved their independence and transparency, but they were unable to provide a response within timescales for publication.

Lessons for future Impact Assessments

In many cases these are a formalisation of rules and obligations rather than actively changing the way that the regulatory authority works. The impact assessment makes it difficult to assess where Ofgem will be undertaking new activities, in contrast to a slight change or formalisation of a current process. Future impact assessments would benefit from a focused breakdown of what measures being introduced are truly additional and what their costs and benefits will be.

Future impact assessments could also place a greater focus on the key uncertainties of the policies. This would add value to evaluations as focus can be directed towards assessing outcome of those uncertainties and their impact on the policy.

What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

We would suggest that, on balance, the increased transparency, stronger governance, and improved intra-European cooperation encouraged by GB's transposition of these regulations are positive for GB markets and therefore should remain in place unchanged. Moreover, the costs to industry and Ofgem are likely to be negligible.

2. Articles concerning provision of consumer information

Evidence Base

What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

There are several requirements in the EU Third Package which are intended to increase the information available to consumers and therefore enable consumers to make more informed decisions when they choose tariffs and suppliers. GB was not compliant with some of these requirements in that there were no formal arrangements in place and it was therefore necessary to amend Licence Conditions in order to ensure compliance.

The impact assessment first examined the requirements relating to consumer information with which GB was currently non-compliant, and will then discussed the options available to ensure compliance and the associated costs and benefits.

All of these measures were designed to improve the quality and quantity of the information available to consumers on both their individual consumption, consumer rights and industry processes. Greater transparency and consumer awareness is a driver of competitive energy supply markets. In the long term these measures may enable consumers to better act as a competitive constraint on suppliers' pricing and provide incentives on suppliers to reduce costs, improve service and develop innovative products.

The following section details the four measures GB took to ensure compliance with the Third Package: Availability of consumption data, Consumer rights regarding dispute settlement, the Energy Consumers checklist, and record keeping.

Availability of consumption data

Article 3 (5b) of the Electricity Directive and 3(6) of the Gas Directive requires Member States to ensure that customers are entitled to receive all relevant consumption data. In addition, Article 1 (i) of Annex 1 of both the Electricity and Gas Directives require Member States to ensure that customers are properly informed of actual consumption and costs frequently enough to enable them to regulate their own consumption. This information must be given using a sufficient time frame which takes account of the capability of customer's metering equipment (and the electricity production in question). Due account must be taken of the cost-efficiency of such a measure. No additional costs shall be charged to consumers for that service.

In order to comply with the requirement to provide consumers with consumption data the following option was used:

- Option 1: Introduce an obligation on energy suppliers so that where a customer provides a meter reading, and provided that the supplier is satisfied that this data is reasonable, the supplier should either send an updated bill to that customer or reflect this reading in the customer's next bill (unless the next bill is due in a matter of days). This updated consumption data should also be reflected in the customer's annual statement.

In addition, to implement the requirement which gives a right to customers to contact their supplier to request them to pass on their consumption data to another supplier, a new Licence Condition was introduced to give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier, free of charge.

Consumer rights regarding dispute settlement

Article 3(9) (c) of the Electricity Directive lays down a new requirement on Member States to ensure that information concerning consumer rights regarding the means of dispute settlement available to them are specified in or with bills and in promotional materials. In order to comply with this requirement the following option was considered. This was the only option considered as it is the minimum compliance option.

Action taken to ensure compliance:

- Option 1: Amend Supply Licence to require energy suppliers to inform consumers that they can complain using the suppliers' complaints procedure and how they can obtain a copy. Suppliers would be required to include this information in promotional material and in or with bills.

Energy consumer checklist

Article 3(16) of the Electricity Directive and 3(12) of the Gas Directive requires energy suppliers in co-operation with the regulatory authority to take the necessary steps to provide the consumers with a copy of the energy consumer checklist⁶ and ensure that it is made publicly available. In order to comply with this requirement the following option was considered. This was the only option considered as it was the minimum compliance option.

Action taken to ensure compliance:

- Option 1: Give Consumer Focus⁷ the lead role of compiling and maintaining the checklist in co-operation with the industry and Ofgem. Suppliers were to annually send their customers a concise list of the checklist, prepared by Consumer Focus.

Record Keeping

Article 40 of the Electricity Directive and Article 44 of the Gas Directive set out a number of requirements on Member States to require energy suppliers to keep at the disposal of the national authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least 5 years, the relevant data relating to all transactions in gas and electricity supply contracts and electricity and gas derivatives with wholesale customers and transmission systems operators as well as storage and LNG operators or any party who sells electricity/gas to the licensee. In order to comply with this requirement the following option was considered.

Action taken to ensure compliance:

- Option 1: Place a new obligation on energy suppliers to hold this information.

Preferred Option

In order to minimise the costs to energy suppliers and Ofgem it was intended to implement Option 1 of all these measures which was believed to be the minimum-cost option, while still achieving the benefit discussed below.

How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The objectives and intended effects are expected to have been fully delivered by the review date. As set out in the Impact Assessment, the Package required energy suppliers to fully comply with the relevant measures from 1 March 2011 when the regulations were due to come into force. These measures were designed to improve the quality and quantity of information available to consumers on their individual consumption, their rights, and industry processes.

Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

Evidence was sought from key stakeholders – Ofgem, Citizens Advice and the Energy Ombudsman – as well as conducted in-house through investigating evidence available online.

⁶ The checklist is a collection of questions and subsequent answers which provide clear, concise and practical information to consumers concerning their rights in relation to the energy sector.

⁷ Consumer Focus is now part of Citizens Advice

The detail of evidence gathered has sought to at least match that of the impact assessment. This considered whether the Package had achieved its intended objectives, the actual costs and benefits for the delivery of the Package, and whether there were any unintended consequences. Due to the nature of these changes, which are often high level changes that do not make significant changes to firms activity (as to, some extent similar activities were already taking place without regulation), there is little evidence available to provide monetised estimates. We have sought qualitative evidence from various key stakeholders. This was conducted using internal staff at BEIS (formerly DECC) who coordinated the collection of evidence with the help staff of several external stakeholders, who trawled for relevant evidence and collated the responses to our consultation questions.

This approach is proportional given fact that no major changes occurred from the policy, with the changes made not expected to impose anything more than minor transition costs and perhaps small ongoing maintenance costs.

The evidence was collected, overall, in a light-touch manner using a small amount of resources. This was considered proportionate as the relevant measures in the Package were deemed to have a low impact. As stated in the Impact Assessment the costs of enforcing these measures were also expected to be small, due to mainly administrative costs (£1.25m over 10 years). This justifies the level of evidence-gathering undertaken.

Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Evidence for the impact assessment was collected via a call for evidence. Responses were sought on the following points:

- Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
- The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.
- What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?

Evidence for this PIR specifically was sought via consulting Citizen's Advice, Ofgem and the Ombudsman. Responses were sought on the following points:

- What effects (if any) have the regulations introduced to implement the Third Package had on your organisation's business or operations?
- Has this resulted in any additional resource or cost burden on your organisation? If yes, please provide a description and annual costing estimate where possible.
- Do you have any insights into the costs and benefits these changes have had on groups that your organisation supports and represents?
- Does your organisation have any additional views they would like to share regarding the consumer checklist or the Third Package in general?
- Have further changes been made to the checklist since 2011?

- The impact assessment estimated the costs of the consumer checklist to be £25,000. Are you able to provide an update of this estimate? What are the ongoing costs or resource implications for CAB in updating and maintaining this checklist?

To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

These measures were designed to improve the quality and quantity of information available to consumers on their individual consumption, their rights, and industry processes. Greater transparency and consumer awareness is a driver of competitive energy supply markets. In the long term it was argued that these measures may enable consumers to better act as a competitive constraint on suppliers' pricing and provide strong incentives on suppliers to reduce costs, improve service and develop innovative products. However the proposed changes were only expected to have a minimal direct impact on GB consumers as these measures were already in place to a large extent. The costs on suppliers could have been higher as they are required to collect and provide extra data.

In terms of the policy objectives, consumers now do have access to more quality information on their individual consumption, their rights and industry processes. To the extent that this drives improvements in competition, all else equal, we would expect the policy to have achieved its intended effect of improving competition to a small degree.

Measure	Action taken to implement	Evidence of Compliance
Availability of consumption data	Introduce an obligation on energy suppliers so that where a customer provides a meter reading, and provided that the supplier is satisfied that this data is reasonable, the supplier should either send an updated bill to that customer or reflect this reading in the customer's next bill (unless the next bill is due in a matter of days). This updated consumption data should also be reflected in the customer's annual statement.	In terms of compliance there is now a legal requirement in terms how often this should be. Suppliers are required to provide consumption data to their customers, if required by the customer. <i>SLC 21B.9 states: Where a Customer requests the licensee to make available information on their energy billing and historical consumption either to the Customer or to any other person designated by the Customer the licensee must comply with that request to the extent that the information requested is available and as soon as reasonably practicable.</i>
Consumer rights regarding dispute settlement	Amend Supply Licence to require energy suppliers to inform consumers that they can complain using the suppliers' complaints procedure and how they can obtain a copy. Suppliers would be required to include this information in promotional material and in or with bills.	The legal basis for the redress scheme in the energy sector was made under the Consumers, Estate Agents & Redress Act 2007 (CEAR Act 2007). Shortly after this, Ofgem appointed Ombudsman Services as the statutory alternative dispute resolution (ADR) body in energy sector. ADR is available for final household customers free of charge. There is approval of redress schemes carried out by Ofgem having regard to factors such as the interests of relevant consumers & generally accepted principles of best practice for redress schemes. Ofgem has set the criteria for the scheme. This sets out the principles that the scheme should comply with rather than

prescribing in detail a particular approach to meeting those principles. The ADR scheme has a number of key performance indicators agreed with Ofgem. These include closing 90% of cases within six weeks & having no more than 1% of cases outstanding over eight weeks.

Ofgem requires suppliers, as per the Electricity Act & Gas Act, to submit monthly complaints data. Domestic suppliers are required to publish annually the number of complaints not resolved by the end of the next day following receipt. Suppliers are required to signpost their complaints procedure to where it is on their website & offer to provide a copy if the complaint is unresolved at day+1. Domestic suppliers voluntarily publish quarterly data on complaints it receives; totals, speed, & reasons.

Energy consumer checklist	Give Consumer Focus the lead role of compiling and maintaining the checklist in co-operation with the industry and Ofgem. Suppliers were to annually send their customers a concise list of the checklist, prepared by Consumer Focus.	Consultation response from Citizen's Advice confirms this measure was implemented with associated costs.
Record keeping	Place a new obligation on energy suppliers to hold this information.	The consultation did not result in any concerns over the compliance with this measure.

We have received no evidence that there have been unintended effects as a result of the policy.

Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

Costs

These measures would impose mainly administrative costs on the energy supply companies and Ofgem. Where possible we attempted to make a quantitative assessment of the costs involved with each measure and where this has not been possible we made a qualitative assessment of the costs involved.

Availability of consumption data

Suppliers were, at the time, required to visit customers at least once every two years, and as part of this visit a meter reading must have been taken. However in practice most suppliers visited customers much more frequently. Customers were also able to call in suppliers with their own meter readings.

Responses to the Call for Evidence and subsequent consultation suggested that it is already standard practice within the industry to take account of consumer provided meter readings in the next bill, thus we did not expect this option to have any additional costs associated with it. However, there would be some additional costs for including updated meter readings in the annual statement.

In addition, in order to implement the requirement of paragraph (h) in Annex 1, which gives a right to customers to contact their supplier to request them to pass on their consumption data to another supplier, we proposed introducing a new Licence Condition to give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier, free of charge. While we were unsure at this stage how this would work in practice and the specific costs and scale of the costs involved, overall we expected that there will be some benefits to consumers by being offered tariffs by perspective suppliers; we expected that this measure will also increase competition between the suppliers.

Consumer rights regarding dispute settlement

This option should have had a limited impact on suppliers as some of the information was already provided on promotional material. There may have also been an indirect effect due to a greater number of consumers utilising the dispute mechanism process as a result. However it was difficult to quantify the costs of this, as we were unable to estimate how many additional customers may use the process.

Energy consumer checklist

In addition, there would be a one-time small cost to Consumer Focus for compiling the checklist (£20-25,000), and an ongoing cost of maintaining it. There may have been some small costs to industry and Ofgem associated with co-operating with Consumer Focus on the compilation of the list. Ofgem estimated that its costs of cooperating with Consumer Focus on this will be minimal. There may have also been costs associated with providing the consumer checklist to customers. We assumed that this will be done as part of billing; however there would be additional costs associated with designing, printing and mailing the checklist.

Record Keeping

The main cost of this measure would fall on suppliers. There would be a one-time cost for setting up the databases, along with ongoing costs for maintaining them. The Commission would provide more information on how companies will be required to keep the data. It was possible, therefore, that as a result suppliers may have had to create new systems which would potentially be quite costly. Given this uncertainty, regarding the need to adapt systems, it was difficult to estimate a cost. However using evidence from an earlier published Impact Assessment (2008) regarding the provision of historic consumption data on bills we set out what we believe to be an upper limit on those costs. In 2010 prices the one-off cost presented for bill and system re-design are £9.8 million. The proposed system changes in this case were expected to be significantly less complex, and it was possible that a number of suppliers already held the data. Therefore the additional costs would be only borne by a proportion of suppliers. As a working assumption for this the Impact Assessment assumed an upper bound of no more than £2.5 million.

This measure could have potentially imposed a significant administrative burden on suppliers, depending on the number of data requests made by Ofgem, the competition authorities and the Commission.

Benefits

All the measures discussed above were aimed at improving the quality and accessibility of information to consumers. The first measure (availability of consumption data) was intended to make consumers better aware of their consumption patterns. This should have allowed them to regulate their consumption more effectively. This in turn would enable consumers

who take advantage of the updated bill to pick more appropriate tariffs and adjust their consumption to maximise their satisfaction. This may also have enabled consumers to make more informed decisions when choosing suppliers, while promoting competition in the supply market.

The second measure (consumer rights regarding dispute settlement) was intended to improve awareness of dispute settlement mechanisms and improve access to them. This should have had a direct impact on consumers who wish to complain through a reduction in search costs. In addition this could potentially have led to a reduction in market power of suppliers as consumers would have become better aware of their rights. As industry already complied with this measure, we expected the benefit to be small.

The third measure (the consumer checklist) was intended to provide consumers with an easily accessible source of information regarding their rights as consumers. As mentioned above this could have potentially lead to a reduction in market power of suppliers as consumers become better aware of their rights. There was, however, a risk that this may have led to information overload and confusion which would limit the benefits of this measure.

The fourth measure (record keeping) was intended to improve transparency in the retail market in order to facilitate access. As with the previous measures this was intended to improve information and, in turn, competition in the market place. By making information available to the regulator this measure was primarily designed to aid with the prevention of abuse of market power.

We did not consider that our proposals would restrict competition, therefore a full competition impact test was not been completed. However, this policy could have had positive competition impacts following from more informed consumers being better able to act as a constraint on suppliers.

It is important to note that some of this information would be more accessible to consumers following the roll-out of smart meters regardless of implementation of these measures.

What have been the actual costs and benefits of the regulation and its effects on business?

Costs

Availability of consumption data

Responses to the consultation suggested that it was already standard practice (i.e. before the policy change was made) within the industry to take account of consumer provided meter readings in the next bill, thus we would not expect this option to have any additional costs associated with it. However, there might have been some additional costs for including updated meter readings in the annual statement.

No evidence has been provided to suggest that costs were more than the small impact highlighted in the IA.

Consumer rights regarding dispute settlement

This option should have had limited impact on suppliers as consultation responses indicate that before the policy change some of the information was already provided on promotional material. It was also thought possible that there may have been an indirect effect due to a greater number of consumers utilising the dispute mechanism process as a result. However

it was difficult to quantify the costs of this, as we were unable to estimate how many additional customers may have used the process.

No evidence has been provided to suggest that costs were more than the small impact highlighted in the IA.

Energy consumer checklist

The original IA suggests that the set-up cost for the energy consumer checklist was as expected at £20-£25k for Consumer Focus. The actual implementation costs for Consumer Focus (now part of Citizen's Advice) range from £20k-£75k. However this cost does not take into account any training of front-line workers and/or project costs which will be a factor in large scale legislative changes. This suggests that costs of the consumer checklist were larger than anticipated, though still small in a relative sense.

Record Keeping

The main cost of this measure fell on suppliers. There would have been a one-time cost for setting up the databases, along with ongoing costs for maintaining them. Therefore the additional costs would be only borne by a proportion of suppliers. As a working assumption for the Impact Assessment we assumed an upper bound of no more than £2.5 million. We assumed that this measure could potentially impose a significant administrative burden on suppliers, depending on the number of data requests made by Ofgem, the competition authorities and the Commission.

No evidence has been provided to suggest that costs were more than the small impact highlighted in the IA.

Benefits

With regards the effectiveness of the measures in informing consumers of their rights to complain, we know that only a small percentage of customers who are sign posted to the Ombudsman service via the supplier's complaints procedure, engage with Ombudsman Services: Energy (OS:E). Research undertaken by Ofgem suggests that this can be as low as only 5% of consumers that could come to OS:E actually do so⁸.

Ombudsman Services (OS) for the last three years has commissioned independent research – Consumer Action Monitor – carried out by ICM Research. That research looks at consumer behaviour in the UK across many sectors including the energy sector. It suggests that consumers generally are more aware of their right to complain and are less likely to put up with poor service⁹. All else equal, we would have expected the measures to have some impact on these market outcomes; however the overall effect is likely to be one small part of multiple drivers including the Energy Directive, the Alternative Dispute Resolution Directive and the Consumer Rights Act.

Also according to a recent Ofgem report¹⁰ the proportion of consumers who are aware of all of their key options¹¹ to engage in the energy market has increased from 75% in 2014 to

⁸ https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem_gfk_complaints_to_ombudsman_services_energy_reports_2013_0.pdf

⁹ https://www.ombudsman-services.org/downloads/CAM2016_report.pdf

<https://www.ombudsman-services.org/downloads/CAMFinal2015.pdf>

https://www.ombudsman-services.org/downloads/CAM_Research_Report.pdf

¹⁰ [Consumer engagement in the energy market since the Retail Market Review: 2016 survey findings](#)

¹¹ The following options are presented: change their payment method with their current supplier; change their tariff with their current supplier, switch to a different supplier.

80% in 2016. What's more a greater proportion of consumers are finding it easier to compare tariffs in 2016 (43%) than in 2014 (37%). However, perceptions remain polarised, with 32% still saying that comparing tariffs is difficult, although this has fallen since the 2014 baseline survey (39%).

Complaints data collected by OS¹² also show that for Q1 2016 they are down by approximately 30% on the same period in 2015. However, according to Ofgem's report (footnote 7) only a small proportion of consumers report making a complaint to energy suppliers, with 9% making a complaint to their energy supplier in the last 12 months, consistent with the 2014 baseline survey results (10%).

Though it is not possible to make an exact conclusion around the correlation effects listed above and the policies concerned, we can see that the market has been moving in a direction which the initial policy assessment envisaged. However, as with our assessment of costs, we must also recognise that, as the measures were already in place to a large extent, we expect the additionality of these policies to be minimal.

Assessment of risks or uncertainties in evidence base / other issues to note

Although the data collection approach is considered proportionate, it is very difficult to assess the Package's influence on the features of GB's electricity market as many factors simultaneously affect these. The benefits of the Package are, therefore, highly uncertain.

Lessons for future Impact Assessments

Some key lessons are the importance of highlighting uncertainties in the Impact Assessment and clearly setting out how the elements of the Package create the stated benefits. These can be helpful to understand what evidence is most useful to collect when assessing whether the benefits have been achieved. It is useful to monetise costs and benefits where possible to better assess whether the regulation has met its objectives. Also it would be beneficial to consider evaluation when deciding the data collection approach, to enable a straightforward evaluation process.

What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

GB's current transposition of the regulations will remain in place because there is no evidence that they are causing a significant burden, or that costs are significantly different from that mentioned in the impact assessment.

3. Licence Modification Appeals

Evidence Base

What were the policy objectives and the intended effects?

12 <https://www.ombudsman-services.org/complaints-data.html>

This post implementation review focuses on changes that were made to the process for appeals against the regulator's licence modification decisions to meet the requirements of the European Third Package.

The high level objectives of the policy are to ensure the National Regulatory Authority (NRA) i.e. Ofgem for GB, can take autonomous licence modification decisions whilst providing appropriate safeguards against the those licence modification decisions for those materially affected by them.

The provisions in force before these changes did not meet the requirements of the Third Package as:

- 1) The regulator could be prevented from taking autonomous decisions, as they could be blocked by 20% of relevant licences.
- 2) The previous system disadvantaged smaller players and reduced the scope for scrutiny as a group of firms or single firm had to total 20% of market share in order to lodge an objection.

The policy rectified these deficiencies by providing a right of appeal against the regulator's decisions for affected licensees and, where consumer's interests are affected, Citizen's Advice, the statutory energy consumer advocate. The Competition and Markets Authority acquired responsibility to act as the appeals body.¹³

The intention of the changes was to improve accountability and broader scrutiny of the regulator's decisions that leads to better outcomes for consumers and industry, whilst still allowing it to make autonomous decisions. The changes would also create a fairer process by allowing smaller firms to individually appeal, reducing the relative power of large players in the market.

GB implemented these changes in 2011, thereby becoming compliant with the Third Package on this requirement.

How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The objectives and intended effects of this policy were expected to have been fully delivered by the review date (November 2016). As set out in the Impact Assessment, the Third Package required sufficient mechanisms to be implemented at national level to afford a right of appeal to persons affected by the regulators decisions. The changes made would result in an immediate change to the appeals process, facilitating delivery of the intended effects and objectives.

GB was expected to be fully compliant with Third Package regulations by implementing and delivering this directive in 2011. GB implemented the required policy changes to become compliant with the requirements in 2011. The appeals process has since been applied in practice on two occasions.

¹³Note, the CMA inherited this function, competence for this function was previously held by the Competition Commission, one of the CMA's precursor organisations.

Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The detail of evidence gathered has sought to mirror that of the initial impact assessment (IA), with the aim of updating or validating estimates made. We also sought qualitative evidence of the effectiveness of the new procedure from the appeals body (CMA), the regulator (Ofgem) and the statutory consumer advocate (citizens advice). This was conducted by internal staff at BEIS (formerly DECC) who coordinated the collection of evidence with the help from staff of several external governmental stakeholders, who trawled for relevant evidence from administrative data and collated the responses to our consultation questions.

This approach is proportional given the modest estimated ongoing cost to business of this proposal (£1.5m per annum). Developing a more detailed picture to isolate the exact effects of the policy would be a complex and costly exercise, likely involving commissioning of evidence and further consultation with stakeholders from industry.

Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Evaluation Approach

This evaluation is primarily an *Impact evaluation* in that it focuses on comparing the actual costs and reported benefits to those that were estimated in the initial impact assessment. Using this approach, a view can be taken as to whether the regulation has been more burdensome or indeed beneficial than expected. However, we do not attempt to make causal links between this policy and wider costs and benefits (e.g. increased competition and its effects on market prices) as it would be disproportional to attempt to isolate and disentangle such effects.

We also incorporate some aspects of *Process evaluation*, as we have sought to consult stakeholders on their views on the delivery mechanisms and administration of the policy (e.g. views on the scope of organisations that can access the current system)

Approach to stakeholders

An internal evidence review of public and internally held material has been undertaken, followed by a consultation with key stakeholders involved in the implementation of the policy – Office for Gas and Electricity Markets (Ofgem) and the Competition and Markets Authority (CMA). We have also sought the views of the Citizens Advice, which represents consumer's interests.

To all parties consulted, we asked specific questions about the costs and effects of the policy, and provided an opportunity for stakeholders to express any other views they might have.

Insofar as possible, we sought to update monetised estimates and assumptions made in the impact assessment with 'actuals' and obtain qualitative views on the effectiveness of the policies.

Monitoring data

Monitoring data has been collected on:

- The number of licence modifications made by Ofgem (before and after the changes);
- The number of appeals made against Ofgem's modification decisions;
- The costs of the appeals and their outcomes.

To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

The appeals system is currently fully operational. Since the new system came into force in 2011 Ofgem have made approximately 50 licence modifications annually, which is similar to the number of modifications made before the policy change.

On the balance of evidence available, it is reasonable to conclude that the current system is effective in the following regards:

- *An appeals system which can hold the regulator to account*

Under the new regime, 2 appeals against all of Ofgem's licence modifications have been lodged. The appellants in both cases were both partially successful, with CMA upholding one of several grounds for appeal in both cases. Both appeals were in relation to price control decisions for distribution companies, with separate cases brought by Northern Powergrid and British Gas Trading.

The CMA has informed us that the appeals process has been efficient, well informed and has dealt effectively with an array of competing interests. Ofgem noted that it is now more straightforward to introduce effective licence conditions, whilst still ensuring relevant parties can hold them to account.

- *A fairer appeals process*

Citizens' Advice noted that the changes should continue to be an effective vehicle to level the playing field between small and large licensees, whilst also welcoming their right to lodge appeals on behalf of customers.

The CMA agreed that the changes made have been positive, however, they noted that while it is now possible for a broader range of stakeholders to lodge appeals, the scope of organisations covered is narrower than comparable appeals processes in other industries. They believe this may prevent meritorious appeals from third parties in the future. In addition Citizens' Advice and Ofgem noted that barriers remain for small players to launch appeals, as the costs of doing so are high, with the latter noting some anecdotal evidence to this end. A direct consultation with licensees was not undertaken, however we do have administrative data available on the majority of costs incurred by business when engaging with the appeals process.

We have not been made aware of any unintended effects during our consultation.

A brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (As set out in the IA).

Monetised Costs and Benefits

Table 1: Summary of Monetised Costs & Benefits for preferred option (over 20 yr. appraisal period, PV 2010 prices)

£Million (PV)	Low Case	Best Estimate	High Case
Costs	-100.6	-21.3	-10.9
Benefits	0.0	8.1	13.6
Net impact	-106.6	-13.2 ¹⁴	2.8

In the central case, costs consist of:

- £0.011m in set up costs for CMA (then the Competition Commission)
- £7.1m in ongoing costs for CMA – these costs result from hearing the appeals. Hearing each appeal has a central estimated cost of £0.5m.
- £8.5m in ongoing costs for Ofgem – these costs result from defending each appeal. The central cost estimate is £0.6m per appeal.
- £4.3 million in costs for business, who are case appellants – costs include submission of evidence to the CMA. The central cost estimate is £300k per appeal.
- £1.4m in third party costs, for example for submission of evidence to the CMA. The central cost estimate is £100k per appeal.

The number of appeals was the key variable driving the magnitude of costs in the impact assessments. The central case assumed 1 appeal to be made per year.

Monetised benefit estimates were based on the costs avoided from terminating the previous provision. Costs avoided included the cost of case referral to the CMA and the subsequent investigation, and the costs for Ofgem to modify its decision should it be blocked (under the previous regime, it was possible for firms(s) representing 20% of market share to block Ofgem's modifications without a CMA ruling; if Ofgem could not subsequently reach an agreement with licensees about the modifications, the decision would go to the CMA for a ruling.)

The benefits consist of:

- £3.5m in ongoing cost savings for the CMA. This assumes that half of all blocked modification decisions made by Ofgem are referred to the CMA for a ruling. It was estimated each referral costs the CMA £0.8m.
- £2.6m in ongoing cost savings for Ofgem. These represent the costs Ofgem would incur in referring cases to the CMA (provision of evidence etc.). Each referral is estimated to cost £0.6m.
- £1.3m cost to objecting businesses. Where Ofgem referred a decision to the CMA, business would incur costs, such as submission of evidence to support their position. Each referral is estimated to cost £300k.
- £0.4m in third party cost savings. These relate to avoided costs for third parties providing evidence to support a CMA referral judgement.

¹⁴NB: the appraisal values in the initial impact assessments have been recalculated to ensure consistency with the evaluation data. This has marginally changed the values of some cost estimates from the original assessments (within +/- £0.2m)

The key assumption surrounding monetised benefits was the number of referred licence modifications, estimated to be 0.3 annually.

Non Monetised Benefits

In the initial IA, the most significant benefits to the policy were considered to be the impacts that could not be monetised. They are considered to be:

- i) *Higher quality decision making*: Under the new regime Ofgem is able make autonomous decisions without direct influence of vested industry views that could previously block modifications, even if Ofgem was acting within its statutory duties. This allows Ofgem to ensure that changes that are in the overall economic interests of the market and consumers are delivered.
- ii) *More efficient decision making*: these benefits are derived from Ofgem’s ability to make decisions autonomously.
- iii) On balance, *an increase in competition*, as removing the asymmetry in who can appeal Ofgem’s decision on licence modification should help prevent the introduction of licence modifications that systematically favour large market players.

Non monetised costs

Though the costs include those of hiring consultants and legal advice for business, they may not include internal administration and management costs.

What have been the actual costs and benefits of the regulation and its effects on business?

In this section we review how the evidence gathered during the post-implementation review compares to the estimates and assumptions made in the impact assessment. We then go on to reproduce in details the appraisal of costs and benefits using the updated data and information gathered during the evaluation. All monetised estimates have been converted to 2010 prices so as a direct comparison can be made.

Table 2: Summary of Monetised Costs and Benefits

<i>£m PV , 2010 prices, 20 yr appraisal period</i>				
Party Effected	IA estimate (central case) (£m)	(central	Evaluation evidence (£m)	Difference (£m)
Costs		-21.3	-17	-4.3
Benefits		8.1	8.1	-
Net impact		-13.2	-8.9	-4.3

The evaluation evidence has observed that the net monetised impact of the policies over the 20 year appraisal period is estimated to be £4.3 million lower than at first assessment of the policy, representing a better than expected outcome. The views we have gathered from stakeholders also indicate that the policy is likely to be delivering benefits in terms of a more efficient, fairer system that facilitates a competitive marketplace, which we have not been able to monetise. These are consistent with those benefits identified in the IA

Monetised Costs

The table below compares the costs per appeal to all parties involved as they were estimated in the IA, and the updated evaluation estimates based on cost data from closed appeals.

The costs to business are much higher than anticipated; this is

Table 3: Costs per appeal

Party Effected	IA estimate Cost per appeal (central case) (£m)	Evaluation evidence (£m)	Difference (£m)
CMA	0.5	0.15	-0.5
Ofgem	0.6	0.7	0.3
Business	0.3	1.9	1.6
Third Parties	0.1	Not obtained ¹⁶	-
Total	1.50	2.62	1.12

As noted, the IA calculated total costs on the assumption of 1 appeal per year. Evaluation evidence indicates there have been 2 appeals in the first 5 years since the new appeals system has been introduced (or 0.4 appeals / year). The total evaluated costs of this policy, based on this new information, are detailed below.

Table 4: Summary of Monetised Costs

<i>£m PV , 2010 prices, 20 yr appraisal period</i>			
Party effected	IA central cost estimate (based on 1 appeal / year)	Evaluation evidence (based on 0.4 appeals / year)	Difference (£m)
CMA set up costs	0.1	0.1	-
CMA costs	7.1	0	-7.1
Ofgem	8.5	4.5	-4.0
Business	4.3	11.0	6.7
Third Parties	1.4	0.6	-0.8
Total	21.3	16.1	-5.2

In summary, monetised costs over the appraisal period are now estimated to be £5.2m smaller than at implementation. Although the costs to business of appealing have been higher than expected because CMA recovers their costs from appealing firms, which was not factored in the initial assessment, far fewer appeals have been made than initially anticipated, restricting the overall impact.¹⁷

The set up cost estimates for the CMA have not been updated for this evaluation but the initial one appears reasonable. The CMA reported that the new process fits well with their current

¹⁵Note CMA incurred costs of £820,000 for both appeals (average per appeal - £0.41m); these were however recovered from the appealing business and from Ofgem. These costs have been reassigned appropriately

¹⁶For the purposes of future comparison, we will assume the initial IA estimate is accurate

¹⁷Although this update of the cost benefit analysis uses the previous 5 years' experience of appeals to estimate the lifetime costs of the policy, CMA would not anticipate more than 2-3 appeals in a 5 year period.

responsibilities in handling similar appeals for other industries and there has been no need for them to significantly 'upskill' or hire new staff as a result of the change.

Monetised Benefits

In the impact assessment, monetised benefits were based on avoided costs of the old system, which would no longer be needed. These estimates were based on historical data around the number of blocks made to Ofgem's licence modification decisions under the old system (0.6 per year). Given that this system is no longer in operation, it is not possible to make an updated estimate of these benefits. We therefore assume that benefits from avoided costs remain the same as those presented in the IA. (See section 5a for details)

Non-monetised Costs

The impact assessment did not identify any significant non-monetised costs. During the evaluation, we have considered that there may, however, be some legal costs to business of deciding whether to appeal Ofgem's modifications or not. We were not able to assess these costs but consider that they are likely to be relatively small compared to the actual costs of appealing.

Though the costs include those of hiring consultants and legal advice for Ofgem, they may not include internal administration and management costs. We believe these internal costs were included in the initial impact assessment so this non monetised cost would increase the overall evaluation cost estimate.

Non-monetised Benefits

The key benefits identified in the impact assessment were non monetised benefits. These included increased competition; better and more efficient decision making; and improved market outcomes for smaller players and consumers.

For the evaluation, we have recognised that it is very difficult to isolate and monetise these effects, and considered that it would be disproportionate to attempt to do so. We have however sought qualitative views from stakeholders as to the benefits of the new regime.

Views expressed by stakeholders suggest that this has been a positive change. In particular, the CMA considers it to be a positive policy development, which has allowed them deliver timely and well informed determinations. Ofgem note that it is, arguably, more straightforward for them to introduce stronger and more effective licence conditions, whilst still providing an effective outlet to hold these decisions to account. Citizens' Advice has also been positive about the change, noting that it reduces the scope of large market players to block potentially positive licence changes. They also welcome the ability to appeal decisions on behalf of consumers, should this be necessary in the future.

We feel that, on balance, the views aired to us are indicative of some improvement in competition, and more efficient decision making. It may have also raised potential for a levelling the competitive disparity between small and large firms, however it is difficult to reach firm conclusions as no small firms have, as of yet, raised an appeal.

Effects on business – Equivalent annual net cost to business (EANCB)

EANCB considers only direct effects on business. For this policy, the only direct impacts were considered to be the **third party costs**. Costs to appealing firms are not considered to constitute a direct impact since companies can choose whether or not to appeal and incur these costs.

We believe that it is reasonable to assume that companies would only appeal if it was in their interest to do so. Therefore they would only appeal where, given the probability of winning an appeal, the benefits of winning an appeal outweigh the costs of doing so.

If a licensee appealed, and was unsuccessful, then it chose to incur appeal costs, even though its case against the proposed Ofgem licence modification was not strong enough.

Similarly, cost savings to business in moving to this new licence regime would not constitute direct costs savings as costs of blocking modifications are also incurred voluntarily.

Third party costs however are not incurred voluntarily. This is because the CMA can require third parties to submit evidence to a case.

Although we have not been able to gather evidence to calculate and updated average cost per appeal for third parties, we can make a comparison of costs using the updated data on appeals made, against the assumption made in the impact assessment.

Table 5: Net cost to business estimate, comparison of the IA against evaluation data

Equivalent annual net costs to business (000's, 2009 Prices) ¹⁸	
IA estimate	Evaluation Estimate
64	10

The policy has had a smaller direct impact on business than expected. This is driven by a smaller amount of appeals than estimated previously. Fewer appeals result in a smaller cost to third parties as they are called to give evidence less often

Assessment of risks or uncertainties in evidence base / Other issues to note

Risks and Uncertainties

Although we consider the range of stakeholders and evidence gathered to be proportionate, the relatively light touch nature of this consultation does increase the scope to challenge our conclusions. In particular, feedback from businesses involved in the appeal process would have strengthened our conclusions.

The largest uncertainty remaining in our monetised estimates is the average costs to third parties per appeal, as we were not able to provide an updated estimate. However, given that we have updated all other estimates made in the IA and our evaluation results have been within the margin of sensitivities presented in the IA, we would expect this to also be the case for costs to third parties. Third party costs are also a small share of the total impacts of the policy, so the impact of any discrepancy is likely to be limited. We would recommend producing an updated assessment at the next review point.

In addition, while we have produced updated cost estimates using outturn data for all other affected bodies, the sample to produce these estimates, though the best available, is limited as there have only been two appeals since the launch of the new system.

Overall we feel average costs of this policy are to come down over time as the new system matures and more cases are heard, meaning the appraisal presented is likely to be a conservative one. This is because:

- a) The appeals heard so far have both been about price control determinations. These have a longer timeframe and are more complex than other types of appeal. They are therefore

18 Detail of how EANCB is calculated can be found in the [better regulation manual](#)

likely to attract a higher cost than standard licence modification appeals which may be heard in future.¹⁹

- b) As a body of cases develop, legal costs are likely to reduce somewhat and processes will operate more efficiently with experience.

Points for further improvement of the policy

Though there was support for the policy from all stakeholders consulted, some points for improvement were put forward. Specifically:

The CMA note that the range of third parties who can appeal or intervene in an appeal is more limited than in other industries. For energy markets, only parties who have some form of gas and electricity licence or Citizens Advice, as the statutory energy consumer advocate, may apply to appeal the regulator's decisions. They believe it is possible that the current system may prevent meritorious appeals being heard in future.

CMA also believes that the process could be made more efficient by removing some procedural rules, such as the requirement that all members of the CMA group constituted to hear an appeal must be physically present when a decision is made. They consider this to be an unnecessary rule given electronic means available, which would allow achievement of the same effect.

Ofgem note that the timescales for the appeals process are challenging, particularly for more complex cases, and there is invariably some trade-off between the quality of inputs and timeliness of determinations.

Some concerns were also raised that small players may be finding the costs of appealing Ofgem's modifications to be prohibitive. Future reviews should explore this issue in greater depth.

Lessons for future Impact Assessments

Overall the impact assessment was a reasonable and proportionate attempt to evaluate the impacts of this policy. The views we have gathered largely support the justification for the policy and the monetised costs estimated in this the evaluation lie within the range of sensitivities presented for the impact assessment.

What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

We recommend that the legislation as transposed remain in place. The licence modification appeals process allows the regulator to make autonomous decisions whilst providing a safeguard for licensees and Citizens Advice (where the decision materially affects consumers) to challenge those decisions. The appeals taken so far (albeit limited in number) have shown the process to be fair, swift, effective and transparent.

The views we have gathered indicate potential for smaller companies to bring forward a challenge, which was not possible under the previous appeals mechanism. Ofgem has acknowledged that it

¹⁹The impact assessment suggests price control decision incur higher costs than hearings for other licence modifications appeals. Taken from the Impact Assessment: 'Based on advice from the CC [now CMA], we assume that the CC could incur costs in dealing with a 6-month price control decision appeal in the range of £400k to £800k, and costs for a 4-month adjudicative hearing for other licence modification appeals in the range of £270k to about £600k.'

is more straightforward for them to introduce more effective licence conditions, compared to the previous appeals mechanism, under which it had to seek agreement from licensees before implementing its decision.

4. Gas Storage and LNG facility impacts

Evidence Base

What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

This Post Implementation Review focuses on the parts of the Package that are targeted at gas storage and LNG facilities. At a high-level, the objectives of these parts of the Package were to increase the access to, and transparency of, gas storage and LNG facilities in a consistent way throughout the European Union. These changes should have enabled all market participants to remain informed of the current status of individual storage and LNG facilities, while ensuring they have access to these flexible supply sources when needed. This means the Package could have enhanced invest signals, created greater security of supply, and led to more competitive prices and services.

As set out in the Impact Assessment, many of the relevant measures in the Package were already in place in GB prior to its introduction. These would therefore have no impact on the policy objectives. The articles for which the GB was not already compliant and could have had a significant impact on the policy objectives are:

- a. *Article 15 of the Directive: vertically integrated system storage operators and LNG storage operators that are technically and economically necessary for the efficient running of the system (TEN) must be legally and functionally unbundled.*
- b. *Article 16 of the Directive: all system storage operators and LNG storage operators need to ensure that commercially sensitive information that could be advantageous to other parts of the business is not shared.*
- c. *Article 33 of the Directive: after consulting with system users, the regulator or Member State must determine and publish the criteria for an access regime for gas storage. Storage facilities for third party access must be published by the regulator and/or the storage system operators. This does not apply to ancillary services and temporary storage for re-gasification.*
- d. *Articles 15, 17, 19 and 22 of the Regulation: all storage and LNG facilities operators must provide a range of data that must be made publically available. TEN facilities must facilitate the trading of capacity in storage and TEN storage operators must ensure a range of services are available for users to access.*

How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The objectives and intended effects are expected to have been fully delivered by the review date. As set out in the Impact Assessment, the Package required gas storage and LNG facilities to fully comply with the relevant measures from 3 March 2011 when the regulations come into force. Assuming full compliance, these measures were designed to directly improve access to, and transparency of, these assets. Market participants could have acted on these developments straightaway, bringing about the intended effects.

Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

Evidence was sought from key stakeholders – Ofgem and National Grid – as well as conducted in-house through investigating evidence available online. This considered whether the Package had achieved its intended objectives, the actual costs and benefits for the delivery of the Package, and whether there were any unintended consequences.

The evidence was collected in a light-touch manner using a small amount of resources. This was considered proportionate as the relevant measures in the Package were deemed to have a low impact. As stated in the Impact Assessment and by stakeholders, the GB wholesale gas market was already one of the most competitive in Europe and many of the measures in the Package were already in place before it was introduced. The costs of enforcing these measures were also expected to be small, at £67,000 per annum based on data from Ofgem, the industry regulator. This justifies the level of evidence-gathering undertaken.

Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Evidence was collected from Ofgem and National Grid. As the industry regulator, Ofgem is responsible for monitoring compliance and enforcing the Package so it was important to gather evidence on monitoring and enforcement costs from them.

National Grid was asked to respond to the following questions:

- a. *What effects (if any) have the regulations introduced to implement the Third Package had on National Grid's business or operations?*
- b. *Has this resulted in any additional resource or cost burden. If yes, please provide a description and annual costing estimate where possible.*
- c. *What is National Grid's view about the benefits of the policies? Have they led to improvements to market conditions?*
- d. *Is there any evidence of benefits arising from the parts of the Third Energy Package targeted at gas storage and LNG facilities, or transmission networks?*

Ofgem was asked to respond to the following question:

- a. *The annual costs of enforcing the parts of the Third Energy Package targeted at gas storage and LNG facilities are reported as £67,000 per annum. Is this the case?*
- b. *The cost of processing Third Party Access exemptions is reported as marginal. Is this the case?*
- c. *The cost of information handling and disclosure is reported as marginal. Is this the case?*

- d. *Have there been additional costs to storage firms from changes to the access requirements and services offered with negotiated third-party access?*
- e. *Have there been additional costs on firms who offer gas storage and LNG facilities from providing additional information to comply with the regulations?*
- f. *Is there any evidence of benefits arising from the parts of the Third Energy Package targeted at gas storage and LNG facilities?*
- g. *Based on Ofgem insight, what is the industry view about the policy, has it been beneficial for market participants?*
- h. *Is there any evidence of unintended effects arising from the parts of the Third Energy Package targeted at gas storage and LNG facilities?*

A light-touch in-house review of the online evidence from relevant websites, such as that of gas storage and LNG operator companies, was also undertaken.

To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

The key objectives of the gas-related measures in the Package were to improve access to, and transparency of, gas storage and LNG facilities. As discussed above, many of these measures were in place in GB prior to the introduction of the Package so these would not have contributed to the policy objectives.

According to the light-touch evidence collected, it can be concluded that GB is now compliant with all the gas-related measures in the Package. The table below sets out the relevant measures and evidence of compliance.

Measure	Description	Evidence of compliance
Article 15 of the Gas Directive	Vertically integrated storage and LNG operators that are technically and economically necessary for the efficient running of the system (TEN) must be legally and functionally unbundled.	Prior to the introduction of the Package, all relevant operators were legally unbundled. Centrica Storage Limited owned York Field in the North Sea so was considered functionally bundled. They have now separated the processing facilities of the two assets ²⁰ so are now functionally unbundled.
Article 16 of the Gas Directive	All vertically integrated storage and LNG operators need to ensure that commercially sensitive information that could be advantageous to other parts of the business is not shared.	We have not received any evidence of non-compliance. However, Section 19C of the Gas Act applies to all storage and LNG facilities and places restrictions on the disclosure of commercially sensitive

20 <http://www.centrica-sl.co.uk/products-and-services/other-information/third-party-gas-processing>

		information to associated undertakings.
Article 33 of the Gas Directive	After consulting with system users, the regulator must determine and publish the criteria for an access regime for gas storage. Storage facilities for third party access must be published by the regulator and/or the storage system operators.	The regulator, Ofgem, has consulted system users on the criteria for an access regime ²¹ and the agreed criteria have been published ²² . Ofgem has also published a list of gas storage facilities in the UK ²³ .
Articles 15, 17, 19 and 22 of the Gas Regulation	All storage and LNG facilities operators must provide a range of data that must be made publically available. TEN facilities must facilitate the trading of capacity in storage and TEN storage operators must ensure a range of services are available for users.	Gas Infrastructure Europe collates the data as set out in the Article from the storage and LNG facilities operators across Europe. This data is published on Gas Infrastructure Europe's website ²⁴ . All TEN facilities make available data on capacity trading and services offered, helping to facilitate their use.

These measures directly improve access to, and transparency of, gas storage and LNG facilities. Compliance ensures the policy objectives have been achieved.

Stakeholders report that there have been no unintended effects from the gas-related parts of the Package.

Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

Costs

The Impact Assessment assumed an annual cost of £67,000 to the regulator for checking compliance and enforcing the parts of the Package targeted at gas storage and LNG facilities. This figure was provided by Ofgem, the industry regulator. The costs to the regulator for processing Third Party Access exemptions and for handling and disclosing information were assessed to be marginal by Ofgem.

²¹ Ofgem, November 2010: "Guidance on the Third Party Access regulatory regime for gas storage facilities in Great Britain"

²² <https://www.ofgem.gov.uk/publications-and-updates/guidance-regulatory-regime-gas-storage-facilities-great-britain-version-2>

²³ <https://www.ofgem.gov.uk/publications-and-updates/list-gas-storage-facilities-uk-operational-and-under-construction>

²⁴ <http://www.gie.eu/index.php/maps-data/remit-lng-storage>

The Impact Assessment set out that there may be following additional costs on businesses:

- Costs arising from a loss of economies of scope due to restrictions on the ability of vertically integrated firms to coordinate activities across different functions.
- Costs to gas storage firms with negotiated third-party access from complying with increased access requirements and services offered.
- Costs to gas storage firms and LNG facilities from complying with requirements to provide additional information.

These were not monetised as the consultation responses to the initial Impact Assessment contained little firm evidence to inform estimates.

Benefits

The Impact Assessment set out that benefits could arise from the following:

- Increased competition in the gas storage and LNG markets
- Greater movements of gas between markets
- Reduction in market power of certain market participants
- Greater regulatory certainty for market participants
- Improved transparency and non-discriminatory access for gas storage users
- More competitive pricing

These benefits were not monetised.

What have been the actual costs and benefits of the regulation and its effects on business?

Costs

Ofgem, the industry regulator, has confirmed that the annual costs of enforcing the parts of the Package relevant to gas storage and LNG facilities total £67,000. This figure includes the costs of processing third party access exemptions and handling and disclosing relevant information. This aligns with the assumptions set out in the Impact Assessment.

Stakeholders' opinions confirmed that the additional costs to business were limited. There were no additional costs of implementing many of the measures as these were already in place prior to the introduction of the Package. The small number of new measures would have created costs but the burden is considered to be minimal.

Benefits

Stakeholders have noted that there has been a convergence in gas prices between the gas market in Great Britain at the National Balancing Point (NBP) and prices in other countries in North West Europe, with the Great British market remaining one of the two most liquid markets in the European Union. This indicates that gas is now more able to flow freely between North West European gas markets in response to price signals and enhancing

movements of gas between countries. Gas prices at the NBP have also fallen by 24% between 2011 and 2015²⁵ suggesting the gas market is becoming more competitive.

However, it is not possible to distinguish the Package's contribution to these trends. There are many factors which have influenced these trends such as the move away from gas contracts linked to the oil price in Europe and the increase in international production of LNG. Industry commentators suggest these factors play a much larger role in GB's gas market compared to the Package.

Whilst stakeholders agree there is no evidence of the benefits stated in the Impact Assessment, they expect that the Package was beneficial. Their engagement with industry indicates that gas market participants view the Package positively. Therefore, it can tentatively be concluded that the Package has been beneficial in at least some of the areas set out in the Impact Assessment although it is difficult to find strong evidence to corroborate this.

Assessment of risks or uncertainties in evidence base / Other issues to note

Although the data collection approach is considered proportionate, the small number of stakeholders involved limits the amount of evidence available to form conclusions. In particular, seeking feedback from storage and LNG facility owners themselves may have provided a broader range of evidence.

It is very difficult to assess the Package's influence on the features of the GB gas market as many factors impact simultaneously upon these fundamentals. The benefits of the Package are, therefore, highly uncertain so were not monetised. This is a disadvantage of the evidence base. However, these benefits were likely to be small as many of the measures were in place prior to the Package's introduction. As a result it was not deemed proportionate to investigate these benefits in more detail for the Impact Assessment and Post Implementation Review.

Lessons for future Impact Assessments

Some key lessons are the importance of highlighting uncertainties in the Impact Assessment and clearly setting out how the elements of the Package create the stated benefits. These can be helpful to understand what evidence is most useful to collect when assessing whether the benefits have been achieved. It is also useful to monetise costs and benefits where possible to better assess whether the regulation has met its objectives but recognise a proportionate approach should be taken.

What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

The policy will remain in place as transposed.

²⁵Data from Argus Media

5. Customers right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching

Evidence Base

What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

This Post Implementation Review focuses on the parts of the Package that were targeted at customers' right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching. At a high level, the objectives of these measures were to improve the switching process for consumers. High levels of switching are associated with greater competition in the market, which should result in better outcomes for consumers and suppliers. Eventually we would expect higher levels of switching to be associated with more innovation and a greater number of products on offer leading to greater efficiency in the market.

Article 3(5a) of the Electricity Directive and Article 3(6a) of the Gas Directive required Member States to ensure that where a customer, while respecting contractual conditions, wished to change supplier, the change would be effected within three weeks. In addition, Annex 1 (j) of both the Electricity and Gas Directive required that consumers receive a final closure account following any change of natural gas/electricity supplier no later than six weeks after the change of supplier has taken place. Since no obligation on suppliers to ensure these requirements were met was available at the time, it was necessary for Government to put in place new Licence Conditions in order to comply with these new requirements.

How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The objectives and intended effects were expected to have been fully delivered by the review date. The requirement to switch customers within three weeks was written into standard licence conditions.

Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

Evidence was sought from Ofgem, as well as conducting in house analysis investigating evidence available online. This considered whether the Package had achieved its intended objectives, the actual costs and benefits for the delivery of the Package, and whether there were any unintended consequences.

The evidence was collected in a light-touch manner using a small amount of resources. This was considered proportionate as the relevant measures in the Package were deemed to