

<p><b>Title:</b> Post Implementation Review of the Internal Markets Regulation –Measures relating to the NRA</p> <p><b>PIR No:</b> BEIS042(PIR)-21-ESNM</p> <p><b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a></p> <p><b>Lead department or agency:</b> Department for Business, Energy &amp; Industrial Strategy</p> <p><b>Other departments or agencies:</b></p> <p><b>Contact for enquiries:</b> <a href="mailto:vishnu.nair@beis.gov.uk">vishnu.nair@beis.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Green	

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

This post implementation review (PIR) focuses on the elements of the Regulations that were introduced with regard to the functions of the National Regulatory Authority (NRA). The Regulations consisted of several measures, but the high-level objective for the collective policy was to:

- Reinforce the independence and transparency of the national regulatory authority (NRA)
- Promote inter-European cooperation between energy regulators.

The policies were designed to achieve this by formalising the roles and objectives of the GB NRA (Ofgem), extending several of its market monitoring and enforcement capabilities and placing obligations on Ofgem to actively work and consult with other European regulators. Elements of these obligations have already been removed due to leaving the EU.

The intended effects are to increase the quality of governance and regulation, this could lead to improved outcomes for consumers in the long run (e.g. lower bills).

**2. What evidence has informed the PIR?** (Maximum 5 lines)

The level of evidence has sought to mirror that gathered for the initial impact assessment (IA) and the previous PIR. We used a questionnaire to obtain qualitative evidence on the level of compliance and impacts of the policy from the key stakeholder, Ofgem. Although there is limited evidence on the impacts of the changes, and costs and benefits have not been monetised, we consider this approach to be proportionate as:

- This policy has not been contentious, nor has it received significant media attention or concerns from industry.
- The costs of these measures are expected to be small.
- The benefits of these measures (better decision making and, potentially, reduced overall costs for consumers and businesses via increased independence, accountability, and transparency of the regulator) are difficult to measure, and the bespoke data collection process required to obtain estimates of these would have been disproportionate given the limited costs.

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

We found good evidence that the policies had been effectively implemented, we found evidence that Ofgem are still fulfilling the responsibilities set out in the regulations by actively monitoring and enforcing their obligations. It is difficult to establish the exact impact of these policies on market outcomes, however to the extent to which successfully implementing measures has improved regulatory oversight, the objectives can be seen as being achieved. From the evidence collected, we find that the policy objectives relating to the functions of the NRA remain appropriate and proportionate. We found no evidence of any unintended effects.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021

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## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### *Costs*

The initial impact assessment expected that the majority of the costs of these measures would be associated with a one-off transition cost of making changes to legislation. These costs were expected to fall predominantly on Government and Ofgem, and to be relatively small.

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

- Some small monitoring costs.
- Some enforcement costs as a result of new obligations for Ofgem.
- Possible costs if number of complaints increase
- Some additional costs from intensified European cooperation, though these costs are no longer applicable (see response to question 7):
  - Costs of consulting and sharing information with other regulatory authorities and ACER.
  - Costs to Ofgem of attending meetings of the EU's Agency for the Cooperation of Energy Regulators (ACER), costs to Ofgem and the Northern Ireland Utility Regulator of co-operating.

#### *Benefits*

The benefits of these measures were expected to be: better decision making and, potentially, reduced overall costs for consumers and businesses. These benefits would be derived from increased independence, accountability, and transparency of the regulator.

#### Specific benefits:

- Possible increase in Ofgem's credibility as independent regulator
- Enhanced ability to carry out regulatory tasks
- Helping to ensure that operators act in the interests of existing and future consumers
- Some additional benefits from intensified European cooperation (no longer applicable, see response to question 7).
  - Benefits to UK of ensuring that UK interests are represented at ACER.
  - Timely implementation of EU legislation.

Though it is reasonable to believe that these measures would improve outcomes for consumers, it was considered very difficult to isolate and monetise this effect. The bespoke data collection process required to obtain estimates of these benefits would have been disproportionate given the limited expected costs. No costs or benefits of these measures were monetised as part of the initial IA (or PIR) as a result.

### 5. Were there any unintended consequences? (Maximum 5 lines)

We found no evidence of unintended effects.

**6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)**

There were no major burdens created for Ofgem as a result of the designation as an NRA and ensuring independence and impartiality. Direct effects on business are small, limited to the costs of providing Ofgem with some additional monitoring data. No opportunities have been identified for reducing these minor burdens.

**7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)**

EU countries have a similar approach, due to similarities in our energy market structure. However, as the UK has left the EU, we are no longer legally required to have regard to how EU member states implement EU law on which our energy legislation is based.

The implementation of the Trade and Cooperation Agreement (TCA) with the EU has not had any impact on Ofgem's role as the independent regulator. In relation to working and consulting with other European Regulators, the TCA calls for the creation of cooperation arrangements between the UK regulatory authorities and ACER. However, some obligations (relating to EU cooperation) have already been removed from retained EU law, such as the requirement for Ofgem to submit a national report, or to contribute to ACER initiatives, so they no longer have effect.

## **Evidence Base**

### **Who is affected?**

- Ofgem

### **How they are affected**

These measures collectively increased Ofgem's duties, a number of which are related to monitoring.

### **Costs**

There were no major burdens created for Ofgem as a result of the designation as an NRA and ensuring independence and impartiality. Direct effects on business are small, limited to the costs of providing Ofgem with some additional monitoring data.

Ofgem did not provide full estimates of the costs associated with these measures in response to the survey for this PIR, though their response mentioned the following information:

#### **Monitoring costs**

- We were not able to obtain any monetised information on monitoring costs; 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.

#### **Enforcement costs**

- According to Ofgem, there were no enforcement costs in relation to formalising Ofgem's role as the independent national regulator or in relation to cooperation with other European counterparts (though this is now not relevant, see response to question 7).

#### **Determination and complaints costs**

- According to Ofgem, there were no costs related to determinations and complaints connected to rules regarding Ofgem's role as an independent regulatory authority or in relation to its cooperation with European counterparts.

#### **Reporting costs – no longer required**

- According to Ofgem, the cost of reporting to the Commission in 2020, to cover the period of 2019, "involved roughly one FTE for 9 full days for coordinating, drafting etc. Then, about one full time day for around 11 policy teams that contributed information, and one full time day for one legal FTE."
  - "It's unlikely this workload has changed much over time, as the report format has stayed roughly the same, and given much of the information Ofgem gathers anyway. We can therefore estimate that similar amounts of FTE were necessary for previous years."
  - "Based on these calculations, Ofgem consider the costs of reporting to the commission over this period to be around 20k."
  - However, Ofgem no longer reports to the Commission since the end of the Transition Period (see response to question 7).

### **Benefits**

As mentioned above, the benefits of the policy were expected to be: better decision making and, potentially, reduced overall costs for consumers and businesses.

Though it is reasonable to believe that these measures would improve outcomes for consumers, it was considered very difficult to isolate and monetise this effect. The bespoke data collection process required to obtain estimates of these benefits would have been disproportionate given the limited expected costs. No costs or benefits of these measures were monetised as part of the initial IA (or PIR) as a result.

### 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 the UK's electricity market as many factors simultaneously affect these. The benefits of the Package are, therefore, highly uncertain.

The lack of monetised costs and benefits is a disadvantage of this evidence base, though it was not deemed proportionate to investigate these in more detail for this Post Implementation Review, as the costs associated with these measures are expected to be small.

Furthermore, the small number of stakeholders involved limits the amount of evidence available to form conclusions.

<b>Title:</b> Provision of consumer information  <b>PIR No:</b> BEIS042(PIR)-21-ESNM  <b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a>  <b>Lead department or agency:</b> Department for Business, Energy & Industrial Strategy <b>Other departments or agencies:</b>  <b>Contact for enquiries:</b> <a href="mailto:vishnu.nair@beis.gov.uk">vishnu.nair@beis.gov.uk</a>	<b>Post Implementation Review</b>
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	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> Green

### 1. What were the policy objectives of the measure? (Maximum 5 lines)

GB implemented 4 measures to increase the information available to consumers and therefore enable consumers to make more informed decisions when they choose tariffs and suppliers. These measures were:

- Availability of consumption data
  - o 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.
- Consumer rights regarding dispute settlement
  - o 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 Energy Consumers checklist
  - o Give Consumer Focus the lead role of compiling and maintaining the checklist in co-operation with the industry and Ofgem. Suppliers to annually send their customers a concise list of the checklist, prepared by Consumer Focus.
- Record keeping.
  - o Place a new obligation on energy suppliers to hold this information.

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.

### 2. What evidence has informed the PIR? (Maximum 5 lines)

The level of evidence has sought to mirror that gathered for the impact assessment (IA) and the previous PIR. We used a questionnaire to obtain qualitative evidence on the level of compliance and impacts of the policy, and cost information where available from key stakeholders, including Ofgem, National Grid and Citizens Advice.

Although there is limited evidence on the impacts of the changes, and benefits and (some) costs have not been monetised, we consider this approach to be proportionate as:

- This policy has not been contentious, nor has it received significant media attention or concerns from industry.

- The costs of these measures are expected to be small.
- The benefits of these measures are difficult to measure, and the bespoke data collection process required to obtain estimates of these would have been disproportionate given the limited expected costs.

Likewise, the initial impact assessment or the PIR conducted in 2016 did not provide monetised estimates of benefits, though it did provide limited estimates of costs.

**3. To what extent have the policy objectives been achieved? (Maximum 5 lines)**

From the data collected, there is no reason to assume non-compliance with this measure. It is difficult to establish the exact impact of these policies on market outcomes, as the measures were already largely in place.

From the information and evidence collected we believe that the objectives of the policy are still appropriate as it remains important for consumers to have access to quality information on their individual consumption, their rights and industry processes.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021





## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### Costs

The original impact assessment assumed that these measures would mainly impose administrative costs on the energy supply companies and Ofgem. The original impact assessment's 'best estimate' for the total costs of this measure was £1.25m, with the 'high estimate' for total costs estimated at £2.5m. This total cost estimate includes 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.

The impact assessment also assumed that there would be some additional, non-monetised costs for suppliers 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.

Outline of costs, from initial impact assessment:

- Availability of consumption data
  - Suppliers are currently required to visit customers at least once every two years, and as part of this visit a meter reading must be taken. However in practice most suppliers will visit customers much more frequently. Customers are also able to call in suppliers with their own meter readings.
  - Responses to the Call for Evidence and subsequent consultation have suggested that it is already standard practice 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 will be some additional costs for including updated meter readings in the annual statement.
- Consumers rights regarding dispute settlement
  - This option should have limited impact on suppliers as some of the information is already provided on promotional material.
  - There may also be an indirect effect due to a greater number of consumers utilising the dispute mechanism process as a result. However, it is difficult to quantify the costs of this, as we are unable to estimate how many additional customers may use the process.
- The Energy consumer checklist
  - There will be a one-time small cost to Consumer Focus for compiling the checklist, and an ongoing cost of maintaining it. There may be some small costs to industry and Ofgem associated with co-operating with Consumer Focus on the compilation of the list. Ofgem estimates that its costs of cooperating with Consumer Focus on this will be minimal.
  - There may also be costs associated with providing the consumer checklist to customers. We assume that this will be done as part of billing; however there will be additional costs associated with designing, printing and mailing the checklist.
- Record keeping
  - The main cost of this measure will fall on suppliers. There will be a one-time cost for setting up the databases, along with ongoing costs for maintaining them. The Commission will provide more information on how companies will be required to keep the data. It is possible, therefore,

that as a result suppliers may have to create new systems which would potentially be quite costly.

### *Benefits*

- The original impact assessment did not estimate monetised benefits for this measure. Non-monetised benefits were expected to include:
- Availability of consumption data
  - o intended to make consumers better aware of their consumption patterns. This should allow them to regulate their consumption more effectively. This in turn will 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 enable consumers to make more informed decisions when choosing suppliers, while promoting competition in the supply market.
- Consumer rights regarding dispute settlement
  - o intended to improve awareness of dispute settlement mechanisms and improve access to them. This should have a direct impact on consumers who wish to complain through a reduction in search costs. In addition, this could potentially lead to a reduction in market power of suppliers as consumers become better aware of their rights. As industry already complies with this measure, we expect the benefit to be small.
- The Energy Consumers checklist
  - o intended to provide consumers with an easily accessible source of information regarding their rights as consumers. As mentioned above this could potentially lead to a reduction in market power of suppliers as consumers become better aware of their rights. There is, however, a risk that this may lead to information overload and confusion which would limit the benefits of this measure.
- Record keeping.
  - o intended to improve transparency in the retail market in order to facilitate access. As with the previous measures this is intended to improve information and, in turn, competition in the marketplace. By making information available to the regulator this measure is primarily designed to aid with the prevention of abuse of market power.

### **5. Were there any unintended consequences? (Maximum 5 lines)**

Citizens Advice believe there has been an unintended consequence of these Regulations. In particular, the requirement to include the details about dispute settlement on each bill, which can lead consumers to contact the Energy Ombudsman before their complaint is within the terms of reference. In 2018, 50% of contacts to the Ombudsman were outside its terms of reference.

They believe consumers would be better placed to contact Citizens Advice consumer service helpline for support with any complaints or concerns in the first instance. This would reduce the burden on the Ombudsman and ensure consumers are directed to the appropriate support.

### **6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)**

We expect that the burden is minimal, as many of the measures required for compliance were already in place. Stakeholders did not raise any opportunities for reducing the burden on businesses. We believe that there are currently no opportunities for reducing the burden on businesses.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)**

We have not received any information about what is being done internationally and these impacts are modest, it would be disproportionately resource intensive to go out and investigate. However, we believe that EU countries have a similar approach, due to similarities in our energy market structure and legislation.

Ofgem does not monitor how switching processes are implemented in other EU member states, and so cannot compare their approach.

## **Evidence Base**

### **Who is affected?**

- Ofgem
- Citizen's Advice
- The Energy Ombudsman

### **How they are affected**

These measures mainly imposed administrative costs on the energy supply companies and Ofgem.

### **Costs**

**No cost estimates were provided in response to the recent consultation, though the previous 2016 PIR provided the following information: **Availability of consumption data****

- Responses to the initial 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 (as of 2011 PIR) 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. 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**

**No benefit estimates were provided in response to the recent consultation, though the previous 2016 PIR provided the following information:**

- 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 so. Also according to an Ofgem report, the proportion of consumers who are aware of all of their key options to engage in the energy market has increased from 75% in 2014 to 80% in 2016. 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 OS 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 the UK's electricity market as many factors simultaneously affect these. The benefits of the Package are, therefore, highly uncertain.

The lack of monetised costs and benefits is a disadvantage of this evidence base, though it was not deemed proportionate to investigate these in more detail for this Post Implementation Review, as the costs associated with these measures are expected to be small.

Furthermore, the small number of stakeholders involved limits the amount of evidence available to form conclusions.

<b>Title:</b> Licence Modification Appeals  <b>PIR No:</b> BEIS042(PIR)-21-ESNM  <b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a>  <b>Lead department or agency:</b> Department for Business, Energy & Industrial Strategy  <b>Other departments or agencies:</b>  <b>Contact for enquiries:</b> <a href="mailto:vishnu.nair@beis.gov.uk">vishnu.nair@beis.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
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	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> Green

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

The policy introduced a new appeals process against the regulator's (Ofgem) licence modification decisions. The objectives of this new process were to

- Provide a process for affected parties to challenge the regulator's decisions.
- Allow the regulator to make autonomous decisions.

Before the changes, GB did have an appeals process, but improvements were required as:

- 1) The regulator could be prevented from taking autonomous decisions, as they could be blocked by 20% of relevant licensees.
- 2) The appeals 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 effect of these improvements, therefore, should be to ensure that the regulator makes robust decisions that benefit both consumers and industry, whilst maintaining safeguards for effected parties

**2. What evidence has informed the PIR?** (Maximum 5 lines)

The evidence gathered mirrors that of the initial impact assessment (IA) and the previous PIR. We used a questionnaire to obtain qualitative evidence on the level of compliance and impacts of the policy from key stakeholders, including: Ofgem, National Grid and Citizens Advice.

Although there is limited evidence on the impacts of the changes, we consider this approach to be proportionate as:

- This policy has not been contentious, nor has it received significant media attention or concerns from industry.
- The costs of these measures are expected to be small.
- The benefits of these measures are difficult to measure, and the bespoke data collection process required to obtain estimates of these would have been disproportionate given the limited expected costs.

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

Since the new system, Ofgem have made many licence modifications annually, the main changes being:

- Improvement in Ofgem's ability to make autonomous decisions, as affected licensees can now appeal, but not block Ofgem's modifications (before the policy change, Ofgem's ability to make autonomous decisions was limited as firms were able to 'block' modifications if they represented 20% of market share).
- The effective appeal body, the CMA, has informed us that these appeals have been efficient, well informed and dealt effectively with an array of competing interests. Ofgem introduced stronger and more effective licence conditions, whilst still providing an effective outlet to hold these decisions to account.

From the information and evidence, we have collected, we believe that the objectives of this measure are still appropriate as the appeal process is still in place.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021

A handwritten signature in blue ink, consisting of a large, stylized initial 'G' followed by a long horizontal stroke.

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### *Costs*

The monetised costs of this measure were estimated to fall on Ofgem, the CMA, and businesses who made appeals. These parties were expected to incur administrative and legal costs of, respectively, defending, hearing, and making an appeal.

The key assumption underlying the cost estimates was the number of appeals that would be made. The central case assumed that one appeal would be made annually under the new process and 0.3 appeals would be made annually if the old process remained in place instead.

#### *Benefits*

Non monetised impacts were:

- Timely & informed decision making, as Ofgem can make autonomous decisions without direct influence of vested industry views.

On balance, an increase in competition, as removing the asymmetry in who can appeal should help prevent licence modifications systematically favouring large market players.

### 5. Were there any unintended consequences? (Maximum 5 lines)

No unintended consequences have been identified by Ofgem.

Citizens Advice are concerned that an unintended consequence is that the appeals process may favour commercial parties over parties representing consumer interests, such as Citizens Advice. This, in turn, could lead to outcomes less favourable to consumers. This is because parties like Citizens Advice do not have the resources to appeal, or cannot risk the award of costs against them, and so are highly unlikely to appeal in practice.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

No major burdens have been identified for Ofgem or businesses. This measure give industry a chance to appeal against certain sanctions, providing an opportunity to reduce the burden on business. Ofgem's review has revealed that the number of appeals since 2016 has been minimal and that they incur negligible costs from the appeals process. There may be some legal costs to business when deciding whether to appeal Ofgem's modifications. 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. Furthermore, the ability for stakeholders to object to Ofgem's licence modification decisions existed prior to the Internal Markets Regulations. Therefore, the specific effect of these regulations is minimal. No opportunities have been identified for reducing these burdens.

### 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

We have not received any information about what is being done internationally and these impacts are modest, it would be disproportionately resource intensive to go out and investigate. However, we believe that EU countries have a similar approach, due to similarities in our energy market structure and legislation.



We do not monitor the implementation approach to the appeals process of other EU member states, and so cannot compare our approach.

## **Evidence Base**

### Who is affected?

- Ofgem
- Citizen's Advice
- CMA
- The Energy Ombudsman

### How they are affected

This measure:

- Provides a process for affected parties to challenge the regulators decisions.
- Allows the regulator to make autonomous decisions.

### 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.

As mentioned above, the key assumption underlying the initial IA's cost estimates was the number of appeals that would be made. The central case assumed that one appeal would be made annually under the new process and 0.3 appeals would be made annually if the old process remained in place instead.

According to the 2011 PIR, there have been 0.4 appeals annually since the change was implemented, rather than one appeal per year, as assumed in the original IA.

The recent survey found that Ofgem do not centrally collect appeals information. However, from their light touch review the number of appeals has been minimal and should be considered to incur negligible costs when considering the value of the appeals process.

### Benefits

In the impact assessment, monetised benefits were based on avoided costs of the old appeals regime, 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 appeals 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.

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.

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

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. Feedback from businesses involved in the appeal process would have strengthened our conclusions.

The lack of monetised costs and benefits is a disadvantage of this evidence base, though it was not deemed proportionate to investigate these in more detail for this Post Implementation Review, as the costs associated with these measures are expected to be small.

Furthermore, the small number of stakeholders involved limits the amount of evidence available to form conclusions.

<b>Title:</b> Gas Storage and LNG Facilities  <b>PIR No:</b> BEIS042(PIR)-21-ESNM  <b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a>  <b>Lead department or agency:</b> Department for Business, Energy & Industrial Strategy  <b>Other departments or agencies:</b>  <b>Contact for enquiries:</b> <a href="mailto:ben.cook@beis.gov.uk">ben.cook@beis.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> Green

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

At a high-level, the objectives of the parts of the Regulations targeted at gas storage and liquefied natural gas (LNG) facilities were to increase the access to, and transparency of, gas storage and LNG facilities. These changes were intended to enable 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 Regulations should have enhanced investment signals, created greater security of supply, and led to more competitive prices and services.

**2. What evidence has informed the PIR?** (Maximum 5 lines)

Commensurate with the approach taken for the previous Post Implementation Review, evidence was collected via consultation with key stakeholders - Ofgem and National Grid (further details can be found in the 'Evidence Base' section below). As the industry regulator, Ofgem is responsible for monitoring compliance with and enforcing the Regulations, so it was important to gather evidence on monitoring and enforcement costs from them. 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.

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

Evidence collected suggests the policy objectives of the measure have been achieved in GB: technical and economically necessary (TEN) storage and LNG operators are functionally unbundled, and the relevant data outlined is available to the public. Stakeholders suggest the storage and LNG market have greater accessibility, and a much greater level of transparency. It is difficult to quantify the extent to which the measure has enhanced investment signals and led to more competitive prices, though stakeholders are predominantly in agreement that the measure benefits market participants. The objectives of the measure – increasing market transparency and accessibility – remain appropriate as they mitigate market failures with little negative effect.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021





## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### *Costs*

The Impact Assessment assumed an annual cost of £67,000 to the regulator for checking compliance and enforcing the parts of the Regulations targeted at gas storage and LNG facilities. This figure was provided by Ofgem, the industry regulator

The Impact Assessment set out that there may be the 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.

### 5. Were there any unintended consequences? (Maximum 5 lines)

Stakeholders believe that these measures in the Internal Market Regulations have met policy objectives and contributed to improved access to, and transparency of, gas storage and LNG facilities. Stakeholders did not point to any unintended consequences, nor did BEIS' independent research.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

Stakeholders did not identify any opportunities for reducing regulatory burden. As research has uncovered significant improvements in transparency and accessibility, we do not suggest any changes to how the regulations achieve the objectives in a way which reduces burden on business.

**7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)**

As the UK has left the EU, we are no longer legally required to have regard to how EU member states implement EU law on which our energy legislation is based. Nonetheless, we invited stakeholders – particularly Ofgem, the industry regulator – to comment on international comparisons. For this measure, Ofgem noted that most of the European LNG terminals have a regulated Third-Party Access (rTPA) regime in place, with some terminals operating under exemptions (similarly to the three terminals in the UK). Ofgem also noted that, in Europe, third party access for storage is either regulated or negotiated TPA (nTPA). Europe’s larger gas storage nations, such as Germany, France, the Netherlands, Denmark, predominantly operate under nTPA rules. In the UK, most gas storage facilities are exempt from operating under nTPA, with the one notable exception being Hornsea, which has not met the exemption criteria. As the impacts of these regulations are modest, it would be disproportionately resource-intensive to conduct further investigation beyond the information provided by Ofgem.

## **Evidence Base**

### **Who is affected?**

- Ofgem
- Gas Storage Facility Owners
- LNG Import or Export Facility Owners

### **How they are affected**

These measures aimed to enable 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. Below is a list of some of the ways in which LNG and storage facility owners were affected.

In order to qualify for an exemption, facility owners (storage and LNG) must meet criteria set out by the Authority (Ofgem) including an appropriate ‘capacity allocation mechanism’. Amongst other things, this means that they must make their unused capacity available to market participants and do so in a non-discriminatory way. (See section 19DB of the Gas Act 1986 which was inserted by regulation 8 of the Electricity and Gas (Internal Markets) Regulations 2011)

The Regulations also set out ‘unbundling’ requirements for owners of gas storage facilities which do not hold minor facility exemptions. This placed restrictions on certain activities relating to the production, supply, shipping, and sale of gas (See regulation 6 of the Electricity and Gas (Internal Markets) Regulations 2011)

The Regulations also set out requirements for transparency, including that Gas Storage Facility owners must publish a draft of their commercial conditions, or any proposed changes to their commercial conditions, at least two months prior to the final publication date. (See amendments made by regulation 10 of the Electricity and Gas (Internal Market) Regulations 2011)

There are restrictions on the disclosure of some commercial information by the owners of gas storage facilities and the owners of LNG import or export facilities. This means they must take precautions to ensure commercially sensitive information is not disclosed in a way which might discriminate against other market participants. (See section 11C of the Gas Act 1986 which was inserted by regulation 7 of the Electricity and Gas (Internal Markets) Regulations 2011)

The Authority is also required to publish a list of storage facilities that are available under the negotiated access regime. (See amendments made by Regulation 8 of the Electricity and Gas (Internal Market) Regulations 2011)

### Costs

In evidence gathered for the previous Post Implementation Review in 2016, Ofgem, the industry regulator, estimated that the annual costs of enforcing the parts of the Regulation relevant to gas storage and LNG facilities totalled £67,000. This figure included 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. As of 2021, Ofgem state that they no longer track this information for these third parties but expect that any continued costs in these areas would be negligible in comparison to the benefits of increasing market access to, and transparency of, gas storage and LNG facilities.

Ofgem believe that effects of the measures in the Internal Markets regulations relevant to gas storage and LNG facilities on their business and operations during 2016-2021 were less than in the last review period (2011-2016). They put this down to increased business familiarity with the measures and processes in place, resulting in fewer LNG and storage facility exemption requests from the third-party access regime.

Under these measures, storage facilities and LNG import terminals may apply to Ofgem for an exemption from being required to offer access to their facilities to third parties. They highlight that only one application for an exemption from regulated the third-party access (rTPA) regime for LNG was received during 2016-2021. Only one storage facility operates under the negotiated third party access (nTPA) rules, previously there were three. All other storage facilities have an exemption.

The Measures in the Regulations relating to gas storage and LNG facilities required the gas transmission system operator, National Grid, to publish daily stock levels at each GB storage facility. To comply with the regulations, National Grid incurred one-off IT costs associated with complying with this obligation.

The additional operational costs associated with this data publication since 2016 are not material. These consist of manpower costs associated with the resolution of data quality issues which arise from time to time which they resolve either within National Grid Gas or by liaising with the relevant storage operator. Ofgem consider the costs incurred by LNG terminals and gas storage facilities in providing this information to be minimal.

National Grid were not aware of any unintended effects on storage or LNG terminals from the implementation of the Regulations.

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 Regulations. The small number of new measures would have created costs, but the burden is considered to be minimal, especially relative to the benefits.

### Benefits

Ofgem believe that these measures in the Internal Markets Regulations have contributed to improved access to, and transparency of, gas storage and LNG facilities. It is the opinion of Ofgem that facility compliance in granting access to their infrastructure to market participants and publishing daily data on their stock levels have helped facilitate the policy objectives in relation to improving the transparency of data provided to the public and competition in the market. However, they stress that quantifying the benefits attributable to the measures on GB gas storage and LNG terminals is difficult. For example, it is difficult to assess how much of increasingly diverse LNG volumes to GB over the past few years are due to the Regulations, and how much of this is due to other factors playing a larger part in driving these trends. Furthermore, there is no objective evidence available to conclude that this compliance has necessarily led to the quoted policy objectives being achieved.

National Grid noted that, whilst the regulatory principles that the regulations introduced were already in place in GB, there were some new requirements to publish information. In relation to storage, National Grid became obliged to publish daily stock levels at each GB storage facility. They believe that such publication on their Market Information Provision Initiative (MIPI) system has delivered greater transparency in this area which is likely to have been beneficial for GB gas market participants, although they are unable to offer a quantified view.

They also highlight a notable change during the review period from the closure of Rough as a storage facility in 2017, which withdrew a significant amount of storage capacity from the GB market. The additional transparency in prevailing inventories at the remaining storage sites may have delivered greater benefit for GB shippers who subsequently sought to optimise their storage bookings elsewhere.

### **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 GB's 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.



<p><b>Title:</b> Customer right to switch energy supplier within 3 weeks &amp; receive final account closure</p> <p><b>PIR No:</b> BEIS042(PIR)-21-ESNM</p> <p><b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a></p> <p><b>Lead department or agency:</b> Department for Business, Energy &amp; Industrial Strategy</p> <p><b>Other departments or agencies:</b></p> <p><b>Contact for enquiries:</b> <a href="mailto:ben.cook@beis.gov.uk">ben.cook@beis.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Green	

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

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. In addition, higher levels of switching improve the incentives for companies to compete in this market and therefore to offer more innovation and a greater number of products, leading to greater efficiency in the market.

**2. What evidence has informed the PIR?** (Maximum 5 lines)

The level of evidence has sought to mirror that gathered for the initial impact assessment (IA) and the previous PIR. We used a questionnaire to obtain qualitative evidence on the level of compliance and impacts of the policy from the key stakeholder, Ofgem. As the industry regulator, Ofgem is responsible for monitoring compliance and enforcing the Regulations, so they are an important source of evidence for this PIR. Although there is limited evidence on the impacts of the changes, and costs and benefits have not been monetised, we consider this approach to be proportionate as:

- This policy has not been contentious, nor has it received significant media attention or concerns from industry.
- The costs of these measures are expected to be small.
- The benefits of these measures are difficult to measure, and the bespoke data collection process required to obtain estimates of these would have been disproportionate given the limited costs.

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

Data from stakeholders confirms broad industry-wide compliance with this measure. BEIS believes the objectives of the measure – improving the switching process for consumers and fostering market efficiencies – remain appropriate. Ofgem maintain a concern, however, that the objectives could be better achieved with further changes to current switching obligations. Ofgem’s response to BEIS’ request for data from the review period pointed to their business case for ‘Reliable Next Day Switching’, which would obligate suppliers to switch customers – where reasonable – within 24 hours of a request and would introduce a new centralised data service to reduce errors associated with switching. BEIS, however, notes the concerns raised by market participants in response to Ofgem’s consultation on these measures. Ofgem’s response also noted that they do not plan to implement these actions at this time. Ofgem have elsewhere expressed a desire to amend the regulatory

backstop switching period in the standard conditions for the Gas Supply Licence and Electricity Supply Licence from 21 to five working days before a transition to Reliable Next Day Switching. Evidence does suggest, overall, that the objectives of the measure may be better achieved by decreasing the time within which suppliers must – where reasonable – switch customers from 21 days and improving the reliability of data handling when switching consumers.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021

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## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### *Costs*

In the initial IA, 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 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.

Ofgem's decision not to carry out an Impact Assessment in 2021 to accompany their changed enforcement of the supplier licence condition which requires 21-day switching (SLC 14 (A)) on the basis that BEIS's original IA was still valid suggested that the costs and benefits of the regulation did not change in 2021 as a result of Ofgem's changed enforcement regime.

### 5. Were there any unintended consequences? (Maximum 5 lines)

Stakeholders have not raised any unintended effects caused by the obligations of this measure; BEIS' independent research and analysis did not identify anything further.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

Stakeholders have not identified or raised any actions which they believe would reduce the regulatory burden, nor has BEIS' independent analysis. The switching process remains burdensome to consumers, however. Considering this in tandem with BEIS' continued belief that the objectives are appropriate, we do not consider the objectives can be achieved with a system which imposes less regulation

### 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

As the UK has left the EU, we are no longer legally required to have regard to how EU member states implement EU law on which our energy legislation is based. We have not received any information about what is being done internationally and these impacts are modest, it would be disproportionately resource intensive to go out and investigate.

## **Evidence Base**

### Who is affected?

- Ofgem

### How they are affected

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.

### 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

We were not able to obtain any monetised information on benefits 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.

### 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 the UK's electricity market as many factors simultaneously affect these. The benefits of the Package are, therefore, highly uncertain.

The lack of monetised costs and benefits is a disadvantage of this evidence base, though it was not deemed proportionate to investigate these in more detail for this Post Implementation Review, as the costs associated with these measures are expected to be small.

Furthermore, the small number of stakeholders involved limits the amount of evidence available to form conclusions.

<b>Title:</b> Transmission and Distribution Networks  <b>PIR No:</b> BEIS042(PIR)-21-ESNM  <b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a>  <b>Lead department or agency:</b> Department for Business, Energy & Industrial Strategy  <b>Other departments or agencies:</b>   <b>Contact for enquiries:</b> <a href="mailto:ben.cook@beis.gov.uk">ben.cook@beis.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Green	

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

The two main policy objectives of this measure were: to improve the functioning of the energy markets; and to improve security of supply.

This measure amended the applicability rules and certification process for ownership unbundling (which prohibits relevant gas transporters and electricity distributors from certain upstream and downstream activities like production or supply). This amendment was intended to improve market functionality, as was improving the availability of information to potential market participants. Similarly, strengthening the incentives for sufficient investment in transmission and distribution networks was intended to improve security of supply.

GB networks were largely compliant with EU energy law unbundling requirements before the introduction of the measure, and so intended effects were minimal.

**2. What evidence has informed the PIR?** (Maximum 5 lines)

Evidence was collected from Ofgem (the industry regulator responsible for monitoring compliance and enforcing the Regulations), and from National Grid (the GB gas national transmission systems owner and operator). Electricity Distribution Network Operators were offered the opportunity to provide evidence, with one providing a response. Gas Distribution Networks operators (DNs) were also offered the opportunity to provide evidence but did not do so. Similarly, gas and electricity interconnectors were surveyed, with one gas interconnector responding. Ofgem was asked to respond to specific questions on the implementation costs of the regulation, the benefits of the regulation, certifications/applications, and unintended effects (further details can be found in the 'Evidence Base' section below).

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

Transmission and distribution networks were already predominantly unbundled prior to 2011. As the policy objectives were, therefore, already largely achieved before the Regulations were made, the costs and benefits of achieving the objectives may be largely attributable to earlier legislation rather than the changes made by these regulations. However, one Distribution Network operator noted that the separation of the network businesses under the unbundling regulations allows Ofgem to better regulate and compare the performance of each company, leading to better services for customers receiving both better services (e.g. fewer and shorter power cuts) and new efficiencies. The ultimate objectives of the policy – improving market function and security of supply – remain appropriate.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021

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## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

#### *Costs*

The Impact Assessment assumed that there would be some small additional administration costs for Ofgem, the industry regulator, regarding certifying Transmission System Operators in line with the processes set out in the Regulations, enforcement costs or costs associated with facilitating the consultation of system users.

Effects on businesses were expected to take the form of additional administration costs to licensees. In addition to the cost of the licence, it was also believed that 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, the original IA estimated 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, the derogation costs were estimated at £300,000.

Therefore, the total cost of the certification process were 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.

### 5. Were there any unintended consequences? (Maximum 5 lines)

The gas interconnector who responded to the survey noted that operational and staffing costs have increased, but not significantly nor in a manner unexpected. Only one stakeholder noted any unintended effects resulting from the unbundling requirements. This DNO stressed that the monitoring of network companies through regular regulatory reporting on unbundling has introduced additional resource costs, as there is a significant level of information which must be provided to Ofgem on a regular basis. There is also the ongoing cost of doing business with multiple other organisations in the energy sector.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

One Distribution Network Operator encouraged Ofgem to consider providing a derogation under some circumstances where the company is solely or materially only a networks business and where there is a clear benefit for customers, or an efficiency benefit. However, most stakeholders did not note any particular regulatory burdens that they wish to reduce associated with network unbundling requirements and consider the licence-based reporting requirements to be proportionate. Considering this in conjunction with our belief that the policy objectives remain appropriate, we do not think this warrants a change to how the measure achieves its objectives.

**7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)**

As the UK has left the EU, we are no longer legally required to have regard to how EU member states implement EU law on which our energy legislation is based. We have not received any information about what is being done internationally and these impacts are modest, it would be disproportionately resource intensive to go out and investigate.

## **Evidence Base**

### Who is affected?

The changes made in this context to implement the Third Package Electricity and Gas Directives affected existing electricity and gas transmission systems, interconnectors, and the new Offshore Transmission Operators (OFTOs). Further unbundling requirements were also placed on gas transporters, operators of gas interconnectors, electricity transmission operators, and operators of electricity interconnectors.

### How are they affected?

Transmission system operators (TSOs) were required to be unbundled (or independent) from generation, production, and supply interests and to be certified as being so. Other provisions made changes to requirements for certain gas transporters and operators of gas interconnectors, as well as for certain electricity transmission operators and operators of electricity interconnectors to be certified as independent. The first certification ground is that the applicant meets the ownership unbundling requirement, which in turn requires that applicants be subjected to 5 tests. These provisions make changes to the criteria applied by the Gas and Electricity Markets Authority in relation to these tests, giving the Markets Authority more discretion to treat one or more of the five ownership unbundling tests as if it were passed. Exceptions to the applicability of this discretion are also established.

### Costs

National Grid state that they were already subject to unbundling rules prior to the Internal Energy Market Regulations. Following its implementation National Grid were certified as independent of relevant production and supply by Ofgem.

As a consequence of certification, National Grid are required to immediately notify Ofgem of any event that may affect eligibility for certification and they are required to declare annually whether any event has occurred in the last 12 months that impacts on eligibility for certification. Whilst complying with such obligations requires a resource commitment it does not impose a significant cost burden on their business.

Ofgem highlighted that the introduction of the Electricity and Gas (Internal Markets) Regulations 2017 required them to assess all RPoS (Relevant Producers or Suppliers) and not just those located within the European Economic Area. However, they view the impact of this change as minimal.

### Costs of unbundling certification to Ofgem

In a recent estimate, Ofgem estimated its actual cost of Transmission System Operator (TSO) certification to be around £215,000 for electricity and £58,000 for gas. They did not require external legal advice in the 2016-2021 period, whereas their previous estimate for certification costs included this.



However, the number of TSOs that Ofgem certify and monitor has increased, thus overall certification costs have stayed roughly the same as the 2016 estimate. There were no additional costs associated with enforcement as between 2016-2021 since they did not take any enforcement action against TSO's.

Also, there were no administration costs incurred for businesses applying for derogation during this period since none were received.

### Costs of unbundling certification to TSO's and DSO's

Ofgem also confirmed their application fees for TSO's and DSO's increased from between £350 and £1,050 to £3,200 as part of their Supplier Licensing Review implemented in July 2019.

Evidence collected from Ofgem did not confirm the assumption made in the IA that administration costs of making an application could cost between one to twenty times the application fees to applicants. The IA applied these costs to the 25 networks companies assumed to be requiring a transmission ownership certification, with an additional administrative burden to the private sector calculated in the range of £17,500 to about £550,000.

One gas interconnector suggested that operational and personnel costs have increased, though they did not specify by how much, and believe it has not been in a manner unexpected.

One distribution network operator considered that the energy system particularly on the electricity side is more fragmented than it was due to the separation of businesses through the unbundling arrangements specified in the Internal Market Regulations. They highlight how this has required programmes such as Open Networks and the recent Whole Electricity System licence changes to formalise the arrangements by which network companies work together to share data, or cooperate on network upgrades, or other projects.

They also point to Ofgem's recent update to the Prohibition of Generation Guidance (POGG) to include prohibitions on network companies from owning or operating large-scale EV charging networks. This might preclude network companies from providing ancillary services to the GB system operator using network assets, which might make a source of services (in this example EV charging points, or even the privately owned EVs themselves) customers have funded, owned by the DNO, potentially unavailable to provide balancing services.

This DNO stressed that the monitoring of network companies through regular regulatory reporting on unbundling has introduced additional costs, as there is a significant level of information which must be provided to Ofgem on a regular basis. They couldn't quantify the extent of these costs. There was also the ongoing cost of doing business with multiple other organisations in the energy sector, caused by the number of hand-offs involved in each process which is greater than would be required in dealing with one or a lower number of integrated entities. One example is in smart meters, where the parties involved in this process range from meter operators, DNOs (for cut outs, connections to the network etc.), suppliers and meter fitters amongst others. They believe that managing all of these relationships requires resources and costs time and money in coordinating with other organisations, and also in issue resolution costs in the event of things not going to plan.

### Benefits

Evidence sought from Ofgem, and online research has not provided additional insights into the non-monetised benefits deemed to be brought forward by the regulation. There lacks any direct evidence to substantiate the assumption that the Package has been responsible for promoting greater competition and stronger security of supply in networks. These phenomena might have been achieved without these measures.

One of the Distribution Network Operators did suggest that the separation of these network businesses under the unbundling regulations allows Ofgem to better regulate and compare the performance of each company, which leads to a greater focus on efficiency and delivering customer needs from the perspective of consumers. In their view, separating out networks and how Ofgem regulates these has been one of the key successes for customers receiving both better services (e.g. fewer and shorter power cuts) and benefitting from new efficiencies.

They also point to increased innovation resulting from these measures and Ofgem's launch of the GB Network Innovation Funding and Network Innovation Competition, where networks could compete for funding for innovation projects. If successful, these projects could then be rolled out by other networks to the company which developed the solution. It is not clear there would have been as much innovation without Ofgem having introduced these mechanisms, made possible by the unbundling regulations.

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

It is very difficult to assess the benefits of the regulation on market features, however, are likely to be low. This is due to the fact that the regulation was implemented in a market that was already largely compliant with the Package.

<p><b>Title:</b> Provisions to third party access to exempt electricity and gas networks</p> <p><b>PIR No:</b> BEIS042(PIR)-21-ESNM</p> <p><b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a></p> <p><b>Lead department or agency:</b> Department for Business, Energy &amp; Industrial Strategy</p> <p><b>Other departments or agencies:</b></p> <p><b>Contact for enquiries:</b> <a href="mailto:ben.cook@beis.gov.uk">ben.cook@beis.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/11/2021
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	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 09/11/2011
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Green	

**1. What were the policy objectives of the measure? (Maximum 5 lines)**

The ultimate objective of this measure was to protect customer choice. It was also thought that encouraging a competitive market within exempt networks would effectively reduce bills for end-consumers. The measure intended to ensure that third parties (in this instance, utility suppliers), could access, under certain conditions, the electricity and gas networks that were exempt from licencing in order to supply customers. This would allow them to supply gas or electricity to consumers who were interested in changing suppliers but whose choice would otherwise have been limited to those whom the network operator allowed access.

**2. What evidence has informed the PIR? (Maximum 5 lines)**

The level of evidence sought aligns with that undertaken during the 2016 Post Implementation Review of the Regulations. In responding to BEIS' request for data from the review period, stakeholders noted that exemptions make it difficult to provide precise estimates of costs and benefits.

BEIS staff undertook desk-based research, seeking information on policy implementation, market outcomes and the costs/ benefits of the policy from both the system operator (National Grid) and the regulator (Ofgem). It would likely require an extensive data collection exercise to build a more detailed picture of costs and benefits. Moreover, pertinent information such as metering, supply and billing arrangements, are agreed privately on a commercial basis between the end customer and the supplier. This would likely limit the amount of reliable data that could be collected even with a more expansive consultation.

**3. To what extent have the policy objectives been achieved? (Maximum 5 lines)**

The measures were expected to enable a broader range of firms to begin negotiations to supply customers connected to exempt networks. Ofgem approved 9 tariff methodologies for exempt networks before the previous review in 2016 and estimate that they have since received a further 7 such requests (these 7 being from electricity networks only), indicating that exempt networks are actively being utilised by 3<sup>rd</sup> parties. Ofgem also suggest the actual costs to them of approving tariffs/methodologies in providing third-party access to licence exempt networks is likely to be lower than the estimate provided in the 2016 PIR (circa £205k), which was lower still than original Impact Assessment (circa £1m). However, there is not enough evidence to isolate the contribution to the wider market of the third-party access provision to any increases in market competition or retail bill reductions. Nonetheless, protecting customer choice and cultivating market competition remain appropriate objectives.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed:

Date: 16/11/2021

A handwritten signature in blue ink, consisting of a large, stylized initial 'G' followed by a long horizontal stroke.

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

The previous PIR made the following assumptions -

#### *Costs*

- In 2011, Ofgem estimated that the annual cost of having to approve tariffs and methodologies was about £71,000 in current prices (2010) and around £1 million over the period from 2011 to 2030 (present value).
- The total cost of switching was estimated to be £75m in present value terms.

#### *Benefits*

- Competition: The provision of third-party access to private networks may lead to an increase in competition because customers will be able to switch supplier.
- Energy Savings: The Impact Assessment assumed energy savings of 155,000 MWh or 2.55% savings resulting from increased roll out of smart meters.
- Switching Rates: The IA made a switching rate assumption of 13%, consistent with the Ofgem Energy Supply Probe findings for small businesses.

### 5. Were there any unintended consequences? (Maximum 5 lines)

Besides the revised cost to Ofgem estimate noted above, stakeholders have not identified any unintended consequences as a result of this measure, nor has BEIS' independent research and analysis.

### 6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

Stakeholders did not identify any opportunities for reducing the burden on business, nor has our independent analysis identified any changes. We do not consider the objectives could be achieved with a system which imposes less regulation.

### 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

As the UK has left the EU, we are no longer legally required to have regard to how EU member states implement EU law on which our energy legislation is based. We have not received any information about what is being done internationally and these impacts are modest, it would be disproportionately resource intensive to conduct a further study.

## **Evidence Base**

### Who Is affected?

- Licence exempt electricity and gas networks
- Ofgem
- 3<sup>rd</sup> Party Suppliers

### How are they affected?

Owners of exempt networks to whom the Regulations apply are obligated to allow 3<sup>rd</sup> parties (usually gas or electricity suppliers) to use their networks to supply customers connected to those networks. Certain rights of refusal are in place in cases where, for example, a network would have to increase capacity, and where that would be technically unfeasible or come with very significant cost. The regulation also set out the procedures by which an exempt network can charge for access, and the cases in which the exempt network are obligated to make and/or maintain a connection. (See schedule 2AA of the Gas Act 1986, which has been inserted by regulation 20 of the Electricity and Gas (Internal Markets) Regulations 2011)

Exempt networks have 4 options to implement this in practice:

- 1) Commercial agreement: the customer connected to the exempt network's chosen energy supplier enters into a commercial agreement with the network to supply the customer through that network
- 2) Deemed metering: A meter is not installed for the customer; bills are estimated by an administrator in order to charge the customer
- 3) Opt in / Opt out: Customers currently on the exempt network can switch to a supplier of their choosing or default to the status quo. For opt out customers, a full settlement meter is installed.
- 4) Full settlement metering: A full metering system is installed for all customers in the network.

The tariffs charged by licence exempt networks to provide 3<sup>rd</sup> party access should be subsequently approved by Ofgem.

### Costs

Ofgem have had very limited requests to assess use of system charging methodologies for private networks – they highlight how this can be used as a rough proxy for third party access requests to licence exempt networks given their role in approving such tariff methodologies. They estimate that they have had approximately 7 such requests in the period 2016 – 2021 and understand all were electricity networks. The breakdown per year is as follows:

- 2016 – 4
- 2018 – 1
- 2020 – 1
- 2021 – 1

Ofgem approved 9 tariff methodologies for exempt networks before the previous review in 2016.

Evidence collected from Ofgem in 2016 (placeholder here for updated 2021 calculation, pending) showed that the actual costs to Ofgem of approving tariffs/methodologies in providing third-party access to licence exempt networks were £205,238.54 (2010 prices) in present value to 2030, 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 were unable to provide further insights on the total actual cost of switching as the evidence base (see below) is thin.

## Benefits

The key objective of providing third party access to licence exempt energy distribution networks was to ensure energy customers benefit from competition in the energy supply market. Moreover, the expected benefits included energy savings associated with smart meter roll out estimated at around 155,000 MWh, a 2.55% energy consumption reduction and customers switching rate of 13%. The majority of the energy savings is from the large smart meter roll out happening across the United Kingdom.

There remains uncertainty as to whether the regulation has achieved its objectives for two main reasons. Firstly, the evidence base is thin. Licence exemptions make it hard to estimate how many market participants have benefited from access to these networks, the degree to which these networks already provided third party access, the likelihood of customers switching and the potential savings to be achieved. Secondly, the Impact Assessment states that the responses from the call for evidence preceding the consultation on the provision of third-party access<sup>1</sup>, delivered some anecdotal evidence which in some cases varied considerably between stakeholders and for the most part highlighted the limited information about this sector.

Despite a lack of direct evidence on whether the policy objectives have been achieved, we do have some indirect evidence to this effect. Firstly, Ofgem approved 9 tariff methodologies for exempt networks before 2016 and received a further 7 applications between 2016-2021, indicating that exempt networks are actively being utilised by 3<sup>rd</sup> parties (as a tariff is approved to allow a new party to be charged for use of an exempt network)

A legal dispute was also brought by Heathrow Airports Limited in 2014 to settle the matter of whether they, or UK Power Networks Systems (who had been contracted to 'run' the network that Heathrow Airport owned) were responsible for administering third party access claims. This came as a result of the Heathrow Airport Hilton Hotel, which is connected to Heathrow's exempt network, applying for an alternate supplier, showing customers have actively been seeking to change their suppliers as a result of the change.

We conclude, therefore, that 3<sup>rd</sup> parties have been enabled to supply customers on exempt networks. In addition, given that a customer is unlikely to switch unless a better tariff is available, the Heathrow airport case also indicates that bills for at least some consumers on exempt networks might have reduced. However, once again, there is no conclusive evidence

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42570/1163-eu-third-package-gov-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42570/1163-eu-third-package-gov-response.pdf)

to suggest that the intended policy objectives of greater competition, lower prices and energy savings are attributable to this measure.

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

The IA describes the potential costs and benefits of ensuring third party access to licence exempt distribution networks as “highly uncertain”. Indeed, the evidence base for the IA is very thin and the responses from the call of evidence do not seem to converge as described earlier.

The main risk associated with a highly uncertain analysis is the inability to evaluate the extent by which the regulation has achieved its objectives. In particular, the level of opacity around the size of the third-party access in the licence exempt sector is making it very difficult to evaluate the effectiveness of the regulation.