



**REFORM OF OFGEM: CALL FOR EVIDENCE**

Report by Chief Planning Officer

**PURPOSE**

- 1.1 The purpose of the Report is to seek homologation of a response submitted to the UK Government's Call for Evidence on the reform of OFGEM.

**EXECUTIVE SUMMARY**

- 2.1 The Office of the Gas and Electricity Markets, or OFGEM, was established almost a quarter of a century ago as the independent regulator for gas and electricity markets in the UK. The remit of the regulator has expanded over time to encompass broader aims such as supporting government to meet its Net Zero targets. In recent years the energy sector has faced huge challenges with record prices and volatility driven by conflict in Eastern Europe, the collapse of several energy suppliers and the unsatisfactory situation around forced installation of pre-payment meters.
- 2.2 The challenge for the Government is to see an energy market with healthy sustainable competition, where effective regulation supports economic growth and delivers better outcomes for consumers. Restoring the reputation of the energy market is a critical part of this. The proposed review of OFGEM, which forms the subject of this Call for Evidence, will seek to ensure that OFGEM is an effective regulator for the transition to Net Zero and that OFGEM has the remit and capability to help drive the required innovation and investment while effectively protecting consumers and businesses.
- 2.3 This Call for Evidence closed on 28 February so a response had to be submitted between Committee series'. That response is now attached at Appendix 1 for consideration and homologation by the Committee and Comhairle.
- 2.4 The Comhairle's experience with the regulator has been variable. In the Comhairle's opinion, there were long periods when the regulator was not effectively regulating the Monopoly Transmission Owners resulting in a 20 year delay in delivery of a new Transmission Link for the Outer Hebrides. When OFGEM finally came round to authorising the link, its capacity was heavily constrained by OFGEM (450MW) on account of a determination to protect the interests of consumers. In the Comhairle's opinion, this determination contradicted OFGEM's other duties to drive Net Zero and economic growth. For 20 years, the regional Transmission Owner outdanced OFGEM on this issue and there seemed to be no-one regulating the regulator. Thankfully, the Holistic Network Design for ScotWind Offshore Wind took the decision out of the hands of OFGEM and a 1.8GW link was quickly authorised.
- 2.5 The attached response covers other areas of OFGEM's remit including the regulator's poor handling of the current Radio Teleswitch changeover, the meaninglessness of OFGEM's per kWh Price Cap and the cost of electricity in the Highlands and Islands.

**RECOMMENDATION**

- 3.1 **It is recommended that the Comhairle homologate the response submitted to the UK Government's Call for Evidence regarding the Reform of OFGEM.**

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Appendix: 1. Response to Call for Evidence: Reform of OFGEM

Background Papers: None

## IMPLICATIONS

- 4.1 The following implications are applicable in terms of the Report.

Resource Implications	Implications/None
Financial	None
Legal	None
Staffing	None
Assets and Property	None
Strategic Implications	Implications/None
Risk	None
Equalities	None
Corporate Strategy	Supports the Corporate Strategy 2022-2027 ambition to strengthen the local economy.
Environmental Impact	None
Consultation	None

## BACKGROUND

- 5.1 UK Government recently launched a Call for Evidence regarding a review of the Office of the Gas and Electricity Markets (OFGEM.) As the Call for Evidence closed on 28 February, Members are being asked to homologate the response at Appendix 1.

## SUMMARY OF RESPONSE

- 6.1 The Comhairle's response to the Call for Evidence covers a range of issues in terms of how OFGEM carries out its role and how its approach has led to imbalance between the need to protect consumer interest with its duties related to economic growth and achievement of net zero.
- 6.2 The response highlights the need for OFGEM to take a longer term, strategic view to meeting the UKs energy needs, including proactive investment in network expansion in areas of highest renewable energy resource.
- 6.3 It seeks to emphasise a number of regulatory areas where effective intervention from Ofgem could positively impact on consumers in the Outer Hebrides, particularly through allowing geographically restricted tariffs to address levels of fuel poverty in one of the UKs highest areas of renewable energy resource.
- 6.4 Finally, the Call for Evidence has afforded the opportunity for the Comhairle to highlight the looming crisis for island households when the Radio Teleswitching (RTS) network is switched off in June 2025, and the critical need for OFGEM to address this.

## CONCLUSION

- 7.1 The Call for Evidence has allowed the opportunity to raise a number of areas where targeted reform of OFGEM should be focussed to ensure effective planning for the transition to net zero, and intervention to secure more affordable energy for island consumers.

## DESNZ CALL FOR EVIDENCE: REFORM OF OFGEM

### Response from Comhairle nan Eilean Siar

#### Legal Mandate

We are seeking views on what Ofgem's mandate should be.

*OFGEM's current mandate to protect consumers while pursuing security of supply, net zero targets and sustainable economic growth is supported but Comhairle experience is that it is not always delivered in practice. The sustainable economic growth duty is a recent addition and OFGEM evidently struggles to deliver this alongside its other duties. OFGEM has the potential to be a powerful driver of growth across every region of the UK but its focus on the interests of consumers, particularly a reluctance to authorise network investment due to impact on consumers, has led to chronic under-investment in networks and a resulting lag in the journey to Net Zero.*

*While the Comhairle welcomed the authorisation of investment in a Holistic Network Design for ScotWind Offshore Wind and the associated Accelerated Strategic Transmission Investment vehicle, there are real concerns over the elongated timelines being proposed for the replacement of lifeline Distribution links to the islands with some critical resilience investments pushed back by up to 10 years in order to "protect consumer interest". The primary consumer interest for island infrastructure should be the resilience of the local community's electricity supply and not the cost of electricity to energy-secure bill payers across the wider UK.*

*With NESO now in place, misdirected priorities, duplication and regulatory confusion are set to increase. At the moment, Local Authorities and others are being consulted separately on network planning and regulation with little apparent coordination between the two. Without review, OFGEM will continue to be pulled in different directions, reacting to external stimuli and making policy on the hoof. This will not deliver effective strategic direction in regulation.*

#### Duties

We are seeking views on whether Ofgem's duties should be streamlined, and if they should, views on which goals might be prioritised.

*At present, OFGEM does not effectively balance its net zero and economic growth drivers with its historic duty to protect the interests of consumers. Economic growth has become the poor relation, often disregarded in the focus on impact on consumers. It requires significant levels of investment to maintain - never mind upgrade - remote island networks (Transmission and Distribution) and net zero will never be achieved without costly network expansion in areas of high Renewable Energy resource, like the Scottish Islands. There should be an OFGEM dispensation which allows heavy, proactive network investment in these high-yield areas with tighter value-for-money regulation around existing networks in high population / low Renewable Energy resource areas which require no upgrade.*

*It seems to the Comhairle that OFGEM has, to an extent, been taken by surprise by the rapid expansion in Renewable Energy infrastructure required to meet net zero targets. A truly innovative and transformative regulator would recognise that the UK electricity network is now back-to-front and not fit for 21<sup>st</sup> Century purpose. Rather than a system where conventional generation is clustered around major cities in the south with electricity pushed out to the northern periphery along a fragile Distribution network, the UK now needs a system where Renewable Energy generation across the Highlands and Islands of Scotland becomes the new centre, pushing electricity to demand markets in the south. To achieve this transformation, the entire Transmission Network Use of System (TNUoS) regime needs to be turned on its head with generators deploying in the Highlands and Islands incentivised to locate there. OFGEM seems unable to address the current regime where generators in the South of England are paid to generate while generators in the Highlands and Islands face crippling TNUoS charges. Repeated attempts to reform the system have maintained the 'Locational Signal' which OFGEM is so wedded to and, while this remains in place, full and innovative reform of the outdated system will never be achieved.*

*The Comhairle has always been concerned about OFGEM capability to control 'regulated monopolies' like SSEN Transmission. For decades now, SSEN-T have made the running in the Highlands and Islands of Scotland with OFGEM struggling to keep up. Over the 15 years leading up to the ScotWind HND and ASTI, SSEN-T*

*consistently refused to submit a Needs Case to OFGEM for a new Western Isles Transmission Link, at a time when 450MW of generation was consented and ready to connect in the islands. OFGEM were singularly unable to force the issue and SSEN-T continued to run their own show untrammelled. It was not lost on the Comhairle that, meanwhile, SSEN-T investment in a Transmission Link for Shetland, where SSEN were developing its own 450MW Wind Farm, continued apace. Now, SSEN-T are arbitrarily doubling Grid Connection fees for island Wind Farms, placing some of these projects in real difficulty and OFGEM seems powerless to intervene.*

### **Transparency and accountability**

We are seeking views on making more detailed information available about energy company performance and behaviour, and how this might assist other licensees and consumers.

We are inviting views on Ofgem's annual report and the KPIs it reports against, and how to strengthen Parliamentary scrutiny of Ofgem's performance.

*The Comhairle welcomes the publication of more detailed information on energy company performance and behaviour. Parliamentary scrutiny of OFGEM's performance against all of its duties – not just protecting the interests of consumers – should increase.*

### **Skills and capability**

We are seeking views on the capabilities Ofgem needs to be an effective regulator in a more digital, fast-moving sector.

*OFGEM has evidently been caught short by the demands of the energy transition and lacks the capacity to keep up with developments in a rapidly changing energy environment. More agile and innovative network companies, employing the best skills available, are out-dancing OFGEM to the detriment of local communities.*

### **Ofgem's Regulatory Remit**

Does Ofgem have the right regulatory remit? Have you observed harms caused by uncertainty over Ofgem's remit, or by gaps in what is currently regulated in the energy sector?

We are seeking views on Ofgem's role in an energy system that is now, in part, driven by strategic planning following the creation of NESO, in particular, how should regulatory strategy be aligned with strategic energy plans?

*Already answered under Mandate. OFGEM seems to pay lip service to its economic growth duty and the interest of the consumer is always its priority duty. With the emergence of NESO, uncertainty and confusion around the role of OFGEM has increased. The reactive behaviour of OFGEM and the lack of strategic direction will only worsen with NESO in play. Urgent collaboration will be required on the development of a fit-for-purpose UK network where monopoly TO's and DO's are properly regulated and low carbon generation and transmission is not heavily penalised. The 'Locational Signal' which OFGEM is so wedded to will naturally result in generation being built in the least effective resource areas, securing the consumer a short-term benefit in terms of capex. But these Locational Signals act against the location of generation in high-yield areas where the capacity factor can be three times the capacity factor of the southern deployment areas favoured by OFGEM. OFGEM must take a more long term, strategic view to meeting the energy needs of the nation and a constant focus on the interests of the consumer will never deliver this.*

### **Delivering Investment and Innovation in the Transition**

We are seeking views on the role Ofgem should play to support growth and the government's industrial strategy.

What can Ofgem do to increase investment and innovation in the sector?

What might Ofgem do to support an environment of falling energy prices?

What else might Ofgem do differently to support higher growth in the energy sector and wider economy?

Are Ofgem's regulatory processes sufficiently fast, effective and user friendly?

*OFGEM has to be detached from its determination to minimise impact on the consumer before meaningful investment in low carbon infrastructure, skills and innovation will take place.*

*The regulatory burden on networks is growing, code amendments are taking years to deliver, vested interests in the south are preventing low carbon development in the north and OFGEM are unable to match the skill and agility displayed by those it is meant to be regulating. Until all this is addressed, OFGEM will not be the effective regulator required to deliver innovation, sectoral growth and lower prices.*

*Shortly, the Western Isles will be over-generating renewable electricity by a factor of 36 in the interests of UK energy security (peak island demand is circa 50MW while 1,800MW will shortly be exported from these islands to the UK Grid). At the same time, Western Isles electricity consumers face the highest retail prices for electricity in the UK and 80% of island households are in Fuel Poverty, having to choose between heating and eating. The Comhairle, with partners in Orkney and Shetland, is urgently pursuing the idea of a 'Community Tariff' where areas suffering the disbenefit of large scale energy infrastructure (required to support massive renewable electricity export to the UK Grid) and the highest levels of Fuel Poverty in the UK can, in turn, benefit from a discounted geographically restricted, postcode electricity tariff. OFGEM is proving to be impenetrable on this with a process almost designed to make enquirers give up. If a primary duty of OFGEM is to protect consumers, any review of the organisation must make justifiable geographically restricted tariffs an easily achievable reality.*

### **Low Carbon Technologies**

We are seeking views on Ofgem's remit in enforcing consumer law in respect of low carbon technologies, such as heat pumps and solar panels, and what the appropriate boundaries might be.

*The Scottish Islands are facing a crisis when the Radio Teleswitching (RTS) network is switched off in June 2025. There are almost half a million RTS meters in use across the UK and, in the Western Isles alone, 2,714 households rely on an RTS meter for heat and hot water. In June 2025, these households will have their RTS meters deactivated leaving them with power either permanently on or permanently off. The consequences for households are unthinkable. Energy companies seem unable to offer sufficient appointments for swop-out to a Smart Meter and, where some Smart Meters are fitted, they often fail to work because of wider changes in the household electricity system. Also Smart Meters are being fitted in areas where there is no digital network coverage to allow them to work, rendering them useless. OFGEM has a duty to regulate these energy companies and accelerate this rollout but it is not clear, with only four months to go, what OFGEM is doing other than threatening action for the continued installation of RTS meters beyond June 2025. OFGEM must do more to address this existential emergency.*

### **Better outcomes for consumers and more accountability**

The 'better outcomes for consumers and more accountability' section therefore seeks views around increasing accountability and consumer standards in the sector.

*The need for OFGEM to widen its horizon beyond outcomes for consumers is well rehearsed above. In the Highlands and Islands of Scotland only heavy investment in infrastructure will deliver better outcomes for consumers.*

*Island households are paying punitive prices for electricity and becoming Fuel Poor at a time when the islands are leading the UK's energy transition. OFGEM should intervene to ensure that island households are compensated, with discounted electricity, for the disbenefit being experienced through hosting UK National Interest energy infrastructure and the horrors of Fuel Poverty and Extreme Fuel Poverty.*

*OFGEM's Price Cap is designed for areas of modest energy usage. A cap per kWh is fairly meaningless in a region where the number of kWh used is twice the UK average due to high levels of climatic exposure and a challenging housing stock. When the 'average UK home' might be spending £1,800 per annum on energy after the Price Cap, the equivalent home in the Western Isles, with no access to mains gas or preferential tariffs, will be paying £3,600 per annum while, notionally, being protected by the same Price Cap. Any review of OFGEM must address this passive discrimination against remote and island communities.*

### **Improving executive accountability and consumer standards**

We are seeking views on how Ofgem can ensure consumer standards are better represented – for example with reference to other business models within the sector, such as through potentially adopting a 'consumer duty' and 'Senior Management Regime'

*See above.*

### **Enhanced investigatory & enforcement powers to protect consumers**

We are seeking views on Ofgem having enhanced investigatory powers.

We are seeking views on Ofgem being granted enhanced enforcement powers similar to the CMA

*Enhanced investigatory powers are welcome but should not deflect from OFGEM's statutory obligations to deliver Net Zero and economic growth.*

### **Approach to Penalties and Compliance Orders**

We are seeking views on whether the scope and scale of Ofgem's current penalties are set at the right level.  
*No comment. This is something for industry to answer.*

### **Increasing the costs of bad practice**

We are seeking views on the current system of a maximum fine of 10% and whether it should change?  
*No comment. This is something for industry to answer.*

### **Quicker response to emerging issues**

We are seeking views around whether this process should change to make it easier for Ofgem to create new rules to respond to emerging challenges.

We are seeking views on how Ofgem might better respond, or be better equipped to respond, to emerging issues, especially for which there is not already a clear precedent.

*Under current consultation and implementation requirements, OFGEM can take three months to respond to an emerging issue. Faster, more decisive action would obviously benefit consumers. OFGEM's apparent lack of urgency around the planned RTS switch-off in June 2025 demonstrates that quicker and more focused responses are required of the regulator.*

### **Supplier failure**

We are seeking views on how Ofgem might be better equipped to protect consumer interests in cases of (predicted or actual) supplier insolvency and/or financial distress.

*Existing supplier failure measures can ensure no loss of supply but do not always guarantee that "customers are not financially disadvantaged" through drop-out of a supplier. Often, consumers switch to a cheaper supplier and then, when that supplier drops out, the consumer is initially offered a comparable tariff with an OFGEM-selected supplier but this is often time limited and the consumer ends up on a tariff more expensive than the one they switched away from in the first place. More effective vetting and regulation is required to prevent supplier drop-out rather than the current focus on reactive penalties once the company drops out.*

### **Automatic compensation**

Is the current compensation framework in the energy market fit for purpose to protect consumers and ensure they receive a consistent minimum level of service?

Are consumers aware of their rights under the existing compensation framework and are eligible consumers receiving timely, appropriate redress when they do experience poor levels of service?

Are there ways in which the current compensation framework could be improved to better serve consumers? For example, are there specific issues or service areas not currently covered by the existing compensation framework where there is evidence of consumer detriment?

Are there examples of compensation frameworks in other sectors that are worth consideration in the context of the energy market?

How should Ofgem drive energy suppliers to go beyond minimum levels of service and deliver high standards of customer service?

*The Comhairle has limited experience of compensation schemes so is not well placed to comment.*

### **Energy Ombudsman**

We are seeking views on whether there are changes that could be made to the model under which Ofgem appoints the Energy Ombudsman, to strengthen the Energy Ombudsman's ability to resolve consumer disputes.

*In addition to an Ombudsman for dissatisfied consumers, there should be an escalation process for Local Authorities and communities frustrated by the activities of the regulator. We are told that there is recourse to Government but OFGEM is supposedly independent of Government so who regulates the regulator? There have been many instances over the past 20 years where inaction or misplaced priorities from OFGEM have disadvantaged the development aspirations of the Western Isles but there has been no recourse for affected communities.*