

A statement by:

CAA

OFTEL

OFGEM

OFWAT

ORR

OFREG NI

**Water Industry Commissioner
for Scotland**

STATEMENT BY CAA, WATER INDUSTRY COMMISSIONER FOR SCOTLAND, OFTEL, OFGEM, OFWAT, ORR AND OFREG NI

Introduction

1. Those appointed by Government to regulate the utilities and other industries in the UK face many similar issues. Since their establishment in the 1980's the utility regulators have liaised on a range of issues through both formal and informal channels. In October 1999 the regulators issued a joint policy statement setting out their commitment to more formal and extensive joint working arrangements. Since then the Civil Aviation Authority and the Water Industry Commissioner for Scotland, have joined in these arrangements. The Postal Services Commission has also been invited to participate.
2. The regulators undertook, in October, to report periodically on what has been achieved and what further work is planned. This is the second joint statement by the regulators.

Importance of joint working

3. Although utility regulation is maturing, the nature of the industries which are regulated is not static. Patterns of ownership and business structures now cross boundaries between the sectors and new ways of relating to customers are beginning to emerge. In such circumstances it becomes ever more important for the regulators to work together and to be both consistent and transparent about the similarities and differences between sectors.
4. The Government has indicated the importance of joint working and this was reflected in the Utilities Bill introduced in 1999. Although the Bill was later reduced in scope to cover energy only it flagged up clearly the Government's interest in a consistent approach to Regulation. The Government has also indicated that it is likely to reintroduce a number of the provisions dropped from the Utilities Bill in subsequent legislation such as the proposed Water Bill. Ministers have also published draft guidance on social and environmental issues to which the energy regulator should have regard. Guidance has also been issued to the water regulator under the Water Industry Act 1999.
5. Under the Competition Act 1998 most utility regulators were given major new powers of investigation and enforcement in relation to anti-competitive agreements and conduct. In the regulated utility sectors these powers are exercised concurrently with the Office of Fair Trading. The regulators have worked together and with OFT to ensure the effective implementation of the Act.

6. Although there are many similarities between the various regulated sectors, there are also statutory, economic and structural differences which need to be recognised. Meetings of regulators offer valuable opportunities to share experience and learn from each other where that is useful. However, not all issues will be of equal relevance or significance to all regulators. The joint working groups are thus open to all regulatory offices to attend but regulators may choose which to be actively involved in.
7. This joint policy statement focuses chiefly on joint working between the regulators. There is also regular contact between the regulators, the OFT and the Competition Commission.

Meetings of the regulators

8. The regulators meet 5 times each year at the different regulators' offices, The Chair rotates between regulators at each meeting and the secretariat is provided by one office for a twelve-month period – currently Ofwat. Regular agenda items have related to Government proposals for new legislation, reports from working groups, and updates on important regulatory developments in each sector.

Issues common to all the regulators

i) The Competition Act

9. Under the Competition Act 1998 most utility regulators (Office of Telecommunications (OfTel), Office of the Rail Regulator (ORR), Office of Gas and Electricity Markets (Ofgem), Office of Water Services (Ofwat) and Office for the Regulation of Electricity and Gas - N Ireland (Ofreg NI), have concurrent powers, with the Director General of Fair Trading, to investigate anti-competitive agreements or abuses of dominant market position. These regulators are members of a Concurrency Working Party (CWP), which facilitates a consistent and co-ordinated approach to the exercise of their functions where appropriate under the Act. The Civil Aviation Authority (CAA) and the Water Industry Commissioner for Scotland (WICS) also attend the CWP as an observer but do not currently have concurrent powers. Guidelines setting out how the provisions of the Act will be implemented in the different sectors have been published jointly with Office of Fair Trading (OFT) by Ofwat and OfTel and are being finalised by Ofgem, ORR and Ofreg NI.
10. Competition issues which arise may be discussed either within the CWP or by the Directors General. The CWP will continue to act as a vehicle for the sharing of expertise and good practice and to provide a forum where issues of common interest can be discussed. It is not, and legally cannot be, a substitute for decisions reserved for particular sectoral regulators.

ii) The Millennium Problem

11. The year 2000 raised business problems for all sectors of the economy. Project managers from the utility and other regulators worked together within the Government's Action 2000 group. The utilities were in the first tranche of organisations, identifying ways to approach the problem and the need for independent verification of the utilities' work to secure essential services. The utilities were amongst the first to introduce the "traffic light system" and to achieve "blue" status indicating that they were fully prepared for year 2000 issues. The regulators attended a joint hearing with the Public Accounts Committee on Year 2000 issues and gave presentations to other sectors on good practice at the National Infrastructure Meetings and other seminars co-ordinated by Action 2000.

iii) Administration, Human Resources and Training Issues

12. The relevant Directors of administration, finance, IT and human resources meet approximately every 4 months. One of the main outputs of this contact was the joint development of early training programmes on competition issues. Arrangements for the broader extension of training on competition is being taken forward by individual offices to suit their particular needs. Other opportunities for joint training or staff development through secondments or other means will be kept under review. Other issues which are jointly discussed include the development of IT systems and the introduction of resource accounting as required by HM Treasury.

iv) Communications

13. Effective communication with stakeholders is important to all regulators. The regulators have now established a communications group to share information on forthcoming events and announcements and to promote best practice in communicating with stakeholders. One area in which such an initiative is expected to prove valuable is in the development of accessible and informative web-sites for the regulatory offices.

Other Areas of joint working

14. The following areas of joint working have a lead Office. Other Offices with an interest are also identified. Reports on achievements to date and plans for further work are appended.

v) Best practice principles for multi-utilities regulation (Ofwat)

15. Ofgem and Ofwat have worked together on issues of corporate governance, ring-fencing and transfer pricing in respect of Hyder and United Utilities. More recently the two Offices have issued joint consultation papers on proposals for the takeover of Hyder.

16. In the future there is likely to be a need to focus more on issues arising from the development of ideas for new corporate structures such as mutuals (on which Ofwat and Ofgem have recently published views). Other issues will include the implications for customer service of new structures and approaches to the joint provision and/or sale of utilities and other services.
- vi) Procedures and criteria for testing transition from pre-competitive to competitive markets (Ofgem)
17. The approach to regulation needs to take account of the development of competition in each regulated industry. As competition develops at a different pace in each sector there is the opportunity for regulators to learn from each other's approach to assessing the development of competition and determining the type of regulation that should be applied (or discontinued) as competition develops. Since initial work in 1999 on a paper outlining an approach to assessing competition, the regulators have focussed on developing the guidelines for the implementation of the Competition Act. The group will return to these issues later this year with a view to issuing a joint consultation paper in early 2001.
- vii) Best practice in compilation and dissemination of comparative price information (Of tel)
18. Reliable and transparent comparative information on prices is important in helping consumers make informed choices between competing suppliers. This Group was set up to share best practice especially in the dissemination of information to customers. Work to date has focussed on a review by Of tel of the usefulness to customers of the information which it provides. This has led to the development of a draft guide on best practice, which is now being discussed with other regulators.
- viii) Best practice on service delivery standards (Ofwat)
19. The Government's utility review recommended that the regulators jointly consider their practice in setting service standards. This joint working group has reviewed the similarities and differences between the service measures and standards in place in the various sectors and identified areas where joint approaches might be useful.
- ix) Regulatory accounting (Ofgem)
20. The Government suggested, in its review of utility regulation, that there would be benefit in companies producing regulatory accounts in a more standardised format to facilitate a wider understanding of regulatory issues. The working group on regulatory accounting is considering the work currently underway in the different regulatory offices with a view to identifying issues where a more co-ordinated approach may be appropriate. A joint consultation paper will be issued later in the year.

x) Price control and cost of capital

21. Price reviews have recently been completed and are still underway across a number of the regulated industries. Issues such as the cost of capital and financing are central to price reviews in all sectors and regulators' decisions will naturally be scrutinised and compared by companies, particularly multi-utilities, and others. Through this working group and other working level contacts the regulators have jointly discussed the principles and approach to a range of financial issues. This allows for agreement to be reached where appropriate and for an understanding of the reasons for any differences in approach between different sectors.

xi) Environmental and Social Issues

22. The Government has recently issued Guidance to Ofwat (under the WIA) and in draft to Ofgem under the Utilities Act. This guidance set out those issues to which the Government considers the regulators should have regard in carrying out their duties. A new working group has been established to consider further the implications of such guidance for regulatory decisions.

Further Joint Working

23. This paper addresses the current programme of joint working. Other issues will be addressed as they arise and where necessary groups established to tackle them. Updates will be issued jointly by the regulators at intervals as appropriate.

INTER-REGULATORY WORKING GROUP

Title: Testing the transition from pre-competitive to competitive markets

Lead regulator: Office of Gas and Electricity Markets (OFGEM)

Lead Official: Nick Fincham,
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Membership of working group:

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Katherine Russell	WICS

Rationale for Joint Work:

Competition is developing at different speeds and in different ways in the regulated industries, in response to the different statutory obligations faced by regulators and following the implementation of the Competition Act 1998 on 1 March 2000. A number of regulators are assessing the development of competition in their industries to inform decisions about the scope, form, level and duration of future regulation of competitive markets.

The aim of the group is to develop a framework, recognising relevant differences between industries, within which competition in the regulated industries can be assessed to determine how well it has developed and to inform regulatory decisions.

Work so far:

So far the group has:

- reviewed regulators' current approaches to assessing competition;
- developed a draft paper describing possible stages (pre-entry, pre-competitive, established competition and effective competition) in the development of competition, by reference to the nature of market conduct and the type and extent of regulatory controls; and
- contact was made with the DTI, OFT, DETR, and HMT to recognise their interest in the project and to keep them informed of progress.

Future work:

After discussions with all the regulators and OFT, it was agreed that this work should be completed after all the Competition Act 1998 guidelines had been issued, later this year. This was to ensure that the paper was broadly consistent with the guidelines and to recognise the large amount of resource required from the regulators to develop the guidelines.

Towards the end of this year, Ofgem will re-convene the group to develop a paper for external consultation by March 2001.

INTER-REGULATORY WORKING GROUP

Title: Best Practice in Compilation and Dissemination of Comparative Price Information

Lead Regulator: Office of Telecommunications (OFTEL)

Lead Official: Geoff Delamere
Customers and Markets Unit

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Membership of Working Group:

Geoff Delamere	OFTEL
Karen Metcalfe	OFTEL
Fran Gillon	OFGEM
Anna Hayes	OFWAT
Jim Mulholland	WICS

Rationale for Joint Work:

As a result of the Utilities Review and Government requests in the White Paper, the Director Generals of the regulatory bodies Ofgas, Offer, Ofwat, and Oftel agreed to publish a joint work programme on Best practice on compilation and dissemination of comparative price information.

It was agreed by the regulators that there is a need to facilitate the publication of comparable pricing information for the consumer to help them make a more informed choice when selecting a utility supplier. Both Offer and Ofgas through MORI research confirmed public demand for comparable pricing information.

It was agreed that the regulators should review the information currently available to identify good practice. Customers' awareness of the information and their views on its usefulness should also be considered.

Work so far:

As reported in October 1999 the regulators summarised their various approaches to making available comparative price information. Actions completed since then include:

- new bi-monthly gas, electricity and dual-fuel pricing factsheets being produced by Ofgem and placed on its website and widely distributed and publicised.
- Ofgem has issued for consultation, a draft specification of minimum standards of independence and accuracy that price comparison services should meet before they could be recognised by Ofgem.

- Oftel has reviewed customers' views on industry price comparisons launched in December 1999. Users reported them to be useful and easy to use. 3 in 4 consumers said they would use the service again and over 4 in 5 wanted to see monthly or quarterly updates.
- Oftel has produced and circulated to other regulators a guide on best practice for compilation and dissemination of comparative price information.
- Ofwat has approved every company's charges scheme ensuring that metered and unmeasured charges are set out clearly and that the new provisions of the Water Industry Act 1999 are properly reflected.

Future Work:

- Ofgem will further develop its approach to recognition and monitoring of independent price comparison services.
- Further development of an Energy Cost Index will be undertaken by Ofgem with suppliers and customers.
- Ofgem will research customers' views on how easy it is to compare prices. It will consider how to monitor and get feedback from customers using the price comparison factsheets and website.
- The regulators will jointly consider the extent to which Oftel's best practice guidelines apply in other sectors

INTER-REGULATORY WORKING GROUP

Title: Best Practice on Service Delivery Standards

Lead Regulator: Office of Water Services (OFWAT)

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Membership of Working Group

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Rationale for Joint Work:

There is a strong case for regulatory offices to liaise on issues of common interest, and for them to share best practice. A paper review of regulators' current practices in setting service standards, monitoring company performance and publishing information for customers revealed significant common elements, but also some differences.

The aims of the group were fourfold:

- to consider what service measures and standards could be extended;
- identify the potential for benchmarking service standards;
- identify essential requirements for securing reliable information from companies; and
- consider how to make published information more accessible.

Work so far:

Broad agreement has been reached on several matters:

- Ofgem should develop measures of network performance for the gas industry, and publish the information.
- An ease of telephone contact measure for the electricity and telecoms industries should be developed.

- All regulators, or their respective consumer councils, should publish comparative information on the number of customer complaints received by them.
- All regulators, or their respective consumer councils, should secure and publish information on customer satisfaction with services provided.
- Regulators operating in non-competitive markets should look into the possibilities of benchmarking service measures internationally.
- Where defined standards exist, companies failing to meet these standards should be subject to regulatory action and that such action should be publicised.
- Independent validation of data is required to ensure the reliability of information provided by regulated companies.
- All published reports should include a summary table similar in scope to the Which? style table used in Ofwat's report.
- All published reports should be made available on the Internet.

Future Work

The Group will, in the short to medium term, monitor the implementation of the above recommendations. In the longer term we will look to develop ideas on linking price control to service performance building on the work undertaken by Ofwat and Ofgem during the recent review of price limits, and Ofgem's current Information and Incentives Project.

INTER-REGULATORY WORKING GROUP

Title: Regulatory Accounts

Lead Regulator: Office of Gas and Electricity Markets (OFGEM)

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Membership of the working group:

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Rationale for joint work:

The Government's Green Paper on utility regulation 'A Fair Deal for Consumers' suggested that there would be benefits in companies producing regulatory accounts in a more standardised format. In particular this would facilitate wider understanding of regulatory issues.

It is clear that Joint Working by the regulators on regulatory accounting issues is extremely useful. In addition to benefiting from improved communication, we are also identifying areas where high level consistency can be achieved.

Work so far:

- background paper produced on the main issues;
- working group set up and discussing the issues; and
- initial thoughts paper circulated in May 2000 to the DGs.

Initial Thoughts Paper

The key themes of the initial thoughts paper are that:

- there is broad agreement between regulators on the principles underlying regulatory accounting arrangements;
- best practice can be achieved by learning from each other;
- the working group has started to identify areas where a consistent approach can be taken e.g. on publication issues and audit; and
- most regulators are also currently reviewing the adequacy of their sector specific regulatory accounting requirements. Co-ordinating this work within a common UK regulatory accounting framework has clear advantages.

Future Work:

- consultation document to be published in August 2000;
- final proposals published in November 2000; and
- implementation of revised arrangements during 2001.

It is envisaged that the working group will continue to meet:

- during the implementation process, to ensure that it goes smoothly; and after implementation, in order to discuss matters of common interest as they arise and identify issues where collective action would be appropriate.

INTER-REGULATORY WORKING GROUP

Title: Price Control and Cost of Capital

Lead Regulator: Office of Water Services (OFWAT)

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Rationale for Joint Work:

There is a strong case for regulatory offices to liaise on issues of common interest during price reviews. The regulated companies will, naturally, compare the decisions of regulators on common matters, such as the cost of capital and approach to financing. Such comparisons will be particularly pertinent for the multi-utilities.

Regulated companies will also consider whether to appeal to the Competition Commission on their price determinations and regulatory consistency will aid the Commission.

The aim of the group is to agree principles and the approach to financial issues, not necessarily to agree precise numbers, since these may vary according to the different characteristics for the respective industries.

Work so far:

Broad agreement has been reached on a number of matters:

- the interpretation of regulators' duties to secure that companies are able to finance the proper carrying out of functions, including the interaction with judgements on efficiency;

- the degree to which regulators should take account of the financial position of other group companies as well as of the licensed holding companies;
- the approach to the assessment of the cost of capital, including the use of various finance theory models and the degree to which market evidence should be taken into account;
- the role in such assessments of a principle of financial efficiency;
- the approach to the assessment of financial viability or bankability of companies, including the weight to be placed on financial covenants;
- the role and designation of key financial indicators and their broad values; and
- the interaction between regulators' actions and the market's assessment of the creditworthiness of companies, for example, by rating agencies.

Future work:

The group has been broadened to include the CAA. The current focus is on the following reviews of price controls:

- National Grid by Ofgem (Proposals September 2000)
- Railtrack by ORR (July 2000)
- Transco by Ofgem (Consultation 2001)
- Outcome of Competition Commission references on price controls of Sutton and East Surrey Water and Mid Kent Water (Ofwat). (September 2000)

INTER-REGULATORY WORKING GROUP

Title: Environmental and Social Issues

Lead Regulator: Office of Gas and Electricity Markets (OFGEM)

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Rationale for Joint Work:

To explore common areas between the regulators' approaches to social and environmental issues; to share information; and to identify opportunities for joint work.

Work so far:

The main conclusions of the group's first meeting were as follows:

1. On the environmental policy side there are significant differences between the industries in terms of their environmental impact. The Government's policy of setting the overall framework of environmental policy, within which utility regulators should operate, is helpful. This is an area where regulators may be able to co-ordinate with one another.
2. The Environment Agency has an important impact on the utility companies. The organisation and role of the Agency is due to be reviewed, and regulators should consider whether to co-ordinate an input to this review.
3. In terms of price control arrangements, in water the index of overall performance provides a link between the companies' environmental and other performance and their allowable revenue. Ofgem, in developing its Information and Incentives Project for an output - based system of price regulation for gas and electricity, is looking at the approaches taken by other regulators.

4. The Energy Efficiency Standards of Performance schemes set by Ofgem and Ofreg have close similarities. Sharing experience at working level is helpful and should continue. Ofwat and Ofgem agreed to discuss the Energy Efficiency Standards, to identify possible lessons for promotion of water efficiency.
5. On social issues, social exclusion, methods of payment, avoidance of disconnection, and service to vulnerable customers are important common areas for regulators.
6. The impact for water companies of the Government's decision to ban disconnections is of interest to other regulators. Disconnections are high in telecoms, but the electricity and gas industries have been able to reduce them substantially by the use of prepayment meters. With increasing pressure on costs, dealing effectively with debt remains a key issue for utilities. The development of new low cost payment methods, including increased use of direct debits through wider availability of bank accounts, and the potential role of credit unions, are developments in which utilities should be playing an active role.

Future Work:

The Working Group agreed it would be helpful to meet again early in 2001 and to review the following issues.

- The seven research projects being undertaken by Ofgem under its Social Action Plan.
- Oftel's research into reasons for non-payment
- Ofwat's experience of the ban on disconnection of households for non-payment
- Low user tariff arrangements (currently under consideration by Ofwat).