



Information Paper on clarification changes and updates made to the Energy Supplier Marketing Codes of Practice in Northern Ireland (Business Customers)

UR Information Paper
January 2020



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



Abstract

This information paper sets out clarifications and amendments to be made to the Utility Regulator's (UR) Energy Supplier Marketing Code of Practice for Non-Domestic Customers. There are some other minor changes including several new definitions within the glossary. The changes have been tracked for ease of reference and a clean copy is also being made available. The changes are to mirror those changes made to the domestic marketing code in 2017 which were required as a result of various issues which arose due to different interpretations of cross referencing etc This Code of Practice applies to all electricity and gas suppliers in NI who supply Non-Domestic Customers.

As stated these changes are largely a housekeeping exercise and will bring in to line the Marketing Code of Practice for Non-Domestic Customers to that of Domestic Customers, which was similarly updated in September 2017.

The changes to the Code are mainly for clarification purposes only. For example there is no longer cross referencing between the different sections of the Code. However, there has been an extension in the length of time some information needs to be held for, such as telephone recordings and information to identify a sales agent. This has been extended from 6 months to 2 years. The current Section 6 'Website/Telephone' has been split into separate sections to deal with inbound telephone marketing and sales and website marketing and sales separately. Suppliers should already be compliant with the Code, but in relation to the extension in time required to hold information, will have 3 months from the publication of this paper.

The updated version of the Marketing Code of Practice for Non-Domestic customers and a tracked change version of same are attached as appendices.

Audience

This document is most likely to be of interest to regulated supply companies in the energy industry, consumer organisations, government and other statutory bodies.



Consumer impact

The clarifications and amendments made to the Code will help ensure that there are no misinterpretations of what the Code requires of energy suppliers and should therefore have a direct beneficial impact on the customer sales experience in NI, with all suppliers of energy being compelled by their licence obligations to comply with the Code. Failure to do so will result in a licence breach and possible enforcement action.



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Appendix I: Marketing Code of Practice for Non-Domestic Customers- Track Changed Version

Appendix II: Marketing Code of Practice for Non-Domestic Customers



1. Introduction

- 1.1. The Implementation of the EU's Third Package of energy market Directives (IME3) resulted in licence modifications to energy supplier licences which required their compliance with a new Supplier Marketing Code of Practice. This requirement was added to condition 40 in electricity supply licences and condition 2.21 in gas supply licences. The Directive called for a "high level of customer protection" and the UR felt to achieve this it was appropriate to install a mandatory code of practice to guard against mis-selling to customers (especially in doorstep/face to face selling situations).
- 1.2. The process for the development and consultation of the Marketing Codes of Practice ran throughout 2013 and 2014. The Marketing Codes of Practice were developed for gas and electricity domestic customers as well as small business customers. The threshold for application to business customers is less than 732,000 KWhs in gas. The threshold for application to business customers is less than 70kVA or an annual consumption less than 150MWh in electricity.
- 1.3. The process included extensive and detailed engagement with stakeholders:
 - February 2013 -First Consultation;
 - February 2013 – October 2013 engagement with stakeholders through workshop and bi-lateral meetings with stakeholders where requested;
 - October 2013 – Second Consultation taking into account stakeholders' consultation responses as well as feedback gained at the workshop and meetings;
 - March 2014 – Decision Paper and new separate Codes published for domestic and small business customers; and
 - June 2014 – Codes becomes 'live' with suppliers having been given 3 months within which to become compliant.



Update to the Code since coming into force June 2014

- 1.4. After the Codes became 'live' there were a number of occurrences whereby advertising carried out by suppliers appeared to have not been in keeping with the relevant sections of the Code.
- 1.5. In detailed discussions with the companies following this, it became clear that drafting within certain sections within the Codes left some room for misinterpretation.
- 1.6. As a result the Codes (both domestic and small business) were **updated in June 2015** to help alleviate this and make them clearer for suppliers.

Further Update to the Domestic Code in September 2017

- 1.7. Following the June 2015 update a number of ongoing issues came to light in the domestic market.
- 1.8. These occurred in relation to the later sections of the Code. In summary, a number of these sections of the Code referred back to previous sections, as opposed to transposing text in full from those earlier sections.
- 1.9. There was also some suggested ambiguity around some of the requirements on suppliers set out in the domestic Code. An example of this was in relation to total clarity on what type of telephone call needed to be recorded.
- 1.10. To help enhance clarity around the applicability of the Code in various scenarios we separated Section 6 which dealt with both Website and Telephone in the one section into two separate sections which then dealt with Inbound Telephone and Marketing sales and Website Marketing & Sales.
- 1.11. Another issue which came to light related to that information which the code required to be retained by suppliers. It emerged that the period of 6 months was not a sufficient length of time for this information to be retained as, if an issue with compliance came to light, it may have been necessary to analyse information from more than 6 months in the past to properly investigate the issue. A specific example of this was the retention of telephone call recordings. The current domestic code before the review



stipulated that is the retention time was 6 months however other information was being held for a period of 2 years. We were of the view that the length of time for the retention of all required information should be aligned to 2 years to allow for its assessment should a licence compliance issue occur. Therefore this change was implemented as part of the 2017 review of the domestic code.

Update to the Current 2020 Code for Non-Domestic Customers

As stated in the abstract of this paper the UR now intends to make those changes to the current non-domestic code of practice that are necessary to mirror the changes made to the domestic code in 2017. The only one change in terms of an actual obligation will be to hold sales information and telephone recordings for 2 years rather than 6 months. However whilst this is an extension to the current obligation, it is not a new obligation. Suppliers should already be recording telephone calls and holding sales information if they are complying with the Code. Therefore this change means only that suppliers will need to hold that information for a longer period of time.

In summary the changes are to:

- transpose text in order to remove the need for cross referencing of certain sections to avoid any possible confusion or misinterpretation due to that cross referencing as per the 2017 domestic code update
- split into two separate sections for inbound and outbound calls the current section 5 of the non-domestic code as per the 2017 domestic code update
- make changes to or insert new terms in the glossary as per the 2017 domestic code update
- make a change that records of sales must be maintained for 2 years instead of 6 months as per the 2017 domestic code update
- remove all references to legislation as per the 2017 domestic code update



- make a correction to the required formatting of tariff tables from the 2015 business code, which should not have included VAT
- remove one mention of a 'cooling off period' which was included in error in the 2015 code and is not relevant to the non-domestic energy market

How to Respond

1.12. This paper is for information purposes only. It is only in the instance where you believe there may be a factual error or some other technical issue with the changes being made to the code for non-domestic customers that you should contact the UR no later than Friday 28th February 2020 to:

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This document is available in accessible formats. Please contact: Chris Mullan on 028 9031 6622 or chris.mullan@uregni.gov.uk



2. Reasons for the Clarifications and changes to the Code for Non-Domestic customers

2.1 As stated above, the UR Marketing Codes of Practice for both domestic and small business customers became effective in June 2014.

2.2 These Codes were developed through extensive consultation. As discussed in Section 1 the development of these Codes relates to licence condition 40 for electricity supply and condition 2.21 in gas supply licences.

2.3 These conditions state:

“that the licensee shall (and shall procure that its agents or sub-contractors shall) comply with the Marketing Code of Practice.”

The Marketing Code is defined in the condition as:

“the document of that name, prepared and published from time to time by the Authority, relating to marketing activities”

2.4 Since the effective date of the Codes, as discussed in Section 1, there has been one update to both Codes in June 2015. These updates were mainly in relation to cross referencing from one section to another where it could potentially cause confusion. These were amended and both Codes reissued.

2.5 As mentioned in Section 1 there was an additional update to the domestic Code only, in September 2017. That update included the transposing of text as opposed to cross referencing between sections of the Code, clarity on the requirements placed on suppliers with regards to information and how it is stored, the removal of some references to legislation in the Code and the creation of two separate sections on Inbound Telephone Marketing and Sales and Website Marketing and Sales, respectively.

2.6 This latest update to the Marketing Code of Practice for Non-Domestic Customers is an exercise to make those changes to the non-Domestic Code that were made to the domestic Code, which was updated and reissued in September 2017. The differences between the two codes remain the same.