



Approach to Enforcement

Consultation on revising 'Our
Enforcement Policy Approach and
Procedure'



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 paper sets out proposals for revisions to our Enforcement Policy Approach and Procedure. This objective of this document is to create a transparent process which will provide operational certainty for industry whilst at the same time providing equality for all UR stakeholders and market participants. The proposed changes make explicit provision for matters relating to the SEM after the new market when live in October 2018.

The revised **Enforcement Approach and Procedure** document is attached at Annex 1.

Audience

This document is likely to be of interest to regulated companies in the energy and water industry, government and other statutory bodies and consumer groups with an interest in the energy and water industries.

Consumer impact

The introduction of the amendments to our Enforcement Policy Approach and Procedure will bring us in line with other sector Regulators and provide reassurance to stakeholders that we are focused on equality, transparency, legislative and licence compliance.



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Executive Summary

The Utility Regulator (UR) have a number of statutory powers to take enforcement action against a regulated company for breach of licence or a failure to comply with specified legislation.

Although not required by statute, the UR have a published *Enforcement Policy Approach and Procedure* ('the procedure') for the purposes of being a best practice regulator with regards to transparency. It enables participants to know what to expect if they find themselves being investigated or having enforcement action taken against them.

The purpose of this document is to set out for consultation, the changes proposed to the procedure which is appended in Annex 1.

In reviewing the procedure, we wished to ensure that it:

- Continues to be an informative and transparent document which identifies a clear process so that regulated companies know what to expect of the process if they are being investigated or having enforcement action taken against them;
- Is aligned with best practice;
- Stakeholders are incentivised to comply with their obligations and it has a deterrent effect;
- Ensures equality for all UR stakeholders and market participants; and
- Is always up to date and aligned with all obligations for participants.

Aim of the revised Enforcement Approach and Procedure

The UR Enforcement Policy Approach and Procedure was last revised in June 2018. In order to protect consumers in Northern Ireland, it is important that all regulator entities are treated equally in a transparent matter. Therefore, it is appropriate to ensure the procedure includes *all* companies and participants in Northern Ireland to ensure they are all compliant with their licence obligations and other legislation.

At the time of the last revision to the procedure, it did not apply in respect of matters or decisions in relation to the all-Ireland Single Electricity Market (SEM). This was due to the new Integrated Single Electricity Market (I-SEM) which was at that time, undergoing design and implementation. The new I-SEM went live in October 2018.

Now that I-SEM has bedded in and considered as the Single Electricity Market (SEM) once again, it is now appropriate to amend the procedure in order to ensure *all*



companies and participants in Northern Ireland remain compliant with their legislative and licence obligations.

The proposed amended procedure includes the relevant legislation underpinning the SEM, particularly the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (SEM Order) under which it is established.

We would welcome any views on any aspects of the revised Enforcement Policy Approach and Procedure to be submitted to the Market Monitoring Unit no later than **12 noon on 14 April 2023**.

Market Monitoring Unit
Utility Regulator
Queens House
14 Queens Street
Belfast BT1 6ED

marketqueries@uregni.gov.uk

1. Introduction

Purpose of this document

- 1.1 Effective and timely enforcement is of vital importance in order to ensure consumer protection alongside promoting efficient and functioning markets. The Utility Regulator (UR) have a number of statutory powers to take enforcement action against a regulated company for breach of licence or a failure to comply with specified legislation.
- 1.2 Although not required by statute, the UR have a published *Enforcement Policy Approach and Procedure* ('the procedure') for the purposes of being a best practice regulator with regards to transparency. It enables participants to know what to expect if they find themselves being investigated or having enforcement action taken against them.
- 1.3 The purpose of this document is to set out for consultation, the changes proposed to the Enforcement Policy Approach and Procedure document.
- 1.4 The proposed changes to the procedure are explained in section 3 and are highlighted in attached amended document in Annex 1.

Responding to this consultation

- 1.5 Responses to this consultation paper should be submitted no later than **12 noon on 14 April 2023**. Responses should be sent to:

Market Monitoring Unit
Utility Regulator
Queens House
14 Queens Street
Belfast BT1 6ED

marketqueries@uregni.gov.uk

- 1.6 It would be our preference that responses are submitted via email.
- 1.7 Individual respondents may ask for their responses (in whole or in part) not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, we will ask respondents to supply a redacted version of the response which can be published.
- 1.8 As a public body and non-ministerial government department, we are required

to comply with the Freedom of Information Act (FOIA). The effect of the FOIA may be that certain recorded information contained in the consultation responses is required to be put in the public domain. Hence, it is not possible that all responses made to consultations will be discoverable under FOIA, even if respondents ask us to treat them as confidential. It is therefore important that respondents take account of this and in particular, if requesting that we treat their responses as confidential.

- 1.9 This paper is available in alternative formats such as audio, Braille, etc. If any alternative format is required please contact our office and we will be happy to assist.
- 1.10 During the consultation period we are happy to engage directly with any stakeholders on the detail of the proposed changes to the *Enforcement Approach and Procedure*. For this purpose, the Market Monitoring Unit can be contacted at marketqueries@uregni.gov.uk.
- 1.11 Following consideration of the responses to this consultation we will publish the revised version of the procedure on our website. We expect to do this no later than May 2023.

2. Approach to the Review

2.1 In reviewing the procedure, we wished to ensure that it:

- Continues to be an informative and transparent procedural document which identifies a clear process so that regulated companies know what to expect of the process if they are being investigated or having enforcement action taken against them;
- Is aligned with best practice;
- Stakeholders are incentivised to comply with their obligations and it has a deterrent effect;
- Ensures equality for all UR stakeholders and market participants; and
- Is always up to date and aligned with all obligations for participants.

2.2 Our approach to enforcement is driven by our objectives to protect the interests of consumers and ensure companies comply with all of their obligations. Our procedures for investigating any potential non-compliance and deciding to take enforcement action were designed having regard to the 5 principles of good regulation. We aim to be:

- Targeted,
- Proportionate;
- Transparent;
- Consistent; and
- Accountable.

2.3 It is based on these objectives, that a review of our Enforcement Policy Approach and Procedure has been undertaken.

3. Proposed changes to the UR Enforcement Approach and Procedure

Overview

- 3.1 This section provides an overview of the changes we propose to make to the Enforcement Policy Approach and Procedure. The proposed revised procedure is published alongside this consultation in Annex 1.
- 3.2 Aside from the main changes outlined below, there are also minor changes to the procedure for clarity, or to wrap around the main changes. These are highlighted in the proposed document in Annex 1.

Aim of the revised Enforcement Approach and Procedure

- 3.3 The aim of the enforcement procedure is to protect the interest of consumers and to ensure that regulated companies comply with their legislative and licence obligations.
- 3.4 The UR Enforcement Policy Approach and Procedure was last revised in June 2018. In order to protect consumers in Northern Ireland, it is important that all regulated entities are treated equally in a transparent matter. Therefore it is appropriate to ensure the procedure includes all companies and participants in Northern Ireland to ensure they are all compliant with their licence obligations and other legislation.

Inclusion of the Single Electricity Market (SEM)

- 3.5 As outlined, the procedure was last revised in June 2018. At this time, the procedure did not apply in respect of matters or decisions in relation to the all-Ireland Single Electricity Market (SEM). This was due to the new Integrated Single Electricity Market (I-SEM) which was at that time, undergoing design and implementation. The new I-SEM went live in October 2018.
- 3.6 Now that I-SEM has bedded in, and considered as the Single Electricity Market (SEM) once again, it is now appropriate to amend the procedure in order to ensure all companies and participants in Northern Ireland remain compliant with their legislative and licence obligations.
- 3.7 The proposed amended procedure includes the relevant legislation underpinning the SEM, particularly the Electricity (Single Wholesale Market)

(Northern Ireland) Order 2007 (SEM Order) under which it is established.

- 3.8 As the review has highlighted the need for all companies and market participants in NI to be covered, the procedure proposes to remove paragraph 1.7 which states the “procedure does not apply in respect of matters or decisions that are within the jurisdiction of the SEM Committee in relation to the all-Ireland Single Electricity Market.”
- 3.9 The SEM Committee (SEMC) is the governing body, or Authority, under the SEM Order for the SEM. The SEM Order determines the relevant and non-relevant functions of the SEMC.
- 3.10 Under Article 6, sub-section 5 of the SEM Order, and within the Electricity (Northern Ireland) Order 1992, the SEMC do not have the function of Article 8(3) of the Electricity (Northern Ireland) Order 1992 (prosecution of licencing offences). The proposed amendment to the UR Enforcement Policy Approach and Procedure addresses this.

4. Conclusion

- 4.1 We would welcome any views on any aspects of the revised Enforcement Policy Approach and Procedure.

Annex 1 – Proposed revised Enforcement Policy Approach and Procedure document

Published alongside this document.