



Department for the

Economy

An Roinn

Geilleagair

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Consultation on proposed Utility Regulator (Support for Decarbonisation Preparation) Bill

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1. Background

1.1 On 16 December 2021, the Department for the Economy ('the Department') published the Executive's Energy Strategy – 'The Path to Net Zero Energy'¹. The document sets out the long-term vision of net-zero carbon and affordable energy. Delivering it will lead to high levels of energy efficiency, reducing the amount of energy we need, whilst making sure the energy we do use comes from clean renewable sources.

1.2 The Energy Strategy sets out a pathway to 2030 that will mobilise the skills, technologies and behaviours needed to take us towards our vision of net-zero carbon and affordable energy by 2050. In doing so we will make a major contribution to the Climate Change Committee's (CCC)² pathway to net zero carbon by 2050 and Executive's Green Growth Strategy³.

1.3 'The Path to Net Zero Energy' is centred around five key principles:

- I. **Placing you at the heart of our energy future:** We will make energy as simple as possible for everyone in society and develop policies that enable and protect consumers through the energy transition. Affordability and fairness will be key considerations in all our policy decisions.
- II. **Grow the green economy:** We will create new jobs and grow a skills base for the low carbon economy through innovation, support and focusing on our competitive strengths.
- III. **Do more with less:** We will set clear targets, standards and regulations that drive improvements in energy efficiency, provide support to invest in improvements to buildings and help consumers make changes that reduce their energy use.
- IV. **Replace fossil fuels with renewable energy:** We will phase out fossil fuels by growing our indigenous renewable base, supported by sustainable renewable imports and use these to decarbonise power, heat and transport
- V. **Create a flexible, resilient and integrated energy system:** We will create a flexible, smart and digitised energy system that integrates renewables across heat, power and transport, creates value for consumers and enhances security of supply.

¹ [The Path to Net Zero Energy. Safe. Affordable. Clean. \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/energy-strategy)

² [Climate Change Committee \(theccc.org.uk\)](https://www.theccc.org.uk)

³ [A Green Growth Strategy for Northern Ireland - Balancing our climate, environment and economy | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk/green-growth-strategy)

- 1.4 As well as having a strategy to deliver net-zero in the arena of energy the Executive has also set overarching and statutory greenhouse reduction targets. The Climate Change Act (Northern Ireland) 2022 (CCA) has come into force and has a target of at least 100% reduction in net-zero greenhouse gas (GHG) emissions by 2050⁴⁵. Energy accounts for almost 60% of our greenhouse gas emissions⁶.
- 1.5 The Act also sets other sectoral targets including at least 80% of electricity consumption from renewable sources by 2030. There is a legal requirement on all departments to exercise their functions, as far as is possible, in a manner consistent with the achievement of the targets of the Act and carbon budgets set under it.
- 1.6 A carbon budget is the maximum total amount of emissions permitted for a budgetary period and each government Department has a role to play in delivering these. The first three carbon budget periods are 2023-2027, 2028-2032 and 2033-2037. Carbon budgets must be set at a level that is consistent with meeting the 2030, 2040 and 2050 emissions reduction targets.

The Utility Regulator

- 1.7 The Utility Regulator (UR) is responsible for regulating the electricity, gas, water and sewerage industries and for promoting the short and long-term interests of consumers. This paper is concerned only with energy and will not comment on water and sewerage. The UR has a key role in supporting the Department in the delivery of the Energy Strategy and CCA targets.
- 1.8 Its principal objective in electricity is to protect the interests of consumers and in doing so it must have due regard for a range of things including security of supply, the ability of licence holders to finance the obligations that are imposed upon them. Its principal objective in gas is to promote the economic, efficient and coordinated development and maintenance of the gas industry, in doing so it must have due regard for a wide range of things including the protection of consumers and the need for licence holders to finance their obligations and security of supply.

⁴ [Climate Change Act \(Northern Ireland\) 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁵ [The Climate Change Act \(Northern Ireland\) 2022 - Key elements | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk/the-climate-change-act-northern-ireland-2022-key-elements)

⁶ [Energy Strategy - Path to Net Zero Energy | Department for the Economy \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/energy-strategy-path-to-net-zero-energy)

1.9 Its work involves the issuing and maintenance of licences for electricity and gas companies to operate and ensuring that these companies meet relevant legislative and licence obligations. The UR encourages regulated companies to be more efficient and responsive to customers' needs and sets the standards of service which regulated companies must adhere to in their provision of electricity and gas.

1.10 Following publication of the Energy Strategy, and to support requirements under the Climate Change Act (NI) 2022, the organisation began engaging with government to move forward the work required to achieve carbon budgets. This included discussions with the Department on the need to update its vires to equip the organisation with the ability to meet the challenges of the decarbonisation agenda across the energy sector.

1.11 Vires is a legal term that encapsulates the powers and authority granted to an organisation by law. It is these legislative powers by which organisations of statute operate. Black's Law Dictionary advises that:

*'An act is said to be intra vires ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of ultra vires'*⁷

1.12 The UR is restricted in its ability to fulfil a strategic role as regulatory advisor to the Department as the legislative framework underpinning its operation has not been updated to reflect the importance of net-zero and the implementation of the Energy Strategy. While the organisation supports the Department on energy matters connected to decarbonisation, the focussed policy direction, that has resulted from the adoption of the Energy Strategy and CCA, has led to a change in the balance of work to be taken forward by the organisation.

1.13 The energy sector has developed considerably in recent times especially over the last decade with regard to low carbon transition. UR's vires therefore needs consideration within this context, and several stakeholders referred to a potential review when commenting on the organisation's forward work plan⁸.

1.14 A few risks arise a consequence of having insufficient vires including:

- I. Insufficient powers to carry out certain acts.
- II. Regulation through ineffective means such as contracts.

⁷ [INTRA VIRES Definition & Meaning - Black's Law Dictionary \(thelawdictionary.org\)](https://www.thelawdictionary.org/intra-vires-definition-meaning/)

⁸ <https://www.uregni.gov.uk/files/uregni/documents/2023-03/FWP%20202324%20Annex.pdf>

- III. Unnecessary burden and costs as a result of undertaking actions that could be better fulfilled by other organisations.

Current Legal Framework

1.15 The UR is an independent non-ministerial government department governed by a Board of Directors and accountable to the Assembly.

1.16 The UR was established by Article 3 of the Energy (NI) Order 2003. The powers of the UR are, in the main, set out in five pieces of NI primary legislation –

- I. The Electricity (NI) Order 1992 (the Electricity Order) [The Electricity \(Northern Ireland\) Order 1992 \(legislation.gov.uk\)](#)
- II. The Gas (NI) Order 1996 (the Gas Order) [The Gas \(Northern Ireland\) Order 1996 \(legislation.gov.uk\)](#)
- III. The Energy (NI) Order 2003 (the Energy Order) [The Energy \(Northern Ireland\) Order 2003 \(legislation.gov.uk\)](#)
- IV. The Electricity (Single Wholesale Market) (NI) Order 2007 (the SEM Order) [The Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(legislation.gov.uk\)](#)
- V. The Energy Act (NI) 2011 (the 2011 Act) [Energy Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

1.17 The policy direction set by previous Ministers, and by the Executive and Assembly (through the Energy Strategy and CCA) means there is an increased need to prioritise low carbon energy solutions, and support emerging technology sectors, likely at the detriment of fossil fuels. However, there is currently no statutory requirement that explicitly refers to the need to facilitate the low carbon transition. The energy transition brings with it a need to change operation, planning and investment strategies, for regulated parties, and this will need to be reflected in legislation.

1.17.1 For example, the UR's statutory duty under Article 14(1) of the Energy Order is “... *to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.*” The expenditure of resources and finances by the UR in the development of the required low carbon heat solutions could potentially conflict with that Article 14 duty.

1.18 A number of new and emerging areas are considered essential to delivering energy strategy actions and the first Climate Budgets (2023-2027). These include:

- **Offshore Renewables beyond current legislative limits** - In supporting the Department's development of a statutory framework for offshore renewables, the UR is required to consider the details of where and how the electricity grid should be updated to facilitate the introduction of electricity which has been generated offshore;
- **Heat Policy** - In this area UR is required to consider where and how the grid should be updated to facilitate the introduction of low carbon heat systems. This will also involve investment decisions on grid connections, consideration of business price controls, significant technical input and resource planning;
- **Hydrogen** - The Energy Strategy supports the long-term phasing out of gas. To ensure the potential use of hydrogen in the gas network is maximised, there is a need to review existing legislative provision. Hydrogen does not come within the definition of gas in Article 3(2) of The Gas Order (NI) 1996, so activities relating to it are outside the powers of the Order. The route to fully decarbonised gas is uncertain and there is a requirement to work with the gas sector to understand viable pathways.
- **System Services and New Activities** - the UR needs to engage in technical discussions, informing the Department's policy development process, including steps required to licence these currently unregulated services.

1.19 The Department is developing the energy policies that will provide the detailed landscape necessary to deliver its net-zero commitments and objectives within the context of the Energy Strategy and the CCA. This is likely to include new duties and obligations for the UR in the arenas described above, including appropriate arrangements for emerging low carbon technologies. Any new legislation required to accommodate this will be subject to Ministerial and Executive decision and direction.

1.20 However, to facilitate the development of low carbon energy policies essential to fulfilling the first Climate Budgets (2023-2027), and to empower the UR in its role of providing technical opinion and expert advice to inform development of energy policy, an interim legislative step is urgently required.

2. Proposal

- 2.1 It is proposed that a bill is introduced to the Assembly to allow the Utility Regulator to support the Department through the provision of advice, information and assistance, in fulfilling obligations under CCA (NI) 2022, and in its role as regulatory advisor in supporting the development of low carbon energy policy.
- 2.2 The Bill provides a power that the Utility Regulator may provide advice, information or assistance to the Department and a qualified duty that it must, so far as reasonably practicable, comply with any reasonable request.
- 2.3 It has been drafted in this way to allow for different circumstances. Firstly, a power to be utilised as and when the Utility Regulator considers it appropriate to provide advice which might be of assistance to the Department and secondly, a duty which is qualified, i.e. rather than using 'must', to allow for times when the Utility Regulator may be unable to meet a request from the Department, for example when it considers that it has insufficient resource to practicably meet a demand.
- 2.4 The 'Utility Regulator (Support for Decarbonisation Preparation) Bill' is published for consultation and views are sought before it is finalised and introduced to the Assembly for consideration.
- 2.5 Consultation responses will inform the Regulatory Impact Assessment which will be completed and published after the required consultation period. The Utility Regulator has advised that resource costs emerging from the Bill will be funded by license holders. The level of resource will be dependent on nature of work required by the department to support development of energy policies to meet CCA objectives. Initial forecasts indicate 5 FTE staff in the first year following Bill implementation.
- 2.6 The Department intends to bring forward further detailed energy legislation in future years, to provide the Utility Regulator with additional powers in areas dealing with low carbon solutions. This Bill is an essential first step before more detailed energy legislation is progressed.
- 2.7 We consider the proposal to be consistent with the policy direction as set out in the NI Executive's Energy Strategy and Climate Change Act (Northern Ireland) 2022.

3. Views Sought

- 1. Do you agree that legislation should be brought forward, so that the Utility Regulator may provide advice, information and assistance to support the Department in development of energy proposals, policies, strategies and plans, essential to the fulfilling obligations under Climate Change Act (NI) 2022?**
- 2. Do you agree that consideration should be given to amendments to the powers of the Utility Regulator in future legislation, that might be required by the Department, to support delivery of energy net zero policies?**
- 3. Do you have any views on the costs resulting from the Bill being funded by license fees? We are specifically interested to hear the views of electricity and gas license holders.**
- 4. Are there any other issues you wish to raise?**

4. Impact Assessments

Impact Assessments

- 3.1 The proposed legislation is required to facilitate advice, information or assistance between the UR and the Department in supporting development of low carbon energy policies, essential to the energy strategy and climate budgets. These will be subject to full impact assessments. It is not possible to assess these policies at this time.

Regulatory Impact Assessment

- 3.2 A Regulatory Impact Assessment (RIA) is a tool which informs policy decisions. The Executive requires a RIA to be considered, applied and used to support policy development for any new policies, or amendments to existing policies. For any policy that has an impact (positive or negative) on the wider business community in a RIA must be developed.

- 3.2 A high-level RIA was undertaken as part of the development of the Northern Ireland Executive's Energy Strategy – 'The Path to Net Zero Energy'. The strategy will have impacts on the business and voluntary sectors, both positive and negative. However, these impacts could not be identified or quantified given that the energy strategy provides a high-level vision to 2030. The impact of individual policies and programmes that DfE and relevant departments develop under the strategy will be subject to RIA in their own right.

- 3.3 The proposed legislation is required to facilitate engagement between the UR and the Department in supporting development of energy policies essential to the energy strategy and climate budgets. A RIA will take place on emerging individual policies once they have been settled. While it is difficult to forecast requirements, the initial assessment is that the Bill will result in 5 FTEs in the first year, to support development of these energy policies, and this will be funded by license fees. We are seeking views on this as part of the consultation.

Wider Impact Assessments

- 3.4 An Equality Screening exercise was carried out, in line with Section 75 of the Northern Ireland Act 1998, on the Energy Strategy. Through this exercise it was determined that the strategy will impact on the entirety of the population,

irrespective of their religion, political opinion, race, age, marital status, sexual orientation, gender, disability or if they have dependants. The strategy sets out a roadmap to 2030 that includes a range of policy options, which are at an early stage of development.

- 3.5 The proposed legislation is required to facilitate engagement between the UR and the Department in supporting development of energy policies essential to the Energy Strategy and climate budgets. A EQIA has therefore not been undertaken and will take place on individual policies once they have been settled upon.
- 3.6 A Rural Needs Assessment was undertaken on the Energy Strategy. The strategy will have impacts on rural communities, affecting households, businesses and transport. However, these impacts cannot yet be identified or quantified given that the strategy provides a high-level vision to 2030.
- 3.7 The proposed legislation is required to facilitate engagement between the UR and the Department in supporting energy policies essential to the Energy Strategy and climate budgets. All social and economic needs of people in rural areas will be considered as part of future policy development arising from the strategy, and the Rural Needs Assessment completed, as appropriate.
- 3.8 An exercise was undertaken to determine if the Energy Strategy for Northern Ireland required a Strategic Environmental Assessment (SEA), in line with The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004. Given the high-level and strategic nature of the strategy, and the fact that the detail of supporting policies and programmes will be determined at a later stage, it was concluded that an SEA was not required at the time.

Climate Change Act (NI) 2022

- 3.9 Section 30 (1) (c) of the Climate Change Act (Northern Ireland) 2022 states that each Northern Ireland Department must “commission a financial, social, economic and rural impact assessment on the effects of their proposals and policies“. The proposed bill is designed to support the development of policies essential to CCA objectives and these policies will be subject to normal impact assessments as required.

5. How to Respond

4. This consultation is being hosted online at the following address:

[NI Direct - Citizen Space](#)

4.2 The Citizen Space website has been specially designed to be as user-friendly and welcoming as possible for those who wish to complete the consultation. It also allows the Department to rapidly collate results. For this reason, we would particularly encourage anyone who is interested in responding to this consultation to utilise Citizen Space as the method of their response.

4.3 However, if this is not possible, you can respond to this consultation via email at: energy.legislation@economy-ni.gov.uk or you can respond in writing to the DfE Energy Legislation Team address in Adelaide House by 5pm 16th August 2024.

Energy Legislation Team
Department for the Economy
6th Floor
Adelaide House
Adelaide Street
Belfast
BT2 8FD 2.14

4.4 When responding via email or in writing, please state whether you are responding as an individual, or representing the views of an organisation – and if so, please state the name of the organisation. Please quote the following: Consultation Reference: Expansion of Utility Regulator Duties to Support Net-Zero