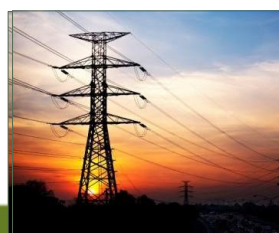


Derogations from Network Codes and Grid Codes / Standards in Electricity Generation, Distribution and Transmission Licences

Decision Paper
17 February 2017



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; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted

Be a united team

Be collaborative and co-operative

Be professional

Listen and explain

Make a difference

Act with integrity

Abstract

A derogation is a direction from the Utility Regulator (**the UR**) relieving the applicant, licensee, or non-licensee from its obligation to comply with a technical standard or code which may be required by a licence or by legislation. Derogations are issued in specific circumstances and have a specified duration. The UR issued a consultation document on 1st December 2016 setting out the proposed process for requesting a derogation along with the criteria that the UR proposes to take into account when considering such requests. This decision paper sets out responses to the consultation. It also sets out the UR's consideration of the responses and the final decision in relation to the derogations process.

Audience

This document will be of interest to Licensees; Distribution System Operators, Transmission System Operators, Network Operators, Generators, Developers, and Asset Owners required to comply with relevant Network Codes, the Distribution Code and the Grid Code.

Consumer impact

Compliance with technical codes and standards is in the interests of electricity consumers, as failure to comply can have a direct and adverse impact on the security and quality of electricity supplied and may have health and safety implications. Requests for derogations from technical codes and standards must therefore be given due consideration and this paper sets out the UR's decision on the process for submitting a derogation request and the criteria upon which it will be assessed.

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Executive Summary

Unless the Utility Regulator (**the UR**) directs otherwise, electricity generation, transmission and distribution licensees are required to comply with relevant Network Codes, the Distribution Code and the Grid Code. There are some parties required to comply with Network Codes who are not licensees and we have used the term “applicant”, when referring to parties (licensees and non-licensees) who may submit a derogation request.

A derogation is a direction from the UR relieving the licensee, or a relevant party (in the case of the Network Codes) from its obligation to comply with a technical standard or code which may be required by a licence or by legislation. Derogations are issued in specific circumstances and have a specified duration.

Networks Codes Regulations¹ place a requirement on the UR to consult on and publish criteria for granting derogations from the provisions of the Regulations. The Network Code on Requirements for Grid Connection of Generators (the RfG) was the first of these codes to come into force on 17th May 2016. The RfG requires the UR to consult upon and publish its criteria for granting derogations to the requirements of the Code within nine months of the RfG coming into force.

As a result, the UR issued a consultation on 1st December 2016 which covered the criteria for consideration of requests for derogations to the RfG, the Demand Connection Code (DCC) and the High Voltage Direct Current Code (HVDC). In this consultation the UR also sought to clarify the criteria and process for granting derogations relating to technical codes and standards which generation, transmission and distribution licensees are obliged to comply with under their licences. The consultation closed on 17th January 2017. Four responses to the consultation were received which are published alongside this Decision Paper.

Next Steps

The UR has considered the responses to the consultation and proposes to adopt the process for submission and consideration of derogation requests which was set out in the Consultation Paper, subject to minor changes which were highlighted by the consultation respondents. A Guidance Document containing the process and criteria will be published on the Utility Regulator’s website alongside this Decision Paper. We will also publish our letter which notifies the European Commission of the criteria, as required by the Network Codes. The new process for submission and assessment of derogation requests will take effect from 17th February 2017.

¹ 1 These Codes are:- The **Network Code on Requirements for Grid Connection of Generators** which can be found at <https://www.entsoe.eu/major-projects/network-code-development/requirements-for-generators/Pages/default.aspx> ; The **Network Code on Requirements for Connection of High Voltage Direct Current (HVDC) Systems and Direct Current (DC) Connected Power Park Modules** which can be found at <https://www.entsoe.eu/major-projects/network-code-development/high-voltage-direct-current/Pages/default.aspx> ; and **The Network Code on Demand Connection** which can be found here <https://www.entsoe.eu/major-projects/network-code-development/demand-connection/Pages/default.aspx>

1. Introduction and Background

- 1.1 Unless the Utility Regulator (**the UR**) directs otherwise, electricity generation, transmission and distribution licensees are required to comply with relevant Network Codes, the Distribution Code and the Grid Code. There are some parties required to comply with Network Codes who are not licensees and in our Guidance Document we have used the term “applicant”, when referring to parties (licensees and non-licensees) who may submit a derogation request.
- 1.2 Compliance with technical codes and standards is in the interests of electricity consumers as failure to comply can have a direct and adverse impact on the security and quality of electricity supplied and may have health and safety implications.
- 1.3 There may be occasions where an applicant assesses that it is not in a position to comply with a particular code or standard, or that the requirements placed upon it by a code or standard may result in an inefficient outcome either in the short or longer term. In these circumstances, the applicant may submit a request to the UR for a derogation from a licence requirement to comply with the relevant code or standard or from an obligation under a Network Code.
- 1.4 The RfG, DCC and HVDC Codes are part of a suite of European Network Codes introduced following implementation of the Third Energy Package.² The European Network Codes seek to deliver a harmonised set of rules for the operation of the electricity sector in Europe. The RfG was the first of these codes to come into force on 17th May 2016. The RfG requires the UR to consult upon and publish its criteria for granting derogations to the requirements of the Code within nine months of the RfG coming into force.
- 1.5 The non-legislative reason for the consultation was so that the UR could also clarify the procedure for derogations from technical codes and standards which electricity licensees are required to comply with under their licences.

² The Third Energy Package consists of two Directives and three Regulations: Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity, Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators.

2 Structure of the Decision Paper

2.1 This paper is structured in the following manner:-

- Section 3 covers the purpose of this paper;
- Section 4 covers the main points raised by consultation respondents and our response to these;
- Section 5 outlines our final decision.

3 Purpose of the Decision Paper

3.1 The UR has considered the responses to the consultation and proposes to adopt the process for submission and consideration of derogation requests which was set out in the Consultation Paper. Some changes have been made to our final Guidance Document to reflect stakeholder feedback. The changes are outlined in Section 4 of this paper.

3.2 The Guidance Document will be published on the Utility Regulator's website alongside this Decision Paper and a letter which notifies the European Commission of the criteria, as required by the Network Codes. The new process for submission and assessment of derogation requests will take effect from 17th February 2017.

3.3 Four responses were received from:-

- NIE Networks Ltd
- SONI
- Renewable Energy Systems Ltd (RES)
- Northern Ireland Renewables Industry Group (NIRIG).

3.4 The responses from the organisation above are non-confidential and have been published on our website along with this paper (www.uregni.gov.uk).

3.5 The paper will discuss the main themes of the responses along with our views and final decision.

4 Consultation Responses

- 4.1 This section summarises the main points contained in the consultation responses. The full response documents are published on the UR's website alongside this Decision Paper.

Stakeholder Comments

- 4.2 NIE Networks Ltd were generally content with the content of the paper but highlighted the need for the UR to inform them as soon as possible if a licensee raised the possibility that it will seek a Network Code derogation. They also wished to be informed of licensees whom had been granted Network Code derogation and are selling their asset.
- 4.3 SONI, RES and NIRIG sought clarification on whether separate derogations would be necessary for a single requirement reflected in both the Grid Code and the Network Code. SONI suggested that efficiencies could be obtained in the longer term through updating the Grid Code process to align with the Network Code process.
- 4.4 RES and NIRIG also sought clarification on definitions used in the proposed guidance document and commented on timescales for assessment of Network Code Derogation requests.
- 4.5 SONI, RES and NIRIG also sought clarification on their understanding of the following statement which appeared in the proposed Guidance Document in Annex A of the Consultation Paper:- "A derogation is granted to an individual licensee and cannot be transferred. Thus, if a non-compliant system or plant item is sold, the new licensee will need to apply for a new derogation."
- 4.6 SONI welcomed confirmation that the process followed to assess and provide derogations from the Grid Code remains unchanged at this time. SONI also highlighted that many Grid Code requirements will also be Network Code requirements and in these cases, they believe the UR should make it clear that derogations must follow the Network Code derogation process.
- 4.7 SONI suggested the UR should set out in detail how each of the informational criteria (environmental costs, increased consumer costs, impact on security of supply, competitive advantage and Government Policy) would be assessed and define rules of proportionality and materiality for the assessments. SONI suggested that without this information the derogation processes lack transparency.
- 4.8 SONI suggested that parties should be asked to provide a cost estimate for works to restore compliance in the case of lifetime derogation requests.

- 4.9 SONI highlighted that their timeframe for providing a connection offer may need to be extended to allow a derogation request to be processed.
- 4.10 SONI also highlighted that there are a number of other provisions under the SONI Transmission licence for applying for derogations and asked if they would be included in the Derogations Guidance Document.

Utility Regulator Responses

- 4.11 The UR is agreeable to NIE Networks suggestions where it is possible to provide this information, subject to the UR having the consent of the relevant stakeholder(s).
- 4.12 In response to SONI, RES and NIRIG seeking clarification on whether separate derogations would be necessary for a single requirement reflected in both the Grid Code and the Network Code, the UR has now specified in the Guidance Document that applicants identify each relevant Code and provisions that they are seeking to derogate from. Separate derogations will be required from each provision.
- 4.13 With regard to RES and NIRIGs comments on definitions and timescales, definitions of relevant terms can be found in Article 2 of the Network Codes which are referenced in the footnotes of the Guidance Document. The timescales for assessment of derogations from the Network Codes are set by the legislation, however when a derogation request is received by the UR we will endeavour to complete our assessment as expeditiously as possible.
- 4.14 The UR has modified the following statement from the Guidance Document in response to SONI, RES and NIRIG's request for clarification:-

"A derogation is granted to an individual licensee and cannot be transferred. Thus, if a non-compliant system or plant item is sold, the new licensee will need to apply for a new derogation",

The UR is aware that the sale of an asset may not necessarily result in a change in the party holding a derogation and as such have clarified the wording of this statement in the Guidance Document to say: -

"A derogation is granted to an individual licensee, or a relevant party (in the case of the Network Codes) and cannot be transferred. Thus, if a non-compliant system or plant item is sold, resulting in the transfer of the item to a new licensee, the UR must be informed so that the derogation can be allocated to the appropriate party".

- 4.15 In response to SONI's request for confirmation that the process followed to assess and provide derogations from the Grid Code remains unchanged at this time, requests to the UR for a derogation from the Grid Code should, from the 17th February 2017, follow the process set out in Sections 2.1 and 3.1 of the Guidance Document.

- 4.16 The UR notes SONI's suggestion that efficiencies could be obtained in the longer term through updating the Grid Code process to align with the Network Code process. It is likely that the Grid Code will be updated to ensure consistency with the Network Codes and as this stage the UR can consider creating a more streamlined derogations process.
- 4.17 The UR also acknowledges SONI's comment that many requirements of a Grid Code will also be Network Code requirements. The UR has clarified in the Guidance Document that where the derogation request is from a requirement that appears in both the Grid Code and a Network Code, the Network Code timeframes for assessment will apply if relevant.
- 4.18 In relation to SONI's suggestion the UR should set out in detail how each of the informational criteria would be assessed, derogation requests will be assessed by the UR on a case by case basis. As such, each criterion may have a different level of proportionality depending on the unique circumstances of that case. Therefore, the UR would be unable to attach a weighting to each criterion. The UR would be unable to further specify the criteria without knowledge of all the circumstances which could potentially arise, resulting in a relevant party requiring a derogation from provision(s) of a particular licence, code or standard. However where possible the UR would expect the assessment to follow the principles, criteria and 10 step approach within the Northern Ireland Guide Expenditure Appraisal and Evaluation.³ In the interests of transparency, derogation requests and decisions, including the reasons for such decisions will be published on the UR's website.
- 4.19 The UR notes SONI's suggestion that parties should be asked to provide a cost estimate for works to restore compliance in the case of lifetime derogation requests, we have clarified this in criterion (f) in Section 2.1 of the Guidance Document.
- 4.20 The UR has provided clarification within the Guidance Document in response to SONI's query on what other licence conditions the Guidance Document applies to. We have said that where derogations occur from other licence conditions not mentioned in Table 3 of the Guidance Document, they will be assessed by the UR based on the principles set out in the Guidance Document, as appropriate. Upon receipt of such requests, if not already furnished, the UR will specify the information required to assess the derogation request.
- 4.21 The UR acknowledges SONI's concern that their timeframe for providing a connection offer may need to be extended to allow a derogation request to be processed. We are agreeable and will be consulting on derogations to connection extension timeframes in the near future.
- 4.22 SONI also sought clarification and further detail on the wording of the process and criteria in general which the UR has accommodated throughout the Guidance Document in so far as is possible.

³ <https://www.finance-ni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae>

5 Decision

- 5.1 The UR has considered the responses to the consultation and proposes to adopt the process and criteria for submission and consideration of derogation requests which was set out in the Consultation Paper. Some minor changes have been made in light of the consultation responses which do not affect the criteria or processes which were consulted upon.⁴
- 5.2 The Guidance Document has been published on the Utility Regulator's website alongside this Decision Paper and a letter which notifies the European Commission of the criteria, as required by the Network Codes. The new process for submission and assessment of derogation requests will take effect from 17th February 2017.

⁴ The UR can provide a comparison document highlighting the changes upon request.