



# **Decision on Maximum Resale Price as it applies to Ultra Low Emission Vehicles (ULEVs)**

31 March 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 paper sets out the Utility Regulator's (the UR's) decision on the application of the Maximum Resale Price (MRP) to Ultra Low Emission Vehicles (ULEVs). The MRP was introduced via a Direction made by the Utility Regulator in 2007 and provides that the reselling of electricity can only be on a cost pass through basis.

The UR published a consultation on this issue on 4<sup>th</sup> November 2019 and this paper discusses the responses and rationale for the UR's decision.

Our decision is to introduce an exemption to the MRP for the resale of electricity where it relates to the propulsion of ULEV's. The revised Direction is published alongside this Decision Paper and takes effect from 31 March 2020.

## Audience

This document is likely to be of interest to regulated companies in the energy industry, government and other statutory bodies and consumer groups with an interest in the energy industry. It will be of particular interest to ULEV owners and charge point operators.

## Consumer impact

Changes to the MRP Direction could impact consumers as the aim of the Direction is to prevent potential instances of overcharging for electricity.



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## Executive Summary

The UR issued a consultation on the 4 November 2019 on the Maximum Resale Price (MRP) as it applies to Ultra Low Emission Vehicles (ULEV's). The UR has the power to set the MRP of electricity through a Direction. Currently the MRP is set on a cost pass through basis (for both unit charges and standing charges) plus VAT at the appropriate rate. The Direction will apply where electricity is supplied by an authorised supplier to a consumer's premises.

Under the current Direction a ULEV charge point could fall within the scope of consumer premises, and therefore the MRP would apply to electricity resold for use in the propulsion of a ULEV. The original aim of the MRP was to protect consumers from being locked into paying prices which the consumer could avoid if purchasing directly from a supplier, for example in rental accommodation or caravan parks.

In the context of energy transition, and increasing uptake of ULEVs, the UR wished to ensure that the MRP Direction is not a barrier to the maintenance and development of ULEV public charging infrastructure. The UR presented two options for consultation with associated questions. These options were:

- no change to the current Direction at present or;
- to amend it to include an exemption for the resale of electricity where it relates to the propulsion of a ULEV.

Following the submission and consideration of a number of consultation responses from a range of stakeholders, the UR have decided to introduce an exemption (referenced as an exclusion in the associated Annex) to the MRP as it applies to the resale of electricity where it relates to the propulsion of a ULEV.

## Acronyms and Glossary

Acronym	Explanation	Detail
CRU	Commission for the Regulation of Utilities	Republic of Ireland's independent energy & water regulator.
DSO	Distribution System Operator	Securely operates and develops an active distribution system comprising networks, demand, generation and other flexible distributed energy resources.
DUoS	Distribution Use of System Charges	A tariff levied on electricity suppliers used to fund the operation and maintenance of distribution assets.
ESB	Electricity Supply Board	A statutory corporation supplying electricity in the Republic of Ireland. ESB own a network or public ULEV charge points in Northern Ireland under their e-cars banner.
GB	Great Britain	England, Scotland and Wales collectively.
MRP	Maximum Resale Price	The MRP was introduced via a Direction made by the Utility Regulator most recently in 2007 and means that the reselling of electricity, for example by a landlord or electric vehicle charge point owner can only be on a cost pass through basis.
NI	Northern Ireland	One of the four countries of the United Kingdom along with England, Scotland and Wales.
NIE Networks	Northern Ireland Electricity Networks	Owens the electricity transmission and distribution network and operates the electricity distribution network which transports electricity to over 860,000 customers.
OLEV	Office for Low Emission Vehicles	A team working across government in the United Kingdom to support the early market for ultra-low emission vehicles (ULEVs).
ULEV	Ultra Low Emission Vehicle	Ultra low emission vehicles (ULEVs) are vehicles that emit less than 75g of carbon dioxide (CO <sub>2</sub> ) from the tailpipe for every kilometre travelled. In practice, the term typically refers to battery electric, plug-in hybrid electric and fuel cell electric vehicles.

UK	United Kingdom	United Kingdom of Great Britain and Northern Ireland.
UR	Utility Regulator	The regulator for the gas, electricity and water industries in Northern Ireland.

# 1. Introduction and Background

1.1 The UR published a [consultation](#) (hereinafter referred to as “the Consultation Paper”) on 4<sup>th</sup> November 2019 which discussed the question of whether or not the [MRP Direction](#) is a barrier to the development or maintenance of ULEV public charging infrastructure.

## The MRP Direction

1.2 The UR has the power, provided by Article 47 (2) of the Electricity (NI) Order 1992 to set the Maximum Resale Price (MRP) of electricity through a Direction. Currently the MRP is set on a cost pass through basis (for both unit charges and standing charges) plus VAT at the appropriate rate.

1.3 The MRP sets the maximum price that a consumer should expect to pay for electricity provided by an authorised supplier.

1.4 The Direction applies where electricity is supplied by an authorised supplier to a consumer’s premises.

1.5 Under the current Direction a ULEV charge point could fall within the scope of consumer premises, and therefore the MRP would apply to electricity resold for use in the propulsion of a ULEV.

1.6 The original aim of the MRP was to protect consumers from being locked into paying prices which the consumer could avoid if purchasing directly from a supplier, for example in rental accommodation or caravan parks.

## Charges which fall outside of the Direction (non-electricity costs)

1.7 A ULEV charge point operator may have a range of other costs on top of the electricity supplied that it may need to recover from charges levied to charge point users. Such costs may include but not be limited to capital costs of the infrastructure, ongoing maintenance and operating costs of the infrastructure, and/or overhead costs.

1.8 If the charge point operator wishes to include these costs in the charges a consumer would pay to use the charge point, the MRP Direction does not prevent this. Such costs may be charged in addition to the electricity today, provided there is transparency in the electricity cost, and it fulfils the restriction under the MRP direction in that the electricity element of the cost doesn’t exceed the MRP.

- 1.9 The only cost which the UR can regulate is the electricity cost. Consequently, neither of the options below provides a level of consumer protection in regard to charges that may be levied for any other costs of using charge point infrastructure.
- 1.10 From our review of charging in other jurisdictions we noted that some charge point operators apply a charge per kilowatt hour which bundles together in one charge all the costs of using the charge point, including the cost of electricity. This type of charging model could be consistent with the MRP Direction provided that the electricity charge (compliant with the MRP Direction) is clearly separated out for the consumer. This could be done on a receipt for example.
- 1.11 This means that charging for infrastructure costs can be consistent with the existing MRP Direction but the consumer must be able to clearly see the separation between the electricity cost and the other items making up the price, however it is charged.

## 2. Structure of this 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.

2.2 Nine responses were received in total. These were from:

- Two ULEV owners
- ESB ecars
- Liberty Global
- Virgin Media
- Northern Ireland Electricity Networks
- Power NI
- The Department for Infrastructure (Dfi) and
- Sustainable NI

2.3 The responses from the organisations above are non-confidential and have been published on our website along with this paper ([www.uregni.gov.uk](http://www.uregni.gov.uk)).

2.4 This paper is available in alternative formats such as audio, Braille etc. If an alternative format is required, please contact the office of the Utility Regulator, which will be happy to assist.

### 3. Purpose of this Paper

- 3.1 The Consultation Paper was published in the context of the Energy Transition and the associated legislative and developmental changes this brings to the ULEV environment.
- 3.2 The Energy Transition<sup>1</sup> represents a global change in energy sectors to reduce energy-related carbon dioxide emissions. ULEVs have a key role in the Energy Transition, both through lowering vehicle emissions and boosting renewable energy use. Consequentially, UK Government launched the Road to Zero Strategy in July 2018. The strategy has a UK wide scope and creates a target for 50% of all new vehicles on UK roads to be ULEV's by 2030.
- 3.3 The Automated and Electric Vehicles Act<sup>2</sup> was passed by the UK Parliament also in July 2018 with the aim of improving electric charging infrastructure across the UK. Part two of the Act applies to Northern Ireland and provides that regulations may be made related to public charging and refuelling points in areas such as the method of payment, access and connection to charging points, information for users, and potential to prescribe requirements for smart charge points.
- 3.4 ULEVs have also been considered in EU Directive 2019/944<sup>3</sup> which states in Article 33 that Distribution System Operators (DSOs) shall not own, develop, manage or operate recharging points for electric vehicles, except where DSOs own private recharging points solely for their own use.
- 3.5 The UR's role is to facilitate the changes brought about by the Energy Transition in accordance with Government policy and our statutory duties. This is reflected in the UR's strategic objective Strategic objective number 3 in our Forward Work Programme<sup>4</sup> of "Ensuring security of supply and a low carbon future".
- 3.6 In the Consultation Paper we discussed the ULEV context in neighbouring jurisdictions and UR concluded that, currently, the ULEV environment in NI differs significantly from those jurisdictions in terms of consumer demand for ULEVs and choice of charge point operator.
- 3.7 This decision paper reflects the UR's consideration of the above issues together with stakeholder responses in reaching our decision on the application of the MRP Direction to ULEV charge points.

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<sup>1</sup> The International Renewable Energy Agency (IRENA) defines the Energy Transition as "a pathway toward transformation of the global energy sector from fossil-based to zero-carbon by the second half of this century".

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2018/18/contents/enacted>

<sup>3</sup> <https://eur-lex.europa.eu/eli/dir/2019/944/oj>

<sup>4</sup> <https://www.uregni.gov.uk/sites/uregni/files/media-files/FWP%20201920%20final.pdf>

## 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.

4.2 The consultation paper presented two options:

- **Option 1** –Amending the existing UR direction to include an exemption for the resale of electricity where it relates to the propulsion of a ULEV.
- **Option 2** – No change to the current MRP direction at present which would mean that the electricity cost remains regulated by the MRP.

4.3 The responses received are summarised below.

4.4 ULEV Owners - Two responses were received, both in favour of option 1. One owner considered that introduction of a fee to use charging points would help expand the network of charging points. The second respondent similarly welcomed a charging model being introduced to assist with the roll out of charging infrastructure across NI. It is also noted that both respondents raised issues around over stays at charging points and fees being introduced for ULEV drivers who do this. Such matters however were outside the remit of the consultation and are also not within the vires of the UR. As such the UR have no comments to make on over-stay and fee issues.

4.5 Virgin Media – a response was received in favour of option 1. They considered removing the MRP would enable infrastructure providers to invest in the provision of ULEV charging points. They also considered that this would further contribute to the draft programme for government and local authority vision of having smart cities.

4.6 Liberty Global – a response was received in favour of option 1. They considered removing the MRP would enable infrastructure providers to invest in the provision of ULEV charging points. They also considered that this would further contribute to the draft programme for government and local authority vision of having smart cities.

4.7 Department for Infrastructure - The Department outlined their support for electric vehicles and expressed their view that visibility and availability of ULEV charging points is important in building public confidence in the use of ULEV's. In their

response the Department further outlined that both options in the consultation document should give clarity for operators wishing to provide commercial services in NI, however, option 2 may place additional requirements on operators in separating electricity and charge point management costs (which are not a requirement in GB or RoI) whereas option 1 would provide alignment across the market and avoid the additional requirement.

- 4.8 ESB e-cars – a response was received in favour of option 1. The response considered this would provide a similar regulatory environment as exists in other adjacent jurisdictions and would allow a competitive market to develop. They considered retaining the MRP in NI will delay investment by charge point operators. They also contended that the MRP was designed to protect tenants from being overcharged for electricity at rental properties and was not appropriate for electric vehicle charging. The response concluded that removal of the MRP in Britain and Ireland has had a positive impact on the market and it would be prudent for NI to follow the approach of other successful markets.
- 4.9 Power NI – Power NI considered that an exemption from the MRP would support development of the ULEV charging infrastructure and therefore the uptake of ULEV's. They considered that transparency in total cost was important and that a breakdown of components is likely to be of no real importance to the customer (they drew a parallel to petrol forecourt transparency where the end price is known but the breakdown of costs –tax, infrastructure, margin etc. is not displayed).
- 4.10 Sustainable NI – Sustainable NI were in favour of option 1 and considered the MRP a barrier to the development and maintenance of public charging infrastructure for ULEV's. Sustainable NI raised the issue of transparency in the electricity element of the cost of charging a ULEV. They also suggested the consideration of all Ireland apps (applications) to be used by network operators in relation to accessing electricity allowing interoperability on both sides of the border. Consideration of issues such as apps are not within the vires of the UR. Consequently we have no comments to make on these matters.
- 4.11 Northern Ireland Electricity Networks (NIEN) – NIEN were in favour of option 1 for a number of reasons. The NIEN response outlined their support of the development of policies which facilitate the roll out of charging points for ULEV's. NIEN were unsure how the removal of the MRP had contributed to the growth of ULEV's in GB. However, they also stated the continuation of the MRP in NI could increase the perception of a regulatory barrier so removal of the MRP for ULEV charging (as per GB and RoI) would reduce complexity for charge point operators, would likely be better for the overall development of the ULEV charging market in NI and they would therefore support an exemption from the MRP in this regard. NIEN also considered the removal of the MRP could be viewed as a 'least regrets'

option increasing the momentum of uptake of ULEV's in NI. In relation to transparency of cost NIEN considered that cost of total cost was important to consumers rather than the make-up of the cost.

## **UR Response**

4.12 The UR notes that all respondents either agreed with option 1 or implied their agreement with option 1 in the content of their response. We wish to thank all those who replied to the consultation.

4.13 As noted above a number of responses raised issues which fall outside the vires of the UR. In addition we note that there were mixed views regarding transparency of costs (either the overall charge of using a charge point or the electricity element of the overall charge). In regard to the overall cost of charging the consultation explained that the electricity element of the cost of charging is the only cost which the UR can regulate via the MRP. Additional costs such as capital costs of the infrastructure, ongoing maintenance, operating costs and/or overhead costs may be chargeable by an operator and are outside the scope of the UR regulatory vires. From the responses received we note that transparency in the total cost of charging (rather than transparency in the cost of electricity) is of most concern to the ULEV driver.

## 5. Decision

5.1 In our consultation we set out two options:-

- **Option 1** - to amend the Direction to include an exemption for the resale of electricity where it relates to the propulsion of a ULEV.
- **Option 2** - no change to the current Direction at present

5.2 The UR's decision, having considered all consultation responses, is to implement Option 1- to amend the Direction to include an exemption for the MRP for the resale of electricity where it relates to the propulsion of a ULEV.

5.3 The revised Direction is published alongside this decision paper and will take effect from the 31 March 2020.

### Rationale for the Decision

5.4 All respondents either agreed with option 1 or implied their agreement with option 1 in the content of their response, providing very strong support for this option.

5.5 In addition it is clear from a number of the responses that the MRP Direction is perceived as a barrier to the development or maintenance of ULEV infrastructure in NI and that this could prevent new customer propositions from entering the NI market. A number of responses also expressed a desire to see a similar regulatory environment for EV charging across NI, GB and Ireland and consequently the need for option 1.

5.6 We agree that option 1 will bring NI into alignment with GB (where the MRP is excluded from resale of electricity by an authorised supplier from a charge point for use by an electric vehicle<sup>5</sup>), thereby helping to reduce any perception that the MRP is a barrier. Also we consider that option 1 may make the NI market more attractive to charge point operators currently operating in the GB and Irish markets and could therefore support the entry of new operators into the NI market.

5.7 The consultation outlined the level of customer protection provide by the current MRP Direction, and particularly that the UR cannot regulate the total cost of charging at a charge point. The current MRP can only provide transparency in then electricity element of the overall charge. In this regard we note that the

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<sup>5</sup> [Ofgem decision on the application of the Maximum Resale Price to the resale of electricity for charging electric vehicles, March 2014.](#)

evidence from responses indicates that transparency in the total cost of charging (rather than transparency in the cost of electricity) is of most concern to the ULEV driver.

5.8 Option 1 is also in keeping with the Department for Economy Energy Strategy Call for Evidence which identifies that a greater use of ULEV's will be key to achieving energy efficient and cleaner road transport, and the UK Government Road to Zero Strategy which is working towards increasing charging infrastructure deployment. Accordingly, we consider that the decision to implement option 1 is a least regrets option in the context of emerging government policy and industry drivers.