



Approach to Enforcement

Decision on revising 'Our Enforcement
Policy Approach and Procedure'

31 January 2024



About the Utility Regulator

The Utility Regulator is the economic regulator for electricity, gas and water in Northern Ireland. We are the only multi-sectoral economic regulator in the UK covering both energy and water.

We are an independent non-ministerial government department and our main duty is to promote and protect the short- and long-term interests of consumers.

Our role is to 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.

We are based at Queens House in Belfast. The Chief Executive and two Executive Directors lead teams in each of the main functional areas in the organisation: CEO Office; Price Controls, Networks and Energy Futures; and Markets and Consumer Protection.



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 revisions to our Enforcement Policy Approach and Procedure which was consulted upon in March 2023.

Published in 2018, the procedure included a clause indicating that it did not apply in respect of matters or decisions that are within the jurisdiction of the SEM Committee. In March 2023 we published a consultation proposing to remove this clause. Having considered feedback to our consultation, we are proposing to finalise the amendments to the procedure and remove this clause.

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 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.

Our Enforcement Policy Approach and Procedure sets out the process we will follow when carrying out an investigation or enforcement action. It provides transparency and clarity to all market participants on how the process will operate, the stages of the process and possible outcomes.

Published in 2018, the procedure included a clause indicating that it did not apply in respect of matters or decisions that are within the jurisdiction of the SEM Committee (SEMC). In March 2023 we published a consultation proposing to remove this clause. Having considered feedback to our consultation, we are proposing to finalise the amendments to the procedure and remove this clause.

The consultation was extended by one week and closed at 12 noon on 21 April 2023. We received 3 *late* responses which have been considered and published alongside this decision paper.

- SONI
- ESB GT
- EPUKI

Summary of Responses

SONI welcomed the inclusion of SEM matters in the procedure.

EPUKI raised concerns about the rationale for the change and how enforcement on SEM matters has been handled previously. The UR clarified the powers have always existed, but the change aims to provide transparency that the same procedure would now clearly apply.

ESB GT questioned the justification for the timing of changes. The UR pointed to allowing time for the new 2018 I-SEM arrangements to settle before deciding if procedure updates were needed.

EPUKI and ESB GT raised queries about potential legal inconsistencies. The UR confirmed the procedure would apply only for matters "called in" by the SEMC and does not enable the UR to overrule the SEMC.



Additionally, ESB GT highlighted a lack of clarity on enforcement of REMIT/MAR matters. The UR confirmed this procedure does not apply to REMIT.

ESB GT also raised proportionality of financial penalties and asked for clarity on which stage in the Enforcement Procedure is the first stage following Initial Inquiry stage by the MMU. The UR provided clarification on both these aspects.

In summary, the few responses mostly related to seeking clarity on rationale, legal powers, timing and implications of changes.

Coming into Effect

The revised Enforcement Policy Approach and Procedure (2024) will come into effect immediately upon the publishing of this decision paper

1. Introduction

Purpose of this document

- 1.1 Effective and timely enforcement is of vital importance 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, we 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 In that regard, we set out for consultation¹, several proposed amendments to the 2018 Procedure document. The consultation was extended by one week and closed at 12 noon on 21 April 2023. We received 3 late responses which have been considered and published alongside this decision paper.
 - SONI
 - ESB GT
 - EPUKI
- 1.4 The purpose of this document is to set out our final decisions on the proposed amendments and address queries and concerns received within the consultation responses.

Coming into effect

- 1.5 The revised Enforcement Policy Approach and Procedure (2024) will come into effect immediately upon the publishing of this decision paper.

¹ [Consultation on revising Enforcement Policy Approach and Procedure | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/consultation-on-revising-enforcement-policy-approach-and-procedure)

2. Summary of Responses Received

- 2.1 This section summaries the responses to our consultation on proposed amendments to the Enforcement Procedure. We also set out the changes to the procedure in consequence.
- 2.2 We would like to emphasise that we have, and always have had, the legal powers for enforcement of all licence obligations. This includes suspected breaches of SEM related licence conditions by NI generators. Our proposed amendments sought only to remove any ambiguity in the use of the published enforcement procedure in relation to SEM related matters.
- 2.3 SONI stated they “strongly welcome the inclusion of SEM related activities within the scope of the Enforcement Policy Approach and Procedure” and noted the numbering within the procedure had not been updated correctly in the event paragraph 1.7 is removed – this has been addressed within the final changes outlined in section 3.
- 2.4 EPUKI raised several concerns around the rationale for the proposed change, particularly considering any current enforcement practices. They questioned what changes between 2018 and present have warranted the deletion of paragraph 1.7; how was it envisioned that enforcement on SEM matters would be handled, and how have they been handled between 2018 and the present day.
- 2.5 Paragraph 1.7 referred to instances that are within the jurisdiction of the SEM Committee (SEMC) in relation to the all-island Single Electricity Market. The SEMC has jurisdiction in Northern Ireland only in relation to SEM Matters which it has decided to ‘call-in’ under the SEM Order, for matter(s) which materially affects, or is likely to materially affect, the SEM.
- 2.6 The proposed deletion of paragraph 1.7 is primarily to provide greater transparency that any enforcement proceedings taken by UR, in relation to a NI participant in the SEM, will follow the same UR procedure.
- 2.7 Similarly, ESB GT questioned the rationale or justification for why now is the “appropriate time” to make the proposed changes as highlighted within the consultation.

- 2.8 This was addressed within the consultation of the procedure in 2018 where it was stated we were waiting for the I-SEM to 'bed in'. The new market arrangements went live in October 2018. As outlined in 2.2 above, the UR has always had the powers to take enforcement action in respect of all licence obligations. It was deemed appropriate to give time to allow the new market design to settle in, before deciding whether the current UR Procedure is suitable for use in any enforcement cases which may be 'called in' by the SEMC, or whether further additional changes to provide greater transparency would be required for UR proceedings.
- 2.9 To that end, in March 2021, the SEMC published the Market Monitoring Unit (MMU) Inquiry Procedure Manual (SEM-21-020²) ("the manual") to provide guidance to the industry on MMU market inquiries and the process they would follow until it is passed to the relevant Regulatory Authority.
- 2.10 The MMU is a joint regulatory unit that is the main monitoring function of the two Regulatory Authorities (UR and CRU) for the SEM.
- 2.11 The manual makes clear that the MMU's role is confined to collecting facts and presenting evidence to the relevant RA through the Senior Staff Group (SSG). The SSG will then determine whether it is necessary to pass the report to the relevant Regulatory Authority. In a case where the Inquiry is focused on a NI Participant, this would be passed to the UR, and this UR Enforcement Procedure would be enacted.
- 2.12 In respect of matters or decisions that are within the jurisdiction of the SEM Committee (SEMC) in relation to the all-island Single Electricity Market (SEM), this UR enforcement procedure shall apply with such modifications (if any) as the SEM Committee may decide.
- 2.13 Both EPUKI and ESB GT raised concerns around potential legislative conflicts and/or inconsistencies. Particularly, ESB GT queried whether the proposed changes were consistent with the legislative provisions referred to in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007³. Assuming the provisions referred therein relate to the legislation and functions under which the UR exercises relevant functions for SEMC call-in purposes, this procedure simply takes that legislation as a given for enforcement purposes.
- 2.14 EPUKI correctly noted that the proposed changes (i.e., the removal of paragraph 1.7) will result in the UR Procedure applying in 'call in' situations by the SEMC.

² [SEM-21-020 MMU Investigation Process Manual.pdf \(semcommittee.com\)](#)

³ [The Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(legislation.gov.uk\)](#)

- 2.15 They also queried whether the proposed changes to the enforcement policy meant that UR would have the authority to overrule the SEMC in relation to SEM Matters. We confirm this is not the case.
- 2.16 ESB GT noted that they are of the view that the UR Procedure (as consulted) does not provide jurisdictional consistency in the all-island market, nor does it target the SEM's nuances. We would note that both Regulatory Authorities, UR and CRU, operate independently in relation to jurisdictional matters. This includes the monitoring and enforcement of licensed companies and does not impede the effective operation of the SEM.
- 2.17 ESB GT notes with regards to the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) and the Market Abuse Regulation (MAR) it is unclear if enforcement on these matters will fall under the amended enforcement policy. The UR confirms that this enforcement procedure does not apply to REMIT.
- 2.18 ESB GT raised concerns that the UR Financial Penalties Statement⁴ (which was not part of the consultation process) may not be proportional to some alleged offence seen in the SEM as it states, "*a penalty imposed shall not exceed 10% of the turnover of the vertically integrated undertaking.*" They noted this means there are potentially large fines for any breach and no precedence set before to benchmark any penalties.
- 2.19 ESB GT requested clarity as to whether there is already scope to currently impose a financial penalty or if this will require a change to legislation. The UR would like to clarify that this is the current position with any potential enforcement in relation to a SEM market participant i.e. for a breach of licence, as The Energy (Northern Ireland) Order 2003⁵ (as amended), states "*No penalty imposed by the Authority under this Article may exceed – (a)... 10 per cent of the turnover of the regulated person; or (b) where the regulated person is or is part of a vertically integrated undertaking and the relevant condition or requirement to which the contravention relates is imposed on a vertically integrated undertaking pursuant to the Electricity Directive... 10 per cent of the turnover of the vertically integrated undertaking.*"
- 2.20 ESB GT noted it was unclear as to which stage in the Enforcement Procedure is the first stage following Initial Inquiry stage by the MMU. The UR clarifies that where an initial inquiry has been carried out by the MMU, in line with the manual, this may form part of the initial enquiry phase as detailed in the Enforcement Procedure.

⁴ [2018-06-28 Our Policy with respect to Financial Penalties - FINAL_0.pdf \(uregni.gov.uk\)](#)

⁵ [The Energy \(Northern Ireland\) Order 2003 \(legislation.gov.uk\)](#)

3. Confirmed Changes to the Enforcement Procedure

- 3.1 This section provides an overview of the confirmed changes which have been made to the Enforcement Policy Approach and Procedure. The complete revised procedure is published alongside this decision.
- 3.2 **Paragraph 1.2** has been further amended to remove the proposed inclusion of the Irish Electricity Regulation Act 2007 and will read: “We were established under the Energy (Northern Ireland) Order 2003 (the **Energy Order**). Under the Energy Order, the Electricity (Northern Ireland) Order 1992, the Gas (Northern Ireland) Order 1996, the Water & Sewerage Services (Northern Ireland) Order 2006 (the **Water Order**), and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, we are responsible for the regulation of gas, electricity, water and sewerage services in Northern Ireland.
- 3.3 **Paragraph 1.7** will be removed as per consultation.
- 3.4 **Paragraph 1.9** confirmed as per consultation.

4. Conclusion

- 4.1 We would like to thank participants for their feedback on this consultation process.
- 4.2 As outlined in 1.5 above, the revised Enforcement Policy Approach and Procedure (2024) will come into effect immediately upon the publishing of this decision paper.

Annex 1 – Revised Enforcement Policy Approach and Procedure (2024) document

Published alongside this document.