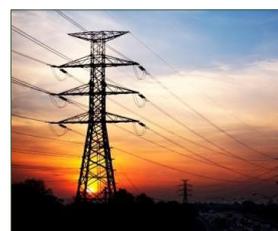


Information Paper on clarification changes and updates made to the Energy Supplier Marketing Codes of Practice in Northern Ireland (Domestic Customers)

UR Information Paper
September 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: Compliance and Network Operations, Finance and Network Assets, Wholesale, Retail and Consumer Protection and Corporate Affairs. 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

This information paper sets out clarifications and amendments to be made to the Utility Regulator's (UR) Energy Supplier Marketing Code of Practice for Domestic Customers. These changes are being made as a result of various issues which have arisen regarding clarity on the interpretation of some sections of the Code. There are some other minor changes including several new definitions within the glossary. The changes have been tracked for ease of reference and a clean copy is also being made available. This Code of Practice applies to all electricity and gas suppliers in NI who supply Domestic Customers.

This paper provides an overview of the changes to the Code and is designed to assist suppliers in relation to clarity and understanding of logistical issues in relation to licence compliance.

The changes to the Code **are mainly** for clarification purposes. For example there is no longer cross referencing between the different sections of the Code. However, there has been an extension in the length of time some information needs to be held for, such as telephone recordings and information to identify a sales agent. This has been extended from 6 months to 2 years. The current Section 6 'Website/Telephone' has been split into separate sections to deal with inbound telephone marketing and sales and website marketing and sales separately. Suppliers should already be compliant with the Code, but in relation to the extension in time required to hold information, will have 3 months from the publication of this paper.

The updated version of the Marketing Codes of Practice for domestic customers and a track change version are attached as appendices.

Audience

This document is most likely to be of interest to regulated supply companies in the energy industry, consumer organisations, community and voluntary organisations, natural gas and electricity consumers, government and other statutory bodies. The Utility Regulator welcomes stakeholder views and comments on all the proposals set out in this consultation paper.

Consumer impact

The clarifications and amendments made to the Code will help ensure that there are no misinterpretations of what the Code requires of energy suppliers and should therefore have a direct impact on the customer sales experience in NI, with all suppliers of energy being compelled by their licence obligations to comply with the Code. Failure to do so will result in a licence breach and possible enforcement action.

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1.Introduction

- 1.1. The Implementation of the EU's Third Package of energy market Directives (IME3) resulted in licence modifications to energy supplier licences which required the development of a new Supplier Marketing Code of Practice. This requirement was added to condition 40 in electricity supply licences and condition 2.21 in gas supply licences. The Directive called for a “high level of customer protection” and the UR felt to achieve this it was appropriate to install a mandatory code of practice to guard against mis-selling to customers (especially in doorstep/face to face selling situations).
- 1.2. The process for the development and consultation of the Marketing Codes of Practice ran throughout 2013 and 2014. The Marketing Codes of Practice were developed for gas and electricity domestic customers as well as small business customers. The threshold for application to business customers is less than 732,000 KWhs in gas. The threshold for application to business customers is less than 70kVA or an annual consumption less than 150MWh in electricity.
- 1.3. The process included extensive and detailed engagement with stakeholders:
 - February 2013 -First Consultation;
 - February 2013 – October 2013 engagement with stakeholders through workshop and bi-lateral meetings with stakeholders where requested;
 - October 2013 – Second Consultation taking into account stakeholders’ consultation responses as well as feedback gained at the workshop and meetings;
 - March 2014 – Decision Paper and new Codes published for domestic and small business customers; and

- June 2014 – Codes becomes ‘live’ with suppliers having been given 3 months within which to become compliant.

Update to the Code since coming into force June 2014

- 1.4. After the Codes became ‘live’ there were a number of occurrences whereby advertising carried out by suppliers appeared to have not been in keeping with the relevant sections of the Code.
- 1.5. In detailed discussions with the companies following this, it became clear that drafting within certain sections within the Codes left some room for misinterpretation.
- 1.6. As a result the Codes (both domestic and small business) were **updated in June 2015** to help alleviate this and make them clearer for suppliers.

Further Update to the Domestic Code

- 1.7. Since the last update a number of ongoing issues have come to light.
- 1.8. These occurred in relation to the later sections of the Code. In summary, a number of these sections of the Code refer back to previous sections, as opposed to transposing text in full from those earlier sections. This is discussed in some further detail in Section 2 of this note.
- 1.9. There has also been some suggested ambiguity around some of the requirements on suppliers set out in the Code. An example of this is in relation to total clarity on what type of telephone call needs to be recorded.
- 1.10. To help enhance clarity around the applicability of the Code we have separated Section 6 which dealt with both Website and Telephone in the one section into two separate sections which now deal with Inbound Telephone and Marketing sales and Website Marketing & Sales.
- 1.11. Another issue which has come to light relates to that information which the code requires is to be retained by suppliers. It has emerged that the period of 6 months is not a sufficient length of time for this information to

be retained as, if an issue with compliance comes to light, it may be necessary to analyse information from more than 6 months in the past to properly investigate the issue. A specific example of this is the retention of telephone call recordings. The current Code stipulates that this is 6 months however other information is being held for a period of 2 years. We are of the view that the length of time for the retention of all required information should be aligned to 2 years to allow for its assessment should a licence compliance issue occur.

Monitoring and compliance

- 1.12. For the avoidance of doubt, it is the view of the UR that it is the supplier's responsibility to ensure that they have put in place the necessary internal processes to ensure that they can comply with all sections of the Code. We expect that these should be embedded into internal business processes and information systems. We assume that suppliers are already complying with the Codes as currently drafted. In terms of the extension in the length of time that information needs to be held, we would expect that suppliers will already have been holding this information for 6 months and that from this point should immediately begin to retain it for the extended period of time i.e. 2 years. However, suppliers will be given 3 months to comply with the extension to length of time information needs to be retained for. If after this clarification and amendments to the Code for domestic customers there are any suppliers who are of the view that they may not be currently compliant they should contact the UR.
- 1.13. In terms of monitoring compliance with the Codes, the UR intends to carry on with the proactive monitoring of whether licensees are fully complying with the Codes on an ongoing basis. This includes (but may not be limited to) liaison with other organisations such as consumer representatives, third sector organisations, Trading Standards and CMA.

It may also include activities such as mystery shopping. In the event of a potential breach of the Code suppliers will be asked to demonstrate that they have the necessary internal procedures in place to ensure compliance and that they have been in compliance with the code. If this cannot be done licence enforcement action may result.

How to Respond

- 1.14. This paper is for information purposes only. It is only in the instance where you believe there may be a factual error, or there is an issue with your current compliance, that you should contact the UR. If either of these apply any correspondence should be sent no later than Friday 20th October 2017 to:

Nicola Sweeney
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: Nicola.Sweeney@uregni.gov.uk

This document is available in accessible formats. Please contact: Nicola Sweeney on 028 9031 6622 or nicola.sweeney@uregni.gov.uk

2. Clarifications and changes to the Code for Domestic customers

2.1 As stated above, the UR Marketing Codes of Practice (the Codes) for both domestic and small business customers became effective in June 2014.

2.2 These Codes were developed through extensive consultation. As discussed in Section 1 the development of these Codes relates to licence condition 40 for electricity supply and condition 2.21 in gas supply licences.

2.3 These conditions state:

“that the licensee shall (and shall procure that its agents or sub-contractors shall) comply with the Marketing Code of Practice.”

The Marketing Code is defined in the condition as:

“the document of that name, prepared and published from time to time by the Authority, relating to marketing activities”

2.4 Since the effective date of the Codes, as discussed in Section 1, there has been one update to both Codes in June 2015. These updates were mainly in relation to cross referencing from one section to another where it could potentially cause confusion. These were amended and both Codes reissued.

Latest clarifications and amendments to the Domestic Code

2.5 As stated in Section 1, since the update to the Codes in June 2015, there have been a number of issues which have come to light.

2.6 Primarily these are again in relation to where the Code cross references between sections. This happens from Section 4 onwards of the current domestic code where it references back to Section 3. Through our licence compliance work and listening to suppliers it would appear that this can cause confusion.

2.7 In this context, the updated version of the Code contains no cross referencing between sections. Each section of the Code from Section 4 onwards has been fully transposed and the text amended to suit that specific section. This is designed to help with the clarity of the Code and ensure each section is 'stand alone'.

2.8 In addition to this, we have included an extension to the length of time a supplier has to retain telephone recordings. The current Code stipulates that this is 6 months. Through our licence compliance work it has come to light that this is not long enough and as a result we have extended this requirement to 2 years. This is in line with the requirement of the Code to hold other types of information for a period of 2 years. Whilst it is an extension to the current requirement it is not a ***new*** requirement. Suppliers should already be recording telephone calls if they are complying with the Code. Therefore this change means only that suppliers will need to hold the recordings for a longer period of time. In this same context and rationale we have also extended the length of time a supplier must hold enough information to identify the agent involved in any marketing activity. We have extended this period of time from 6 months to 2 years also.

2.9 Furthermore we have removed references to legislation in the Code as they are additional to our Code and a supplier should be complying with them in line with that legislation, not our Code.

2.10 We have also created two separate sections for Inbound Telephone and Marketing and Sales and Website Marketing and Sales. These were previously both dealt with in Section 6 which covered Website and Telephone (inbound telephone calls).

2.11 There has also been a number of amendments made to text throughout the Code which in our view should help with overall clarity as well as a number of new terms defined in the Glossary.