



Consultation on the application of exit fees in the small business energy market

Addendum to Decision Paper –
Measures to Enhance the Operation of
the Small Business Energy Market



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

The UR published its final Decision Paper – “Measures to Enhance the Operation of the Small Business Energy Market” in September 2018. This consultation is an addendum to that decision paper in which the UR explores the specific issue of the application of exit or contract termination fees and their appropriateness in the context of a fixed term contract.

The UR wishes to consult on this and stakeholders are asked to provide their views regarding the UR view of when the application of an exit fee is appropriate.

Audience

Consumers and consumer groups; industry; and statutory bodies.

Consumer impact

This consultation focuses on the issue that consumers will only be liable to pay an exit fee or contract termination fee for ending a contract with an energy supplier, if it is appropriate and fair that they should pay such a fee.



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1. Introduction and Background

- 1.1 In September 2018, the Utility Regulator issued their final Decision Paper¹ “Measures to Enhance the Operation of the Small Business Energy Market”. This paper was the culmination of extensive consultation with relevant stakeholders in the development of potential measures set out in the decision paper.
- 1.2 Stakeholders included suppliers (both gas and electricity), the network operators, and consumer representative organisations. These stakeholders took part in workshops and responded to the consultation.
- 1.3 It is anticipated that the measures which will be implemented as a result of the project will have a positive impact on both customers and the market itself. We are of the view that the measures will help stimulate the market and as such will benefit everyone both operating and participating in the market. The completion of this project represents a progressive step forward in the development of the retail market for small business customers in NI.

Issues identified in the small business energy market

- 1.4 Stakeholders identified a number of issues in the current small business energy market.
- 1.5 The issues which were highlighted and discussed such as:
- tariff transparency;
 - rollover contracts;
 - levels of deposit required; and
 - time period deposits are held for;
- 1.6 These issues were discussed at a stakeholder workshop and a number of measures were developed for consultation. Stakeholders were invited to provide their views on the potential measures put forward. Based on the consultation feedback provided, a final set of measures was put forward for implementation in the Decision Paper.

¹ <https://www.uregni.gov.uk/news-centre/decision-published-measures-enhance-operation-small-business-energy-market>

Final Measures to be taken forward

1.7 The decision paper set out the final measures which are to be taken forward:

- **Measure 1 – Tariff Transparency Requirement**
 - ◆ Suppliers to publish tariff rates including their acquisition and retention rates for small business customers.
- **Measure 2 – Deposits – clarity on how these are set by suppliers**
 - ◆ Suppliers should provide information on their website around deposit requirements and how they are determined for a small business customer.
- **Measure 3 – Level of deposits & length of time they are held**
 - ◆ Deposits should be set at a maximum of the value of 3 months average consumption. It is at the supplier’s discretion to determine when the deposit can be returned to the customer.
- **Measure 4 – Rollover of contracts**
 - ◆ These will be prohibited for small business customers, meaning that when the original contract term is finished they cannot be moved onto another fixed term contract without explicit agreement.
- **Measure 5 – Exit Fees**
 - ◆ Exit fees must be “proportionate and justifiable”. Suppliers must be able to justify the level of exit fee ex-post if an issue or complaint arises, to demonstrate their compliance with the “proportionate and justifiable” obligation.
- **Measure 6 – Prepayment Meters for small business customers**
 - ◆ The potential for an electricity prepayment meter for small businesses will be fully examined. This has been referred to the industry working group (CDA). At this point, the potential for a prepayment meter in gas is not being progressed (however this may be revisited in the future)
- **Measure 7 Transparency of Terms and Conditions (T&Cs)**
 - ◆ Suppliers will have an obligation to inform customers if their T&Cs change and this would include:

- a. 21 day notification of price changes; and
- b. Notification of any fixed term contract periods coming to an end.

Scope of coverage of the measures

- 1.8 The scope of coverage of the measures will be small business customers with 0 – 50 MWh annual consumption for electricity and up to 73.2MWh for gas.

Implementation of measures

- 1.9 Measures 2-5 and 7 will be implemented through new licence conditions for suppliers. Measure 6 will be dependent on the outcome of the work carried out by the industry forum. With regard to Measure 1 (Tariff Transparency), at this point in time it will not be implemented through licence conditions which mandate price transparency. This is on the basis that suppliers voluntarily committed to provide their small business tariffs to CCNI (or another third party provider) for publication. We intend to monitor this closely to determine if the information provided fulfils the transparency requirements consulted upon.

About this Addendum document

- 1.10 The purpose of this document is to set out the issues which have emerged since the publication of the Decision Paper. As such this consultation is an add-on or addendum to the consultation and decision on the “Measures to Enhance the Operation of the Small Business Energy Market”. The specific issue that we now wish to consult with stakeholders on is the application of Exit Fees by Suppliers during fixed term periods of supply contracts.
- 1.11 The document is structured as follows:
- Section 2 outlines the developments and issues which have emerged since the publication of the Decision Paper; and
 - Section 3 sets out the next steps for the project.

Responding to this consultation

- 1.12 The UR is keen to hear all stakeholder views on the proposals set out in this consultation paper.
- 1.13 We would like to advise respondents that, in keeping with Section 65 of the [Fresh Start Stormont Agreement](#), the maximum time period required for

consultations is normally now 8 weeks.

- 1.14 It is our intention to comply with this requirement.

Responses to this consultation should be forwarded to reach the UR on or before 4pm on 18th June 2019 to:

Nicola Parker

The Utility Regulator

Queens House

14 Queen Street

Belfast

BT1 6ED

Email: Nicola.Parker@uregni.gov.uk

- 1.15 Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 1.16 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.
- 1.17 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.
- 1.18 This document is available in accessible formats. Please contact: Nicola Parker on 028 9031 6622 or Nicola.Parker@uregni.gov.uk

2. Developments subsequent to Decision Paper

Exit Fees

- 2.1 As described in Section 1, Measure 5 of the original Decisions relates to the application of exit fees. These are sometimes also referred to as termination fees, for instance as they are in the electricity supply licence condition 27 Paragraph 5 (d) and the gas supply licence condition 2.18.5. The decision paper stated that exit fees must be “proportionate and justifiable”. Suppliers must be able to justify their level of exit fee ex-post if an issue arises, to demonstrate their compliance with the “proportionate and justifiable” obligation.
- 2.2 However this protection when included in the licence would be ex-post and will not set out any criteria that must be met before an exit fee of any level is deemed to be justifiable.
- 2.3 Since the publication of the Decision Paper, the issue of the inclusion of an exit fee within a fixed term contract which does not have a fixed price has been highlighted and discussed within the UR. This has been in the context of domestic customers and has been raised with the UR by both customers and by CCNI. In light of this, we have decided to further explore the area of exit fees with regard to small business energy customers as a follow on to the previous small business consultation.
- 2.4 The UR was very clear throughout the stakeholder engagement phase, and the Consultation and Decision Papers for Measures to Enhance the Operation of the Small Business Energy Market that exit fees must be “proportionate and justifiable”.
- 2.5 Conceivably, it could be argued that the proposed decision and the licence modification to implement it which was set out in the decision paper would prohibit the application of an exit fee (or that its level should be zero) in a contract where the price is not fixed for a fixed term. This would be on the basis that we are of the view that such an exit fee isn’t proportionate and there are no grounds on which to justify it.
- 2.6 However this is not explicit and we are now consulting on the inclusion of additional conditionality that will preclude exit fees unless certain criteria are met within the terms of the contract.
- 2.7 The UR is of the view that the application of an exit fee (where a customer wishes to exit their contract before any fixed term has finished) is not justifiable where the contract does not give the customer a fixed price for a

fixed term or some financial or otherwise tangible benefit that justifies the charging of an exit fee. Furthermore, our position is that these latter cases, where the price is not fixed but some other benefit justifies the application of an exit fee during a fixed term period, should be approved by the UR.

- 2.8 We investigated as far as possible the types of tariffs available to further understand the circumstance in which exit fees are applied in the small business energy market. Typically suppliers charge an exit fee where they have entered into a contract with a customer and have agreed a fixed price for a fixed term period. The supplier will most likely have purchased energy on a forward basis in order to offer this, and as such should be able to secure that the customer fulfils the contract with them to purchase that energy, or the customers pay the exit fee to compensate the supplier for any potential loss.
- 2.9 We are also aware that there are tariffs that are referenced to a transparent market price index, such as the gas wholesale market price. These type of tariffs have a fixed price which then moves upwards and downwards based on transparent published energy market movements, such as wholesale gas or the electricity market. These tariffs typically have a fixed term period and an exit fee if the customer wishes to leave before the end of the fixed term. In the case of a tariff such as this, we agree that an exit fee of a proportionate amount is justifiable. The tariff will move down as well as up from the agreed base price. The basis on which these movements occur is transparent, verifiable and is agreed by both the customer and the supplier at the outset of the contract. The base price however is fixed and hence the customer has purchased what is in effect an agreed price fixed tariff.
- 2.10 We are also aware there may be tariffs which have a fixed term period but do not have a fixed price. The price movements of these contract types are not linked to any verifiable market movement, and are instead at the sole discretion of the supplier. The supplier can change the price at any time during the fixed term period of its own volition. These tariffs could also possibly include a percentage discount off one of the supplier's variable tariffs. The UR knows that is often the structure of domestic tariffs with fixed term periods, but in the current absence of any tariff transparency in the small business market, as yet we are unable to verify if these types on contracts exist for small businesses.
- 2.11 However, the fact remains variable priced tariffs with exit fees for small businesses may exist, and if they do the supplier can change the price at any time during the fixed term period, yet the customer may be bound to pay an exit fee in order to move to another supplier. It does not seem justifiable that one party to the contract (the supplier) can change the actual price at any time during the fixed term period yet demand an exit fee for the other party to

cancel the contract.

2.12 Given the issues which have come to light since the publication of the Decision Paper, we have decided to issue this addendum consultation which wishes to explore and seek stakeholder views regarding what is proportionate and justifiable regarding when and under what circumstances the application of an exit fee is appropriate.

2.13 The UR is of the view that exit fees would not be justifiable where the price is:

- Not fixed for the fixed term period of the contract; or
- Where the movement in the price is not linked to an agreed and transparent, verifiable or publically available source such as the gas or electricity wholesale price; or
- The contract does not include some financial or otherwise tangible benefit that justifies the charging of an exit fee.

Q1. Do respondents agree that an exit fee should only be permissible where a price is:

- fixed for the fixed term period of the contract; or**
- where the price moves up or down it is linked to a transparent, verifiable or publically available source for the period the exit fee would apply; or**
- where it includes some financial or otherwise tangible benefit that justifies the charging of an exit fee?**

If stakeholders disagree with this, they must provide a clear rationale as to why along with examples justifying their view.

3. Next Steps

How to Respond

- 3.1 As indicated in Section 1, the UR is keen to hear all stakeholder views on the proposed policy approach and the options.

Responses to this consultation should be forwarded to reach the UR on or before 4pm on 18th June 2019 to:

Nicola Parker

The Utility Regulator

Queens House

14 Queen Street

Belfast

BT1 6ED

Email: Nicola.Parker@uregni.gov.uk

Next Steps

- 3.2 Once all the responses to this consultation paper are received and analysed, the UR intends to issue a decision paper which will analyse stakeholders' responses to this consultation.