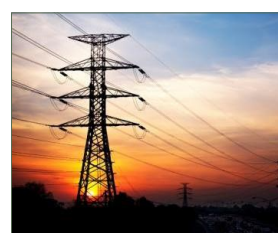


# Measures to Enhance the Operation of the Small Business Energy Market

A UR Consultation Paper  
October 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, proportionate, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

# Abstract

Protecting consumers is at the heart of the Utility Regulator's (UR) role and promoting measures to enhance the effectiveness of competition in the Northern Ireland (NI) energy markets is an integral part of delivering our statutory duties. This paper consults on proposals to build transparency and trust in competition for small business customers. In 2016 the UR published its final decision paper for the Power NI 2017 Electricity Price Control. This saw the removal of the price control from the remainder of Power NI's small business electricity customers. In parallel, the CMA energy market review in GB noted some issues and concerns around the detrimental impacts on small businesses of some aspects of the energy market.

The UR now wishes to consult on potential measures in the electricity and gas small business markets that will help to make sure competition is as effective as possible for these customers. In the main, the proposed measures already exist for domestic consumers and are not novel.

Whilst there is still price regulation for small business gas consumers we envisage these new measures will apply to the small business gas market nonetheless, as we are of the view they will not interfere with, but rather enhance, the gas small business market and can co-exist with price regulation.

This paper follows on from the information paper on this project which was published by the UR in May 2017 and lays out the potential measures for consultation. This project is included in the UR's 17/18 Forward Work Programme.

# Audience

Consumers and consumer groups; industry; and statutory bodies.

# Consumer impact

Small business consumers will see the benefit of a new set of measures with the aim of enhancing the operation of the small business energy market. The direct consumer impact of this will be in relation to the type of measures which may be implemented e.g. measures in relation to contract clauses or tariff clarity. The new measures will not directly affect price. However, they may affect the level of deposits and for how long suppliers retain them.

## Contents

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1. CONTEXT .....	5
2. BACKGROUND & ISSUES .....	11
3. SCOPE .....	16
4. THE SMALL BUSINESS ENERGY MARKET & STAKEHOLDER ENGAGEMENT .....	20
5. CMA FINDINGS AND MEASURES.....	27
6. MEASURES FOR CONSULTATION .....	30
7. CONSULTATION QUESTIONS NEXT STEPS AND TIMELINES .....	46

# 1. CONTEXT

- 1.1 Protecting consumers is at the heart of the Utility Regulator's (UR) role and we pursue this, where appropriate, through promoting effective competition in the Northern Ireland (NI) energy markets. The UR operates to ensure consumers are adequately protected in these markets through fostering transparent and effective competition, alongside regulation if that competition is not deemed effective enough to adequately protect consumers.
- 1.2 In November 2016 the UR published its final Decision Paper<sup>1</sup> for the 2017 Power NI Price Control (SPC17). One of key decisions in this paper was the removal of the price control on the remainder of the small business market. This results in a price control remaining on Power NI's domestic customers only. In the gas market however price regulation remains in the small business sector in both Greater Belfast and Ten Towns.
- 1.3 In parallel, the CMA energy market review in GB noted some issues and concerns around the detrimental impacts on small businesses of some aspects of the energy market.
- 1.4 We also carried out bi-lateral meetings with small business representatives which identified areas where they felt that the energy market for small business could be enhanced to make transparency and competition more effective.
- 1.5 In this context, we committed to carrying out a project which would examine a potential range of new measures which could be implemented for small business customers which could enhance the operation of the small business energy market. These measures both enhance transparency of competition, and will build customer confidence and trust in the market. This project has been included in the UR Forward Workplan (FWP)<sup>2</sup> which was published on

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<sup>1</sup> <https://www.uregni.gov.uk/news-centre/utility-regulator-publishes-decision-paper-2017-power-ni-price-control>

<sup>2</sup> <https://www.uregni.gov.uk/news-centre/forward-work-programme-fwp-201718-published>

31 March 2017. This project is under Strategic Objective 3: Protecting the long-term interests of business and domestic consumers.

- 1.6 We published an Information Paper<sup>3</sup> in May 2017. This paper laid out the context for the project, key project considerations, and the timetable in which we aim to complete it. This paper also stated that we were minded to limit the scope of the project to the small business sector customers in the context of the recent Power NI price deregulation of this group. This also mirrors the scope of the CMA recommendations. Furthermore, we see merit in applying these measures to the small business market in gas as well as electricity. Whilst there is still price regulation in the small business sector in gas we see these measures as suitable for complimenting that price regulation and see no reason not to implement them in that market as well as electricity. The price de-regulation of the small business sector in electricity was merely the catalyst for this project but not the reason. The measures proposed will enhance the operation of a market with or without price regulation.
- 1.7 The UR already carries out extensive work in relation to putting downward pressure on prices through controlling costs, for example network price controls and the control of end user prices in retail markets where there is still a dominant supplier. In this context, it is important to note that the focus of this project is not specifically on concerns regarding prices. Rather we are consulting on proactive proposals, based on stakeholder feedback, relevant learning from elsewhere, and full consultation with our stakeholders. These will potentially enhance the operation of, and customer experience in, the small business gas and electricity markets.
- 1.8 It is important to note that the proposed market improvements already exist for domestic customers in our energy markets, so are not novel.
- 1.9 The outcomes of this project will sit alongside other important measures which the UR has implemented such as Retail Energy Market Monitoring (REMM) to

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<sup>3</sup> <https://www.uregni.gov.uk/news-centre/information-paper-project-consider-measures-enhance-operation-small-business-energy>

ensure, as best we may, that retail energy markets are working to the benefit of consumers now and into the future.

### **Project to Date**

- 1.10 As stated above, we published an Information Paper in May which laid out the context for the project, key project considerations, and the timetable in which we aim to complete it.
- 1.11 Subsequent to the publication of the information paper, the UR held a stakeholder roundtable at its office on 21 June 2017. This roundtable included presentations by Ofgem, CCNI and UR. These were followed by a roundtable discussions in groups covering current issues in the small business energy market such as transparency of the available tariff offerings to potential customers; availability of terms for customers; and issues around deposits (level and time they are held for). These discussions have helped inform the options for consultation in this paper.

### **About this document**

- 1.12 The Information Paper stated that the project analysis will aim to:
- Identify concerns or areas of improvement for transparency and competition in the NI energy market by small business customers;
  - identify, develop and critically analyse a set of potential measures for the NI market which can be implemented to help enhance the operation of the small business energy market;
  - define each of these potential measures in detail;
  - undertake stakeholder engagement in the development of these potential measures e.g. in the format of bilateral meetings and/or workshops;
  - consider the measures implemented for microbusinesses as a result of the CMA review of the GB energy market and consider their relevance in the NI market context; and
  - Consider the logistical and regulatory policy implications of all measures (such as the requirement for supply licence modifications).

- 1.13 The purpose of this document is to set out a number of options for consultation for measures to enhance the operation of the small business energy market.
- 1.14 It is anticipated that the work to assess responses to this consultation will be completed during the remainder of 2017, with a final decision paper issued early 2018. This may also involve a phase of licence modifications and implementation for suppliers.
- 1.15 The document is structured as follows:
- Section 2 outlines the background and issues;
  - Section 3 discusses the proposed scope of coverage for the measures;
  - Section 4 examines the areas for improvement in the small business energy market and the outcome of the various stakeholder engagements so far in this project;
  - Section 5 outlines the CMA findings and the measures which are being implemented in the equivalent GB energy markets as a result;
  - Section 6 outlines the proposed market improvement measures for consultation;
  - Section 7 summarises the consultation questions and the next steps for the project.

### **Equality considerations**

- 1.16 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:
- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - ii. men and women generally;
  - iii. persons with disability and persons without; and
  - iv. persons with dependants and persons without.



- 1.17 The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.
- 1.18 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.
- 1.19 In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

***Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?***

***Q2. Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.***

### **Responding to this consultation**

- 1.20 The UR is keen to hear all stakeholder views on the proposals set out in this consultation paper.
- 1.21 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.
- 1.22 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 5<sup>th</sup> December 2017 to:

Nicola Sweeney

The Utility Regulator

Queens House

14 Queen Street

Belfast

BT1 6ED

Email: [Nicola.Sweeney@uregni.gov.uk](mailto:Nicola.Sweeney@uregni.gov.uk)

- 1.23 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.
- 1.24 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.
- 1.25 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.
- 1.26 This document is available in accessible formats. Please contact: Nicola Sweeney on 028 9031 6622 or [nicola.sweeney@uregni.gov.uk](mailto:nicola.sweeney@uregni.gov.uk)

## 2. BACKGROUND & ISSUES

- 2.1 Since the liberalisation of the energy retail markets in electricity and gas in NI, the UR has followed a policy of continuing to price control the former incumbent gas and electricity suppliers who remain dominant in certain market sectors, whilst progressively lowering the threshold for price regulation as competition developed in the larger customer end of the markets. In parallel the UR constantly seeks opportunities to improve the transparency, operation and effectiveness of competition in our energy retail markets. Much of our efforts up to now on this has concentrated on the domestic energy markets, rather than the small business sectors.
- 2.2 The UR Board decided that UR's 2017/18 Work Programme should include a project to consider if there were any improvements that could be made to the effectiveness and transparency of the small business energy markets.
- 2.3 Also, as highlighted previously, the latest Power NI price control now applies to domestic customers only. This has acted as a catalyst for the UR to examine and consult upon measures which will help enhance the operation of the small business energy market. Now that price regulation is no longer in existence we need to rely on competitive forces to protect customers and constrain the behavior of suppliers. Our proposals should allow small business customers to better engage and take advantage of the competition in this market. We are also keen to ensure that where appropriate small business customers have similar measures in place as those in the domestic market (such a tariff transparency) which could contribute positively to the functioning of the market and help competition. Whilst small business customers are still covered by price regulation in the gas market (and therefore some of the measures will already exist such as tariff transparency) we envisage that where appropriate these measures will apply equally in gas.
- 2.4 As part of the Power NI price control consultation we consulted on the removal of the price control on the remainder of small business customers. In addition to this, we held bi-lateral meetings with small business representatives. The purpose of this was to engage with them on their views

as well as determining what their ideas for improvement were and what issues their members had encountered in the market.

2.5 There were recurring themes amongst the customer representative groups in relation to the issues which their members have experienced. These included concerns such as:

- Lack of tariff transparency;
- levels of deposit required from some customers by energy suppliers;
- time period that deposits are held for; and
- “rollover” contracts.

2.6 The customer representative groups were all supportive of the UR carrying out a project which would examine potential measures to address these concerns. They were of the view that this could help their members engage more meaningfully in the market and with more transparency and confidence, and so make competition more effective.

2.7 The UK Competition and Markets Authority (CMA) also completed their review of the GB energy market in 2016. The findings of this review included the issues which they found to exist in the GB energy market regarding small business customers. A number of these have echoed those which the customer representatives identified to the UR as issues in the NI market.

2.8 In their final report published in June 2016<sup>4</sup> the CMA identified that there were several Adverse Effects on Competition (AEC) and detriment to microbusinesses in the GB market. The CMA findings are discussed further in Section 5 of this paper, however they identified areas such as:

- limited engagement in the market or interest in switching;
- lack of small business tariff transparency;

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<sup>4</sup> <https://www.gov.uk/cma-cases/energy-market-investigation>

- margins earned generally on the microbusiness tariffs were higher than other markets such as domestic ; and
- margins being earned on the microbusiness default tariffs appeared to be much higher than the margins on acquisition and retention tariffs. In particular the margins on rollover tariffs (where a customer takes no action at the end of their contract) were higher.

2.9 It is also worth noting that even prior to the CMA review, the Ofgem Energy Supply Probe<sup>5</sup> identified that there were issues of concern in the small business market and the report likened small business customers to domestic customers. Our understanding from stakeholder discussions to date is that these factors exist in NI also. These factors include:

- Limited knowledge of the market;
- Difficulties in understanding and assessing offers;
- Low bargaining power;
- Less able to devote time to energy procurement (compared to larger businesses);
- A large number of microbusinesses consume similar volumes of energy as domestic customers.

2.10 These findings would indicate that small I&C customers, even in a marketplace much bigger and with more competing suppliers than in NI, may need some additional measures to help enhance the operation, transparency and effectiveness of competition of the energy market. The CMA findings are discussed further in Section 5 of this paper.

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<sup>5</sup> <https://www.ofgem.gov.uk/sites/default/files/docs/2008/10/energy-supply-probe---initial-findings-report.pdf>

## UR vision for optimal operation of a competitive market

- 2.11 To further explain the UR policy context of this project, it is important to state our view as to what constitutes a market which operates well and what we believe would make a market function better for customers.
- 2.12 The UR published a paper entitled “UR Strategic Approach to Energy Retail Markets and Consumer Protection”<sup>6</sup> in 2014. This paper laid out the UR’s view on how an optimally functioning retail energy market should look.
- 2.13 There are certain fundamental requirements which would allow customers to engage with confidence and transparency in the energy market and thereby maximise the benefits of competition.

### **Market Signals and Clear Understanding of Prices**

Appropriate market signals mean that there should be clarity and transparency in relation to prices available to small business customers. This would result in well informed customers who have access to clear and easily understood information on products and tariff / service choices resulting in uncomplicated, high-quality decision-making by consumers. Customers will have the confidence that they can easily weigh up their options and shop around for the best deal available with ease.

### **Customer Confidence**

If a market is to function optimally customers must have the confidence and ability to engage in the market if they choose to. They should not have undue concerns around exit fees, Terms and Conditions or deposit levels that hinder their engagement in the market.

### **Market Mechanisms**

It is critical that the market mechanisms themselves do not impede the effectiveness of competition in the market. This would include a customer being locked into a contract by virtue of being rolled over automatically or exit

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<sup>6</sup> <https://www.uregni.gov.uk/publications/ur-strategic-approach-energy-retail-markets-and-consumer-protection>

fees from a current contract that were unduly onerous. Mechanisms such as these create a loss of confidence in the market and less effective competition.

- 2.14 Taking all the above into account, the existence of this project as a priority in our Workplan for 17/18 reflects our view that the UR should consult on and implement measures that can enhance the effectiveness and transparency of energy markets for small business customers.

### 3. SCOPE

- 3.1 This section of the paper discusses the potential customer scope which the enhancement measures (if implemented) would cover. It also sets the context for who these measures would impact.
- 3.2 As previously highlighted in Section 1 of this paper, the Information Paper stated that we were minded to limit the scope of the project to the small business sector, rather than all business customers. This is because these customers are most in need of additional measures to assist them with understanding and operating in a competitive market: larger business users have more knowledge, negotiating power, and capabilities to gain the benefits of the competitive market.
- 3.3 The CMA final report defined the 'relevant segment' of the market which the small I&C measures would apply to. This is in the context of the term "microbusiness" as defined by Ofgem which encompassed a broad spectrum of business customers. The Ofgem definition of a microbusiness is a business with:
- Electricity consumption  $\leq 100$  MWh; or
  - Gas consumption  $\leq 293$  MWh; or
  - Less than 10 full time employees and  $<€2$ m turnover or balance sheet.
- 3.4 In this context, the CMA defined a relevant segment so as the scope of coverage for the remedies would not be impractical. For example, in the case of tariff transparency, it would be complex for energy suppliers to disclose the prices for larger microbusinesses. It was also argued that larger microbusiness prefer to negotiate contractual matters through offline channels such as telesales. It was also determined that there would be cost implications with applying remedies across too wide a definition of microbusiness.
- 3.5 The CMA in their final report, defined the relevant scope as non-domestic electricity consumers with single meter points meeting all of the following criteria: falling under profile classes 1 to 4; consumption threshold equal to or below 50,000kWh per year; and on simple meters. For non-domestic gas



consumers, this remedy applies to consumers with small supply points only, which will include microbusiness consumers with consumption levels of less than 73,200kWh per year.

- 3.6 This paper has previously discussed the recent price deregulation of the remaining Power NI small I&C electricity customers. This deregulation was implemented on 1 April 2017. This was part of the final decisions on the Power NI price control for 2017 onwards. This saw the remaining 0-50MWh I&C customers have their regulated tariff removed.
- 3.7 In this context, we are of the view that the scope of measures and proposals in this paper should cover those small I&C customers who fell within this latest tranche of price deregulation (i.e. 0 – 50MWh users). This would also align with the CMA definition of the relevant segment.
- 3.8 In relation to gas small I&C customers there is still price regulation in this energy market. Currently the threshold for the price regulation applies to those customers up to 73.2MWh. Whilst not all of the enhancement measures may be relevant in the context of the customers who are currently price regulated we are of the view that the scope of coverage for them should include those small I&C customers up to 73.2MWh. Again, this would be in line with the CMA relevant segment definition for gas.

## Small Businesses

- 3.9 The latest UR Quarterly Transparency Report<sup>7</sup> states that there are circa 61,000 electricity customers in the 0-50MWh category and circa 9,000 gas customers in the up to 73.2MWh category which we have defined as within the scope of coverage of this project.
- 3.10 There is no direct read across from the consumption level of the company to the economic categories which are used to apportion out different businesses of different sizes for the purposes of analysing what each category contributes to the economy. However, using information gained from Gov.UK<sup>8</sup> we can

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<sup>7</sup> <https://www.uregni.gov.uk/sites/uregni/files/media-files/2017-08-31%20Transparency%20Report%202017%20Q2%20FINAL%20%281%29.pdf>

<sup>8</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2016>

provide some context around the contribution these businesses make to the NI economy, and therefore their importance. The categories are defined in a number of ways, one of which is by the number of employees in the business. It is difficult to determine exactly where NI's 0-50MWh businesses fall in terms of using the number of employees to gauge the size of the business relative to the consumption of electricity. However, if we were to use the Ofgem definition in their report Micro and small business engagement in the energy market 2016<sup>9</sup> a small business would be defined as having fewer than 50 employees.

Table 1 below shows the number of micro and small businesses in the private sector in NI and their associated employment and turnover. This information is correct at January 2016.

<b>Percentage of NI businesses with less than 50 employees</b>	<b>Turnover £ millions</b>	<b>% of Turnover of whole NI market</b>	<b>Total Number Employed</b>	<b>% of Employees of whole NI market</b>
<b>99%</b>	30,425m	51%	313,000	58%

3.11 Table one demonstrates that almost all businesses in NI fall within the category of small business. In terms of employment and turnover they represent over half of the total for both.

**Q3. Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?**

<sup>9</sup> <https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-business-engagement-energy-market-2016-quantitative-research-report>



## 4. THE SMALL BUSINESS ENERGY MARKET & STAKEHOLDER ENGAGEMENT

- 4.1 This section of the paper examines the issues which, through all our preparatory work and discussions for this project, we consider as potential areas for enhancement of the small business energy market.
- 4.2 As previously stated our work to date highlighted some initial areas where potential improvements were flagged; these included:
- tariff transparency;
  - rollover contracts;
  - levels of deposit required;
  - time period deposits are held for;
  - being offered terms.
- 4.3 As laid out in our information paper we stated that we would undertake stakeholder engagement to help establish the current issues experienced in the small I&C market and assist in formulating the options for consultation. As a result of this, the UR also then held a stakeholder roundtable at their offices on 21 June 2017.
- 4.4 The event was attended by a wide range of stakeholders including suppliers and customer representative groups. As previously stated in Section 1 of this paper the attendees were broken into groups and each group was chaired by a member of UR staff. The groups were asked to discuss a number of the issues which were highlighted by small business representatives during the consultation phase of the Power NI 2017 price control. The aim of these discussions was to get more detail on the issues taking into account both supplier and customer representative views. It was anticipated that a set of measures could then be developed based on these discussions which would

be consulted upon by the UR. A summary of each group's discussion was also distributed to all those stakeholders present at the workshop.

### **Tariff Transparency**

- 4.5 A significant amount of time was spent on this area with the stakeholders. This was previously highlighted by the business representatives as the major barrier for their members engaging effectively and thoroughly in the market.
- 4.6 During the roundtable discussion customer representatives were clear and insistent that there is a problem with the lack of price transparency in the market and a resulting lack of engagement by small business customers. They were also concerned as to why there is reluctance to implement tariff transparency by suppliers or assist in the establishment of a central source of tariffs for customers, such as a price comparison website. This would seem to be clearly beneficial as a key area to allow better customer knowledge and engagement.
- 4.7 This lack of transparency can result in a customer being unable to establish whether they are on a good tariff deal or not without approaching a number of suppliers individually and obtaining a quote from each of them.
- 4.8 This is time consuming for a customer and in the context of running their business they may not be able to dedicate their time to making numerous calls to suppliers (they simply may not have the resource to do this). In addition to this, there can be an issue with comparability as not all tariffs are quoted or presented in a uniform manner. This leads to a scenario where even if the customer has invested the time in obtaining a number of quotes they may be in a position where they are unable to meaningfully compare them.
- 4.9 This severely impacts on their ability to actively participate in the market and take advantage of the competition that exists in this market. Whether or not it represents a large expenditure to a customer, the tariffs should be readily available to an existing or potential customer so that it does not require a significant time investment. This would allow a customer to better engage in the competitive market.
- 4.10 It was also raised that the recent price deregulation of the remaining I&C customers which were previously covered by Power NI's price control has

meant that there is no longer a benchmark for small business customers.

These tariffs were published on Power NI's website **prior** to the removal of the price control on this small business segment of the market. Without the provision of a benchmark there is even less transparency in the market.

- 4.11 In the context of tariff transparency customer representatives were of the view that the UR did have a responsibility for enhancing the operation of the market.
- 4.12 However, suppliers expressed the view that tariff quotes can be individual and as such it would present difficulties for them to publish uniform tariff rates. If there was a requirement to publish tariffs this could eliminate bespoke offers for potential customers. They highlighted the fact that tariff rates were also influenced by whether the customer wanted a fixed tariff or a 'tracker' tariff. There was also a view amongst suppliers that it would be costly to publish individual tariffs and whether published tariffs would be 'like for like' across suppliers.
- 4.13 Suppliers were also of the view that published tariffs may encourage brokers to enter the market and they are currently unregulated in NI. However, the Ofgem representative present outlined that it has been shown in GB that it is a more likely scenario that brokers would enter a market segment where prices were less transparent.

#### **Automatic 'rollover' of contracts**

- 4.14 The participants in the roundtable discussions were then asked to discuss the area of rollover contracts and whether there were any current issues in the small business energy market with regard to these.
- 4.15 Rollover contracts exist where a customer's existing contracts comes to an end and they are moved on to another contract which would 'lock' them in to another fixed term contract. It would also be likely that exit fees would be incurred as the customer would in effect be breaking a contract.
- 4.16 Customer representatives were very much of the view that being locked in to a rollover contract would be an issue and that customers should not be disadvantaged by a lack of engagement at the end of their contract period. Suppliers were also of the same view. However, customer representatives

had not come across any instance where a NI customer who had come to the end of their initial contract period had been rolled over to a new contract. In all cases they were only required to give the standard notice period.

- 4.17 Encouragingly, suppliers stated that they would like to see rollover contracts with locked in clauses banned. All suppliers agreed that it was perceived as an opportunistic way to put customers onto higher prices. They did note however that enduring contracts should be allowed where there is a lack of engagement from customers. These would contain no exit fees nor would the customer be locked in. They were of the view that a rollover contract frustrates the market and ability to switch if there is a lock in or an automatic rollover.

## Deposits

- 4.18 The discussion in the area of deposits covered a number of different elements such as the level of deposit required and the length of time a deposit should be held for.
- 4.19 Customer representatives acknowledged that suppliers need protection from bad debt and were not against the principle of deposits. However, they were also of the view that deposits needed to be reasonable. In this context, they should reflect how long a company has been in business and should be linked to credit checks. Customer representatives also argued that a reasonable level is often seen as the cost of 3 months consumption and this is often the level of deposit required. They stated that this could be quite a lot of money which is potentially held indefinitely and it was queried whether or not this was a reasonable approach. There were instances reported in the hospitality industry when deposits for electricity are held for the entirety of contracts. This implies that the customer never gets the money back again as long as they are in business. These customers are seen as high risk by suppliers who have often seen doubling of deposits mid-contract.
- 4.20 Suppliers stated that they have to manage their debt risk across their total customer base. They were of the view that they should be able to ask for deposits to address this risk. The sector the business operates in could also

impact this, with some being inherently more risky than others. They also highlighted that credit checks are not robust enough in the cases where businesses with bad debt were changing their legal entity. They highlighted the fact that suppliers have to provide security to the market and therefore why shouldn't it be the same for their customers.

- 4.21 Positively, suppliers stated that they had no concerns with the proposal that deposits should be set at a reasonable level. However, 'reasonable' would have to be defined. They were also of the view that the level of deposit should be of a minimum level of the equivalent of the cost of 8 weeks consumption for that customer.
- 4.22 In the context of how long a deposit should be held by suppliers there were differing views amongst suppliers themselves. Some stated that consideration should be given to the introduction of triggers determining if a deposit could/should be released back to the customer and how much of it should be released at any given trigger point. Others were of the view that a deposit should be held for the entirety of the period of supply citing the example of a landlord holding a deposit on a rental property. They argued that a history of good payment doesn't guarantee continued good payment.
- 4.23 Suppliers noted that in ROI they have to give a statement on their website as to how a deposit is calculated and this is something that could also be considered in NI.
- 4.24 Furthermore suppliers argued that a lot of benefit could be gained, in the context of dealing with customer risk and deposits, if a pre-payment keypad solution could be introduced for small business customers which would remove the requirement for upfront deposits. They cited the success of the keypad market in domestics to support this.

### **Duty to offer terms**

- 4.25 Customer representatives supported a duty to offer terms obligation (akin to that in place for domestic customers) in principle and ideally would like to see a non-discrimination clause. They also made the point that a duty to offer



terms is not a protection if the price and T&C's are unfavorable. This has been the experience of some small business customers.

- 4.26 Suppliers were of the view that the company has the right to do business with whom they choose. They also pointed out that there was no evidence of micro-businesses not being offered terms. In this context, they stated that only circa 5% of companies in the small business category have a substantial deposit held (i.e. the majority are offered terms without prohibitive deposits). They were of the view that a duty to offer terms was not required and were not supportive of any measure to introduce this.

### **Customer Engagement/Education:**

- 4.27 This part of the discussion looked at possible reasons why small business customers were not engaging in the market and perhaps switching was not as active as it should be. Particularly, if there were any issues with the market that stakeholders felt were impacting upon customer engagement.
- 4.28 Other stakeholder views focused on the fact that the former incumbent has a strong image and having been the regulated supplier, customers trust them. They also offered the view that there is a lack of awareness on the part of some customers. Many also are confused and simply don't understand their bills. An example of this that was cited was when one customer was asked what their unit rate was and the rate they quoted would have been impossible. This appears to highlight a lack of understanding. Stakeholders also highlighted an inability to engage in the market due to a lack of tariff transparency and the time input required when electricity may not be a significant part of the business's ongoing operating expenditure.
- 4.29 It is worth noting that CCNI have already indicated that they will be introducing a 'Switch and Save Campaign' for small businesses. This work will aim to:
- focus on Small business;
  - raise awareness;
  - promote switching;

- take a partnership approach;

4.30 The CCNI project will potentially help address the educational requirements of customers. This in conjunction with other potential measures proposed in this consultation should enhance the operation of the small business energy market and potential increase engagement and transparency.

#### **Brokers:**

4.31 Whilst this was not something that was highlighted in advance of the stakeholder engagement, this was raised as a concern amongst stakeholders during the roundtable discussions. As highlighted above, suppliers felt that the publication of prices may encourage more broker entry into the market. However, we are unsure if this is the case as we are of the view that less transparency may allow brokers to have a function where a customer cannot gain easy access to price information. Concerns were also raised as to whether customers would actually receive the best deal available if they use a broker.

***Q4. Do respondents agree with the issues highlighted in Section 4 –if not please provide explanation/rationale as to why?***

***Q5. Do respondents have any other issues which they would like to raise which have not been highlighted above?***

## 5 CMA FINDINGS AND MEASURES

- 5.1 This section of the paper discusses the CMA Market review at a high level and what some of the key findings were of that report and the subsequent recommended measures. The CMA review is important to consider as a number of the findings mirror concerns that have been expressed by stakeholders in relation to the NI small business energy market.
- 5.2 In June 2014, the GB regulator, the Office of Gas and Electricity Markets (Ofgem), announced that it would refer the GB energy market for an investigation by the Competition and Markets Authority (CMA). The decision followed a market assessment, conducted by Ofgem, which concluded that a number of features of the market were preventing, restricting, or distorting competition.
- 5.3 As part of its investigation, the CMA was required to examine whether “any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom”. If this were the case, it would represent an Adverse Effect on Competition (AEC).
- 5.4 The CMA focused its market assessment on the GB market and did not consider the NI energy markets. However, the review is important in the context of this consultation given that a number of the findings mirror what stakeholders and small business representatives have told the UR concerning their members.
- 5.5 The final report of the CMA review of GB energy markets was issued in June 2016. During the course of the review, the CMA stated that its focus and concerns were not on the wholesale energy market in GB, but rather the retail sector where they identified certain concerns regarding consumer harm.
- 5.6 The findings highlighted that there were a combination of features in the GB market which have an adverse effect on competition. For example, one of the Adverse Effects on Competition (AECs) identified was Micro Business Weak Customer Response. The CMA identified the features causing this Micro Business Weak Customer Response as:

- Customers having limited awareness or an interest in their ability to switch energy supplier.
- Customers face actual and perceived barriers to accessing and assessing information arising from a lack of price transparency concerning the tariffs available to microbusinesses and the role of third party intermediaries in relation to malpractice and a lack of transparency and incentives not to give non-domestic customers the best possible deal.
- Some micro businesses are on auto-rollover contracts and are given a narrow window in which to switch supplier or tariff which may limit their ability to engage with the market.

5.7 The CMA decided on a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment it found. The CMA decided to implement, via an order, a requirement on suppliers:

- To disclose certain information about the prices they charge or offer micro business on their website or third party online platforms
- Not to include terms in their auto-rollover contracts with micro business customers that restrict when such customers can give notice to terminate the contract or from charging such customers a termination fee in certain circumstances.
- having Ofgem implement a programme to provide micro-business customers with different or additional information to promote them to engage in the SME retail energy markets; and
- a requirement on suppliers to provide details of their micro-business customers who have been on a default tariff for over three years to Ofgem, so this information may be used for postal marketing.

- 5.8 The Energy Market Investigation (Micro businesses) Order 2016 (The Order)<sup>10</sup> came into force on 15th December 2016 except for Articles 3, 4 and 5 which will come into force on 26 June 2017.
- 5.9 The recommendations for micro-businesses are of relevance to NI. Issues such as the transparency of prices are cited by small business representative groups in NI as problematic and this lack of transparency means small businesses do not have the correct information with which to make appropriate decisions. This distorts the proper functioning of the competitive market. Up until lately small businesses in electricity did have the regulated Power NI tariff to use as a benchmark against other offerings, but from 1 April 2017 this price control has been removed from Power NI in the small business market as they were no longer dominant in that space. Power NI removed all their small business price information from their website following the removal of the price control. Other electricity suppliers in NI also do not publish price information for their small business offerings.

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<sup>10</sup> <https://assets.publishing.service.gov.uk/media/58513efb40f0b60e4a0000a2/energy-market-microbusiness-order-2016.pdf>

## 6. MEASURES FOR CONSULTATION

- 6.1 This section of the paper sets out the potential measures that the UR is consulting upon. As previously discussed, these measures have been developed taking into account lessons from similar customer experiences in GB, the views expressed by small business representatives during the consultation phase of the latest Power NI price control, as well as the those put forward by small business and industry at the stakeholder roundtable event as laid out in Section 4. The aim of each of the measures laid out for consultation is to enhance the operation of the small business energy market in NI. These measures are not to remedy any particular harm per se, but rather are positive and proactive measures to improve the operation of the small business market. As noted previously, they already exist in the domestic market and are not novel.
- 6.2 In our information paper we highlighted a number of potential measures which would potentially be consulted upon. These included:
- Increased tariff transparency for small business customers. This would include a requirement on all suppliers to publish tariffs for these customers. This would mirror the final CMA proposal which requires all suppliers to publish their acquisition and retention tariffs for all small business customers.
  - A duty on all suppliers to offer terms to a small I&C customer (similar to the duty to offer terms obligation for domestic customers in the current supply licences);
  - A requirement on all suppliers that if deposits are required they must be at a reasonable level and potentially limiting the period for which they can be held;
  - Suppliers being prohibited from rolling over contracts of existing customers;
  - Consideration of the level of exit fees in the small business market;

- Investigation of the technical feasibility of offering a pre-payment solution to small business customers;
- Other protections for small business that currently exist for domestic customers, such as: transparency of T&Cs with obligation to inform customers if their T&Cs change, notification of price changes, notification of any fixed term contract periods coming to an end.

### **Measures for Consultation**

6.3 Below is a list of the measures the UR wishes to propose following engagement with all stakeholders after the publication of the UR information paper. We envisage that each of these measures would likely require either the imposition of new supply licence obligations or existing licence obligations that apply only to domestic customers being extended to cover small business customers also.

#### **Measure 1 – Tariff Transparency Requirement on Suppliers to publish tariff rates including their acquisition and retention rates for small business customers.**

6.4 As highlighted in Section 4 this is an area where stakeholders views varied somewhat. Suppliers' view was that this was too difficult and too costly to execute and wasn't required given that customers had to 'shop around' for other things such as insurance. However, other Stakeholders including customer representatives were of the opinion that this area is the biggest concern for customers.

6.5 The UR considers that having clear and transparent access to price information is a key pre-requisite for fully effective competition. This is preventing small business customers engaging meaningfully in the market. As such the UR is of the view that Suppliers should publish their tariffs. Customers should have transparency and the ability to meaningfully compare prices offered by different suppliers. This would be an enhancement to the market which would allow small business customers to take full advantage of the competitive market which is open to them in NI.

6.6 At this stage, we would envisage that this could take a similar form to that proposed by the CMA in the Energy Market Investigation (Microbusinesses) Order 2016. This area is covered by Article 3 and Article 4 of the Order.

Article 3: “***Obligation to disclose Required Price Information to Relevant Micro Business Customers***” states:

“3.1 *Retail Energy Suppliers must disclose the Required Price Information<sup>11</sup> in the Prescribed Format promptly to each Relevant Micro Business Customer on its Website or on one or more Third Party Online Platforms.*”

3.2 *Where a Retail Energy Supplier discloses the Required Price Information on its Website, the Retail Energy Supplier must ensure that access to the Required Price Information is displayed clearly and prominently.*

3.3 *Where a Retail Energy Supplier discloses the Required Price Information through a Third Party Online Platform, the Retail Energy Supplier must ensure that a web-link to the Third Party Online Platform is displayed clearly and prominently on its Website.*”

6.7 Article 4 of the Order also states that:

“4.1 *Retail Energy Suppliers must disclose, on their Website, the Unit Rates and Standing Charges per fuel of all their Out-of-contract Contracts and Deemed Contracts which apply to Micro Business Consumers.*

4.2 *When making the disclosure in accordance with Article 4.1, the Retail Energy Supplier must ensure that access to this information is displayed clearly and prominently on its Website.*”

6.8 As discussed previously, this requirement has already come into effect in GB. We are of the view that this type of transparency should be available in the NI market and that this can enhance the competitive market. The Authority is also of this opinion and it views price transparency in the gas and electricity markets as an integral part of any measures to enhance the operation of the

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<sup>11</sup> Means each separate combination of Standing Charges, Unit Rates and all other associated charges per Electricity Meter and Gas Meter, which is available for a Relevant Micro Business Customer to enter into a contract to purchase the supply of electricity or the supply of gas (or both) from the Retail Energy Supplier, and remains available for an identified period, subject only to the Retail Energy Supplier conducting a Successful Credit Check and any terms and conditions that may apply to any existing Micro Business Consumer Contract between the Relevant Micro Business Customer and that Retail Energy Supplier.



market. The Authority's view is that price information for small businesses **needs** to be adequate and accessible and comparable to what is currently available to domestic customers in NI. In the absence of such transparency it will be impossible for gas and electricity customers to be well enough informed to make high quality decisions. The implementation of this measure in GB can be analysed to inform any implementation in NI and lessons learned from what has worked or not.

***Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.***

**Measure 2 – Deposits – clarity on how these are set by suppliers. Suppliers should publish how they calculate deposits on their websites**

- 6.9 At the stakeholder roundtable there was quite a lot of discussion around deposits and their level. One of the suggestions made by a supplier was the potential for publishing information on their websites as to how they calculate their deposits (which is currently done in ROI). The UR is of the view that this would be another measure to aid transparency in the market. It would also provide adequate information to a potential customer as to what the requirements are for them with an individual supplier without the requirement to phone them. It would also allow them to take into consideration the deposit requirements alongside the tariffs being offered by that supplier.

***Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why.***

### Measure 3 – Level of deposits & length they are held for

6.10 This area has also been raised as a concern by customer representatives. The level of deposit set can be seen as prohibitive to a potential customer receiving terms/supply from a supplier. Whilst the UR agrees that the supplier has the right to ask for a deposit and have the protection to their income from this, we are of the view that the level set should be reasonable and not prohibitive.

6.11 There is currently protection for domestic customers in relation to this area. This is dealt with under licence Condition 27a for electricity and Condition 2.22 for gas. These state:

*“Any Security Deposit required by the Licensee shall be of an amount that:  
(a) is reasonable in all the circumstances of the case; and*

*(b) does not exceed the Charges of the Supply of Electricity likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity reasonably expected at the relevant premises by the Domestic Customer..”*

6.12 We are of the view that the provision of a similar requirement for small business customers may help address customer representative concerns and at the same time give suppliers comfort that they are also being protected against loss of income. The deposit amount should be calculated as three months consumption at the appropriate rate (the appropriate rate is that which will be shown through the transparency measures for tariffs on the supplier’s website).

6.13 As discussed in Section 4, the length of time for which deposits are held for was also raised as an issue by customer representatives. There were various views as to whether a deposit should be held indefinitely or whether after a period of proven payment history it should be returned to the customers.

Another potential option which was suggested was giving the deposit back in various stages with triggers for doing so.

6.14 In relation to domestic customers this issue is also dealt with through licence Condition 27a for electricity and Condition 2.22 for gas. The licences state:

*“3 The Licensee shall, where it requires a Domestic Customer to pay a Security Deposit, at the same time inform the Domestic Customer of the effect of paragraph 5.*

*4 Subject to paragraph 5, any Security Deposit given by a Domestic Customer shall be repaid by the Licensee:*

*(a) within 28 days where, in the previous 12 months, the Domestic Customer has paid all Charges for the Supply of Electricity demanded from him within 28 days of each written demand made; or*

*(b) as soon as reasonably practicable, and in any event within 1 month, where the Licensee has ceased to supply the Domestic Customer and the customer has paid all Charges for the Supply of Electricity demanded from him.*

*5 Sub-paragraph 4(a) shall not apply where it is reasonable in all the circumstances for the Licensee to retain the Security Deposit.”*

6.15 We are currently of the view that deposits should not be held indefinitely and it is reasonable, that where the customer has demonstrated a good payment history with the supplier, for them to be handed back to the customer after a finite period of time. The licence does allow the supplier to retain the deposit and not apply 4(a) if it is reasonable for them to do so. However, we would envisage that 5 would apply in exceptional circumstance only. An example of this could be theft or a situation where the company is in administration but is continuing to trade. We would not see as ‘reasonable’ the supplier holding the deposit because the supplier’s view is that the customer is in an industry that overall was risky or the customer had previously had a bad credit rating (demonstrated payment history should address this).

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

#### **Measure 4 – Rollover of contracts**

- 6.16 As highlighted in Section 4, rollover contracts do not seem to present an issue in NI. It would appear that suppliers do not use an autorollover of an existing contract to tie customers into another set time period. If a contract is rolled over by a supplier (where the customer has not contacted the supplier) it will allow the customer to exit the contract in the normal notice period such as 28 days and there won't be an exit fee charged.
- 6.17 Stakeholders were keen that this should not be allowed to exist in NI, this was the view expressed by all stakeholders, both suppliers and customer representatives.
- 6.18 Rollover contracts in GB have been an issue and one of the areas addressed by the CMA in their Microbusiness Order. Article 6 states:

*“6.1 Subject to Article 6.4, Retail Energy Suppliers must not enter into, or perform, an Auto-Rollover Contract containing either:*

*(a) a restriction on when a Micro Business Consumer can give notice to terminate the Auto-Rollover Contract during (a) the Initial Period, or (b) any Roll-Over Period; or*

*(b) a term that provides for a Retail Energy Supplier to charge the Micro Business Consumer a Micro Business Termination Fee where that Micro Business Consumer gives notice to terminate the Auto-Rollover Contract during the Roll-Over Period.*

*6.2 Subject to Article 6.4, where a Micro Business Consumer gives notice to terminate an Auto-Rollover Contract during the Initial Period, the Retail Energy Supplier:*

*(a) must terminate the contract at the end of the Initial Period, if the Micro Business Consumer gives notice to terminate at least 30 days before the end of the Initial Period;*

*(b) must terminate the contract no more than 30 days after the Micro Business Consumer gives notice to terminate, if such notice is given within the last 30 days of the Initial Period.*

**6.3** *Subject to Article 6.4, where a Micro Business Consumer gives notice to terminate an Auto-Rollover Contract during the Roll-Over Period, the Retail Energy Supplier:*

*(a) must terminate the contract within the Relevant Notice Period; and*

*(b) must not engage in any course of action which has the effect of increasing the Standing Charge, Unit Rate or any other charge which the Micro Business Consumer must pay pursuant to the Auto-Rollover Contract.*

**6.4** *Articles 6.1, 6.2 and 6.3 do not apply until 26 June 2017 for an Auto-Rollover Contract that was entered into on or before 15 December 2016.”*

**6.19** Domestic customers in NI are already protected against this under Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences.

The licence states:

*“12 Where the Licensee enters into a Contract with a Domestic Customer which has a fixed term period:*

*(a) any such Contract may not include any term or condition which has the effect of:*

*(i) extending the length of that fixed term period; or*

*(ii) applying a consecutive fixed term period,*

*unless the Domestic Customer has the right to terminate the Contract at any time in the extended or consecutive fixed term period without payment of a termination fee; and*

*(b) the Licensee shall, by way of sending a notice, notify each such Domestic Customer of:*

*(i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date;*

*(ii) the name and unit rate, expressed as “pence per kWh”, of the Domestic Customer’s current tariff; and*

*(iii) details of the standard evergreen tariff, including the applicable unit rate expressed as “pence per kWh”, that will apply under the Contract following the expiry date of the fixed term period.”*

- 6.20 Whilst there currently does not appear to be an issue with auto rollover contracts in NI there is no restriction on their introduction. Given the views of all stakeholders at the roundtable, it may be appropriate to prohibit them. The requirement in supply licences in relation to domestic customers on this could potentially be replicated for small business customers.

**Q10. Do respondents think that there should be a formal requirement on licensees which disallows the rollover of a contract (similar to that currently provided for domestic customers). If so please provide a clear rationale as to why.**

## **Measure 5 – Exit Fees**

- 6.21 Whilst the UR understands the rationale for the existence of exit fees they should be reasonable. It should also be clear and transparent at the outset of the contract what the exit fees are associated with exiting that contract; when they will apply and how they are calculated.
- 6.22 Suppliers highlight the point that when a customer enters into a contract they may well have purchased hedges and volume on the basis that the customer would be with them for the entirety of the contract period. In this context they are of the view that an exit fee is reasonable.
- 6.23 In the context of domestic customers exit fees are also dealt with under Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences. The licences state:

*“5 The Licensee:*

*(d) shall not determine standard terms and conditions which impose an obligation on the Domestic Customer to pay a termination fee, unless any such obligation has been approved in advance by the Authority;”*

- 6.24 We would propose that exit fees should be set at reasonable level and that this level (or the derivation/calculation of the level) should be approved by the UR.

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation/calculation of the level) is approved by the UR?**

### **Measure 6 – Prepayment Meters for small business customers**

- 6.25 We indicated in our information paper that we would potentially investigate the technical and logistical feasibility of a prepayment solution for small business customers. At the roundtable discussion a number of stakeholders indicated their support for this. They stated that it could help address concerns in relation to the level of deposits as it offered protection for suppliers and that there wouldn't be the need for a security deposit upfront. In addition to this, businesses customers may be able to budget their energy costs more appropriately and it removes the risk of surprise/large bills. Since the publication of the information paper we have engaged with both the network companies in electricity and gas to provide the UR with information which would support a conclusion as to whether this was a viable solution or not in the two industries. Early indications would suggest there are likely to be some issues in terms of for example shared premises, where there are common areas such as halls where security and fire detection equipment may be, and other potential issues around VAT levels. The UR has requested that the network companies submit papers to the UR which detail out whether the solution will be feasible or not.
- 6.26 In this context, we would invite respondents to give their views on whether a prepayment solution for small business customers would enhance the

operation of the small business energy market. We will consider these views along with the papers submitted by the network companies. It is also important to note that the systems in gas and electricity are different and as such it could potentially outturn that the option is viable in one energy market but not in the other.

**Q13. Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?**

### **Measure 7 – Other Potential enhancement measures**

6.27 Domestic customers currently have a range of measures in place which may also be relevant in the context of the small business customers. These other measures include:

- Duty to offer terms;
- ‘Cooling off’ period;
- transparency of T&Cs with obligation to inform customers if their T&Cs changes; 21 day notification of price changes, notification of any fixed term contract periods coming to an end;
- Mandatory statement on bills stating that the customer may not be on the cheapest tariff

### **Duty to Offer Terms**

6.28 This measure was listed as one that would potentially be explored. However, on discussion and consideration at the stakeholder roundtable it was viewed as an option that should not be implemented. In relation to domestic customers there is a requirement on suppliers to offer terms under Condition 26 in the electricity supply licence and Condition 2.17A in the gas supply licence. However, the rationale in these circumstances is that electricity supply is essential in domestic circumstance for reasons such as health and



safety of the occupants. It was also agreed in discussions that it could be unworkable in practice as a supplier could offer terms, if duty bound to do so, but then offer a unit rate which was exceptionally high which a customer is unlikely to accept. Suppliers also raised the issue that they had experienced where a business closed down (with outstanding debt to the supplier) and the same business reopening under another name to avoid paying the debt. Suppliers expressed the view that they had the right to refuse to offer terms in this circumstance. Furthermore, without the full complement of supplier obligations under domestic supply licence conditions such as standard terms and conditions for all domestic customers, it would not resolve the issue. Therefore, the UR view is that, on balance, the difficulties of implementation and the uncertainties with the justification for such a measure that the proposal should not be taken forward at this time. This issue can be revisited in the future if that is needed.

### Measure 7(a) 'Cooling Off Period'

- 6.29 Domestic customers have the right to cancel their contract with an energy supplier up to ten working days after entering it. This is under Condition 27 of the electricity supply licences and Condition 2.18 in gas supply licences. The licences state:

*"7 The Licensee shall ensure that each set of standard terms and conditions it determines for Domestic Customers shall be fair (as between the Licensee and each Domestic Customer) and shall, as a minimum, include the following:*

*(e) a right for the Domestic Customer to withdraw from and cancel the Contract:*

*(i) where a supply of electricity has at any time previously been taken at the premises, within ten working days of entering into the Contract; or*

*(ii) where a supply of electricity has not previously been taken at the premises, within ten working days of entering into the Contract, or any time up to ten working days prior to the premises being connected to a distribution system, whichever is the later;"*

- 6.30 We understand this may present some issues for suppliers, for example where they have committed to hedges for that customer on the assumption that they will be a customer of that supplier. However, we would seek stakeholder's

views on this as a potential option and seek to understand how they envisage it would work in practical terms.

**Q14. Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.**

#### **Measure 7(b) Transparency of T&Cs:**

- **Obligation to inform customers if their T&Cs change**
- **21 day notification of price changes**
- **Notification of any fixed term contract periods coming to an end**

6.31 In relation to domestic customers, this is another area which is dealt with under Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences. There is a requirement to inform the customer if there is a change to their terms & conditions. The licences state:

*“Where the Licensee proposes to vary any of the terms and conditions of a Contract it has with a Domestic Customer, it shall, by way of sending a notice that:*

*(a) sets out the information in clear, transparent and easy to read and understand language; and*

*(b) where the variation relates to terms as to price, sets out the unit rate (expressed in each case in ‘pence per kWh’) of the Domestic Customer’s current tariff and of the proposed new tariff,*

*notify each such Domestic Customer of the proposed variation, together with the Customer’s right (as included in the Contract in accordance with paragraph 7(f)) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect.”*

*And*

*“12 Where the Licensee enters into a Contract with a Domestic Customer which has a fixed term period:*

*(b) the Licensee shall, by way of sending a notice, notify each such Domestic Customer of:*

*(i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date;”*

6.32 This proposed enhancement measure is to increase transparency of a customer's T&C's with obligations to inform a small business customer if these are going to change (including changes to price) as well as informing small business customers if their fixed term contract is coming to an end. The UR is of the view that the customer should be in a position to make an informed decision at all times and as such transparency in relation to their T&C's (including terms as to price) and appropriate notice if they are going to change is essential. Notification of the end of a fixed term contract encourages engagement with the market and is also a marketing opportunity for the supplier. In addition to this, it is also prevalent in many other industries e.g. insurance.

**Q15. Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.**

**Measure 7(c) Mandatory statement on bills stating that the customer may not be on the cheapest tariff**

6.33 The UR issued its final decision paper<sup>12</sup> on Implementation of a New Supplier Code of Practice on Energy Bills and Statements. Under Principle 4:

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<sup>12</sup> <https://www.uregni.gov.uk/news-centre/decision-paper-new-supplier-code-practice-energy-bills-and-statements>

*“customers will be made aware if there are cheaper tariffs available to them”* it was proposed that there be a mandatory statement on bills informing customers of this. It had previously been proposed that the statement should be on both domestic and non-domestic bills. However at the decision paper stage it was indicated, that it would apply to domestic bills only. Some of stakeholder feedback gave a firm view that the mandatory statement should also be included on a non-domestic bill. In this context, the decision paper indicated that it would be considered again as part of this project.

- 6.34 This measure could also help to enhance transparency and potentially stimulate engagement in the market. As previously stated the UR is of the view that customers should in a position where they can make informed decisions.
- 6.35 The decision paper for the Code of Practice on Bills and Statements finalised the content of the mandatory statement for domestic customers:

*“Thank you for choosing <supplier name>. We may offer other tariff options so please check our website <website details> or speak to one of our advisors <customer number> to find out if you are on the best deal for you. You may also change your <electricity/gas> supplier. Impartial advice and information about tariffs and switching can be found at [www.consumer council.org.uk](http://www.consumer council.org.uk) or by phoning 0800 121 6022.”*

- 6.36 The UR would welcome stakeholder views as to whether a similar statement should be included in the bills of small businesses.

**Q16. Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why.**

## Code of Practice for Brokers

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6.37 As highlighted in Section 4, stakeholders expressed concerns about brokers and the potential increase in their numbers in NI. There is currently no regulatory or mandatory/voluntary codes of practice for brokers and this is a concern as their behavior is therefore not bound by any parameters. All brokers are currently bound by consumer protection rules, such as the Consumer Protection from Unfair Trading Regulations (CPRs) and the Business Protection from Misleading Marketing (BPMMRs). Trading standards currently have enforcement powers in respect of all relevant consumer protection rules covering business to business and business to consumer interactions. However, it is the UR's intention to carry out a separate assignment on the development of a code of practice for brokers which will be more specific to energy. Therefore, it will not form part of the measures for consultation in this project.

***Q17. Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.***

## 7. CONSULTATION QUESTIONS

### NEXT STEPS AND TIMELINES

7.1 The UR is keen to hear the views of interested stakeholders and invite representations on the following questions:

**Q1.** *Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?*

**Q2.** *Do respondents consider that the proposals to Enhance the Operation of the Small Business Energy Market to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.*

**Q3.** *Do respondents agree with the proposals for scope of coverage being 0-50MWh for small I&C electricity customers and 0-73.2MWh for small I&C gas customers?*

**Q4.** *Do respondents agree with the issues highlighted in Section 4 –if not please provide explanation/rationale as to why?*

**Q5.** *Do respondents have any other issues which they would like to raise which have not been highlighted above?*

**Q6. Do respondents agree that suppliers should provide transparent price information on their website by publishing tariff information for small businesses and if so should this take a similar format to that required in GB? If respondents do not agree please provide a clear rationale as to why.**

**Q7. Do respondents agree that suppliers should provide information on their website around deposit requirements and how they are determined for a customer? If not please provide a clear rationale as to why**

**Q8. Do respondents agree that deposits should be set at a reasonable level and this should be 3 months consumption? If not please provide a clear rationale as to why.**

**Q9. Do respondents agree that deposits should be held for a finite amount of time and that this should be no longer than a period of 12 months (where on time payment record has been demonstrated over the period)? If not please provide a clear rationale as to why.**

**Q10. Do respondents think that there should be a formal requirement on licencees which disallows the rollover of a contract (similar to that currently provided for domestic customers). If so please provide a clear rationale as to why.**

**Q11. Do respondents think that exit fees are justifiable where a customer has entered into a contract with a supplier?**

**Q12. Do respondents think that UR should introduce a measure which makes it mandatory that the level of exit fees is reasonable and that the level of exit fees (or the derivation of the level) is approved by the UR?**

**Q13.** *Do respondents think that the introduction of prepayment meter solution would enhance the operation of the small business energy market? Can you provide a clear rationale as to why?*

**Q14.** *Do respondents think that there should be a cooling off period for small business customers once they enter into a contract. If so please provide a rationale as to why and how it could work in practical terms. If not provide a rationale as to why.*

**Q15.** *Do respondents agree that small business customers should be given 21 days notice if there is a change to their T&C's or Price and notified of a fixed term contract ending? If not please provide a clear rationale.*

**Q16.** *Do respondents agree that a mandatory statement should be included in small business bills which indicates that other tariffs may be available to them? If not please provide a clear rationale why.*

**Q17.** *Are there any other measures to enhance the operation of the small business energy market which respondents think should be considered as part of this consultation process? If so, please provide a clear rationale.*

## **How to Respond**

7.2 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 5<sup>th</sup> December 2017 to:

Nicola Sweeney

The Utility Regulator

Queens House



14 Queen Street  
Belfast  
BT1 6ED  
Email: Nicola.Sweeney@uregni.gov.uk

## **Next Steps**

- 7.3 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. As indicated in our information paper, the anticipated timeline for this report to be issued is early 2018.