

NOTICE UNDER ARTICLE 14(2) OF
THE ELECTRICITY (NORTHERN
IRELAND) ORDER 1992
Modifications to Condition 42 of the
TSO Licence

SONI RESPONSE 17 NOVEMBER 2023



Re: Notice under Article 14(2) of the Electricity (NI) Order 1992 – Licence Condition 42 Modifications

SONI welcomes the opportunity to respond to the Article 14 Notice and the proposed modifications to the SONI TSO Licence Condition 42 (Governance and Management of the Licensee).

We welcome the Utility Regulator (UR) recognising the challenges arising from the new governance arrangements, most notably in relation to the robust process that was necessary to appoint the new SONI Board and the associated timeframes required to achieve this milestone.

SONI agrees with the UR's approach to allow flexibility in the dates and time periods specified in Condition 42, and that modifications are necessary to facilitate the new board having an adequate amount of time to consider and make its decisions on matters relating to the implementation of Condition 42.

Overall, we consider the modifications arrived at by the UR to be pragmatic, however feel it prudent to highlight two important concerns we have in relation to the practical outworkings of the proposed modifications, to ensure that any challenges that may lie ahead are duly considered before the UR publishes its decision.

Conditions to trigger the need for a Direction

There are no parameters included in the drafting around the conditions required to trigger a direction. We consider that the modifications would benefit by a revision to make more prescriptive and capture the points/questions detailed below:

- Can SONI or another third party request a direction for changes to the dates/durations contained within LC42?
- Will the UR be able to attach additional conditions to any direction issued?
- Following the consultation process and a UR direction being issued, SONI may consider that associated conditions (if any) or the specified timeframe in the direction, remains unachievable. In this case, what right of appeal options are available? The current drafting contains no safeguards for SONI or any third party.
- Additional information on the direction process would bring further transparency to the process. SONI considers that the UR should include an indicative timeframe for each direction to allow this to be factored into the wider planning of the programme required to implement Licence Condition 42. This could cover activities such as initial engagement on changes to dates/timeframes, the consultation window, consideration of responses, decision and issuance of a direction, and when the direction will take effect etc.
- As per the Uncertainty Mechanism (UM) Guidelines¹ (Chapter 2), the UR provided a flow chart on the approval process and actions required from SONI and the UR in the application for UM

¹ https://www.uregni.gov.uk/files/uregni/documents/2021-11/uncertainty-mechanism-guidance_0.pdf

funding. A similar section and diagram could also be used in terms of the issuing of LC42 directions and providing a process for all parties to follow.

‘Principles and Guidance’ documentation for Derogations

We note that the ‘Principles and Guidance’ documentation for the Derogation process has not yet been published. We would welcome an update from the UR on its plans to consult on the ‘Principles and Guidance’ documentation and a timeframe for the published guidance documentation to be in place. This is a key element for the effective functioning of Licence Condition 42 and is a prerequisite before any derogation requests that the SONI Board may wish to progress can be issued. It therefore will need to be factored into any directed changes to the dates or durations of the milestones defined in Licence Condition 42.

In summary, SONI welcomes this consultation by the UR and remains available to discuss any aspects of this response.