

# **RULES OF PROCEDURE**

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# 1. Interpretation

1.1 In these Rules, the following definitions to terminology will apply:

| Term               | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Authority          | Northern Ireland Authority for Utility Regulation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Chair              | Member of the Authority from time to time holding the post of Chairperson                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Chief Executive    | Person from time to time holding the post of Chief Executive. The CEO is also appointed by the Department of Finance, in accordance with Section 9(6) of the Government Resources & Accounts Act (Northern Ireland) 2001 (GRAANI), as Accounting Officer. This carries with it responsibility for ensuring that (1) resources authorised by the Northern Ireland (NI) Assembly are used for purposes authorised by it and (2) the departmental annual report and accounts are prepared for examination and certification by the Comptroller and Auditor General. These responsibilities to the NI Assembly are concurrent with responsibilities to the Authority as CEO. |
| Clear Days         | In relation to the period of a notice, a period excluding both the day on which the notice is given and the day for which it is given or on which it is to take effect                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Council            | The Consumer Council for Northern Ireland                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DfE                | Department for Economy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DoF                | Department of Finance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Energy Order       | Energy (Northern Ireland) Order 2003                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Independent Member | As defined by paragraph 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Member             | Any person appointed to the Authority                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Reserved Function  | As defined by Schedule 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| SEM Committee      | The committee of the Authority established under Article 6(1) of the SEM Order, having the membership and rules of procedure determined under, or in accordance with, Schedule 2 to the SEM Order                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

|                 |                                                                                                                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SEM Function    | A function of the Authority which relates to a SEM Matter (as defined in the SEM Order), the exercise of which is determined by the SEM Committee as materially affecting or being likely materially to affect the single wholesale electricity market |
| SEM Order       | Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.                                                                                                                                                                                   |
| Senior Staff    | Employees of the Authority holding the post of director or Head of Function                                                                                                                                                                            |
| Simple Majority | A resolution shall be carried where voted for by a majority of such members as are entitled to vote on that resolution and are present at the relevant meeting                                                                                         |
| Water Order     | Water and Sewerage Services (Northern Ireland) Order 2006.                                                                                                                                                                                             |

- 1.2 In these Rules, a reference to any statute or statutory provision includes a reference to that statute or statutory provision as modified or re-enacted from time to time.

## **Duties and responsibilities**

- 1.3 The Authority shall:
- a) Carry out its functions in accordance with, and shall comply with, all relevant legislation; and
  - b) Take collective responsibility for all decisions made by it and for their effective and accurate representation to the public and to stakeholders. No Member may make any public statement which expresses or implies personal dissent from Authority decisions.

## **Membership - authority and independent members**

- 1.4 Matters relating to the terms of appointment or removal of any Member are within the exclusive jurisdiction of DoF, which is, in accordance with the Energy Order, solely entitled to appoint and remove Members and to vary their terms of appointment in accordance with its lawful authority.
- 1.5 The validity of anything done by the Authority is not affected by a vacancy among its Members or by a defect in the appointment of a Member.
- 1.6 The Chief Executive shall keep Members informed of opportunities to undertake training and development relevant to their role and the public sector context in which they exercise it.

- 1.7 The Authority may appoint, with approval of DoF as needed, Independent Members to its committees in light of resourcing constraints and/or where relevant specialist knowledge is required. Independent Members are not members of the Authority. Terms of appointment will depend on the circumstances in which the appointment was deemed necessary and, in any event, will be set out in a letter of appointment.

## Meetings

### General

- 1.8 The Authority shall annually approve a schedule of formal meetings for the following calendar year.
- 1.9 The Authority shall determine appropriate arrangements for assessment of its effectiveness (either by the Authority itself or by a third party) in line with the requirements of best public sector practice. The Authority shall review those arrangements at least annually.
- 1.10 The Chair, or any three other Members upon making a request in writing to the Chair, may call a meeting of the Authority in accordance with the provisions for notice of meetings below. Meetings may take place other than at the Authority's usual place of business.
- 1.11 The Chair may invite any person to attend all or part of a meeting. It shall be the norm for the Chair to invite senior staff to attend (but not vote at) meetings other than where the nature of an item of business requires the Authority to meet in closed session. Independent Members of Authority committees may also be invited to attend (but not vote at) meetings as agreed with the Chair.
- 1.12 The Chief Executive shall report to each meeting of the Authority on the business of, and matters dealt with by, the Authority in the preceding period.
- 1.13 The Authority shall ensure that minutes are made and retained in relation to all meetings of the Authority or committees thereof including of attendees, business transacted and decisions reached. Minutes of each meeting of the Authority will normally be published (save for those which relate to any closed business conducted).
- 1.14 The Authority is entitled, in its discretion, to determine the form and content of minutes made and retained in accordance with these Rules. Such minutes shall normally record all of the key points and conclusions of discussion but shall not generally attribute comments to individuals.

Matters relating to the employment of Authority staff and other restricted matters as provided for by law, shall not normally be included in the minutes.

### Notice required

- 1.15 The Chair, or the three other Members, convening a meeting of the Authority shall give no less than seven clear days' notice of any meeting to each Member. Such notice shall be given by electronic means and include details of the meeting.
- 1.16 A meeting may, if necessary, be called with less than seven clear days' notice. Such shorter notice shall be treated as valid only if it is ratified at the meeting called on short notice by a simple majority of the Authority.

### Agendas and papers

- 1.17 An agenda and full written particulars, including supporting documentation where relevant, of any business expected to be conducted at a meeting shall normally be given to members by electronic means no later than five clear days prior to the date of the meeting. However, where it is not reasonably practicable to make them available to Members by that time – for reasons of emergency, unavoidable delay, late availability of information being provided by third parties or other exceptional circumstances – the relevant papers shall be given to Members as soon as they become available and at any time up to, and including, the day of the meeting.
- 1.18 Papers not given to Members in advance of a meeting of the Authority may only be tabled at that meeting with the permission of the Chair.
- 1.19 The failure of a Member to receive notice of a meeting, or any papers relating to the meeting, shall not invalidate that meeting or any business transacted at it, subject to the requirements of quoracy (paragraph 22 below) being met.
- 1.20 Members shall treat all papers given to them in respect of a meeting of the Authority as confidential and shall not disclose the content to any person other than another Member or a member of Authority staff, unless that disclosure has been agreed in advance with the Chair or Chief Executive (having had regard to any relevant legal restrictions on disclosure). If, having secured such agreement, any such information is so disclosed (such as, to a consultant or adviser of the Authority) the

disclosing Member must ensure that each person to whom it is proposed to disclose the information has provided advance, written agreement (or otherwise has a professional duty) to treat the information as confidential.

### Conduct of business

- 1.21 The quorum for a meeting of the Authority shall be four Members present.
- 1.22 Members may attend meetings by telephone or video conferencing facility and, where they do so, shall be deemed present. Such a meeting shall be deemed to take place at the location at which the largest group of Members participating is assembled or, if there is no such group, where the Chair then is.
- 1.23 All decisions of the Authority shall be made by simple majority voting. Only Members present at a meeting may vote (to the extent each Member is free from conflicting interests in accordance with paragraph 50).
- 1.24 Written comments on agenda items submitted by any Member who is not present when a particular agenda item is discussed may be circulated to those Members who are present, and read out, if deemed appropriate by the Chair. .
- 1.25 If the Chair is not present at a meeting, those Members present shall appoint one of their number to act as chairperson of that meeting (the "Acting Chair").
- 1.26 The Chair, or in his/her absence the Acting Chair, shall be entitled to brief Members, or ask the Chief Executive for a briefing, on the content of the papers circulated in respect of any particular matter for discussion. In the case of particular urgency, where no relevant papers have been circulated to Members, it shall be a permissible exception for the Chair, or in his/her absence the Acting Chair, to brief Members present as to the background facts of the matter in question, with contributions from the Chief Executive as appropriate.
- 1.27 In the case of an equality of votes on any matter the Chair, or in his/her absence, the Acting Chair shall have a second or casting vote.
- 1.28 Any decision capable of being made by the Authority at a meeting may be made instead by written agreement by a majority of Members. Once affirmed by a majority of all Members, a written agreement (which may be recorded by electronic communication) shall be deemed passed. Each

Member's agreement does not need to be recorded on a single document.

- 1.29 Unless otherwise agreed by the Authority, the Chief Executive shall be tasked with implementing, executing and delivering (as the case may be) the actions needed to give effect to each decision made by the:
- a) Authority; or
  - b) SEM Committee on behalf of the Authority.
- 1.30 S/he shall do so at the earliest practicable opportunity or by such later date as the Authority or SEM Committee (as appropriate) may determine (where appropriate by use of sub-delegation to Senior Staff or other members of Authority staff).
- 1.31 It shall remain open to the SEM Committee (subject to the consent of the Chief Executive in cases where Authority staff are concerned) to seek to give effect to the kinds of decisions described in this paragraph by alternatively allocating such responsibility to any:
- a) Member of the SEM Committee authorised for that purpose by the SEM Committee, either generally or specifically;
  - b) Sub-committee of the SEM Committee which is so authorised; or,
  - c) Member of the staff of the Authority or the Commission for Regulation of Utilities who is so authorised.

## **Delegation and committees**

- 1.32 In accordance with the Energy Order, the Authority may establish committees and any committee of the Authority may establish sub-committees.
- 1.33 Committees established by the Authority (as distinct from committees created under statute) may be standing or ad-hoc and shall be subject to such provisions as to their scope of activity and such rules of procedure as the Authority, in its absolute discretion, may from time to time impose. Each committee created by the Authority shall have Terms of Reference setting out the matters that the Authority determines should be considered by it. Such terms shall be reviewed annually by the Committee to which they relate and a report, together with any amendments proposed, submitted to the Authority for approval.

- 1.34 The Authority may, in its discretion, create a General Purposes Committee and delegate to it the exercise of all of its functions (save for SEM Functions) and the power to make all decisions that may be made by the Authority (including in respect of Reserved Functions) in order to prevent the Authority from becoming incapable of performing its functions. Such committee would only become operational if, for whatever reason, the total number of Members holding office at any one time is less than four.
- 1.35 The Authority may create advisory bodies to assist its committees, Members and Authority staff for any purpose whatsoever which is connected to the Authority's continued performance of its functions.
- 1.36 The Authority may establish ad hoc committees known as "enforcement committees" to exercise enforcement functions of the Authority including, but not limited to, the enforcement functions listed in Schedule Two hereof in any particular case. Membership of an enforcement committee shall be comprised of individuals selected by the Chair following recommendations, as appropriate, from the Chief Executive. The persons eligible to be appointed shall include those senior staff of the Authority who hold a director or head of function level post.
- 1.37 There shall be a committee of the Authority known as the Audit and Risk Committee. The Authority may refer questions relating to risk management and internal financial control to the Audit and Risk Committee for investigation and advice. The membership and terms of reference of the Audit and Risk Committee may be reviewed by the Authority. The Authority shall have identical rights or review in connection with any other Committees established by it.
- 1.38 Save for any committee established pursuant to the performance of SEM Functions, and any enforcement committee established pursuant to paragraph 37 above, committees shall normally consist of Members of the Authority. Such committees, in the normal course, shall consist of members appointed by a simple majority of the Authority for a term of not more than three years. The Authority may appoint Independent Members to its committees in line with paragraph 8 above.
- 1.39 In accordance with Article 6 (1) of the SEM Order, there shall be a committee of the Authority known as the SEM Committee. Any decision as to the exercise of a SEM Function shall be taken on behalf of the Authority by the SEM Committee. Where the Authority is in doubt as to whether or not a decision will entail an exercise of a SEM Function, the Authority will refer the decision in question to the SEM Committee for determination unless the SEM Committee has already determined that the decision is one which would neither materially affect nor be likely materially to affect the single wholesale electricity market.

- 1.40 Except at any time during which a General Purposes Committee is operational, in accordance with these Rules, any decisions as to the exercise of the Reserved Functions shall be exclusively reserved to the Authority.
- 1.41 Under paragraph 9(1)(a) of Schedule 1 to the Energy Order, the Authority may delegate any of its functions to any Member or employee of the Authority. All functions of the Authority which are neither Reserved Functions nor SEM Functions, and which have not been delegated to any committee, shall be exercisable by the Chair on behalf of the Authority. The Chair may delegate the performance of those functions to any Member, Independent Member or to the Chief Executive as s/he determines to be appropriate including to a group of such individuals who carry out that function jointly. Any such delegation shall be deemed to be given by the Authority.
- 1.42 Any function delegated to the Chief Executive in accordance with paragraph 42 may not be further delegated by him to one or more Senior Staff unless and until the consent of the Authority has first been obtained. A list of such delegations shall be set out in a Scheme of Delegation.
- 1.43 Subject to any provision within Schedule 1, the Chair and the Chief Executive shall be authorised to sign contracts or other documents on behalf of the Authority. Such authorisation cannot be further delegated to one or more Senior Staff unless and until the consent of the Authority has first been obtained.
- 1.44 It shall, at all times, remain open to the Authority to decide to exercise itself any function (other than a SEM Function) that would otherwise be delegated to any committee, individual or group of individuals, to delegate any such function to another committee, individual or group, or to direct any committee, individual or group to whom such a function has been delegated as to the manner in which it or s/he should exercise that delegated authority.
- 1.45 For the avoidance of doubt, the Authority, acting through its Chief Executive, shall be deemed to be the “Qualified Person” for the purposes of certain exemptions under the Freedom of Information Act 2000.

## **Functions, consultations and advisors**

- 1.46 The Authority shall meet and consult with representatives of the Council regularly in accordance with the terms of the memorandum entered into in accordance with Article 11(2) of the Energy Order (which memorandum may be amended from time to time).

- 1.47 The Authority and/or the Chair may at any time engage and consult with such professional and other advisers as it/he considers appropriate to further the objectives and functions of the Authority.
- 1.48 The Authority and/or the Chair may at any time consult with any advisory bodies, consumer and industry groups and other stakeholders as it/he considers appropriate in relation to the business of the Authority.

## **Management of interests**

- 1.49 If a Member or Independent Member holds a direct or indirect interest or duty which is material and relevant (or may be relevant) to any item of business of the Authority (or one of its committees) s/he shall treat that interest or duty as declarable before that matter is discussed at a meeting of the Authority (or one of its committees). The Member or Independent Member shall also update the register of interests as soon as reasonably practicable upon notice of the item of business to which the interest relates.
- 1.50 Members or Independent Members shall not be permitted to hold or acquire incompatible or prohibited interests or duties in accordance with the terms of appointment as set by DoF and as defined in the Authority Members' Interests Statement.
- 1.51 A Member or Independent Member shall not vote at a meeting of the Authority or of a committee of the Authority on any matter in which s/he holds a direct or indirect interest or duty which is material and relevant (or may be relevant) to any item of business of the Authority.
- 1.52 A Member or Independent Member shall not be counted for the purpose of determining a meeting quorate in relation to a particular matter on which s/he is not entitled to vote. Nothing in this paragraph or paragraph 50 shall affect the validity of anything done by the Authority.
- 1.53 The Authority may (notwithstanding that no notice was given of the same) by simple majority voting suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these Rules prohibiting a Member or Independent Member from voting at a meeting of the Authority or of a committee of the Authority.
- 1.54 Any question which arises in respect of a meeting of the Authority or of a committee of the Authority as to the right of a Member or Independent Member to vote on a particular matter shall be referred to the Chair, or in his/her absence, the Acting Chair, whose determination shall be final.

- 1.55 Any question which arises in respect of whether a particular interest or duty falls to be considered as (i) declarable (ii) registrable or (iii) incompatible or prohibited shall be referred to the Chair, or in his/her absence the Acting Chair, whose determination shall be final.

## **The Seal**

- 1.56 The Authority is entitled to use a seal, and keep it with the Chair or with such other person as he may nominate.
- 1.57 Any Member of the Authority, and any person who is authorised by or under paragraph 42 to sign any document on behalf of the Authority, is authorised to authenticate the application of the seal to that document.
- 1.58 As a practical alternative to the use of the seal, any Member of the Authority, and any person who is authorised by or under paragraph 42 to sign any document on behalf of the Authority may duly execute documents by way of signature.

## 2. Schedule 1 - Reserved functions

Decisions in respect of each of the following matters (the Reserved Functions) are – except in any case in which they would amount to decisions in respect of SEM Functions – reserved exclusively to the Authority, and may not be delegated other than to the General Purposes Committee during any period in which it is operational.

### **Reserved Management Matters**

- 2.1 Any changes to the Authority's Rules of Procedure as set out in the document to which this is the Schedule.
- 2.2 The approval of Authority strategy, any forward work programme or other business plan, and any annual report (the latter of which may provide for the annual review of the Authority's performance).
- 2.3 Any change to the name, status or structure of the Authority, insofar as the Authority is legally empowered to take a decision on same.
- 2.4 The appointment of persons to the office of Chief Executive, which may become vacant from time to time.
- 2.5 The approval of annual pay awards for Senior Staff which are referred to it in special cases by the Remuneration Committee (which committee shall otherwise have full delegated power to consider and decide upon remuneration related matters).
- 2.6 The terms of reference, any changes thereto, and membership of any committee of the Authority.
- 2.7 The undertaking of any major capital projects (those costing in excess of £200,000).
- 2.8 The approval of decisions regarding major legal disputes (including decisions to commence, defend or appeal litigation)
- 2.9 The approval of any Scheme of Delegation and any changes thereto.

### **Reserved Regulatory Matters**

#### **Licence Modifications**

- 2.10 Decisions to approve proposals that will have the effect of significantly modifying a condition of a gas or electricity licence, or of an Instrument of

Appointment held by an undertaker of water or sewerage services (a water licence). For the avoidance of doubt such decisions shall include modifications of any control or limit applied to the charges or revenue of the regulated person)

(Article 14 of the Electricity (Northern Ireland) Order 1992, Article 14 of the Gas (Northern Ireland) Order 1996, and Article 20 of the Water Order)

### **References to the Competition and Markets Authority**

- 2.11 The making (or varying) of any reference to the Competition and Markets Authority in respect of any matter which the Authority has the power to refer to that body.

(Articles 15 and 46 of the Electricity (Northern Ireland) Order 1992, Articles 15 and 23 of the Gas (Northern Ireland) Order 1996, Schedule 2 (3) to the Energy Order, Articles 19, 21 and 29 of the Water Order and various relevant conditions within the water licence.)

### **Prosecutions**

- 2.12 The decision that the Authority will bring a prosecution where it is entitled to do so under the law.

(Including but not limited to: Sections 42, 43 and 44 of the Competition Act 1998, Section 245 of the Enterprise Act 2002, and Article 51 (4) – 51 (6) of the Energy (Northern Ireland) Order 2003)

### **Disqualification of Directors**

- 2.13 The decision to apply to court seeking an order for the disqualification of a director (or directors) of a company which has infringed either or both of the Chapter 1 / Chapter 2 prohibitions of the Competition Act 1998 and/or the prohibitions under Article 81 / Article 82 of the EC Treaty.

(Section 204 of the Enterprise Act 2002)

### **Undertakings**

- 2.14 The acceptance of undertakings from a water or sewerage undertaker in lieu of taking steps toward the making of a provisional or final

enforcement order, which undertakings may be subject to such conditions as may be prescribed, and which appear to the Authority for the time being, appropriate to achieve compliance with the terms of the water licence or other relevant requirement.

(Article 31 of the Water Order)

### **Financial Penalties**

- 2.15 The publication of a statement of policy with respect to the imposition of financial penalties and the determination of their amount.

(Article 46 of the Energy Order and Article 36 of the Water Order)

### **Statutory Instruments**

- 2.16 The making of any rule or order or other statutory instrument that the Authority may from time to time be empowered to make.

### **External Co-operation Arrangements**

- 2.17 The entering into of any material collaborative or co-operative arrangements with other regulators, governmental bodies, any type of organisation or association, or gas or electricity companies located in any other parts of the United Kingdom, in the European Union or in any other country that is (directly or indirectly) connected to Northern Ireland by an electricity transmission system or gas pipeline.

(Article 8 of the Energy Order and Article 11 of the Water Order)

### **Alteration of Licensable Activities**

- 2.18 The application by the Authority for an order providing for certain activities to require a gas or an electricity licence or to cease to require a gas or electricity licence.

(Schedule 2 to the Energy (Northern Ireland) Order 2003, paragraphs 2 and 7)

## Delegation of Certain Functions

- 2.19 The revocation or material amendment (not required to implement legislative requirements) of arrangements with the Gas and Electricity Markets Authority in Great Britain (generally known as Ofgem) in relation to the exercise of functions on behalf of the Authority by the Gas and Electricity Markets Authority in relation to the Northern Ireland renewables obligation, gas meters, active electrical energy meters or non-prescribed measuring instruments.

(Section 121 of the Energy Act 2004, Regulation 25 of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, Regulation 25 of the Measuring Instruments (Gas Meters) Regulations 2006 and Regulation 4 of the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006.)

## Special Administration Orders

- 2.20 Any decision, with the consent of the Department for Infrastructure, to make an application to the Court for a special administration order to be made in relation to the holder of a water licence.

(Article 42 of the Water Order)

### 3. Schedule 2 - Enforcement functions

3.1 The Authority's enforcement functions include (but are not limited to):

- a) The giving of a notice to make a final order or to confirm a provisional order that a gas or electricity regulated person or water licence holder is in contravention of the terms of its licence or of another relevant requirement.

(Articles 42 and 43 of the Energy Order, and Articles 30 and 32 of the Water Order)

- b) The revocation of a final order or the decision not to confirm a provisional order that a gas or electricity regulated person, or water licence holder is in contravention of the terms of its licence.

(Articles 42 and 43 of the Energy Order, and Articles 30 and 32 of the Water Order)

- c) The imposition of a financial penalty upon a gas or electricity regulated person, or water licence holder where that person is or has been in contravention of the terms of their licence.

(Article 45 of the Energy Order and Article 35 of the Water Order)

- d) The decision to exercise enforcement powers under Part 8 of the Enterprise Act 2002 in relation to certain consumer legislation.

(Sections 210-236 of the Enterprise Act 2002, as supplemented by various provisions including but not limited to: Sale of Goods Act 1979, Control of Misleading Advertising Regulations 1988, Supply of Goods and Services Act 1982, Consumer Protection (Northern Ireland) Order 1987 (Part III only))

- e) The giving of directions in relation to agreements and the exercise of concurrent powers in relation to conduct which either: (a) may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom; or (b) amounts to the abuse of a dominant position in a market which may affect trade within the United Kingdom.

(Sections 25-29 and 32-33 of the Competition Act 1998)

- f) The making of decisions following investigation, the making of an application to court concerning the enforcement of directions made pursuant to the exercise of the powers described above, and the imposition of penalties as a result of a breach of either of the two types of prohibition as described in a) and b) above.

(Sections 31, 34, 36 of the Competition Act 1998).