

**MINUTES OF THE NINETEENTH MEETING OF THE NORTHERN IRELAND
AUTHORITY FOR UTILITY REGULATION (THE 'AUTHORITY') HELD ON
WEDNESDAY 14 JANUARY 2009 AT QUEENS HOUSE, BELFAST**

Present	Mr Peter Matthews Mr Philip Johnson Mr Chris Le Fevre Mr Alan Rainey Mr Clive Elphick Mr Jim Oatridge Mr Iain Osborne	Chairman Chief Executive
In attendance	Ms Jo Aston Mr Brian McHugh Mr J P Irvine Mr Greg Irwin Ms Mary Timlin	Director of Water Director of Gas Head of Legal Board Secretary and Communications Manager Legal Directorate

1. APOLOGIES FOR ABSENCE

Etain Doyle, Donald Henry, Dermot Mac Cann

2. FIRE DRILL

The board members were informed of the evacuation procedures which apply at Queens House in the event of a fire.

3. DECLARATIONS OF INTEREST

No declarations of interest were made.

4. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting were agreed, subject to one minor amendment.

The Board asked that a paper setting out the legal position in Northern Ireland vis a vis the Climate Change Act that was legislated at Westminster be provided.

5. ACTION POINTS FROM THE DECEMBER MEETING

The action points recorded at the last meeting had been circulated to the Board and progress against each action point was noted.

It was agreed that the potential to move the scheduled board dinner from the 11 February to 12 February would be investigated.

There was also agreement that the Board meeting scheduled for 12 March would take place on the evening of the 11 March.

It was also agreed that the April BAG should be changed from 9 April to 2 April.

6. CONSIDERATION WHETHER OR NOT TO MAKE A FINAL ENFORCEMENT ORDER IN RESPECT OF NORTHERN IRELAND WATER ('NIW') OR TO ACCEPT UNDERTAKINGS IN LIEU OF ENFORCEMENT

The Head of Legal introduced this item by recalling the Board's finding of a breach of licence Condition F6A.1 (1) at its meeting on 5 November, and the subsequent publication of an Article 32 notice which conveyed the Board's intent to proceed with enforcement action at that time. Board members were updated on the latest developments and correspondence in relation to NIW by the Head of Legal and the Director of Water. This update explained the context of and the detail within the most recent set of legally binding undertakings offered in draft by NIW – in lieu of enforcement action - for the Utility Regulator's consideration.

An outline of the statutory process for addressing the substantive matter at hand was provided by the Head of Legal. Specifically, board members were apprised of the requirement to consider representations and objections made following the Article 32 consultation. Having done so, the various options open to the Board, and as set out in detail in the board paper (Ref:06-01/09), were considered and discussed.

Board members discussed the representations and objections made in relation to the Article 32 consultation, which were included in the board papers. Board members welcomed the constructive and grounded points made by all consultees in relation to potential enforcement action – and noted the general theme which called for measurability and proportionality in any final set of requirements to be imposed by the Utility Regulator. Having read and discussed all relevant points, the board was satisfied that there were no grounds to dissuade it from its initial conclusion that a breach of licence had taken place and remained extant.

The Board then turned its mind to the matter of the latest undertakings offered by NIW. Questions were taken and answered by the Head of Legal and the Director of Water as to the status of the undertakings offered (that they were not in final form), the procedures relevant to acceptance or rejection, the likelihood of room for improvement, and the differences between what requirements the Utility Regulator had proposed in its Article 32 notice as compared to what commitments were being offered by NIW presently.

The Board was minded to accept undertakings formally given in substantially the form submitted to the Utility Regulator in draft, regarding them as appropriate for the purposes of facilitating or securing compliance with the licence condition. After voicing a number of concerns about, inter alia, NIW's approach to emergency problems and informing the Utility Regulator of these promptly, board members agreed that a clear message should be sounded to NIW via the executive team and made explicit in any contextual acceptance letter of NIW's undertakings, should the undertakings come to be modified as anticipated.

If such acceptable undertakings were not formally given, the Board instructed the Director of Water and the Head of Legal to proceed with a modified enforcement order (directing some small changes to be made in light of helpful representations made during the consultation window). The precise form of resolution made by the Board is attached as an Appendix.

All items of business having been discussed the Chairman brought the meeting to a close at 1.50 p.m.