



Dispute Resolution Procedure and Notes for Applicants

Background Information

The Northern Ireland Authority for Utility Regulation (the “**Authority**”) is Northern Ireland’s first cross-utility regulator. We are both an independent economic and customer services regulator, and are accountable to government as a Non-Ministerial Government Department. We were established under the Energy (Northern Ireland) Order 2003 as the Northern Ireland Authority for Energy Regulation to regulate gas and electricity in Northern Ireland. When the Water & Sewerage Services (Northern Ireland) Order 2006 (the “**Water Order**”) came into force on 1st April 2007, our name changed to the Northern Ireland Authority for Utility Regulation. From this date, we became additionally responsible for the regulation of water and sewerage related services in Northern Ireland.

As a direct result of EU directives¹ aimed at improving the way internal markets in energy are structured, the Authority was given the legal authority to act as a dispute resolution authority for certain matters. Prior to the implementation of these EU directives into national law, the Authority had been, and still is, able to determine complaints or disputes connected with the supply of electricity by a public electricity supplier (though note the same is not true for supplies of gas). Since the implementation of the EU directives, the Authority’s dispute resolution remit has extended further, as now individuals and companies are able to refer certain disputes or complaints regarding the transmission and distribution of gas and electricity in Northern Ireland to us for resolution.

¹ The Gas Directive (Directive 2003/55/EC of the European Parliament and of the Council Concerning Common Rules for the Internal Market in Natural Gas) and the Electricity Directive (Directive 2003/54/EC of the European Parliament and of the Council Concerning Common Rules for the Internal Market in Electricity). These directives have now been implemented into national law via the Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 and the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 respectively.

The Water Order extends our dispute resolution function even further. The Authority can now determine relevant complaints, disputes, and even some appeals relating to water and sewerage services.

The kinds of complaint or dispute (or 'appeal' in the unique case of water and sewerage services, which term shall be read as a 'complaint' or a 'dispute' for the purposes of this document) which can properly be brought before the Authority from each utility sector are outlined in the utility specific annexures at the end of this document.

This document outlines the procedures which the Authority will generally follow when dealing with a complaint or dispute which it is entitled to determine, and which it has been asked to determine. These procedures are additional to any procedural requirements set out in the relevant legislation or licences.

Potential applicants may find these procedures helpful, as they outline:

- (a) the information applicants must provide to support their case; and,
- (b) the manner and timeframe in which the Authority will handle the dispute or complaint.

Please Note: This document is a best practice guide which may be reviewed from time to time in order for the Authority to keep its procedures relevant and up to date. The Authority will seek to adhere to this guidance document, but for the avoidance of doubt, this document does not in itself impose requirements on, or purport to fetter the discretion of, the Authority. There may be special circumstances which require a modified version of these procedures to be followed and the Authority agrees to communicate to Applicants when these procedures are not the most appropriate means to govern such special circumstances.

Section A: Submitting a Complaint

As a precursor to the step-by-step guide which follows, the Authority has noted from experience that the vast majority of complaints or disputes which it has handled have benefited from early involvement of the Consumer Council. Consumer Council's involvement will not be appropriate in certain cases (for example disputes exclusively between distribution and transmission operators) but as a general rule, the Authority recommends that potential applicants should actively consider seeking early advice and assistance from the Consumer Council prior to submitting an application to the Authority.

- 1) In order for the Authority to receive a valid dispute or complaint to which it can give proper consideration, the person or entity making the submission (the Applicant) must comply with the following essential requirements (the Requirements):
 - (a) the application regarding the dispute or complaint must be made in writing (which may be submitted either in hard copy, facsimile transmission or in emailed electronic form)²;
 - (b) the application must identify the provision within the legislation, licence or other document under which the Authority is given jurisdiction to consider the dispute or complaint;
 - (c) the application must contain detailed information and supporting evidence regarding the basis of the complaint or dispute **and** the manner in which the Applicant is affected; and
 - (d) in the case of a dispute with a third party or a complaint regarding a third party, (such as an electricity or gas transmission or distribution company, or an undertaker of water or sewerage services) the Applicant must provide documentary evidence that the matter has previously been raised with that third party without success.

² Reasonable assistance by Authority staff will be given in special cases to those persons who demonstrate their having difficulties in personally satisfying this 'writing' Requirement.

- 2) If the Authority considers that an application does not comply with the above Requirements, it reserves the right not to treat that application as having been properly received as a complaint or dispute for the purposes of the relevant legislation. The Authority may advise the Applicant to submit a complete application which complies with the above Requirements.

- 3) If the Authority considers that it does not have jurisdiction, or that it is not appropriate for it, to consider the complaint or dispute in question, it will reject the application and inform the Applicant accordingly. In such circumstances, the Authority may advise the Applicant that it considers the matter is better considered (i) by an alternative body (such as a suitable arbitrator (in the case of certain water disputes), the Consumer Council for Northern Ireland, or the Information Commissioner's Office) or (ii) under an alternative mechanism (such as that prescribed under competition law).

SECTION B: Timetable for Applications

- 1) As soon as practicable after having received an initial application for a determination, the Authority shall acknowledge receipt.
- 2) At the same time as it complies with step 1) above, or shortly thereafter, the Authority shall endeavour to:
 - (a) categorise the application as either a valid complaint, dispute or appeal which is capable of determination by the Authority; and,
 - (b) issue to the applicant an indicative timetable for the matter's consideration – this will outline each stage of the process and the times specified by the Authority by which the Authority expects to have received replies (as required on a case by case basis); or,
 - (c) reject the application on the grounds referred to in either of paragraphs 2 or 3 in Section A (in the event of having received an invalid application or an application in respect of a dispute that the Authority considers would be better resolved by other means).
- 2) The Authority will ordinarily conduct a preliminary investigation to establish whether the matter is one which can be resolved to the satisfaction of all parties without the need to engage in a formal determination process.
- 3) If a formal determination is required, the Authority will endeavour to issue a decision on each dispute or complaint that complies with the Requirements of Section A within 2 months of receiving the application.
- 4) However, where the Authority considers it necessary to request further information or evidence in order to assist its consideration of the matter, or considers that an extension of time is essential in furtherance of its statutory obligations, powers, or objectives, this period of time can be extended by up to 2 further months. Please note that both the initial timescale of 2 months and the extended timescale of 4 months from

receipt of a valid application can be altered by agreement between the Authority and the Applicant.

- 5) In practice the Authority will attempt to issue its final determination as quickly as possible in order to minimise any delay experienced by the Applicant.

Section C: Procedure

- 1) The Authority will ordinarily consider each dispute or complaint on the basis of written representations.
- 2) The Authority will invite the third party (or third parties) with whom the Applicant has a dispute, or any third party to whom a complaint relates, to comment on the Applicant's submissions.
- 3) Where a third party provides such comments, the Authority may allow the Applicant the opportunity to respond to those comments. At the Authority's discretion, the third party may be invited to comment on any such response.
- 4) It will almost always be necessary for the Authority to refer information received from an Applicant to any relevant third party in order to allow that third party to respond to the dispute or complaint in question. Where an Applicant considers that any information it provides to the Authority is confidential, it must mark it as such. The Authority will endeavour to reveal only such part of it as is necessary, having regard to the need for a fair process and the possible application of separate legal requirements to the information in question.
- 5) The Authority may also, at its discretion, invite the Applicant and any third party to respond to particular points or questions raised by the Authority.
- 6) Where it considers it necessary to do so, the Authority will have recourse to its legal powers to raise formal information requests in order to obtain additional information or evidence.³
- 7) Where the Authority considers it appropriate, it may call for a hearing at which the Applicant, any relevant third party in question, and any other select invitees (by Authority-invitation only) may be invited to submit their case, and/or respond to matters raised by the Authority.

³ Including, but not limited to: Articles 67, 243, and 261 of the Water Order, and Article 51 of the Energy (Northern Ireland) Order, and various provisions within individual water, gas and electricity licences

- 8) In light of all received submissions, comments and responses from the Applicant and relevant third parties, the Authority will draw up and issue a concise statement including the key facts of the case, the parties' main arguments, and the Authority's indicative views (a Draft Determination)
- 9) All relevant parties will usually be required to provide comments within five working days in response to a Draft Determination. Comments shall be limited to the accuracy of the key facts of the case and the description of the parties' arguments, as presented by the Authority
- 10) If for whatever reason an Applicant or third party is unable to supply the required information in a timely manner, the Authority reserves the right to proceed on the basis of available facts. This is to ensure that the Authority is not unreasonably delayed in providing its determination.
- 11) The Authority will normally issue a final determination as soon as practicable having received all relevant parties' responses to the Draft Determination. The Authority shall give the reasons for reaching the decision in question, and crucially, the decision shall be final and binding upon the parties to which it relates.⁴
- 12) The Authority reserves the right⁵ when making a determination to include such incidental, supplemental and consequential provision (including provision in certain circumstances requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it considers appropriate.

⁴ In the absence of an appeals mechanism relating to the particular complaint or dispute in question, parties may wish to investigate whether judicial review of the Authority's decision is available to them. If parties are concerned about the manner in which their matter was dealt with by the Authority, parties are free to make representations to this effect to the Northern Ireland Ombudsman.

⁵ When exercising such right the Authority will have regard to the conduct and means of the parties and any other relevant circumstances.

Section D: Confidentiality and Publication

- 1) In general, the Authority will expect all parties to a complaint or dispute to copy relevant papers and correspondence to each other as well as to the Authority at the appropriate stage in the process.
- 2) The Authority supports transparent and open regulation. In accordance with its statutory duties, the Authority's decision regarding any dispute or complaint shall be published on the appropriate public register.
- 3) The Authority's duty to publish such decisions is subject to certain exceptions including where such publication may seriously prejudice the interests of an individual or body. The Authority will observe these exceptions as necessary, but hereby asks all Applicants and relevant third parties to tell us when they consider that information is sensitive or confidential, and indeed why this is the case.

Section E: Further Contact

- 1) Further information regarding this document, or applications regarding a particular dispute or complaint, should be directed to:

In the case of electricity matters:

Tanya Wishart 028 (90) 316325 tanya.wishart@niaur.gov.uk

In the case of gas matters:

Neil Bingham 028 (90) 316351 neil.bingham@niaur.gov.uk

In the case of water matters:

Peter Naylor 028 (90) 316345 peter.naylor@niaur.gov.uk

Annex A: Electricity Disputes/Complaints

Under Article 23 of EC Directive 2003/54/EC, the types of complaint or dispute which may be brought before the Authority for determination primarily involve the performance of those companies in charge of the transmission system and distribution system for electricity in Northern Ireland. At present, these roles are carried out by NIE.

Under Article 26 of the Electricity (Northern Ireland) Order 1992, the Authority may also receive complaints and disputes which concern Northern Ireland's public electricity supplier in the performance of its roles (again currently performed by NIE)⁶.

The Authority is responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market. The following is a non-exhaustive list of the types of issues which could form the basis of complaints or disputes capable of determination by the Authority, followed by the authoritative legislative basis in each case:

a)	the rules on the management and allocation of interconnection capacity;	Articles 23(1) and 23(5) Directive 2003/54/EC
b)	any mechanisms to deal with congested capacity within the national electricity system;	Articles 23(1) and 23(5) Directive 2003/54/EC
c)	the time taken by transmission and distribution undertakings to make connections and repairs;	Articles 23(1) and 23(5) Directive 2003/54/EC
d)	the publication of appropriate information concerning interconnectors, grid usage and capacity allocation to interested parties, (bearing in mind commercial confidentiality);	Articles 23(1) and 23(5) Directive 2003/54/EC
e)	the effective unbundling of accounts to avoid cross subsidies between generation, transmission, distribution and supply activities;	Articles 23(1) and 23(5) Directive 2003/54/EC
f)	the terms, conditions and tariffs for connecting new producers of electricity (to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies,	Articles 23(1) and 23(5) Directive 2003/54/EC

⁶ Complaints and disputes regarding the performance and functions of second tier electricity suppliers can not be brought before the Authority as a determinable dispute.

	distributed generation and combined heat and power);	
g)	the extent to which transmission and distribution system operators fulfil their specific roles and duties, specifically as identified under Directive 2003/54/EC;	Articles 23(1) and 23(5) Directive 2003/54/EC
h)	the level of transparency and competition;	Articles 23(1) and 23(5) Directive 2003/54/EC
i)	the methodologies used to calculate or establish the terms and conditions for connection and access to national networks, including transmission and distribution tariffs;	Articles 23(2) and 23(5) Directive 2003/54/EC
j)	the methodologies used to calculate or establish the terms and conditions for the provision of balancing services;	Articles 23(2) and 23(5) Directive 2003/54/EC
k)	the modification of any of the items a-j so as to prejudice their proportionate and non-discriminatory application;	Articles 23(4) and 23(5) Directive 2003/54/EC
l)	A public supplier's duty to supply electricity to an owner/occupier's premises;	Articles 19(1)(a) and 26 Electricity Order 1992
m)	A public supplier's duty to provide electric lines or electrical plant or both to fulfil its duty to supply electricity;	Articles 19(1)(b) and 26 Electricity Order 1992
n)	the methods and principles associated with the tariffs and charges published by a public supplier;	Articles 21 and 26 Electricity Order 1992
o)	the expenses reasonably incurred by a public supplier in making a supply of electricity and the extent to which these expenses should be defrayed by the person requiring the supply;	Articles 22 and 26 Electricity Order 1992
p)	the level of security required by a public supplier before making a supply of electricity;	Articles 23 and 26 Electricity Order 1992
q)	other terms imposed on customers by a public supplier in connection with making a supply of electricity;	Articles 24 and 26 Electricity Order 1992
r)	disputes concerning the failure of a public supplier to meet the standards set out in the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993.	Article 42(5) Electricity Order 1992
s)	disputes relating to the terms offered by NIE for use of the system, connection to the system and the provision	NIE Transmission and Public Electricity Supply Licence Part IIE Conditions 16 and 17

	of top-up or standby;	
(t)	disputes relating to the terms of bulk supply tariff agreements;	NIE Transmission and Public Electricity Supply Licence Part IIIB Condition 3
(u)	disputes relating to terms offered for use of interconnectors;	NIE Transmission and Public Electricity Supply Licence Part IIIF Condition 22
(v)	disputes with a transmission system operator over the terms of interim settlement agreements;	NIE Transmission and Public Electricity Supply Licence Part IIIG Condition 24
(w)	disputes relating to the terms of renewable output factor participation agreements;	NIE Transmission and Public Electricity Supply Licence Part IIIH Condition 27
(x)	disputes relating to the terms of renewable spill agreements.	NIE Transmission and Public Electricity Supply Licence Part IIIH Condition 28

Annex B: Gas Disputes/Complaints

Article 25 of Directive 2003/55/EC provides for the kinds of disputes and complaints which may fall to the Authority to resolve. The provision is primarily aimed at the work of the operators of the transmission system and distribution system. In Northern Ireland, these activities are presently carried out by the following companies:

Phoenix Natural Gas Limited	<i>Transmission & Distribution Operators</i>
Firmus Energy (Distribution) Limited	
Bord Gas Eireann (UK) Limited	
Premier Transmission Limited	

One significant difference between the types of complaint or dispute which can be brought in respect of gas issues stems from the fact that there is no public gas supplier which performs the public supply role akin to the role performed by NIE in electricity. Therefore, there is no legislative base for the Authority to determine disputes concerning gas supplies to the public. The following list is nevertheless instructive as to the types of matter that we can determine:

(a)	the rules on the management and allocation of interconnection capacity	Article 25 (1) (a) of Directive 2003/55/EC
(b)	any mechanisms to deal with congested capacity within the national gas system;	Article 25 (1) (b) of Directive 2003/55/EC
(c)	the time taken by companies to make connections and repairs	Article 25 (1) (c) of Directive 2003/55/EC
(d)	the publication of appropriate information by the companies concerning interconnectors, grid usage and capacity allocation to interested parties;	Article 25 (1) (d) of Directive 2003/55/EC
(e)	the effective unbundling of accounts to avoid cross subsidies between the different types of activities performed by certain gas companies	Article 25 (1) (e) of Directive 2003/55/EC
(f)	the access conditions to storage, linepack and to other ancillary services	Article 25 (1) (f) of Directive 2003/55/EC
(g)	the extent to which companies perform their duties	Article 25 (1) (g) of

	under Directive 2003/55/EC	Directive 2003/55/EC
(h)	the level of transparency and competition	Article 25 (1) (h) of Directive 2003/55/EC
(i)	the methodologies used to establish the terms and conditions offered for connection and access to the network, including transmission and distribution tariffs and/or the provision of balancing services	Article 25 (2) (a) and Article 25 (2) (b) of Directive 2003/55/EC
(j)	issues of proportionality or discrimination arising in connection with the terms and conditions described particularly in (i) (but also in (a) – (h) as above)	Article 25 (4) of Directive 2003/55/EC

Annex C: Water Appeals Complaints, and Disputes

Northern Ireland (at present) has one licensed provider of water supply services and one licensed provider of sewerage related services – both licences being held by Northern Ireland Water Limited (a government owned company). From 1st April 2007, the Authority has the necessary powers to determine complaints, disputes and certain appeals which are covered by the Water Order 2006⁷. The following list gives examples of the kinds of complaints, disputes, and appeals that fall under our control:

- (a) disputes under any regulations regarding the undertaker's compliance with standards of performance in connection with water supplies (but only if the relevant regulations provide such a role for the Authority) (Article 66 Water Order)
- (b) disputes concerning the undertakings given or security required by the undertaker in connection with an undertaker's duty to provide a water main (Article 77 (6)) Water Order)
- (c) disputes concerning extensions of time for the undertaker to comply with a requisition to provide a water main and/or the places at which any such water main is to be situated (Article 78 (4) Water Order)
- (d) disputes concerning the expenses levied by an undertaker for making connections (including works required) from a service pipe to an undertaker's water main (Article 79 (8) Water Order)
- (e) disputes concerning the terms of the requirements imposed by the undertaker on any person serving a connection notice to it, regarding connection via the fitting of a meter (Article 81 (4) Water Order)
- (f) disputes over the question of compliance by any person with the requirements imposed by the undertaker regarding connection to an undertaker's water main (Article 82 (5) Water Order)
- (g) disputes over the question of the reasonableness or validity of the requirements referred to in (f) (Article 82 (6) Water Order)
- (h) disputes concerning the payments required to be made or the security required to be provided to an undertaker as a condition of agreements relating to connection to an adopted main (Article 88 (5) Water Order)

⁷ In addition to the small number of disputes which can be determined by the Authority under the Instrument of Appointment granted to Northern Ireland Water Limited by the Department for Regional Development on 1 April 2007.

- (i) disputes over questions of compliance with the requirements imposed by an undertaker on any person requesting a domestic supply of water (Article 92 (3) Water Order)
- (j) disputes over questions reasonableness of the expenses-requirement imposed by an undertaker on any person requesting a domestic supply of water (Article 92 (4) Water Order)
- (k) disputes over the undertaker's decisions in response to requests made by persons seeking new supplies of water for non-domestic purposes (but Authority may appoint an arbiter to determine the dispute) (Article 95 Water Order)
- (l) disputes over compliance with the statutory requirements imposed on any person requesting a separate service pipe to serve his/her property (article 104 (3) Water Order)
- (m) disputes under any regulations regarding the undertaker's compliance with standards of performance in connection with its provision of sewerage services (but only if the relevant regulations provide such a role for the Authority) (Article 150 (4) Water Order)
- (n) disputes concerning the undertakings given or security required by the undertaker in connection with an undertaker's duty to provide a sewer or lateral drain (Article 155 (6) Water Order)
- (o) disputes concerning extensions of time for the undertaker to comply with a requisition to provide a sewer or lateral drain and/or places where such sewers or lateral drains are to be situated (Article 156 (2) (b) Water Order)
- (p) disputes concerning the existence of a further duty to provide a public sewer in a particular locality, what purposes such further duty (if found) should serve, and times for compliance with such duty (Article 157 (8) Water Order)
- (q) disputes concerning provision of and requests for an undertaker to construct a lateral drain once a sewer has been provided, and the associated costs of such lateral drain (Article 158 (4) Water Order)
- (r) disputes as to costs, security requirements and excess sums required by a sewerage undertaker prior to making a communication with an existing sewer (Article 164 (5) Water Order)
- (s) disputes as to the effectiveness of alternate sewer arrangements provided by an undertaker in pursuance of closure or discontinuance of use of an existing sewer (Article 173 (4) Water Order)

- (t) disputes as to whether an undertaker is obliged to give effect to a measured charges notice (i.e. a notice requiring charges to be made on a volumes basis, via a water meter) (Article 204 (4) Water Order)
- (u) disputes over who should bear the expense of, and the level of expenses charged by, an undertaker for the carrying out of works in relation to the installation of meters (Article 208 (7) Water Order)
- (v) appeals of decisions by Northern Ireland Water Limited as to the provision or otherwise of a consent or variation of a consent allowing someone to discharge effluent into public sewers (Article 180 and 184 Water Order)
- (w) appeals regarding Northern Ireland Water Limited's refusal of an application, imposition of conditions for offering grant of application or failure to respond to an application, relating to adoption a new water main or a service pipe (Article 87 Water Order)
- (x) appeals regarding any declaration made or not made by NIWL with regard to the adoption of sewers, lateral drains or waste water works or where NIWL has refused application, imposed conditions on grant of application or failed to respond to application, relating to adoption of sewers, lateral drains or waste water works (Article 162 Water Order)
- (y) appeals regarding requirements imposed by NIWL in relation to construction of drains or sewers which it may wish to form part of the general sewerage system (Article 169 Water Order)
- (z) complaints about laying pipes in private land (Article 243 Water Order)
- (aa) disputed questions as to the level of credit or payment properly owing to a customer of water or sewerage services as a result of interruption to supply as a result of drought (Instrument of Appointment condition Q paragraph 5)
- (bb) disputes concerning the calculations used in determining the level of infrastructure charge to be charged by an undertaker on the recipient of the infrastructure charge (Instrument of Appointment condition C paragraph 10)

Complaints we cannot deal with in the water sector

Under the new Water Order, we cannot deal with some complaints. These include complaints about:

- parts of Northern Ireland Water Limited's businesses which are not directly subject to our regulation;
- rivers and coastal waters; and,
- matters between a customer and Northern Ireland Water Limited which could be, or have been previously, dealt with through the courts.

If your complaint concerns the regulation of drinking water quality, or essentially environmental issues (such as safety of water fittings, discharge consents and contamination issues), other regulators should be able to help you:

1. the Drinking Water Inspectorate is the independent regulator that monitors the quality of tap water; and,
2. the Environment and Heritage Service for Northern Ireland is responsible for protecting and improving the quality of rivers, estuaries and coastal waters.