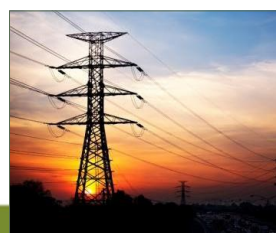


Further consultation on certain
matters relating to the
Price Control 2015-2020 for the
Electricity System Operator for
Northern Ireland (SONI)

11 April 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 and 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: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. 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, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

The purpose of this document is to further consult with stakeholders on specific issues relating to the price control for the electricity transmission System Operator for Northern Ireland (SONI).

Audience

Regulated Companies, Consumer Groups, Industry and Statutory Bodies.

Consumer impact

SONI has a pivotal role in terms of 'keeping the lights on'. Both the effectiveness and efficiency of SONI is key to industry and consumers. SONI's allowable revenue is passed through to end users as a System Support Services (SSS) tariff, therefore any increase in allowable revenue directly results in an increase in tariffs for both Domestic and Large Energy Users.

Executive Summary

SONI Ltd (SONI) is the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. Following the publication of the Final Determination¹ on the SONI price control for the five year period from 1 October 2015 to 30 September 2020, the Utility Regulator has decided to further consult on two specific topics.

The topics covered by this paper and therefore subject to further consideration and consultation respectively are Pensions (including both pension deficit and ongoing pension operational expenditure) and Change in Law.

On the topic of Pensions this paper outlines; the Utility Regulator's position at the time of the Final Determination, SONI's consideration of this position and presents any further evidence or information since the time of the final determination. The Utility Regulator has no formal position on pensions at this time and as such would welcome representations from stakeholders taking account of all of the positions as evidence presented.

On the topic of Change in Law this paper outlines SONI's consideration of the proposed Licence modifications at the time of the Final Determination and Utility Regulator's position. As the Utility Regulator has a position as at the time of this paper we have also included a draft of the proposed Licence modifications to enact this position on Change in Law. We welcome representations from stakeholders on both the Utility Regulator Position and the proposed Licence Modifications.

Consultation responses should be received by 5.00pm on Friday 26th May 2017 and be sent where possible by email to natalie.dowey@uregni.gov.uk or [Electricity Networks Responses@uregni.gov.uk](mailto:Electricity_Networks_Responses@uregni.gov.uk). Responses can also be sent by post to Natalie Dowey, The Utility Regulator, Queen's House, 14 Queen Street, Belfast, BT1 6ED.

¹ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

Contents

- Executive Summary 2
- 1. Introduction 4
- 2. Pensions 6
- 3. Change of Law 16
- 4. Next steps..... 19
- 5. Annex A 20

1. Introduction

1. SONI Ltd (SONI) is licensed as the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. The SONI price control takes place in the context of increased renewable electricity generation, an evolving legislative subsidy environment and wider changing European legislative developments. Furthermore, during 2014, as a result of implementing IME3², SONI is now responsible for transmission network planning up to the construction phase.
2. The Final Determination³ on the SONI price control for the five year period from 1 October 2015 to 30 September 2020 was published on 24 February 2016 and the Article 14(8) licence modifications⁴ was published on 14 March 2017.
3. In SONI'S response to the Final Determination, it raised some concerns in respect of the consultation process the Utility Regulator, ("UR") had engaged in with regard to the proposed licence modifications relating to Pensions and Change of Law.
4. Following a review of the issues raised the UR has decided to further consult on two specific topics The topics covered by this paper and therefore subject to further consideration and consultation respectively are:
 - Pensions
 - Pensions – Deficit
 - Pensions – Opex
 - Change in Law

1.1 Duration of decision

5. Following the conclusion of this consultation any decision on the specific items will be for the period of the original Price Control i.e. 2015 – 2020. Any adjustments required will be dealt with via the K-factor provisions in the price control formula. There is no change to the overall approach and price control design for the 2015 – 2020; this continues to be considered appropriate for SONI for this five year period. The UR will again review and consider the appropriateness of both the approach and price control design at the beginning of next price control period
6. License modifications may be required following a decision on this consultation.

² EU Third Internal Energy Package (IME3)

³ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

⁴ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

1.2 Responses to Consultation

7. As a public body and non-ministerial government department, the UR is bound by the Freedom of Information Act which came into effect on 1 January 2005. According to the remit of the Freedom of Information Act, it is possible that certain recorded information contained in responses can be put into the public domain. Hence it is possible that all responses made to consultations will be discoverable under Freedom of Information Act, even if respondents asked the UR to treat responses as “confidential”.
8. It is therefore important that respondents note these developments and in particular, when marking responses as “confidential” or asking the UR to treat responses as confidential should specify why they consider the information in question to be confidential.
9. Confidentiality disclaimers created automatically by your company’s email system will not normally be treated as sufficient in terms of a confidentiality request.
10. This is an open consultation. While the UR has posed some specific questions in this paper; stakeholders are invited to express a view on any particular aspect of the paper.
11. Responses should be received by 5 pm on 26th May 2017 and should be addressed to:

Natalie Dowey
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

E-mail: natalie.dowey@uregni.gov.uk

OR

E-mail: Electricity_Networks_Responses@uregni.gov.uk

2. Pensions

12. In its response to the Final Determination SONI raised a concern that certain matters within the Price Control had not been adequately consulted upon. Following UR's review of SONI's response we consider that it would be beneficial to consult further on the proposed approach for costs arising in respect of any additional pension deficit occurring from 1 April 2015.
13. We have been provided with the initial results of a further actuarial valuation as at 31 March 2016, as such we consider that it would be beneficial to consult further on pensions as a whole, both the ongoing contributions (Opex) and any additional pension deficit occurring from 1 April 2015.
14. In the following sections we will outline; UR's policy position (in relation to pensions) at the time of the Final Determination, SONI's response to this and any further or relevant information that has been provided since the Final Determination was published. We would request representations from stakeholders taking all of this relevant information into account.

2.1 Pension Deficit

2.1.1 Utility Regulator's Position at the Final Determination

15. The Pension Deficit Recovery Position Paper⁵ published by the UR in 2014 is consistent with both the pension deficit decision made by the Competition Commission, now the Competition Markets Authority, (CMA) in their Final Determination on the NIE RP5 price control⁶ and Ofgem's policy for funding pension deficits⁷. The policy aims to protect the interests of existing and future consumers and in doing so, ensures relevant regulated businesses are subject to the same incentive pressures as the broader market.
16. In respect of all remaining price controlled businesses with pension deficits, of which SONI Ltd is one, the UR's position was stated within the Pension Deficit Recovery Position Paper referenced above and included an introduction of a "cut-off" date of 31 March 2015. Up to this date a historical pension deficit would be 100% recovered from consumers after which any incremental deficit will be 100% funded by the licensee.
17. This approach is consistent with Ofgem's current policy which provides pass-through funding by consumers of deficits up to a specified cut-off date which

⁵ https://www.uregni.gov.uk/sites/uregni.gov.uk/files/media-files/UR_Position_Paper_-_Pension_Deficit_Recovery_v1_0.pdf

⁶ <https://www.gov.uk/cma-cases/northern-ireland-electricity-price-determination>

⁷ <https://www.ofgem.gov.uk/publications-and-updates/decision-letter-pension-deficit-allocation-methodology-applicable-our-funding-price-controls-network-operators%E2%80%99-pension-deficits>

for system operators in GB is March 2012⁸. Together with the Competition Commission's Final Determination in 2014 regarding NIE the UR considers the Pension Deficit Recovery Policy to be relevant to SONI which is analogous with the system operators in GB.

18. Each relevant regulated business should provide the UR with the relevant pension deficit information, splitting accordingly the historic deficit (assuming a cut-off date of 31 March 2015) and incremental deficit. The paper stated that “The companies affected by this decision will need to submit calculations of historical and incremental deficits and illustrate compliance with the RIGS methodology for the purposes of setting regulated tariffs.”
19. Historic pension deficit valuations do not determine how much funding will be needed but do provide estimation for purposes of setting price control allowances. Actual requirements will vary according to outturns including investment performance, longevity and inflation. Further detail on ongoing defined benefit pension expenses for scheme member service after the cut-off date will be covered in the Pension Opex section within this paper.
20. We would welcome representations as to the appropriateness of applying this Policy to SONI

Result of Policy Position at the Final Determination

21. In accordance with the UR's pension deficit recovery policy an actuarial valuation report for the SONI Ltd defined benefit pension scheme as at 31 March 2015 was requested. SONI provided an actuarial funding update which estimated the pension deficit to be £1,885,000 as at 31 March 2015. The funding level remains at 95% as was the case in the March 2013 valuation.
22. A pension deficit recovery of 10 years was to be applied reflecting the average remaining service of active members per the Final Determination, “FD”⁹. Based upon the 31 March 2015 pension deficit of £1,885,000 and a recovery period of 10 years the pension deficit recovery allowance for the duration of this price control set out in Table A below:

Pension Deficit Recovery based upon 31 March 2015 Funding Update of £1,885,000. 10 year recovery period applied	URs Decision					
	2015/16 £'000	2016/17 £'000	2017/18 £'000	2018/19 £'000	2019/20 £'000	Total £'000
Historic Pension Deficit Recovery	189	189	189	189	189	943

Table A: 2015-2020 UR Decision on Historic Pension Deficit Recover as at cut-off date 31 March 2015

⁸ <https://www.ofgem.gov.uk/ofgem-publications/42784/pricecontroltreatmentofpensioncostsfinal.pdf>

⁹ https://www.uregni.gov.uk/sites/uregni.gov.uk/files/media-files/2016-2-22_SONI_PC_Final_Determination_2015-2020_Final.pdf

23. Future adjustments will be necessary for this pension deficit recovery allowance to reflect actual historic deficit requirement according to outturns. SONI will provide relevant pension deficit information, splitting it accordingly between the historic deficit (as at 31 March 2015) and any subsequent incremental deficit.

2.1.2 SONI Consideration of Utility Regulator's Position at the Final Determination

24. SONI maintains that the Pension Deficit Recovery Paper has no relevance to it. SONI has suggested this is because the base for this position arose out of the Commission's determination made exclusively in respect of the NIE referral. SONI states that as a result of the differences between it and NIE, when considering scale, asset thinness, the impact on consumers and the impact on SONI – it is inappropriate to apply the principles from a decision relating to NIE to SONI.

25. Specifically, in respect of the UR's proposals detailed in paragraph 2.2(b) of Annex 1 of the 22 February 2016 paper, SONI objects to the modification in Table A which removes the reference to "ongoing pensions" and instead refers to "pension deficit".

26. SONI states: *"that it should be entitled to recover the ongoing cost of pensions in respect of the personnel within SONI's Defined Benefit scheme (the "Focus" plan) who have "protected persons" status pursuant to the Electricity (Protected Persons) Pension Regulations (Northern Ireland) 1992. It is therefore important that the cost of these pensions are separately identified within the Bt term, and cannot simply be treated as part of a payroll benchmarking exercise. Given the UR's decision to embark on a further consultation exercise in relation to its proposed approach for costs arising in respect of any additional pension deficit occurring from 1 April 2015, SONI reiterates its request that the reference to "ongoing pensions" be reinstated in the draft licence modifications."*

27. This proposed policy was contained within paragraph 4.8 of Annex 1 of the Final Determination paper. In SONI's response to this paper, it objected to this proposal suggesting that the provided wording was ambiguous as to the type of information that it was required to produce. Additionally, that it was inappropriate to utilise the format adopted in GB.

28. SONI stated:

"In respect of the specific modification proposed, SONI objects to the proposed requirement that it shall provide the Authority with relevant information "such that the information provided is in line with the information submitted by the Great Britain transmission/distribution network operators".

29. Additionally SONI has commented that:

"It is entirely inappropriate for the Authority to seek to include this wording, which refers to the practice of network operators in another jurisdiction as regulated by a different regulator and with no specific reference to any defined obligations, guidelines or even documents. SONI can only infer that the Authority means the Pension RIGS requirements as outlined on Ofgem's website: Ofgem Pensions RIGS Table. Should the Authority require SONI to submit information in a similar format, the Authority should produce a similar table which has been modified appropriately to ensure it is fit for purpose for SONI and should consult SONI on the same (as Ofgem did prior to requiring the network operators to provide this information). In the absence of clear directions SONI cannot be expected to comply with this obligation."

30. SONI has proposed alternative wording for the paragraph:

"The Licensee shall furnish the Authority with information regarding any pension contributions and/or deficits in such form as the Authority may reasonably require. Any such request from the Authority to provide such information shall only follow consultation with the Licensee and shall be in a form which is not disproportionately burdensome and shall be consistent with general actuarial principles for the compilation of such information."

2.1.3 Further information/evidence

31. Further to the information available at the time of the Final Determination we have been provided with an actuarial valuation of the SONI pension scheme as at 31 March 2016. This shows a deficit of £1,481,000, with a funding level at 96%.
32. This actuarial valuation does not provide the split between the historic deficit (as at 31 March 2015) and the incremental deficit to March 2016. We note that the funding level is staying fairly consistent.
33. It should also be noted that all other licensed companies that the 'Pension Deficit Recovery Policy' (as outlined in section 2.1.1) is relevant to within Northern Ireland have implemented it.
34. It is useful to note that when the CMA approached NIE's costs for its RP5 determination, CMA benchmarking was used as a tool on overall spend, including pensions. Legally protected pensions does not imply pass through.
35. The overriding principle is that it is up to the company to reduce all costs, including pensions in order to become an efficient operator. The UR is aware of a number of measures that other utilities have implemented in order to attempt to address pension (and other) costs, however SONI are unfettered in how they manage this aspect of their business.

36. Other than the information presented by SONI in section 2.1.2 we would welcome any evidence that the SONI Pension Deficit has any special features which would justify an exception to this policy..

2.2 Pension Opex

2.2.1 Utility Regulator's Position Defined Contribution (DC) Scheme at the Final Determination

37. The Defined Contribution section of the SONI Ltd Pension Scheme is the only section which remains open to new members. At the time of SONI's submission the DC section had 89 members.

38. For the Final Determination the UR reviewed the 6-8% level of employer contributions submitted by SONI Ltd. At the time the most recent Office of National Statistics (ONS) Occupational Pension Schemes Survey¹⁰ indicated the weighted-average employer contribution rate for a private sector pension scheme to be 6%.

39. SONI's considered an 8% employer DC contribution rate necessary to retain/attract workers. The UR remains of the view that the ONS weighted average employer contribution rate is an appropriate benchmark.

40. Prospect Union were also concerned with the use of the ONS data for benchmarking the DC scheme on the basis it reflected *all sectors* and was not specific to the electricity sector. In respect of the ongoing employer DC contributions the UR views the use of the ONS data as being an appropriate independent benchmark as it represents the broader market.

41. We would emphasise that the company should seek to reduce all costs and if increased contributions are considered appropriate this is a matter for SONI. The rationale for a narrower benchmark on the DB scheme is clear in that there exists special arrangements in the Electricity Sector (e.g. protected persons) which are not a feature of wider DB schemes. There is no similar rationale for the DC scheme.

42. In addition to employer DC pension contributions, SONI Ltd contributes 3% administration fees. The UR was encouraged that this represented a 50% reduction in the administration cost for the DC scheme proposed by the company at the last price control review.

¹⁰ [ONS Occupational Pension Schemes Survey 2013 published 25 September 2014](#)

43. Therefore in the Final Determination the UR provided for a 6% employer DC pension allowance and a 3% administration fee, within the overall payroll allowance of the Final Determination.

2.2.2 Utility Regulator's Position Defined Benefits (DB) Scheme at the Final Determination

44. The Defined Benefit (DB) section of the SONI Ltd Pension Scheme is the more expensive section of the scheme because retirement benefits payable are defined based on salary and length of service.

45. The DB section of the pension scheme was closed to new entrants in 1998, however due to exceptional circumstances was reopened in May 2014 in order to transfer six employees transferring from NIE who were members of a defined benefit section of the NIE Pension Scheme.

46. At the time of the Final Determination there were 32 DB active members. All of the DB members have 'protected persons' status outlined in the Electricity (Protected Persons) Pension Regulations (Northern Ireland) 1992. This means that SONI Ltd, as the employer, is limited in its ability to change the pension scheme rules and member benefits which were in place when the industry was privatised.

47. It is important to note that "Protected Person" status is limited to the pension benefits of the individuals concerned. It does not limit the company from introducing other cost saving measures.

48. According to the actuarial valuation report as at March 2013, SONI Ltd contributed 40% of pensionable pay to the DB section of the SONI Ltd Pension Scheme. This represents an increase in mid-2014 from 28% in 2010. SONI advise the sharp fall in gilt yields between 2010 and 2013 as being the major factor in the increase in the on-going service cost from 28% in 2010 to 40% applied in mid-2014.

49. At the time of the Final Determination in assessing an appropriate ongoing employer DB contribution rate the UR first considered the same ONS survey as used for the DC analysis. This ONS 2013 Survey shows an *all sector* weighted average employer DB contribution rate of 16% for closed DB schemes. Note that this benchmarking was used within the context of the Opex allowance as a whole.

50. At the time of the Final Determination the UR completed a benchmarking exercise on DB contribution rates for an electricity sector rather than an all sector basis. This was an appropriate benchmark in this case (as opposed to the general benchmark used for the DC) as historic DB schemes in the electricity sector have certain unique features such as 'protected persons' status.

51. In doing so, consideration was given to the most recent Government Actuary's Department report to Ofgem on a review of network operators' pension costs¹¹. Consideration was also given to the number of active DB members within these schemes compared to total staff numbers which suggested that SONI has a particularly high level of DB members.
52. A number of options were considered by the UR at the time of the Final Determination and the UR considered it relevant to maintain the 2010 – 2015 provision of 28% throughout the five years of the 2015-2020 price control period. This was to be applied to the current level of DB members for the whole price control period.
53. Manufacturing NI also commented on the payroll and pension analysis outlining SONI staff achieved, inter alia, a 40% increase in pension costs. They viewed the UR's proposals as being very generous and were keen that they should be reviewed to ensure customers in Northern Ireland would not be unduly burdened by a very generous scheme.

2.2.3 SONI Consideration of Utility Regulator's Position

54. SONI have provided a number of clarifications and points to note about the specificities of their DB pension scheme as follows:
- *100% members of the DB pension scheme hold 'protected persons' status which means SONI cannot manage the costs within the scheme.*
 - *A very small scheme like SONI's is vulnerable to not having a normal demographic risk profile.*
 - *Administration costs of small schemes are affected by diseconomies of scale (due to the basic or minimum level of admin costs having to be recouped over the small number of members).*
 - *SONI consider that their asset base cannot support the financial gap between required pension contributions for protected persons and the UR's original proposed allowances e.g. SONI's asset base is less than 1% of NIE's (and less than 0.1% of UK's National Grid).*
 - *SONI has never engaged in any enhancement of benefits, early retirements or voluntary severance under the scheme, each of which would have had the potential to impair the Scheme. SONI has at all times made the contributions consistent with the actuarial recommendations and the provisions accorded it by UR.*
 - *The scale of the gap is such that it is greater than the underlying equity returns accorded to SONI under the Final Determination.*
 - *SONI considers there would be considerably difficulties in 'severing' this issue from the issue of deficit treatment.*

¹¹ <https://www.ofgem.gov.uk/ofgem-publications/91593/gadfinalreport-2014reasonablenessreview.pdf>

55. SONI have also provided some specific points with particular regard to the form of benchmarking that was used in the Final Determination as follows:

- *The Government Actuary's Department (GAD) report on which the Utility Regulator benchmarked SONI's pension contributions excluded administration expenses and PPF levies¹² costs. Therefore when SONI contribution rates were compared to those contained within the GAD report the SONI rate should have been adjusted beforehand i.e. instead of quoting the SONI DB contribution rate as 40.3% when the correct rate was actually 34.8% (40.3% less -5.5% expenses). As before, the SONI scheme is very small in comparison to the other DB pension schemes which tend to be many times larger and as such the SONI scheme(s) would have a disproportionately high administration cost contributions which have been increasing since the initial 2010 valuation.*
- *In addition, SONI considers there to be a mismatch between the benchmarks UR refers to in its benchmarking assessment. In the DD SONI's 2013 assessment for 2013-2016 contribution requirements is compared to the rates included in the 2012 GAD Report however that report was based on the contribution rates as per March 2010. The equivalent SONI contribution rate in 2010 was actually 25.1% (28.1% less 3.0% admin as per the 2010 assessment).*
- *SONI considers the most recent GAD 2014 report (based on contributions rates as per March 2013) is the more appropriate report for comparison purposes timing wise. The equivalent SONI contribution rate of 34.8% (i.e. excluding administration costs) falls squarely within the 28% - 58% range of all schemes included in the GAD report or the 28% - 35% range for the electricity schemes excluding an outlier at 53%.*
- *SONI considers that for a whole variety of reasons DB pension schemes are not easy to benchmark. The GAD Report itself clearly refers to the limitations of comparing or benchmarking, as follows¹³:*
 - *2.16 This review considers NWOs' DB pension provision in isolation. It is recognised that pension arrangements are only part of overall remuneration packages.*
 - *2.17 Schemes' benefits, investment strategies and funding valuation reflect each scheme's particular circumstances. It is beyond the scope of this report to consider all such factors. It is recognised that a 'one size fits all' approach is not appropriate. This review must not be interpreted as advising that a particular approach or level of provision is necessarily inappropriate. Further, in the review of schemes' funding assumptions, while individual assumptions are reviewed in turn it is recognised that the overall basis in the round determines the funding valuation results.*
- *In the Final Determination the UR also refers to a comparison with contribution rates included in a 2014 Office of National Statistics report on*

¹² See note 1 of Table 6 (2012 Report) and Table 7 (2014 Report)

¹³ See Page 6 of 2014 Report

occupational pension scheme for 2013. SONI considers that this is not an appropriate comparator as it is a wide ranging review of a large number of DB pension schemes and as such would be considered much less relevant than the GAD reports which are electricity and gas company specific.

- In addition, it includes both private and public sector pension schemes - which again would point to the GAD reports being of more relevance. As per para 2.18 of the 2014 GAD report 'Comparisons of NOWs' schemes with publicly available information on other UK private sector DB pension schemes do not take into account factors which affect particular industries, sponsoring employers or pension schemes in isolation.' However the ONS report does provide a useful comparator in terms of the size of SONI's pension scheme through its breakdown of the occupational pension schemes of 8.1m members which clearly demonstrates that c. 7m of these members are in schemes with membership of 10,000+ members whereas c. 0.1m were in schemes with less than 100 members¹⁴.

56. The UR has been provided with an initial actuarial valuation of the SONI limited pension scheme as at 31 March 2016. This valuation indicates an employer contribution rate of 39.6%.

2.2.4 Pension Costs of Transfer of Undertakings (Protection of Employment) Persons

57. To satisfy the requirements of the EU's IME3 directive the transmission planning function transferred from NIE to SONI on 1st May 2014. The transfer of the function included the staff associated with this

58. These staff fall under the Transfer of Undertakings (Protection of Employment) Persons Regulations¹⁵. TUPE includes provisions for these staff's pensions.

59. These staff are almost exclusively involved in the planning of network projects and their costs form part of Pensions Capex. The UR would like to consider the pensions element of these CAPEX TUPED staff as part of this consultation.

60. The UR considers that all costs that relate to the CAPEX TUPED staff could be included within a Dt¹⁶. However we acknowledged that it may not be possible or practical to separate out the pension costs for these staff, especially in relation to the DB scheme and we will consider including these costs as part of the overall allowance.

¹⁴ See table 4 of the 2014 ONS report

¹⁵ <http://www.legislation.gov.uk/uksi/2006/246/regulation/4/made>

¹⁶ The "Dt" process is a process in their licence whereby SONI is free to seek additional allowances during the price control to adjust for unforeseen developments or uncertainties.

61. The UR is seeking views from stakeholders in respect the pension's element of CAPEX TUPED staff.

2.2.5 Excluded SSS/TUoS Pension costs

62. Excluded SSS/TUoS costs are effectively additional allowances within Annex 1 of SONI's licence in a relevant year. In its Final Determination paper the UR outlined its proposals to remove the existing paragraph 8.1(d) from Annex 1 of SONI's Licence.

63. Subparagraph (d) covers *"the pension's costs (in relevant year t) of the Transmission System Operator Business to the extent reasonably approved by the Authority"*. SONI objected to this potential change. The UR is now seeking views from stakeholders in respect of its proposal to exclude this pension SSS/TUoS cost.

64. Additionally SONI has stated that given, as the UR has acknowledged, SONI will likely make a number of Dt claims within the forthcoming regulatory period and pension costs could be included within the list if pension costs are not included within the other allowances

65. It is SONI's view that pensions should remain a specific category and "should not be swept into the new catch-all "other" category in proposed paragraph (h)."

66. The UR believes its proposal in the Final Determination adequately addresses SONI's concerns and provides an appropriate way to designate the relevant costs. The UR welcomes stakeholder comments in respect of the proposal within chapter 4.3 of the Final Determination¹⁷ and within this paper.

¹⁷ https://www.uregni.gov.uk/sites/uregni.gov.uk/files/media-files/2016-2-22_SONI_PC_Final_Determination_2015-2020_Final.pdf

3. Change of Law

67. Within a price control there are various uncertainty mechanisms within the licence that provide the necessary flexibility to adjust allowances due to change of law/regulation.
68. In the Final Determination¹⁸ paper the UR proposed licence modifications which had proposed changes to section 6 of the Annex 1, this also involved deletion of elements of Annex 1 and putting forward new drafting which involved the inclusion of Legal Requirement and Relevant Change of Law into the definitions table of Annex 1.
69. Having considered SONI's concerns, we have determined that the proposals to make licence modifications in respect of "Change of Law" should be the subject of further consultation. Within the Article 14(8) licence modifications¹⁹, Section 6 of Annex 1 was reverted to the text in the previous Annex 1 in respect of the change of law provisions and we have decided to further consult on the proposed changes.

3.1 SONI Response to the Final Determination

70. In SONI's response to the Final Determination, they objected to the Section 6 modifications and commented that the proposed change of law provision did not require the Authority to consult before making a determination. They proposed that the first paragraph in section 6 (Paragraph 6.1) be revised as follows: "*The licensee may request that the Authority determine that there has been, or is likely to be, a Relevant Change of law which has had, or is likely to have, a material effect on the financial position and performance of the Transmission System Operation Business*".
71. SONI commented that the proposed deletion of the 6.3 provision removed the right of SONI to challenge any determination in relation to Change of Law and that it should in any case be given that right.
72. SONI also commented that the new provision in paragraph 6.4(b) requiring it to ensure that where it requests that the Authority make a determination pursuant to paragraph 6.1 such requests must "be accompanied by all relevant details (including a breakdown of internal and external incremental costs incurred)". SONI commented that it was not clear to them what the Authority means by "internal and external incremental costs" and have suggested deleting the word "incremental" from paragraph 6.4(b).
73. SONI also objected to the reference to NIE Energy Supply licence within

¹⁸ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

¹⁹ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

Annex 1. SONI proposed that the Authority provides a new draft paragraph within Annex 1 for consultation which omits the reference to condition 60 of the NIE Energy Supply Licence and instead sets out the relevant arrangements as they are proposed to apply to SONI.

74. SONI also raised a concern that the proposals to make licence modifications in respect of changes of law have not been the subject of adequate consultation.

3.2 Utility Regulator's Position

75. We are now therefore consulting and proposing to change Section 6 of the Annex 1 which involves;

- a. Giving the UR the ability to determine a relevant change of law has occurred of its volition, i.e. without the need for the licensee to make an application;
- b. moving elements to the definitions table; and
- c. the deletion of existing paragraph 6.3.

76. We have proposed the changes to Section 6 in Annex 1 of the licence in Annex A of this document for comment.

77. At present the change of law provisions work one way. That is the licensee can, where it considers that there has been, or likely to be, a relevant change of law which has had (or likely to have) a material effect on its business, bring forward a change of law to be determined by the UR. There is no equivalent provision for the UR to determine, without having received an application from the licensee that such a change of law has occurred.

78. In other words the current provisions do not reflect the position that a change of law could have the effect of increasing or decreasing the revenue entitlement for the price control period. If a change of law has the effect of decreasing the revenue entitlement, there is no mechanism by which the UR could make a change to the revenue entitlement to reflect that change of law, in circumstances where the licensee does not make an application to the UR for it to do so (the UR considers it unlikely that the licensee would make any such application in these circumstances).

79. The new proposed paragraph 6.1 now gives the UR the ability to determine a relevant change of law has occurred of its volition, i.e. without the need for the licensee to make an application, but retains the existing provisions which enable the licensee to make an application.

80. The UR also proposes deleting the existing 6.3 which stated *“This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modification shall have effect from the later of the date of the determination and the date upon which the relevant change of law comes into force.”*

81. We consider the proposed deletion of 6.3 does not remove or deprive SONI of any rights that do not currently exist within the current provision. Once a determination is made then one avenue that is open to a regulated company in respect to recourse is via a reference to the CMA with regards to the opening RAB in the next price control period.
82. SONI also commented on internal and external incremental costs and wish to remove the word “incremental”. The current Licence states that in determining the request of a Change of Law submission the Authority should have regard to the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the relevant change of law. This new 6.4 (b) provision will break this information down further into SONI’s internal and external costs to aid our decision around the determination.
83. In determining the matters for Change of Law the UR will continue to have regard to the development and implementation of the “requisite arrangements”, as provided for in Condition 60 of the NIE Energy Supply Licence, the relevant codes e.g. the Trading & Settlement Code, the Grid Code, the Fuel Security Code etc. may still have an impact on SONI therefore the wording in the current licence is still sufficient and the UR is not proposing to change it.
84. In relation to the proposed licence modifications the UR welcomes stakeholder’s comments on the proposed change of law drafting.

4. Next steps

85. This is an open consultation. While the UR has posed some specific questions in this paper, stakeholders are invited to express a view on any particular aspect of the paper.

86. Representations with respect to this consultation may be made on or before 5pm on 26th May 2017 by writing to or by emailing:

Natalie Dowey
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
E-mail: Natalie.Dowey@uregni.gov.uk

Or

E-mail: Electricity_Networks_Responses@uregni.gov.uk

87. Following consideration of responses it is the intention of the UR to make modifications to Annex 1 of the electricity transmission licence (the “Licence”) held by SONI Limited (the “Licensee”). The impact of the proposed modifications will be to bring into effect the UR’s proposed decisions on Pension and change of law on the SONI TSO amount for 1 October 2015 to 30 September 2020

5. Annex A

Proposed Change of Law definitions to be included within the definitions table and within Section 6 of Annex 1 of the Licence.

Definitions

1.1 In this Annex:

<p>Legal Requirement</p>	<p>means, in relation to the Licensee, any of the following:</p> <ul style="list-style-type: none"> (a) any enactment to the extent that it applies to the Licensee; (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee and impacts on the Transmission System Operator Business or a decision taken by that Council or Commission which is binding on the Licensee and impacts on the Transmission System Operator Business to the extent that it is so binding; (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired; (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department.
<p>Relevant Change of Law</p>	<p>means the application to the Licensee of any Legal Requirement which did not previously so apply or the change of any Legal Requirement relating to the Licensee (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed).</p>

- 6.1 ~~The Authority may, including following a request made to it by~~ Where it appears to the Licensee asking it to do so, determine that there has been, or is likely to be, a Relevant Change of Law ~~relevant change of law~~ which has had or is likely to have a material effect on the financial position and performance of the Transmission System Operation Business.
- 6.2 ~~Where the Authority makes a determination pursuant to paragraph 6.1, it may, for the purposes of ensuring the Licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating D_{TSOT} for relevant year t and each succeeding relevant year in accordance with paragraph 2 to ensure~~ that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the Relevant Change of Law ~~relevant change of law~~ had not taken place. ~~give effect to that determination by determining an amount (whether a positive or negative figure) that is to be treated as an allowed change of law revenue for the purposes of calculating D_{TSOT} for Relevant Year t in which the determination is made, and, where applicable, for each succeeding Relevant Year t, in accordance with paragraph 2.2(d) of this Annex.~~
- 6.3 In determining the matters provided for in ~~the~~ paragraph 6.1 and 6.2 above, the Authority shall have regard, where relevant, to:
- (a) its intentions in relation to the development and implementation of the “requisite arrangements”, as provided for in condition 60 of the NIE Energy Supply Licence;
 - (b) the period over which the Licensee shall incur costs by reason of the ~~r~~Relevant Change of Law ~~relevant change of law~~;
 - (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the Relevant Change of Law ~~relevant change of law~~; and
 - (d) the other circumstances of the case.
- 6.4 ~~A notice given to~~ Where the Licensee requests the Authority ~~by the Licensee to make a determination pursuant to paragraph 6.1, the request shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and;~~
- (a) unless the Authority ~~shall otherwise consents, shall be made given not~~ later than the first day ~~in of~~ April immediately preceding ~~the first of~~ the relevant years in respect of which the Licensee ~~wishes any change in such elements to take effect. would (if the Authority were to make a determination pursuant to paragraph 6.1) wish the Authority to make a determination under paragraph 6.2; and~~
 - (b) ~~be accompanied by all relevant details (including a breakdown of internal and external incremental costs incurred) of the Relevant Change of Law and such other information as the Authority shall require.~~
- ~~6.5 This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modifications shall have effect from the later~~

~~of the date of the determination and the date upon which the relevant change of law comes into force.~~

~~6.6~~—In this paragraph:

"legal requirement"

~~means, in relation to the Licensee, any of the following:~~

- ~~(a) any enactment to the extent that it applies to the Licensee;~~
- ~~(b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee or a decision taken by the said Commission which is binding on the Licensee to the extent that it is so binding;~~
- ~~(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;~~
- ~~(d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department;~~

"relevant change of law"

~~means any of the following:~~

- ~~(a) the application to the Licensee of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Licensee (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);~~
- ~~(b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time).~~