

Approach to Enforcement: Annex 1

Our Enforcement Policy Approach and Procedure

1. Introduction

- 1.1 We are Northern Ireland's cross-utility regulator. We are both an independent economic and customer services regulator and a non-ministerial government department.
- 1.2 We were established under the Energy (Northern Ireland) Order 2003 (the **Energy Order**). Under the Energy Order and the Water & Sewerage Services (Northern Ireland) Order 2006 (the **Water Order**), we are responsible for the regulation of gas, electricity, water and sewerage services in Northern Ireland.
- 1.3 We expect regulated companies¹ to abide by their respective licence² conditions and/or legislation. However, if it is alleged that a company is contravening or has contravened or is likely to contravene a relevant condition or requirement,³ we have a number of powers under the relevant energy and water legislation to take enforcement action against the regulated company. In particular we have the following powers:
- to make an enforcement order,
 - to impose a financial penalty,
 - to revoke a licence⁴.
- 1.4 The procedures set out below will be followed by us when investigating potential contraventions and when giving formal consideration to whether it would be appropriate to take enforcement action.

¹ 'Regulated company' means both licence holders and exemption holders.

² In the context of water and sewerage services the reference to licence includes an appointment as a water or sewerage undertaker.

³ See Art. 41, 41A, and 41B of the Energy (Northern Ireland) Order 2003 and Art. 30 The Water and Sewerage services (Northern Ireland) Order 2006.

⁴ In the case of a water undertaker or a sewerage undertaker revocation of licence can only occur with the consent of the Department for Infrastructure (see 14(2) of The Water and Sewerage Services (Northern Ireland) Order 2006.

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- 1.5 A flowchart providing a high level summary of the major stages and the possible outcomes of our enforcement procedure is included at appendix 1; this document should be read in conjunction with the flow chart.
- 1.6 Our procedure does not apply in respect of any enforcement decision in relation to the all-Ireland Single Electricity Market.
- 1.7 Similarly, our procedure does not apply to the enforcement of competition law under the Competition Act 1998 (the **Competition Act**) in relation to commercial activities connected with the electricity, gas and water sectors. We have published a separate guidance for such cases and this is available on our website. Our powers in the area of competition law include:
- the power to direct a company to modify or terminate agreements or to modify or cease particular conduct,
 - the power to impose a financial penalty.
- 1.8 However, if as we investigate a case and new issues emerge, we will evaluate whether it is appropriate to apply our competition procedure to those issues.
- 1.9 Please note:
- ***We will seek to adhere to the procedures outlined but, for the avoidance of doubt, our Enforcement Procedure does not in itself impose requirements on or purport to fetter our discretion.***
 - ***Our Enforcement Procedure will be reviewed from time to time in order to ensure our procedures are relevant and up to date.***

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2. Principles and approach

2.1 Our procedures for investigating any potential contravention and deciding to take enforcement action have been designed having regard to the 5 principles of good regulation. We aim to be:

- targeted,
- proportionate,
- transparent,
- consistent, and
- accountable.

2.2 Our approach to investigating any potential contravention and making enforcement related decisions is designed to be rigorous, thorough, evidence-based and fair so as to ensure that the outcomes reached are proportionate and consistent.

Aim of our Enforcement Work

2.3 The aim of our enforcement work is to protect the interests of consumers and to secure that regulated companies comply with their obligations.

2.4 We see enforcement action as a key part in changing the behaviour of companies by acting as a deterrent. We expect that the enforcement action we take will act as an incentive on the individual company in question to change its behaviour. In addition, the action we take will also make it clear to other companies where their own behaviour may need to change and incentivise compliance best practice more generally.

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Publicity

- 2.5 To this end publicising our investigations and the final decisions we take is an important part of our enforcement approach. Section 3 explains when we will publish information and what will be published at each stage of the procedure (see relevant paragraphs of 3.27-3.74).
- 2.6 Information will be published on a dedicated section of our website. The investigation team's decision to open a case and anything subsequently published during the enforcement process will be placed on our website and published as a news item. This means it will be sent to anyone who has signed up to receive news items from our website.
- 2.7 We recognise that companies may be concerned about what we may publish about their case. Where practical we will inform the company concerned that we intend to publish information about their case on our website. We will do this one day in advance of publication and at that stage will provide them with a copy of what will be published for information only.
- 2.8 When considering what to publish we will take account of the need to maintain confidentiality where appropriate. Where a company considers that information it provides to us is confidential they should set out the reasons why and provide a non-confidential version of any documents at the same time the original is provided to us.
- 2.9 We will consider any request to treat information as confidential on a case by case basis and make our own assessment in line with the applicable legislation. However, companies should note that information provided to us, including personal information, may be subject to publication or disclosure. This is in accordance with the access to information regimes; primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), and the Environmental Information Regulations 2005 (EIR).

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Expectation of a company being investigated

- 2.10 We expect that a company which is being investigated, or is subject of any enforcement action, will be candid and co-operative, assisting us in our processes and providing us with full and frank information in a timely manner.
- 2.11 We strongly encourage a company which is aware that it has contravened, is contravening, or is likely to contravene any relevant condition or requirement to self-report this to us at the earliest stage, providing as much detail as possible and setting out the steps it has taken or intends to take to remedy the actual or potential contravention.
- 2.12 Self-reporting which is prompt, accurate and comprehensive and where the company can demonstrate steps taken by it to remedy the issue in a manner designed to avoid repeat contraventions will, in most cases, count in the company's favour; where the case is suitable for alternative resolution to make that more likely or to be reflected in the level of any financial penalty.

Prioritisation Principles for Our Enforcement Work

- 2.13 We recognise that enforcement action and the preceding investigation can be a time consuming and resource intensive process for both the Utility Regulator and the company under investigation. In each case before proceeding to enforcement action we will consider whether it is the appropriate course to take, and prioritisation principles will be used for this purpose.
- 2.14 We may apply prioritisation principles as appropriate at different stages, for example when considering whether a case can be resolved by means of alternative resolution, when deciding whether to formally open a case, and when deciding whether to continue with a case.

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2.15 We may prioritise for resource or other reasons and any prioritisation principles we apply will take account of the specific facts of the case and the applicable legal framework.

Proportionate approach to investigations

2.16 We aim to approach enforcement action in the most efficient and effective way. Where there is evidence that a company is not complying with its obligations, our policy is to take whatever action we judge as most appropriate in all the circumstances to secure compliance with the obligations and ensure that incidents of non-compliance are not likely to recur.

2.17 In appropriate cases, therefore, we may rely on alternative resolution offered by a company to secure compliance. Alternative resolution is explained in section 3.10-3.19 below and see also sections 3.27 – 3.44 for more detail on how it fits into the procedure.

2.18 Some cases may not be suitable for alternative resolution and cases may still be settled by agreement. Settlement is explained in sections 3.20-3.24 below see also sections 3.45 – 3.58 for more detail on how it fits into the procedure.

3. Our Enforcement Process

3.1 During the process we will ensure that:

- a) a company will be advised if we decide to undertake an initial investigation and when a case is opened;
- b) a company will be given clear information about the issues being investigated and allowed a reasonable time to respond to any questions;
- c) a company will be notified as to the person managing the investigation and will be kept informed of progress at appropriate points;

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- d) we will respond to requests for clarification within a reasonable timeframe;
and
- e) we will accede to reasonable requests for face-to-face meetings to discuss any issues relating to the process and a company will always have a fair opportunity to make representations before any decisions are made.

Timetable

- 3.2 We will progress all investigations in a timely manner. We will endeavor to adhere to the shortest timescales possible taking into account the need to follow the appropriate processes and procedures. The length of time that different steps of the process will take will vary from case to case. This is why, instead of setting general time limits, we will give an individual timeline in every case.
- 3.3 In certain circumstances the urgency of a particular case may mean that it is not possible to follow our process in full. An example of this may be where it appears to us that a company is in serious contravention of a relevant requirement, such that alternative resolution is not suitable or it is appropriate for us to make a provisional enforcement order to prevent a person sustaining serious loss or damage. The UR may make an enforcement order at any stage in the process.

Information Notice

- 3.4 During the initial enquiry stage and once an investigation has been formally opened we may serve an information notice on the company, requiring that the company provide further information and/or documentary evidence to enable us to determine whether or not a contravention has taken/is taking place or is likely to take place. An information notice will generally be served once an investigation has been formally opened.

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- 3.5 An information notice may be a notice served under article 51 of the Energy Order or article 261 of the Water Order. Where we serve an information notice we will state in the notice the date by which we require the company to respond.
- 3.6 We expect companies to co-operate in full with our investigation. While we aim to make any requests for information as clear as possible if the company wishes to clarify any part of the information notice it should use the details provided to contact the investigation team.
- 3.7 We will take any failure to comply with an information notice very seriously. Failure to comply with such a notice without reasonable excuse constitutes a criminal offence as does intentionally altering, suppressing or destroying any document which has been requested in such a notice. Any person who commits such an offence may be liable to a fine (or even to imprisonment in some cases).
- 3.8 We will review the company's response to the information notice including any submissions which the company has made in relation to the potential contravention or any proposals it has made for alternative resolution.
- 3.9 We may require further information or documentary evidence from the company, for example, to clarify particular points. If this is the case, we will serve further information notices on the company as appropriate.

Alternative resolution

- 3.10 Alternative resolution will not result in a finding that a company is contravening or has contravened or is likely to contravene a condition or requirement. Therefore it is likely to be most appropriate in cases in which it would be a more proportionate way of responding to the contravention while still effectively protecting the interests of consumers and of the market, and deterring future contraventions.

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- 3.11 Alternative resolution may take different forms depending on the circumstances of the case and more than one form may be necessary to fully resolve a particular case.
- 3.12 One mode of alternative resolution might include the payment of compensation to customers who have been adversely affected by non-compliance or other ways of providing redress or of remediating a situation so that a company does not benefit from contravening any relevant condition or requirement and that any harm done by it is, so far as practicable, alleviated. Also, the company might agree to independent audits of compliance to provide assurance that the issue investigated will not recur.
- 3.13 Regulated gas or electricity might propose a voluntary undertaking or provide some other assurance that the company will take all the steps as it appears to us to be appropriate for the purpose of securing or facilitating compliance with the requirement in question. The Water and Sewerage Services (NI) Order 2006 makes provision for the company to provide a statutory undertaking in lieu of an enforcement order being made (under Article 31 of the Water Order).
- 3.14 In appropriate cases we may make, or invite a company to make, proposals for alternative resolution. However, in all cases we encourage a company which is being investigated to bring forward proposals of its own without any need for prompting as early as possible. Proposals for alternative resolution may be brought forward during the Initial Enquiry Stage and during the Enforcement Action Stage A. Once the Summary of Initial Findings has been served on the company no further proposals for alternative resolution will be considered.
- 3.15 Proposals for alternative resolution put forward by a company must include steps to comprehensively address the full extent of all issues under investigation, compensate customers for any detriment suffered and rectify any gain to the company, and include steps to ensure the contravention is not repeated. In short the company must show a real commitment to resolve the issue under investigation and prevent repeat contraventions.

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- 3.16 Before we accept any proposal for alternative resolution, we will need to be satisfied that the proposal fully addresses our concerns, that the company has identified all the necessary steps to put things right and prevent repeat contraventions, and that the company will act promptly to implement these steps. In some cases we may request that the company independently audits the steps it takes pursuant to its plan for alternative resolution.
- 3.17 The terms of alternative resolution must be agreed in writing by both the company and the Utility Regulator. Once the alternative resolution is agreed between the company and the investigation team, the case will be closed. There will not be a finding that the company is contravening or has contravened or is likely to contravene any condition or requirement. However, the company name, details of the issue investigated, and the alternative resolution agreed will be published on our website. Before publishing anything about alternative resolution on our website we will inform the company concerned.
- 3.18 We will monitor the company to ensure the alternative resolution steps are implemented to the timescales proposed. If this does not occur the case may be re-opened and the enforcement process will resume. Where a statutory undertaking is given by a water company we may be able to take enforcement action against the company directly for the failure to comply with the terms of the undertaking.
- 3.19 Cases which are not resolved by means of alternative resolution will proceed to resolution by means of our statutory enforcement powers and a formal finding as to whether a contravention has occurred, which will be made public.

Settlement by agreement

- 3.20 To settle a case a company must admit to all the contraventions that are under investigation at that point in the process. The company must also agree not to challenge or appeal any finding by the UR that a company is contravening or has contravened or is likely to contravene a condition or requirement, or any

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decision as to the amount of a financial penalty. There is no obligation on a company to settle – it is a voluntary process. However, cases settled by agreement will still need to fulfil the relevant statutory requirements, including public consultation on the amount of any potential penalty.

- 3.21 In return for admitting the contravention the settlement agreement will include a discount from the amount of financial penalty that may otherwise have been imposed. This is because cases settled by agreement will follow a streamlined administrative procedure allowing the case to be concluded earlier (compared to a contested case) saving resources for both the company and the Utility Regulator and ensuring that redress for customers is available earlier than would otherwise be the case. The earlier the settlement agreement is signed the greater the discount will be.
- 3.22 There will be two windows wherein the company can indicate it wishes to settle - the company will have the duration of the window to sign a settlement. A case settled in the first window will result in a discount of 40% and a case settled in the second window a discount of 20%. The discounts are set out in the Financial Penalties Policy which also provides that monies to be recovered from the company (as a consequence of any gain to the company or detriment to consumer from the contravention investigated) will not be discounted.
- 3.23 Settlement does not prevent us from taking future action if further contraventions occur or if the actions agreed by the company to reach settlement are not carried out. Companies should take their own legal or other advice before settling a case.
- 3.24 Settlement is possible only in cases where a financial penalty is in prospect. Cases where the investigation team consider that an enforcement order is required or (in water) statutory undertakings are proposed, will not be suitable for settlement and the investigation team will instead write to the company setting out the process that will be followed.

Contested cases

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- 3.25 If at any point settlement discussions break down or the company indicates that it does not wish to settle the case, the UR will consider the case as contested and a fresh committee (an enforcement committee) will be convened to determine the outcome of the case.
- 3.26 The investigation team will prepare a final statement of case for the enforcement committee and the enforcement committee will make its decisions based on the final statement of case it receives. To ensure the enforcement committee is independent and unbiased it will not see any admissions previously made by the company in the course of settlement discussions but will consider the issues afresh. This also means that the enforcement committee will form its own view on the amount of any penalty and whether an enforcement order may be required. The enforcement committee will not be bound by the penalty amount stated in any draft penalty notice previously shared with the company.

Initial enquiry stage (see enforcement procedure flow chart)

- 3.27 There are a number of ways in which we may come to investigate a company on the basis that it may be contravening or has contravened or is likely to contravene a condition or requirement. For example:
- our monitoring and investigations may bring to light information which we consider suggests that a company is contravening, has contravened, or is likely to contravene a condition or requirement;
 - the company itself may report the contravention;
 - a complaint from a third party may bring to light information which we consider suggests that a company is contravening, has contravened, or is likely to contravene a condition or requirement; or
 - a whistleblower from within the company may allege that a contravention of a relevant requirement has taken place.

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- 3.28 However information about possible contraventions comes to light, we will consider whether the information does in fact suggest a contravention of a condition or requirement such that we need to commence the initial enquiry stage of the enforcement procedure. Where the initial enquiry stage is commenced we will alert the company concerned so that it is clear to them that the first stage of the enforcement procedure has been commenced.
- 3.29 The investigation team will then begin to assess the issue and gather further information. They will also consider the legal tests for enforcement action (set out in section 6 below) and the particular requirements in the licence and/or the legislation. The company may put forward proposals for alternative resolution at any stage and these will be considered by the investigation team.
- 3.30 During this stage we may seek information from the company or third parties, e.g. to help inform our understanding of the issue, where the information obtained is unclear, or to fill in the gaps where the information is incomplete. The information notice may be a notice served under article 51 of the Energy Order or article 261 of the Water Order.
- 3.31 The investigation team may apply the prioritisation principles at any point during the initial enquiry stage.
- 3.32 The company will be notified of the outcome of the initial enquiry stage by the investigation team. The possible outcomes from this stage are that:
- A. there is no case to answer and close the case; or
 - B. the issue is minor and has been or can be solved quickly and easily by the company and the case subsequently closed; or
 - C. the case can be resolved by means of alternative resolution.; or
 - D. none of the above are appropriate and a formal investigation will be opened into the case.

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- 3.33 Where cases are closed following alternative resolution in this stage, we will publish on our website the name of the company, the licence conditions or requirement at issue with an outline of the issues investigated, and the alternative resolution agreed (including (if any) the amount of any voluntary payment to charity). Before publishing anything about alternative resolution on our website we will inform the company concerned.
- 3.34 When deciding whether a case should be formally opened we will consider the prioritisation principles. If the investigation team decides it is appropriate to open a formal investigation into the case the issue moves into the second stage of the procedure – Enforcement Action Stage A.

Enforcement Action Stage 1 (see enforcement procedure flow chart)

- 3.35 When we decide to open a case we will send an initial notification to the company. The initial notification will include:
- details of the potential contravention by the company which is being considered by us;
 - an outline of the process which we will follow and proposed timescales for the remaining stages in the process; and
 - contact details for the lead investigation officer.
- 3.36 Details of all cases opened for formal investigation will also be published on our website. These will include the name of the company under investigation, the licence conditions or requirement for which compliance will be investigated, and a brief summary of those conditions.
- 3.37 The investigation team will conduct further investigation and develop their initial findings in this stage. For this purpose the information notice may be a notice served under article 51 of the Energy Order or article 261 of the Water Order.

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- 3.38 The company may put forward proposals for alternative resolution at any stage and these will be considered by the investigation team.
- 3.39 The investigation team may apply the prioritisation principles at any point during Enforcement action Stage 1.
- 3.40 The company will be notified of the outcome of the initial enquiry stage by the investigation team. The possible outcomes from this stage are that:
- A. there is no case to answer and close the case; or
 - B. the case can be resolved by means of alternative resolution; or
 - C. neither of the above are appropriate and a Summary of Initial Findings will be produced.
- 3.41 If we decide that the case should not proceed we will notify the company and will publish a notice of the decision on our website.
- 3.42 Similarly, where cases are closed following alternative resolution in Enforcement Action Stage 1, the UR will publish on its website the name of the company, the licence conditions or requirement at issue with an outline of the issues investigated, and the alternative resolution agreed, (including (if any) the amount of any voluntary payment to charity). Before publishing anything about alternative resolution on our website we will inform the company concerned.
- 3.43 Alternatively we may decide the case should be continued so that a formal determination on enforcement action can be made. In this case the investigation team will prepare a Summary of Initial Findings (SIF) and invite written representations on it from the regulated company giving it a period of not less than 21 days to comment on it.
- 3.44 The SIF may include the following:

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- any specific condition or requirement which our investigation team considers a company is contravening, has contravened, or is likely to contravene and an outline of the reason(s) why this is the case;
- our investigation team's understanding (from consideration of the evidence) of the relevant facts of the case;
- an initial assessment of the gain to the company and the detriment to customers of the activity under investigation; or

Enforcement Action Stage Part 2 (see enforcement procedure flow chart)

- 3.45 Following receipt of written representations on the SIF, the investigation team will update the Summary of Initial Findings. The UR will convene a Settlement Committee for the purposes of deciding that settlement is appropriate and the provision of a settlement mandate (contained in the draft penalty notice). Where a settlement is subsequently agreed the Settlement Committee will remain in place and make all subsequent decisions in the case. See section 4.1-4.5 for further information on the Settlement Committee.
- 3.46 Once the settlement mandate is provided and the draft penalty notice provided to the company the first settlement window will open. The company will be advised when the window closes.
- 3.47 Settlement discussions may take place within this first window - we will generally consider settlement in all cases. The aim of the settlement discussions is to agree the terms of the draft penalty notice.⁵ We will not enter into partial settlements with companies, whereby the company admits to some contraventions but continues to contest others.

⁵ This means that we will seek to reach agreement with the company on the wording that will appear in the penalty notice. The company will also have an opportunity to comment on the content of any draft press notice but the final decision as to what will be published will be made by the UR.

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- 3.48 Settlement discussions will take place on a 'without prejudice' basis. Consequently, if a settlement agreement is not reached and the case becomes contested, neither the company nor the UR can rely on admissions or statements made during these discussions. See section 3.72 on contested cases above.
- 3.49 In order to advance settlement discussions we will need to have sufficient information to assess the nature and extent of the contravention and the harm caused and we may ask the company for information to help us assess this at any stage.
- 3.50 If the company wishes to settle it must sign a formal settlement agreement, the template for which will be standard in all cases and provided by the Utility Regulator. The company will have the duration of the first window to sign a settlement agreement. Cases settled in the first window will attract a 40% discount as set out in the UR's Financial Penalties Policy.
- 3.51 If the settlement agreement is signed by the end of the first window the process moves into the final Stage, Enforcement Action Stage 3 (see below). The Settlement Committee will take the final decisions in stage 3.

Statement of case and response

- 3.52 If a settlement is not agreed in the first window we will consider the case as contested and our investigation team will prepare a draft statement of case which will be issued to the company. The draft statement of case will include the following:
- any specific condition or requirement which our investigation team considers a company is contravening, has contravened, or is likely to contravene and the reason(s) why this is the case;
 - a summary of the background to the investigation;

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- our investigation team's understanding (from consideration of the evidence) of the relevant facts of the case;
- copies of the evidence, which the investigation team considers to be relevant to the facts of the case.

3.53 When we send the statement of case to the company we will make clear that the company may make written representations in response to the statement of case and will provide a time period for the company to make representations.

3.54 The company will normally have 28 days to respond to the statement of case. However, this will not always be appropriate and in certain circumstances a different period may be specified (for example, due to the urgency of the case).

3.55 In certain cases, it may then be appropriate for an updated statement of case to be prepared and sent to the company in which case the company will get an opportunity to update its response.

3.56 When the draft Statement of Case is issued to the company the second settlement window will open and the company will be advised when it will close (this will typically be when written representations on the draft Statement of Case are due to be submitted to the UR). If the company wishes to settle in the second window it must sign a formal settlement agreement and the company will have the duration of the first window to sign a settlement agreement.

3.57 Cases settled in the second window will attract a 20% discount as set out in the UR's Financial Penalties Policy. Such cases will also proceed directly to decision by Enforcement Committee on the contravention and minded to on a financial penalty (Enforcement Action Stage 3).

3.58 If settlement is not reached in the second window then we will proceed to finalise the statement of case.

Appointment of enforcement committee

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- 3.59 At this point in the process the UR will appoint an enforcement committee to make the determination. Our enforcement committee may be either our Board or an ad-hoc committee of our Board established for the purposes of making a formal determination on enforcement action in that particular case. Our Board's decision as to whether or not to appoint an ad-hoc committee will be made on the basis of manageability in each particular case.
- 3.60 Where our enforcement committee is an ad-hoc committee it will be comprised of individuals selected by our Chair (following recommendations, where possible, from our chief executive) from a list of persons who are authorised to sit on an enforcement committee.
- 3.61 Once the membership of our enforcement committee for the case has been appointed we will inform the company of the names of members of the enforcement committee and give the company an opportunity to make representations on this which we will take into account.
- 3.62 The enforcement committee will give directions on the procedure which will be followed before it makes its determination, including how any preliminary or interim issues will be dealt with and the dates by which any relevant actions should occur. The company will be notified of these directions.
- 3.63 If it becomes appropriate for our enforcement committee to vary the directions at any point the company will be notified of the varied directions.

Enforcement Action Stage 3 - Contested case: Final decisions by the enforcement committee (see enforcement procedure flow chart)

- 3.64 In contested cases the enforcement committee will consider the statement of case and any response to the statement of case.
- 3.65 When it has considered the company's response to the statement of case it is open to the enforcement committee to decide that the case should not proceed

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to formal determination. If this is the case we will notify the company of the decision.

- 3.66 If our enforcement committee considers that it needs any further information from the company in order to make any of its determinations, it may request further information in a further information notice. Our enforcement committee may also request information from our investigation team or any relevant third parties.
- 3.67 It may also be appropriate for our enforcement committee to invite representations on any particular issues from the company, our investigation team and/or any relevant third parties.
- 3.68 If the investigation team or a third party provides further information or makes representations to our enforcement committee following such a request, the information or representations will generally be provided to the company and the company given an opportunity to comment.
- 3.69 In certain cases, to ensure that the relevant issues are fully explored, our enforcement committee may decide that it is appropriate for there to be a hearing at which the company and our investigation team are both invited to answer questions and, where appropriate, to make representations. Our enforcement committee may also invite third parties to attend all or part of the hearing to answer questions or to make representations. Minutes will be taken of any hearing held.
- 3.70 In any such hearing, our enforcement committee will adopt an investigative rather than an adversarial approach.
- 3.71 Once our enforcement committee is satisfied that it has received sufficient evidence and appropriate representations, it will be the role of our enforcement committee to give due consideration to the evidence and representations and to then make a determination on:

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- the relevant facts of the case;
- whether or not the company has contravened, is contravening, or is likely to contravene a licence condition or relevant statutory requirement; and
- if there is, has been, or is likely to be, a contravention, whether it would be appropriate for us to take enforcement action and, if so, what enforcement action should be taken. (Our powers in relation to enforcement action are summarised at the end of this document.)

Contested cases: Preliminary determination and representations

3.72 Our enforcement committee will notify the company of its preliminary determination and give the company a period of time to make representations in relation to our preliminary determination. This is not necessary in a settled case where the agreement has already been reached.

Final Determination on enforcement

3.73 In both settled and contested cases we will follow any statutory procedure which needs to be followed before the determination is implemented. We are required to consult before imposing a financial penalty or before confirming a provisional order or making a final order. Where consultation is required we will invite representations on our proposals and give interested parties an appropriate period to comment. Our Enforcement or Settlement Committee (as appropriate) will duly consider any representations or objections (which are duly made and not withdrawn) before making a final determination on enforcement action.

3.74 All responses made will also be published alongside our final decisions.

4 Our enforcement committee

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- 4.1 Our enforcement committee is independent of our investigation team which has worked on a particular case and will form an independent view on the case.
- 4.2 Our enforcement committee will generally be comprised of 3 members, who will be Board members or senior employees of the Utility Regulator. However, in certain cases, it may be appropriate for the enforcement committee to be larger or smaller than this. For example:
- in certain cases, our enforcement committee may be our full Board; or
 - in certain cases which are particularly urgent, our enforcement committee may only have one member.
- 4.3 When the members of our enforcement committee are appointed one of its members will be appointed as the chair. Decisions of our enforcement committee will be made by consensus.
- 4.4 The enforcement committee may take legal or other advice in the course of its work.
- 4.5 The approach described in this section will apply equally to the Settlement Committee.

5 Complaints, disputes and appeals

- 5.1 As noted above, in some cases, we may obtain information following a complaint against a company by a third party who may suggest that a company is contravening or has contravened or is likely to contravene a licence condition or other relevant requirement.
- 5.2 Where a complaint, appeal or dispute has been referred to us we will deal with the complaint, appeal or dispute in accordance with our Policy on Resolution of Complaints, Disputes and Appeals and Guide for Applicants.

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- 5.3 In particular, as a direct result of EU Directives aimed at improving the way internal markets in energy are structured, we were given the legal authority to act as a dispute resolution authority for certain matters in relation to electricity and gas. Our complaints policy sets out a number of procedures (with specified timescales) which we are required by EU law to follow.
- 5.4 In relation to water, the Water Order gives us the power to determine relevant complaints, disputes and certain appeals relating to water and sewerage services.
- 5.5 The complaint, appeal or dispute may suggest that it would be appropriate for us to take enforcement action in relation to the issue of the complaint or a related issue. We will consider whether to undertake further investigation and/or take enforcement action in the particular circumstances of the case. In some cases, where we have already has a detailed understanding of the matter following the complaints process, we may be satisfied that there is sufficient evidence a company is contravening or has contravened or is likely to contravene a condition or requirement to proceed directly to the preparing of a statement of case and the appointment of our enforcement committee for the case.

6 The Legal Framework

- 6.1 Our enforcement powers are summarised in the table below and outlined in more detail, including exceptions, in the sections following the table.

Enforcement Power	Circumstances of use
Enforcement order	Shall be used where we are satisfied that a company is contravening, or is likely to contravene, any relevant condition or requirement.

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Financial penalty

May be used where -

We are satisfied that a company has contravened or is contravening any relevant condition or requirement or any provision of a Community Regulation.

Revocation of licence

For electricity licence holders and gas licence holders, may be used in accordance with the terms as to revocation set out in the particular licence.

For a company holding a licence for water and sewerage services may be used in accordance with article 14 of the Water Order and the conditions of the relevant licence.

Enforcement Orders

- 6.2 Article 42(1) of the Energy Order states that where we are satisfied that a company is contravening, or is likely to contravene, any relevant condition or requirement, we shall by a final order make such provision as is requisite for the purpose of securing compliance.
- 6.3 Article 42(2) states that where it appears to us that a company is contravening, or likely to contravene, a relevant condition or requirement, and it is requisite that a provisional order be made instead of making a final order, we shall by provisional order make such provision as appears to it requisite for the purpose of securing compliance.
- 6.4 A provisional order shall be confirmed by us (with or without modifications) if we are satisfied that the company is contravening, or is likely to contravene, any

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relevant condition or requirement and the provision made by the order is requisite for the purpose of securing compliance.

6.5 If a provisional order is made and not confirmed, it will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

6.6 There are certain exceptions to these duties, where we are not required to make a final or provisional order. These include the following:

- where the company has agreed to take and is taking all such steps as it appears to us to be appropriate for the company to take to secure or facilitate compliance; or
- where the contraventions were of a trivial nature.

6.7 Article 30(1) and Article 30(2) of the Water Order set out similar provisions in relation to our enforcement power to make final orders and provisional orders in the water and sewerage services sector (including specified exceptions).

6.8 In particular, Article 30(1) states that, where we are satisfied that a company is contravening, or is likely to contravene, any condition of the company's licence or any statutory or other requirement, we shall by a final order make such provision as is requisite for the purpose of securing compliance.

6.9 Article 30(2) states that, where it appears to us that a company is contravening, or is likely to contravene, any condition of the company's licence or any statutory or other requirement and it is requisite that a provisional order is made instead of making a final order, we shall by provisional order make such provision as appears to it requisite for the purpose of securing compliance.

6.10 Article 31(1) provides certain exceptions to these duties, where we are not required to make a final or provisional order. These include the following:

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- where the company has given and is complying with a statutory undertaking to take all such steps as it appears to us to be appropriate for the company to take to secure or facilitate compliance, or
- where the contraventions were of a trivial nature.

6.11 Where a decision has been taken to make a final enforcement order or confirm a provisional enforcement order, Article 43 of the Energy Order and Article 32 of the Water Order set out a statutory procedure which must be followed before the order can be made/confirmed.

Financial Penalties

6.12 Article 45(1) of the Energy Order states that where we are satisfied that a company has contravened or is contravening any relevant condition or requirement or any provision of a Community Regulation, we may impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

6.13 As well as this, Article 45(2) of the Energy Order states that where we are satisfied that an electricity licence holder (who is an electricity distributor or an electricity supplier) or a gas licence holder has failed or is failing to achieve any standard of performance prescribed under the relevant legislation, we may impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

6.14 We generally have a limited time following the contravention or failure to impose a penalty. Generally, where no provisional or final order has been made in relation to a contravention or failure, we may not impose a penalty more than 12 months from the time of the contravention or failure unless during that period the we have done one of the following:

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- served a penalty notice relating to the contravention or failure on the company; or
- served an information notice on the company requesting further information in relation to the contravention or failure.

6.15 Where a final order has been made in relation to the contravention or failure the penalty notice relating to the contravention or failure must generally be served on the company within 3 months from the making of the final order.

6.16 Where a provisional order has been made in relation to the contravention or failure, the penalty notice relating to the contravention or failure must generally be served on the company within 3 months from the confirmation of the provisional order by the Utility Regulator or, if the provisional order is not confirmed, within 6 months from the making of the provisional order.

6.17 Article 35(1) and Article 35(2) of the Water Order set out similar provisions in relation to our enforcement power to impose financial penalties in the water and sewerage services sector (including a general time limit for imposing a penalty).

6.18 Article 35(1) of the Water Order states that, where we are satisfied that a company has contravened or is contravening any condition of its licence or has failed or is failing to achieve the standard of performance prescribed under the relevant legislation, we may impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

6.19 Article 35(2) of the Water Order states that, where we are satisfied that a company has contravened or is contravening any relevant statutory or other requirement, we may impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

6.20 Where a decision has been taken to impose a financial penalty, Article 45 of the Energy Order and Article 35 of the Water Order set out a statutory procedure which must be followed before the penalty can be imposed (as set out in our policy on financial penalties).

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- 6.21 Article 46 of the Energy Order and Article 36 of the Water Order require us to prepare and publish our policy with respect to the imposition of penalties and the determination of their amount (see our policy on financial penalties).
- 6.22 As indicated in our policy, we are first required to decide whether a company has contravened or is contravening any relevant condition of its licence or other requirement, or has failed to achieve any standard of performance set in accordance with specified provisions of the Energy Order. We will use the process outlined in the proceeding sections of this procedure in making that decision.
- 6.23 Once satisfied that a relevant contravention or failure has occurred our enforcement committee will decide whether a penalty should be imposed and, if so, at what level. The Financial Penalties Policy will be used for this purpose.

Revocation of licence

- 6.24 In certain circumstances we have the power to revoke a company's licence where it has failed to comply with certain requirements. For electricity licence holders and gas licence holders, the circumstances where this power is available are set out in the terms as to revocation in the particular licence. For a company holding a licence for water and sewerage services, a termination may only be made in accordance with Article 14 of the Water Order and the relevant licence conditions. We will follow any procedure set out in the licence and any relevant legislation.