

## Response ID ANON-2B4J-7H6X-Y

Submitted to Utility Regulator (Support for Decarbonisation Preparation) Bill  
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### Introduction

1 What is your name?

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3 Are you providing a submission on behalf of an organisation or business?

Yes

If yes, please provide the name of the organisation or business below:

Sustainable NI

### Consent

4 Please confirm that you have read the Northern Ireland Assembly Committee's Privacy Notice by clicking the button below.

yes:  
Yes

5 How would you like your submission to be published?

Yes. Publish but with my personal information and any content that could be used to identify me redacted.

### Utility Regulator (Support for Decarbonisation Preparation) Bill

#### Clause 1 (1)

6 Does this part of Clause 1 give the Utility Regulator sufficient power and/or responsibility in order to help decarbonise the energy sector in Northern Ireland?

Yes

If no, what powers / responsibilities should the Bill confer on the Utility Regulator in order to support decarbonisation, beyond the provision of advice?:

#### Clause 1 (2)

7 Should the Utility Regulator's support for decarbonisation be restricted to the provision of advice to the Department for the Economy?

No

If no, who else should the Utility Regulator be able to provide decarbonisation advice to?:

The Utility Regulator should be able to advise the Department for Infrastructure on matters relating to the development of the grid to support renewable energy growth and Strategic Spatial Planning to achieve a smart and flexible electricity grid.

While not a government department, the Utility Regulator will also have to work closely with and advise the System Operator for Northern Ireland (SONI) for whole-system planning.

#### Clause 1 (3)

8 Do you support this aspect of Clause 1?

Yes

If no, please explain in the text box below.:

## Clause 2

9 Should the relevant provisions be commenced immediately after Royal Assent?

Yes

If no, what conditions or restrictions might be placed on commencement?:

### Additional Information/Comments

10 Please provide information on any other potential amendments that you feel would enhance the Bill and the rationale for those.

Additional information or comments.:

#### 1. A statutory decarbonisation duty on the Utility Regulator

The Bill as introduced is purely facilitative — it allows the Regulator to assist the Department but says nothing about the Regulator's own remit. The Regulator's principal statutory framework is the Energy (Northern Ireland) Order 2003, under which its overarching duty centres on protecting the interests of consumers, with subsidiary duties on competition, security of supply, sustainability and so on. In practice, "consumer interest" has been read narrowly as short-term cost minimisation, which is widely understood to constrain anticipatory investment in networks, storage and flexibility — exactly the investment a rapid energy transition requires.

There are two ways to address this:

Option A — amend the Energy (Northern Ireland) Order 2003 directly. This is the more durable approach because the duty would attach to all of the Regulator's functions, not only those exercised in connection with the 2022 Act.

Option B — a freestanding duty within this Bill. This keeps the Bill self-contained and is politically simpler if there is reluctance to reopen the 2003 Order.

Suggested drafting:

##### A. Decarbonisation duty

(1) In carrying out its functions, the Utility Regulator must have regard to the need to support—

- (a) the achievement of the emissions targets and carbon budgets under the Climate Change Act (Northern Ireland) 2022; and
- (b) the transition to a zero-carbon energy system that is secure, affordable and just.

(2) In discharging the duty under subsection (1), the Utility Regulator must in particular consider the implications of its decisions for—

- (a) the connection and integration of renewable electricity generation;
- (b) energy storage, demand response and other flexibility services;
- (c) the decarbonisation of heat, including heat networks and electrification;
- (d) the timely reinforcement and modernisation of energy networks;
- (e) the protection of consumers in or at risk of fuel poverty during the transition; and
- (f) innovation in low-carbon technologies and business models.

Rationale: A permission-only Bill (as currently drafted) does not change what the Regulator can be challenged on. If the Regulator approves anticipatory network investment to host renewables, a licensee or consumer body can still argue it has failed its consumer-protection duty by raising near-term costs. A statutory decarbonisation duty rebalances the framework so the Regulator can lawfully weigh long-term decarbonisation against short-term price impacts. It also gives the Regulator legal cover to send clearer signals to industry about the kind of marketplace it is trying to create.

#### 2. Reporting, transparency and Assembly oversight

The Bill creates new functions but no accountability mechanism. A reporting duty creates a feedback loop with the Assembly and civil society.

Suggested drafting:

##### B. Reporting

(1) The Utility Regulator must, within 12 months of this Act coming into operation and annually thereafter, publish a report setting out—

- (a) the advice, information or assistance provided to the Department under section 1;
- (b) any other actions taken in support of the duty under section A; and
- (c) its assessment of progress towards the targets in the Climate Change Act (Northern Ireland) 2022.

(2) The Utility Regulator must lay each report before the Assembly.

Rationale: without published reporting, there is no way to gauge whether the Bill is achieving anything.

### Proposed Additions and Amendments

11 Please provide information on any potential amendments that you feel would enhance the Bill and the rationale for those.

Information on any potential amendments:

As well as (1) decarbonisation and (2) reporting duties outlined in the previous question, we propose the following additions:

### 3. Duty to consult stakeholders

The Bill is silent on engagement. Suggested drafting:

#### Consultation

In exercising functions under section 1 or section A, the Utility Regulator must, where appropriate, consult—

- (a) generators, suppliers and network operators;
- (b) the renewable generation, storage, flexibility and energy efficiency industries;
- (c) representatives of domestic and non-domestic consumers, including those in or at risk of fuel poverty;
- (d) the Climate Change Committee or any equivalent advisory body;
- (e) district councils; and
- (f) any other persons it considers appropriate.

### 4. Express recognition of anticipatory investment

Northern Ireland's grid has been a known constraint on renewables deployment. The Regulator's price-control framework has historically rewarded "just-in-time" investment, which is incompatible with the pace of transition required.

Suggested drafting:

#### Anticipatory investment

(1) For the purposes of any price control or revenue determination, the Utility Regulator may treat as efficient and recoverable costs that are reasonably incurred in anticipation of future demand or generation arising from—

- (a) renewable electricity generation and connection;
- (b) electrification of heat or transport;
- (c) energy storage and flexibility; or
- (d) other low-carbon developments consistent with the targets in the Climate Change Act (Northern Ireland) 2022.

Rationale: this gives the Regulator explicit cover to approve forward-looking expenditure that current cost-benefit framings discourage.

### 5. Broader scope — energy strategy and a fuller definition

Two small but useful changes:

First, expand section 1(1) so the Regulator's advisory role is not tied solely to the 2022 Act:

In section 1(1), after "the 2022 Act" insert "or for the purposes of developing or implementing any energy strategy or successor document published by the Department".

Rationale: most operational decarbonisation policy in NI sits in the Energy Strategy ("The Path to Net Zero Energy", 2021) and its action plans, not directly in the 2022 Act.

Second, sharpen the definition of "the energy sector" in section 1(3):

After "consumption of energy (of any kind)" insert ", including (without limitation) electricity, gas, heat, hydrogen, energy storage, demand-side flexibility and energy efficiency".

Rationale: a non-exhaustive but illustrative list pre-empts disputes about whether emerging technologies fall within scope, and underlines that the transition is whole-system.

### 6. Just transition and fuel poverty

Even with section A(2)(e) above, it is worth a standalone signal that decarbonisation must not fall hardest on those least able to pay.

Suggested drafting:

#### Just transition

In exercising its functions under this Act, the Utility Regulator must have regard to—

- (a) the impact of decarbonisation costs on consumers in or at risk of fuel poverty;
- (b) the need to ensure equitable access to the benefits of low-carbon technologies; and
- (c) any relevant strategy on fuel poverty published by the Department for Communities.

### 7. Review clause

A built-in review point allows the framework to be improved without waiting for primary legislation to be revisited unprompted.

Almost done...

12 If you provide an email address you will be sent a receipt and a link to a PDF copy of your response.

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