



PC21 mid-term review draft determination

**Response by the Consumer Council for Northern Ireland
27 June 2024**

Table of contents

1. Overview of our response	2
2. About the Consumer Council	3
3. Our approach	4
Consumer protection principles	4
4. Our response	5
MTR approach	5
Consumer measures	6
Nominated outputs	6
Other MTR output adjustments	7
Development outputs	7
Operating expenditure	8
Capital investment.....	9
Capital Cost Pressures above Inflation	9
Base maintenance investment	10
Change Control Projects	10
Mid-Term Review Capex conclusion	10
Public Expenditure implications.....	10
5. Contact information	12

1. Overview of our response

The Consumer Council for Northern Ireland welcomes the opportunity to respond to the PC21 mid-term review draft determination (MTR DD) consultation from the Utility Regulator (UR).

Our reference: PD20010/3301

We welcome the opportunity to respond to the UR on its PC21 MTR DD.

In this response we set out our:

- continued support for the approach and proportionality of the MTR.
- agreement to the refinement of existing consumer measures, and the need for timely development of new measures for PC27.
- agreement for logging adjustments for outputs that are over/underdelivered alongside maintaining PC21 targets for nominated outputs unless linked to a scope certainty project.
- support for the continuation of two development objectives linked to consumer engagement and consumer vulnerability.
- proposal to help mitigate the significant tariff increase in the final two years of PC21.
- expectation that adjustments for cost pressures above inflation will require significant evidence from NI Water.
- continued support for the principle of maintaining base maintenance allowances to ensure there is no overall deterioration in existing levels of service.
- support for the clarity and transparency provided via the MTR for the public expenditure requirements for the delivery of the final three years of PC21.

We look forward to continued collaboration with UR in the ongoing process of improving our water and sewerage services.

2. About the Consumer Council

The Consumer Council (Consumer Council) was established in April 1985 as a non-departmental public body (NDPB) under the General Consumer Council (Northern Ireland) Order 1984¹ (The Order).

We are Northern Ireland's statutory consumer representative body and our principal duty is to safeguard their interests. We operate under our sponsor department, the Department for the Economy (DfE), on behalf of the Northern Ireland Executive.

We are an insight-led evidence-based organisation:

- Providing consumers with expert advice and confidential guidance.
- Engaging with government, regulators and consumer bodies to influence public policy.
- Empowering consumers with the information and tools to build confidence and knowledge.
- Protecting consumers by investigating and resolving consumer complaints under statutory and non-statutory functions.
- Undertaking best practice research to identify and quantify emerging risks to consumers.
- Campaigning for market reform as an advocate for consumer choice, welfare and protection.

Our statutory powers cover consumer affairs, energy, transport, water and sewerage, postal services and food affordability and accessibility.

Our role in water and sewerage

Alongside our statutory obligations under The Order, the Water and Sewerage Services (Northern Ireland) Order 2006² confers certain functions on the Consumer Council regarding:

- The interests of consumers in relation to the supply of water to premises by water undertakers.
- The provision of sewerage services by sewerage undertakers.
- Consumer matters, that is any matter connected with “the interests of consumers”.

¹ [General Consumer Council \(Northern Ireland\) Order 1984](#), UK Parliament

² [Water and Sewerage Services \(Northern Ireland\) Order 2006](#), UK Parliament

3. Our approach

In this section, we have set out our approach to the MTR draft determination consultation.

Consumer protection principles

The Consumer Council uses eight guiding principles to assess where the consumer interest lies, and develop and communicate our policies, interventions and support.

They provide an agreed framework through which we approach regulatory and policy work and ensure we apply a consistent approach across statutory and non-statutory functions, and in our engagement with consumers and stakeholders.

Figure 1: Consumer protection principles



They serve to protect consumers, setting out minimum standards expected from markets when delivering products or services in Northern Ireland.

They frame our policy position and approach to addressing emerging detriment and resolving consumer disputes with industry, offering a straightforward checklist to analyse and validate outcomes, in particular amongst vulnerable consumer groups.

4. Our response

In this section, we set out our response to the PC21 MTR DD consultation from UR.

MTR approach

In our April 2023 response to UR on its approach to the MTR we noted our support for the process. Such regulatory processes are important for transparency and help engender consumer trust. Additionally, the MTR provides a timely opportunity to review and recalibrate NI Water's targets and revenues, and to facilitate any necessary changes.

We agreed with UR's plans to take a proportionate approach to the MTR, and that the review's scope should be limited to areas where it can provide benefit or is necessary. Accordingly, we supported not reopening the financial determination to reconsider return on capital, operational cost efficiency and capital cost efficiency.

In our response we set out the main areas of interest for the Consumer Council, namely:

- The impact of changes in funding, or significant budgetary pressures, on output delivery and the K-Factors previously set.
- Consideration of the outcome of the work completed on scope certainty and the associated impact on the prioritised list of outputs.
- Investment programme changes required due to emerging needs and pressures.
- Consideration of capital maintenance funding levels and serviceability to check whether assets are being maintained and the PC21 final determination (PC21 FD) assessments remain valid.
- A review of delivery against the development outputs to determine whether elements of funding for the second half of the period should be approved, and whether NI Water's capability and techniques are being developed sufficiently to support more robust business planning for PC27.
- The review of existing consumer measures, and consideration of the incorporation of new consumer measures and targets developed and agreed through the Consumer Measure Satisfaction group (CM/SAT) stakeholder group.
- A review of the target performance bands set for water quality and environmental compliance performance measures, and understanding of how performance could impact on other service areas.
- Opportunities for implementing any innovative and sustainable solutions proven in the early part of PC21.

The MTR DD addresses these areas. Below we provide comment on these following the structure of the UR's MTR DD.

Consumer measures

As the MTR DD notes, through the CM/SAT group we have agreed:

- Methodological changes and alterations to targets for three consumer measures, First Point of Contact Resolution, unwanted contacts and Net Promotor Score.
- The retirement of the Overall Performance Assessment (OPA), with component data being recorded through the Annual Information Return, and the semi-retirement of the DG measures.
- To develop a new measure of non-domestic satisfaction for introduction in PC27.
- To develop a new measure for developer services for introduction in PC27.
- The establishment of targets for services provided to consumers in vulnerable circumstances in line with the PC21 Social and Environmental Guidance and the UR's MTR Final Determination (MTR FD) to be introduced for PC27.

We agree with UR that the above measures can be progressed through CM/SAT.

For the measures to be introduced for PC27 (non-domestic satisfaction, developer services, and consumer vulnerability) we expect preparatory work to be completed in time to allow for data gathering in the final years of PC21 to enable targets, with trajectories for improvement, to be set for full introduction from the start of PC27.

NI Water's Codes of Practice (COPs) contain service promises to consumers. Improvements were agreed, following consumer engagement, to these service promises for PC21. As the MTR DD notes, we are concerned at the lack of visibility of NI Water's performance against the COPs' promises and see this as a weakness in the regulatory regime. We wish to see the establishment of a reporting framework for PC27 to monitor this performance. We propose this is progressed through CM/SAT and would look to UR to set this direction in the MTR FD.

Nominated outputs

We support the MTR DD proposal for adjustments to NI Water's regulatory capital value (RCV) for outputs that are over/underdelivered, alongside maintaining PC21 FD targets for nominated outputs unless linked to a scope certainty project.

It is reasonable that where there was significant uncertainty about some outputs during PC21 and that uncertainty has been subsequently resolved through scope certainty projects, that the price control should reflect the revised figures (and if projects are removed, other projects added where possible to make up some or all of the shortfall). This process leads to slightly lower outputs than in the PC21 FD, however given that NI Water has not asked for adjustments to the drinking water quality or wastewater treatment percentage compliance targets, we expect consumers to receive the same levels of service from the revised outputs.

Other MTR output adjustments

Properties at risk of low pressure

Clarity should be provided in the MTR FD that no further allowance is being provided to NI Water for increasing the targets for the removal of low water pressure (DG2) properties following the register refresh.

Power derived from renewable sources

We support the adjustment to the percent of NI Water's power from renewable sources to ensure that renewable energy is purchased at efficient costs. This does not affect PC21 funding of the self-generation of renewable energy (95% of renewable power usage is purchased from other suppliers).

Development outputs

Smart metering

We supported NI Water's PC21 metering programme. It is positive that NI Water has backed its plan for smart metering with a cost-benefit analysis of the approach.

Smart meters can benefit customers by helping to detect leaks, preventing water wastage and helping businesses understand their water use and save money on their bills. We see scope for smart metering to allow the benefits of improved information and the potential for intelligent tariff design to be shared with non-domestic customers.

UR notes it will be undertaking further engagement with NI Water on smart metering for PC27. In early discussions with the Department for Infrastructure (DFI) on developments for the PC27 Social and Environmental Guidance we proposed that NI Water should continue trialling smart meter and AMR technology and undertake further pilots to inform moving non-domestic customers to smart metering.

Leakage

It is in consumers long term interests for NI Water to explore innovative ways to reduce leakage and we support the continuation of trials for new leakage innovation technologies.

UR has not made any changes to leakage targets based on NI Water's reassessment of the sustainable economic level of leakage (SELL). In our response to NI Water's draft Water Resource and Supply Resilience Plan (WR&SRP) we commented that as the WR&SRP is developed to assess and define the need for investment in support of a Price Control determination considerations on SELL, SELL targets and appropriate funding levels to meet leakage reduction targets need to be considered and set through a Price Control. Any recalculation of SELL at PC27 must accurately reflect contemporary costs and valuations and demonstrate the advantages to consumers of any necessary increased investment to achieve these targets.

Completed Development Outputs

We support the continuation of development objectives 1 and 2 (relating to consumer engagement and consumer protection/care register respectively).

For both objectives we agreed that UR should retain an oversight role. This can be progressed through the CM/SAT group.

Serviceability

UR suggests that the data trends for each indicator remain within the control limits set and no alteration is required at MTR, with a refresh at PC27. However, while Figure 3.1 in the MTR DD shows that three of the four primary serviceability indicators have remained fairly stable over PC21 (and in the years previously), the 'Water non-infra' indicator has dropped to below 50% and is significantly lower in recent years than its level in 2018/19 and 2019/20.

A change in performance needs to be demonstrable over a number of years before re-categorisation of a serviceability indicator occurs.³ We would request greater clarity in the MTR FD on the control limits for 'water non-infra', how the observed decline remains categorised as stable and how the declining performance aligns with the assessment that capital maintenance is sufficient and what corrective action is potentially required by NI Water to return the measure to previous levels.

Delivery of Social and Environmental Priorities

We agree that having completed the scoping exercise to fully understand the funding required for the Social and Environmental Guidance, PC21 should be adjusted accordingly, with due consideration to our proposal below concerning tariff impacts.

We support UR's continued monitoring of NI Water to ensure that it continues to deliver the social and environment aims of the guidance.

Operating expenditure

In our response to the MTR approach we noted that possibilities for phasing or spreading the impacts of short term but severe power cost increases should form part of the MTR.

The MTR DD proposes a tariff increase due to the increase in power costs from c. £30m pa to over £50m pa. UR proposes increasing tariffs in 2025/26 and 2026/27 by 4.6% in real terms. This equates to a 9.4% real increase over the final 2 years of PC21. This is a significant increase from the 0% K factor set in the PC21 FD.

Delays in the MTR meant that NI Water's 2024/25 tariffs were based on PC21 FD K factors (0%). Consequently, increases in the K factor driven by three years of power costs have been concentrated into the final two years of PC21.

³ PC21 Final Determination Annex F Asset Serviceability.

To help mitigate this significant price increase, we propose that rather than collect all of the increase in power costs over the last 2 years of PC21 as suggested in the MTR DD, that UR spreads the increase over the last 2 years plus the initial years of PC27 (as a minimum the first year of PC27 to provide an equal period of three years for cost pressures to be distributed across tariffs).

This would mitigate the size of the immediate price increase, easing the pressure on consumers, while allowing NI Water to recover its costs. It would also maintain consistency with DFI's PC21 Social and Environmental Guidance objective and the UR's PC21 FD outcome of establishing a deliverable investment plan which meets established needs and is affordable from a tariff perspective.

Consumers must not pay for investments not made and services not delivered. The normal logging down process accommodates this. Spreading the impacts of cost increases on K across a longer period will help maintain tariff stability through lessening the need to make negative K adjustments to compensate for non-delivery.

We appreciate this would not be a standard occurrence. But it is highly unusual for costs to increase so significantly that the required mid-term price control adjustment makes such a large difference to tariffs.

Capital investment

We agree that the 19 projects not in the original list of uncertain schemes should not be included in the MTR and should instead be dealt with through logging up/down at the end of PC21.

We support the UR's approach of the Reporter reviewing a sample of NI Water's projects that required greater scope certainty. The findings of this review of 24 out of the total 146 projects raises concerns over the accuracy of NI Water's assessments, with a cost challenge of over 10%.⁴ The exact choice of projects reviewed by the Reporter could have a significant impact on the size of this cost challenge and subsequent adjustments UR makes. We suggest that the Reporter reviews a wider selection of projects to give more confidence in the regulatory adjustment. In line with this, we would support the final view of the Reporter on any additional information that NI Water provides to seek to justify the cost challenge.

Capital Cost Pressures above Inflation

NI Water has suggested real price effects of 7% and 11% above RPI in 2021/22 and 2022/23 respectively. As UR comments, this is surprising since the RPI inflation figures are intended to capture inflationary impacts. UR has considered NI Water's submission and carried out a range of tests of the underlying assumptions including:

- Refreshing the PC21 RPE calculations using updated inflation numbers,
- Sense checking against CPI(H) adjustments,
- An independent review by the Reporter based on long term cost data from the England & Wales water sector,

⁴ We have noted to UR the error in the total cost challenge in Table 5.3. UR has confirmed the total Reporter cost challenge should be £52.5m.

- Short term analysis by the Reporter of E&W water sector data, and
- Regional price comparisons.

None of these approaches supported NI Water's real price effect claim. This evidence, particularly that provided by the Reporter, is extensive and compelling. Should NI Water provide further evidence prior to the MTR FD this would need to explain why the UR's analysis was incorrect in addition to providing further justifications for its claim.

Base maintenance investment

We continue to support the principle of maintaining base maintenance allowances to ensure there is no overall deterioration in existing levels of service, and UR's continued application of this agreed policy in the MTR. We also expect the continuation of the established principle of prioritising drinking water investment.

Further to our comments above on cost pressures above inflation RPI should provide sufficient headroom for water sector price rises and therefore no adjustment is needed in the MTR.

Change Control Projects

The additional £10.6m of required capex is based on the Reporter's review of the change control projects submitted by NI Water and appears reasonable.

Mid-Term Review Capex conclusion

The MTR DD suggests using the March 2024 RPI dataset to ensure that projections are as accurate as possible. The ONS has published RPI data for April (released on 22 May 2024) and will publish the May RPI on 19 June 2024. We propose that the MTR FD uses the most up to date RPI data available prior to publication.

Public Expenditure implications

The main threat to the delivery of PC21 is the constrained availability of public expenditure funding. We continue to have serious concerns about the significantly detrimental impacts to services that will be presented through a constrained public expenditure budget and the additional burdens placed on NI Water through a lack of medium-term funding security.

Setting out the approach to PC21 MTR UR outlined the impracticalities of setting specific alternative budget scenarios. It is correct that the MTR DD does not provide a view on the investment programme changes that will be required due to known public expenditure budget pressures. The MTR DD, and subsequent FD do provide welcome clarity and transparency on the public expenditure Resource DEL and Capital DEL requirements for the delivery of the final three years of PC21.

At this time of constrained public expenditure it is essential that NI Water, DFI and UR continue to provide transparency to consumers and the statutory consumer body

representing their interests regarding the short- and long-term impacts of constrained investment in NI Water infrastructure. This should be undertaken through proactive engagement. Commitment to engagement via the rhythm of formalised Output Review Group (ORG) and Water Senior Stakeholder Group (WSSG) meetings combined with ad hoc engagement as matters come to light is essential to ensure transparency.

It is important that consumers understand the potential impact of constrained funding on NI Water's ability to meet legislative targets, including those relating to drinking water quality, waste-water treatment, customer service standards, and carbon emissions reduction.

5. Contact information

If you have any questions, require further information or wish to discuss any aspect of our consultation response, please contact:

Graham Smith
Head of Water

Telephone: 028 9025 1600

Email: graham.smith@consumercouncil.org.uk

The Consumer Council consents to this response being published.

Consumer Council for Northern Ireland

Floor 3, Seatem House

28-32 Alfred Street

Belfast BT2 8EN

Freephone: 0800 121 6022

Email: contact@consumercouncil.org.uk

Website: www.consumercouncil.org.uk

