

From: [Hughes, Seamus](#)
To: ["Katy Read"](#)
Cc: [Wightman, Stuart](#); [Willis, Adele](#); [Jane Pierce](#); [Sarah Driver](#)
Subject: RE: TRIM: RE: NIRHI - November changes (OFFICIAL)
Date: 06 November 2015 15:29:15
Attachments: [The Renewable Heat Incentive Schemes \(Amendment\) Regulations \(Northern I....pdf](#)

Hi Katy

Please find attached copy of final draft regulations as laid with our Assembly Business Office this afternoon. The drafting comments made by your legal advisors have been incorporated as have all the policy issues you raised. The implementation date has had to be changed to 18 November 2015 allow time for scrutiny by the ETI Committee and scheduling of motion debate etc.

Regards

Seamus

Seamus Hughes

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Please consider the environment - do you really need to print this e-mail?

From: Katy Read [<mailto:Katy.Read@ofgem.gov.uk>]
Sent: 04 November 2015 15:36
To: Hughes, Seamus
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: TRIM: RE: NIRHI - November changes (OFFICIAL)

Hi Seamus,

Please find our comments attached. The legal version is mainly drafting issues that need to be fixed.

The policy version contains the two main issues that I raised with you this morning as well as some other medium/minor points.

Can you let me know what the next steps are from your side as soon as you know please? From our perspective, the 4 Nov → 11 Nov change, and the CHP changes must happen before laying (labelled as “major” in the attached policy comments).

Thanks

Katy

From: Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]
Sent: 04 November 2015 11:58
To: Katy Read
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: RE: NIRHI - November changes (OFFICIAL)

Hi Katy

Thanks for this, we will digest further.

Regards

Seamus

Seamus Hughes

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From: Katy Read [<mailto:Katy.Read@ofgem.gov.uk>]
Sent: 04 November 2015 11:47
To: Hughes, Seamus
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: RE: NIRHI - November changes (OFFICIAL)

Hi Seamus,

Following on from our chat,

- My colleague in the RO has sent the following explanation of how the RO Order works:
In short: after the 1st October 2015, heat in NI will have to go to RHI for heat support, UNLESS the heat produced is from a technology or fuel source that is not eligible for the RHI. In this instance new accreditations and additional capacity may still be eligible for the CHP uplift under the RO. Where this is the case, a declaration would need to be made in accordance with the requirements (Article 26(8)) . This is the same as England, wales and Scotland currently work.

So for anyone accredited on the RO after 1st October 2015, they **can** still try to get their heat uplift on the RO. They would do this by making a declaration under Article 26(8): “support has not been given under any relevant scheme for heat produced by the use of that generating capacity”. If they make this declaration, they **can** get their heat uplift on the RO.

So Regulation 38A needs to say that anyone who made this declaration who was

accredited on or after 1st October can **not** also get paid on the RHI. This will prevent the chance of double subsidy being given.

NB. Regulation 9 already locks out anyone from being accredited on the RHI who was accredited on the RO before 1st October 2015

Does that make sense?

- Also, you need to reference the 2013 amendment in reg 38A as it refers to Article 26(8) which didn't exist in 2009. Email attached where this was flagged.

<http://www.legislation.gov.uk/nisr/2013/174/article/2/made>

Thanks

Katy

From: Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]
Sent: 04 November 2015 11:21
To: Katy Read
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: RE: NIRHI - November changes (OFFICIAL)

Hi Katy

Thanks for your comments. On your first point the date will be changed in regulation 36 when laying the regs.

We don't follow your thinking re 38A (3). After 1 October 2015 CHP applicants accredited under the RO will only be entitled to the reduced 3.5 ROC payment so there is no risk of being paid twice for heat. It is those accredited under the RO before this date that cannot receive the RHI payment because they are in receipt of the full ROC payment.

Perhaps we are missing something?

Regards

Seamus

Seamus Hughes

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From: Katy Read [<mailto:Katy.Read@ofgem.gov.uk>]
Sent: 04 November 2015 10:38
To: Hughes, Seamus
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: RE: NIRHI - November changes (OFFICIAL)

Hi Seamus,

A couple of initial high priority points:

- The date of 4 November is still cited in Regulation 36. I expect **DETI would be at significant risk of challenge** if you insert a date in the past as this would be a retrospective decrease in tariff.

In the GB regs the difficulty around entering the exact date which is subject to change is avoided by referring to it as the "xth relevant date" and then inserting a definition into reg 2, eg. "relevant date" means the date of coming into force of the Renewable Heat Incentive Scheme (Amendment) Regulations 2013;

- Regulation 38A(3) now states "**prior to** 1st October 2015" instead of "**on or after** 1st October 2015". This means it doesn't work.

The aim of this rule is to make sure that any biomass CHP installations accredited onto the RHI (and this is only possible if they were accredited on the RO **on or after** 1st October 2015) cannot claim their heat payments on both schemes. The regulation is now just referring to those who can't be accredited on the RHI anyway.

The wording needs to be changed to "**on or after**"

I'll call to discuss.

Thanks

Katy

From: Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]
Sent: 04 November 2015 09:22
To: Katy Read
Cc: Wightman, Stuart; Willis, Adele; Jane Pierce; Sarah Driver
Subject: NIRHI - November changes (OFFICIAL)

Good morning Katy

For info attached please find a copy of our **final amendment regulations cleared by our solicitors**. We have shared an advance copy with the NI Examiner of Statutory Rules prior to formally laying the regulations.

Regards

Seamus