

DFE - 17506**David White**

From: Stewart, Susan <Susan.Stewart@detini.gov.uk>
Sent: 03 April 2012 11:45
To: Alan Bissett
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RE: Review of Draft Regulations

Alan

Many thanks for the draft Regulations you sent on 14 March 2012. We have reviewed these and considered the issues you raised in your email below. We are currently liaising with the DSO on some issues and will get back to you as soon as we receive a response for further amendments to these Regulations.

Many thanks

Susan

Susan Stewart

Sustainable Energy
Department of Enterprise, Trade & Investment
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From: Alan Bissett [<mailto:alan.bissett@arthurcox.com>]
Sent: 14 March 2012 19:29
To: Stewart, Susan
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RE: Review of Draft Regulations

Susan

In accordance with the Work Request Form for this matter, please find attached for your review a revised draft of the Northern Ireland Renewable Heat Incentive Scheme Regulations (the "**NI RHI Regulations**"). As previously discussed and for ease of reference, we have attached a blacklined version marked to show the changes made to the DSO version that you shared with us.

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As you will see, we have incorporated the amendments which were introduced into the GB RHI Regulations prior to them being enacted which were not included in the version to be debated in Parliament that we used to prepare the previous draft of the NI RHI Regulations. We have dealt with the issues flagged by the DSO by making some additional amendments and have also addressed those issues raised in Appendix 2 of the Ofgem report which relate to drafting rather than policy issues.

We should be grateful if the Department would provide us with some clarification on a few points at this stage:-

1. In our discussions with you last week, we note that you referred to the definition of the term "Northern Ireland authority" that appears in Section 114 of the enabling legislation (the Energy Act 2011) – this term is defined for the purposes of Section 114 only as the Department or the NIAUR. We note that the powers in the enabling act provide for the Department or the NIAUR to have *vires* to establish the scheme and you mentioned that it has been determined that the Department is to establish the scheme. If this is the case, we could dispose of the definition of "NI Authority" altogether from the NI RHI Regulations and refer only to the "Department" where the term "NI Authority" is currently used – I should be grateful if you would confirm if this is appropriate.
2. In relation to Part 4, Chapter 1 which refers to the reporting functions relating to the use of municipal waste as an energy source, we have noted the DSO's comments and can confirm that we are in broad agreement with these. However, we have slightly amended Article 28(7)(a) to conform it with the parallel reporting function used in the Renewables Obligation (Northern Ireland) Order 2009. As you will see, this refers to data published by the Department of the Environment or a district council and, in this regard, we should be grateful if the Department would confirm that the data publishing regime has not changed since 2009 in order for these provisions to operate.

Once you have had an opportunity to review the amended version the NI RHI Regulations attached, we would welcome a call or meeting to have your thoughts and comments on this draft and the points raised above. We also look forward to discussing with you the next section of the work order involving iterative engagement with the Department, the DSO and Ofgem and further discussions with the Department in relation to the final policy decisions which will need to be reflected in the final form of the NI RHI Regulations.

I should be grateful if you would acknowledge receipt of this email and its attachments.

Kind regards

Alan

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DFE - 17508

From: Stewart, Susan [mailto: Susan.Stewart@detini.gov.uk]
Sent: 02 March 2012 16:12
To: Alan Bissett
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: FW: Review of Draft Regulations

Alan

I attach a work request form detailing the work needed to provide the Department with a Final draft version of Renewable Heat Regulations.

I also attach a copy of the previous comments from Ofgem along with a letter with comments on the draft Regulations from DSO. We have redrafted the Regulations to incorporate DSO comments which are attached for your convenience.

We request a quote only at this stage and we would appreciate if you could provide the quote by close of play Tuesday 6th March 2012.

If you need any more information, please don't hesitate to contact me

Many Thanks

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DFE - 17510**David White**

From: Alan Bissett
Sent: 03 April 2012 11:49
To: 'Stewart, Susan'
Subject: RE: Review of Draft Regulations

Thanks for this

Alan

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Kind regards

Alan

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Sent: 02 March 2012 16:12
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DFE - 17514**Charles McRobert**

From: Stewart, Susan <Susan.Stewart@detini.gov.uk>
Sent: 18 May 2012 17:10
To: Alan Bissett
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RE: Review of Draft Regulations

Alan

Further to your email below, we have now received legal advice from DSO in relation to your queries below -

1. Legal advice has stated that DETI would be the main authority in the legislation. However, it would be more appropriate to just use the term "the Department" when referring to DETI instead of "the Authority". This would follow the normal drafting convention when referring to a Northern Ireland Department and would also be less likely to mislead the reader. Section 114 of the 2011 Act gives the power to GEMA and DETI to enter into an agreement however, there is nothing to stipulate that or even facilitate such an agreement being put on a legislative footing. Therefore, the agreement would be done administratively and requires no mention in the Regulations themselves. When producing guidance notes and so on DETI should make it clear then that GEMA will actually be carrying out the functions on it's behalf. Therefore the relationship between DETI and GEMA wouldn't be mentioned in the legislation. On the face of the Regulations DETI would be the point of contact for the reader.

Therefore the Department should be the only organisation mentioned in the definition of the Regulations. All references to the Authority or Northern Ireland Authority should be replaced with the Department and we would be grateful if you could do so.

Regulations 53 and 54 for the most part should be removed. We would like to retain regulation 53(6) and have drafted below what we believe this section of the Regulations should look like:

Publication of relevant information

52.—(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

(2) The Northern Ireland Authority must publish annually the following information on its website—

- (a) information in aggregate form as to—
 - (i) the number of accredited RHI installations;
 - (ii) their technology and installation capacity;
 - (iii) the amount of heat they have generated;
 - (iv) the total amount of periodic support payments made under each tariff; and
- (b) information in aggregate form as to—
 - (i) the number of participants who are producers of biomethane;
 - (ii) the volume of biomethane produced for injection by those participants; and

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(iii) the total amount of periodic support payments made in respect of that biomethane.

I would appreciate if you would confirm that we can proceed with this wording and, if so, update the Regulations to include this update.

2. In relation to regulation 28(7), I have liaised with my colleague who works on the Renewables Obligation and he has confirmed that there has been no changes the data publishing regime since 2009.

I have attached the most recent version of the Regulations which now includes the new tariff levels for NI in Schedule 3. As no announcement has been made on this tariffs and the banding, I would be grateful if you treated this document as **restricted** and do not disseminate it outside your organisation.

I would be grateful if you could update the document and sent it to Peter Hutchinson by close of play on Wednesday 23 May 2012.

We will then send the draft Regulations to Ofgem for their comments and potential amendments. We will then write back to you to revise the draft Regulations if Ofgem raise any issues before sending it to DSO for final clearance.

Many thanks

Susan

Susan Stewart

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