

From: [Michelle Murdoch](#)
To: [Stewart, Susan](#)
Cc: [William Elliott](#); [Rita Chohan](#); [Paul Heigl](#); [Keith Ayis](#)
Subject: RE: Ofgem guidance document
Date: 28 August 2012 16:42:35
Attachments: [image001.png](#)

Hi Susan

Thanks for your good wishes, hope all's well over there too. Sorry for the delay in replying– I was in a meeting.

Have spoken to legal regarding below and they have decided that it is best to leave things at your end the way they are, we will deal with the issue through the guidance.

Will drop you a line if anything else springs to mind!

Kind regards

Michelle

From: Stewart, Susan [<mailto:Susan.Stewart@detini.gov.uk>]
Sent: 28 August 2012 16:03
To: Michelle Murdoch
Cc: McCutcheon, Joanne
Subject: RE: Ofgem guidance document

Hi Michelle

Hope you are well.

Joanne has sent me some issues that Peter had been discussing with you on the Guidance document to ensure are drafted in the NI Regulations.

Before I proceed, I was wondering if you and Peter had any further liaison regarding the issue around the definition of building (see email below). In the last correspondence I was party to, Peter was asking for Ofgem's comments if we should expand our definition of building in the NI Regs to have a planned use for 2 years so that we would be aligned with GB Regs. I would appreciate if you would have any further comment or view on this issue.

I am happy to discuss

Many thanks

Susan

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The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk



www.ni2012.com

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

From: Hutchinson, Peter
Sent: 21 August 2012 16:48
To: Michelle Murdoch
Cc: McCutcheon, Joanne; Stewart, Susan; Paul Heigl; Rita Chohan; William Elliott; Marcus Porter
Subject: RE: Ofgem guidance document

Michelle,

Have added additional wording below, hope this is useful – have tried to answer in a different font colour for ease of reference. In addition, I think the two questions you had asked yesterday (re Reg 51 and definition of building) had either already been dealt with in previous email or are covered here.

Let me know if you there are further queries.

Thanks,

Peter

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

From: Michelle Murdoch [mailto:Michelle.Murdoch@ofgem.gov.uk]
Sent: 21 August 2012 11:38
To: Hutchinson, Peter
Cc: McCutcheon, Joanne; Stewart, Susan; Paul Heigl; Rita Chohan; William Elliott; Marcus Porter
Subject: RE: Ofgem guidance document

Hello Peter,

Thanks for below. Please find all outstanding/ being worked upon queries listed here. I have put my further comments in green.

- As you correctly pointed out. I was remiss in attaching the link for question 2 below. Bearing in mind the importance of this to us as administrators, please find it here now. I would appreciate your comments regarding this question in the light of this document. <http://www.ofgem.gov.uk/e-serve/RHI/Documents/Consultation%20on%20amendments%20to%20Ofgems%20administration%20of%20the%20Renewable%20Heat%20Incentive%20scheme.pdf>
DETI COMMENT – Thanks for sharing this, as before there were no specific issues raised on this matter with the EU Commission, however I expect that the developed tariff for biogas would include costs incurred for biogas production plants as part of the CAPEX and therefore would suggest that the same approach as included in your attached letter is used in the NI case. If there are issues with this please let me know.
- The Uniform Network Code (Vol. 1, 8.32)** - As discussed earlier, there have been no expressions of interest, as far as we are aware, of developing a biomethane injection onto the gas grid. I have liaised with colleagues in the NI Utility Regulator regarding this and the previous network codes that I sent you would be the only source that would provide the information pertaining to balancing and settlement. We do, however, have a tariff for biomethane in our draft Regulations so Peter may have a view what needs to be put into the Biomethane chapter within the guidance. (Written by Susan) - *Please comment.* **DETI COMMENT – I think as mentioned yesterday, given the lack of guidance in place for Northern Ireland, I agree with your suggested approach that you include in the guidance the line; "If you are intending to produce biomethane for injection to the grid in NI, pls contact DETI and Ofgem at the earliest possible stage to discuss your project and application, and to obtain guidance". A guidance update or biomethane Applicant Guidance Note can be created and released by DETI later. In addition, a specific Guidance consultation question should be asked along the lines of "is our approach to helping biomethane production in NI, given it is in its infancy / does not exist, appropriate"**
- CHPQA relevance** - We have been advised that we do refer to the guidance on the DECC website. As discussed with you previously, we will need to obtain confirmation from DECC that we can use the DECC link in our guidance. *Has confirmation been received?* **DETI COMMENT – Not received as yet but it has been raised with DECC. I would not envision any issue with this.**
- Definition of a building** - To be eligible for NIRHI support, heat must be used for eligible purposes within a building. The Regulations define a building as 'any permanent or long-lasting building or structure of whatever kind and whether fixed or moveable which, except for doors and windows, is wholly enclosed on all sides with a roof or ceiling and walls'. In assessing whether a building or structure meets the requirement that it is 'permanent or long-lasting'. Under the GB scheme, we generally consider that any building that would be eligible for exemption from the energy efficiency requirements of Schedule 1, Part L of the Buildings Regulations 2010 on the basis that it has 'a planned time of use of two years or less', is not permanent or long-lasting. Similarly, under the GB Regs, where there is a claim for capital allowances on a moveable building, we use this as an indication that the building is not 'permanent or long-lasting'. Do the relevant provisions of the Capital Allowance Act apply in NI? What other NI legislation-based indicators are likely to be relevant to our assessment of the permanence of NI buildings? **DETI COMMENT – The Building Regulations (Northern Ireland) 2012 is probably the most appropriate NI legislation (however this will soon be replaced by the 2013 regulations), this appears to limit buildings to a planned use of 28 days, rather than 2 years. The Capital Allowances Act 2001 appears to apply to Northern Ireland. We would have significant concerns about basing the NI definition of a "building" that incorporated a 28 day, rather than 2 year cut-off, not least because this would lead to vastly differing administrations of identical definitions under the GB and NI schemes. DETI COMMENT – If the NI Building Regulations definition is not appropriate then should we expand the definition of 'building' within the NI Renewable Heat Regs to specify that the building must have a planned use of over two years in order to align with GB?**
- DECC RHI Policy Document.** Will DETI be providing OFGEM with an equivalent document? If not, will you be approaching DECC for the use of some of the information in theirs as the document is in the public domain? **DETI do not currently have an equivalent document, for the most part the NI scheme and GB scheme are similar barring tariff levels. The DECC approach regarding eligibility, technical standards, metering etc. should be used in the NI guidance. If you require authorisation from DECC for specific information or data let me know and I will contact.**
 - Mentioned and/or a link given to it regarding:
 - A description of all eligible types of heat pump (Vol. 1) **Same position in NI RHI as in GB RHI**
 - Mentioned later on regarding reversible heat pumps (Vol. 1) **Same position in NI RHI as in GB RHI**
 - Stated as setting out the principles underlying the Government's policy on heat uses that are eligible for RHI support (Vol. 1) **Same position in NI RHI as in GB RHI**
 - Mentioned regarding the calibration of meters and associated components (Vol. 2) **Same position in NI RHI as in GB RHI**
 - Tariff levels for the different eligible technologies and the formulae to determine the payments (Vol. 2) **Unsure what is required – tariff levels have been provided and the formulae to determine payments will be the same as GB, except for "tiering" which is not included in NI RHI scheme.**

Is DETI intending to create an equivalent document? If so, will this be in place by the NIRHI scheme's go-live date?

As you will be aware DECC is considering extending the scope of the GB RHI to include additional technologies as part of its Phase 3 amendments. Where the scope of the GB scheme is extended, this will likely impact on the list of eligible heat pump technologies referred to in DECC existing policy document. There will also likely be additional changes to the GB scheme as part of phase 3 that may require further amendments to the policy document. Once this happens the current DECC policy document will be superseded by an up to date version which may no longer reflect the current draft of the NI Regulations.

One solution would be to ask for DECC's permission to host on DETI's own website a copy of DECC's policy document such that any link to the policy document is to the policy document as drafted at the time the NI Regulations come into force, and to ensure that references to DECC's policy documents in the guidance are expressed as references to the version of that document in existence at the time the NI Regulations came into force. Alternatively, DETI may simply be able to re-badge DECC's existing document or replicate the relevant extracts from it that are referred to in the NI Guidance, either in the NI Guidance itself, or as separate documents hosted on DETI's website. However, if we pursue either of these options then I think we will need to seek authorisation from the DECC.

DETI COMMENT – The only relevant documentation we currently hold are the July 2011 Policy Consultation, a DETI response following the consultation and policy papers shared with the EU Commission re State Aids. I would however intend to draft a final policy document (to be cleared by the Minister) to outline the DETI RHI policy and be used at launch of the scheme – this could be shared in due course and will be ready by go-live date. We will shortly be beginning work on phase 2 of the

NI RHI that will include consideration of additional technologies and other issues. Changes to the NI RHI scheme will of course be subject to public consultation and discussion with yourselves regarding administration. Given the differences in tariffs between the two schemes I don't think using the DECC policy document is appropriate as it could create confusion amongst applicants/stakeholders. A NI policy document, drafted by DETI, is the best approach – it will replicate many areas of DECC document however. I am happy to liaise with DECC as appropriate.

- Definition of waste? I am sure this has been asked before but cannot find the answer... Vol. 2 (4.7) 'Waste' is defined in regulation as having the same meaning as in section 75(2) of the Environmental Protection Act 1990.....This does not pertain to NI...what would be your equivalent? **DETI COMMENT – Most recent draft of NI regs has following definition "waste" has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997. (S.I. 1997/2778 (N.I. 19), Article 2(2) was amended by SR 2011 No.127)**

I have also attached the 2 questions sent through yesterday. I appreciate these are new and may take a little time to answer.

I look forward to your next email.

Kind Regards

Michelle

From: Hutchinson, Peter [mailto:Peter.Hutchinson@detini.gov.uk]
Sent: 20 August 2012 17:30
To: Michelle Murdoch
Cc: McCutcheon, Joanne; Stewart, Susan; Paul Heigl; Rita Chohan; William Elliott
Subject: RE: Ofgem guidance document

Michelle,

Have tried to respond to all the current queries below, let me know if you need further clarification/information or if there are any further/outstanding queries.

Thanks,

Peter

DECC RHI Policy Document. Will DETI be providing OFGEM with an equivalent document? If not, will you be approaching DECC for the use of some of the information in theirs as the document is in the public domain? **DETI do not currently have an equivalent document, for the most part the NI scheme and GB scheme are similar barring tariff levels. The DECC approach regarding eligibility, technical standards, metering etc. should be used in the NI guidance. If you require authorisation from DECC for specific information or data let me know and I will contact.**

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- Para 4.74 (Vol. 1) – **Can you advise on para content? The guidance document I have in front of me only goes to Para 4.58 ?? Must be using an older version?**

- 1) Regs 5 and 6 of the draft NI Regs vs. Schedule 3.** Schedule 3 indicates an intention not to accredit large biomass plants where the capacity is 1MW or above and irrespective of whether the biomass is in solid municipal waste. Regs 5 and 6, however, which stipulate the relevant eligibility requirements, appear open ended in this regard, as in the corresponding provisions in the GB Regs. If, as I understand it, Schedule 3, viewed in isolation, correctly reflects the policy intent, it seems to me that regs 5 and 6 should specify 1MW limits. **DETI COMMENT – Agree, Regs 5 and 6 should include 1MW limits for MSW similar to biomass, we will revise.**
- 2)** We need to know whether, if replicated in the NI guidance, Table 3 Chapter 4 Vol. 1 of the GB Guidance in general and the entries therein for biogas production plant in particular, would correctly reflect DETI's negotiations with the Commission leading up to the granting of state aids approval in relation to the draft NI Regs. We ask in light of advice we received from Counsel earlier in the year as regards whether the BPP should be regarded as included in the "eligible installation". To cut a long story short, he felt that it should if that had been the basis on which state aids discussions with the Commission took place. As DECC informed us that it was indeed the basis, we concluded that the entries in the Table for BPP should be in the middle column rather than the right hand one and so the consultation on changes to the GB guidance currently under way (and appearing on the Ofgem website) include that change. The consultation letter explains the significance of this issue in some detail. **Link to be added here.** The matter is important to us as administrators because we need to know what it is that we are accrediting and it is relevant also to the application of the rules re grants from public authorities in regs 23 and 25. **DETI COMMENT – DETI did not have any specific discussions / negotiations with EU Commission on this point, as this is the case the BPP may have to remain in right hand side column but happy to take your view? The link that you mention does not appear to have been added.**
- 3) DECC's Biomethane guidance for gas producers -** There is no equivalent guidance in NI and we would not be able to refer to the GB document as we have our own regulatory regime which is very different to that in GB. (DETI) For GB, injection has been a huge practical and financial challenge, and Ofgem facilitated work on this via a steering group. The result has been, after many months, agreements on how this may work in practice with grid operators, and how costs of gas grid connections for biomethane can be reduced – an excellent outcome. Perhaps we could include in the guidance the line: **"If you are intending to produce biomethane for injection to the grid in NI, pls contact DETI and Ofgem at the earliest possible stage to discuss your project and application, and to obtain guidance".** We can always release a guidance update or biomethane Applicant Guidance Note created by DETI later. Also perhaps DETI can ask a specific Guidance consultation question "is our approach to helping biomethane production in NI, given it is in its infancy / does not exist, appropriate" – if no producers, you won't get a "no"! **DETI COMMENT – Content with this approach.**
- 4) Volume 1, Appendix 4 -** In NI the European Waste Catalogue is enacted under the List of Wastes (Northern Ireland) Regulations (2005), which includes the EU list as an appendix. We don't have an equivalent to the 2006 DEFRA guidance on interpreting the list. This is a policy decision for NIRHI which wastes we allow to be included and subject to us making the same policy decision as DECC we could use their interpretation of the List of Wastes. Which list do you wish Ofgem to refer to, the List of Wastes (NI) Regs 2005 or the EU list in the Appendix? Whichever is the answer the guidance ought to reflect the intended approach. Also, (if it is to be the