

From: [Anderson, Gail](#)
To: [Wightman, Stuart](#)
Cc: [Vaughan, Helen](#); [Hughes, Seamus](#); [Briggs, Peter](#); [Mills, John \(DETI\)](#)
Subject: RE: Draft SR: The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016
Date: 11 February 2016 17:00:37
Attachments: [image001.png](#)
[DSO clearance of draft Renewable Heat Incentive Schemes Regulations. 5 February 2016.EML](#)

Stuart,

I'm just responding to the ultimate paragraph of Gordon Nabney's message below. Regulation 5 amends regulation 22(6) of the non domestic regulations (the 2012 Regulations) which sets out the process for accreditation of an eligible installation by adding another exception to eligibility i.e. aren't eligible because the operation of the scheme is suspended. Regulation 6 amends regulation 25(4) of the 2012 Regulations which sets out the process for accreditation for producers of biomethane by adding another exception to eligibility i.e. aren't eligible because the operation of the scheme is suspended.

Paul McGinn advised in his letter of 5 February that 'Strictly speaking , I do not think that regulations 5, 6 or 9 are necessary.....' since the new Article 23A of the 2012 Regulations makes it clear that the relevant applications cannot be made or granted – see attached.

The reason we didn't include 26(5) in the Regulations is that the Department proposes to honour preliminary accreditations so that an application for full accreditation will be processed even if it is received during the suspension period.

Hope this is helpful.

Gail

From: Wightman, Stuart
Sent: 11 February 2016 15:57
To: Hughes, Seamus; Vaughan, Helen; Anderson, Gail
Subject: FW: Draft SR: The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016

Oh dear!! Can we please check this out?

Stuart

From: Nabney, Gordon [<mailto:Gordon.Nabney@niassembly.gov.uk>]
Sent: 11 February 2016 15:56
To: Wightman, Stuart
Subject: Draft SR: The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016

Mr Stuart Wightman

DETI

Draft SR: The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016

As you know, the Department is moving with almost indecent haste, and the route is not easy.

I am aware that the Minister wrote to the Committee Chair (Mr McGlone) on Monday (when the draft SR was laid) and the Permanent Secretary appeared before the Committee on Tuesday. The motion for approval is down for Monday.

The draft SR seems on its face to be intra vires and I take it that the Department will have fully teased out any potential Convention rights issues with its legal advisers (say, in relation to Article 1 of the First Protocol ECHR and peaceful enjoyment of possessions).

Can I mention a point I have just noticed? I notice the amendments in regulations 5 and 6 (consequential "subject to" references to new Article 23A). Should there not be a similar amendment for regulation 26(5) of the 2012 Regulations (see below)?

Regards

Gordon Nabney

(5) Where a plant has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for accreditation is made under this Part, the Department must, subject to regulation 23 [?or 23A?], grant that application unless it is satisfied that—

- (a) there has been a material change in circumstances since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused;
- (b) any condition attached to the preliminary accreditation has not been complied with;
- (c) the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular such that, had the Department known the true position when the application for preliminary accreditation was made, it would have been refused; or
- (d) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused.



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