

**From:** [Hutchinson, Peter](#)  
**To:** [McCutcheon, Joanne](#)  
**Cc:** [Stewart, Susan](#)  
**Subject:** FW: Work Request - ACX/RHI 002  
**Date:** 20 September 2011 17:33:11  
**Attachments:** [NI draft RHI Regulations \(DV of 06.07.11 with 30.08.11\).doc](#)  
[NI draft RHI Regulations - working draft 30.08.11.doc](#)

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Susan – Thank you for considering these regs and commenting, I have added my thoughts, some of these points are for Arthur Cox to address, whilst others can be left in and drawn to attention of Ofgem or DSO as they consider the regs. Further to these DECC have raised a number of points;

- Consider clarifying the reference to building or enclosed structure in Regulation 3(2) (“Renewable Heat Incentive scheme”). Concerns were expressed by MPs during the parliamentary debates on the GB RHI Regulations that the current wording could inadvertently exclude chemical plants. The reasoning was that these plants use heat in distillation columns which could be deemed to be open vessels. Charles Hendry confirmed that it was not DECC’s intention to exclude chemical plants from the GB RHI.
- Consider amending Regulation 11 (“Eligible installations using biogas”) to refer to the digester that produces biogas rather than simply the plant generating heat as the majority of the capital costs which the relevant tariff under the GB scheme was designed to compensate for are incurred in designing and building the digester.
- Consider changing the reference to “water” in Regulation 12 (c) to “liquid”. This is a step that we have already taken in response to stakeholder feedback that plants using thermal oils as the medium for transmitting heat should be eligible for the GB RHI.
- Consider amending Regulation 18 (“Shared meters”) to allow a single renewable heat plant (no fossil fuel back up) providing heat to more than one building (i.e. a complex system) to measure the heat used via a single heat meter. This would remove a potentially costly monitoring requirement for complex systems.
- Consider whether Regulation 53 (“Inspection”) needs to more explicit that the right of inspection to verify that heat is used for eligible purposes extends to non-domestic buildings where heat is used on-site. Currently the Regulation just refers to “the accredited RHI installation and its associated infrastructure”. DECC don’t see this as a significant risk to the GB scheme but it is an area that Ofgem have suggested could be made more explicit.

Grateful if Arthur Cox could consider also.

Joanne – Grateful if you would consider and advise Susan on further engagement with

Arthur Cox to re-draft these regs taking on these additional points. A further draft will be required post consultation when final policy is agreed but for now it would be useful for this draft to reflect comments so it can be shared with Ofgem and DSO.

Once Arthur Cox have these regs re-drafted (hopefully within a couple of days) we would need to share with Ofgem ([matthew.harnack@ofgem.gov.uk](mailto:matthew.harnack@ofgem.gov.uk)) and DSO ([Nicola.wheeler@dfpni.gov.uk](mailto:Nicola.wheeler@dfpni.gov.uk)), Ofgem are expecting their copy shortly.

Many thanks,

Peter

## **Peter Hutchinson**

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**From:** Stewart, Susan  
**Sent:** 12 September 2011 17:08  
**To:** Hutchinson, Peter; McCutcheon, Joanne  
**Subject:** FW: Work Request - ACX/RHI 002

Joanne/Peter

I have now read through the revised draft of the Regulations and would like to highlight a number of points -

1. Page 2 - Definitions - "The Authority". Arthur Cox has defined this as the Utility Regulator however throughout the Regulations it refers to the Authority to deal with accreditation, payments, enforcements, sanctions, etc. To my knowledge, I thought that this was going to be the responsibility of Ofgem in GB. However, I would ask if the Utility Regulator will have some governance issues in dealing with the RHI scheme? If so, do we need to mention both bodies and clarify what role and set of responsibilities each body has? Or is it simply that Ofgem will manage the whole scheme whereas in that case the definition of "Authority" needs to be amended to reflect this. **Agree – Arthur Cox will need to ensure that when describing the roles of the administrator that they refer to Ofgem, they should maybe consider having two definitions, 1 NI Authority (NIAUR) and 2 GB Authority (Ofgem), and ensure they use appropriate term throughout.**

2. Page 3 - Definitions - Do Arthur Cox need to define the GB Energy Act 2011 so as it is not confused with the Energy (Northern Ireland) Act 2011. **Agree – define 2011 GB Energy Act**

to distinguish between GB and NI acts. (Note the DECC 2011 Act is still a Bill at time of writing.)

3. Page 3 - Footnote 3, 5 - Is the level of detail in this footnote required in legislation? i.e. do we say where copies of the British Standard can be found? I haven't seen this previously but am happy to get some clarification from Arthur Cox. **Include at this stage, Ofgem or DSO might advise at later date.**

4. Page 4 - "retail prices index" - I believe that I clarified previously that this would be the Office of National Statistics as NISRA does not have responsibility for the price index. Therefore should the query not be removed? **Should be ONS, this has been dealt with previously.**

5. Page 5 - "scheme" - it says "(except in this regulation)". I have not seen this in other NI legislation and would like clarification on if and why this phrase is needed. **Keep in and let DSO consider.**

6. Page 5 - "steam measuring equipment" - this is a technical task and I am not certain that it would be under the remit of the Utility Regulator as they are economists. This refers to my earlier question at point 1. Is the Authority the Utility Regulator or Ofgem? Also do Ofgem have the technical expertise to undertake this task? **Ofgem to consider.**

7. Page 5 - regulation 3(2) - I have not previously seen a definition drafted in this way. I would appreciate if Arthur Cox would advise if this is in line with NI drafting of legislation. **Agree – have it amended.**

8. Page 6 - regulation 4(1) - Use of brackets for "the eligibility criteria". If this has already been defined in the Regulations, are we not redefining here? As mentioned in my previous email on NI drafting, I not not seen definitions drafted in this way before but I am happy to be corrected. Agree that there is no need for brackets if previously defined – **have it amended, DSO can also advise in final draft**

9. Page 7 - regulation 8(a)(i) - I think some commas are needed in this sentence - the ground, other than naturally occurring energy, located .... again happy to be corrected. **Agree**

10. Page 9 - regulation 14(2) - the "component plants" - As I mentioned previously, I have never seen this type of bracket usage in NI legislation and would ask Arthur Cox, whether or not this would be better as a definition. **Keep in and let DSO consider.**

11. Page 9 - regulation 15(1)(c)(ii) - Does the term "solar collector" need to be defined? I would appreciate Arthur Cox's advice on this. **Ofgem to consider**

12. Page 18 - regulation 27 - "waste collection authority" - I feel that it would be appropriate for Arthur Cox to provide a draft definition for us on this based on their legal

view. The Regulations will have to be cleared by DSO and they will advise if it requires amendment. **Agree – have them define and Ofgem can refine.**

13. Page 27 - Above "periodic support payment" , Part 5 is missing. **Agree**

14. Page 31 - regulation 43(2)(a) "the original installation" - same as for point 10. **Keep in and let DSO consider.**

15. Page 34 - regulation 45(2)(e) - "subparagraph" should be "sub-paragraph". **Agree**

16. Page 45 - Schedule 2, para. 2(g) - "where the information specified in paragraph (vi)" - Could it be clarified paragraph (vi) of what? **Agree**

17. Page 48 - Explanatory Note - "The Regulations confer functions on the Northern Ireland Authority for Utility Regulation" - refer to point 1 question(s). **As above at point 1**

18. Page 48 - Explanatory Note - I would specify what regulations are in which part. This is done sporadically i.e. for part 3 but not for part 2 (regulation 4) or part 4 (regulations 27-30) **Agree**

19. Page 50 - Regulation 55 - remove square bracket at end of sentence **Agree**

20. Page 50 - Bold text at the end of explanatory note - This is not normal practice in NI legislation and is therefore not required. Thus, both these paragraphs should be removed. **Agree**

Happy to discuss

Susan

## **Susan Stewart**

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**From:** Alan Bissett [<mailto:alan.bissett@arthurcox.com>]  
**Sent:** 30 August 2011 12:57  
**To:** Stewart, Susan  
**Cc:** McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan  
**Subject:** RE: Work Request - ACX/RHI 002

Susan

In accordance with the requirements of work request ACX/RHI 002, please find attached for your review a revised draft of the Northern Ireland Renewable Heat Incentive Regulations (the "NI RHI Regulations").

As you may recall, the draft GB RHI Regulations dated 9th March 2010 were used to prepare the previous versions of the NI RHI Regulations issued to you. The attached draft of the NI RHI Regulations tracks the amendments which have subsequently been introduced into the draft GB RHI Regulations to be debated in Parliament that have now been published by DECC on its website.

For ease of reference, please also find attached a blacklined version of the latest draft of the NI RHI Regulations marked to show the changes made to the version that we issued to you 6th July 2011.

As before, queries and notes for the Department are indicated in the document by way of footnotes and we look forward to receiving your comments on the revised NI RHI Regulations.

We should be grateful if you would acknowledge receipt of this email.

When appropriate, I look forward to discussing the further work required on this issue.

Regards

Alan

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**From:** Stewart, Susan [<mailto:Susan.Stewart@detini.gov.uk>]  
**Sent:** 17 August 2011 10:30  
**To:** Alan Bissett  
**Cc:** McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan  
**Subject:** Work Request - ACX/RHI 002

Alan

Please find attached revised work request (ACX/RHI 002) which has been approved by the Head of Energy Division for you to proceed with the work on the basis of the £3,630 estimate. **This only covers legal work up to 29 August 2011.**

If you require any further information, please do not hesitate to contact myself or Peter Hutchinson.

Many thanks

Susan

**Susan Stewart**

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