

From: [Alan Bissett](#)
To: [Stewart, Susan](#)
Cc: [McCutcheon, Joanne](#); [Hutchinson, Peter](#); [David Trethowan](#); [Thompson, Sandra](#)
Subject: RE: ACX/RHI 003 - Review of Draft Regulations
Date: 17 July 2012 20:41:11
Attachments: [image002.jpg](#)
[2.a. 2011.127.UK - Renewable Heat Incentive Scheme Notification \(GB\).pdf](#)

Susan

As requested, we have been focusing our attention on the point you have raised in your email below concerning notification under EU Directive 98/34/EC (the “**Technical Standards and Regulations Directive**”) (as amended by Directive 98/48/EC) and will revert separately on the other points raised in your email.

As you may be aware, the Technical Standards and Regulations Directive is intended to prevent the creation of new technical barriers to trade and specifies a procedure for the notification of information in the field of technical standards and regulations. Regulations that require such notification have to be notified to the Commission in draft form and there is a three month standstill period before the regulations are made or brought into force. This is intended to provide an opportunity for the Commission and Member States to raise concerns about potential barriers to trade. If a notified regulation is considered as a barrier to trade, a detailed opinion may be submitted and this will extend the standstill period for a further three months.

It is noted that the RHI Scheme under the GB RHI Regulations was notified to the Commission by way of Notification 2011/127/UK (the “**2011 Notification**”)(copy attached). With regard to the Microgeneration Certification Scheme (**MCS**) aspect, the 2011 Notification notes at Section 9 1) that the MCS scheme has been previously notified to the Commission by way of Notification 2007/458/UK. It would appear that what is being notified under the 2011 Notification is the fact that the GB RHI scheme is being linked to the MCS scheme.

In relation to heat meters, you have mentioned that these are of an EU standard. However, it appears from Section 9 2) of the 2011 Notification that what is being notified is the fact that accuracy class 2 of Annex MI-004 of Directive 2004/22/EC has been adopted as the standard for the GB RHI scheme.

The other aspects of the GB RHI scheme notified under the 2011 Notification are set out in Sections 9 3) – 4) thereof.

The consequences of failing to notify a notifiable technical regulation for the purposes of the Technical Standards and Regulations Directive are as follows:

- the measure is unenforceable; and
- there is a risk of infraction proceedings.

In light of this, we would recommend that a regulation in draft form should be notified if there is any doubt on the issue. In the case of the NI RHI Regulations, the fact that these follow closely the form of the GB RHI Regulations that have already been notified supports the view that the NI RHI Regulations should also be notified.

With regard to the NIRO, it does not appear from a search on the Technical Regulations Information System (**TRIS**) website that the GB Renewables Order has been the subject of a notification under the Technical Standards and Regulations Directive.

A search of Country “United Kingdom” and keyword “Northern Ireland” at the TRIS website at the link below reveals that a large number of NI Regulations have been notified under the Technical Standards and Regulations Directive in relation to various NI Departments:

<http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=text&lang=EN>

DETI notifications can be found at the links below and it is noted that these both date from 2006:

http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2006&inum=470&lang=EN&sNLang=EN

http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2006&inum=467&lang=EN&sNLang=EN

By way of a more recent example, the Explanatory Note to the draft Regulations prepared in relation to the DETI Consultation on the proposed Electricity Safety, Quality and Continuity Regulations for NI appearing at the link below refer to a notification under the Technical Standards and Regulations Directive (however, the current status of this consultation is unclear):

http://www.detini.gov.uk/consultation_on_introducing_new_electricity_legislation_to_northern_ireland

On a separate point, I note that the reference to a regulatory impact assessment was deleted as the last paragraph of the Explanatory Note to the draft NI RHI Regulations that were sent to Ofgem for comment. I note that the Explanatory Note to the proposed Electricity Safety, Quality and Continuity Regulations for NI referred to above and the Explanatory Note to the Renewables Obligation Order (Northern Ireland) 2009 at the link below refer to a regulatory impact assessment being carried out and made available:

http://www.legislation.gov.uk/nisr/2009/154/pdfs/nisr_20090154_en.pdf

In light of this, it would appear that a regulatory impact assessment in relation to the NI RHI Regulations may be required and I'd be grateful if the Department could consider this point further.

Please do not hesitate to contact me if you would like to discuss any of the above points in further detail.

Regards

Alan

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Subject: Re: ACX/RHI 003 - Review of Draft Regulations

Susan

Many thanks for this - we will review and revert.