

**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:** 24 July 2012 20:42:54  
**Attachments:** [image001.jpg](#)  
[DV of Ofgem with AC 24.07.12.pdf](#)  
[AC draft RHI Regs 24.07.12.doc](#)

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Susan,

Further to my email dated 17th July 2012, please now find attached for your review an updated draft of the NI RHI Regulations in clean copy and also a version marked to show that changes made to the Ofgem mark-up that you forwarded to us on 10<sup>th</sup> July 2012.

You will note that we have included further footnotes which either raise queries for the Department to address or contain the Ofgem comments with a query for the Department noted with them.

You will note that we have addressed the following issues in particular:-

- (i) We have revised the definition of "pipe-line system" in Regulation 2 to bring it in-line with the definition under the GB RHI Regulations.
- (ii) By way of the new provision added as Regulation 5(b), installations generating heat from solid biomass with an installation capacity greater than 1,000kWth will not qualify for RHI payments.
- (iii) We have reinstated the definition of 'Waste' in Regulation 27.
- (iv) Although the comments of Ofgem on Regulation 29 were unclear, we believe the amendments we have made address Ofgem's concerns and this point will need to be checked with Ofgem.
- (v) The retention of the Technical Standards and Regulations Directive notification language in the Explanatory Note and reinstatement of the RIA language pending the Department's consideration of our advice of 17th July 2012;

We would also draw your attention to the issue raised by Ofgem in regard to Regulation 51 (Publication of guidance and tariffs) and the requirement to publish information on an ongoing basis at regular intervals. I should be grateful if the Department would advise they are happy with adopting this principle.

I note the comment in your email dated 10<sup>th</sup> July 2012 concerning confirmation that AD sites in receipt of NIROCs will not receive RHI payments. With regard to this, please note the existing provisions of Regulation 9(2) in relation to CHP systems that use solid biomass to generate heat and electricity – the effect of this is that such CHP systems that receive NIROCs will not receive RHI payments. The eligibility criteria for RHI payments are set out in Regulations 5 - 11 and I should be grateful if you could confirm whether the Department requires wording similar to Regulation 9(2) to be added to Regulation 5.

Please let us know if you have any comments or queries on any of the issues raised above or on this latest draft of the NI RHI Regulations.

I should be grateful if you would kindly acknowledge receipt.

Kind regards

Alan

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**From:** Alan Bissett  
**Sent:** 17 July 2012 20:42  
**To:** 'Susan.Stewart@detini.gov.uk'  
**Cc:** 'Joanne.McCutcheon@detini.gov.uk'; 'Peter.Hutchinson@detini.gov.uk'; David Trethowan; 'Sandra.Thompson@detini.gov.uk'  
**Subject:** RE: ACX/RHI 003 - Review of Draft Regulations

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=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](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](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](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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**From:** Alan Bissett  
**Sent:** 10 July 2012 21:33  
**To:** 'Susan.Stewart@detini.gov.uk'  
**Cc:** 'Joanne.McCutcheon@detini.gov.uk'; 'Peter.Hutchinson@detini.gov.uk'; David Trethowan; 'Sandra.Thompson@detini.gov.uk'  
**Subject:** Re: ACX/RHI 003 - Review of Draft Regulations

Susan

Many thanks for this - we will review and revert.

Regards

Alan

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**From:** Stewart, Susan [mailto:Susan.Stewart@detini.gov.uk]  
**Sent:** Tuesday, July 10, 2012 04:24 PM  
**To:** Alan Bissett  
**Cc:** McCutcheon, Joanne <Joanne.McCutcheon@detini.gov.uk>; Hutchinson, Peter <Peter.Hutchinson@detini.gov.uk>; David Trethowan; Thompson, Sandra <Sandra.Thompson@detini.gov.uk>  
**Subject:** ACX/RHI 003 - Review of Draft Regulations

Alan

In reference to work request ACX/RHI003, the Department has now liaised with Ofgem in relation to the draft Regulations. The quote for this work request was estimated at £ [REDACTED] of which, to date, approximately £ [REDACTED] has been spent. This leaves around £ [REDACTED] still to spend on this work request.

We would now like to consider and amend the draft Regulations (attached with Ofgem comments) as follows -

- Consider and amend the draft Regulations following Ofgem comments; and
- Confirm the draft Regulations stipulate that AD sites in receipt of NIROCs will not receive RHI. This was requested in work request ACX/RHI 002 however we are not certain if this requirement has been drafted. I have attached work request 002 for your convenience and would appreciate that you confirm where in the Regulations this is set out- if it is not in the Regulations, it is necessary that it be drafted in as soon as possible.
- Ofgem have now raised an issue relating to the Regulations and EU Directive 98/34/EC regarding notification requirements for good and electronic services. Ofgem have advised that DECC, when finalising the regulations for the GB scheme, notified the EU Commission under this Directive, I attach for information the GB notification, it relates to MCS standards, heat meter standards and a couple of other

issues. This is not a requirement that we are familiar with and indeed the regulations relating to the Northern Ireland Renewables Obligation, that includes requirements for MCS standards, have not previously been notified under this scheme.

<http://www.bis.gov.uk/policies/innovation/standardisation/tech-standards-directive>

From looking through existing guidance it is difficult to understand why the Renewable Heat Regulations would need to be notified under this Directive. The MCS standards are a EU standard that were notified separately in 2007 and the heat meters in question again are of a EU standard.

I would be grateful if you could consider the guidance on this Directive and the potential relevance to the RHI regulations and provide advice on whether DETI need to notify in this way. Given that the notification process includes a 3 month 'standstill' period, this issue needs to be considered with some urgency.

Many thanks

Susan

**Susan Stewart**

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*The new website for the European Sustainable Competitiveness Programme for NI is now available - visit [www.eucompni.gov.uk](http://www.eucompni.gov.uk)*



[www.ni2012.com](http://www.ni2012.com)

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

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**DRAFT STATUTORY RULES OF NORTHERN IRELAND**

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**2012 No. \*\*\***

**ENERGY**

**The Renewable Heat Incentive Scheme Regulations  
(Northern Ireland) 2012**

*Laid before the Assembly in draft*

*Made*            -        -        -        -        [•] 2012

*Coming into operation* -        -        -        [•] 2012

The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by sections 113, 120(4) and 121 of the Energy Act ~~2011~~<sup>+</sup> [2011](#)<sup>a b</sup>

**Do DETI really want to omit the Table of Arrangements that the GB Regs include? The NI Regs seem more than long enough to warrant the inclusion of a Table**

**PART 1**

**INTRODUCTORY**

**Citation and commencement**

1. These Regulations may be cited as the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 and shall come into operation on [ • ] 2012.

**Interpretation**

2. - In these Regulations—

“accreditation” means accreditation of an eligible installation by the Department following an application under regulation 22;

<sup>+</sup>[2011 c. 16](#)

<sup>a</sup>[2011 c. 16](#)

<sup>b</sup>[OFGEM COMMENT - Do DETI really want to omit the Table of Arrangements that the GB Regs include? The NI Regs seem more than long enough to warrant the inclusion of a Table.](#) □

[DETI - please advise on whether a Table of Arrangements is required.](#)

“accredited RHI installation” means an eligible installation which has been given accreditation;

“anaerobic digestion” means the bacterial fermentation of biomass in the absence of oxygen;

“biogas production plant” means a plant which produces biogas by anaerobic digestion, gasification or pyrolysis;

“building” means 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;

“CHP” means combined heat and power;

“class 2 heat meter” means a heat meter which—

- (a) complies with the relevant requirements set out in Annex 1 to the Measuring Instruments Directive;
- (b) complies with the specific requirements listed in Annex MI-004 to that Directive; and
- (c) falls within accuracy class 2 as defined in Annex MI-004 to that Directive;

“coefficient of performance” means the ratio of the amount of heating or cooling in kilowatts provided by a heat pump to the kilowatts of power consumed by the heat pump;

“commissioned” means, in relation to an eligible installation, the completion of such procedures and tests as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of eligible installation in order to demonstrate that it is capable of operating and delivering heat to the premises or process for which it was installed;

“date of accreditation”, in relation to an accredited RHI installation, means the later of—

- (a) the first day falling on or after the date of receipt by the Department of the application for accreditation on which both the application was properly made and the plant met the eligibility criteria; and ~~This amendment reproduces one DECC are including in their amending SI on interim cost control that is due to come into force in early July. Although those amending Regs has mainly temporary effects only (as regards interim cost control) the change to this definition is intended to be permanent. It is assumed that, given the imminence of the coming into force date of the amending Regs, DETI will wish to replicate the revised definition in the draft NI Regs, though confirmation of this would be appreciated.<sup>c</sup>~~
- (b) the day on which the plant was first commissioned;

“date of registration”, in relation to a producer of biomethane for injection, means the first day falling on or after the date of receipt by the Department of the application for registration on which ~~in relation to the amendment proposed here, the comments above relating to “date of accreditation” again apply.~~ the application was properly made;

“the Department” means the Department of Enterprise, Trade and Investment; ~~Is it necessary to include this definition? I assume, though I haven’t checked, that the NI Interpretation Act (which applies to these Regs by virtue of reg 2(2)) includes a provision similar to the one in the GB Interpretation Act~~

<sup>c</sup> OFGEM COMMENT IN RELATION TO DEFINITIONS OF “DATE OF ACCREDITATION AND “DATE OF REGISTRATION” -This amendment reproduces one DECC are including in their amending SI on interim cost control that is due to come into force in early July. Although those amending Regs has mainly temporary effects only (as regards interim cost control) the change to this definition is intended to be permanent. It is assumed that, given the imminence of the coming into force date of the amending Regs, DETI will wish to replicate the revised definition in the draft NI Regs, though confirmation of this would be appreciated.   
 DETI – Please confirm that you wish for this revision to be accepted.

~~whereby terms used in subordinate legislation have the same meaning as the meaning they bear in the relevant primary legislation unless the subordinate legislation states otherwise, If so then isn't this definition superfluous given that the term is defined in the Energy Act 2011?~~<sup>d</sup>

“eligibility criteria” has the meaning given by regulation 4;

“eligible installation” means a plant which meets the eligibility criteria;

“eligible purpose” means a purpose specified in regulation 3(2);

“gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

“gas conveyor” means the holder of a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996<sup>2</sup>1996<sup>e</sup>;

“heat meter” has the same meaning as that given in Annex MI-004 of the Measuring Instruments Directive;

“ineligible purpose” means a purpose which is not an eligible purpose;

“injection” means the introduction of gas into a pipe-line system operated by a gas conveyor;

“installation capacity”, in relation to a plant, means the total installed peak heat output capacity of the plant;

“kWh” means kilowatt hours;

“kWhth” means kilowatt hours thermal;

“kWth” means kilowatt thermal;

“MCS” means the Microgeneration Certification ~~Scheme~~<sup>3</sup>~~Scheme~~<sup>f</sup> or an equivalent scheme accredited under EN 45011 ~~shouldn't this be footnoted — as footnote 3?~~<sup>g</sup> which certifies microgeneration products and installers in accordance with consistent standards;

“Measuring Instruments Directive” means Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring ~~instruments~~<sup>4</sup> ~~shouldn't this be footnote 4?~~<sup>h</sup>instruments<sup>h</sup>;

“municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003;<sup>5</sup> ~~shouldn't this be footnote 5?~~<sup>i</sup>

“MWhth” means megawatt hours thermal;

“MWh” means megawatt thermal;

“ongoing obligations” means the obligations specified in Part 4;

“participant” means—

<sup>d</sup> [DETI - the inclusion of the definition of "the Department" is consistent with other NI legislation which also incorporates the NI Interpretation Act 1954](#)

<sup>2e</sup> S.I. 1996/275 (N.I.2)

<sup>3f</sup> Details of which are available at [www.microgenerationcertification.org](http://www.microgenerationcertification.org)

<sup>g</sup> [ISBN 0580294153. Copies of which can be obtained from the British Standards Institution at \[www.bsigroup.com\]\(http://www.bsigroup.com\)](#)

<sup>4</sup> [OJ L 135, 30 4 2004 p.1, amended by Commission Directive 2009 132/EC\(OJ L 294,11.11.2009, p.7](#)

<sup>h</sup> [OJ L 135, 30 4 2004 p.1, amended by Commission Directive 2009 132/EC\(OJ L 294,11.11.2009, p.7\)](#)

<sup>5</sup> [2003 c.33](#)

<sup>i</sup> [2003 c.33](#)

- (a) the owner of an accredited RHI installation or, where there is more than one such owner, the owner with authority to act on behalf of all owners in accordance with regulation 22(3); or
- (b) a producer of biomethane who has been registered under regulation 25;

“periodic support payments” have the meaning given in regulation 3;

“pipe-line system” means a pipe ~~(together with any apparatus and works associated therewith)~~, or a system of pipes ~~(together with any apparatus and works associated therewith)~~, for the conveyance of gas, ~~not being — this definition differs significantly from the GB one. It impacts on the definition of “injection”, which in turn is used in reg 25. It is not clear whether the differences between this definition and its GB counterpart result in the effects of reg 25 being different in NI as compared with in GB and includes any associated apparatus comprised in that system~~<sup>j</sup>;

- ~~(a) a pipe or a system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes;~~
- ~~(b) a pipe or a system of pipes wholly situated —~~
  - ~~(i) within the site of any apparatus or works to which certain provisions of the Factories- Act (Northern Ireland) 1965<sup>6</sup> apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);~~
  - ~~(ii) within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949,<sup>7</sup> where the system of pipes is designed for use for purposes of agriculture; or~~
  - ~~(iii) in premises used for the purposes of education or research;~~

“process” means any process other than the generation of electricity;

“pyrolysis” means the thermal degradation of a substance in the absence of an oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

“quarterly period” means, except where otherwise specified, the first, second, third or fourth quarter of any year commencing with, or with the anniversary of, a participant’s tariff start date;

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office of National Statistics; or
- (b) where the index is not published for a year, any substituted index or figures published by that Office;

“scheme” (except in this regulation) means the incentive scheme established by these Regulations;

“solar collector” means a liquid filled flat plate or evacuated tube solar collector;

“statement of eligibility” has the meaning given by regulation 22(6)(f);

<sup>j</sup> OFGEM COMMENT - this definition differs significantly from the GB one. It impacts on the definition of “injection”, which in turn is used in reg 25. It is not clear whether the differences between this definition and its GB counterpart result in the effects of reg 25 being different in NI as compared with in GB. □

NOTE FOR DETI: The revised definition more closely follows that contained in the GB RHI Regulations (which reference section 5(10) of the Gas Act 1985 (inserted by section 149(3) of the Energy Act 2004) to address the concerns raised by Ofgem and DETI is to confirm if this revised definition is acceptable.

<sup>6</sup>-1965 Chapter 20

<sup>7</sup>-1949 Chapter 2

“steam measuring equipment” means all the equipment needed to measure to the Department’s satisfaction the mass flow rate and energy of steam, including at least the following components —

- (a) a flow meter;
- (b) a pressure sensor;
- (c) a temperature sensor; and
- (d) a digital integrator or calculator able to determine the cumulative energy in MWhth which has passed a specific point;

“tariff” means the payment rate per kWhth in respect of an accredited RHI installation and per kWh in respect of biomethane injection;

“tariff end date” means the last day of the tariff lifetime;

“tariff lifetime” means—

- (a) in relation to an accredited RHI installation, the period for which periodic support payments are payable for that installation; or
- (b) in relation to a participant who is a producer of biomethane, the period for which that person is eligible to receive periodic support payments;

“tariff start date” means the date of accreditation of an eligible installation or, in relation to a producer of biomethane, the date of registration.

(2) The Interpretation Act (Northern Ireland) ~~1954~~<sup>1954<sup>k</sup></sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

### **Renewable heat incentive scheme**

3.—(1) These Regulations establish an incentive scheme to facilitate and encourage the renewable generation of heat and make provision regarding its administration.

(2) Subject to Part 7 and regulation 24, the Department must pay participants who are owners of accredited RHI installations payments, referred to in these Regulations as “periodic support payments”, for generating heat that is used in a ~~building~~<sup>building<sup>l</sup></sup> for any of the following purposes—

- (a) heating a space;
- (b) heating water; or
- (c) for carrying out a process.

(3) Subject to Part 7, the Department must pay participants who are producers of biomethane for injection periodic support payments.

## **PART 2**

### **ELIGIBILITY AND MATTERS RELATING TO ELIGIBILITY**

<sup>sk</sup> 1954 c.33 (N.I.)

<sup>l</sup> DETI to confirm whether the definition of “building” is to be clarified to avoid excluding chemical plants under Regulation 3(2) on the basis that these plants use heat in distillation columns which could be deemed to be open vessels.

## CHAPTER 1

## Eligible installations

**Eligible installations**

4.—(1) A plant meets the criteria for being an eligible installation (the “eligibility criteria”) if—

- (a) regulation 5, 6, 7, 8, 9, 10 or 11 applies;
- (b) the plant satisfies the requirements set out in regulation 12(1);
- (c) regulation 15 does not apply; and
- (d) the plant satisfies the requirements set out in Chapter 3.

(2) But this regulation is subject to regulation 14.

## CHAPTER 2

## Eligibility criteria for technologies

**Eligible installations generating heat from solid biomass** ~~if, as appears to be the case, it is not intended that RHI payments will be made to the owners of installations generating heat from solid biomass where the installation capacity of the plant is 1000kWth or above, shouldn't reg 5 include a requirement that the installation have an i.e of less than that? Otherwise the owners concerned could be admitted to the scheme but would have no entitlement to payments, which is a nonsense.~~

5. — This regulation applies if the plant complies with all of the following requirements—

- (a) it generates heat from solid biomass;
- (b) [it has an installation capacity of less than 1,000kWth;](#)
- [\(c\)](#) the heat from the solid biomass is generated using equipment specifically designed and installed to use solid biomass as its only primary fuel source;
- [\(ed\)](#) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies.

**Eligible installations generating heat from solid biomass contained in municipal waste**

6. — This regulation applies if the plant generates heat from solid biomass contained in municipal waste.

**Eligible installations generating heat using solar collectors**

7. — This regulation applies if the plant complies with all of the following requirements—

- (a) it generates heat using a solar collector;
- (b) it has an installation capacity of less than 200kWth<sub>3</sub>.

- (c) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies.

### Eligible installations generating heat using heat pumps

8.— This regulation applies if the plant is a heat pump and complies with all of the following requirements—

- (a) it generates heat using naturally occurring energy stored in the form of heat from one of the following sources of energy—
- (i) the ground, other than naturally occurring energy, located and extracted from at least 500 metres below the surface of solid earth;
  - (ii) surface water;
- (b) in the case of a heat pump with an installation capacity of 45kWth or less, regulation 13 applies;
- (c) it has a coefficient of performance of at least 2.9.

### Eligible installations which are CHP systems

9.—(1) Subject to paragraph (2), this regulation applies if the plant is a CHP system which complies with one of the following requirements—

- (a) it generates heat and electricity from solid biomass and either regulation 6 applies or the plant complies with the requirement in regulation 5(~~bc~~);
- (b) it generates heat and electricity from biogas and complies with regulation 11(b) and (c);
- (c) it generates heat and electricity utilising naturally occurring energy located and extracted from at least 500 metres beneath the surface of solid earth.

(2) This regulation does not apply if the plant—

- (a) uses solid biomass to generate heat and electricity;
- (b) is accredited under the Renewables Obligation Order (Northern Ireland) ~~2009~~<sup>2009<sup>m</sup></sup>; and
- (c) is, or at any time since it was accredited in accordance with sub-paragraph (b), has been a qualifying CHP generating station within the meaning of Article 2 of that Order.

### Eligible installations generating heat using geothermal sources

10.— This regulation applies if the plant generates heat using naturally occurring energy located and extracted from at least 500 metres beneath the surface of solid earth.

### Eligible installations generating heat using biogas

11.— This regulation applies if the plant complies with all of the following requirements—

<sup>9m</sup> S.R. 2009 No.154 as amended by the S.R. 2010 No. 134 and S.R. 2011 No 169

- (a) it generates heat from biogas;
- (b) it has an installation capacity of less than 200k~~Wth is there a difference between this and~~ ~~“200k~~Wth”?~~”?kWth~~;
- (c) it does not generate heat from solid biomass.

### Other eligibility requirements for technologies

12.—(1) The requirements referred to in regulation 4(b) are—

- (a) installation of the ~~plant~~<sup>n</sup> was completed and the plant was first commissioned on or after 1st ~~September 2010~~ ~~presumably this date is used, here and elsewhere in the draft Regs, because it was the date it was announced that there would be an NI RHI, the corresponding GB date being 15/9/2009~~ September 2010;
- (b) the plant was new at the time of installation;
- (c) the plant uses liquid or steam as a medium for delivering heat to the space, ~~water~~<sup>p</sup> or process;
- (d) heat generated by the plant is used for an eligible purpose.

(2) The requirements of paragraph (1)(a) and (b) are deemed to be satisfied where the plant was previously generating electricity only, using solid biomass or biogas, and was first commissioned as a CHP system on or after 1~~st~~<sup>st</sup> ~~September~~ September 2010;

(3) But the requirements of paragraph (1)(a) and (b) are not satisfied where the plant was previously generating heat only and was first commissioned as a CHP system on or after 1st September 2010.

### MCS certification for microgeneration heating equipment

13. —This regulation applies where the plant for which accreditation is being sought is certified under the MCS and its installer was certified under the MCS at the time of installation.

### Plants comprised of more than one plant

14.—(1) Subject to paragraph (2), and without prejudice to regulation 42(5)(b), the eligibility criteria are not met if the plant is comprised of more than one plant.

(2) Where two or more plants—

- (a) use the same source of energy and technology;
- (b) form part of the same heating system; and
- (c) are not accredited RHI installations;

those plants (the “component plants”) are to be regarded as a single plant for the purposes of paragraph (1) provided that paragraph (3) applies.

<sup>n</sup> DETI to confirm whether this should 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.

<sup>o</sup> DETI – Please confirm that this remains consistent with your policy proposals

<sup>p</sup> DETI – Please confirm whether the reference to “water” should be revised to “liquid” in order that plants using thermal oils as the medium for transmitting heat would be eligible.

(3) This paragraph applies where each component plant meets the eligibility criteria; and for that purpose a component plant can be taken to meet the eligibility criteria notwithstanding that regulation 13 does not apply.

### **Excluded plants**

**15.—**(1) This regulation applies where the plant—

- (a) is generating heat solely for the use of one domestic premises;
- (b) is, in the Department’s opinion, generating heat solely for an ineligible purpose; or
- (c) is a plant which—
  - (i) is additional RHI capacity within the meaning of regulation 42(2) and was first commissioned more than 12 months after the original installation was first commissioned;
  - (ii) generates heat from biogas or using a solar collector; and
  - (iii) has an installation capacity which, together with the installation capacities of all related plants, is 200kWth or above.

(2) For the purposes of this regulation—

“domestic premises” means single, self contained premises used wholly or mainly as a private residential dwelling where the fabric of the building has not been significantly adapted for non-residential use;

“related plant” means any plant for which an application for accreditation has been made (whether or not it has been accredited) which uses the same source of energy and technology and forms part of the same heating system as the plant referred to in paragraph (1)(c).

## **CHAPTER 3**

### **Eligibility criteria in relation to metering and steam measuring**

#### **Metering of plants in simple systems**

**16.—**(1) This regulation applies where—

- (a) the plant is generating and supplying heat solely for one or more eligible purposes within one building;
- (b) no heat generated by the plant is delivered by steam; and
- (c) the plant is not a CHP system.

(2) Where this regulation applies, a class 2 heat meter must be installed to measure the heat in kWhth generated by the plant.

#### **Metering of plants in complex systems**

17.—(1) This regulation applies where regulation 16(1) does not apply.

(2) Subject to regulation 19—

- (a) where heat generated by the plant is delivered by liquid, class 2 heat meters must be installed to measure both the kWhth of heat generated by that plant and the kWhth of heat used for eligible purposes by the heating system of which that plant forms part; and
- (b) where heat generated by the plant is delivered by steam, the following must be installed—
  - (i) steam measuring equipment to measure both the heat generated in the form of steam by the plant and the heat in the form of steam used for eligible purposes; and
  - (ii) a class 2 heat meter or steam measuring equipment to measure any condensate or steam which returns to the plant.

(3) Where this regulation applies, and more than one plant is supplying heat to the heating system supplied by the plant, steam measuring equipment or class 2 heat meters must be installed, as appropriate, to measure the heat generated in kWhth by all plants supplying heat to that heating system.

### Shared meters

18.—(1) Subject to paragraph (2), the heat generated by the plant must be individually ~~metered~~<sup>metered</sup><sup>q</sup>.

(2) Subject to regulation 42(8), the heat generated by two or more plants may be metered using one meter provided that—

- (a) the plants use the same source of energy and technology;
- (b) the plants will, once given accreditation, be eligible to receive the same tariff;
- (c) the plants will then share the same tariff start date and tariff end date; and
- (d) it is the Department’s opinion that a single meter is capable of metering the heat generated by all of those plants.

### Metering of CHP systems generating electricity only before 1st September 2010

19.—(1) This regulation applies where the plant is a CHP system and the requirements of regulation 12(1)(a) and (b) are deemed to be satisfied in accordance with regulation 12(2).

(2) Where this regulation applies, any existing heat meter or steam measuring equipment installed before the date of commencement of these Regulations may continue to be used by a participant to measure the heat generated by the CHP system and used for eligible purposes, provided that the CHP system was registered under the CHPQA before that date.

(3) For the purpose of this regulation, “the CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009, as published by the Department of Energy and Climate ~~Change~~<sup>10</sup><sup>Change</sup>.

<sup>q</sup> DETI to confirm whether this should be amended 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

<sup>10</sup> A copy is available ~~on <http://at.ww.chpqa.decc.gov.uk/combined-heat-and-power-quality-assurance-standard-issue-3-january-2009-is-now-published/>~~. ~~wording differs from wording of corresponding GB footnote~~

**Matters relating to all heat meters and steam measuring equipment**

**20.**—(1) All heat meters installed or used in accordance with these Regulations must, where applicable—

- (a) be calibrated prior to use;
- (b) be calibrated correctly for any water/ethylene glycol mixture; and
- (c) be (or have been) properly installed in accordance with manufacturer's instructions.

(2) All steam measuring equipment installed or used in accordance with these Regulations must be—

- (a) calibrated prior to use;
- (b) capable of displaying measured steam pressure and temperature;
- (c) capable of displaying the current steam mass flow rate and the cumulative mass of steam which has passed through it since it was installed; and
- (d) properly installed in accordance with manufacturer's instructions.

**Additional metering requirements for plants generating heat from biogas**

**21.**—(1) This regulation sets out additional requirements in relation to metering where a plant is generating heat from biogas.

(2) In that case—

- (a) a class 2 heat meter must be installed to meter any heat directed from the plant combusting the biogas to the biogas production plant; and
- (b) a class 2 heat meter must be installed to meter any heat supplied to the biogas production plant from any source other than—
  - (i) the plant combusting the biogas; and
  - (ii) where the biogas has been produced by anaerobic digestion, the feedstock from which it was produced.

**PART 3****ACCREDITATION AND REGISTRATION****Applications for accreditation**

**22.**—(1) An owner of an eligible installation may apply for that installation to be accredited.

(2) All applications for accreditation must be made in writing to the Department and must be supported by—

- (a) such of the information specified in Schedule 1 as the Department may require;
- (b) a declaration that the information provided by the applicant is accurate to the best of the

applicant's knowledge and belief;

- (c) a declaration that the applicant is the owner, or one of the owners, of the eligible installation for which accreditation is being sought.

(3) The Department may, where an eligible installation is owned by more than one person, require that—

- (a) an application submitted under this regulation is made by only one of those owners;
- (b) the applicant has the authority from all other owners to be the participant for the purposes of the scheme; and
- (c) the applicant provides to the Department, in such manner and form as the Department may request, evidence of that authority.

(4) Before accrediting an eligible installation, the Department may arrange for a site inspection to be carried out in order to satisfy itself that a plant should be accredited.

(5) The Department may, in granting accreditation, attach such conditions as it considers to be appropriate.

(6) Where an application for accreditation has, in the Department's opinion, been properly made in accordance with paragraphs (2) and (3) and the Department is satisfied that the plant is an eligible installation the Department must (subject to regulation 23 and regulation 46(3))—

- (a) accredit the eligible installation;
- (b) notify the applicant in writing that the application has been successful;
- (c) enter on a central register maintained by the Department the applicant's name and such other information as the Department considers necessary for the proper administration of the scheme;
- (d) notify the applicant of any conditions attached to the accreditation;
- (e) in relation to an applicant who is or will be generating heat from solid biomass, having regard to the information provided by the applicant, specify by notice to the applicant which of regulations 28 or 29 applies;
- (f) provide the applicant with a written statement ("statement of eligibility") including the following information—
  - (i) the date of accreditation;
  - (ii) the applicable tariff;
  - (iii) the process and timing for providing meter readings;
  - (iv) details of the frequency and timetable for payments; and
  - (v) the tariff lifetime and tariff end date.

(7) Where the Department does not accredit a plant it must notify the applicant in writing that the application for accreditation has been rejected, giving reasons.

(8) Once a specification made in accordance with paragraph (6)(e) has been notified to an applicant, it cannot be changed except where the Department considers that an error has been made or on the receipt of new information by the Department which demonstrates that the specification should be changed.

### **Exceptions to duty to accredit**

**23.**—(1) The Department must not accredit an eligible installation unless the applicant has given notice (which the Department has no reason to believe is incorrect) that, as applicable—

- (a) no grant from public funds has been paid or will be paid in respect of any of the costs of purchasing or installing the eligible installation; or
- (b) such a grant was paid in respect of an eligible installation which was completed and first commissioned between 1st September 2010 and the date on which these Regulations come into force, and has been repaid to the person or authority who made it.

(2) In this regulation, “grant from public funds” means a grant made by a public authority or by any person distributing funds on behalf of a public authority.

(3) The Department must not accredit an eligible installation if it has not been commissioned.

(4) The Department may refuse to accredit an eligible installation if its owner has indicated that one of the applicable ongoing obligations will not be complied with.

(5) The Department may refuse to accredit a plant which is a component plant within the meaning of regulation 14(2).

### **Changes in ownership**

**24.**—(1) This regulation applies where ownership of all or part of an accredited RHI installation is transferred to another person.

(2) No periodic support payment may be made to a new owner until—

- (a) that owner has notified the Department of the change in ownership; and
- (b) the steps set out in paragraph (3) have been completed.

(3) On receipt of a notification under paragraph (2), the Department—

- (a) may require the new owner to provide such of the information specified in Schedule 1 as the Department considers necessary for the proper administration of the scheme;
- (b) may review the accreditation of the accredited RHI installation to ensure that it continues to meet the eligibility criteria and should remain an accredited RHI installation.

(4) Where the Department has received the information required under paragraph (3)(a) and is satisfied as to the matters specified in paragraph (3)(b) it must—

- (a) update the central register referred to in regulation 22(6)(c);
- (b) where the new owner is the participant, send the new owner a statement of eligibility setting out the information specified in regulation 22(6)(f); and
- (c) where applicable, send the new owner (if the new owner is the participant) a notice in accordance with regulation 22(6)(e).

(5) If, within a period of 12 months from the transfer of ownership of the accredited RHI installation, no notification is made in accordance with paragraph (2) or paragraph (4) does not apply, the installation will on the expiry of that period cease to be accredited and accordingly no further periodic support payments will be paid in respect of the heat it generates.

(6) The period specified in paragraph (5) may be extended by the Department where the Department considers it is just and equitable to do so.

(7) Subject to paragraph (8), following the successful completion of the steps required under paragraphs (3) and (4), the new owner of an accredited RHI installation will receive periodic support payments calculated from the date of completion of those steps for the remainder of the tariff lifetime of that accredited RHI installation.

(8) Where a transfer of ownership of all or part of an accredited RHI installation takes place and results in that accredited RHI installation being owned by more than one person, the Department may require that only one of those owners is the participant for the purposes of the scheme and require that owner to comply with sub-paragraphs (b) and (c) of regulation 22(3).

### **Producers of biomethane**

**25.**—(1) A producer of biomethane for injection may apply to the Department to be registered as a participant.

(2) Applications for registration must be in writing and supported by—

- (a) such of the information specified in Schedule 1 as the Department may require;
- (b) a declaration that the information provided by the applicant is accurate to the best of the applicant's knowledge and belief;
- (c) details of the process by which the applicant proposes to produce biomethane and arrange for its injection; and
- (d) a notice given in accordance with paragraph (6).

(3) The Department may in registering an applicant attach such conditions as it considers appropriate.

(4) Where the application for registration is properly made in accordance with paragraph (2), the Department must (subject to paragraphs (5) to (8))—

- (a) notify the applicant in writing that registration has been successfully completed and the applicant is a participant;
- (b) enter on a central register maintained by the Department the date of registration and the applicant's name;
- (c) notify the applicant of any conditions attached to their registration as a participant; and
- (d) send the applicant a statement of eligibility including such of the information specified in regulation 22(6)(f) as the Department considers applicable.

(5) The Department may refuse to register an applicant if the applicant has indicated that one or more of the applicable ongoing obligations will not be complied with.

(6) The Department must not register an applicant unless that applicant has given notice (which the Department has no reason to believe is incorrect) that no grant from public funds has been paid or will be paid in respect of any of the equipment used to produce the biomethane for which the applicant is intending to claim periodic support payments.

(7) The Department must not register an applicant if it would result in periodic support payments being made to more than one participant for the same biomethane.

(8) The Department must not register the applicant unless, at the time of making the application, injection of biomethane produced by that applicant has commenced. ~~This proposed amendment replicates one intended to have effect permanently that is included in DECC's amending (interim cost control) Regulations that are due to come into force at the beginning of July. In view of the imminence of the coming into force of those Regulations, it is assumed that DETI will wish to replicate this GB amendment here.~~<sup>s</sup>

### Preliminary accreditation

26.—(1) The Department may, upon the application by a person who proposes to construct or operate an eligible installation which has not yet been commissioned, grant preliminary accreditation in respect of that eligible installation provided—

- (a) any necessary planning permission has been granted; or
- (b) such planning permission is not required and appropriate evidence of this is provided to the Department from the relevant planning authority.

(2) The Department must not grant preliminary accreditation to any plant under this regulation if, in its opinion, that plant is unlikely to generate heat for which periodic support payments may be paid.

(3) An application for preliminary accreditation must be in writing and supported by such of the information specified in Schedule 1 as the Department may require.

(4) The Department may attach such conditions as it considers appropriate in granting preliminary accreditation under this regulation.

(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, 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.

<sup>s</sup> [OFGEM COMMENT - This proposed amendment replicates one intended to have effect permanently that is included in DECC's amending \(interim cost control\) Regulations that are due to come into force at the beginning of July. In view of the imminence of the coming into force of those Regulations, it is assumed that DETI will wish to replicate this GB amendment here.](#) □

[DETI - Please confirm that you wish to replicate this amendment.](#)

(6) Where any of the circumstances mentioned in paragraph (7) apply in relation to a preliminary accreditation which the Department has granted and having regard to those circumstances the Department considers it appropriate to do so, the Department may—

- (a) withdraw the preliminary accreditation;
- (b) amend the conditions attached to the preliminary accreditation;
- (c) attach conditions to the preliminary accreditation.

(7) The circumstances referred to in paragraph (6) are as follows—

- (a) in the Department's view there has been a material change in circumstances since the preliminary accreditation was granted;
- (b) any condition attached to the preliminary accreditation has not been complied with;
- (c) the Department considers that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular;
- (d) there has been change in the 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.

(8) The Department must send the applicant a notice setting out—

- (a) its decision on an application for preliminary accreditation of a plant or on the withdrawal of any preliminary accreditation;
- (b) any condition attached to the preliminary accreditation or any amendment to those conditions.

(9) The notice sent pursuant to paragraph (8) must specify the date on which the grant or withdrawal of preliminary accreditation is to take effect and, where applicable, the date on which any conditions (or amendments to those conditions) attached to the preliminary accreditation are to take effect.

(10) In paragraph (1), the reference to the person who proposes to construct an eligible installation includes a person who arranges for the construction of the eligible installation.

(11) This regulation does not apply to a plant which will generate heat using—

- (a) a solar collector;
- (b) a heat pump which complies with the requirements of regulation 8(a); or
- (c) solid biomass, provided that the plant will have an installation capacity below 200kWth.

## **PART 4**

### **ONGOING OBLIGATIONS FOR PARTICIPANTS**

#### **CHAPTER 1**

##### **Ongoing obligations relating to the use of solid biomass to generate heat**

## Interpretation

27. — In this Part—

“district council” shall have the same meaning as in section 44 of the Interpretation Act (Northern Ireland) 1954<sup>1</sup>; ~~is this definition necessary in view of reg 2(2)?~~

“energy content” means the energy contained within a substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid and gaseous fuels (including definitions) published by the British Standards Institute on 28th June 1991);<sup>++u</sup>

“landfill gas” means gas formed by the digestion of material in a landfill;

“standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the accredited RHI installation;

~~definition of “waste” is omitted. Isn’t a definition of that necessary given that the term is used 3 times in this Part?~~

“waste” has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997.<sup>v</sup>

## Participants using solid biomass contained in municipal waste

28.—(1) This regulation applies to participants generating heat in an accredited RHI installation from solid biomass contained in municipal waste.

(2) The proportion of solid biomass contained in the municipal waste must be a minimum of 50 per cent.

(3) For the purposes of paragraph (2)—

- (a) the proportion of solid biomass contained in the municipal waste is to be determined by the Department for every quarterly period;
- (b) it is for the participant to provide, in such form as the Department may require, evidence to demonstrate to the Department’s satisfaction the proportion of the energy content of the municipal waste used in any quarterly period which is composed of fossil fuel, to enable the Department to determine the proportion of solid biomass in accordance with sub-paragraph (c);
- (c) the proportion of solid biomass is the energy content of the municipal waste used in any quarterly period to generate heat less the energy content of any fossil fuel of which that municipal waste is in part composed, expressed as a percentage of the energy content of that municipal waste.

(4) The participant may use fossil fuel (other than fossil fuel mentioned in paragraph (3)(c)) in an accredited RHI installation for the following permitted ancillary purposes only—

- (a) cleansing other fuels from the accredited RHI installation’s combustion system prior to using fossil fuel to heat the combustion system to its normal temperature;

<sup>1</sup> [QUERY FOR DETI: AC believes that the inclusion of this definition aids interpretation - DETI to confirm](#)

<sup>++u</sup> ISBN 0580194825 Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/)

<sup>v</sup> [S.I. 1997/2778 \(N.I. 19\). Article 2\(2\) was amended by SR 2011 No.127](#)

- (b) the heating of the accredited RHI installation's combustion system to its normal operating temperature or the maintenance of that temperature;
- (c) the ignition of fuels of low or variable calorific value;
- (d) emission control;
- (e) in relation to accredited RHI installations which are CHP systems, standby generation or the testing of standby generation capacity.

(5) The energy content of the fossil fuel used during any quarterly period for the permitted ancillary purposes specified in paragraph (4) must not exceed 10 per cent of the energy content of all the fuel used by that accredited RHI installation to generate heat during that quarterly period.

(6) Without prejudice to paragraph (3)(b), when determining the proportion of solid biomass contained in municipal waste, the Department may have regard to any information (whether or not produced to it by the participant) if, in its opinion, that information indicates what proportion of the energy content of the municipal waste is composed of fossil fuel.

(7) Subject to paragraph (8), where the participant produces to the Department—

- (a) data published by the Department of the Environment or a district ~~council~~[council](#)<sup>w</sup> demonstrating that the proportion of municipal waste used by that participant which is composed of fossil fuel is unlikely to exceed 50 per cent; and
- (b) evidence that the municipal waste used has not been subject to any process before being used that is likely to have materially increased that proportion;

the Department may accept this as sufficient evidence for the purposes of paragraph (3)(b) of the fact that the proportion of the municipal waste used which is composed of fossil fuel is no more than 50 per cent.

(8) Where the Department so requests, the participant must arrange for samples of the municipal waste used (or to be used) in the accredited RHI installation, or of any gas or other substance produced as the result of the use of such municipal waste, to be taken by a person (and analysed in a manner) specified by the Department, and for the results of that analysis to be made available to the Department in such form as the Department may require.

(9) The participant may not generate heat using solid biomass contained in any waste other than municipal waste.

**Participants using solid biomass in accredited RHI installations with an installation capacity of between 45 kWth and 1 MWth ~~noted that what is reg 29 of the GB Regs is omitted, reflecting fact that it appears to be the intention that RHI payments should not be made to owners of biomass installations having an installation capacity of 1000kWth or above.~~**

~~New reg 29 equates to reg 30 in the GB Regs (though it is differently structured) and it is assumed that the intention is to replicate reg 30 of the GB Regs. If so, however, new reg 29 does not seem quite to achieve that—for the following reasons: Reg 30(2) of the GB Regs permits participants to use biomass contaminated with fossil fuel if the participant also complies with reg 29(2), (3), (5) and (6) of those Regs. By contrast, the draft NI Regs don't cross refer to a provision in those Regs corresponding to reg 29 in the GB Regs as there isn't going to be a corresponding provision. They instead replicate relevant provisions within reg 29 below but the nature of the requirements changes slightly: The requirements in reg 30(2) of the GB Regs that reg 29(2) and (3) of those Regs be complied with *are* replicated—in reg 29(2) and (3) below. However the requirements in reg 30(2) of~~

<sup>w</sup> [QUERY FOR DETI – this drafting follows the treatment of waste as a renewable energy source in Article 3\(5\) of the Renewables Obligations Order \(Northern Ireland\) 2009, where municipal waste used in a generating station must satisfy the Department of its renewable make up. As the DSO has suggested, this treatment could be adopted for the RHI Regulations in NI. DETI should clarify that the data publishing regime has not changed since the 2009 Order.](#)

**the GB Regs that reg 29(5) and (6) of those Regs be complied with are *not* replicated below. Instead these provisions are simply re-produced in their own right in reg 29(5) and (6) below.**

### 29.29<sup>x</sup>

—(1) This regulation applies to participants generating heat from solid biomass, not being solid biomass contained in municipal waste, in an accredited RHI installation with an installation capacity of between 45 kWth and 1 MWth.

(2) The participant may use solid biomass contaminated with fossil fuel provided that the participant complies with the following provisions as well as the other requirements of this regulation—

(a) the participant may use solid biomass contaminated with fossil fuel only where the proportion of fossil fuel contamination does not exceed 10 per cent.;

~~(3) Such~~ such contaminated biomass may not be used unless the fossil fuel is present because—

(a) the solid biomass has been subject to a process, the undertaking of which has caused the fossil fuel to be present in, on or with the biomass even though that was not the object of the process; or

(b) the fossil fuel is waste and was not added to the solid biomass with a view to its being used as a fuel.;

~~(4c) For~~ for the purposes of paragraph (2a)—

(a) the proportion of fossil fuel contamination is to be determined by the Department for every quarterly period;

(b) it is for the participant to provide, in such form as the Department may require, evidence to demonstrate to the Department's satisfaction the proportion of fossil fuel contamination; and

(c) the proportion of fossil fuel contamination is the energy content of the fossil fuel with which the solid biomass used in any quarterly period is contaminated expressed as a percentage of the energy content of all solid biomass (contaminated or otherwise) used in that quarterly period to generate heat other than fossil fuel used in accordance with paragraphs (5d) and (6e).;

~~(5d) The~~ the participant may use fossil fuel (other than fossil fuel mentioned in paragraph (2a)) in an accredited RHI installation for the following permitted ancillary purposes only—

(a) cleansing other fuels from the accredited RHI installation's combustion system prior to using fossil fuel to heat the combustion system to its normal temperature;

(b) the heating of the accredited RHI installation's combustion system to its normal operating temperature or the maintenance of that temperature;

(c) the ignition of fuels of low or variable calorific value;

(d) emission control;

<sup>x</sup> OFGEM COMMENT - New reg 29 equates to reg 30 in the GB Regs (though it is differently structured) and it is assumed that the intention is to replicate reg 30 of the GB Regs. If so, however, new reg 29 does not seem quite to achieve that - for the following reasons: Reg 30(2) of the GB Regs permits participants to use biomass contaminated with fossil fuel if the participant also complies with reg 29(2), (3), (5) and (6) of those Regs. By contrast, the draft NI Regs don't cross-refer to a provision in those Regs corresponding to reg 29 in the GB Regs as there isn't going to be a corresponding provision. They instead replicate relevant provisions within reg 29 below but the nature of the requirements changes slightly: The requirements in reg 30(2) of the GB Regs that reg 29(2) and (3) of those Regs be complied with are replicated - in reg 29(2) and (3) below. However the requirements in reg 30(2) of the GB Regs that reg 29(5) and (6) of those Regs be complied with are not replicated below. Instead those provisions are simply re-produced in their own right in reg 29(5) and (6) below.   
QUERY FOR DETI: Although the comments from Ofgem on Regulation 29 are unclear, AC believes the amendments made may address Ofgem's concerns and Ofgem should be asked to confirm.

(~~ey~~) in relation to accredited RHI installations which are CHP systems, standby generation or the testing of standby generation capacity;

(~~6e~~) ~~The~~ the energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in paragraph (~~5d~~) must not exceed 10 per cent of the energy content of all the fuel used by that accredited RHI installation to generate heat during that quarterly period.

(~~73~~) Where solid biomass contaminated with fossil fuel is used in an accredited RHI installation, the participant must keep and provide upon request written evidence including invoices, receipts and such other documentation as the Department may specify relating to fuel use and fossil fuel used for the permitted ancillary purposes specified in paragraph (~~52~~)(d) and provide this information upon request to the Department, in such form as the Department may require, to demonstrate compliance with this regulation.

(~~84~~) Without prejudice to paragraph (~~73~~), the Department may have regard to any information (whether or not produced to it by the participant) if, in its opinion, that information indicates what proportion of the contaminated solid biomass is composed of fossil fuel.

(~~95~~) Where—

(a) the Department is not satisfied that the proportion of fossil fuel contamination (within the meaning of paragraph (~~4~~)(c)(iii)) does not exceed 10 per cent; or

(b) the Department is not satisfied as to the matters specified in paragraphs (~~52~~)(d) and (~~62~~)(e).

the Department may require the participant to arrange for samples of the fuel used (or to be used) in the accredited RHI installation, or of any gas or other substance produced as the result of the use of such fuel, to be taken by a person (and analysed in a manner) specified by the Department, and for the results of that analysis to be made available to the Department in such form as the Department may require.

## Chapter 2

### Ongoing obligations relating to the use of biogas to generate heat and the production of biomethane for injection

#### Biogas produced from gasification or pyrolysis

**30.**—(1) This regulation applies to participants producing biogas using gasification or pyrolysis and generating heat from that biogas in an accredited RHI installation.

(2) The participant may only use solid biomass or municipal waste as feedstock to produce the biogas.

(3) Where the participant uses municipal waste as feedstock—

(a) paragraphs (2), (3), (6) and (7) of regulation 28 apply to the proportion of solid biomass contained in the municipal waste used for feedstock in the same way as for the proportion of solid biomass contained in municipal waste used to generate heat; and

(b) paragraphs (4) and (5) of regulation 28 apply.

(4) Where the participant uses solid biomass (not being solid biomass contained in municipal waste) as feedstock—

(a) paragraphs (2), (3), (4) and (8) of regulation 29 apply to the contamination of solid biomass used for feedstock in the same way as for solid biomass contaminated with fossil fuel used to generate heat; and

(b) paragraphs (5) and (6) of regulation 29 apply.

(5) Where the Department so requests, the participant must arrange for samples of the municipal waste or solid biomass used (or to be used) as feedstock in the biogas production plant, or of any gas or other substance produced as a result of the use of such municipal waste or solid biomass, to be taken by a person (and analysed in a manner) specified by the Department, and for the results of that analysis to be made available to the Department in such form as the Department may require.

#### Participants generating heat from biogas

**31.**—(1) This regulation applies to participants generating heat from biogas in an accredited RHI installation where regulation 30 does not apply.

(2) A participant using biogas produced by anaerobic digestion may only use biogas which—

(a) was produced from one or more of the following feedstocks—

(i) solid biomass;

(ii) solid waste;

(iii) liquid waste; and

(b) is not landfill gas.

(3) The participant may use fossil fuel in the accredited RHI installation only in accordance with paragraphs (5) and (6) of regulation 29.

**Biomethane producers**

**32.**—(1) This regulation applies to participants producing biomethane for injection.

(2) A participant producing biomethane for injection from biogas made by gasification or pyrolysis may only use biogas made using solid biomass or municipal waste as feedstock.

(3) Where municipal waste is used as feedstock, paragraphs (2) and (3)(c) of regulation 28 apply to the proportion of solid biomass contained in municipal waste used as feedstock in the same way as for the proportion of solid biomass contained in municipal waste used to generate heat.

(4) Where solid biomass is used as feedstock, paragraphs (2), (3), and (4)(c) of regulation 29 apply to the contamination of solid biomass used for feedstock in the same way as for solid biomass contaminated with fossil fuel used by participants to generate heat.

(5) A participant producing biomethane for injection from biogas made by anaerobic digestion must comply with regulation 31(2).

(6) The participant must provide measurements in such format as the Department may request which satisfies the Department of all of the following—

- (a) the gross calorific value and volume of biomethane injected;
- (b) the gross calorific value and volume of any propane contained in the biomethane;
- (c) the kWh of biomethane injected together with supporting meter readings and calculations;
- (d) the kWhth of heat supplied to the biogas production plant (other than heat contained in feedstock to produce biogas by anaerobic digestion) which made the biogas used in any quarterly period to produce biomethane for injection;
- (e) any heat supplied to the biomethane production process.

(7) The participant must keep and provide upon request copies or details of agreements with third parties with whom the participant contracts to carry out any of the processes undertaken to turn the biogas into biomethane and to arrange for its injection.

(8) The participant must keep and provide upon request written evidence including invoices, receipts, contracts and such other information as the Department may specify in relation to biogas purchased and feedstock used in the production of the biogas used to produce biomethane.

(9) The participant must provide sustainability information in accordance with Schedule 2.

**Chapter 3****Ongoing obligations relating to other matters****Ongoing obligations: general**

**33.** — Participants must comply with the following ongoing obligations, as applicable—

- (a) they must keep and provide upon request by the Department records of type of fuel used and fuel purchased for the duration of their participation in the scheme;

- (b) they must keep and provide upon request by the Department written records of fossil fuel used for the permitted ancillary purposes specified in Chapters 1 and 2;
- (c) they must submit an annual declaration as requested by the Department confirming, as appropriate, that they are using their accredited RHI installations in accordance with the eligibility criteria and are complying with the relevant ongoing obligations;
- (d) they must notify the Department if any of the information provided in support of their application for accreditation or registration was incorrect;
- (e) they must ensure that their accredited RHI installation continues to meet the eligibility criteria;
- (f) they must comply with any condition attached to their accreditation or registration;
- (g) they must keep their accredited RHI installation maintained to the Department's satisfaction and keep evidence of this including service and maintenance documents;
- (h) participants combusting biogas must not deliver heat by air from their accredited RHI installation to the biogas production plant producing the biogas used for combustion;
- (i) they must allow the Department or its authorised agent reasonable access in accordance with Part 9;
- (j) participants generating heat from solid biomass must comply with the regulation specified by the Department in accordance with regulation 22(6)(e);
- (k) they must notify the Department within 28 days where they have ceased to comply with an ongoing obligation or have become aware that they will not be able so to comply, or where there has been any change in circumstances which may affect their eligibility to receive periodic support payments;
- (l) they must notify the Department within 28 days of the addition or removal of a plant supplying heat to a heating system of which their accredited RHI installation forms part;
- (m) they must notify the Department within 28 days of a change in ownership of all or part of their accredited RHI installation;
- (n) they must repay any overpayment in accordance with any notice served under regulation 47;
- (o) they must, if requested, provide evidence that the heat for which periodic support payments are made is used for an eligible purpose;
- (p) they must not generate heat for the predominant purpose of increasing their periodic support payments;
- (q) they must comply with such other administrative requirements that the Department may specify in relation to the effective administration of the scheme.

### **Ongoing obligations in relation to metering**

**34.—**(1) Participants must keep all meters and steam measuring equipment required to be used in accordance with these Regulations—

- (a) continuously operating;

- (b) properly maintained and periodically checked for errors; and
  - (c) re-calibrated every 10 years or within such period of time as may be specified in accordance with manufacturers' instructions where available; whichever is the sooner,
- and must retain evidence of this, including service and maintenance invoices, receipts or certificates for the duration of their participation in the scheme.

(2) The Department may, by the date (if any) specified by it, or at such regular intervals as it may require to enable it to carry out its functions under these Regulations, require participants to provide the following information—

- (a) meter readings and other data collected in accordance with these Regulations from all steam measuring equipment, class 2 heat meters and other heat meters used in accordance with these Regulations in such format as the Department may reasonably require;
- (b) in relation to participants using steam measuring equipment, a kWhth figure of both the heat generated and the heat used for eligible purposes together with supporting data and calculations; and
- (c) the evidence and service and maintenance documentation specified in paragraph (1).

(3) Participants using heat pumps to provide both heating and cooling must ensure that their meters for those pumps enable them to—

- (a) measure heat used for eligible purposes only; and
- (b) where appropriate, measure (in order to discount) any cooling generated by the reverse operation of the heat pump,

and must provide upon request an explanation of how their metering arrangements have enabled the cooling in sub-paragraph (b) to be discounted.

(4) The data referred to in paragraph (2)(a) and (b) may be estimated in exceptional circumstances if the Department has agreed in writing to an estimate being provided and to the way in which those estimates are to be calculated.

(5) Nothing in this regulation prevents the Department from accepting further data from a participant, if the Department considers it appropriate to do so.

### **Ongoing obligations in relation to the provision of information**

**35.**—(1) A participant must provide to the Department on request any information which the participant holds and which the Department requires in order to discharge its functions under these Regulations.

(2) Participants must retain the information referred to in Schedule 1, including such information as may reasonably be required by the Department under paragraph 1(2)(e), (f), (h), (k), (n), (v) or (w) and whether or not copies of that documentation have been supplied to the Department, for the duration of their participation in the scheme.

(3) Information requested under paragraph (1) must be provided within 7 days of the request or such later date as the Department may specify.

(4) Information provided to the Department under these Regulations must be accurate to the best of the participant's knowledge and belief.

(5) Sub-paragraphs (3) and (4) of paragraph 1 of Schedule 1 have effect.

## PART 5

### PERIODIC SUPPORT PAYMENTS

#### Payment of periodic support payments to participants

36.—(1) Periodic support payments shall accrue from the tariff start date and shall be payable for 20 years.

(2) Periodic support payments shall be calculated and paid by the Department.

(3) Subject to regulation 42(5) and paragraph (7) ~~reference to para (9) must go as that para has been removed and the words “this regulation” are in any event superfluous~~, the tariff for an accredited RHI installation shall be fixed when that installation is accredited.

(4) Subject to paragraph (7), the tariff for a participant who is a producer of biomethane is the biomethane and biogas combustion tariff set out in Schedule 3.

(5) Subject to paragraphs (6) and (7) ~~again, reference to para (9) must go~~, the tariff for an accredited RHI installation is the tariff set out in Schedule 3 in relation to its source of energy or technology and installation capacity.

(6) For the purposes of paragraph (5), where the accredited RHI installation is one of a number of plants forming part of the same heating system its installation capacity is to be taken to be the sum of the installation capacities of that accredited RHI installation and all plants for which an application for accreditation has been made (whether or not they have been accredited) which—

- (a) use the same source of energy and technology as that accredited RHI installation; and
- (b) form part of the same heating system as that accredited RHI installation.

(7) The tariffs—

- (a) for the period beginning with the commencement of these Regulations and ending with [31st March 2012], are the tariffs set out in Schedule 3; and
- (b) for each subsequent year commencing with 1st April and ending with 31st March, are the tariffs applicable on the immediately preceding 31st March adjusted by the percentage increase or decrease in the retail prices index for the previous calendar year (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards).

(8) The Department must calculate the tariff rates each year in accordance with paragraph (7) and publish on [or before 1st April of each year a table of tariffs for the period commencing with 1st April of that year and ending with 31st March of the following year]. ~~Noted that what is reg 37(9) and (10) of the GB Regs is not replicated here, there being no tiers included in these draft Regs for small and medium biomass~~

#### Periodic support payments for accredited RHI installations in simple systems

37.—(1) This regulation applies to participants who own an accredited RHI installation (“the installation”) which—

- (a) is generating and supplying heat solely for one or more eligible purposes used in one building;
- (b) does not deliver heat by steam; and
- (c) is not a CHP system.

(2) Subject to regulations 39 and 40, participants shall be paid a periodic support payment for the installation in respect of each quarterly period calculated in accordance with one of the following formulae, as applicable—

- (a)  $A \times B$ ; or
- (b) where the installation is generating heat from the combustion of biogas,  $A \times (B - C)$ ,

where—

A is the tariff for the installation determined in accordance with regulation 36;

B is the heat in kWhth generated by the installation during the relevant quarterly period; and

C is the heat in kWhth directed from the installation or delivered by any other source to the biogas production plant which produced the biogas combusted in the relevant quarterly period (other than heat contained in feedstock used to produce biogas by anaerobic digestion).

#### **Periodic support payments accredited RHI installations for complex systems**

**38.**—(1) This regulation applies to participants who own an accredited RHI installation (“the installation”) which does not fall within regulation 37.

(2) Subject to regulations 39 and 40, participants shall be paid a periodic support payment for the installation in respect of each quarterly period calculated in accordance with one of the following formulae, as applicable—

- (a)  $A \times B \times D/E$ ; or
- (b) where the accredited RHI installation is generating heat from the combustion of biogas,  $A \times (B - C) \times D/E'$

Where A is the tariff for the installation determined in accordance with regulation 36;

B is the heat in kWhth used by the heating system of which the installation forms part during the relevant quarterly period for eligible purposes;

C is the heat in kWhth directed from the installation or delivered from any other source to the biogas production plant which produced the biogas combusted in the relevant quarterly period (other than heat contained in feedstock to produce biogas by anaerobic digestion) or, where there is no such heat, zero;

D is the heat in kWhth generated by the installation during the relevant quarterly period; and

E is the heat in kWhth generated by all plants supplying heat to the same heating system of which the installation forms part in the relevant quarterly period.

### Fossil fuel contamination of solid biomass and fossil fuel used for permitted ancillary purposes

39.—(1) This regulation applies to participants generating heat in an accredited RHI installation where the heat is generated from solid biomass contained in municipal waste. ~~Need to correct the indentation~~

(2) Where heat is generated from solid biomass contained in municipal waste the periodic support payment calculated in accordance with regulation 37 or 38 shall be reduced pro rata to reflect the proportion of the energy content of the municipal waste used in the relevant quarterly period which was composed of fossil fuel and, where fossil fuel has been used for permitted ancillary purposes in accordance with regulation 28, to reflect the proportion of fossil fuel so used which resulted in the generation of heat. ~~Noted that the references to “Case A” and “Case B” in the corresponding provision of the GB Regs are not replicated here as the provisions on case b are not replicated and thus there is no need to designate the surviving provisions (which equate to case A) as Case A. removal of case B reflects the paparent decision not to make RHI payments to owners of biomass installations where the installation capacity equals or exceeds 1 MWth~~

### Fossil fuel contamination adjustment to periodic support payments for producers and combusters of biogas produced from gasification and pyrolysis

40.—(1) This regulation applies to participants producing biogas from gasification or pyrolysis and generating heat from that biogas in an accredited RHI installation.

(2) Where, in accordance with regulation 30, a participant uses feedstock contaminated with fossil fuel, the periodic support payment calculated in accordance with regulation 37 or 38 shall be reduced pro rata to reflect the proportion of fossil fuel contamination in the feedstock used by the participant in the relevant quarterly period.

### Periodic support payments to producers of biomethane

41. Participants producing biomethane for injection shall be paid a periodic support payment in respect of each quarterly period calculated in accordance with the following formula—

$$A \times (B - (C + D + E)) \times F,$$

where—

A is the biomethane and biogas combustion tariff determined in accordance with regulation 36;

B is the kWh of biomethane injected in any quarterly period;

C is the kWh of propane contained in B;

D is the kWhth of heat supplied to the biogas production plant (other than heat contained in feedstock to produce biogas by anaerobic digestion) which produced the biogas from which the biomethane was made, from any heat source other than heat generated from the combustion of that biogas;

E is the kWhth of heat supplied to the biomethane production process; and

F applies only in relation to biomethane made using biogas produced from gasification or pyrolysis, and is the proportion of biomass contained in the feedstock used in the relevant quarterly period to produce the biogas.

## PART 6

## ADDITIONAL RHI CAPACITY

**Treatment of additional RHI capacity**

42.—(1) This regulation applies where a participant installs additional RHI capacity.

(2) In this regulation “additional RHI capacity” means a plant which is—

- (a) first commissioned after the date on which an accredited RHI installation (“the original installation”) was first commissioned;
- (b) uses the same source of energy and technology as the original installation; and
- (c) supplies heat to the same heating system as that of which the original installation forms part.

(3) A participant must inform the Department within 28 days of the additional RHI capacity being first commissioned.

(4) Paragraph (5) applies where the additional RHI capacity is first commissioned within 12 months of the date on which the original installation was first commissioned.

(5) Where this paragraph applies—

- (a) the Department may review the accreditation of any accredited RHI installation using the same source of energy and technology and supplying heat to the same heating system as the additional RHI capacity;
- (b) upon an application for accreditation of the additional RHI capacity, the Department must—
  - (i) treat the additional RHI capacity as if it were part of the original installation; and
  - (ii) decide whether or not to accredit the additional RHI capacity and original installation as one eligible installation in accordance with Part 3;
- (c) subject to sub-paragraph (d), a refusal of accreditation under sub-paragraph (b)(ii) does not affect the accreditation of the original installation;
- (d) if a review undertaken in accordance with sub-paragraph (a) results in a finding that a relevant ongoing obligation is no longer being complied with, the Department may take appropriate action under Part 7; and
- (e) where the Department grants accreditation in accordance with sub-paragraph (b), from the date of that accreditation a participant’s periodic support payments in respect of the original installation will be replaced by periodic support payments calculated using the applicable tariff determined in accordance with paragraph (7) of regulation 36 in relation to the source of energy and technology concerned based on the sum of the installation capacities of the additional RHI capacity and the original installation, and will terminate with the tariff end date of the original accredited RHI installation.

(6) Paragraph (7) applies where the additional RHI capacity is first commissioned more than 12 months after the original installation was first commissioned.

(7) Where this paragraph applies, the Department may review the accreditation of any accredited RHI installation using the same source of energy and technology and supplying heat to the same heating system as the additional RHI capacity; and if a review results in a finding that a relevant ongoing obligation is no longer being complied with, the Department may take appropriate action under Part 7.

(8) All additional RHI capacity must be individually metered.

## PART 7

## ENFORCEMENT

**Power to temporarily withhold periodic support payments to investigate alleged non-compliance**

43.—(1) Where the Department has reasonable grounds to suspect that a participant has failed or is failing to comply with an ongoing obligation and the Department requires time to investigate, it may temporarily withhold all or part of that participant's periodic support payments.

(2) Within 21 days of a decision to withhold periodic support payments, the Department must send a notice to the participant specifying—

- (a) the respect in which the Department suspects the participant has failed or is failing so to comply;
- (b) the reason why periodic support payments are being withheld;
- (c) the date from which periodic support payments will be withheld;
- (d) the next steps in the investigation; and
- (e) details of the participant's right of review including any relevant time-limits.

(3) The Department's investigation must be commenced and completed as soon as is reasonably practicable.

(4) The Department may withhold a participant's periodic support payments for a maximum period of 6 months commencing with the date specified in accordance with the notice required by paragraph (2)(c).

(5) The Department must review its decision to withhold a participant's periodic support payments every 30 days commencing 30 days after the date of the notice required by paragraph (2).

(6) Following a review pursuant to paragraph (5), the Department must send a notice to the participant providing an update on—

- (a) the progress of any investigation to date; and
- (b) whether the Department intends to continue to withhold periodic support payments.

(7) For the purposes of calculating the time-limit specified in paragraph (4), no account is to be taken of any period attributable to the participant's delay in providing any information reasonably requested by the Department.

(8) For the purposes of paragraph (7), a participant is not to be deemed to have delayed in providing information if that participant responds within 2 weeks of a request from the Department.

(9) On expiry of the period referred to in paragraph (4) or, if earlier, the conclusion of the investigation, the Department must—

- (a) send the participant a notice specifying the outcome of the investigation or, where the investigation is not concluded, inform the participant accordingly; and
- (b) pay within 28 days of the date of that notice all periodic support payments temporarily withheld under this regulation, subject to any permanent withholding or reduction of any such payments under regulation 45.

(10) If, on conclusion of the investigation, the Department is satisfied that a participant is failing or has failed to comply with an ongoing obligation it may impose one or more of the other sanctions set out in this Part.

#### **Power to suspend periodic support payments where ongoing failure to comply**

**44.**—(1) Where the Department is satisfied that a participant is failing to comply with an ongoing obligation it may suspend that participant's periodic support payments.

(2) Within 21 days of a decision to suspend periodic support payments the Department must send a notice to the participant specifying—

- (a) the respect in which the Department is satisfied that the participant is failing so to comply;
- (b) the reason why periodic support payments are being suspended;
- (c) the date from which the suspension is effective;
- (d) the steps that the participant must take to satisfy the Department that it is complying with the ongoing obligation;
- (e) the consequences of the participant failing to take the steps required pursuant to sub-paragraph (d) including potential sanctions; and
- (f) details of the participant's right of review including any relevant time-limits.

(3) Within 21 days of being satisfied that the participant is complying with the ongoing obligation the Department must remove the suspension.

(4) If, within 6 months the Department is satisfied that the participant has taken the steps specified by notice under paragraph (2), the Department may pay within 28 days of being so satisfied all periodic support payments withheld under this regulation.

(5) The maximum period for which the Department may suspend a participant's periodic support payments is 1 year.

(6) Subject to paragraph (4), a participant may not recover any periodic support payments suspended in accordance with this regulation.

#### **Power to permanently withhold or reduce a participant's periodic support payments**

**45.**—(1) Where the Department is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing obligation during any quarterly period and the periodic support payment for that quarterly period has not been paid, the Department may ~~request that the Department~~ take one or more of the following actions—~~highlighted words don't make sense~~

- (a) permanently withhold a proportion of the participant's periodic support payment which corresponds to the proportion of that quarterly period during which the participant failed so to comply;
- (b) reduce a participant's periodic support payment for that quarterly period or for the quarterly period immediately following.

(2) Within 21 days of a decision to permanently withhold or to reduce a periodic support payment, the Department must send a notice to the participant specifying, as applicable—

- (a) the respect in which the participant has failed so to comply;
- (b) the reason why a periodic support payment is being withheld or reduced;
- (c) the period in respect of which any periodic support payment is to be withheld or reduced;
- (d) the level of any reduction; and
- (e) details of the participant's right of review including any relevant time-limits.

(3) Where reducing a periodic support payment in accordance with paragraph (1)(b), the Department may determine the level of the reduction (taking into consideration all factors which it considers relevant) up to a maximum reduction of 10 per cent of the periodic support payment in question.

### **Revocation of accreditation or registration**

**46.**—(1) Where the Department is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing obligation it may take one or more of the following actions—

- (a) revoke accreditation for the accredited RHI installation in respect of which there has been a material or repeated failure;
- (b) revoke accreditation for any other accredited RHI installations owned by that participant;
- (c) in relation to a participant who is a producer of biomethane for injection, revoke that participant's registration.

(2) Within 21 days of a decision to revoke accreditation or registration the Department must send a notice to the participant specifying—

- (a) the reason for the revocation of accreditation or registration including, where applicable, details of the respect in which the participant has failed so to comply;
- (b) an explanation of the effect of the revocation; and
- (c) details of the participant's right of review including any relevant time limits.

(3) Where accreditation of an accredited RHI installation has been revoked, or a participant's registration has been revoked, the Department may refuse to accredit any eligible installations owned by the same person or refuse to register that person as a producer of biomethane for injection at any future date.

### **Overpayment notices and offsetting**

**47.**—(1) Where the Department is satisfied that a participant has received a periodic support payment which exceeds that participant's entitlement or has received a periodic support payment whilst failing to comply with an ongoing obligation it may—

- (a) require the participant to repay the periodic support payment as a civil debt owed to the Department; or
- (b) offset the periodic support payment against any future periodic support payments.

(2) Within 21 days of a decision to offset or require the participant to repay any periodic support payment the Department must send the participant a notice specifying—

- (a) the periodic support payment which the Department believes has been overpaid and the sum which it is seeking to recover from the participant;
- (b) whether the sum specified in sub-paragraph (a) will be recovered in accordance with paragraph (1)(a) or (1)(b);
- (c) where applicable, a date by which the sum specified in sub-paragraph (a) must be repaid;
- (d) the consequences of failing to make any repayments requested including potential sanctions or civil action; and
- (e) details of the participant's right of review including any relevant time limits.

## PART 8

### REVOCATION OF SANCTIONS

#### Revocation of Part 7 sanctions

**48.**—(1) The Department may at any time revoke a sanction imposed in accordance with Part 7 if it is satisfied that—

- (a) there was an error involved in the original imposition of the sanction; or
- (b) it is just and equitable in the particular circumstances of the case to do so.

(2) Within 21 days of a decision to revoke a sanction, the Department must send a notice to the participant specifying—

- (a) the sanction which has been revoked;
- (b) the reason for the revocation;
- (c) what action if any the Department proposes to take in relation to any loss incurred by the participant as a result of the imposition of the sanction including the time within which any action will be taken; and
- (d) details of someone within the Department whom the participant may contact if they are not satisfied with the proposals made by the Department under sub-paragraph (c).

## PART 9

### INSPECTION

#### Power to inspect accredited RHI installations

**49.**—(1) The Department or its authorised agent may request entry at any reasonable hour to inspect an accredited RHI installation and its associated ~~infrastructure~~<sup>infrastructure<sup>y</sup></sup> to undertake any one or more of the following—

- (a) verify that the participant is complying with all applicable ongoing obligations;

<sup>y</sup> DETI to confirm whether this should explicitly state 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.

- (b) verify meter readings;
- (c) take samples and remove them from the premises for analysis;
- (d) take photographs, measurements or video or audio recordings;
- (e) ensure that there is no other contravention of these Regulations.

(2) Within 21 days of a request made under paragraph (1) being (in its opinion) unreasonably refused the Department must send a notice to the participant specifying—

- (a) the reason why the Department considers the refusal to be unreasonable;
- (b) the consequences of the refusal, including potential sanctions for failing to comply with the ongoing obligation imposed by regulation 33(i); and
- (c) details of the participant's right of review including any relevant time-limits.

## PART 10

### REVIEWS

#### **Right of review**

**50.**—(1) Any prospective, current or former participant affected by a decision made by the Department in exercise of its functions under these Regulations (other than a decision made in accordance with this regulation) may have that decision reviewed by the Department.

(2) An application for review must be made by notice in such format as the Department may require and must—

- (a) be received by the Department within 28 days of the date of receipt of notification of the decision being reviewed;
- (b) specify the decision which that person wishes to be reviewed;
- (c) specify the grounds upon which the application is made; and
- (d) be signed by or on behalf of the person making the application.

(3) A person who has made an application in accordance with paragraph (2) must provide the Department with such information and such declarations as the Department may reasonably request in order to discharge its functions under this regulation, provided any information requested is in that person's possession.

(4) On review the Department may—

- (a) revoke or vary its decision;
- (b) confirm its decision;
- (c) vary any sanction or condition it has imposed; or
- (d) replace any sanction or condition it has imposed with one or more alternative sanctions or conditions.

(5) Within 21 days of the Department’s decision on a review, it must send the applicant and any other person who is in the Department’s opinion affected by its decision a notice setting out its decision with reasons.

## PART 11

### ADMINISTRATIVE FUNCTIONS OF THE DEPARTMENT AND NOTICES

#### Publication of guidance and tariffs

**51.**—(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme. ~~Noted that the provisions of reg 53(1) to (5) and 54 of the GB Regs are not replicated here, due to the fact that, although the proposal is that, as in the case of the GB Regs, GEMA should administer the NI Regs on behalf of another Department, that is to be effected by means of “arrangements” being entered into under section 114 of the Energy Act 2011.~~

(2) The Department must publish the following information on its website—

- (a) [current] 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) [current] 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
  - (iii) the total amount of periodic support payments made in respect of that biomethane. ~~Noted that the requirement in the GB Regs that the information be “current” (i.e. not more than 5 days out of date) is not replicated here. Effect of its inclusion in GB Regs appears to be to require publication every few days. Conversely, the effect of its exclusion here is unclear. Arguably publication is required only once—though it is not clear when? Surely there should be a requirement to publish at regular intervals (even if not every few days) as per the GB Regs. Publication only once seems fairly pointless.~~<sup>z</sup>

#### Notices

**52.** A notice under these Regulations—

- (a) must be in writing; and
- (b) may be transmitted by electronic means.

<sup>z</sup> [OFGEM COMMENT - Noted that the requirement in the GB Regs that the information be “current” \(i.e. not more than 5 days out of date\) is not replicated here. Effect of its inclusion in GB Regs appears to be to require publication every few days. Conversely, the effect of its exclusion here is unclear. Arguably publication is required only once—though it is not clear when? Surely there should be a requirement to publish at regular intervals \(even if not every few days\) as per the GB Regs. Publication only once seems fairly pointless.](#) □  
 DETI— we note that this wording was preferred by the Department. Please let us know if it is the Department’s policy to have this information published at regular intervals. □

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on

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*A F Hepper*  
A senior officer of the Department of Enterprise, Trade and Investment

## SCHEDULES

## SCHEDULE 1

Regulations 22, 24, 25, 26 and 35

**Information required for accreditation and registration**

1.—(1) This Schedule specifies the information that may be required of a prospective participant in the scheme.

(2) The information is, as applicable to the prospective participant—

- (a) name, home address, e-mail address and telephone number;
- (b) any company registration number and registered office;
- (c) any trading or other name by which the prospective participant is commonly known;
- (d) details of a bank account in the prospective participant's name which accepts pound sterling deposits in the United Kingdom;
- (e) information to enable the Department to satisfy itself as to the identity of the individual completing the application;
- (f) where an individual is making an application on behalf of a company, evidence which satisfies the Department, that the individual has authority from the company to make the application on its behalf;
- (g) details of the eligible installation owned by the prospective participant including its cost;
- (h) evidence, which satisfies the Department, as to the ownership of the eligible installation;
- (i) evidence that the eligible installation was new at the time of installation;
- (j) where an eligible installation has replaced a plant, details of the plant replaced;
- (k) evidence which demonstrates to the Department's satisfaction the installation capacity of the eligible installation;
- (l) details of the fuel which the prospective participant is proposing to use;
- (m) in relation to prospective participants generating heat from biomass, notification as to whether the prospective participant is proposing to use solid biomass contained in municipal waste and, if so, whether or not the prospective participant is regulated under the Pollution Prevention and Control Regulations (Northern Ireland) ~~2003~~<sup>12</sup>[2003<sup>aa</sup>](#);
- (n) where the plant is a heat pump, evidence which demonstrates to the Department's satisfaction, that the heat pump meets a coefficient of performance of at least 2.9;
- (o) in respect of a producer of biogas or biomethane, details of the feedstock which the producer is proposing to use;

<sup>12aa</sup> S.R. 2003 No. 46

- (p) details of what the heat generated will be used for and an estimate of how much heat will be used together with an estimate of the number of hours of operation per week in which heat will be generated for an eligible purpose ~~This proposed amendment replicates one intended to have effect permanently that is included in DECC's amending (interim cost control) Regulations that are due to come into force at the beginning of July. In view of the imminence of the coming into force of those Regulations, it is assumed that DETI will wish to replicate this GB amendment here.~~<sup>bb</sup>
- (q) details of the building in which the heat will be used;
- (r) the industry sector for which the heat will be used;
- (s) details of the size and annual turnover of the prospective participant's organisation;
- (t) details of other plants generating heat which form part of the same heating system as the eligible installation to which the application relates;
- (u) where regulation 13 applies, evidence from the installer that the requirements specified in that regulation are met;
- (v) such information as the Department may specify to enable it to satisfy itself that the requirements of Chapter 3 of Part 2 have been met including—
- (i) evidence that a class 2 heat meter, other heat meter or steam measuring equipment has been installed;
  - (ii) evidence that the class 2 heat meter, other heat meter or steam measuring equipment was calibrated prior to use;
  - (iii) in relation to all heat meters, details of the meter's manufacturer, model, meter serial number;
  - (iv) a schematic diagram showing details of the heating system of which the eligible installation forms part, including all plants generating and supplying heat to that heating system, all purposes for which heat supplied by that heating system is used, the location of meters and associated components and such other details as may be specified by the Department;
  - (v) where regulation 17 applies; if so requested by the Department, an independent report by a competent person verifying that such of those requirements as the Department may specify have been met; ~~noted that para 1(2)(v)(v)(aa) of Sched 1 to the GB Regs is not replicated here—reflecting the decision not to make RHI payments in respect of biomass installations having an installation capacity of 1000 MWth or above~~
- (w) such other information as the Department may require to enable it to consider the prospective participant's application for accreditation or registration.

(3) Information specified in this Schedule must be provided in such manner and form as the Department may reasonably request.

(4) The costs of providing the information specified in this Schedule are to be borne by the applicant.

<sup>bb</sup> [OFGEM COMMENT - This proposed amendment replicates one intended to have effect permanently that is included in DECC's amending \(interim cost control\) Regulations that are due to come into force at the beginning of July. In view of the imminence of the coming into force of those Regulations, it is assumed that DETI will wish to replicate this GB amendment here.](#)

[DETI – Please confirm that you wish to replicate this amendment.](#)

**Provision of information in relation to the use of biomass in certain circumstances**

**Information to be provided to the Department where biomass is used for combustion or production of biomethane**

1. This Schedule specifies the information that a participant is required to provide under regulation 32(9).
2. The information is information identifying to the best of the participant's knowledge and belief, in such manner and form as the Department may require—
  - (a) the material from which the solid biomass was composed;
  - (b) the form of the solid biomass;
  - (c) its mass;
  - (d) whether the solid biomass was a by-product of a process;
  - (e) whether the solid biomass was derived from waste;
  - (f) where the solid biomass was plant matter or derived from plant matter, the country where the plant matter was grown;
  - (g) where the information specified in paragraph (f) is not known or the solid biomass was not plant matter or derived from plant matter, the country from which the operator obtained the solid biomass;
  - (h) whether any of the solid biomass used was an energy crop or derived from an energy crop and if so—
    - (i) the proportion of the consignment which was or was derived from the energy crop; and
    - (ii) the type of energy crop in question;
  - (i) whether the solid biomass or any matter from which it was derived was certified under an environmental quality assurance scheme and, if so, the name of the scheme;
  - (j) where the solid biomass was plant matter or derived from plant matter, the use to which the land on which the plant matter was grown has been put since 30th November 2005.
3. The information specified in paragraph 2 must be collated by reference to the following places of origin—
  - (a) United States of America or Canada;
  - (b) the European Union;
  - (c) other.
4. The information specified in paragraph 2 must be provided for every quarterly period.
5. For the purpose of this Schedule—

“energy crop” means a plant crop planted after 31st December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following—

- (a) miscanthus giganteus (a perennial grass);
- (b) salix (also known as short rotation coppice willow);
- (c) populus (also known as short rotation coppice poplar);

“environmental quality assurance scheme” means a voluntary scheme which establishes environmental or social standards in relation to the production of biomass or matter from which a biomass is derived.

~~SCHEDULE 3 – Tariffs Regulation 36 noted that there are substantial differences between the tariffs below and GB counterparts, including that, although the designation “large biomass” is retained, payments are not available for biomass plants having an installation capacity of 1000kWth or above.~~

SCHEDULE 3 – Tariffs<sup>cc</sup>      Regulation 36

**Table 1**

| <i>Tariff name</i>               | <i>Sources of energy or Technology</i>   | <i>Installation capacity</i>                                 | <i>Tariff Pence/kWh</i> |
|----------------------------------|--|--|-------------------------|
| Small Biomass                    | Solid biomass including solid biomass contained in municipal solid waste and CHP | Less than 20kWth   | 6.2                     |
| Medium Biomass                   | As above   | 20kWth and above up to but not including 100kWth             | 5.9                     |
| Large Biomass                    | As above   | 100kWth and above up to but not including 1000kWth           | 1.5                     |
| Small heat pumps                 | Ground source heat pump, water source heat pump, deep geothermal                 | Less than 20kWth   | 8.4                     |
| Medium heat pumps                | As above   | 20kWth and above up to but not including 100kWth             | 4.3                     |
| Large heat pumps                 | As above   | 100kWth and above  | 1.3                     |
| All Solar collectors             | Solar collectors   | Below 200kWth  | 8.5                     |
| Biomethane and biogas combustion | Biomethane injection and biogas combustion                                       | All biomethane injection and biogas combustion below 200kWth | 3.0                     |

<sup>cc</sup> DETI - please confirm that the deletion of 'commercial' from each of the 'tariff names' is agreed



**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations establish a renewable heat incentive scheme (“the scheme”) under which owners of plants which generate heat from specified renewable sources and meet specified criteria may receive payments at prescribed tariffs for the heat used for eligible purposes. Payments may also be made to biomethane producers who produce biomethane for injection. The Regulations confer functions on the Department in connection with matters in connection with the general administration of the scheme.

Regulation 3 confers on the Department the function of making payments to participants in the scheme and specifies the eligible purposes for which heat will receive payment.

Chapter 1 of Part 2 (Regulation 4) defines criteria (“eligibility criteria”) that must be satisfied for a plant to be eligible to participate in the scheme.

Chapter 2 of Part 2 (Regulations 5 to 15) specifies the eligibility criteria other than those in relation to metering.

Chapter 3 of Part 2 (Regulations 16 to 21) specifies the eligibility criteria in relation to metering, setting out the types of meters which may be used, the requirements with which they must comply and what must be measured.

Part 3 (regulations 22 to 26) sets out the procedures for accreditation, registration, change of ownership and preliminary accreditation. Regulation 22 confers on the Department the function of accrediting eligible installations (which upon accreditation are known as accredited RHI installations) and specifies the process by which applicants apply to the Department for accreditation.

Regulation 23 specifies the circumstances in which the Department may not accredit a plant. These include matters relating to the receipt of grants from public funds; where a plant has not been commissioned; where an applicant has indicated that applicable ongoing obligations will not be complied with and where the plant is one of a number of plants which would together form one eligible installation in accordance with Part 2.

Regulation 24 specifies the procedure for notifying the Department where there has been a transfer in ownership of all or part of an accredited RHI installation and sets out the process by which the new owner may receive payments under the scheme.

Regulation 25 confers on the Department the function of registering producers of biomethane who are producing biomethane for injection. It specifies the process by which applicants apply to the Department for registration and specifies the circumstances in which an application for registration can be refused.

Regulation 26 sets out the process by which a person may apply for and the Department may grant preliminary accreditation in respect of a plant.

Chapter 1 of Part 4 (Regulations 27 to 29) sets out ongoing obligations for participants in the scheme with which participants generating heat from biomass must comply.

Regulation 28 applies to participants generating heat from solid biomass contained in municipal waste. It specifies the minimum proportion of solid biomass which must be contained in the municipal waste used, sets out how the proportion of solid biomass is determined and specifies the permitted uses of fossil fuel in accredited RHI installations.

Regulation 29 applies to participants generating heat from solid biomass, not being solid biomass contained in municipal waste, in accredited installations with an installation capacity of between 45kWth and 1MWth. It specifies the permitted levels of and reasons for fossil fuel contamination, sets out how the proportion of fossil fuel contamination is determined and specifies the permitted uses of fossil fuel in accredited RHI installations.

Chapter 2 of Part 4 (Regulations 30 to 32) sets out ongoing obligations for participants who are generating heat from biogas and producing biomethane for injection.

Regulation 30 applies to participants producing biogas using gasification or pyrolysis and generating heat from that biogas. It stipulates composition requirements for the feedstock used by participants and specifies the permitted uses of fossil fuel in accredited RHI installations.

Regulation 31 applies to participants generating heat from biogas to whom regulation 30 does not apply. It stipulates feedstock requirements for participants using biogas produced from anaerobic digestion and specifies permitted uses of fossil fuel in accredited RHI installations.

Regulation 32 applies to biomethane producers who produce biomethane for injection. It specifies composition requirements for feedstocks used to produce the biogas from which the biomethane is made and sets out the ongoing obligations relating to administration with which participants must comply. It also imposes a sustainability reporting requirement.

Chapter 3 of Part 4 (Regulations 33 to 35) sets out the ongoing obligations for participants which are not specific to those participants generating heat from biomass or biogas or producing biomethane for injection.

Regulation 33 specifies general ongoing obligations relating to administrative and other matters with which participants must comply.

Regulation 34 specifies the ongoing obligations in relation to metering. It imposes requirements on participants in relation to their heat meters and steam measuring equipment; requires participants to provide data when requested by the Department; and specifies the metering arrangements for participants using heat pumps for both heating and cooling. This regulation also permits the data to be estimated in exceptional circumstances.

Regulation 35 specifies ongoing obligations in relation to the provision of information and gives effect to Schedule 1.

Part 5 (regulations 36 to 41) confers on the Department the function of calculating and paying periodic support payments to participants. These regulations specify the method by which tariffs are assigned; confer a function on the Department to calculate and publish a table of tariffs each year based on the tariffs set out in Schedule 3 adjusted in line with the retail price index and specifies the method by which periodic support payments are calculated.

Part 6 (regulation 42) specifies how a plant using the same source of energy and technology as an accredited RHI installations and supplying heat to the same heating system (known as additional RHI capacity) is to be treated under the scheme.

Part 7 (regulations 43 to 47) sets out the provisions in relation to enforcement.

Regulations 43 to 45 confer on the Department a wide range of powers to temporarily or permanently withhold a participant's periodic support payments or reduce a periodic support payment.

Regulation 46 confers a power on the Department to revoke accreditation or registration in certain circumstances.

Regulation 47 confers a power on the Department to recover overpayments.

Part 8 (regulation 48) confers on the Department a power to revoke any sanction imposed under Part 7 and specifies the circumstances and manner in which the Department may exercise this power.

Part 9 (regulation 49) confers on the Department or its authorised agent the power to inspect an accredited RHI installation and its associated infrastructure and specifies the manner and circumstances in which this power may be exercised and the consequences of refusal.

Part 10 (regulation 50) confers a right of review on any prospective, current or former participant affected by a decision made by the Department under these Regulations, sets out the process by which a person may request a review of such decisions and specifies the Department's powers on review.

Part 11 (regulations 51 and 52) confers additional administrative functions on the Department. Under regulation 51 the Department must publish procedural guidance in connection with the administration of the scheme and requires the Department to publish certain information on its website.

Regulation 52 describes the form of notices under these Regulations.

~~[A draft of these Regulations was notified to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37) as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18). Noted that this para has been included and it presumably reflects that either the notification has occurred or that, if it hasn't, it will do. On the face of it, if the Regs are largely replicating the GB Regs, notification will be required (the GB Regs were notified) and the eventual Regs will be unenforceable if they should be notified in advance under the directive but aren't. Complying with the requirements of the directive will involve notifying the draft Regs to Brussels and other member States and a *minimum* 3 months standstill period following the notification before it is lawful to enact the Regs]~~<sup>dd</sup>

~~Noted also that the para in the GB Regs re an impact assessment is not replicated here. Is this because there is no obligation in NI to produce an I.A or is there simply no obligation to mention it in the E.N?~~

[A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Enterprise, Trade and Investment at Netherleigh, Massey Avenue, Belfast BT4 2JP and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).]<sup>ee</sup>

<sup>dd</sup> DETI - Wording included pending the Department's consideration of the advice in our email of 17 July 2012.

<sup>ee</sup> DETI - Wording reinserted pending the Department's consideration of the advice in our email of 17 July 2012.