

**From:** [Michelle Murdoch](#)  
**To:** [Marcus Porter](#); [William Elliott](#); [McCutcheon, Joanne](#); [Hutchinson, Peter](#)  
**Cc:** [Keith Avis](#); [Rita Chohan](#); [Paul Heigl](#)  
**Subject:** Resolution Grid  
**Date:** 11 September 2012 16:53:40  
**Attachments:** [image001.gif](#)  
[Copy of Issues to resolve \(2\).xlsx](#)

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Dear all,

Thanks for your participation in the meeting today. Please find attached the 'resolution grid' which we worked upon in the meeting.

Kind Regards

Michelle

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**MAIN OBJECTIVE OF THE MEETING: Key thing is to decide how we can resolve these issues for the guidance, if we can't then the fall back MUST be how we manage this in the consultation document.**

Issue	Resolution options?	To be resolved by
<p><b>&lt;45 Kw Biomass</b></p> <p>Volume 2 4.37 "As set out above, solid biomass plants with an installation capacity of less than 45kW are allowed to use contaminated solid biomass fuels, but the energy content of these fuels cannot exceed 10 per cent of the energy content of the biomass fuels used in the quarter.".. (LEGAL Ofgem) the regs do not actually provide for this. Consequently, this whole section may need deleting?</p> <p>DETI's reply...Think we should remain consistent with GB – <b>we will need to amend our Regs.</b></p> <p>Ofgem Legal have concerns about DETI's comments on Vol 2 4.37 "as you and I (Marcus and Will) both share concerns about the way in which we currently address this issue under the GB regs (ie by imposing a condition of accreditation on &lt;45kw installations). DETI have not yet reverted substantively on this issue, which I explained in detail to them when sending across the draft Arrangements, so this is something we will need to address with them the w/c 3rd September. Having spoken with Paul, I understand that the majority of biomass installations &lt;45 Kw are unable to use fossil fuel, so this may be more of an issue in theory than in practice.</p> <p>This will also have an impact on other sections of the guidance and needs resolved asap - including whether an FMS (fuel measurement sampling) is required for these installations</p>	<p># Either leave out completely <b>OR</b> add into Guidance without any back up from the Regs?</p> <p><b>DECISION: TAKE OUT TABLES AND SECTION HIGHLIGHTED MP HIGHLIGHT TO MM OTHER AREAS IN GUIDANCE THIS AFFECTS.</b></p>	<p>MM MP</p>
<p><b>Statutory Review</b></p> <p>Volume 2 12.23 23 DETI's SRO (Statutory Review Officer) will aim to reach a decision within 20 working days. If it is not possible to do so in that time, the SRO should provide the affected person with an update within this time. The update will give a timescale (normally 20 working days) for when DETI will next be in contact regarding the request for review. Within 21 days of DETI's SRO reaching their decision, they will write to the affected person (and any other person whom we believe to be affected by the decision), to inform them of the statutory review decision with reasons. <b>Ofgem Legal</b> believe this time frame is far too small given that Ofgem will most likely be preparing the case materials and making a recommendation to DETI. Will to discuss with Marcus concerning DETI and time limits re. Statutory Review. <b>(WILL - LEGAL)</b> I think it unlikely that DETI will be able to complete a statutory review within 20 days. As a matter of law (public law and Article 6 ECHR) statutory remedies must be effective, which, in the case of a statutory reviews requires that they should be completed in a timely manner. While it is not something I have looked at in any detail, I am pretty certain that DETI can carry out the review over a significantly longer period than 20 days and still comply with applicable public law/ECHR requirements.</p>	<p># Leave at 20 days <b>OR</b> come to an agreement which DETI is comfortable with as to how many days to include in the Guidance. <b>DECISION: CHANGE TO 30 DAYS. RELEVANT PARTS OF NI RHI GUIDANCE (STATUTORY AND SEPARATION OF POWERS RE. COMPLIANCE/ENFORCEMENT) TO BE SENT TO JOANNE TO BE SEEN BY FIONA AS DRAFT ADMINISTRATIVE AGREEMENT WILL NOT BE BACK TO DETI IN TIME FOR CONSULTATION PERIOD</b></p>	<p><b>JM- Reporting back tomorrow.</b></p>
<p><b>GBRHI scheme open letter consultation - latest update..</b></p> <p>Jessica Ladbury will be emailing a draft response letter later today for internal review which lists all the changes in the annex. It should be coming into being by COP next week.</p>	<p># There is not time to include in the Guidance as the GB changes will not be coming into play until AFTER Guidance is sent to DETI on the 13th...</p> <p># <b>Potential to add a supplemental document for the beginning of the NI consultation period?</b></p> <p><b>DECISION: INCLUDE ALL ADMIN CHANGES AS PER MARCUS' EMAIL. NOT TO INCLUDE BIOGAS HEAT GENERATION TABLE 3 AS YET. (SEE BELOW)</b></p>	<p>MM</p>
<p><b>Renewable Heat Incentive Scheme Regs (NI) 2012</b> New draft available?</p> <p>This would also include the meaning of 'waste' in Part 4 - other than in the term 'municipal waste' - according to Marcus this has been included in the new draft version. Confirmation needed.</p> <p><b>"municipal waste" has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003 (2003 c.33)</b></p> <p><b>"waste" has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997. (S.I. 1997/2778 (N.I. 19), Article 2(2) was amended by SR 2011 No.127)</b></p>	<p><b>DO HAVE NEW DRAFT REGS. THEY RECEIVED TODAY. CAN CONFIRM THERE IS A DEFINITION OF 'MUNICIPAL WASTE' IN IT (see to the left) . WILL HAVE SIGHT OF NEW DRAFT AFTER SUSAN HAS SIGNED OFF (ASAP)</b></p>	<p>PM to email over to MM. - done 16.19</p>

<p><b>Marcus (Ofgem legal )Vol 1 paras 5.67-8 and Appendix 4</b></p> <p>This concerns permissible types of waste where biomass is contained in municipal waste. DETI have said that the lists in Appendix 4 to the GB Regs are not appropriate for the purposes of the NI guidance and that the list in the List of Wastes (Northern Ireland) Regulations 2005 should be used instead. I take this to mean the entire list. However this seems to me to be inappropriate: the list in those Regulations (which were amended in 2011) is very wide and appears to encompass the list in Appendix 4 to the GB guidance of items which DEFRA have concluded are not municipal (e.g. agricultural waste). Clearly, having regard to the fact that the DEFRA list is presumably the product of lengthy consideration, this is a matter of concern. Plainly it would not be appropriate for us to administer the NI Regs on the basis that “municipal waste” extended to waste categories which cannot reasonably be described as municipal. We thus need to discuss further with DETI whether they intend the whole list in the 2005 Regs to be included and, if so, on what basis they justify that and, if not, which wastes they want included. We will then be in a position to determine how, if at all, the DETI list differs from the DEFRA one.</p> <p>It would still be possible (as originally suggested) if DETI were content, to use the same lists as in the GB Regs, but simply make no reference there to DEFRA, other than perhaps by way of acknowledgement <b>The following was DETI’s answer to this. “The List of Wastes (NI) Regs 2005 should be used (this of course includes the EU list within the Appendix in any case). We are content for DECC to be referred to in guidance document as the source, no need to anonymise. “ email of 20th Aug 2012 17.30</b></p>	<p># Confirmation needed regarding statement in red. <b>PETER TO CONFIRM BY LUNCHTIME TOMORROW COURSE OF ACTION - WISHES EMAIL FROM MARCUS WITH FURTHER EXPLANATION OF ISSUE TODAY</b></p>	<p>MP AND PM</p>
<p><b>Reg 51 - DETI reporting requirements.</b></p> <p><b>Both volumes 1.14</b></p> <p>We will also publish the following aggregated information on our website on an ongoing basis:</p> <ul style="list-style-type: none"> <li>• the number of accredited NIRHI installations and registered biomethane producers</li> <li>• the technology and installed capacity of the installations</li> <li>• the total amount of heat generated and biomethane produced together with the total amount of periodic support payments made under each tariff - <b>I believe (Michelle) this to mirror the reg. have taken out annual reporting and left as quarterly - TBC with DETI</b></li> </ul>	<p># Confirmation needed regarding statement in red. <b>DETI WISHES TO TAKE OUT BOTH QUARTERLY AND ANNUALLY AND LEAVE AS 'WILL PUBLISH CURRENT INFORMATION'</b></p>	<p>MM TO ACTION IN GUIDANCE</p>
<p><b>Tariff for biogas and biomethane production and whether or not it extends to biogas production plants</b></p> <p>(Marcus) The advice we had from counsel was that, whether or not the BPC was covered by the tariff notified to Brussels during the state aids process was determinative as to whether the BPC should be regarded as part of the eligible plant. We thus need to know, as with the GB Regs, what was said in this regard during the DETI discussions with Brussels. Peter, however, simply states that there were “no specific issues” raised on the matter with the Commission and that he “expects” that the tariff would include the costs of the BPC as part of the “CAPEX”. I’m not sure what this all amounts to, so we need to seek clarification. Until we have it we will not be clear as to whether or not BPCs should be regarded as part of the eligible installation. This was DETI’s specific reply: “there were no specific issues raised on this matter with the EU Commission, however I expect that the developed tariff for biogas would include costs incurred for biogas production plants as part of the CAPEX and therefore would suggest that the same approach as included in your attached letter is used in the NI case.” <b>Marcus, please could you bring this up in the meeting this pm so we can confirm a final response in the next 24 hours.</b></p>	<p># Marcus to seek clarification regarding eligibility of biogas production plants. <b>PETER TO CONFIRM WHETHER THEIR MODELLING REFLECT THIS OR NOT</b></p>	<p>PH TO CONFIRM BY LUNCH TOMORROW</p>
<p><b>Paras 4.40 to 4.49 of vol 1</b></p> <p><b>This concerns the “single domestic premises” issue. Broadly speaking I am content that this section of the draft NI guidance is in reasonable shape. If need be I think it would suffice in its current form. However Will has asked that we enquire of DETI as to how they confirm the basis on which valuation officers determine that a dwelling should be included as a separate hereditament. Do we have an answer as to that yet? This would provide a more complete picture. As far as I am aware NO...Marcus to raise in the meeting this pm? yes</b></p>	<p># Marcus to raise in the meeting. <b>PETER TO CONFIRM WITH RELEVANT DEPT.</b></p>	<p>PH TO CONFIRM BY LUNCH TOMORROW</p>