

Departmental Solicitor's Office  
Oifig Aturnae na Roinne



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*Our Ref:* SOL56405/2016/DfE13<sup>th</sup> January 2017

Dear Lucy

**RHI AMENDMENT REGULATIONS**

Thank you for sending me a further set of amendments with the changes suggested by Ofgem. We discussed these on the telephone and I am content with the changes made. I think, however, that it is important that I address the point that Ofgem make about the 'sunset clause' in Regulation 1(3). What Ofgem were suggesting would have the effect that on 1<sup>st</sup> April 2018, the Regulations return to 'status quo ante' and that small and medium biomass boilers accredited before November 2015 would return to untiered and uncapped tariffs. I do not think that this would, in any circumstances, be acceptable to the Assembly. It is better, therefore, that the Regulations provide for a simple sunset clause on the basis that before 31<sup>st</sup> March 2018, the Department will be in a position to legislate for a comprehensive solution to the present difficulty.

As the Regulations presently stand, the boilers presently covered by Schedule 3A would have no tariffs set at all on or after 1<sup>st</sup> April without fresh legislation. This seems to me to be a better position than what Ofgem is suggesting. Subject to this, however, you may now take the Regulations as cleared.

Yours sincerely

*Paul McGinn*

**P MCGINN**  
**Director Division 2**

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13<sup>th</sup> January 2017

Dear Lucy

**AMENDMENTS TO THE RENEWABLE HEAT INCENTIVE SCHEME  
REGULATIONS (NORTHERN IRELAND) 2012**

I refer to your letter of 9<sup>th</sup> January in relation to this matter.

You should, by now, already have a finalised daft of the above Regulations. Subject to the amendments marked thereon, you may now take these Regulations as cleared.

In your letter, however, you also mentioned the intention to request accredited installations to provide energy meter readings taken on 31<sup>st</sup> March 2017. I point to Regulation 34(2) of the Renewable Heat Incentive Regulations (NI) 2012 which provides:-

“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.”.

You will, of course, appreciate that I have no technical expertise in relation to these matters, but I am assuming that this language is apt to apply to biomass boilers.

Regulation 34 is, of course, an ongoing obligation for the purposes of the Regulations. So, if anyone fails to provide the information, then under Regulation 44 payments may be suspended or, under Regulation 45 if there was a repeated failure by the participant to provide the information, payments may be withheld permanently for the quarter in question.

You also ask about photographic evidence of the meter reading. Regulation 34(2) simply refers to the provision of meter readings. These are, however, clearly intended to be actual meter readings rather than estimated ones. This is, I think, made clear by paragraph (4). There is certainly nothing to prevent the Department from asking for the meter readings to be provided in a particular form (ie photographically). It is probably, however, going too far to say that the Department may under the present Regulations require meter readings to be given in photographic form. It would, I think, be possible to amend the Regulations to give the Department the power to require meter readings to be given in a particular form, but I do not think that that is necessary. Regulation 49 of the 2012 Regulations enables the Department or its agent to request entry to inspect an accredited RHI installation including for the purposes of verifying meter readings. The duty to allow reasonable access for this purpose is itself an ongoing obligation. Even without photographic evidence, therefore, there are ample powers for the Department to verify meter readings.

Yours sincerely

*Paul McGinn*

**P McGINN**  
**Director Division 2**