INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 467 of 2017
DATE: 13th October 2017

Witness Statement of: Alan Bissett

I, Alan Bissett, will say as follows: -

With regard to the documentation made available to me by the RHI Inquiry to enable me to refresh my memory on the specified issues for the purpose of providing this witness statement, I understand that the documents I have been provided electronic access to are those provided to the RHI Inquiry by Arthur Cox. As I have not been provided with access to the hard copies of the physical files that I and the team at Arthur Cox were working on for DETI, I am unable to establish or confirm if the documentation provided to the RHI Inquiry by Arthur Cox is complete. Further, it should be noted that some of the documents have been heavily redacted by Arthur Cox, including my own meeting notes, and this has rendered the remaining text in a number of those documents difficult to interpret. Subject to these qualifications, I will say as follows:-

Background

1.

a. Following a competitive tender in the first quarter of 2011, Arthur Cox was appointed to provide legal advice to the Department of Enterprise, Trade and Investment ("DETI") on energy matters in Northern Ireland ("NI"). Prior to the appointment of Arthur Cox, the firm now called Dentons UKMEA LLP had been providing legal advice to DETI on energy matters in NI. Following Arthur Cox’s appointment, the initial briefing meeting with DETI was held on 11th May 2011 and it is stated in the email
to me from Paul Dolaghan of DETI at 14:20 hrs on 5th May 2011 (at DFE-15238 to DFE-15239) that the main purpose of this meeting was “...to bring you and colleagues up to speed on where the Department is on [Arthur Cox redacted issue] and RHI.” It was understood from this that the proposals to develop a non domestic renewable heat incentive scheme in NI had been under way for some time.

b.

i. Although I do not have access to the relevant documents, I recall that the criteria used by DETI to select Arthur Cox was set out comprehensively in the tender documentation issued by DETI in advance of the contract award in the first quarter of 2011.

ii. The appointment was for a period of two years and this was extended by a further year in 2013. Following a further competitive tender process in 2014, Arthur Cox was appointed to provide legal advice to DETI on energy matters in NI for a further period of two years.

2. Although I do not have access to the relevant documents, I recall that my relevant expertise and experience and that of the other members of the Arthur Cox team that was held out to DETI is that contained in the tender submission made by Arthur Cox in the first quarter of 2011. This was made in response to the tender documentation issued by DETI that set out in detail the expertise and experience that DETI required of its legal advisers on energy matters in NI.

3. In summary, the principal role of Arthur Cox in relation to the non domestic renewable heat incentive scheme in NI was to draft NI Renewable Heat Incentive Regulations based on the equivalent Regulations in Great Britain ("GB") and to make only those revisions necessary for application of the provisions in NI. At paragraph 5 below, I have set out in more detail the work that was required of Arthur Cox under each of the five work requests from DETI.
sort of matters were coming up. There were at least two meetings and we maybe had — we
talked about a few different topics at each of those meetings. So the one on the 11th of May
may have covered other items, but there was a discussion in relation to a proposed
renewable heat support scheme on the 11th of May.

Mr Scoffield QC: And you said in your statement that you understood from the email
which preceded that initial briefing meeting that the proposals to develop a non-domestic
RHI scheme in Northern Ireland had been under way for some time. I wonder, can you
remember what you were told about the state of RHI policy or the state of development at
that meeting?

Mr Bissett: Yes. We were told that there were proposals for a renewable heat support
mechanism and that they hadn’t decided yet whether it would be a grant structure or
through legislation. And it was expected that we would know before the end of June which
route, which pol— that a policy decision would be taken and that we would know which
route was to be followed before the end of June. And we were told pros and cons of the
grant route and the legislation route.

Mr Scoffield QC: And can you remember what was discussed about that?

Mr Bissett: On terms of grant, they said the pros of the grant structure were that the
Department already had the powers to implement a scheme by way of a grant scheme. With
regard to a legislative route, there would have to be a statutory instrument of some sort and
enabling legislation prepared if we were to follow that route. And if we were to follow the
route of the legislation, it would be following the GB scheme, hem, which, I thought — I
think, they knew would be that that would — there was something for us to follow, that
would be — that would give us some structure to follow for the NI scheme.

And also that Ofgem were administering the scheme in GB and that if we were following
the scheme in GB, we would have to stick very closely to the GB scheme because there
would be cost implications for Northern Ireland, for the Department, if the scheme varied
from the GB scheme because Ofgem would have to — they, presumably, had different
systems and different IT systems and different structures to deal with a different — a
scheme that differed from the one that they were administering. So, rather than just adding
an extra volume, they would have to add some sort of more complexity to their scheme and
there would be a cost consequence for DETI from that.

Mr Scoffield QC: So, you were being told at that stage that there were two possible
options.

Mr Bissett: Two possible options, and that a decision was imminent, and they thought the
decision would be heard by — they would receive the decision before the end of June.

Dr MacLean: Can I just ask — can you remember who it was that would have been
leading the presentation?

Mr Bissett: Yes. At that meeting, it was Alison Clydesdale. We had a — it was a —. So, we
—. The people who attended the meeting were myself and some other people from Arthur
Cox, but we had Alison Clydesdale, Dan Sinton, Peter Hutchinson, Susan Stewart and Joanne
McCutcheon were the attendees. Alison, I think, was the most senior person there and she
would have — she led the — I think she did all of the speaking at that meeting.

Dr MacLean: Thanks. And the other question I had: when they were describing the grant
route, would that have been one that you wouldn’t have then necessarily been involved in if
they already had the powers?

Mr Bissett: I don’t know. I don’t know if there would have been a role for us, but we
didn’t discuss [Inaudible.] —

Dr MacLean: OK. That wasn’t the [Inaudible.] Thanks, sorry.

Mr Scoffield QC: Maybe just to assist with some of those questions, and for the panel’s
note, if we go to DFE-15374: this, I think, Mr Bissett, is your note of that meeting. I’m going
involved in developing energy policy with DETI, when it came to the RHI scheme, you said
this afternoon, you had a more limited role. In fact, in your statement you’ve said that you
had no role in any aspect of the development of policy in relation to the scheme, and I
wanted to ask you why you said that.

Mr Bissett: Because I suppose for — I would imagine, for all of the other matters that I
would have dealt with with DETI — because we did have expertise, and, you know, there
was a contract there, there was fees being paid for expertise — we normally would have
been involved. And I think even the fact that there were five work orders — I think usually
we would have had a work request order to say, “We want to develop”. For example, one
aspect I was looking at was offshore wind. We were looking at issues with developing that
and legislation that would be required and changes that would’ve been made for the regime.
So you would have had one work request form, and you would’ve been involved throughout
the whole process from beginning to end. The same with other — another example would
be when we were licensing distribution of electricity in Northern Ireland and also looking at
exemptions. Again, we would’ve been involved at the outset, working through the
consultation, inputting into the document, doing research, developing that and then drafting
legislation.

In this, we were told, “GB regs are these. If you divert from these, there’ll be a cost,
because it’s being administered by Ofgem. There’ll be a cost, so you follow these, and you
just change the statutory references and the int— and anything that doesn’t relate to
Northern Ireland, for example certain pipeline issues and how you would reference
something when you were referring to the legislation in Northern Ireland. But, if you divert
from that, there’s a cost implication. We will make a policy decision if we’re going to divert
from GB and incur that cost, so you don’t change it until you’re told by us that a policy
decision has been made where we’re going to divert from GB.” So we sat, essentially, in a
box, and we did some work at the outset. A few months later, we were contacted to do
some more work, and then, quite significantly after that, we were c— we were advised to do
some more drafting. And we had no input in the consultation; we didn’t see the
consultation. Obviously we followed it ourselves, but we weren’t involved in any way in that
process.

**Mr Scoffield QC:** And, given what you’ve described about how you worked with the
Department on some other projects, did you find that unusual?

**Mr Bissett:** it was an unusual role, and it wasn’t a very satisfying way to work in that we
weren’t very involved in the project.

**Mr Scoffield QC:** And was that something that you raised with the Department?

**Mr Bissett:** No. I did whatever the Department asked me to do.

**Mr Scoffield QC:** You said, as I mentioned, in fairly trenchant terms in your statement that
you didn’t have involvement in giving advice on policy. Now, I want to talk about that later
on, particularly in relation to work request 5, because it seemed to me that that might be
one area where certainly there was —

**Mr Bissett:** Work request 5 — sorry, that is a good point. Work request 5 was more along
the lines of the sort of work — advisory work — that we would have been doing where we
wouldn’t —. Work request 5 was — we were doing a report and we were giving, we were
adding something at that stage, I think.

**Mr Scoffield QC:** Well, let’s park it for the moment and think about the — in fact, let’s
park work request 4 also, which is the administrative arrangements agreement —

**Mr Bissett:** OK.

**Mr Scoffield QC:** — and think, for a moment, about the three drafting requests.

**Mr Bissett:** Yes.

**Mr Scoffield QC:** And, you’ve made the point in your statement and you’ve reiterated this
It didn’t seem clear to me what — why it couldn’t have been done by DSO. Certainly the role that we were carrying out, it could have been done by DSO, unless there were issues with regard to capacity. But certainly there’s no reason why someone in DSO couldn’t have done the role that we had.

Mr Scoffield QC: And again, was that something that you raised at any stage with the Department?

Mr Bissett: It wasn’t, no.

Mr Scoffield QC: Maybe then if we begin to look at some of the detail of the drafting work requests. In fact, what I want to do is, subject to any queries or concerns the panel have, really focus in on work request 3.

So work request 1, Chairman, you may recall, came in June 2011, and that was to produce an initial draft of the regulations to go out with the July 2011 consultation. I should say, Mr Bissett, stop me if you disagree with this summary of any of the points I’m making.

Work request 2, then, was a request during the summer of 2011 to update the regulations, and that’s because the draft had, at that stage, been based on an early draft of the GB regulations and there had been a further draft of the DECC regulations provided for debate in Parliament. So, it was to update the Northern Ireland draft —

Mr Bissett: Could I make a — can I make a point? You asked me to stop you. On that one, we had noticed this. So, we were given a draft from March. The GB draft we were given was from March 2011, and we were told to produce the NI regs, and, as I say, I told you the role we had in relation to doing that. It was towards the end of that role, which is only four weeks later, that I noticed that another draft had been prepared by DECC — a consultation, sorry, a parliamentary draft — and I then, I thought, trying to bring something to the table, I went back to DETI and said, “Look, this draft is different from the draft that we’ve been working on. There are changes that have occurred in the meantime” and “Do you want us
11. As mentioned at paragraph 10 above, the non domestic renewable heat incentive scheme under the GB RHI Regulations was put forward to Arthur Cox by DETI as the model scheme to be followed and Arthur Cox had no instruction from DETI or other cause to challenge the Regulations prepared by DECC and its legal advisers for deficiencies.

12.

a. I can confirm that the notes bearing Inquiry reference DFE-15374 to DFE-15375 are my complete notes of the meeting between Arthur Cox and DETI on 11th May 2011.

b. On the basis of my notes and the email correspondence at that time, it appears that the attendees at this meeting from Arthur Cox were me, Alan Taylor, David Trethowan and Rachel Lundy and that the attendees from DETI were Alison Clydesdale, Peter Hutchinson, Dan Sinton, Susan Stewart and Joanne McCutcheon. I am unable to confirm if any of the other attendees at the meeting were taking notes.

c.  
  i. As mentioned at paragraph 1a above, at that time, Arthur Cox had recently been appointed to take over the role of legal adviser to DETI on energy matters in NI from the firm now called Dentons UKMEA LLP. It is understood that the proposals to develop a non domestic renewable heat incentive scheme in NI had been under way for some time and it is stated in an email to me from Paul Dolaghan of DETI at 14:20 hrs on 5th May 2011 (at DFE-15238 to DFE-15239) that the main purpose of this meeting was “…to bring you and colleagues up to speed on where the Department is on [Arthur Cox redacted issue] and RHI.”

  ii. The discussion on the RHI Scheme at the meeting on 11th May 2011 was led by Alison Clydesdale of DETI. The Arthur Cox team was informed that DETI had commissioned its own study on the issue and that two alternative options for the development of a non domestic renewable heat incentive scheme in NI were being
considered by DETI at that time. The Arthur Cox team was informed that the first option would involve the introduction of legislation in NI that would "mirror" the legislation that was to be introduced in GB for the implementation of a non domestic renewable heat incentive scheme in GB (at DFE-15374). The Arthur Cox team was also informed by Ms Clydesdale that, if matters proceeded by way of a legislative scheme in NI, this would be administered by Ofgem and there would be additional costs of Ofgem to be met if the scheme in NI differed from the scheme that Ofgem was administering for GB (at DFE-15375). The alternative option would be to introduce a non domestic renewable heat incentive scheme in NI by way of grant support and the Arthur Cox team was informed that this would not require legislation to be enacted in NI as DETI had "grant giving powers already" (at DFE-15375).

d. It is noted from my minutes of the meeting between Arthur Cox and DETI on 11th May 2011 that the Arthur Cox team was informed by Ms Clydesdale of DETI that DETI would know before the end of June 2011 whether the non domestic renewable heat incentive scheme in NI would be proceeding by way of legislation mirroring the legislation in GB or by way of grant support (at DFE-15374).

e. Arthur Cox had no involvement in the policy in relation to the development of the non domestic renewable heat incentive scheme in NI and there was no discussion about the relative merits of different types of incentivisation at the meeting between Arthur Cox and DETI on 11th May 2011.
- Can we start study
- No longer loses at no serious harm
- DEC to make scenario 6
  Clean 100 of every 200 (see page)
  Strategies 200 will mirror GB design
  2(2) legs
  - NI use GB legs

RHI for NT

Options may not be practical
Could be great support (could not New
2(2) legs) will know before end of Jan
15 August 2011

Dear Paul

Implementation of Northern Ireland Renewable Heat Regulations

I had written to you and your colleague, Nicola Wheeler, earlier this year regarding the Department seeking a Legislative Consent Motion (LCM) to extend the primary powers for renewable heat, by the Department of Energy and Climate Change (DECC) in GB in the 2008 Energy Act, to Northern Ireland. Your office also advised on the instructions to Parliamentary Council for the drafting of the appropriate clause to extend the necessary primary powers.

Background

You will be aware from the correspondence I mention above of the Department’s work on developing and incentivising the local renewable heat market.

The EU Renewable Energy Directive (2009/28/EC), published in the Official Journal of the European Union on 5 June 2009, requires that member states ensure that 15% of their energy consumption comes from renewable sources by 2020. This requirement extends beyond electricity to heating and cooling as well as transport.

GB Renewable Heat Incentive

DECC has set a target of 12% renewable heat for England and Wales by 2020. This target, coupled with the 30% target for renewable electricity consumption, will assist in Great Britain meeting its requirements under the Renewable Energy Directive. In order to achieve this target, DECC has made clear plans to introduce a Renewable Heat Incentive (RHI) in Great Britain.

Northern Ireland perspective

Northern Ireland is not included as part of the wider Great Britain RHI. There are many differences between the heat and renewable heat markets in Great Britain and Northern Ireland that mean that it has been more appropriate for a separate assessment to be taken on how the local market can be developed.
In December 2009, DETI commissioned AECOM Ltd and Pöyry Energy Consulting to carry out research into the existing heat and renewable market so an assessment could be made on the optimum growth potential of the market, methods for developing the market and an appropriate target for 2020.

In February 2011, Cambridge Economic Policy Associates (CEPA), in conjunction with AEA Technologies, were commissioned to undertake an economic appraisal on the feasibility of a Northern Ireland RHI. The economic appraisal has considered various options for incentivising the local renewable heat market, and has advised on appropriate tariff levels. It has also considered the costs/benefits and the impact of each of the options.

Her Majesty’s Treasury (HMT) has advised that £25million of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2million in the first year, followed by £4million and £7million, with £12million available in the final year. The Office of the Gas and Electricity Markets (Ofgem) are responsible for developing and administering the scheme on behalf of the DECC and it is anticipated that they will also be carrying out the same functions and duties on behalf of the Department when the Northern Ireland RHI scheme is implemented.

**Legislative Position**

Renewable heat is largely a new area of work for the Department and therefore there are no primary powers in Northern Ireland legislation that would allow the introduction of a Renewable Heat Incentive (RHI) or payments to be made to generators of renewable heat. However, in March 2011, the Department successfully tabled a LCM in the Assembly and obtained the necessary approvals.

The LCM has allowed for DECC to amend their current Energy Bill to extend renewable heat powers to Northern Ireland. DECC had been expecting Royal Assent to be granted in July 2011, however this has now been delayed until the Autumn. We can only move forward with the implementation of subordinate legislation once this has been acquired.

The primary powers will allow the Department to introduce a Northern Ireland RHI scheme via secondary legislation. The Regulations will underpin the tariff scheme and will specifically prescribe matters relating to eligibility criteria, obligations for participants of the scheme, methods of payment and accreditation and registration.

The Department has engaged external legal advisers, Arthur Cox, to draft an early version of what Northern Ireland RHI Regulations might look like. These Regulations are based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB Regulations). A copy of the draft Northern Ireland Regulations is attached at Annex A for your convenience.

**RHI Consultation**

The Department is currently out to consultation for a period of 10 weeks, to allow industry and the wider public to comment on the proposed NI incentive scheme and also the draft Regulations. The consultation is due to end on 3 October 2011.
Once the consultation responses have been reviewed and policy decisions applied, the Regulations will be re-drafted by Arthur Cox to take account of those final policy decisions.

**Next Steps**

As it is expected that Ofgem will be responsible for administering the RHI scheme on behalf of the Department, it will be necessary to liaise with Ofgem lawyers in relation to the draft Regulations to ensure that they are content with our proposed scheme.

As previously mentioned, the Department has funding of £25 million to spend on the RHI. If the introduction of a RHI in Northern Ireland is delayed, because of the lack of the necessary powers, there is a danger that this funding would not be utilised. Therefore the Department intends to have the Regulations in place by April 2012 at the latest. I have set out a draft timetable for the implementation of the RHI Regulations at Annex B.

It is expected that the Regulations will be subject to the draft affirmative resolution procedure before the Assembly.

It would be most helpful if solicitors at DSO would have capacity to facilitate this process, and your views on this would be appreciated. I would also be grateful if you could advise whether you are content with the enclosed draft Regulations.

Yours sincerely

PETER HUTCHINSON
Renewable Heat

cc Fiona Hepper
Joanne McCutcheon
Nicola Wheeler
Susan Stewart
These Regulations are subject to the amendment in the Energy Act 2011 being given Royal Assent in Westminster. This is anticipated to be obtained in September 2011.

These Regulations are also subject to revision pending the outcome of this consultation process and the final design of a Northern Ireland Renewable Heat Incentive (RHI). The Regulations do not currently consider a number of issues specific to the Northern Ireland RHI.

STATUTORY RULES OF NORTHERN IRELAND

2011 No. ***

ENERGY

Renewable Heat Incentive Regulations (Northern Ireland) 2011

Made - - - 2011

Coming into operation - - 2011

[The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section [●] of the Energy Act 2011 for the purposes of establishing in Northern Ireland an incentive scheme to facilitate and encourage the renewable generation of heat and the production and injection of biomethane and making provision regarding its administration.]

PART 1

INTRODUCTORY

Citation and commencement
1. These Regulations may be cited as the Renewable Heat Incentive Regulations (Northern Ireland) 2011 and shall come into operation on [●] 2011.

Interpretation
2. In these Regulations—

“accreditation” means approval by the Authority of an eligible installation as an accredited RHI installation in accordance with part 4;

“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;

[“Authority” means the Gas and Electricity Markets Authority;]

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

“CHP” means combined heat and power;

“class 2 heat meter” means a heat meter which complies with the relevant requirements set out in Annex 1 of the Measuring Instruments Directive, the specific requirements and conformity assessment procedures listed in Annex MI-004 of the Measuring Instruments Directive and falls within accuracy class 2 as defined in Annex MI-004 of that Directive;

“combined installation capacity” means the installation capacity of one or more plants;

“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 it is capable of operating and delivering heat to the premises or process for which it was installed;

“component unit” means two or more plants complying with the provisions of regulation 14(2)(a)-(c);

“conversion date” means the date on which a plant was first commissioned as a CHP system;

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

(a) (i) the date on which an application for accreditation is received by the Authority, provided the application is properly made and the Authority is satisfied that the eligibility criteria imposed by these Regulations, as applicable, were met at the time of receipt, or

(ii) where the Authority is not so satisfied, first date after receipt of an application for accreditation on which the Authority is satisfied that the applicable eligibility criteria were met, and

(b) the date on which the plant was first commissioned;

“Department” means the Department for Trade, Enterprise and Investment;

“eligibility criteria” means the eligibility criteria specified in regulations 4 to 21 of Part 2;

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

“eligible purpose” means one of the purposes specified in regulation 3(2);

“EN 45011” means British Standard EN 45011 which prescribes certain requirements for bodies operating product certification systems;

“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 to convey gas from one place to another in an area authorised by a licence granted under Article 8(1)(a) of the Gas Order;
“Gas Order” means the Gas (Northern Ireland) Order 1996;
“ineligible purposes” 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” means one or more plants;
“installation capacity” means the total installed peak heat output capacity of a plant or accredited RHI installation;
“kWth” means kilowatt thermal;
“kWhth” means kilowatt hours thermal;
“MWth” means megawatt thermal;
“MWhth” means megawatt hours thermal;
[“MCS” means the Microgeneration Certification Scheme\(^1\) or equivalent schemes accredited under EN 45011\(^2\) which certify Microgeneration products and installers in accordance with consistent standards;]
“municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003\(^4\);
“NIRO” means the Renewables Obligation (Amendment) Order (Northern Ireland) 2010;
“ongoing obligations” means the ongoing obligations specified in part 3;
“participant” means an owner of an accredited RHI installation or a producer of biomethane who has registered with the Authority;
"pipe-line system" means a system of pipes (together with any apparatus and works associated therewith) for the conveyance of gas, not being—

(a) a system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; or

(b) 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\(^5\) apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);

\(^{1}\) Details of which are available at www.microgenerationcertification.org

\(^{2}\) ISBN 0580294153. Copies can be obtained from the British Standards Institution at www.bsigroup.com


\(^{4}\) 2003 c.33

\(^{5}\) 1965 Chapter 20
(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\(^6\)), 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;\(^7\)

“preliminary accreditation” in relation to a plant, means accreditation of the plant by the Authority as one which (when commissioned) will be capable of meeting the eligibility criteria;

“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;

“periodic support payment” is the sum payable to a participant per quarterly period in accordance with part 5;

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

“retail prices index” means—

(c) the general index of retail prices (for all items) published by the Office of National Statistics; or

(d) where the index is not published for a year, any substituted index or figures published by that Office;

“RHI” means an incentive scheme to facilitate and encourage the renewable generation of heat;

“scheme” means the incentive scheme established by these Regulations;

“site” means the premises to which are attached one or more accredited RHI installations or eligible installations to be determined by the Authority by reference to one or more of the following—

(e) geographical proximity,

(f) street address,

(g) ordnance survey grid reference

(h) any other factors which the Authority in its discretion considers relevant:

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

“steam measuring equipment” means all the equipment needed to measure to the Authority’s satisfaction the mass flow rate and energy of steam and must include the following components—

(i) a flow meter,

(j) a digital integrator or calculator able to calculate the cumulative energy in kWth which has passed a specific metering point;

\(^6\) 1949 Chapter 2

\(^7\) As extracted from the Gas (Northern Ireland) Order 1996
“tariff” means the payment rate per kWhth in respect of an accredited RHI installation and per kWth in respect of biomethane injection;
“tariff end date” means the last day of the tariff lifetime;
“tariff lifetime” means the period for which an accredited RHI installation or a participant who is a producer of biomethane 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 on which an application for registration was properly made.

Renewable heat incentive scheme

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

(2) Subject to paragraph (3), the Authority will pay participants periodic support payments in accordance with part 5 for heat used for any of the following eligible purposes—
   (k) space heating;
   (l) water heating; or
   (m) process heating.

APPENDIX B where the heat is used in a building or other enclosed structure.

(3) The Authority will pay participants who are producers of biomethane for injection periodic support payments calculated in accordance with part 5.

PART 1

ELIGIBILITY AND MATTERS RELATING TO ELIGIBILITY

Eligibility criteria for technologies

Eligible installations

4. A plant is an eligible installation if—
   (n) either regulation 5, 6, 7, 8, 9, 10 or 11 is satisfied;
   (o) the eligibility requirements set out in regulation 12 are satisfied;
   (p) it complies with the eligibility criteria in relation to metering set out in regulations 16 to 21; and
   (q) regulation 15 does not apply.

Eligible installations generating heat from solid biomass

5. Subject to regulations 12 and 15, a plant is an eligible installation if it complies with all of the following requirements—
(r) it generates heat from solid biomass;
(s) the heat from the solid biomass is generated using equipment specifically designed and installed to use solid biomass as its only primary fuel source; and
(t) in the case of a plant with an installation capacity of [45kWth] or less, it complies with regulation 13.

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

6. Subject to regulations 12 and 15, a plant is an eligible installation if it generates heat from solid biomass contained in municipal waste.

**Eligible installations generating heat using solar collectors**

7. Subject to regulations 12 and 15, a plant is an eligible installation if it complies with all of the following requirements—
   (u) it generates heat using a solar collector;
   (v) it has an installation capacity of less than [200kWth]; and
   (w) in the case of a plant with an installation capacity of [45kWth] or less, it complies with regulation 13.

**Eligible installations using heat pumps**

8. Subject to regulations 12 and 15, a plant is an eligible installation if it complies with all of the following requirements—
   (x) it is a heat pump and generates heat using naturally occurring energy stored in the form of heat from one of the following sources—
      (i) the ground other than geothermal;
      (ii) surface water; or
      (iii) [air];
   (y) in the case of a heat pump with an installation capacity of [45kWth] or less, it complies with regulation 13; and
   (z) the heat pump meets a coefficient of performance of at least [2.9].

**Eligible installations generating CHP**

9. (1) Subject to regulations 12 and 15 and to paragraph (2), a CHP system is an eligible installation if it generates heat using one of the following sources of energy—
   (aa) solid biomass;
   (bb) biogas produced from anaerobic digestion, gasification or pyrolysis; or
   (cc) naturally occurring heat located at least [500 metres] beneath the surface of solid earth.

   (2) A CHP system is not an eligible installation if it is a qualifying CHP generating station within the meaning of Article 2 of the NIRO and is accredited under that Order.
Eligible installations using geothermal sources

10. Subject to regulations 12 and 15, a plant is an eligible installation if it generates heat utilising naturally occurring heat located at least [500 metres] beneath the surface of solid earth.

Eligible installations using biogas

11. Subject to regulations 12 and 15, a plant is an eligible installation if it complies with the following requirements—

   (dd) it generates heat using biogas produced from anaerobic digestion, gasification or pyrolysis;
   (ee) it has an installation capacity of less than [200kWth]; and
   (ff) combustion of the biogas takes place in a separate plant to the biogas plant in which it was produced.

Other eligibility requirements for technologies

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

   (gg) installation of the plant was completed and the plant was first commissioned on or after [1st September 2010];
   (hh) the plant was new at the time of installation;
   (ii) the plant uses water or steam as a medium for delivering heat to the space, water or process; and
   (jj) heat generated by the plant is used for an eligible purpose.

   (2) A CHP system with a conversion date which is on or after [1st September 2010], will be deemed to be a new plant completed and first commissioned for the purposes of paragraph (1)(a) and (b), on the conversion date.

MCS certification for microgeneration heating equipment

13. The requirements of this regulation are that the plant for which accreditation is being sought is certified under the MCS and its installer was certified under MCS at the time of installation.

Eligible installations comprised of more than one plant

14. (1) Subject to paragraph (2) and regulation 43(5)(b) an eligible installation may not be comprised of more than one plant.

   (2) Where two or more plants—

   (kk) use the same source of energy;
   (ll) form part of a common heating system; and
   (mm) neither plant is an accredited RHI installation;
APPENDIX C

The Authority must treat those component units as one plant and that plant may be an eligible installation where, subject to paragraph (3), each component unit complies with regulation 4.

(3) For the purpose of regulations 7(b) and 11(b), the installation capacity of an eligible installation comprised of more than one plant is the combined installation capacity of all plants comprising that eligible installation.

Excluded plants

15. (1) For the purposes of regulation 4, the following plants are not eligible installations—

(nn) a plant which is generating heat solely for the use of one domestic premises;

(oo) a plant which is generating heat solely for an ineligible purpose; or

(pp) [anaerobic digestion plant in receipt of support under the NIRO].

(2) For the purposes of this regulation, domestic premises means a single, self contained premises used wholly or mainly as a private residential dwelling where the fabric of the building has not been adapted for non-residential use.

Eligibility criteria and matters relating to metering

Metering of plants in simple systems

16. (1) This regulation sets out the eligibility criteria in relation to metering for a plant where—

(qq) the plant is generating and supplying heat solely for eligible purposes and the building or other enclosed structure to which the heat is supplied is located on the same site;

(rr) no heat generated by the plant is delivered by steam; and

(ss) the plant is not a CHP system.

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

Metering of complex systems

17. (1) This regulation sets out the eligibility criteria in relation to metering for a plant where regulation 16 does not apply.

(2) Subject to regulation 19, where heat generated by a plant is delivered by water, class 2 heat meters must be installed to measure the kWhth of heat generated by that plant and used for an eligible purpose.

(3) Subject to regulation 19, where heat generated by a plant is delivered by steam, the following must be installed—

(tt) steam measuring equipment to measure the steam generated by the plant and used for eligible purposes; and

(uu) a class 2 heat meter to measure any condensate which returns to the plant.
(4) Where more than one plant is supplying heat to a heating system, steam measuring equipment and class 2 heat meters must be installed, as appropriate, to measure the heat output in kWhth of all plants supplying heat to that heating system.

Shared meters

18. (1) Except where paragraph (2) applies, the heat generated by a plant must be metered separately.

(2) Where two or more plants—
   (vv) use the same source of energy;
   (ww) will be eligible to receive the same tariff;
   (xx) will share the same tariff start date and tariff end date; and
   (yy) it is the Authority’s opinion that a single meter is capable of metering the heat generated by all of those plants;
   the heat generated by those plants may be metered using one meter.

Metering of CHP systems generating electricity before [1st September 2010]

19. (1) In relation to CHP systems first commissioned on or after [1st September 2010] which were generating electricity from renewable sources prior to that date, any existing heat meter or steam measuring equipment installed before the commencement of these Regulations may continue to be used by a participant to measure the heat generated and used provided the CHP system was registered under the CHPQA before the date of commencement of these Regulations.

(2) [For the purpose of this regulation, “CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009, as published by the Department for Environment, Food and Rural Affairs.]

Matters related to all heat measuring equipment

20. All meters and steam measuring equipment installed in accordance with these Regulations must, where applicable, be—
   (zz) calibrated prior to installation;
   (aaa) duly marked with the CE marking and supplementary metrology markings as specified in Articles 7 and 17 of the Measuring Instruments Directive;
   (bbb) in relation to eligible installations generating using solar collectors, calibrated correctly for any water/ethylene glycol mixture;
   (ccc) in relation to the temperature and pressure components of steam measuring equipment, capable of displaying that they are operational and of specifying which steam properties they are metering;
   (ddd) in relation to the flow meter of steam measuring equipment, capable of displaying the current steam mass flow rate and the total mass of steam which has passed through it since it was installed; and
   (eee) properly installed in accordance with manufacturer’s instructions.
Additional metering requirements for combusters of biogas

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

(2) Where this regulation applies—

(a) a class 2 heat meter must be installed to meter any heat directed from the plant combusting the biogas to the biogas plant; or

(b) a class 2 heat meter must be installed to meter any heat to the biogas plant derived from any source other than the biogas itself.

PART 3

ONGOING OBLIGATIONS FOR PARTICIPANTS

Ongoing obligations relating to the use solid biomass to generate heat

Interpretation

22. In regulations 22 to 25—

“allocating authority”, and “waste disposal authority” have the same meaning as in section 24 of the Waste and Emissions Trading Act 2003;

“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);

“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;

“[waste collection authority]” shall mean [to be defined];

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

Solid biomass contained in municipal waste as a source of energy

23. (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—

(a) is to be determined by the Authority;

(b) is the energy content of the municipal waste used by the participant as a whole in any quarterly period less the energy content of any fossil fuel from

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8 ISBN 0580194825. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.
which that municipal waste is in part composed or derived expressed as a percentage of the energy content of the municipal waste as whole; and

(jjj) must be a minimum of [50] per cent.

(3) A participant must demonstrate to the Authority’s satisfaction what proportion of the municipal waste used in any quarterly period is, or is derived from, fossil fuel to enable the Authority to determine the proportion of solid biomass contained in the municipal waste in accordance with paragraph (2).

(4) Participants may use fossil fuel in an accredited RHI installation for the following permitted ancillary purposes—

(kkk) 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;

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

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

(nnn) emission control; and/or

(ooo) in relation to accredited RHI installations which are CHP, 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 ten per cent of the energy content of all the energy sources used by that accredited RHI installation to generate heat during that quarterly period.

(6) Without prejudice to paragraph (3), when determining the proportion of solid biomass contained in municipal waste, the Authority 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, or is derived from fossil fuel.

(7) Subject to paragraph (8), where a participant using municipal waste produces to the Authority—

(ppp) data published by an allocating authority, a waste disposal authority or a waste collection authority, demonstrating that the proportion of municipal waste used by that participant which is, or is derived from fossil fuel, is unlikely to exceed [50] per cent; and

(qqq) 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 Authority may accept this as sufficient evidence for the purposes of paragraph (3) of the fact that the proportion of the municipal waste used which is, or is derived from, fossil fuel is [50] per cent.

(8) Where—

(rrr) municipal waste is used in an accredited RHI installation and—

(i) the Authority is not satisfied as to the matters identified in paragraphs (5) or (7);

(ii) a participant is claiming that the proportion of that municipal waste which is, or is derived from fossil fuel is less than [50] per cent; or

(iii) the Authority 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 approved by the Authority, and for the results of that analysis to be made available to the Authority.

Solid biomass as a source of energy in accredited RHI installations with an installation capacity of 1MWth or above

24.   (1) This regulation applies to participants generating heat from solid biomass in an accredited RHI installation with an installation capacity of [1 MWth] or above.

   (2) Participants may use solid biomass contaminated with fossil fuel, provided the proportion of fossil fuel contamination does not exceed [10] per cent.

   (3) Where paragraph (2) applies, the fossil fuel must be present because—

      (sss) (i) the biomass has been subject to a process; and

      (ii) the undertaking of that process 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—

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

   (4) Where paragraph (2) applies—

      (uuu) the proportion of fossil fuel contamination is to be determined by the Authority;

      (vvv) it is for the participant to demonstrate to the Authority’s satisfaction the proportion of fossil fuel contamination; and

      (www) 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 the contaminated solid biomass as a whole.

   (5) Participants may use fossil fuel in an accredited RHI installation for the following permitted ancillary purposes—

      (xxx) 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;

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

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

      (aaaa) emission control; and/or

      (bbbb) in relation to accredited RHI installations which are CHP, standby generation or the testing of standby generation capacity.

   (6) The energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in paragraph (5) must not exceed [10] per cent of the energy content of all the energy sources used by that accredited RHI installation to generate heat during that quarterly period.
(7) Without prejudice to sub-paragraph (4)(b), in determining the proportion of solid biomass composed of fossil fuel the Authority may have regard to any information (whether or not produced to it by the participant) if, in its option, that information indicates what proportion of the solid fuel is, or is derived from fossil fuel.

(8) Where—

(cccc) solid biomass contaminated with fossil fuel is being used in an accredited RHI installation and the Authority is not satisfied as to what proportion of the fuel used by the participant is, or is derived from, fossil fuel;

(dddd) the Authority is not satisfied as to the matters identified in paragraph (6); or

(eeee) the Authority so requests,

the participant must 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 approved by the Authority, and for the results of that analysis to be made available to the Authority.

(9) Participants must provide sustainability information in accordance with schedule 2.

Solid biomass as a source of energy in accredited RHI installations with an installation capacity of between [45kWth] and [1MWth]

25. (1) This regulation applies to participants generating heat from solid biomass in an accredited RHI installation with an installation capacity of between [45kWth] and [1MWth].

(2) Participants to whom this regulation applies must comply with paragraphs (2) and (3) of regulation 24.

(3) Where fuel comprised of solid biomass is used in an accredited RHI installation and a proportion of it is composed of fossil fuel—

(ffff) a participant must keep and provide upon request written evidence including invoices, receipts and such other documentation as the Authority may specify relating to fuel use and fossil fuel used for ancillary purposes and provide this information upon request to the Authority as requested to demonstrate compliance with this regulation; and

(gggg) the proportion of the 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 the solid biomass as a whole.

(4) Paragraphs (5) and (6) of regulation 24 apply in relation to fossil fuel used for ancillary purposes.

(5) Without prejudice to paragraph (3)(a), the Authority may have regard to any information (whether or not produced to it by the participant) if, in its option, that information indicates what proportion of the solid fuel is, or is derived from fossil fuel.

(6) Where—
solid biomass contaminated with fossil fuel is being used in an accredited RHI installation and the Authority is not satisfied that the proportion of fossil fuel contamination is under [10] per cent; or

(iii) the Authority is not satisfied as the matters specified in paragraph (4), the Authority may request the participant must 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 approved by the Authority, and for the results of that analysis to be made available to the Authority.

Ongoing obligations in relation for participants combusting biogas and producing biomethane

**Biogas which has been produced from gasification or pyrolysis**

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

(2) Participants may only use solid biomass or municipal waste as feedstock.

(3) Where participants use municipal waste as feedstock, paragraphs (2) to (8) of regulation 23 apply in relation to the proportion of solid biomass contained in the municipal waste used for feedstock as for solid biomass contained in municipal waste used to generate heat and in relation to the use of fossil fuel for permitted ancillary purposes.

(4) Where participants use solid biomass as feedstock paragraphs (2) to (8) of regulation 24 apply in relation to the contamination of solid biomass used for feedstock as for solid biomass contaminated with fossil fuel and in relation to the use of fossil fuel for permitted ancillary purposes.

**Combustion of biogas**

27. (1) This regulation applies to participants generating heat from biogas in an accredited RHI installation where regulation 26 does not apply.

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

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

(i) solid biomass;

(ii) solid waste; and/or

(iii) liquid waste;

and

(kkkk) is not landfill gas.

(3) Participants may use fossil fuel for the permitted ancillary purposes in accordance with paragraphs (5) and (6) of regulation 24.
Biomethane producers

28. (1) This regulation applies to participants producing biomethane for injection.
   (2) Participants producing biomethane for injection from biogas made by gasification or pyrolysis must use biogas made from one of the following feedstocks—
      (llll) municipal waste which complies with the composition requirements specified under regulation 23(2)(b) and (c); or
      (mmmm) solid biomass which complies with the composition requirements specified under paragraphs (2), (3), and (4)(c) of regulation 24.
   (3) Participants producing biomethane for injection from biogas made by anaerobic digestion must comply with regulation 27(2).
   (4) Participants must provide measurements which satisfy the Authority of all of the following—
      (nnnn) the gross calorific value and volume of biomethane injected;
      (oooo) the gross calorific value and volume of any propane contained in the biomethane;
      (pppp) the kWh figure of the biomethane injected together with supporting meter readings and calculations; and
      (qqqq) any heat supplied to the biogas plant which made the biogas used in any quarterly period to produce biomethane for injection.
   (5) Participants must keep and provide upon request copies of contracts with third parties with whom they contract to carry out any of the final processes required to produce the biomethane and to arrange for its injection.
   (6) Participants must keep for the duration of their participation in the scheme and provide upon request written evidence including invoices, receipts, contracts and such other information as the Authority may specify in relation to biogas purchased and feedstock used in the production of the biogas used to produce biomethane.
   (7) Participants must provide sustainability information in accordance with schedule 2.

Ongoing obligations relating to other matters

29. Participants must comply with the following ongoing obligations, as applicable,—
   (rrrr) participants must keep and provide upon request records of type of fuel use and fuel purchases for the duration of their participation in the scheme;
   (ssss) participants must keep and provide upon request written records of fossil fuel used for the permitted ancillary purposes specified in regulations 22 to 28;
   (tttt) participants must submit an annual declaration as requested by the Authority confirming that their accredited RHI installations are being used in accordance with the eligibility criteria and ongoing obligations;
   (uuuu) participants must keep their accredited RHI installation maintained to the Authority’s satisfaction and keep evidence of this including service and maintenance documents;
   (vvvv) participants combusting biogas must not deliver heat by air from their accredited RHI installation to the biogas plant producing the biogas used for combustion;
(wwww) participants must allow the Authority reasonable access in accordance with part 9;

(xxxx) participants generating heat from solid biomass must comply with one of regulation 23, 24 or 25 as specified in their statement of eligibility;

(yyyy) participants must notify the Authority where they have not complied with the eligibility criteria or ongoing obligations or there has been any change in circumstances which may affect their eligibility to receive the RHI;

(zzzz) participants must notify the Authority of any change to the plants supplying heat to a heating system of which their accredited RHI installation forms part;

(aaaaa) participants must, if requested, provide evidence that the heat for which periodic support payments are made is used for an eligible purpose and must not deliberately generate heat for the sole purpose of increasing their periodic support payments;

(bbbbbb) such other administrative requirements that the Authority may specify in relation to the effective administration of the scheme.

Ongoing obligations in relation to metering

30. (1) Participants must keep meters and steam measuring equipment used in accordance with these Regulations properly maintained and regularly calibrated in accordance with manufacturer’s instructions where available and retain evidence of this, including service and maintenance invoices, receipts or certificates for the duration of their participation in the scheme.

(2) The Authority 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—

(ccccc) meter readings and other data collected in accordance with these Regulations from all steam measuring equipment, class 2 heat meters and other meters used in accordance with these Regulations in such format as the Authority may reasonably require;

(ddddd) in relation to participants using steam measuring equipment, a kWhth figure of heat generated and delivered by steam together with supporting data and calculations; and

(eeee) the service and maintenance documentation specified in paragraph (1).

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

(fffff) measure heat used for eligible purposes only,

(ggggg) 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 figure in sub-paragraph (b) to be discounted.

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

(5) Nothing in this regulation prevents the Authority from accepting further data from a participant, if the Authority considers it appropriate to do so.
Ongoing obligations in relation to the provision of information

31. (1) A participant must provide to the Authority any information which the Authority believes the participant may hold and which in the Authority’s opinion, it requires in order to discharge its functions under these Regulations.

(2) Information requested by the Authority must be provided within 7 days or such other date as the Authority may specify.

(3) Information provided to the Authority must be accurate to the best of a participant’s knowledge and belief.

PART 4

ACCREDITATION AND REGISTRATION

Applications for accreditation

32. (1) Subject to regulation 33, the Authority must accredit an eligible installation in accordance with this part.

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

(hhhhh) the information specified in Schedule 1;

(ii iii) a declaration that the information provided by the applicant is accurate to the best of the applicant’s knowledge and belief; and

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

(3) Where an eligible installation is owned by more than one person the Authority—

(kkkkk) may require that an application submitted under this regulation is made by only one of those owners; and

(lllll) must be satisfied that the applicant has the authority from all other owners to be the participant for the purposes of the scheme.

(4) Before accrediting an eligible installation, the Authority may require a site inspection to be undertaken in order to satisfy itself that a plant should be accredited.

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

(6) Where an application for accreditation has been properly made and the Authority is satisfied that the plant is an eligible installation the Authority must—

(mmmmm) accredit the eligible installation;

(nnnnn) notify the applicant in writing that the application has been successful;

(o oooo) determine the site of the accredited RHI installation;

(ppppp) enter on a central register details of the accredited RHI installation, the site on which it is located, the date of accreditation and the applicant’s name;

(qqqqq) notify the applicant of any conditions attached to the accreditation;
in relation to an applicant who is or will be generating heat from biomass, specify whether the applicant must comply with regulation 23, 24 or 25; and

send a statement of eligibility including the following information—

(i) the date of accreditation;
(ii) the applicable tariff rate;
(iii) the process and timing for providing meter readings;
(iv) details of the frequency and timetable for payments;
(v) the tariff lifetime and tariff end date.

(7) Where the Authority 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)(f) has been notified to a participant, it cannot be changed except in the case of error or on the provision of new information.

Exceptions to accreditation applicable to all eligible installations

33. (1) The Authority must not accredit an eligible installation unless the applicant has given notice that—

(tttt) no grant from public funds has been made in respect of any of the costs of purchasing or installing the eligible installation; or

(uuuu) such a grant was made in respect of an eligible installation 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 which 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 Authority must not accredit an eligible installation if it has not been commissioned.

(4) The Authority may refuse to accredit an eligible installation if its owner has indicated that one or more of the eligibility obligations will not be complied with.

Changes in ownership

34. (1) This regulation applies where a participant who owns an accredited RHI installation transfers ownership of that accredited RHI installation to another person.

(2) A participant must notify the Authority as soon as possible in the event of a change in ownership of an accredited RHI installation.

(3) No periodic support payment may be made to the new owner of an accredited RHI installation until that owner has notified the Authority of the change in ownership and the steps set out in paragraph (4) have been completed.

(4) On receipt of a notification under paragraph (3), the Authority—

(vvvvv) may require the new owner to provide such of the information specified in schedule 1 as the Authority considers necessary for the proper administration of the scheme; and/or
(wwwww) 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.

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

(xxxxx) update the central register; and

(yyyyy) send the new owner a statement of eligibility setting out the information specified in regulation 32(6)(g).

(6) If no notification is made in accordance with paragraph (3), within 12 months of the transfer of ownership of the accredited RHI installation the accreditation RHI installation in question will cease to be accredited and no further periodic support payments will paid in respect of the heat it generates.

(7) The period specified in paragraph (6) may be extended by the Authority where there are extenuating circumstances.

(8) Following the successful completion of the steps required under paragraph (4) and (5), 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.

Producers of biomethane

35. (1) A producer of biomethane must register with the Authority in order to become a participant.

(2) Applications for registration must be supported by—

(zzzzz) the information specified in schedule 1;

(aaaaaa) a declaration that the information provided by the applicant is accurate to the best of the applicant’s knowledge and belief; and

(bbbbbb) details of the process by which the applicant proposes to produce biomethane and arrange for its injection.

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

(4) Where the application for registration is properly made the Authority must—

(cccccc) notify the applicant in writing that registration has been successfully completed and the applicant is a participant;

(dddddd) enter on a central register the date of registration and the applicant’s name;

(eeeeee) notify the applicant of any conditions attached to their registration as a participant; and

(ffffffffff) send the applicant a statement of eligibility including the information specified in regulation 32(6)(g) as applicable.

(5) The Authority may refuse to register an applicant if the applicant has indicated that one or more of the eligibility obligations will not be complied with.
Preliminary accreditation

36. (1) This regulation applies to the granting and withdrawing of preliminary accreditation of a plant by the Authority.

(2) This regulation does not apply to plants which will generate heat using solar collectors or a heat pump.

(3) The Authority 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—

(gggggg) planning permission under the Planning (Northern Ireland) Order 1991⁹ has been granted; or

(hhhhhh) such planning permission is not required and appropriate evidence of this is provided to the Authority.

(4) The Authority 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.

(5) An application for preliminary accreditation must be supported by such of the information specified in schedule 1 as the Authority considers necessary.

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

(7) Where a plant has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for accreditation is made under part 4, the Authority must grant that application unless it is satisfied that—

(ii) 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;

(jjjjjj) any condition attached to the preliminary accreditation has not been complied with;

(kkkkkk) the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular such that, had the Authority known the true position when the application for preliminary accreditation was made, it would have been refused; or

(llllll) 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.

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

(mmmmmm) withdraw the preliminary accreditation;

(nnnnnn) amend the conditions attached to the preliminary accreditation; or

(oooooo) attach conditions to the preliminary accreditation.

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

⁹ 1991 No. 1220 (N.I. 11)
(pppppp) in the Authority’s view there has been a material change in circumstances since the preliminary accreditation was granted;

(qqqqqq) any condition attached to the preliminary accreditation has not been complied with;

(rrrrrr) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular; and/or

(ssssss) 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.

(10) The Authority must send the applicant a notice setting out—

(tttttt) its decision on an application for preliminary accreditation of an plant;

(uuuuuu) any conditions attached to the preliminary accreditation; and/or

(vvvvvv) any withdrawal of preliminary accreditation.

(11) The notice sent pursuant to paragraph (9) 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 attached to the preliminary accreditation are to take effect.

(12) In paragraph (2), the reference to the person who proposes to construct an eligible installation includes a person who arranges for the construction of the eligible installation.

PART 5

PERIODIC SUPPORT PAYMENTS

Payment of periodic payments to participants

37. (1) Subject to part 7 the Authority will pay participants periodic support payments calculated in accordance with this part.

(2) Periodic support payments will accrue from the tariff start date and will be paid for the tariff life time ending on the tariff end date.

(3) Periodic support payments will be calculated by the Authority for each quarterly period and paid four times a year.

(4) Subject to paragraph (5), the tariff for each accredited RHI installation or for a participant who is a producer of biomethane will fixed for the tariff life time and will be—

(wwwwww) in relation to accredited RHI installations, the applicable tariff as at the date of accreditation for the eligible technology of that accredited RHI installation based on the combined installation capacity of that accredited RHI installation and all installations—

(i) for which an application for accreditation has been made;

(ii) which use the same source of energy as the accredited RHI installation; and

(iii) which form part of the heating system of which the accredited RHI installation forms part, or
(xxxxx) in relation to participants who are producers of biomethane, the biomethane and biogas combustion tariff as at the date of registration.

(5) The tariffs for the period ending [date TBC] will be the tariffs set out in table 1 of schedule 3. For each subsequent year commencing on 1 April and ending on [31 March], the Authority will use the tariff rates set out in the table which will be published each year by the Authority and will comprise the figures in table 1 of schedule 3 adjusted by the percentage increase or decrease in the retail price index for the previous calendar year.

Periodic payments for simple systems

38. (1) Subject to part 6, this regulation applies to participants who own an accredited RHI installation which—

(yyyyyy) is generating and supplying heat solely for eligible purposes;

(zzzzzz) does not generate and deliver heat by steam; and

(aaaaaa) is not a CHP system.

(2) Participants will be paid a periodic support payment in respect of each quarterly period calculated in accordance with one of the following equations, as applicable—

(bbbbbbb) A x B; or

(cccccccc) where the accredited RHI installation is generating heat from the combustion of biogas,

\[ A \times (B - C), \]

where A is the tariff fixed by the Authority for the accredited RHI installation on the date of accreditation;

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

C is the heat in kWhth directed from the accredited RHI installation or delivered by any other source to the biogas plant which produced the biogas combusted in the relevant quarterly period.

Periodic payments for complex systems

39. (1) This regulation applies to participants who own an accredited RHI installation which does not fall within regulation 38.

(2) Participants will be paid a period support payment for each quarterly period in respect of the accredited RHI installation calculated in accordance with one of the following equation, as applicable—

(dddddddd) A x B x C/E; or

(eeeeeeee) where the accredited RHI installation is generating heat from the combustion of biogas,

\[ A \times B \times (C - D)/E, \]

where A is the tariff fixed by the Authority for the accredited RHI installation on the date of accreditation;

B is the total number of kWhth used by the heating system of which the accredited RHI installation forms part during the relevant quarterly period for eligible purposes;
C is the heat generated by the accredited RHI installation in kWhth during the relevant quarterly period;

D is the heat in kWhth directed from the accredited RHI installation or delivered from any other source to the biogas plant which produced the biogas combusted in 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 accredited RHI installation forms part in the relevant quarterly period.

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

40. (1) This regulation applies to participants generating heat from one of the following—

(fffff) solid biomass contained in municipal waste; or

(gggggg) solid biomass in an accredited RHI installation with an installation capacity of [1MWth] and above.

(2) Where the solid biomass used by a participant is contaminated with fossil fuel or the participant has used fossil fuel for permitted ancillary purposes, the periodic support payment calculated in accordance with regulations 38 or 39 will be reduced pro rata to reflect the proportion of fossil fuel contamination and proportion of fossil fuel used for permitted ancillary purposes during the relevant quarterly period which resulted in the generation of heat.

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

41. (1) This regulation applies to participants producing and combusting biogas produced from gasification or pyrolysis.

(2) Where a participant uses feedstock contaminated with fossil fuel the periodic support payment calculated in accordance with regulation 38 or 39 will 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

42. (1) Participants producing biomethane for injection will be paid a period support payment each quarterly period calculated in accordance with the following equation—

A x (B – (C + D)) x E,

where A is the biomethane injection tariff;

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 plant which produced the biogas from which the biomethane was made, from any heat source other than heat generated from the combustion of that biogas; and
E 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

43. (1) This regulation applies where a participant installs additional RHI capacity.
(2) In this regulation “additional RHI capacity” means an increase in the capacity
of an accredited RHI installation (“the original accredited RHI installation”) by the
addition of another plant using the same source of energy and supplying heat to
the same heating system of which the accredited RHI installation forms part.
(3) A participant must inform the Authority within 28 days of 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 accredited RHI installation was
first commissioned.
(5) Where this paragraph applies—
(hhhhhhh) the Authority may review the accreditation of any accredited RHI
installation located on the same site as the additional RHI capacity;
(iiiiiii) upon an application for accreditation of the additional RHI capacity, the
Authority must—
(i) treat the additional RHI capacity as if it were part of the original
accredited RHI installation, and
(ii) decide whether or not to accredit the additional capacity and original
accredited RHI installation as one eligible installation in accordance
with part 4;
(jjjjjjj) subject to paragraph (d), where the Authority refuses accreditation under sub-
paragraph (b)(ii), the original accredited RHI installation must remain
accredited;
(kkkkkkk) if a review undertaken in accordance with paragraph (a) results in a
finding that one of the eligibility criteria or ongoing obligations is no longer
being met, the Authority may take appropriate action under part 7;
(lllllll) where the Authority grants accreditation in accordance with paragraph (b),
from the date of accreditation of the additional RHI capacity a participant’s
periodic support payments will be calculated using the tariff as at the date of
accreditation of the original accredited RHI installation for that eligible
technology based on the combined installation capacity of the additional RHI
capacity and the original accredited RHI installation and will terminate on 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 accredited RHI installation was first commissioned.
(7) Where this paragraph applies, the Authority may review the accreditation of any
accredited RHI installation located on the same site as the additional RHI capacity.
(8) All additional RHI capacity must be metered separately.

PART 7

ENFORCEMENT

Compliance Notices

44. (1) Where the Authority has reasonable grounds to believe that a participant has failed or may be failing to comply with an eligibility criterion or ongoing obligation it may serve the participant with a compliance notice.

(2) The compliance notice must specify:

- (mmmmmmmm) the eligibility criterion or eligibility obligation with which the participant has failed or may be failing to comply;
- (nnnnnnn) the manner of the alleged failure;
- (ooooooo) whether any action must be taken to remedy the failure;
- (ppppppp) the period within which any action must be taken; and
- (qqqqqqq) the consequences of failing to take any action stipulated in paragraph 2(c) including potential sanctions.

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

45. (1) The Authority may temporarily withhold all or part of a participant’s periodic support payments where the Authority has reasonable grounds to suspect that the participant is failing to comply with an eligibility criterion or ongoing obligation and requires time to investigate the suspected non-compliance.

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

- (rrrrrrrr) the eligibility criterion or ongoing obligation with which the Authority suspects the participant is failing to comply;
- (ssssssss) the reason why periodic support payments are being withheld;
- (tttttttt) the date from which periodic support payments will be withheld;
- (uuuuuuuu) the next steps in the investigation; and
- (vvvvvvvv) details of the participant’s right to appeal including any relevant time-limits.

(3) Any investigation must be commenced and completed as soon as is reasonably practicable.

(4) The Authority may withhold a participant’s periodic support payments for a maximum period of 6 months commencing from the date of the notice specified in paragraph (2).

(5) The Authority must review its decision to withhold a participant’s periodic support payments every 30 days commencing 30 days after the date of the notice specified in paragraph (2).
(6) Following a review pursuant to paragraph (5), the Authority must send a notice to the participant providing an update on—

(wwwwwww) the progress of any investigation to date; and

(xxxxxxxx) whether the Authority intends to continue to withhold periodic support payments.

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

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

(9) On conclusion of the investigation or after 6 months, whichever is the earlier, the Authority must notify the participant of the outcome of the investigation, if applicable, and either—

/yyyyyyyy impose one or more of the other sanctions set out in this Part; or

/zzzzzzzz repay any periodic support payments temporarily withheld under this regulation within 21 days.

(10) This regulation does not affect a participant’s tariff end date.

Power to temporarily withhold periodic support payments to ensure compliance

46. (1) The Authority may temporarily withhold all or part of a participant’s periodic support payments where it is satisfied that the participant is failing to comply with an eligibility criterion or ongoing obligation.

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

(aaaaaaaa) the eligibility criterion or ongoing obligation with which the Authority believes the participant is failing to comply;

(bbbbbbbb) the reason why periodic support payments are being withheld;

(cccccccc) the date from which periodic support payments will be withheld;

(dddddddd) the steps that the participant must take to satisfy the Authority that the relevant eligibility criterion or ongoing obligation is being met;

(eeeeee) the consequences of the participant failing to comply with the steps specified in sub-paragraph (d) including potential sanctions; and

(fffffff) details of the participant's right to appeal including any relevant time-limits.

(3) The Authority may withhold a participant’s periodic support payments for a maximum period of 6 months following service of the notice specified in paragraph (2).

(4) For the purposes of calculating the time-limit specified in paragraph (3), no account will be taken of any period attributable to the participant’s delay in providing any information reasonably requested by the Authority.
For the purposes of paragraph (4), a participant will not be deemed to have delayed in providing information if that participant responds within 2 weeks of a request from the Authority.

On expiry of the time-limit specified in paragraph (3) the Authority must either—

- impose one or more of the other sanctions set out in this Part; or
- repay any periodic support payments temporarily withheld under this regulation within 21 days.

This regulation does not affect a participant’s tariff end date.

Power to suspend periodic support payments where ongoing failure to comply

47. (1) Where the Authority is satisfied that a participant is failing to comply with an eligibility criterion or ongoing obligation it may suspend the participant’s periodic support payments.

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

- the eligibility criterion or ongoing obligation with which the participant is failing to comply;
- the reason why periodic support payments are being suspended;
- the date from which the suspension is effective;
- the steps that the participant must take to satisfy the Authority that the relevant eligibility criterion or ongoing obligation is being met;
- the consequences of the participant failing to comply with the steps required pursuant to sub-paragraph (d) including potential sanctions; and
- details of the participant’s right to appeal including any relevant time-limits.

(3) Within 21 days of being satisfied that the eligibility criterion or ongoing obligation are being met the Authority must remove the suspension.

(4) The maximum period for which the Authority may suspend a participant’s periodic support payments is 1 year. After this time the Authority must either—

- impose any other sanction specified in this Part; or
- remove the suspension with 14 days.

(5) A participant may not recover any periodic support payments suspended in accordance with this regulation.

(6) This regulation does not affect a participant’s tariff end date.

Power to stop participants’ periodic support payments

48. (1) Where the Authority is satisfied that there has been a material or repeated failure by a participant to comply with an eligibility criterion or ongoing obligation during any quarterly period, the Authority may decide not to pay all or part of the support payments in respect of that quarterly period.
(2) Within 21 days of a decision not to pay periodic support payments, the Authority must send a notice to the participant specifying—

(qqqqqqqq) the eligibility criterion or ongoing obligation with which the participant has failed to comply;

(rrrrrrrr) the reason why periodic support payments are being stopped;

(ssssssss) the date from which the periodic support payments are to be stopped; and

(tttttttt) details of the participant’s right to appeal including any relevant time-limits.

(3) This regulation does not affect a participant’s tariff end date.

Power to reduce periodic support payments

49. (1) Where the Authority is satisfied that there is or has been a material or repeated failure to comply with an eligibility criterion or ongoing obligation in any quarterly period it may reduce a participant’s next periodic support payment.

(2) The Authority 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 next periodic support payment.

(3) The reduction in a participant’s periodic support payment must be commensurate with the seriousness of the breach.

(4) Within 21 days of a decision to reduce a participant’s periodic support payment, the Authority must send a notice to the participant specifying—

(uuuuuuuu) the reason for the reduction including the eligibility criterion or ongoing obligation with which the participant has failed or may be failing to comply;

(vvvvvvvv) the level of the reduction;

(wwwwwwww) the period which the reduction covers;

(xxxxxxxx) details of any evidence supporting the Authority’s decision; and

/yyyyyyyy) details of the participant’s right to appeal including any relevant time-limits.

Overpayment notices and offsetting

50. (1) Where the Authority has reasonable grounds to believe that a participant has received a periodic support payment which exceeds that participant’s correct entitlement or whilst failing to comply with an eligibility criterion or ongoing obligation it may take the following action—

(zzzzzzzz) require the participant to repay the periodic support payment; or

(aaaaaaaa) offset the periodic support payments against future periodic support payments.

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

(bbbbbbbb) the periodic support payment which the Authority believes have been overpaid and the sum which it is seeking to recover from the participant;
whether the sum specified in sub-paragraph (a) will be recovered in accordance with paragraph (1)(a) or 1(b);

- the period within which the sum specified in sub-paragraph (a) must be repaid;
- the consequences of failing to make any repayments requested including potential sanctions; and
- details of the participant’s right to appeal any sum claimed including any relevant time-limits.

Excluding a participant from the scheme

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

- exclude the participant from the scheme and stop all periodic support payments in respect of a specific accredited RHI installation; or
- exclude the participant’s other accredited RHI installations.

(2) Within 21 days of a decision to exclude the Authority must send a notice to the participant specifying—

- the reason for the exclusion including the eligibility criterion or ongoing obligation with which the participant has failed to comply;
- an explanation of the effect of the exclusion;
- details of any evidence supporting the Authority’s findings; and
- details of the participant’s right to appeal including any relevant time limits.

(3) Where a participant has been excluded from the scheme, the Authority may prohibit that participant from reapplying to join the scheme in relation to any future eligible installation.

(4) A prohibition under paragraph (3) may be removed where the Authority believes that it is just and equitable in the particular circumstances of the case to do so.

PART 8

WITHDRAWAL OF SANCTIONS

Withdrawal of Part 7 sanctions

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

- there was an error involved in the original imposition of the sanction; or
- 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 Authority must send a notice to the participant specifying—

- the sanction which has been withdrawn;
the reason for the revocation;
what action if any the Authority 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
details of someone within the Authority whom the participant may contact if they are not satisfied with the proposals made by the Authority under sub-paragraph (c).

(3) If a participant is not content with the proposals made by the Authority in under paragraph (2)(c) it must notify the Authority within one month of receipt of a notice sent in accordance with paragraph (2).

PART 9

INSPECTION

Power to inspect accredited RHI installations

53. (1) The Authority may request entry at any reasonable hour to inspect an accredited RHI installation and its associated infrastructure to undertake any one or more of the following—
verify that the RHI accredited installation satisfies the eligibility criteria and ongoing obligations;
verify meter readings;
take samples and remove them from the premises for analysis;
take photographs, measurements or video or audio recordings; and/or ensure that there is no other contravention of these Regulations.

(2) The Authority may impose one or more of the sanctions set out in Part 7 in the event that an occupier unreasonably refuses —
a request made under paragraph (1); or to comply with directions of the Authority once entry to the premises is granted.

(3) Within 21 days of a request made under paragraph (1) being unreasonably refused the Authority must send a notice to the participant specifying—
the reason why the Authority believes the refusal to be unreasonable;
the consequences of the refusal and of failing to take any other action required under paragraph (2)(b), as applicable, including potential sanctions; and
details of the participant’s right to appeal including any relevant time-limits.

(4) For the purposes of paragraph (2), an occupier means—
a participant;
a participant’s agent; or
(eeeeeeeeee) any other person authorised by a participant to operate or control an accredited RHI installation.

PART 10

APPEALS

Right of appeal

54. (1) [A decision will be taken on the internal appeal process ahead of the introduction of the RHI which may require an addition to the draft Regulations.]

PART 11

ADMINISTRATIVE FUNCTION OF THE AUTHORITY AND NOTICES

Publication of guidance and tariffs

55. (1) The Authority must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

(2) The Authority must publish on or before [1 April] each year a tariff table for the period commencing [1 April] of that year to [31 March] of the following year in accordance with regulation 37(5).

Reporting obligations

56. (1) The Authority must provide to the Department quarterly and annual reports setting out in a practical format the following information, as applicable—

(fffffffff) In respect of each accredited RHI installation accredited during the reporting period—

(i) details of the accredited RHI installation and the fuel it has used;
(ii) details of the generator it has replaced, if any;
(iii) the total amount of periodic support payments made in respect of that accredited RHI installation during the reporting period;
(iv) the total amount of heat in kWhth for which periodic support payments were made in respect of that accredited RHI installation and the eligible purpose and the industry sector for which it was used; and
(v) sustainability information provided in accordance with schedule 2;

(gggggggggg) the information specified in paragraph (a) in aggregate form for all accredited RHI installations accredited during the reporting period and since the date of commencement of the scheme;

(hhhhhhhhhh) details of the number of biomethane producers who are participants and the volume of biomethane produced for injection for which periodic support payments have been made; and
(iiiiiiii) such other information as the Authority may hold in relation to its functions under these Regulations as the Department may request.

(2) The first annual report must be published by [date TBC] and must cover the period ending on [date TBC] and each subsequent year the annual report must be published by [date TBC] in respect of the 12 months period ending on [date TBC] of that year.

(3) The Authority must publish quarterly and annual reports on its website and provide copies to the Department.

(4) The Authority must publish the following information on its website—

   (jjjjjjjjjj) the quarterly and annual reports provided in accordance with this regulation; and

   (kkkkkkkkkk) up to date information on the number of accredited RHI installations and their installation capacity.

Additional information

57. On request from the Department, the Authority must provide to the Department in such format as the Department may reasonably request such additional information as the Authority may hold in relation to the performance of its functions under these Regulations as is requested.

Notices

58. A notice under these Regulations—

   (llllllllll) must be in writing; and

   (mmmmmmmmmm) may be transmitted by electronic means.

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

***

A senior officer of the Department of Enterprise, Trade and Investment
SCHEDULE 1

Information to be provided on application for accreditation or registration

1. (1) The information referred to in regulations 32 and 35 is, as applicable to the prospective participant—

(a) name, a 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 applicant’s name which accepts pound sterling deposits in the United Kingdom;

(e) details of the eligible installation owned by the prospective participant, including the site on which it is located;

(f) evidence that the eligible installation is new;

(g) where an eligible installation has replaced an existing generator, details of the generator replaced;

(h) evidence which demonstrates to the Authority’s satisfaction the installation capacity of the eligible installation;

(i) details of the fuel which the owner is proposing to use;

(j) in relation to applicants generating heat from biomass, notification as to whether the applicant is proposing to use solid biomass contained in municipal solid waste and, if so, whether or not the applicant is regulated under the Pollution Prevention and Control Regulations (Northern Ireland) 2003/Waste incineration directive;

(k) where the plant is a heat pump, evidence which demonstrates to the Authority’s satisfaction, that the heat pump meets a coefficient of performance of at least 2.9.

(l) in respect of a producer of biogas or biomethane, details of the feedstock which the producer is proposing to use;

(m) details of what the heat generated will be used for and an estimate of how much heat will be used;

(n) details of the building or other enclosed structure in which the heat will be used;

(o) the industry sector for which the heat will be used;

(p) details of the size and annual turnover of the undertaking;

(q) details of any other heat generating equipment supplying heat to for the same eligible purpose as the eligible installation;

(r) where regulation 13 applies, evidence from the installer that the requirements specified in that regulation are met;

(s) such information as the Authority may specify to enable it to satisfy itself that the metering and measuring requirements imposed by regulations 16 to 21 of part 2 have been met including—
(i) evidence that a class 2 heat meter has been installed;
(ii) evidence that the meter or steam measuring equipment was calibrated prior to installation;
(iii) details of the class 2 heat meter’s manufacturer, model, meter serial number and manufacturer’s declaration of conformity to the European Measuring Instruments Directive;
(iv) a schematic diagram;
(v) where—
   (aa) an eligible installation has with an installation capacity of [1MWth] or above; or
   (bb) regulation 17 applies;
   if so requested by the Authority, an independent report by a competent person verifying the schematic diagram provided in accordance with sub-paragraph (iv);
(ggggggggggg) such other information as the Authority may reasonably request to enable it to consider the prospective participant’s application for accreditation.

(2) The costs of providing the information requested in this schedule are to be borne by the applicant.
SCHEDULE 2

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

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

1. (1) This schedule applies to—

(hhhhhhhhhhh) participants using solid biomass, other than biomass derived wholly from municipal waste, for combustion in accredited RHI installations with an installation capacity of [1 MWth] or above; and

(iiiiiiiiiii) participants producing biomethane from biogas produced from solid biomass, other than solid biomass contained in municipal waste

(2) Participants must provide the following information to the Authority in relation to all biomass which falls within paragraph (2)—

(iiiiiiiiiiiii) information identifying to the best of the participant’s knowledge and belief—

(i) the material from which the biomass was composed;

(ii) the form of the biomass;

(iii) its mass;

(iv) whether the biomass was a by-product of a process;

(v) whether the biomass was derived from waste;

(vi) where the biomass was plant matter or derived from plant matter, the country where the plant matter was grown;

(vii) where the information specified in paragraph (vi) is not known or the biomass was not plant matter or derived from plant matter, the country from which the operator obtained the biomass;

(viii) whether any of the biomass used was an energy crop of derived from an energy crop and if so—

(aa) the proportion of the consignment which was or was derived from the energy crop; and

(bb) the type of energy crop in question;

(ix) whether the 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; and

(x) where the 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 [date TBC].

(3) The information specified in paragraph (2) must be collated by reference to the following places of origin—

(kkkkkkkkkkk) United States of America/Canada;

(llllllllllll) the European Union; or

(mmmmmmmmmm) 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 [date TBC] which is grown primarily for the purpose of being used as fuel or which is one of the following—

(nn nn nn nn nn nn) miscanthus giganteus (a perennial grass);
(o o o o o o o o) salix (also known as short rotation coppice willow); or
(pp p p p p p p) populous (also known as short rotation coppice poplar);

and

“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 fuel is derived.
## SCHEDULE 3

### Tariffs participants

<table>
<thead>
<tr>
<th>Tariff name</th>
<th>Eligible technology</th>
<th>Installation capacity</th>
<th>Tariff rate (pence/kWh)</th>
<th>Tariff duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Source Heat Pumps</td>
<td>[Less than 45kWth]</td>
<td>[3.3]</td>
<td>[20]</td>
<td></td>
</tr>
<tr>
<td>Ground Source Heat Pumps</td>
<td>[including water source heat pumps and deep geothermal]</td>
<td>[Less than 45kWth]</td>
<td>[4.0]</td>
<td></td>
</tr>
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<td></td>
<td>[Above 45kWth but excluding large industrial sites]</td>
<td>[0.9]</td>
<td>[20]</td>
<td></td>
</tr>
<tr>
<td>Bioliquids</td>
<td>[Less than 45kWth]</td>
<td>[1.5]</td>
<td>[20]</td>
<td></td>
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<td>[solid biomass; municipal solid waste (including CHP)]</td>
<td>[Less than 45kWth]</td>
<td>[4.5]</td>
<td>[20]</td>
</tr>
<tr>
<td></td>
<td>[Above 45kWth but excluding large industrial sites]</td>
<td>[1.3]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biomethane</td>
<td>[Biomethane injection and biogas combustion, except from landfill gas]</td>
<td>[Biomethane all scales, biogas combustion below 200 kWth]</td>
<td>[2.5]</td>
<td>[20]</td>
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<tr>
<td>Solar Thermal</td>
<td>[Less than 200 kWth]</td>
<td>[8.5]</td>
<td>[20]</td>
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# IMPLEMENTATION OF RHI REGULATIONS

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 week consultation on RHI proposals and Regulations</td>
<td>22 July to 3 October 2011</td>
</tr>
<tr>
<td>Review consultation and policy decisions</td>
<td>2 weeks</td>
</tr>
<tr>
<td>Re-drafting Regulations to incorporate comments from consultation</td>
<td>2-3 weeks</td>
</tr>
<tr>
<td>Liaise with Ofgem lawyers to obtain consent to proceed with Regulations</td>
<td>2 weeks</td>
</tr>
<tr>
<td>SL1 and consultation responses to Minister and Committee</td>
<td>3 weeks</td>
</tr>
<tr>
<td>Liaise with DSO to seek approval on final draft Regulations</td>
<td>TBC</td>
</tr>
<tr>
<td>Once DSO approval has obtained, seek Ministerial approval to proceed with making and laying Regulations</td>
<td>Needs to be completed by early February 2012 at the latest (in order to go through affirmation resolution procedure in the Assembly)</td>
</tr>
<tr>
<td>Finalisation of Regulations and passage through Assembly</td>
<td>Early February – End March 2012</td>
</tr>
</tbody>
</table>
26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC. Since that time, the rules for the internal market in gas and electricity have been the subject of continual evolution and expansion and DSO has worked closely with DETI and later DFE in amending Northern Ireland legislation to implement these rules. In addition, there has been a separate but interrelated series of legislative initiatives on renewable energy arising out of climate change concerns. Both of these programmes require legal advice on a broader range of commercial and energy law issues than DSO provides. As previously mentioned, the core expertise and experience of DSO advisory lawyers lies in the public law field. For this reason it was thought necessary for DETI to engage external legal consultants to assist in these specialist aspects of energy law. Initially, this expertise was provided by a London-based law firm, SNR Denton (formerly Denton, Wilde, Sapte). When that contract expired on 31 March 2011, a further procurement exercise was carried out and final award letters were issued to successful tenderers on 1 April 2011. (WIT-00989-01003 refers). This is the procurement which resulted from the letter dated 2 September 2010, from Paul McGinn to DETI, (Annex 3 refers). It was through this procurement exercise that Arthur Cox was commissioned, by DETI, to provide a preliminary draft of the RHI Regulations on 9 June 2011.

3.1. Paragraph 3 of the s.21 Notice asks about the relationship and/or distinction in roles in the work carried out on the RHI Scheme by DSO, by Arthur Cox and by OFGEM in-house lawyers. As part of Arthur Cox's responsibility in providing legal advice to DETI, Arthur Cox was specifically instructed by DETI to draft Northern Ireland Renewable Heat Incentive Regulations, (see WIT-01004-01005). A draft of the Regulations was in turn submitted to DSO by DETI on 15 August 2011, (WIT-01006). DSO advised DETI on the draft Regulations but had no direct dealings with Arthur Cox or Ofgem. DSO was unaware of the nature of the contact between DETI and Arthur Cox/Ofgem.

3.2. An Administrative Arrangement Agreement, “AAA”, was entered into between DETI, (on the one part), and GEMA/Ofgem, (on the other), for the purposes of the following in relation to the RHI Scheme:-

- managing enquiries and applications;
• processing payments;
• preventing fraud; and
• providing management information.

GEMA/Ofgem provided a draft Administrative Arrangement Agreement, “draft AAA”, for this purpose which had been adapted from that developed for the RHI Scheme in Great Britain. In developing this draft AAA, and in its operation, GEMA/Ofgem was advised by its own in-house lawyers. DSO directly advised DETI but had no further direct involvement with either Ofgem or its in-house legal advisors.

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

4.1. The following narrative, in response to question 4, has been provided by Nicola Wheeler.

4.2. By letter dated 15 August 2011, (WIT-01006), DETI submitted the draft Renewable Heat Incentive Regulations (Northern Ireland) 2011, “the 2011 draft Regulations”, to the then Director of DSO Advisory Division 2, (Paul McGinn). The draft Regulations were accompanied by a set of instructions. The instructions advised:-

“The Department has engaged external legal advisors, Arthur Cox, to draft an early version of what NI RHI Regulations might look like. These Regulations are based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB Regulations). A copy of the draft Northern Ireland Regulations is attached at Annex A for your convenience.”

By way of instructions to DSO, the letter stated:-

“It would be most helpful if solicitors at DSO would have capacity to facilitate this process, and your views on this would be appreciated. I would also be grateful if you could advise whether you are content with the enclosed draft
DSO was not asked to advise on any particular issues or specific provisions within the draft Regulations.

4.3. I, Nicola Wheeler, was allocated this file by the Director of Advisory Division 2, (my Director). As I indicated in my letter dated 3 October 2011 to Peter Hutchinson (DETI) (WIT-01185), I understood my role to be limited to checking the draft Regulations to ensure that drafting conventions commonly applied in Northern Ireland were followed and that legislative references were correct. The vires of the draft Regulations was also considered as far as possible, given that the parent powers were contained in a Bill which, at that point had not yet received Royal Assent. Consequently, I checked the layout and format, I checked legislative references within the draft Regulations to ensure that the correct Northern Ireland legislation had been referenced, (rather than corresponding GB legislative references), and that correct citations were given in the footnotes. I also checked terminology to ensure that the correct Northern Ireland bodies/organisations were referenced.

4.4. Some months later, in 2012, as a consequence of a further set of DETI instructions addressed to the Director of Advisory Division 2, dated 2 April 2012, (see WIT DSO-01030), I was asked to consider (i) the definition of “the Authority” which appeared in the then draft of the Regulations, “the draft 2012 Regulations”, and (ii) two specific provisions in the draft 2012 Regulations, (regulation 53 and 54), which related to administrative reporting arrangements. In response, (see DSO-01047-01048 and DSO-01049), I advised DETI on the parent powers contained in sections 113 and 114 of the Energy Act 2011, which governed who “the Authority” could be. I also advised on the necessity of regulations 53 and 54, which placed reporting obligations on “the Authority”.

4.5 By e-mail dated 14 September 2012, (DSO-00691), DETI contacted me to advise that a further draft of the Regulations would follow for DSO consideration. DETI advised –

"Just by way of update/forewarning, the draft Regulations relating to the
Mrs Wheeler: Yes.

Mr Lunny: — and they’ve enclosed a copy for you. And then they go on to explain that there’s a public consultation ongoing, and if we scroll on down we’ll see that they say at the very top of 1008 that, when:

“the consultation responses have been reviewed and policy decisions applied, the Regulations will be re-drafted by Arthur Cox to take account of those final policy decisions.”

So they’re making it clear Cox’s have an ongoing role in relation to the drafting of these regulations, taking on board policy changes and policy decisions.

10:30 am

And they then, under the heading “Next Steps”, set out their intended timetable for the implementation of the regulations. And, at that point, we can see in the second paragraph, some way down, that their intention was:

“to have the regulations in place by April 2012”,

which we know ultimately didn’t happen. And they enclose a draft timetable for the implementation, and they say, in the third paragraph under the heading “Next Steps” that they expect they

“will be subject to the draft affirmative resolution procedure before the Assembly.”

And then in the final paragraph, they appear to set out what they want your office to do, and they say:

“It would be most helpful if solicitors at DSO would have capacity to facilitate this process, and your views on this would be appreciated.”

Now, pausing there, are you clear as to what that sentence means?

Mrs Wheeler: No. The file was allocated to me, and I obviously got the correspondence. And I just took it from the letter, and from the file being allocated to me, that I was just meant to look over the regulations in our usual, basic DSO role.
Mr Lunny: Yes. Certainly, the following sentence says:

“\textit{I would also be grateful if you could advise whether you are content with the enclosed draft Regulations.}”

So that’s asking you to look at the draft regulations and say whether you’re content. There’s certainly no specific request for advice on a specific issue in that letter.

Mrs Wheeler: No.

Mr Lunny: And there is that slightly opaque sentence about DSO having capability to facilitate this process.

The Chairman: But does that not refer to obtaining a draft affirmative resolution in a previous sentence?

Mr Lunny: It may do, and it may simply be a reference to the three paragraphs before that where they’re setting out their broad timescale and hope that you can facilitate.

Mrs Wheeler: It could be, yes.

Mr Lunny: It might be a request that it gets — it’s dealt with with some level of expedition, perhaps?

Mrs Wheeler: Yes. Probably just facilitate the process of getting it cleared on time — the timescales they needed it.

The Chairman: Who’s the letter from?

Mr Lunny: The letter — if we can just scroll a little bit further down, you’ll see it’s from Mr Hutchinson. So we have heard some evidence from Mr Hutchinson already, and it is something we can revisit with him in phase 2 if needs be. So that’s the letter of instruction, and you had understood your role in relation to these draft regulations to be I think what we’d referred to earlier as your fundamental role, which was to look at the regulations, to consider the issue of vires, to look for Northern Ireland drafting conventions and ensure that they’re followed, and to look for drafting defects.

Mrs Wheeler: Yes, that’s right. All the paragraphs that we’d looked at in the statement
Mr Lunny: And what was your understanding of the role that Arthur Cox were playing, then, in parallel?

Mrs Wheeler: I’d just assumed that they were providing the advice on, I suppose, energy aspects — the technical aspects of the scheme. I didn’t actually think overly of what they were doing. I just concentrated on my role, which I viewed as being more of the legislative side of it, because I just assumed that we were involved in that because Arthur Cox wouldn’t have had as much familiarity with that side of things — looking for things like the Examiner would comment on. I suppose I just thought that they were doing everything else.

The Chairman: Well, at this stage, according to this letter, all you were being told was that they drafted regulations the same as the British ones.

Mrs Wheeler: Yes. I suppose I just assumed that they had another firm involved, because they needed their experience in some way that we didn’t have.

The Chairman: That you didn’t have.

Mrs Wheeler: Yes.

Mr Lunny: Yes. You’d have known against the general backdrop that for certain energy matters, government Departments, DETI, used external lawyers to provide some advice.

Mrs Wheeler: Yes. I wasn’t — I didn’t — I wasn’t — I can’t say that I was aware of all the detail of what had happened with the process of getting Arthur Cox and everything. I just knew that another firm was involved because they needed their input.

Mr Lunny: Yes. And you’d have known from what we’ve looked at in the letter that Cox’s had drafted the regulations based on GB regulations but also that Cox’s were going to have further input in relation to any policy changes in the regulations once the consultation was complete.

Mrs Wheeler: Yes. Well, I was saying, I think, that they were going to redraft them once
Our Ref: SOL 29872/2011/DARD

Mr Peter Hutchinson
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
Belfast
BT4 2JP

Dear Peter

RE: DRAFT RENEWABLE HEAT INCENTIVE REGULATIONS (NORTHERN IRELAND) 2011

I refer to the above and to previous correspondence.

I have now had the opportunity to go through the above mentioned draft Regulations and enclose a draft with handwritten amendments marked upon it.

Many of the amendments are self-explanatory so I do not propose to comment on all of them. However I would like to comment on the amendments as set out below-

General
I have removed some of the references to the words ‘and’ and ‘or’ throughout the Regulations where they have been inserted between sub-paragraphs. Depending on the wording at the start of each provision, the intended meaning of the provision and the context, it is not always necessary to use the word ‘and’ or ‘or’ and indeed, the meaning of the provision itself could be altered incorrectly by the inclusion of these words where they are unnecessary. If in doubt, it is better to follow GB as their draftsmen will probably have considered the use of these words in some detail.

Layout
I advise that you have a Table of Contents to help the reader. I assume this is probably going to be included at a later stage.

You should use Chapter breaks in Parts 2 and 4 as has been done in GB. Northern Ireland Regulations may also use Chapter breaks. It would be much better to use Chapters than to have extra headings placed between various Regulations, for instance, as has been done between regulations 3 and 4, and 4 and 5, and 15 and 16. The current format is unusual. In light of this, those instances throughout the draft where regulation groups instead of Chapters are referred to will need to be amended. I have had a look over the draft and have attempted to amend such references but may have missed some. Please check this.

First Page – You have indicated in your letter dated 15th August 2011 that it is expected that the Regulations will be subject to the draft affirmative resolution procedure before the Assembly. If this is the case the words
"Draft Regulations laid before the Assembly under [insert statutory provision] for approval by resolution of the Assembly" should be inserted at the very top of the first page in italics. When Assembly approval has been given the italicized heading should be deleted from the copy being sent for final print and there should be added to the first page of that copy below the operative date – "Affirmed by resolution of the Assembly on...

Footnotes – the normal drafting practice in NI is to letter footnotes (a), (b) (c) and so on and to start the lettering at (a) again at each new page.

Regulation 2 - Interpretation

Once the provisions of the Bill are finalised it will be necessary to check the definitions to ensure that none of the definitions in the parent Act are unnecessarily duplicated here. Given the provisions of our NI Interpretation Act (which I have attracted by inserting a sub-paragraph(2)), it is unnecessary to define terms which are already defined in the parent Act and which are intended to have the same meaning.

I have removed the definition of ‘the Gas Order’. This term is only used once, namely in the definition of ‘gas conveyor’. It is therefore more appropriate to give the Order its full title in that latter mentioned definition than setting out a whole new definition for that purpose.

I have amended the definition of ‘pipe-line system’ to follow that used in the gas Order. I presume that these Regulations are meant to catch pipe-line systems in terms of what they are understood to mean in the Gas Order? If that is the case the exact wording should be followed otherwise you run the risk of people with pipe-line systems which consist of only one pipe attempting to wriggle out of the definition for the purposes of your Regulations despite being caught by the Gas Order.

As mentioned above, I have attracted the Interpretation Act (NI) 1954 to these Regulations by inserting reference to is in new sub-paragraph (2). This is the normal practice for most NI Regulations.

Part 4

Regulation 27 – Interpretation

I have removed the definitions of ‘allocating authority’, ‘waste collection authority’ and ‘waste disposal authority’ as I don’t believe they are relevant in the NI context. You will see that in the Renewables Obligation Order (NI) 2009 (“the 2009 Order”) district councils are merely referred to. The term ‘district council’ is recognized and does not need to be defined. You are not assigning duties to particular district councils within their own areas so don’t even have to specify this. Furthermore, the terms allocating authority and so on are not used anywhere else in the Regulations apart from in Regulation 28(7) which should also be amended anyway. Please also see my comments below with regards to Regulation 28(7).

Regulation 28(7)

You will note that in Article 3(5) of the 2009 Order it is provided –

"But where the operator of a generating station in which waste is used satisfies the Authority –

(a) by reference to data published by the Department of Environment or a district council, that the proportion of the municipal waste so used, which is, or is derived from fossil fuel, is unlikely to exceed 50 per cent, and
(b) that the municipal waste so used has not been subject to any process before being so used that is likely to have had materially increased that proportion,

that constitutes evidence of the fact that the proportion of the municipal waste so used which is, or is derived from, fossil fuel is 50 per cent."

Received from Stephen McMurray (on behalf of DfE) on 22.05.2017
Annotated by RHI Inquiry
Given that DETI seems to be trying to make the same provision as this, should DETI also be referring to the Department of Environment as publishing the data along with district councils? Who does actually publish the data? Please check this and confirm.

I note that NI follows GB in relation to the technical nature of the subject matter. I cannot comment on the technical nature given that I have no expertise in this regard. I have merely checked the drafting to ensure that the drafting conventions commonly used within NI are applied, and that NI legislative references are correct. Once the Bill has been given Royal Assent it will of course be necessary to check the parent powers to ensure that DETI is acting ultra vires. I understand that GB are still working on their draft and that further amendments will more than likely become necessary as that GB draft takes it final shape. I therefore look forward to receiving a revised NI draft once it becomes available. I ask that any future revised drafts indicate what amendments have been made so that I do not have to unnecessarily check the whole draft again.

I should also add that it would be helpful if the Department could find out whether the Joint Committee on Statutory Instruments raise any issues with the GB Regulations. Our Examiner will receive copies of their comments and will comment on the same issues so it would be useful to avoid them altogether.

If you wish to discuss any of my suggested amendments in further detail, please do not hesitate to contact me.

Yours sincerely

Nicola Wheeler

028 90(2)51275

E-Mail: nicola.wheeler@dfpni.gov.uk
The Renewable Heat Incentive Regulations (Northern Ireland) 2011

Made [•] 2011

Coming into operation [•] 2011

[The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section [•] of the Energy Act 2011 for the purposes of establishing in Northern Ireland an incentive scheme to facilitate and encourage the renewable generation of heat and the production and injection of biomethane and making provision regarding its administration.]¹

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Regulations (Northern Ireland) 2011 and shall come into operation on [•] 2011.

Interpretation

- (i)

2. In these Regulations—

¹ NOTE TO DETI - Wording to be confirmed.
"the Department" means the Department of Enterprise, Trade and Investment;

"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);

"EN 45011" means British Standard EN 45011 which prescribes certain requirements for bodies operating product certification systems; *(a)

"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 to convey gas from one place to another in an area authorised by a licence granted under Article 8(1)(a) of the Gas Order (Northern Ireland) 1996 *(b)

"the Gas Order" means the Gas (Northern Ireland) Order 1996;

"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 or an equivalent scheme accredited under EN 45011 which certifies microgeneration products and installers in accordance with consistent standards;


"municipal waste" has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003 *(c)

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* Replaces "Gas Transporter" to accord with the terminology used in the Gas (Northern Ireland) 1996 (1996 No.275) (NOTE TO DETI: this provisions of the equivalent section 7 of the Gas Act 1996 (as amended), are more prescriptive than the Gas (Northern Ireland) Order 1996, however the effect on the definition is much the same)

Details of which are available at www.microgenerationcertification.org


* 2003 c.33 (NOTE TO DETI: CONFIRMED — applicable in NI)
“MWhth” means megawatt hours thermal;

“MWth” means megawatt thermal;

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

“participant” means—

(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 system of pipes (together with any apparatus and works associated therewith) for the conveyance of gas, not being—

(a) a system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes;

(b) 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) 19659 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) 1949,10 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;11

“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]12; or

9 NOTE TO DETI - This definition has been taken from the Gas Order
10 1949 Chapter 2
11 As extracted from the Gas (Northern Ireland) Order 1996

12 As extracted from the Gas (Northern Ireland) Order 1996
(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);

“steam measuring equipment” means all the equipment needed to measure to the Authority’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 MWh in which has passed a specific point;

“tariff” means the payment rate per kWH 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; and

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

The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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 Authority 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 for any of the following purposes—

(a) heating a space;
(b) heating water;

12 NOTE TO DETI To be confirmed whether this will be undertaken by the Northern Ireland Statistics and Research Agency

(c) 1954 c. 33 (N.})
(c) for carrying out a process.

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

PART 2
ELIGIBILITY AND MATTERS RELATING TO ELIGIBILITY

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 regulations 16 to 21.

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

Eligible installations generating heat from solid biomass

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

(a) it generates heat from solid biomass;
(b) the heat from the solid biomass is generated using equipment specifically designed and installed to use solid biomass as its only primary fuel source;
(c) in the case of a plant with an installation capacity of [45k Wth or less]¹³, 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.

¹³ Value relates to draft GB RHI Regulations – position to be confirmed for NI
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 200k Wth]\(^{14}\); \(\text{and}\)

(c) in the case of a plant with an installation capacity of [45k Wth or less]\(^{15}\), 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]\(^{16}\) below the surface of solid earth; or

(ii) surface water;

(b) in the case of a heat pump with an installation capacity of [45k Wth or less]\(^{17}\), regulation 13 applies; \(\text{and}\)

(c) it has a coefficient of performance of [at least 2.9]\(^{18}\).

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(b);

(b) it generates heat and electricity from biogas and complies with regulation 11(b) and (c); \(\text{and}\)

(c) it generates heat and electricity utilising naturally occurring energy located and extracted from [at least 500 metres]\(^{19}\) beneath the surface of solid earth.

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

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\(^{14}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{15}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{16}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{17}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{18}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{19}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI
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]\(^{21}\) 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—

(a) it generates heat from biogas;

(b) it has an installation capacity of [less than 200k Wth]\(^{22}\); and

(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 was completed and the plant was first commissioned on or after [15th July 2009]\(^{23}\); 

(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 or process; and

(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 [15th July 2009]\(^{24}\).

(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 [15th July 2009]\(^{23}\).
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. 26

Plants comprised of more than one plant

14.—(1) Subject to paragraph (2), and without prejudice to regulation 43(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.

(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 Authority’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 43(2) and was first commissioned [more than 12 months] 27 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 [200k Wth or above] 28.

(2) For the purposes of this regulation—

25 Incentive retrospective start date from draft GB Regulations - position to be confirmed for NI
26 NOTE TO DETI – Confirmed applicable in NI
27 Time period from draft GB Regulations - position to be confirmed for NI
28 Value relates to draft GB RHI Regulations – position to be confirmed for NI
"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.

(2) Subject to regulation 43(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 Authority’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 [15th July 2009]

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 prepared by the Department of Environment, Food and Rural Affairs and published by the Department of Energy and Climate Change.

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;

29 Incentive retrospective start date from draft GB Regulations - position to be confirmed for NI
30 NOTE TO DETI - CONFIRMED - applicable in NI.
(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 Authority and must be supported by—

(a) such of the information specified in Schedule 1 as the Authority may require;

(b) a declaration that the information provided by the applicant is accurate to the best of the applicant’s knowledge and belief; and

(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 Authority 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 Authority, in such manner and form as the Authority may request, evidence of that authority.

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

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

(6) Where an application for accreditation has, in the Authority’s opinion, been properly made in accordance with paragraphs (2) and (3) and the Authority is satisfied that the plant is an eligible installation the Authority must (subject to regulation 23 and regulation 47(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 Authority the applicant’s name and such other information as the Authority 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 regulation 28, 29 or 30 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 Authority 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 Authority considers that an error has been made or on the receipt of new information by the Authority which demonstrates that the specification should be changed.

Exceptions to duty to accredit

23.—(1) The Authority must not accredit an eligible installation unless the applicant has given notice (which the Authority 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 [15th July 2009] 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 Authority must not accredit an eligible installation if it has not been commissioned.

(4) The Authority 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 Authority 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 Authority 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 Authority—

(a) may require the new owner to provide such of the information specified in Schedule 1 as the Authority 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 Authority 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

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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 Authority where the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority must (subject to paragraphs (5), (6) and (7))—

(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 Authority 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 Authority considers applicable.
(5) The Authority 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 Authority must not register an applicant unless that applicant has given notice (which the Authority 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 Authority must not register an applicant if it would result in periodic support payments being made to more than one participant for the same biomethane.

Preliminary accreditation

26.—(1) The Authority 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 Authority from the relevant planning authority.

(2) The Authority 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 Authority may require.

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

(a) withdraw the preliminary accreditation;

(b) amend the conditions attached to the preliminary accreditation; or

(c) attach conditions to the preliminary accreditation.

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

(a) in the Authority’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 Authority 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 Authority 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; and

(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]\textsuperscript{32}.

\textsuperscript{32} Value relates to draft GB RHI Regulations – position to be confirmed for NI
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—

"allocating authority" and "waste disposal authority" have the same meaning as in section 24 of the Waste and Emissions Trading Act 2003;\(^{33}\)

"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);\(^{39}\)

"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;

"waste" has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997;

"waste collection authority" shall mean \(^{[\ast]}\),\(^{35}\) and

"waste disposal authority" has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997.

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]\(^{36}\).

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\(^{33}\) NOTE TO DETI — CONFIRMED — applicable in NI

\(^{35}\) NOTE TO DETI — the draft GB RHI Regulations refer to the meaning of "waste collection authority" under Part 2 (sic) of the Environmental Protection Act 1990 (the "EPA"), which deals with waste on land. This definition, like the whole of Part II of that Act, does not extend to Northern Ireland. However, Part II of the EPA is largely replicated in the Waste and Contaminated Land (Northern Ireland) Order 1997, but this NI Order does not include a definition of "waste collection authority" — referring instead to "district council". A definition of "waste collection authority" is needed in the EPA to cater for the many different categories of authority involved (county councils, city councils and district councils). Given this, it seems appropriate to replace references to "waste collection authority" in the NI RHI Regulations with "district council" which could then be defined by reference to the Local Government Act (Northern Ireland) 1972. This issue requires further consideration.

(b) S.I. 1997/2778 (N.I. 19), Article 2 (2) was amended by SR 2011 no. 12.
(3) For the purposes of paragraph (2)—

(a) the proportion of solid biomass contained in the municipal waste is to be determined by the Authority for every quarterly period;

(b) it is for the participant to provide, in such form as the Authority may require, evidence to demonstrate to the Authority’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 Authority to determine the proportion of solid biomass in accordance with subparagraph (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;

(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]\(^{37}\) 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 Authority 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 Authority—

(a) data published by an allocating authority, a waste disposal authority or a waste collection authority, demonstrating that the proportion of municipal waste used by that participant which is composed of fossil fuel is unlikely to [exceed 50 per cent]\(^{38}\); and

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\(^{36}\) Value relates to draft GB RHI Regulations - position to be confirmed for NI
\(^{37}\) Value relates to draft GB RHI Regulations - position to be confirmed for NI
\(^{38}\) Value relates to draft GB RHI Regulations - position to be confirmed for NI
(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 Authority 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]\(^{39}\).

(8) Where the Authority 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 Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority 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 [1 MWth or above]\(^{40}\)

29.—(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 [1 MWth or above]\(^{41}\).

(2) The participant may use solid biomass contaminated with fossil fuel only where the proportion of fossil fuel contamination does not [exceed 10 per cent]\(^{42}\).

(3) 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.

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

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

(b) it is for the participant to provide, in such form as the Authority may require, evidence to demonstrate to the Authority’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 (5) and (6).

\(^{39}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{40}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{41}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^{42}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI
(5) The participant may use fossil fuel (other than fossil fuel mentioned in paragraph (2) 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; ☞

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

(6) The energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in paragraph (5) must not [exceed 10 per cent]^43 of the energy content of all the fuel used by that accredited RHI installation to generate heat during that quarterly period.

(7) Without prejudice to paragraph (4)(b), in determining the proportion of solid biomass composed of fossil fuel the Authority 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.

(8) Where the Authority so requests, the participant must 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 Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.

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

Participants using solid biomass in accredited RHI installations with an installation capacity of between [45 kWth]^44 and [1 MWth]^45

30.—(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]^46 and [1 MWth]^47.

(2) The participant may use solid biomass contaminated with fossil fuel provided the participant complies with paragraphs (2), (3) (5) and (6) of regulation 29 as well as the requirements of this regulation.

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^43 Value relates to draft GB RHI Regulations – position to be confirmed for NI
^44 Value relates to draft GB RHI Regulations – position to be confirmed for NI
^45 Value relates to draft GB RHI Regulations – position to be confirmed for NI
^46 Value relates to draft GB RHI Regulations – position to be confirmed for NI
^47 Value relates to draft GB RHI Regulations – position to be confirmed for NI
(3) 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 Authority may specify relating to fuel use and fossil fuel used for the permitted ancillary purposes specified in regulation 29(5) and provide this information upon request to the Authority, in such form as the Authority may require, to demonstrate compliance with this regulation.

(4) Without prejudice to paragraph (3), the Authority 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.

(5) Where—

(a) the Authority is not satisfied that the proportion of fossil fuel contamination (within the meaning of regulation 29(4)(c)) does not exceed [10 per cent];\(^\text{48}\) or

(b) the Authority is not satisfied as to the matters specified in paragraphs (5) and (6) of regulation 29, the Authority 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 Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority 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

31.—(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—

\(^{48}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI
(a) paragraphs (2), (3), (4) and (7) 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 Authority 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 Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.

Participants generating heat from biogas

32.—(1) This regulation applies to participants generating heat from biogas in an accredited RHI installation where regulation 31 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; or

(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

33.—(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 32(2).
(6) The participant must provide measurements in such format as the Authority may request which satisfies the Authority 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 kWhh 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 Authority 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

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

(a) they must keep and provide upon request by the Authority 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 Authority written records of fossil fuel used for the permitted ancillary purposes specified in regulations 27 to 33;

(c) they must submit an annual declaration as requested by the Authority 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 Authority 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 Authority’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 Authority 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 Authority in accordance with regulation 22(6)(e);

(k) they must notify the Authority within [28 days]49 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 Authority within [28 days]50 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 Authority within [28 days]51 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 48;

(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; and

(q) they must comply with such other administrative requirements that the Authority may specify in relation to the effective administration of the scheme.

Ongoing obligations in relation to metering

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

(a) continuously operating;

49 Date from draft GB RHI Regulations – position to be confirmed for NI
50 Date from draft GB RHI Regulations – position to be confirmed for NI
51 Date from draft GB RHI Regulations – position to be confirmed for NI
(b) properly maintained and periodically checked for errors; and

(c) re-calibrated every [10 years]52 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 Authority 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 Authority 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

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 Authority 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 Authority from accepting further data from a participant, if the Authority considers it appropriate to do so.

Ongoing obligations in relation to the provision of information

36.—(1) A participant must provide to the Authority on request any information which the participant holds and which the Authority 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 Authority 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 Authority, for the duration of their participation in the scheme.

52 Time period taken from draft GB RHI Regulations – position to be confirmed for NI
(3) Information requested under paragraph (1) must be provided within [7 days]53 of the request or such later date as the Authority may specify.

(4) Information provided to the Authority 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.

Periodic support payments

Payment of periodic support payments to participants

37.—(1) Periodic support payments shall accrue from the tariff start date and shall be payable for [20 years]54.

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

(3) Subject to regulation 43(5) and paragraphs (7) and (9) of this regulation, 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), (7) and (9), 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]55, are the tariffs set out in Schedule 3; and

(b) for each subsequent year commencing with [1st April and ending with 31st March]56, are the tariffs applicable on the immediately preceding [31st March]57 adjusted by the percentage increase or decrease in the retail prices

53 Time period from draft GB RHI Regulations – position to be confirmed for NI
54 Time period from draft GB RHI Regulations – position to be confirmed for NI
55 Time period from draft GB RHI Regulations – position to be confirmed for NI
56 Time period from draft GB RHI Regulations – position to be confirmed for NI
57 Date from draft GB RHI Regulations – position to be confirmed for NI
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 Authority must calculate the tariff rates each year in accordance with paragraph (7) and publish on [or before 1st April]\(^{58}\) of each year a table of tariffs for the period commencing with [1st April]\(^{59}\) of that year and ending with [31st March]\(^{60}\) of the following year.

(9) Where an accredited RHI installation receives the small commercial biomass tariff or the medium commercial biomass tariff as set out in Schedule 3—

(a) the tariff for the initial heat generated by the installation in any [12 month]\(^{61}\) period commencing with, or with the anniversary of, the date of accreditation is the relevant tier 1 tariff specified in Schedule 3; and

(b) the tariff for all further heat generated in that same [12 month]\(^{62}\) period is the relevant tier 2 tariff.

(10) For the purposes of paragraph (9), “the initial heat” means the heat in kWh\(t\)h generated by an accredited RHI installation running at its installation capacity for [1,314 hours]\(^{63}\).

Periodic support payments for accredited RHI installations in simple systems

38.—(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 40 and 41, 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—

\[ A \times (B - C), \]

where—

\[ \text{where } A \times \frac{A}{(B - C)} \]

where—

A is the tariff for the installation determined in accordance with regulation 37; 

B is the heat in kWh\(t\)h generated by the installation during the relevant quarterly period; and

\[ ^{58} \text{Date from draft GB RHI Regulations – position to be confirmed for NI} \]

\[ ^{59} \text{Date from draft GB RHI Regulations – position to be confirmed for NI} \]

\[ ^{60} \text{Date from draft GB RHI Regulations – position to be confirmed for NI} \]

\[ ^{61} \text{Time period from draft GB RHI Regulations – position to be confirmed for NI} \]

\[ ^{62} \text{Time period from draft GB RHI Regulations – position to be confirmed for NI} \]

\[ ^{63} \text{Time period from draft GB RHI Regulations – position to be confirmed for NI} \]
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

39.—(1) This regulation applies to participants who own an accredited RHI installation ("the installation") which does not fall within regulation 38.

(2) Subject to regulations 40 and 41, 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—

   \[ A \times B \times DE; \text{ or } A \times B \times \frac{D}{E}; \text{ or } \]

   \[ A \times (B-C) \times DE \text{ where } \]

   where the accredited RHI installation is generating heat from the combustion of biogas, \( A \times (B-C) \times DE \)

   \[ A \text{ is the tariff for the installation determined in accordance with regulation 37; } \]

   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

40.—(1) This regulation applies to participants generating heat in an accredited RHI installation

   \[ \text{where the heat is generated from solid biomass contained in municipal waste } \]

   ("Case A"); or

   (b) \[ \text{where the heat is generated from solid biomass, not being solid biomass } \]

   \[ \text{contained in municipal waste, and the capacity of the installation is [1 MWth } \]

   or above\(^{64}\) ("Case B").

(2) In Case A, the periodic support payment calculated in accordance with regulation 38 or 39 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

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64 Value relates to draft GB RHI Regulations - position to be confirmed for NI
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.

(3) In Case B, the periodic support payment calculated in accordance with regulation 38 or 39 shall be reduced pro rata to reflect the proportion of fossil fuel contamination in the relevant quarterly period determined in accordance with regulation 29 and, where fossil fuel has been used for permitted ancillary purposes during the relevant quarterly period in accordance with regulation 29, to reflect the proportion of fossil fuel so used which resulted in the generation of heat.

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

41.—(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 31, a participant uses feedstock contaminated with fossil fuel, the periodic support payment calculated in accordance with regulation 38 or 39 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

42. 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 37;

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

C is the kWh of propane contained in B;

D is the kWh 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 kWh 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

43.—(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 Authority within [28 days]\(^{65}\) of the additional RHI capacity being first commissioned.

(4) Paragraph (5) applies where the additional RHI capacity is first commissioned within [12 months]\(^{66}\) of the date on which the original installation was first commissioned.

(5) Where this paragraph applies—

(a) the Authority 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 Authority 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 Authority may take appropriate action under Part 7; and

(e) where the Authority 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

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\(^{65}\) Time period from draft GB RHI Regulations – position to be confirmed for NI

\(^{66}\) Time period from draft GB RHI Regulations – position to be confirmed for NI
support payments calculated using the applicable tariff determined in accordance with paragraphs (7) and (9) of regulation 37 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]^{67} after the original installation was first commissioned.

(7) Where this paragraph applies, the Authority 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 Authority 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 noncompliance

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

(2) Within [21 days]^{68} of a decision to withhold periodic support payments, the Authority must send a notice to the participant specifying—

(a) the respect in which the Authority 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 Authority’s investigation must be commenced and completed as soon as is reasonably practicable.

(4) The Authority may withhold a participant’s periodic support payments for a maximum

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67 Time period from draft GB RHI Regulations - position to be confirmed for NI
68 Time period from draft GB RHI Regulations - position to be confirmed for NI
period of [6 months]\textsuperscript{69} commencing with the date specified in accordance with the notice required by paragraph (2)(c).

(5) The Authority must review its decision to withhold a participant’s periodic support payments every [30 days]\textsuperscript{70} commencing [30 days]\textsuperscript{71} after the date of the notice required by paragraph (2).

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

(a) the progress of any investigation to date; and

(b) whether the Authority 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 Authority.

(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]\textsuperscript{72} of a request from the Authority.

(9) On expiry of the period referred to in paragraph (4) or, if earlier, the conclusion of the investigation, the Authority 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]\textsuperscript{73} 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 46.

(10) If, on conclusion of the investigation, the Authority 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**

45.—(1) Where the Authority 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]\textsuperscript{74} of a decision to suspend periodic support payments the Authority must send a notice to the participant specifying—

(a) the respect in which the Authority is satisfied that the participant is failing so to comply;

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\textsuperscript{69} Time period from draft GB RHI Regulations – position to be confirmed for NI
\textsuperscript{70} Time period from draft GB RHI Regulations – position to be confirmed for NI
\textsuperscript{71} Time period from draft GB RHI Regulations – position to be confirmed for NI
\textsuperscript{72} Time period from draft GB RHI Regulations – position to be confirmed for NI
\textsuperscript{73} Time period from draft GB RHI Regulations – position to be confirmed for NI
\textsuperscript{74} Time period from draft GB RHI Regulations – position to be confirmed for NI
(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 Authority that it is complying with the ongoing obligation;

(e) the consequences of the participant failing to take the steps required pursuant to paragraph (d) including potential sanctions; and

(f) details of the participant’s right of review including any relevant time-limits.

(3) Within [21 days]\(^{75}\) of being satisfied that the participant is complying with the ongoing obligation the Authority must remove the suspension.

(4) If, within [6 months]\(^{76}\), the Authority is satisfied that the participant has taken the steps specified by notice under paragraph (2), the Authority may pay within [28 days] of being so satisfied all periodic support payments withheld under this regulation.

(5) The maximum period for which the Authority may suspend a participant’s periodic support payments is [1 year]\(^{77}\).

(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**

46.—(1) Where the Authority 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 Authority may take one or more of the following actions—

(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]\(^{78}\) of a decision to permanently withhold or to reduce a periodic support payment, the Authority 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;

\(^{75}\) Time period from draft GB RHI Regulations - position to be confirmed for NI

\(^{76}\) Time period from draft GB RHI Regulations - position to be confirmed for NI

\(^{77}\) Time period from draft GB RHI Regulations - position to be confirmed for NI

\(^{78}\) Time period from draft GB RHI Regulations - position to be confirmed for NI
(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 Authority 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]\(^79\) of the periodic support payment in question.

Revocation of accreditation or registration

47.—(1) Where the Authority 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]\(^80\) of a decision to revoke accreditation or registration the Authority 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 Authority 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

48.—(1) Where the Authority 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 Authority; or

(b) offset the periodic support payment against any future periodic support payments.

\(^79\) Value relates to draft GB RHI Regulations – position to be confirmed for NI

\(^80\) Time period from draft GB RHI Regulations – position to be confirmed for NI
(2) Within [21 days] of a decision to offset or require the participant to repay any periodic support payment the Authority must send the participant a notice specifying—

(a) the periodic support payment which the Authority 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

49.—(1) The Authority 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 Authority 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 Authority 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 Authority whom the participant may contact if they are not satisfied with the proposals made by the Authority under sub-paragraph (c).

81 Time period from draft GB RHI Regulations – position to be confirmed for NI
82 Time period from draft GB RHI Regulations – position to be confirmed for NI
PART 9

INSPECTION

Power to inspect accredited RHI installations

50.—(1) The Authority or its authorised agent may request entry at any reasonable hour to inspect an accredited RHI installation and its associated infrastructure to undertake any one or more of the following—

(a) verify that the participant is complying with all applicable ongoing obligations;
(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 Authority must send a notice to the participant specifying—

(a) the reason why the Authority 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 34(i); and
(c) details of the participant’s right of review including any relevant time-limits.

PART 10

REVIEWS

Right of review

51.—(1) Any prospective, current or former participant affected by a decision made by the Authority 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 Authority.

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

(a) be received by the Authority 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;

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83 Time period from draft GB RHI Regulations – position to be confirmed for NI
84 Time period from draft GB RHI Regulations – position to be confirmed for NI
(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 Authority with such information and such declarations as the Authority 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 Authority 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 Authority’s decision on a review, it must send the applicant and any other person who is in the Authority’s opinion affected by its decision a notice setting out its decision with reasons.

PART II

ADMINISTRATIVE FUNCTIONS OF THE AUTHORITY AND NOTICES

Publication of guidance and tariffs

52. The Authority must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

Reporting obligations

53.—(1) The Authority must provide to the Department monthly reports in such manner and form as the Department may request containing the following information, as applicable—

(a) in respect of each accredited RHI installation accredited during the period covered by the report—

(i) such of the information specified in Schedule 1 as the Authority may hold and the Department may require regarding the accredited RHI installation;

(ii) details of the plant it has replaced, if any;

(iii) the total amount of periodic support payments made in respect of the accredited RHI installation during the period covered by the report;

85 Time period from draft GB RHI Regulations – position to be confirmed for NI
(iv) the total amount of heat in kWh for which periodic support payments were made and the eligible purposes and the industry sector for which it was used;

(v) sustainability information provided in accordance with Schedule 2;

(b) in respect of each participant registered as a producer of biomethane during the period covered by the report—

(i) the total amount of periodic support payments made to each participant;

(ii) the volume of biomethane produced for injection by each participant; and

(iii) sustainability information provided in accordance with Schedule 2;

(c) such other information as the Authority may hold in relation to its functions under these Regulations as the Department may require.

(2) The first monthly report must cover the period from the commencement of these Regulations and ending with [31st October 2011]86 and each subsequent monthly report must cover each subsequent month and must be sent to the Department within [10 working days]87 of the end of that month.

(3) The Authority must provide to the Department quarterly and annual reports in such manner and form as the Department may request containing the information specified in paragraph (1) in aggregate form both for the period covered by the report and since the date of commencement of the scheme.

(4) The first annual report must be published by [31st July 2012]88 and must cover the period from the commencement of these Regulations and ending with [31st March 2012]89, and in each subsequent year the annual report must be published by [31st July]90 in respect of the [12 month]91 period ending with [31st March]92 of that year.

(5) The first quarterly report must be published by [31st January 2012]93 and must cover the period from the commencement of these Regulations and ending with [31st December 2011]94, and each subsequent quarterly report must cover each quarterly period and must be published within one month of the end of the relevant quarterly period.

(6) The Authority must publish the following information on its website—

(a) the quarterly and annual reports provided in accordance with this regulation;

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86 Time period from draft GB RHI Regulations – position to be confirmed for NI
87 Time period from draft GB RHI Regulations – position to be confirmed for NI
88 Date from draft GB RHI Regulations – position to be confirmed for NI
89 Date from draft GB RHI Regulations – position to be confirmed for NI
90 Date from draft GB RHI Regulations – position to be confirmed for NI
91 Time period from draft GB RHI Regulations – position to be confirmed for NI
92 Date from draft GB RHI Regulations – position to be confirmed for NI
93 Date from draft GB RHI Regulations – position to be confirmed for NI
94 Date from draft GB RHI Regulations – position to be confirmed for NI
(b) 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; and

(iv) the total amount of periodic support payments made under each tariff; and

(c) 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.

(7) For the purposes of this regulation “quarterly period” means the first, second, third or fourth quarter of any year commencing on [1st January].

(8) For the purposes of this regulation “current information” means information which is no more than five days out of date.

Additional information

54. On request from the Department, the Authority must provide to the Department in such manner and form and by such date as the Department may request such additional information as the Authority may hold in relation to the performance of its functions under these Regulations.

Notices

55. A notice under these Regulations—

(a) must be in writing; and

(b) may be transmitted by electronic means.
Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on

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A senior officer of the Department of Enterprise, Trade and Investment
SCHEDULES

SCHEDULE 1

Regulations 22, 24, 25, 26 and 36

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 Authority 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 Authority, 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 Authority, 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 Authority’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;

SCHEDULE 1

(a) 5.N. 2003 No. 46
(n) where the plant is a heat pump, evidence which demonstrates to the Authority’s satisfaction, that the heat pump meets a coefficient of performance of at least \[2.9\]^{96};

(o) in respect of a producer of biogas or biomethane, details of the feedstock which the producer is proposing to use;

(p) details of what the heat generated will be used for and an estimate of how much heat will be used;

(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 Authority may specify to enable it to satisfy itself that the requirements of regulation 17 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 Authority; and

(v) where—

(aa) an eligible installation has an installation capacity of [1 MWth or above]\[97]; or

(bb) regulation 17 applies;

if so requested by the Authority, an independent report by a competent person verifying that such of those requirements as the Authority may specify have been met; and

\[96\] Value relates to draft GB RHI Regulations – position to be confirmed for NI

\[97\] Value relates to draft GB RHI Regulations – position to be confirmed for NI
(w) such other information as the Authority 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 Authority may reasonably request.

(4) The costs of providing the information specified in this Schedule are to be borne by the applicant.
SCHEDULE 2

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

Information to be provided to the Authority 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 29(9) and 33(9).

2. The information is information identifying to the best of the participant’s knowledge and belief, in such manner and form as the Authority 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 (vi) 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—

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98 Date from draft GB RHI Regulations – position to be confirmed for NI
(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]99 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.

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99 Date from draft GB RHI Regulations – position to be confirmed for NI
### SCHEDULE 3

**Tariffs**

**Table 1**

<table>
<thead>
<tr>
<th>Tariff name</th>
<th>Sources of energy or Technology</th>
<th>Installation capacity</th>
<th>Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Small commercial Biomass]</td>
<td>[Solid biomass including solid biomass contained in municipal solid waste and CHP]</td>
<td>[Less than 200kWth]</td>
<td>[Tier 1:7.9]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[Tier 2:2.0]</td>
</tr>
<tr>
<td>[Medium commercial Biomass]</td>
<td>[As above]</td>
<td>[200k Wth and above]</td>
<td>[Tier 1:4.9]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to but not including 1MWth</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[Tier 2:2.0]</td>
</tr>
<tr>
<td>[Large commercial Biomass]</td>
<td>[As above]</td>
<td>[1 MWth and above]</td>
<td>[2.7]</td>
</tr>
<tr>
<td>[Small commercial heat pumps]</td>
<td>[Ground source heat pump, water source heat pump, deep geothermal]</td>
<td>[Less than 100kWth]</td>
<td>[4.5]</td>
</tr>
<tr>
<td>[Large commercial heat pumps]</td>
<td>[As above]</td>
<td>[100kWth]</td>
<td>[3.2]</td>
</tr>
<tr>
<td>[All Solar collectors]</td>
<td>[Solar collectors]</td>
<td>[Below 200 Wth]</td>
<td>[8.5]</td>
</tr>
<tr>
<td>[Biomethane and biogas Combustion]</td>
<td>[Biomethane injection and biogas combustion]</td>
<td>[All biomethane injection and biogas combustion below 200 Wth]</td>
<td>[6.8]</td>
</tr>
</tbody>
</table>

100 All values in Schedule 3 relate to the draft GB RHI Regulations – the position for NI is to be confirmed.
[EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations, which apply to Northern Ireland, 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 Northern Ireland Authority for Utility Regulation ("the Authority") in connection with the administration of the scheme.

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

Regulation 4 defines criteria ("eligibility criteria") that must be satisfied for a plant to be eligible to participate in the scheme.

Regulations 5 to 15 specify the eligibility criteria other than those in relation to metering.

Regulations 16 to 21 specify 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 Authority 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 Authority for accreditation.

Regulation 23 specifies the circumstances in which the Authority 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 Authority 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 Authority the function of registering producers of biomethane who are producing biomethane for injection. It specifies the process by which applicants apply to the Authority 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 Authority may grant preliminary accreditation in respect of a plant.

Regulations 27 to 30 set out ongoing obligations 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.

Regulations 29 and 30 apply to participants generating heat from solid biomass, not being
solid biomass contained in municipal waste. They specify the permitted levels of and reasons
for fossil fuel contamination, set out how the proportion of fossil fuel contamination is
determined and specify the permitted uses of fossil fuel in accredited RHI installations.
Regulation 29 also imposes a sustainability reporting requirements for participants generating
heat using accredited RHI installations with an installation capacity of [1MWth]\(^{101}\) or above.

Regulations 31 to 33 set out ongoing obligations for participants who are generating heat
from biogas and producing biomethane for injection.

Regulation 31 applies to participants producing biogas using gasification and 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 32 applies to participants generating heat from biogas to whom regulation 31 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 33 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.

Regulations 34 to 36 set 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 34 specifies general ongoing obligations relating to administrative and other
matters with which participants must comply.

Regulation 35 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 Authority; 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 36 specifies ongoing obligations in relation to the provision of information and
gives effect to Schedule 1.

Part 5 (regulations 37 to 42) confers on the Authority 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 Authority 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 43) 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.

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\(^{101}\) Value relates to draft GB RHI Regulations – position to be confirmed for NI
Part 7 (regulations 44 to 48) sets out the provisions in relation to enforcement.

Regulations 44 to 47 confer on the Authority a wide range of powers to temporarily or permanently withhold a participant's periodic support payments or reduce a periodic support payment.

Regulation 47 confers a power on the Authority to revoke accreditation or registration in certain circumstances.

Regulation 48 confers a power on the Authority to recover overpayments.

Part 8 (regulation 49) confers on the Authority a power to revoke any sanction imposed under Part 7 and specifies the circumstances and manner in which the Authority may exercise this power.

Part 9 (regulation 50) confers on the Authority 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 51) confers a right of review on any prospective, current or former participant affected by a decision made by the Authority under these Regulations, sets out the process by which a person may request a review of such decisions and specifies the Authority's powers on review.

Part 11 (regulations 52 to 55) confers additional administrative functions on the Authority. Under regulation 52 the Authority must publish procedural guidance in connection with the administration of the scheme.

Regulation 53 requires the Authority to provide information to the Department including annual, quarterly and monthly reports and to publish certain information on its website.

Regulation 54 requires the Authority to provide certain additional information as the Department may request.

Regulation 55 describes the form of notices under these Regulations.]


[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.] 103

102 To be confirmed
103 To be confirmed
Peter

I had e-mailed you earlier saying that I would like to take some advice from Paul before coming back to you definitively on this matter. However, in advance of my meeting with Paul on Thursday I have some comments/queries in relation to the definition of “the Northern Ireland Authority”.

Firstly, given that these are Northern Irish Regulations to apply in Northern Ireland, it would be more appropriate to just use the term “the Authority” rather than “the Northern Ireland Authority”. When making regulations that are to apply within your own jurisdiction it would be uncommon to make reference to your region in the terminology used. I note that the term “the Northern Ireland Authority” is used in section 114 of the Energy Act 2011, however that is appropriate in that case. The 2011 Act is referring to a bodies outside it’s own shores so appropriately refers to those bodies collectively as “the Northern Ireland Authority” to distinguish them from it’s own GB Authority. Furthermore, the GB definition will serve it’s purpose regardless of whether you use the term “the Authority” or “the Northern Ireland Authority” as the GB definition serves to permit GEMA to enter into arrangements to act on behalf of the Northern Ireland Authority which for their purposes is defined as DETI and NIAUR. Their definition applies merely for the purpose of that section and does not mean that you have to define your authority using the same terminology. The key is that GEMA can make arrangements with DETI and/or NIAUR so provided one or both have authority to act under your Regulations that will work.

Interestingly, I note that in regulations 23 and 24 of your draft the term “the Authority” has been used instead of “the Northern Ireland Authority.” I am not sure if this is just a drafting error and the drafts person really intended to refer to the Northern Ireland Authority, or whether the drafts person was trying to convey reference to another different body, maybe the GB Authority. I suspect it is the former. However, if for example, these regulations do need to make reference to the GB Authority then you could define that as “the GB Authority”.

The next issue is who is to be defined as the Authority. My response to this is that really that is a policy matter for DETI to decide based on who is to carry out the functions conferred on the authority. If we look at some examples of where the Authority is referred to throughout the Regulations, the Authority is meant to carry out the following tasks:

Regulation 3 - make payments
Regulation 4 - have opinions as to whether a plant is generating heat solely for an ineligible purpose
Regulation 18 - have opinions as to whether a single meter is capable of metering heat generated by all the plants sharing the metre
Regulation 22 - receive and decide applications for accreditation and set out what information is to be provided in such applications
Regulation 25 - register producers of biomethane

There are numerous other tasks and responsibilities that the Authority is referred to as having. The question for DETI is who is going to do these tasks? Is it going to be DETI, is it going to be NIAUR or is DETI planning to enter into an arrangement under section 113 of the 2011 Act for GEMA to carry out any or all functions?

There does not appear to be any power to define the Authority in these Regulations as being GEMA (OFGEM). From what I understand, section 113 of the 2011 Act provides that DETI may make Regulations establishing a scheme for the purpose of this renewable heat incentive. Under sub-section 2 these Regulations may confer functions on either DETI or NIAUR for the purposes outlined. There is nothing giving DETI the power to confer function on OFGEM. Any arrangement with OFGEM would have to be done administratively between the Authority (being DETI or NIAUR depending on who DETI) settles on to carry out the Authorities behalf the functions conferred on that Authority by the Scheme under the Regulations.

Currently, the Authority is defined as being both DETI and NIAUR. I don’t think this is workable in practice. Not only for the reasons you have outlined, i.e. that it makes a nonsense of regulation 53 in that DETI cannot of course not
report to itself. But also because it would cause complete confusion as to who is to do what tasks when it comes to the crunch on the ground. If the Authority is both DETI and NIAUR then who should a person apply to for accreditation, who should make payments, who should carry out all the daily practical arrangements?

I would ask you to consider the policy behind this and perhaps provide me with some views before I discuss the matter further with Paul on Thursday. I expect that he will re-iterate my view that the definition depends on DETI’s policy response to this important question, unless of course Paul spots something that I have missed that would make it legally possible for only one or other to be the Authority.

I look forward to hearing from you.

Kind regards

Nicola

Nicola Wheeler
Principal Legal Officer
Departmental Solicitor’s Office
Victoria Hall
12 May Street
Belfast
BT1 4NL

Ph 90 2(51275)

nicola.wheeler@dfpni.gov.uk
Nicola,

As previously discussed, please see attached draft Regulations relating to the NI Renewable Heat Incentive Scheme. These have been drafted in conjunction with Energy legal advisor’s Arthur Cox and the scheme’s administrators Ofgem.

I would be grateful if you would consider these Regulations from a DSO perspective and advise whether you are content for us to proceed to lay these Regulations according to the Draft Affirmative resolution proceed.

Grateful also if you would consider the attached draft Explanatory Memorandum.

As you will be aware we are under pressure to have the scheme in place by 1 November 2012 and therefore need to lay the Regulations next week. I would be very grateful for your early consideration of these documents.

Thanks in advance,

Peter

Peter Hutchinson
Renewable Heat
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9532 (ext: 29532)
Textphone: 028 9052 9304
Web: www.detini.gov.uk

The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

www.ni2012.com

Please consider the environment - do you really need to print this e-mail?
From: Hutchinson, Peter  
Sent: 14 September 2012 14:56  
To: Wheeler, Nicola  
Subject: NI Renewable Heat Incentive Regulations

Nicola,

Just by way of update/forewarning, the draft regulations relating to the Northern Ireland RHI, that you have kindly considered and commented on previously, are currently being finalised through discussions with Energy legal advisors (Arthur Cox) and the scheme’s administrators, Ofgem. It is anticipated that the Regs will be finalised, from this perspective by the end of next week, we will then be seeking DSO consideration and approval before they are submitted to the Examiner of Statutory Rules.

I will be in touch again whenever the Regs are finalised and need your final consideration, it is likely I will be seeking a quick turnaround, if possible, given our Minister’s desire to have the legislation passed and scheme in places as soon as possible. Apologies in advance for this, however as you have considered the Regs previously on a number of occasions hopefully there will not be any major issues.

Thanks in advance.

Peter

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Tel: 028 9052 9532 (ext: 29532)  
Textphone: 028 9052 9304  
Web: www.detini.gov.uk

The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

www.ni2012.com

Please consider the environment - do you really need to print this e-mail?
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(a).

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 1st November 2012.

Interpretation

2. In these Regulations—
   “accreditation” means accreditation of an eligible installation by the Department following an application under regulation 22;
   “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;
(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
(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 the application was properly made;
“the Department” means the Department of Enterprise, Trade and Investment;
“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 reforming 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(a);
“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(b) or an equivalent scheme accredited under EN 45011(c) which certifies microgeneration products and installers in accordance with consistent standards;
“municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003(a);

(a) S.I. 1996/275 (N.I.2)
(b) Details of which are available at www.microgenerationcertification.org
(c) ISBN 0580294153. Copies of which can be obtained from the British Standards Institution at www.bsigroup.com
“MWhth” means megawatt hours thermal;
“MWth” means megawatt thermal;
“NIRO” means Northern Ireland renewables obligation as set out in the Renewables Obligation Order (Northern Ireland) 2009(b);
“ongoing obligation” means the obligations specified in Part 4;
“participant” means—
(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, or a system of pipes, for the conveyance of gas, and includes any associated apparatus comprised in that system;
“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);
“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;
(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;

(a) 2003 c.33
(b) S.R. 2009 No. 154
“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(a) 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 for any of the following purposes—

(a) heating a space;
(b) heating liquid; 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

CHAPTER 1

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

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;
(d) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies;
(e) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

(a) 1954 c.33 (N.I.)
Eligible installations generating heat from solid biomass contained in municipal waste

6. This regulation applies if the plant complies with all of the following requirements—
   (a) it generates heat from solid biomass contained in municipal waste;
   (b) it has an installation capacity of less than 1,000kWth;
   (c) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

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;
   (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 liquid;
   (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(c);
   (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 NIRO; 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—
(a) it generates heat from biogas;
(b) it has an installation capacity of less than 200kWth;
(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 was completed and the plant was first commissioned on or after
   1st 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, liquid 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 1st 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.

(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.

(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(a).

**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.

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(a) A copy is available at www.chpqa.decc.gov.uk
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 or other public support has been provided or will be provided in respect of any of the costs of purchasing or installing the eligible installation; or

(b) such a grant or support 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 and “public support” means any financial advantage provided by 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 2 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)(c); 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 or other public support has been provided or will be provided 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, injections of biomethane produced by that applicant has commenced.

(9) In this regulation, “grant from public funds” and “public support” have the meanings given in regulation 23(2).

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.

(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;
   “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);(a)
   “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;
   “waste” has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997(b)

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

(a) ISBN 0580194825 Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(b) S.I. 1997/2778 (N.I. 19); Article 2(2) was amended by SR 2011 No. 127
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;

(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 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 45kWth and 1MWth

29.—(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 45kWth and 1MWth.

(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;

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

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

(c) for the purposes of paragraph (a)—

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

(ii) 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

(iii) 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 (d) and (e);

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

(i) 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;

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

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

(iv) emission control;

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

(e) the energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in paragraph (d) 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.

(3) 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 (2)(d) and provide this information upon request to the Department, in such form as the Department may require, to demonstrate compliance with this regulation.

(4) Without prejudice to paragraph (3), 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.

(5) Where—

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

(b) the Department is not satisfied as to the matters specified in paragraphs (2)(d) and (2)(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 digestions 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 may request which satisfies the Department of all of the following—

(a) a 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

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) 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), 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 2013, 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].
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, \( A \times B(B - C) \),

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 used to produce biogas by anaerobic digestion) or, where there is not 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.

(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.

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 here 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 of 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 is to comply with the ongoing obligation;

(e) the consequences of the participant failing to take the steps required pursuant to subparagraph (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 is 1 year.

(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 take one or more of the following actions—

(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 payments, 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 paragraphs (1)(a) or (1)(b);
(c) where applicable, a date by which the sum specified in sub-paragraph (a) must be repaid;
(d) 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 to undertake any one or more of the following—
(a) verify that the participant is complying with all applicable ongoing obligations;
(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 publication of specified information on the Department’s website

51.—(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

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

(a) 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) 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.

Notices

52. A notice under these Regulations—
   (a) must be in writing; and
   (b) may be transmitted by electronic means.

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

A senior officer of the
Department of Enterprise, Trade and Investment

SCHEDULES

SCHEDULE 1 Regulations 22, 24, 24, 26 and 35

Information required for accreditation and registration

53.—(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(a)

(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;

(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;

(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;

(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.

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(a) S.R. 2003 No. 46
SCHEDULE 2

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 specified 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 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 or 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) populous (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 form which a biomass is derived”.

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

1. INTRODUCTION

1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Statutory Rule. It does not form part of the Statutory Rule.

1.2 The Statutory Rule is made under Assembly under Sections 113, 120(4) and 121 of the Energy Act 2011 and is subject to the draft affirmative resolution procedure.

2. PURPOSE

2.1 The Statutory Rule establishes a Renewable Heat Incentive (“the RHI scheme”) to facilitate and encourage the renewable generation of heat by giving subsidy payments to eligible generators of renewable heat and producers of biomethane. The Statutory Rule will give functions to the Gas and Electricity Markets Authority (“Ofgem”) to administer the scheme. The key functions for Ofgem will include:

- Accreditation of installations eligible for the RHI scheme;
- Calculating and paying periodic support payments to participants;
- Publication of annual tariff rates;
- General administrative functions needed to operate the scheme, including enforcement auditing provisions and an appeals process; and
- Providing guidance to participants on the scheme criteria.

3. BACKGROUND AND POLICY OBJECTIVES

Background

3.1 Heating energy accounts for around half of all total energy consumed within Northern Ireland however over 98% of our heating fuels come from imported fossil fuels. Increasing the level of renewable heat to 10% by 2020 is in line with Northern Ireland’s expected contribution to the United Kingdom’s obligations under the EU Renewable Energy Directive1 as well as the Department’s wider energy policy goals of increased security of supply, reduced emissions and potential for ‘green jobs’ and skills.

3.2 Grant support had previously been available through the Department for renewable energy installations under the Reconnect scheme. More recently, the Department has been investigating the introduction of an appropriate long-term incentive scheme for Northern Ireland in line with the proposals announced by the Department of Energy and Climate Change (DECC) for a RHI in Great Britain. The differences between the heat markets in Northern Ireland and Great Britain (GB) meant that it has been more

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appropriate for the Department to make a separate assessment on the most suitable, sustainable and cost-effective method for incentivising the local market rather than simply replicating all aspects of the gas proposal.

3.3 The NI RHI has some similarities to the GB RHI, but it has been specifically designed and tailored for the Northern Ireland heat market.

Policy Objectives

3.4 The Statutory Rule has a number of objectives:

- The NI RHI will be available to all those in the non-domestic sector and will support new renewable heat installations, commissioned after the 1 September 2010;
- Payments may be claimed by, and paid to, the owner of the heat installation or the producer of biomethane;
- Payments will be made quarterly over a 20 year period for all installations following accreditation;
- For small and medium-sized installations (up to and including 45kWth), the installers and the equipment must be certified under the Microgeneration Certification Scheme (MCS), to ensure quality assurance and consumer protection;
- Tariff levels in Northern Ireland have been calculated to bridge the financial gap between conventional heating systems (oil, gas and coal) and renewable heating technologies. Tariffs have been designed to address capital costs, ongoing operating costs as well as non-financial ‘hassle’ costs; and
- The rule sets out the functions of the administrator of the scheme. This will include dealing with applications, accrediting installations, making incentive payments and monitoring compliance with the rules and conditions of the scheme.

4. CONSULTATION

4.1 The Department went out to consultation on implementation of a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses were analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered and, where appropriate, incorporated in the final design of the scheme. The consultation document, the responses, the final policy position and other associated papers can be accessed at:

www.energy.detini.gov.uk

5. EQUALITY IMPACT

5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise was carried out in relation to implementation of the proposed RHI scheme and no adverse effects were identified. The purpose of the RHI is to incentivise people to move from fossil fuel heating to renewable energy sources.
These measures will therefore benefit all of the Northern Ireland general public who use heat by providing an alternative option for heat demand and therefore increasing diversity of supply. It does not have any negative implications for equality of opportunity.

6. REGULATORY IMPACT

6.1 A Regulatory Impact Assessment (RIA) was been prepared in respect of implementation of the RHI scheme and is attached at Annex A of this document.

7. FINANCIAL IMPLICATIONS

7.1 The benefits and cost estimates of the RHI scheme are discussed in the Regulatory Impact Assessment prepared by the Department.

8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

8.1 This Statutory Rule does not contravene Section 24 of the Northern Ireland Act 1998.

9. EU IMPLICATIONS

9.1 This policy was notified to the European Commission regarding compliance with State Aid Rules. The EU Commission advised in June 2012 that they were content with the policy as outlined and gave approval to proceed. In addition, these Regulations were notified separately to the EU Commission as a requirement under EU Directive 98/34/EC relating to technical standards.

10. PARITY OR REPLICATORY MEASURE

10.1 Similar legislation has been introduced in Great Britain in respect of the RHI scheme. Ofgem is responsible for developing and administering the scheme on behalf of DECC. However, the Department is legislating for a specifically tailored Northern Ireland RHI scheme. It has been agreed that Ofgem will also administer the NI scheme.

11. ADDITIONAL INFORMATION

Commencement

11.1 The Statutory Rule comes into operation on 1st November 2012.
relation to the NI RHI Regulations; however I can confirm that as and when DETI passed comments from Ofgem and the DSO to Arthur Cox, these were incorporated into the NI RHI Regulations by Arthur Cox in accordance with instructions from DETI. On a number of occasions, Arthur Cox had been informed that (i) in light of Ofgem's role in administering the non domestic renewable heat incentive scheme in NI, Arthur Cox would be required to incorporate the comments of Ofgem in the NI RHI Regulations and (ii) the DSO would have final sign-off on the form of the NI RHI Regulations. Examples of these are as follows:-

a. DETI sign off approval on the revised Work Request Form in respect of Work Request 2 was provided on 17th August 2011 (DFE-16448 to DFE-16450) and this stated that the final NI RHI Regulations would need to be drafted in consultation with Ofgem and that Ofgem legal advisers would need to vet and clear the final draft.

b. The email from Susan Stewart of DETI to Arthur Cox at 15:12 hrs on 26th September 2011 (DFE-16993 to DFE-16994) refers to a further draft of the NI RHI Regulations being required post consultation when final policy is agreed and that it would be useful for the then current draft to reflect comments so that it can be shared with Ofgem and the DSO.

c. A version of the NI RHI Regulations had been prepared by DETI without the involvement of Arthur Cox and these were issued to Arthur Cox by Susan Stewart of DETI at 16:12 hrs on 2nd March 2012 (at DFE-17144 and DFE-17226 to DFE-17271). It should be noted that it is stated that the NI RHI Regulations had been redrafted by DETI to incorporate comments which it had received from the DSO.

d. DETI sign off approval on the revised Work Request Form in respect of Work Request 2 was provided on 7th March 2012 (DFE-17299 to DFE-17305) and this provided that both DSO and Ofgem legal advisors would need to vet and clear the final draft of the NI RHI Regulations.
what you knew and what you didn’t know about what else might’ve been going on, there was — and we — the panel heard evidence about this just recently from Mrs Hepper, but there was an exchange between Ofgem and DETI officials at the end of June in 2012. And, in broad terms, Ofgem was saying, “We think that you should wait, not make the Northern Ireland regulations now, but you should build into them changes which have been made or are being made in GB. So we think you should hold off and introduce your regulations once the GB scheme has developed further”. Were you aware of any of that?

Mr Bissett: I wasn’t aware. I was of the same opinion, but I wasn’t aware that there was advice coming to DETI from other parties on that, but I had formed the same view, only on the basis that we were now departing from GB, and I was given a — I was given a plausible reason why we were departing on this occasion, but I wasn’t aware that there was — there were other issues between DETI and other parties on it.

Mr Scoffield QC: OK. We’ll maybe come back to that issue by reference to the documents in a moment. Can I ask you to look at DFE-66112? If you’re using your own witness files, that’s at page 357, but this is the text, or, sorry, the email enclosing work request 3. Sorry — yes, work request 3.

Dr MacLean: March ’12.

Mr Scoffield QC: So this is the 2nd of March ’12, and we see this is an email from Miss Stewart. The panel has a number of statements from Miss Stewart, who’s now Mrs Logan, so if you’re looking for her statements, that’s the name that you’ll find them under. She says:

“I attach a work request form detailing the work needed to provide the Department with a Final draft version of Renewable Heat Regulations.

I also attach a copy of the previous comments from Ofgem”.

If you just turn the page, or if we go to DFE-66113, this is, I think, the comments from Ofgem. It’s a document which, in the Inquiry, has sometimes been called the Ofgem memo,
sometimes called the Ofgem legal review, but that’s a document you recognise, Mr Bissett?

Mr Bissett: Uh-huh.

Mr Scoffield QC: That was received with the email of the 2\textsuperscript{nd} of March. Can you describe what consideration you gave to it at that stage?

Mr Bissett: Well, with the work request that was sent through, it was sent through with various items. So it was sent through with another redraft of the regs by DETI, so DETI had revised the Northern Ireland regulations again. So they sent us a revised version of the RHI regs for Northern Ireland. They sent us a letter from DSO with comments, and I think they had tried to reflect the DSO comments in their – in the draft that they had sent through. And then they sent the Ofgem document, which was a lengthy document with comments – appendix 1 and appendix 2 comments. Quite a lengthy document; I think it’s 28 pages. When I received that, I asked for a telephone — so I was — and we were given a week’s — I think we were given five days, actually, to review it and respond on these, and I asked for a telephone call with the Department to discuss, principally, the Ofgem memo and what was the background to it and what was the intention.

Mr Scoffield QC: And why in particular did you ask for that meeting?

Mr Bissett: Well, I wanted to know because this document was dated — so this document is dated 4\textsuperscript{th} of November 2011, and it was sent to us in March with a very short time frame to do anything with any of the documents that they were providing to us. So, for the purpose of giving a — we have to give a very — a detailed fee quote, number of hours to be spent etc, so I needed to know exactly what it was they wanted us to do with this document, and that was the reason for the phone call.

2:45 pm

Mr Scoffield QC: I think the panel may have seen from the papers that the — and, again, please correct me if this is an incorrect summary — but the process was that a work request
Alan

I attach a work request form detailing the work needed to provide the Department with a Final draft version of Renewable Heat Regulations.

I also attach a copy of the previous comments from Ofgem along with a letter with comments on the draft Regulations from DSO. We have redrafted the Regulations to incorporate DSO comments which are attached for your convenience.

**We request a quote only at this stage and we would appreciate if you could provide the quote by close of play Tuesday 6th March 2012.**

If you need any more information, please don’t hesitate to contact me

Many Thanks

Susan

Susan Stewart
Sustainable Energy
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9212 (ext: 29212)
Textphone: 028 9052 9304
Web: www.detini.gov.uk

www.ni2012.com

Please consider the environment - do you really need to print this e-mail?
The Chairman: Both.

Mr Bissett: They were relevant to both, because they were comments for the GB regs, and we had copied the GB regulations, so they were comments for both.

Mr Scoffield QC: OK. And this concept that you’ve mentioned that DETI were only wanting to take forward appendix 1 issues if they (a) could be dealt with quickly but also (b) were Northern Ireland-specific.

Mr Bissett: Because we couldn’t change — if it was GB — if it was a matter that was relating to GB and NI, then it would be — we would be going ahead of GB, and there was — there would be issues. We were trying to follow behind GB, not lead GB.

Mr Scoffield QC: OK, but that phrase “Northern Ireland-specific issues” I don’t think makes its way into either your written notes of the telephone consultation or —

Mr Bissett: Yes, I agree. I mean, the conversation is recorded in the minutes of the meeting, and it’s talking about DETI telling us which provisions to —. That hasn’t been transferred into that email, either: that DETI were going to be reviewing it and letting us know if there was any in appendix 1 that they wanted us to deal with.

Mr Scoffield QC: OK, so DETI were going to do an exercise. They were going to look through appendix 1 —

Mr Bissett: They had been. They told us they had been doing an exercise and had been in discussions with DECC, so they had already been doing an exercise of reviewing this note.

Mr Scoffield QC: Just so we’re clear, what did that leave, if anything, for Arthur Cox to do in relation to appendix 1?

Mr Bissett: Not — well, to flick through it and to — or, well, to review it, to review the revisions — flick through the revisions and see if there was anything that maybe was only relevant to NI. And, as I say, in our review there wasn’t, and DETI’s view, I assume, was the same, because they didn’t bring anything to our attention.
Arthur Cox received Work Request 3 from the Department on 2nd March 2012. There had been no contact from DETI on the NI RHI Regulations in the 5 month period from the conclusion of the work under Work Request 2. Work Request 3 was issued to Arthur Cox with a covering email from Susan Stewart of DETI at 16:12 hrs on 2nd March 2012 (at DFE-17301 to DFE-17305) along with a version of the draft NI RHI Regulations that had been redrafted by DETI without the involvement of Arthur Cox to incorporate comments from the Departmental Solicitor’s Office ("DSO") that DETI had received in the meantime (at DFE-17226 to DFE-17271). Arthur Cox commenced work on Work Request 3 when DETI sign off approval on the revised Work Request Form was provided at 15:23 hrs on 7th March 2012 (DFE-17299 to DFE-17305). The approved Work Request Form confirmed that Arthur Cox’s role was to revise the NI RHI Regulations to ensure that they followed “the enacted version of the GB RHI Regulations as closely as possible”. Arthur Cox was also to ensure that certain of the comments received from the office of Gas and Electricity Markets (“Ofgem”) were incorporated in the NI RHI Regulations and that the comments received from the DSO had been incorporated. With regard to policy decisions on matters such as the types of technologies for inclusion, the tariff levels and banding and the treatment of anaerobic digestion facilities receiving NI Renewables Order support, these were to be incorporated in the drafting by Arthur Cox as and when they were finalised by DETI and communicated to Arthur Cox. A number of successive drafts of the NI RHI Regulations were prepared during the course of the work carried out under Work Request 3 and the last version of the NI RHI Regulations prepared by Arthur Cox was issued to DETI on 25th September 2012 (at DFE-20265 to DFE-20351).
then to implement those changes?”, which led to work request 2, which was — the role was to then bring those new changes that were in the later GB draft into the NI regs.

Mr Scoffield QC: Yes, and that was done at that time, but that draft was really parked, as it were, until —

Mr Bissett: About four or five months.

Mr Scoffield QC: Yes.

Mr Bissett: And the consultation, as I say, the consultation happened after that. We produced our draft. It’s interesting to note that the draft that we were producing, which I understood was to be attached to the end, to the back of the consultation document, wasn’t the draft that was actually attached to the back of the consultation document. The draft that Arthur Cox produced from then and to much later in the process had tiering in the relevant schedule and had their operative provisions for tiering. The draft that was produced, which was attached to their consultation document, was a draft with those provisions removed. I only found that out in October of this year when I was reviewing the document.

Dr MacLean: Sorry, can I just understand which ones we’re then talking about? So, the initial ones that you had drafted did not include tiering and were —

Mr Bissett: They did include it. So, the draft — so we were just copying GB.

Dr MacLean: OK, so —

Mr Bissett: We only ever copied GB.

Dr MacLean: — the first draft did include tiering.

Mr Bissett: Yes.

Dr MacLean: And then you revised that.

Mr Bissett: I produced a draft which — our last version was in July, which we handed to DETI, which is our version —

Dr MacLean: Yes.
Mr Bissett: — which included tiering and included the operative provisions that referred to tiering and then took you to the schedule. So there’s a regulation; I think it’s 37 — 36 or 37 — at that time. But when I, more latterly, when I looked at the consultation document, the draft regs that were — went out to consultation had those provisions removed. So, DETI had produced its own draft, which it did on a number of occasions. The next — when we were contacted to do further work — in the meantime, DETI had produced its own draft of the regulations and then handed that to us.

Mr Scoffield QC: I’m sure that’s something that we can check, but, when you say that the version which went out with the consultation paper in July had the reference to tiering removed, is that simply the reference to tiered tariffs in schedule [inaudible] or is that also the equivalent parts of the regulations — I think it is regulation 37?

Mr Bissett: Both were removed and, I say, I hadn’t realised they’d been removed because the next time that we were working throughout, um, um, work request 3, when I took — when I started work on the draft on the Arthur Cox team, we started with our last draft and worked on from that. So, I reintroduced tiering. I didn’t realise that DETI had taken it out. So, we reintroduced tiering, and I think it was taken out again then by another draft by DETI in May of 2012, it was when they took it out again.

Mr Scoffield QC: I was intending to talk about tiering a little later on but —

Mr Bissett: It’s just a point in terms of the development of the document.

Mr Scoffield QC: Maybe we can just deal briefly then with what was happening at this stage because you’ve made the point that you provided the draft for the regulations that had, as a copy from the GB regs —

Mr Bissett: Yes.

Mr Scoffield QC: — provisions relating to tiering. They came out. Now, what you may well not know or what you might not have known at that stage is that DETI were receiving advice
from a consultancy called Cambridge Economic Policy Associates, and their advice had been, in May 2011, that tiering was not required, which may well have been the reason why that came out. But, maybe I should ask you: were you aware of what was going on at that stage in terms of the economic assessment?

Mr Bissett: I wasn’t aware. I mean, the only reference was it’s commissioning its own study was that meeting on the 11th of May. From my point of view, the idea that DETI was producing its own drafts of a document I found very strange, and I didn’t mention it, but I found that very odd. But, I didn’t — we didn’t have any discussion about the tiering.

The Chairman: Can we just take it in, sort of, fairly simple steps? The first work request you got you produced the draft on the 6th of July: is that right?

Mr Bissett: Hmm, the final — I think the final — I think we produced two iterations but yes, certainly, the draft on the 6th of July, which is the last time we touched it for work request 1.

The Chairman: What was the date that you produced your first draft based on GB?

Mr Bissett: I think it was in towards the end of June, I would —

The Chairman: Towards the end of June. 27th: is that right?

Mr Bissett: Pardon?

The Chairman: 27th of June.

Mr Bissett: I can’t remember the exact date.

The Chairman: So, then, did you produce a further one?

Mr Bissett: We would have had comments from DETI, and we would have produced then — there was, I think, a further draft was on the 6th of July.

The Chairman: That’s draft 1. Draft 2 is the 6th of July, and in that one you had again included the reference to tiering.

Mr Bissett: Yes.
The Chairman: Now, it must be the case then that, in July, DETI had two drafts, one from you with tiering included and one they had produced themselves without tiering.

Mr Bissett: Yes.

The Chairman: And what I’m gathering from you now is that they did not come back to you. They did not come back and say, “By the way, we’re going to consultation, but we’re going to use a draft without tiering.”

2:30 pm

Mr Bissett: I wasn’t aware that the tiering was removed.

The Chairman: No, all right.

Mr Bissett: And they did officially take tiering out at a later stage; I think it was in May 2012 when —

The Chairman: No, but I’m just interested at the moment for the purposes of the consultation — . For the purposes of the consultation, they produced — . Despite the fact that you had given them a further draft on the 6th of July, they don’t appear to have used that but used their own draft without tiering. Now, whether or not that was the result of their advice from CEPA, they didn’t come back to you on that.

Mr Bissett: No.

The Chairman: Not at that stage, all right.

Mr Bissett: We didn’t prepare that.

Dr MacLean: But, then — . So, where does the draft that you described earlier that you had done to incorporate the updates from GB, where does that fit in in this chronology?

Mr Bissett: So, work request 2, we had pointed out that the drafts in GB had moved on. It was a later draft, and we were going to revise the NI regs to reflect this later draft of the GB regulations. So, my starting point there, not being aware of this second version that was in the consultation document, was to start again with Arthur Cox’s last draft. So, we took the
David White

From: Alan Bissett
Sent: 18 May 2012 17:44
To: ‘Stewart, Susan’
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RE: RESTRICTED: 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@detni.gov.uk]
Sent: 18 May 2012 17:13
To: Alan Bissett
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RESTRICTED: Review of Draft Regulations

Alan

Further to your email below, we have now received legal advice from DSO in relation to your queries below -

1. Legal advice has stated that DETI would be the main authority in the legislation. However, it would be more appropriate to just use the term "the Department" when referring to DETI instead of "the Authority". This would follow the normal drafting convention when referring to a Northern Ireland Department and would also be less likely to mislead the reader. Section 114 of the 2011 Act gives the power to GEMA and DETI to enter into an agreement however, there is nothing to stipulate that or even facilitate such an agreement being put on a legislative footing. Therefore, the agreement would be done administratively and requires no mention in the Regulations themselves. When producing guidance notes and so on DETI should make it clear then that GEMA will actually be carrying out the functions on it’s behalf. Therefore the relationship between DETI and GEMA wouldn’t be mentioned in the legislation. On the face of the Regulations DETI would be the point of contact for the reader.
Therefore the Department should be the only organisation mentioned in the definition of the Regulations. All references to the Authority or Northern Ireland Authority should be replaced with the Department and we would be grateful if you could do so.

Regulations 53 and 54 for the most part should be removed. We would like to retain regulation 53(6) and have drafted below what we believe this section of the Regulations should look like:

**Publication of relevant information**

52.-(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

(2) The Northern Ireland Authority must publish annually the following information on its website—

(a) 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) 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.

I would appreciate if you would confirm that we can proceed with this wording and, if so, update the Regulations to include this update.

2. In relation to regulation 28(7), I have liaised with my colleague who works on the Renewables Obligation and he has confirmed that there has been no changes the data publishing regime since 2009.

I have attached the most recent version of the Regulations which now includes the new tariff levels for NI in Schedule 3. As no announcement has been made on this tariffs and the banding, I would be grateful if you treated this document as **restricted** and do not disseminate it outside your organisation.

I would be grateful if you could update the document and sent it to Peter Hutchinson by close of play on Wednesday 23 May 2012.

We will then send the draft Regulations to Ofgem for their comments and potential amendments. We will then write back to you to revise the draft Regulations if Ofgem raise any issues before sending it to DSO for final clearance.

Many thanks

Susan

**Susan Stewart**  
Sustainable Energy
Mr Bissett: Yes, the first time we were — Arthur Cox were formally informed was on the 18th of May 2012, where we got an email from DETI — from Susan Stewart at DETI saying that the tiered tariffs in schedule 3 —. So, they’d produced another draft; they’d had to take them out again. So, the tiered tariffs in schedule 3 had been removed by DETI, telling us that this was now confidential and that the tiering was going to be removed from that, and that was the first time. So, all the drafts that we produced up to the 18th of May would’ve had tiering, because we didn’t have a discussion about tiering. So, every time I produced a draft, it would’ve had tiering; it would’ve had the operative provision in the regulation, and it would’ve had the tiering in the schedule. It was officially taken out on the 18th of May.

Mr Scoffield QC: If we can just step back from that, though. I can quite understand, given how things have turned out, why you would think it’s relevant to make the point that your drafts had tiering in, but that wasn’t, I presume, consistent with what you said earlier, because you had any role in advising that tiering should be in or out, much less any role in designing or constructing the tariff, but just because you were —

Mr Bissett: I was just following what GB had done, and that’s why I’m surprised it had differed at that stage.

Mr Scoffield QC: So, that’s the second work request where, after you sent the version in early July to DETI for use in the consultation, there’s an updating process. And, then, I think you said that there was a hiatus then of four or five months before they came back to you with work request 3. The reason why I want to focus in on work request 3 is because that’s when the final version of the regulations, which became law, were drafted. So, that’s when really the meat of the work was done once the policy position was much more settled.

Now, if I could take you to paragraph 3 of your statement, and that’s at WIT-28213. I just wanted to ask one or two clarificatory questions about what you’ve said there. You say — paragraph 3:
Dear Mr McManus

SL1 – RENEWABLE HEAT REGULATIONS (NORTHERN IRELAND) 2012

1.1 The Department of Enterprise, Trade and Investment (the Department) proposes to make a Statutory Rule in exercise of the powers conferred by the Energy Act 2011.

1.2 The Department of Energy and Climate Change (DECC) in London agreed that an amendment could be made to the Energy Act 2011 that would extend powers for renewable heat, contained within the Energy Act 2008, to Northern Ireland. For this to be achieved a Legislative Consent Motion (LCM) was required. Following Executive approval on 10 February 2011 and ETI Committee support at its meeting on 24 February 2011, a LCM was tabled and passed in the Assembly on 14 March 2011.

1.3 The Energy Act makes special provisions for Northern Ireland in terms of renewable heat1.

1.4 DECC obtained Royal Assent on 18 October 2011 and the Bill became the Energy Act 2011. The Act deems that the Statutory Rule will be subject to the affirmative resolution procedure before the Assembly.

Purpose of the Statutory Rule

2.1 The Department carried out an economic appraisal of a potential Northern Ireland incentive scheme with the aim to assist in achieving the target of 10% renewable heat by 2020. The appraisal considered various options for incentivising the local renewable heat market, and advised on appropriate tariff levels. It also considered the costs/benefits and the impact of each of the options.

2.2 The Department carefully considered the findings of the economic appraisal to reach a view on the proposed design of an incentive scheme for Northern Ireland (NI) and has obtained Ministerial clearance on the proposed way forward.

2.3 The Statutory Rule has therefore been drafted based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB

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Regulations). The GB Regulations were approved by both Houses of Parliament and by Scottish Ministers on 10 November 2011.

2.4 The Statutory Rule will set in place a structured mechanism which will allow a RHI scheme to be introduced which will provide long-term guaranteed financial support for renewable heat installations in Northern Ireland. The Rule will underpin the tariff scheme and will specifically prescribe matters relating to eligibility criteria, obligations for participants of the scheme, methods of payment and accreditation and registration.

Consultation

3 The Department went out to consultation on a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered and, where appropriate, incorporated in the final design of the scheme.

Position in Great Britain

4 DECC originally legislated for an incentive scheme in the Energy Act 2008 and has established the GB RHI scheme and provided details of the manner and design of such a scheme. In March 2011, DECC published further information on the RHI where it advised that the Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC. DECC obtained parliamentary approval of the GB regulations in November 2011.

Equality Impact

5. In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, a screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

Regulatory Impact

6.1 A draft Regulatory Impact Assessment (RIA) has been prepared in respect of these Regulations. The Regulations will support the implementation of the Renewable Energy Directive 2009/28/EC (RED) which requires the UK to ensure that 15% of its energy consumption comes from renewable sources including electricity, heating and cooling and transport.

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6.2 Five options were considered as part of the RIA –

(a) **Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 4.8% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by Her Majesty’s Treasury (HMT) (discussed under point 7) would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market. Finally, there would be widespread criticism of the Department if no action was taken, especially given previous commitments on the issue.

(b) **A renewable heat challenge fund**

A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The scheme would need to be administered either by the Department or a contracted third party organisation and therefore could result in additional resource pressures or governances issues. It could also be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised, namely air source heat pumps or biomass boilers; this could be controlled by the Department in designing the scheme. However, this would not support the development of a more diverse market and could have a negative impact on technologies that require more support, e.g. solar thermal.

The final issue with a ‘challenge fund’ is that it is in essence a capital grant system and does not provide long term stable support. Previous experience shows that grant schemes tend to lead to the market ramping up but then failing once the funding ends. It is also not certain that such a fund would be in the spirit of the terms under which HMT is providing the funding.
(c) **50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. Under this scheme 5.35% renewable heat could be delivered by 2015. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the *Reconnect* scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than an administratively awarded grant.

(d) **Joining in with the GB RHI scheme**

There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administrating an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The major issue that would arise would be that customers could be potentially over-incentivised and inefficient technologies supported; there would also be an unintended negative impact on the gas market. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables. If GB tariff levels were implemented there would potentially be an incentive for existing gas customers to switch to renewables and not just those using oil. Under statute, DETI has an obligation to develop and maintain an efficient gas industry and therefore it is important to develop tariff levels that make it attractive for oil customers to switch but *not* necessarily existing gas users.

(e) **A specifically tailored NI RHI scheme**

The NI RHI option offers the highest potential renewable heat output at the best value. It also would incentivise a wide range of technologies and provide investors with long-term support. Whilst it would only be open to non-domestic market, in the first instance, it would eventually be open to all consumers and therefore provide greater accessibility.

The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The 'cost' of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower. In addition, the tariffs are based on an oil counterfactual, increasing the tariff levels could lead to consumers currently on gas switching to renewable heat, this would *not* be desirable as it could lead to long term price increases in gas distribution charges.
Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

6.3 Preferred option
As mentioned in the consultation exercise in July 2011, the Department’s preferred option is a specifically tailored NI RHI scheme. This has been determined as the most appropriate method of providing long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO₂ emissions as fossil fuels are displaced, an increase in fuel security as Northern Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

Financial Implications

7. HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2million in the first year, followed by £4million and £7million, with £12million available in the final year. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers’ energy bills.

EU Implications

8.1 The RED requires the UK to ensure that 15% of its energy consumption comes from renewable sources – for the first time the requirement extends beyond electricity to heating and cooling and transport. This is an important shift in emphasis: almost half of the final energy consumed in the UK is in the form of heat, producing around half of the UK’s CO₂.

8.2 The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target. In light of the obligations within the RED, the Department has undertaken to introduce a renewable heat scheme in Northern Ireland.

Section 24 of the Northern Ireland act 1998

9. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.
Section 75 of the Northern Ireland Act 1998

10. The Department had considered section 75 of the Northern Ireland Act 1998 and is satisfied that the proposed Regulations will have no negative implications or possible infractions under Section 75.

Operational Date

11.1 It is proposed that the Regulations will come into operation in May [TBC] 2012.

11.2 I would be grateful if you would bring this matter to the attention of Enterprise, Trade and Investment Committee.

Yours sincerely

Fiona Hepper
Head of Energy Division

cc Human Rights Commission
Legislative Programme Secretariat
Dear Jim McManus

SL1 – RENEWABLE HEAT REGULATIONS (NORTHERN IRELAND) 2012

1.1 The Department of Enterprise, Trade and Investment (the Department) proposes to make a Statutory Rule in exercise of the powers conferred by the Energy Act 2011.

1.2 The Department of Energy and Climate Change (DECC) in GB agreed that an amendment could be made to the Energy Act 2011 that would extend powers for renewable heat, similar to those contained within the Energy Act 2008, to Northern Ireland. For this to be achieved a Legislative Consent Motion (LCM) was required. Following Executive approval on 10 February 2011 and ETI Committee support at its meeting on 24 February 2011, a LCM was tabled and passed in the Assembly on 14 March 2011.

1.3 The Energy Act makes special provisions for Northern Ireland in terms of renewable heat.\(^1\)

1.4 DECC obtained Royal Assent on 18 October 2011 and the Bill became the Energy Act 2011. The Act deems that the Statutory Rule will be subject to the draft affirmative resolution procedure before the Assembly.

Purpose of the Statutory Rule

2.1 The Department carried out an economic appraisal of a potential Northern Ireland incentive scheme with the aim to assist in achieving the target of 10% renewable heat by 2020. The appraisal considered various options for incentivising the local renewable heat market, and advised on appropriate tariff levels. It also considered the costs/benefits and the impact of each of the options.

2.2 The Department carefully considered the findings of the economic appraisal to reach a view on the proposed design of an incentive scheme for Northern Ireland (NI) and has obtained Ministerial clearance on the proposed way forward.

2.3 The Statutory Rule has therefore been drafted based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB

The GB Regulations were approved by both Houses of Parliament and by Scottish Ministers on 10 November 2011.

2.4 The Statutory Rule will set in place a structured mechanism which will allow a RHI scheme to be introduced which will provide long-term guaranteed financial support for renewable heat installations in Northern Ireland. The Rule will underpin the tariff scheme and will specifically prescribe matters relating to eligibility criteria, obligations for participants of the scheme, methods of payment and accreditation and registration.

Consultation

3.1 The Department went out to consultation on a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered.

3.2 Following the consultation, further economic analysis was carried out considering issues that were raised by stakeholders. This analysis completed in February 2012 and has informed the final policy decision.

Position in Great Britain

4.1 DECC originally legislated for an incentive scheme in the Energy Act 2008 and, following a consultation process, published final proposals on the RHI in March 2011. DECC obtained parliamentary approval of the GB regulations in November 2011.

4.2 The Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC.

Equality Impact

5. In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, a screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

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6.1 A draft Regulatory Impact Assessment (RIA) has been prepared in respect of these Regulations. The Regulations will support the implementation of the Renewable Energy Directive 2009/28/EC (RED) which requires the UK to ensure that 15% of its energy consumption comes from renewable sources including electricity, heating and cooling and transport.

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6.2 Five options were considered as part of the RIA –

(a) **Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 7% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by Her Majesty’s Treasury (HMT) (discussed under point 7) would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market.

(b) **50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the Reconnect scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than an administratively awarded grant.

(c) **A renewable heat challenge fund**

A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The first to consider is that the administration costs are likely to be prohibitive. Previous experience of running Reconnect demonstrated administration costs of £1.48m for a grant scheme worth £10.5m (14%). The Reconnect scheme was for domestic customers only, and on a ‘first-come-first-served’ basis. A challenge fund, dealing with commercial applications and involving complex evaluation metrics, could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within DETI budget.

The scheme could be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised. This would not support the development of a more diverse market.

The final issue with a ‘challenge fund’ is that of risk. As the Challenge Fund would be contributing to the capital costs of the installation (rather than the whole life costs under the RHI) a risk would develop that, after a short time, installations would stop
generating renewable heat. This could be because the renewable heat fuel is no longer affordable, that a fossil fuel alternative (such as gas) become available or more attractive, that the site is no longer in business etc. In these circumstances clawback arrangements would need to be initiated, which could be costly and complicated, and the target would be hindered.

(d) **Joining in with the GB RHI scheme**

There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administrating an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The major issue that would arise would be that customers could be potentially over-incentivised and inefficient technologies supported. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables.

(e) **A specifically tailored NI RHI scheme**

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The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The ‘cost’ of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower.

Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

6.3 **Preferred option**

As mentioned in the consultation exercise in July 2011, the Department’s preferred option is a specifically tailored NI RHI scheme. This has been determined as the most appropriate method of providing long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO\textsubscript{2} emissions as fossil fuels are displaced, an increase in fuel security as Northern
Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

Financial Implications

7. HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2million in the first year, followed by £4million and £7million, with £12million available in the final year. DETI has sought and received approval for the funding profiled for year 1 of the scheme to be made available in year 2. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers’ energy bills.

EU Implications

8.1 The RED requires the UK to ensure that 15% of its energy consumption comes from renewable sources – for the first time the requirement extends beyond electricity to heating and cooling and transport. This is an important shift in emphasis: almost half of the final energy consumed in the UK is in the form of heat, producing around half of the UK’s CO2.

8.2 The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target. In light of the obligations within the RED, the Department has undertaken to introduce a renewable heat scheme in Northern Ireland.

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9. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

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10. The Department had considered section 75 of the Northern Ireland Act 1998 and is satisfied that the proposed Regulations will have no negative implications or possible infractions under Section 75.

Operational Date

11.1 It is proposed that the Regulations will come into operation in June 2012.

11.2 I would be grateful if you would bring this matter to the attention of Enterprise, Trade and Investment Committee.

Yours sincerely

FIONA HEPPER  
Head of Energy Division

cc  Human Rights Commission  
cc  Legislative Programme Secretariat
IMPLEMENTATION OF A RENEWABLE HEAT POLICY IN NORTHERN IRELAND

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Renewable Heat Incentive Regulations (Northern Ireland) 2012

2. Purpose and intended effect of measure

a) The background

The Department of Enterprise, Trade and Investment (the Department) is responsible for the development and maintenance of an appropriate legislative and policy framework for energy in Northern Ireland. The vision is for a competitive, sustainable, reliable energy market at the minimum cost necessary. Four key policy goals have been identified to support this vision as follows

- Competitiveness
- Security of Supply
- Infrastructure
- Sustainability

The agenda for developing renewable energy solutions and securing real reductions in energy consumption to enhance sustainability is driven by environmental policy, aimed at reducing harmful emissions. However, pursuing sustainability in energy also offers opportunities to enhance security of energy supply by introducing alternative generation sources, which are not subject to the price volatility of imported fossil fuels. Furthermore, development of indigenous sources offers opportunities for diversification and alternative sources of income.

Renewable Heat

Renewable heat is simply heat produced from renewable sources, for example wood pellet boilers, solar thermal water heating units, heat pumps and, on a larger scale, industrial biomass boilers or biogas plants.

The EU Renewable Energy Directive (2009/28/EC), published in the Official Journal of the European Union on 5 June 2009, requires that Member States ensure that 15% of their energy consumption comes from renewable sources by 2020. This requirement extends beyond electricity to heating and cooling and to transport.

As heat energy accounts for almost half of all the energy consumed in the UK and produces around half of the UK’s CO₂ there is considerable scope to explore and increase the use of renewable heat technologies in order to help meet the new Renewable Energy Directive target.

GB Renewable Heat Incentive

The Department of Energy and Climate Change (DECC) has set a target of 12% renewable heat for England and Wales by 2020, this target, coupled with the 30%
target for renewable electricity consumption, will assist in Great Britain meeting its requirements under the Renewable Energy Directive. Scotland has a separate target of 11%.

In order to achieve this target, DECC legislated for an incentive scheme in the Energy Act 2008 and, following a consultation process, published final proposals on the RHI in March 2011. DECC obtained parliamentary approval of the GB Regulations in November 2011. The RHI in Great Britain opened to applications in November 2011, the scheme is initially for the non-domestic sector with the domestic sector to be eligible for RHI payments as part of ‘phase 2’ of the scheme. In the interim, domestic consumers wishing to install renewable heating technologies can apply for ‘renewable heat premium payments’ to support the capital cost of the installation. These premium payments have been available since July 2011 and will close on 31 March 2012.

Over the next 4 years, DECC has anticipated that £860m will be invested in new renewable heat installations, this investment will go beyond 2015/2016 as new installations are supported for 20 years under fixed tariffs.

The Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC.

Northern Ireland Heat Study
Northern Ireland is not included as part of the wider Great Britain RHI. There are many differences between the heat and renewable heat markets in Great Britain and Northern Ireland that mean that it has been more appropriate for a separate assessment to be taken on how the local market can be developed.

In December 2009, DETI commissioned research into the existing heat and renewable market so an assessment could be made on the optimum growth potential of the market, methods for developing the market and an appropriate target for 2020. The study was carried out by AECOM Ltd and Pöyry Energy Consulting and was part financed by the European Regional Development Fund under the European Sustainable Competitiveness Programme for Northern Ireland.

Economic Appraisal of a Northern Ireland RHI
In February 2011, Cambridge Economic Policy Associates (CEPA), in conjunction with AEA Technologies, were commissioned to undertake an economical appraisal on the feasibility of a Northern Ireland RHI.

The economic appraisal has considered various options for incentivising the local renewable heat market, and has advised on appropriate tariff levels. It has also considered the costs/benefits and the impact of each of the options.

Following a public consultation on the introduction of a Northern Ireland RHI further economic analysis was carried out. This analysis focussed on issues raised by stakeholders and assisted in developing final tariff levels and banding. This has, therefore, informed the final policy position.

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b) The objective

The overall objective is to deliver the maximum possible renewable heat in Northern Ireland, but this has to be delivered in a way that is consistent with other Departmental policies and objectives. In addition, the target must be delivered within the agreed budget of £25m to 2015 provided by Her Majesty’s Treasury (HMT).

In September 2010, the Northern Ireland Executive endorsed a target of 10% renewable heat by 2020 (against a baseline of 1.7% in 2010). This target is included in the Strategic Energy Framework.

The achievement of this target is the overall objective of developing the renewable heat market, in doing so there will be significant benefits for fuel security in Northern Ireland and the opportunity to reduce carbon emissions. There may also be the potential to develop ‘green jobs’ and ‘green skills’ within the renewable heat industry.

c) Risk assessment

The Department recognises that there is some degree of risk and uncertainties in implementing a renewable heat incentive to Northern Ireland and seeks to consider those uncertainties in this paper.

Risk of incorrect subsidy level

Probably the most obvious risk is that the subsidy levels proposed for the RHI are either too high or too low. In the former case, those installing renewable heat will be over-subsidised and less heat will be delivered per pound than under more optimal subsidy levels. In the latter, renewable heat will not be deployed to the extent expected.

The normal method of dealing with this risk is firstly to have carefully analysed and researched data in developing the tariffs. The tariffs have been developed by CEPA and AEA Technologies, subject to a public consultation and then subsequently reviewed by CEPA and AEA. Departmental Economists have also assessed the tariffs and assumptions behind the calculations and have deemed them appropriate.

In addition it is the intention to have regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions. It is currently proposed that the first review will begin in January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market.

Risk of harm to other sectors

An increase in renewable heat will, inevitably, lead to a reduction in the demand for conventional heating (oil, gas, coal and electric heating). At a high level, the short term harm to any sector should be relatively small. However, even this, if it impacted disproportionately on the gas sector, could have negative consequences for the extension of the gas network.
Risk of failure of renewable heat supply

Just as supplies of conventional fuels may be disrupted, there is a risk that supplies of renewable fuel (i.e. biomass, biogas and bioliquids) will be disrupted. Biogas can be replaced with conventional gas in the short term, so disruptions to it should be relatively low risk. Bioliquids, since locally sourced by assumption, should be less risky than biomass, much of which will be imported. This suggests that the biomass supply chain, and the security of biomass imports, will be an important factor in the actual or perceived riskiness of renewable heat.

Risk of low take-up

This could be a result of tariffs or other possible barriers include planning restrictions, a lack of awareness, and negative perceptions of the reliability and/or cost of renewable heat.

Risk of failure to implement targets set by EU Renewable Energy Directive

The RED set a binding target that 20% of the EU’s energy consumption should come from renewable sources by 2020. The UK share of this target commits the UK to increasing the share of renewable energy to 15% by 2020. The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target.

Risk of insufficient budget for administration or future payments

There may be the possibility of a higher than expected uptake leading to overspends in annual budget and higher administration costs. This will be mitigated with ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget.

Risk of not receiving State Aid Approval

The EU Commission may refuse to approve the NI RHI scheme because of a lack of information provided to Commission; the inability to justify the need for, or the design of, the NI RHI scheme; or possibly the tariffs are set at too high a level and amounting to over-incentivisation.

The Department has consistently kept the Commission informed of proposed changes to the Scheme and took on board the lessons learned from the GB state aid application. In December 2011, the Department sent a detailed submission outlining the NI RHI proposals which was based on the GB application that was approved in November 2011. An addendum to December application was submitted in February 2012 advising on proposed changes.

Risk of instances of fraud

Instances of fraud could include duplicate applications, unusual meter readings (too high for expected output), lack of information being provided to the administrator and using unregistered installers.
The Department has put in place measures to counteract instances of fraud including:

- Assessment of applications and verification of installations and meter readings;
- Liaison with Ofgem on instances of suspected fraud;
- Physical verification of sites under RHPP scheme;
- Random checks to sites and meters under RHI scheme;
- Requirements of detailed information for each installation;
- Use of MCS under 45kw installations; and
- Meter readings assessed against expected output.

Where there are instances of suspected fraud, the participant will be investigated and payments will be stopped.

**Risk of failure in administration of RHI**

There is the potential for delays in dealing with applications, accreditations and payments for the NI RHI scheme which would lead to stakeholders complaining about application process. This could be as a result of difficulties in IT systems or a lack of communication between Ofgem and the Department.

In order to mitigate this risk, the Department will establish a joint project team with Ofgem as the scheme is implemented. The Department has also acknowledged the lessons from the GB RHI implementation. It has also developed a robust and detailed feasibility and ensured that there are sufficient resources earmarked for the NI RHI scheme. The IT systems have been well developed and tested (through GB scheme).

3. Options

A number of options for DETI’s support of the renewable heat market were considered:

**Option 1 - Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 7% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by HMT would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market.

**Option 2 - 50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. Under this scheme 5.35% renewable heat could be delivered by 2015. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the Reconnect scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than administratively awarded grant.
Option 3 - A renewable heat challenge fund
A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The first to consider is that the administration costs are likely to be prohibitive. Previous experience of running Reconnect demonstrated administration costs of £1.48m for a grant scheme worth £10.5m (14%). The Reconnect scheme was for domestic customers only, and on a ‘first-come-first-served’ basis. A challenge fund, dealing with commercial applications and involving complex evaluation metrics, could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within DETI budget.

The scheme could be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised. This would not support the development of a more diverse market.

The final issue with a ‘challenge fund’ is that of risk. As the Challenge Fund would be contributing to the capital costs of the installation (rather than the whole life costs under the RHI) a risk would develop that, after a short time, installations would stop generating renewable heat. This could be because the renewable heat fuel is no longer affordable, that a fossil fuel alternative (such as gas) become available or more attractive, that the site is no longer in business etc. In these circumstances clawback arrangements would need to be initiated, which could be costly and complicated, and the target would be hindered.

Option 4 - Joining in with the GB RHI scheme
There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administering an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables.

Option 5 - A specifically tailored NI RHI scheme
The NI RHI option is the preferred approach and offers the highest potential renewable heat output at the best value. It also would incentivise a wide range of technologies and provide investors with long-term support. Whilst it would only be open to non-domestic market, in the first instance, it would eventually be open to all consumers and therefore provide greater accessibility.
The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The ‘cost’ of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower.

Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

4. Benefits

Quantitative Benefits for options 2 to 5

• 10% target for renewable heat
  The overarching benefit would be the achievement of the 10% target of renewable heat, set by the Executive within the Strategic Energy Framework. The achievement of this target would contribute to the UK renewable energy targets set under the Renewable Energy Directive.

  Looking towards 2020, analysis undertaken indicates that Northern Ireland’s overall heat demand is predicted to fall from 17.4 TWh per year to 16.7 TWh with rises in demand from new development being outweighed by reductions in demand and energy efficiency improvements. Taking into account the 300 GWh of renewable heat already present in Northern Ireland, a target of 10% for 2020 equates to an additional 1.3 TWh or 1300 GWh of renewable heat.

• Carbon Savings
  In addition, there would be quantitative benefits driven by carbon savings. Under the Northern Ireland RHI it is estimated that 5.1 million tonnes of carbon emissions. The value of these savings is in the order of £240million.

Qualitative benefits

This section covers the benefits that are not quantified and looks at the qualitative benefits of the implementation of renewable heat in Northern Ireland.

• Employment and capacity building, particularly in green sectors
  DECC has estimated\(^2\) that there are 150,000 jobs in the heating industry in Great Britain. In relative terms, this equates to around 3,750 jobs in this sector in Northern Ireland. The Renewable Energy Installers Academy lists 92 firms or individuals in Northern Ireland that are qualified to install renewable heat; this could be expected to grow significantly with a robust, long term renewable heat subsidy in place. In March 2011 there were 26 firms that were MCS (microgeneration scheme) accredited and qualified to install at least one of the renewable heat technologies and based in Northern Ireland. Investment in renewable energy is likely to create direct jobs as well as indirect jobs across the entire supply chain of the renewable industry including:

• Environmental monitoring;
• Development design;
• Commissioning and procurement;
• Manufacturing;
• Installation;
• Project management;
• Transport and delivery and operations; and
• Maintenance.

A 2007 European Commission study\(^3\) found that, overall, a 10% substitution towards renewable energy sources compared to non-renewable sources has a positive impact on jobs.

Employment can be created or safeguarded in the following ways:

• Direct employment in the installation, construction or operation of a project.
• Direct employment in the manufacturing of renewable heat technologies.
• Indirect employment from supplying goods and services to a project.
• Induced employment through jobs created due to increase spending due wealth creation by the project.

Biomass and bioenergy schemes in particular offer the greatest potential for jobs relating to the ongoing operation of a facility. Jobs may be created both from the operation of larger plants, and also from the ongoing management and supply of fuels. Bio-energy schemes can result in additional jobs through:

• The management of forestry and production of forestry residues.
• Transport and delivery of fuels.
• Utilising unused land for energy crop production.

• Reduction in oil imports

Analysis suggests that the majority of the fuel displaced will be oil, which is as expected since nearly 80% of heating in NI is from oil. For comparison purposes, NI’s current demand for oil is around 17,558 GWh/ year\(^4\), which is around 10.3 million barrels\(^5\). The NI RHI with the highest level of renewable heat deployment displaces less than 10% of oil imports. This reduction in oil imports would reduce Northern Ireland’s exposure to the price of oil and to the risk of disruptions in oil supplies.

• Air quality

There could be air quality impacts from widespread take-up of biomass heating, particularly if this is in urban areas. However, the relative impact will depend significantly on the fuel displaced. The impact assessment for the GB RHI\(^6\) notes that where renewable heat displaces oil, the “[air quality] impacts can be positive”.

Sectors affected

The following sectors are likely to be affected by the introduction of these Regulations:

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\(^3\) European Commission (2007), DG Environment: Links between the environment, economy and jobs.

\(^4\) Source: AECOM/ Pöyry, 2010, op. cit.

\(^5\) Assuming 1 barrel of oil =6.119GJ. Source: Energy Information Agency www.eia.gov

\(^6\) DECC, 2011, Renewable Heat Incentive Impact Assessment
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<th>Sector</th>
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<tr>
<td>Domestic</td>
<td>Opportunity and availability of support to convert new renewable heat technologies</td>
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<tr>
<td>Green</td>
<td>Possible creation of new jobs/ growth of the industry</td>
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<tr>
<td>Public</td>
<td>Opportunity to convert public buildings to new renewable heat technologies</td>
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<tr>
<td>Commercial</td>
<td>Opportunity and availability of grant to convert new renewable heat technologies</td>
</tr>
<tr>
<td>Existing heating industries</td>
<td>Increasing demand for renewable heat may lead to a reduction in the demand for conventional heating</td>
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Other impact assessments

**Equality**

In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

5. Costs

- **Funding**

HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2 million in the first year, followed by £4 million and £7 million, with £12 million available in the final year. DETI has sought and received approval for the funding profiled for year 1 of the scheme to be made available in year 2. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers' energy bills. HMT have already indicated that any spending commitments made via the initial NI RHI (i.e. through the £25m) will be met by ongoing RHI payments from HMT. Additional funding post 2015 will need to be negotiated with DECC and HMT in due course.

- **Administration costs**

The introduction of a NI RHI requires an administrative system capable of managing enquiries and applications, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. Ofgem has developed such a system for DECC and is already managing the administration of the GB RHI. In addition, it has experience of delivering other large scale incentive schemes such as the Renewables Obligation and the Feed-in-Tariff. It is considered that there could be significant advantages in utilising the existing systems and so a direct award contract was awarded to Ofgem to carry out a feasibility study into how the DECC GB RHI system could be used as a basis for an administrative system for the NI RHI.

The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of
operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload.

Exploiting synergies with the GB RHI will drive down the costs of administering the scheme whilst maintaining a high quality service to generators. For example, using the existing Customer Relationship Management (CRM) Software will save NI an estimated £100-150K, while using the existing SUN system to make generator payments, instead of a payment service provider, could save in the range of £100-500K. In addition, using the main existing RHI register instead of commissioning a bespoke IT system is expected to save between £2m and £3m. Overall, it is estimated that using Ofgem's existing systems could save somewhere between £3.2million and £5.15million with additional ongoing operational savings.

6. Consultation with small business: The Small Business Impact Test

The businesses most affected by these proposed Regulations will be those companies which install and manufacture renewable components. As previously mentioned under the Benefits section of this impact assessment, there is likely to be a positive effect on installers of renewable technologies as investment in renewable energy is likely to create direct jobs as well as indirect jobs across the entire supply chain of the renewable industry including:

- Environmental monitoring;
- Development design;
- Commissioning and procurement;
- Manufacturing;
- Installation;
- Project management;
- Transport and delivery and operations; and
- Maintenance.

The incentive scheme will also be available to businesses across NI as well as the public sector and the other elements of the non-domestic sector (community groups, not-for-profit organisations etc). It is expected that the domestic sector will be introduced into the NI RHI from during phase 2 of the scheme, following further analysis, in the interim support in the form on “Renewable Heat Premium Payments”.

This scheme will help to incentivise the industrial sector into changing its heating from oil which produces high carbon emissions to one of the “green” heating technologies offered under the incentive scheme which could help them cut costs on their fuel bills significantly.

7. Enforcement and Sanctions

Many aspects of the Renewable Heat Regulations will be implemented by Ofgem by which participants in the incentive scheme must abide. Compliance with the incentive scheme will be enforced by the Ofgem who has the power to impose sanctions on those participants in the event of a failure to comply with the eligibility criterion or ongoing obligation set out in the Regulations.

Ofgem's powers include the following –

- Temporarily withholding periodic support payments for a maximum period of 6 months commencing from the date of the notice served on the participant;
- Suspend periodic support payments where ongoing failure to comply with an eligibility criterion or ongoing obligation for a maximum period of 1 year;
- Stop or reduce participants' periodic support payments where there has been a material or repeated failure by a participant to comply with an eligibility criterion or ongoing obligation during any quarterly period; and
- Exclude a participant from the scheme where there has been a material or repeated failure by a participant to comply with an eligibility criterion or ongoing obligation.

Ofgem can also at any time revoke a sanction imposed.

8. Monitoring and Review

The Department, in liaison with Ofgem, will monitor the operation of the Northern Ireland renewable heat market to assess if the elements of the incentive scheme are delivering the anticipated benefits.

It is expected that Ofgem will be responsible for developing and administering the scheme on behalf of DETI. Ofgem has significant experience in the delivery of large scale energy incentive schemes such as the Renewables Obligation (RO) and the Feed-in-Tariff (FIT). In addition, Ofgem has administered the Northern Ireland Renewables Obligation (NIRO) since its inception and therefore has an understanding of the local energy market and a working relationship with the Department.

9. Consultation

The Department went out to consultation on a proposed RHI scheme including the draft the Renewable Heat Regulations (Northern Ireland) 2012 on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered.

10. Summary and Recommendation

A specifically tailored NI RHI scheme will provide long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO₂ emissions as fossil fuels are displaced, an increase in fuel security as Northern Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

The RHI will be open to all non-domestic consumers in the first instance, with the domestic market introduced at a later date. In the interim, the domestic sector will be able to avail of support in the form of Renewable Heat Premium Payments.
Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Signed

Date 13/04/2012

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Contact point

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Renewable Heat
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Belfast BT4 2JP

E-mail address: peter.hutchinson@detini.gov.uk
From: Fiona Hepper
Energy Division

Date: 18th April 2012

To: 1. David Sterling [Content 18/4/12]
2. Andrew Crawford
3. Arlene Foster MLA

BUSINESS CASE FOR THE APPOINTMENT OF OFGEM, VIA AN AGENCY SERVICE AGREEMENT TO ADMINISTER THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE.

Issue: This submission seeks the mandatory internal approval to appoint The Office of Gas and Electricity Markets (Ofgem) to administer the Northern Ireland Renewable Heat Incentive (RHI) and to act as an External Delivery organisation on behalf of DETI.

Timing: Desk Immediate – Ofgem’s work must commence immediately if we are to minimise the delay in the start of the scheme.

Need for referral to the Executive: Not applicable

Presentational issues: The appointment of Ofgem may attract some comment from local stakeholders.

FOI implications: Some elements may be exempt under of the Freedom of Information Act.

Financial Implications: The development of the administrative system is expected to cost £386K; the ongoing operational costs for the next four years are estimated to be £136K, £157K, £198K and £249K respectively

Legislation Implications: N/A

PSA/PFG Implications: None
Statutory Equality: None.

Obligations:

Recommendation:

That the Departmental Accounting Officer authorises the appointment of Ofgem, and approves the attached business case for the project.

That the Departmental Accounting Officer authorises the appointment of Ofgem as an External Delivery Organisation.

That the Minister notes the appointment of Ofgem to develop an administrative system for the NI RHI and approves the business case for the appointment at a cost of approximately £386k.

Background

A target of 10% renewable heat for NI by 2020 is included within the Strategic Energy Framework; this is a challenging target given that the current level is 1.7% but is necessary to meet an EU Renewable Energy Directive (RED) (2009/28/EC) on renewable energy. £860 million has been made available from central Government funding to support the introduction of a Renewable Heat Incentive (RHI) in GB over the period 2011-2015; HMT has notified the Northern Ireland Executive that £25 million of funding is available for a NI RHI over the same period. The GB RHI scheme commenced in November 2011. Energy Division engaged consultants to consider how the renewable heat market in Northern Ireland could best be developed; this has resulted in proposals for a specific NI RHI tailored to take account of the differences in the GB and NI existing heat markets. The proposed NI RHI represents a long term approach to developing the renewable heat market by providing consistent, secure, long term payments for renewable heat generation. The scheme involves payments to installers of renewable heat technologies, with tariffs dependent on the type and size of technology installed, and in the form of pence per kilo watt hour (p/kWh) for heat generated. Payments will be made quarterly over a 20 year period for all eligible installations (following accreditation).

Administrative System

2. The introduction of a NI RHI requires an administrative system capable of managing enquiries and applications, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments as outlined above, preventing fraud and providing management information.
3. The Office of Gas and Electricity Markets (Ofgem) is the Energy regulator for Great Britain and has a close working relationship with the Department of Energy and Climate Change (DECC). Over the last 2 years Ofgem and DECC have worked closely together to develop administration arrangements for the GB RHI; this has included developing processes, designing IT systems and developing the guidance documents that underpin the scheme.

4. It was considered that by contracting with Ofgem for the delivery of the NI RHI, DETI would benefit from all the work that has already been undertaken in developing the GB system. For this reason, you will recall, Ofgem was asked to conduct a feasibility study to advise on the technical and legal implications of administering the NI RHI, the feasibility of using the existing systems and to provide estimates of development and operational costs.

5. The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of operating costs for the next four years are £136K, £157K, £198K and £249K, based on NI accounting for a 3% share of the workload. In any case, Ofgem has confirmed that it will only pass through actual costs to DETI.

6. Exploiting synergies with the GB RHI will drive down the costs of administering the scheme whilst maintaining a high quality service to generators. For example, using the existing Customer Relationship Management (CRM) Software will save NI an estimated £100-150K, while using the existing SUN system to make generator payments, instead of a payment service provider, could save in the range of £100 -500K. In addition, using the main existing RHI register instead of commissioning a bespoke IT system is expected to save between £2m and £3m. Overall, it is estimated that using Ofgem's existing systems could save somewhere between £3.2million and £5.15million with additional ongoing operational savings.

7. The question as to who should administer the NI RHI was asked within the public consultation on the scheme. Responses to the consultation were mixed; some consultees agreed that the use of Ofgem would be beneficial in terms of efficient delivery, consistency and reduced administrative costs. Others argued that the scheme should be administered locally with the possibility of creating new jobs and skills in NI. However, the completion of this feasibility study provides clear evidence that there are very substantial gains (both in terms of efficiency and cost) to be had from utilising the existing GB system. Looking forward, there is the additional advantage that we would only be required to pay our share of any future development or enhancement costs.

Central Procurement Directorate (CPD)

8. Energy Division has discussed the award of the contract to Ofgem with colleagues in CPD who in turn have consulted the Departmental Solicitor’s Office. DSO indicated that three tests should be applied to decide whether the proposed contract with Ofgem involved ‘public bodies sharing in such a manner that the procurement regulations do not apply’. Having received information on the status of Ofgem, its funding arrangements and procurement procedures, CPD is content...
that the proposed agreement would pass all three tests. CPD have confirmed, in writing, that appointing Ofgem would be acceptable and that a formal arrangement with Ofgem through a Service Level Agreement is appropriate, without the need for a call for competition (pdf of signed form is attached).

9. The main reasons for awarding the contract to Ofgem are contained in the attached business case (Annex A) and can be summarised as follows:-

- Economies of scale due to Ofgem’s role as Administrator of the GB scheme; DETI will benefit from existing expertise and systems.

- Consistency of approach with GB; the GB RHI and NI RHI are largely similar and discrepancies in administration could cause confusion and prevent uptake.

- Ofgem has a sound track record in delivering large scale energy projects such as the roll out of smart metering, the Feed-in-Tariff and the Renewables Obligation (including the NI element).

- The adaptation of an existing system will be quicker and carry less risk; the NI RHI will be able to be introduced earlier and the risk of it not being fit for purpose is lessened

Ofgem as an External Delivery Organisation

10. At the Casework Committee meeting of 9th March 2012, which considered the wider proposals on the NI Renewable Heat Incentive, Energy Division was advised that if the administration of the RHI was awarded to Ofgem that they would be treated as a External Delivery Organisation and this would require approval from the Departmental Accounting Officer. This is in addition to the approval for the Agency Service Agreement.

11. In considering this proposal the following should be noted:

- Ofgem will be awarded the contract, via an Agency Service Agreement. CPD have been involved throughout this matter, offering procurement and legal advice, and are content with this proposal;

- Formal contractual arrangements with Ofgem and DETI will be via an approved Agency Services Agreement, again CPD are advising on this matter;

- The roles and responsibilities of Ofgem, as well as the expected costs, are set out in the attached business case and in the Ofgem feasibility study; and

- Energy Division will ensure DETI Internal Audit Branch have right of entry into Ofgem to make appropriate checks as required.
12. The **Departmental Accounting Officer** is asked to consider this proposal and give approval to the appointment of Ofgem as an External Delivery Organisation.

13. In addition, it should be noted that Finance Division have been alerted to the scale of the set up and ongoing costs as laid out in para 5 above and have undertaken to manage these internally via deminimus bids in the appropriate monitoring rounds. Energy Division will therefore keep in close contact with Finance Division and will make in year bids as required.

**Recommendations**

(1) That the Departmental Accounting Officer authorises the appointment of Ofgem, via an Agency Service Agreement and approves (and signs) the attached business case for the project.

(2) That the Departmental Accounting Officer authorises the appointment of Ofgem as an External Delivery Organisation.

(3) That the Minister notes the appointment of Ofgem to develop an administrative system for the NI RHI and approves the business case for the appointment at a cost of approximately £386k.

(signed)
FIONA HEPPER
Energy Division
(Ext 29215)

cc: David Thomson
Trevor Cooper
Iain McFarlane
Bernie Brankin
Terry Coyne
Joanne McCutcheon
Peter Hutchinson
Jill Hawthorne
Glynis Aiken
Sam Connolly
Susan Stewart
Sandra Thompson
DETI Economic Appraisal Pro Forma  
(Expenditure between £250k and £1m)

(It is expected that the level of detail required is proportionate with the level of expenditure)

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<tr>
<th>Division</th>
<th>Energy Division</th>
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<td>Branch</td>
<td>Renewable Heat Branch</td>
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**Project Title**  
Administration of Renewable Heat Incentive

**Date**  
March 2012
1. Strategic Context

This section should refer to the underlying policy or strategy that the project ‘fits’ within. It should indicate how the project is expected to contribute to the relevant objectives of the strategies identified.

In September 2010, DETI published the Strategic Energy Framework (SEF) which had been agreed and endorsed by the Executive. The SEF included a target of 10% renewable heat by 2020; this is required to meet a EU Renewable Energy Directive (RED) (2009/28/EC) as well as to increase fuel security, reduce dependence on fossil fuels, support the drive for a cut in emissions and provide opportunities for green jobs. In the same month, the DETI Minister announced that DETI would seek to introduce a Renewable Heat Incentive (RHI) in Northern Ireland should one be economically viable (GB had already announced plans to introduce a GB RHI). The Programme for Government contains an interim target of 4% renewable heat by 2015.

In October 2010, Her Majesty’s Treasury allocated DETI £25m (2011-2015) for the introduction of a RHI. Following on from this, DETI appointed Cambridge Economic Policy Associates (CEPA) and AEA Technologies, following a competitive tender process, to carry out an economic appraisal of a RHI. The work by CEPA/AEA has shown that the introduction of a specific NI RHI is the best way to develop the renewable heat market in NI and achieve the targets outlined above.

The NI RHI represents a long term approach to developing the renewable heat market by providing consistent, secure, long term payments for renewable heat generation. The incentivisation involves payments to installers of renewable heat technologies, with tariffs dependent on the type and size of technology installed, and in the form of pence per kilo watt hour (p/kWh) for heat generated. Payments will be made quarterly over a 20 year period for all eligible installations (following accreditation).

The introduction of a NI RHI requires an administrative system capable of
managing enquiries and applications, accrediting installations, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. The Office of Gas and Electricity Markets (Ofgem) has developed such a system for DECC and is already managing the administration of the GB RHI.

2. Assessment of Need
Establish the need for the expenditure on the project by identifying current deficiencies in provision and analysing future demand; the proposed level of service provision etc. should be quantified and justified. Where the project involves funding the non-government sector, the rationale for government intervention should be explained. Additionality should be addressed i.e. would the project go ahead without assistance (whether at a different time / location or on a different scale)? Displacement should be considered.

With a budget of £25m over the next four years and payments ‘grandfathered’ for 20 years, it is vital that the NI RHI scheme is properly administered. A sophisticated system, incorporating both IT systems and manual operations, and capable of managing the various stages of the scheme (managing applications; accreditation; payment processing; monitoring, forecasting and fraud detection) is required.

The resource to develop such a system, both in terms of number of personnel and expertise, is not available within Energy Division. Similarly there is insufficient resource to manage the system on an ongoing basis.

**The NI RHI cannot proceed without an administrative system being put in place.**
Objectives

Objectives must be set for the project and should be quantified through the use of targets, which should be monitored and ultimately evaluated. Targets should be SMART, i.e. Specific, Measurable, Agreed, Realistic and Time-dependent. The relative priority of individual objectives should be identified.

The objectives for the project are as follows:-

To develop an administrative system for the NI RHI

- Recruit and train staff
- Develop Guidance Material for scheme
- Develop Standard Operating Procedures for the scheme
- Develop Call scripts for contacts team
- Develop training materials for operations staff
- IT systems development
- Systems testing
- Communications strategy

To manage the administration of the NI RHI on an ongoing basis (initially for 4 year period)

- Processing applications
- Accreditation of Generators
- Customer relationship management including processing payments
- Maintenance of Central register
- Auditing and assurance
- Prevent fraud and manage compliance
- Provide management information
3. Identification and sifting of Options
Identify and describe a range of options to meet the projects stated aims and objectives. The options examined should include a base case, or status-quo option and an appropriate range of alternative options. If appropriate, options may be rejected before full appraisal but the reasons behind the rejection of particular options should be clearly detailed and evidenced where appropriate. A sufficient range of options to allow for meaningful comparison should be carried forward to full appraisal (at least a base case and 2 alternatives should be taken forward).

The options considered are as follows:

**Option 1 – Do nothing**
Doing nothing would result in the Northern Ireland RHI not going ahead due to a lack of administration. The scheme cannot run unless it is properly administered. Failure to deliver a RHI would result in the loss of allocated funding, criticism from stakeholders and failure to achieve Executive and EU targets (with potential for the UK, as Member State, passing on a share of any infraction costs to NI). **This is not a viable option.**

**Option 2 – Undertake the administration in-house**
The necessary resources and technical expertise do not exist in-house in Energy Division or in the wider Department. The team responsible for renewable heat (as well as other related and unrelated activities) consists of a PT Grade 7, 1.5 DP’s and 0.5 SO. As well as the introduction of Phase 1 of the RHI, this team will be managing and running the interim Renewable Heat Premium Payment scheme; as well as developing policy and making legislation for Phase 2 of the RHI (to commence 2013) as well as providing briefing, answering AQs and dealing with correspondence cases. They are also responsible for sustainable energy messaging. There is absolutely no spare capacity within the Division. As above, targets will be missed and **this is not a viable option.**
Option 3 – Partial completion of assignment using in-house resources
The necessary resources and technical expertise to administer the Northern Ireland RHI do not currently exist in-house. The option of obtaining additional staff resource and completing part of the work in house has been considered. However, following the feasibility study, it is clear that the system provided by Ofgem is a total solution and the work would not easily divide between Ofgem and DETI. Indeed, dividing the work would almost certainly increase the costs and would definitely increase the risk of incorrect or inappropriate payments. For this reason this is not a viable option.

Option 4 – Short/Medium term secondment of industry experts
The administration of the RHI requires a long term approach and therefore the short/medium term secondment of industry experts is not a viable option.

Option 5 – Use of external body to manage the administration
A body with appropriate resource and experience in developing and implementing this type of administrative system is the only feasible option. Ofgem, through its experience of working with DECC in designing and implementing the GB RHI, would be able to deliver the scheme in a timely and effective manner. DETI asked Ofgem to undertake a feasibility study to consider the viability and costs associated with adapting the GB RHI system to manage the NI RHI. This is the only viable option.

4. Monetary Costs & Benefits
Clearly identify and quantify all the monetary costs that are associated with each of the options under consideration; both capital costs and recurrent costs should be disaggregated to an appropriate level. Recurrent costs and benefits should be provided on an annual basis, shown at current market prices. Opportunity costs and residual values for all assets employed should be included. In accordance with HM
Treasury guidance assumptions about costs, benefits and timing should be adjusted for optimism bias\(^1\).

The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload. In any case, Ofgem has confirmed that it will only pass through actual costs to DETI.

The economic appraisal for the RHI scheme, prepared by external consultants, considered that the likely cost of administering an RHI scheme could be 10% of total funding. With total funding of £25m over the 4 years, the estimates provided by Ofgem appear to be value for money.

The feasibility study also shows that exploiting synergies with the GB RHI will drive down the costs of administering the scheme whilst maintaining a high quality service to generators. For example, using the existing Customer Relationship Management (CRM) Software will save NI an estimated £100-150K, while using the existing SUN system to make generator payments, instead of a payment service provider, could save in the range of £100 -500K. In addition, using the main existing RHI register instead of commissioning a bespoke IT system is expected to save between £2m and £3m. Overall, it is estimated that using Ofgem's existing systems could save somewhere between £3.2million and £5.15million with additional ongoing operational savings.

5. **Appraise risks associated with each option**

Identify the main risks associated with the various options. Consider how risks compare under the different options identified.

\(^1\) Optimism bias is the tendency for project appraisers to be overly optimistic i.e. by overstating benefits and understating timescales and costs, both capital and operational.
The main risk with this option is that the Ofgem will fail to deliver either at the development phase or at the operational stage. This risk is low given that it is currently delivering the GB scheme and has a good track record in delivering other schemes including the Northern Ireland Renewables Obligation.

The risk will also be managed through ongoing performance monitoring. An Administration Board will be setup with the DETI Director of Energy as the Senior Responsible Owner and Joint Chair. The board will initially meet on a fortnightly basis before moving to a monthly cycle once the scheme is established. This will be supplemented with regular contact between the DETI project team and the Ofgem project manager.

6. Calculate Net Present Values
Identify phasing of monetary costs and benefits. Calculate NPV of each option using correct discount rate (usually 3.5%). Include spreadsheets detailing the calculations as an annex.

n/a

7b. Sensitivity Analysis
Sensitivity analysis should be carried out to test variations in key assumptions; this will include the impact of price and volume changes. (Relevant spreadsheets should be included as annexes)

n/a

7. Non-Monetary Costs & Benefits
Identify relevant non-monetary benefits and costs. Describe how these costs and benefits compare under the different options being appraised and quantify when possible (If costs/benefits are quantified in monetary terms they
should not be included in this section but in section 5). Alternatively, use an appropriate technique such as an ‘impact statement’ or ‘weighting and scoring’ to assess how each option performs. Rank each option in relation to how it performs against the identified non-monetary costs and benefits.

As well as the significant cost benefit in using Ofgem, there is the additional benefit of getting a sophisticated bespoke system. By building on the existing GB system we are maximising the technical functionality we can purchase with our budget. Furthermore, the system is already tested and functioning so the risk is minimised. Ofgem has a good track record of delivering similar schemes both in GB and NI, for example, the roll out of smart metering, the Feed-in-Tariff and the Renewables Obligation (including the NI element).

With the similarities between the GB and NI schemes, consistency of approach may also be important thus minimising the potential for confusion among stakeholders or errors in administration.

Using Ofgem to adapt an existing system is also likely to be significantly quicker. This is important as the NI RHI cannot be introduced until the system is ready. We are already behind GB in the introduction of the scheme and any further delay must be minimised to avoid negative feedback from stakeholders.

9. **Assess the balance between options and identify preferred option.**

The following summary table should be completed detailing the results of the analysis of costs and benefits, non-monetary factors, the assessment of risk and uncertainty (taking into account optimism bias), viability, cost effectiveness and efficiency (DCF test to include optimism bias-adjusted NPV).

<table>
<thead>
<tr>
<th>Summary Table</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>NPV (£)</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Non-Monetary Benefits/Costs Ranking</td>
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<td></td>
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<tr>
<td>Overall Risk Assessment (low, med, high)</td>
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</table>
Based on these summary results, a preferred option should be identified.

The only viable option is to appoint an external body to administer the RHI.

The preferred option is to appoint Ofgem as the administrator. Ofgem is already providing the administration for the GB RHI and the cost of tailoring that existing system to accommodate the NI RHI is considerably less than developing a new system. It also carries less risk than commissioning an entirely new system.

10. Financing, Monitoring & Post Implementation Evaluation and Management Considerations

The proposed sources of funding should be shown (The funding provision for a project should be sufficient to cover expenditure after adjustment for optimism bias). Consider the affordability of the preferred option and whether it represents value for money. Details of any conditions attached to the proposed support should also be documented.

Funding will be through Divisional budgets with in year monitoring bids as appropriate.

Arrangements for project monitoring and evaluation should be documented. Monitoring indicates how the proposed option will be monitored during and after implementation. Evaluation should check the extent to which project objectives, costs and benefits have been achieved as planned once the preferred option is running for a specified period. The arrangements for evaluation should indicate the factors to be evaluated, when any evaluation is to be carried out and who will be responsible for ensuring an evaluation is completed (The officials project sponsor or approver should not carry out the Post Project Evaluation).

There will be a signed agreement between Energy Division and Ofgem which will clearly state expected outputs, targets and costs for both the
development and operational phases. Arrangements for monitoring of the project against the targets are as laid out in para 6 above. Evaluation of the development and operation will be separate. The development evaluation will take place shortly after the system becomes operational. The evaluation of the operational part of the contract will be at the end of the first year of operation.

Please set out the management considerations that need to be taken into account if the anticipated benefits for this project / programme are to be realised including details of project personnel, procurement, timetable, staffing issues and highlight how risks will be managed. If support is to a TPO / TSO confirm that TPO guidance has been followed and highlight relevant monitoring and control issues.

n/a

10. Recommendations

DECLARATION

I am satisfied that all factors of all feasible options have been considered in this appraisal and that the recommended option is the optimum.

Signed..............................................................................................................

Position............................................................................................................

Date..................................................................................................................

APPROVAL

I am satisfied that all factors of all feasible options have been considered in this appraisal and that the recommended option represents best value for money.

Signed...... ......

Position......Permanent Secretary...........................................
# CENTRAL PROCUREMENT DIRECTORATE (CPD)

Request for Procurement Advice in respect of a Direct Award Contract (DAC)

Please complete this form with all relevant details and send to CPD.

## Section 1: Client Contact Details

<table>
<thead>
<tr>
<th>Name of Contact</th>
<th>Joanne McCutcheon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department</td>
<td>Department of Enterprise, Trade and Investment</td>
</tr>
<tr>
<td>Branch/Division</td>
<td>Renewable Heat Branch, Energy Division</td>
</tr>
<tr>
<td>Address</td>
<td>Netherleigh Massey Avenue Belfast</td>
</tr>
<tr>
<td>Postcode</td>
<td>BT4 2JP</td>
</tr>
<tr>
<td>e-mail address</td>
<td><a href="mailto:Joanne.mccutcheon@delini.gov.uk">Joanne.mccutcheon@delini.gov.uk</a></td>
</tr>
<tr>
<td>Office Telephone Number</td>
<td>028 9052 9425</td>
</tr>
<tr>
<td>Mobile Telephone Number</td>
<td>-----------</td>
</tr>
</tbody>
</table>

## Section 2: Direct Award Contract (DAC) Details

<table>
<thead>
<tr>
<th>Title of DAC</th>
<th>Administration of the Northern Ireland Renewable Heat Incentive (RHI) by the Office of Gas and Electricity Markets (Ofgem)</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the estimated value of this DAC?</td>
<td>£386K development costs plus ongoing operational costs estimated to be £136k, £157K, £198K and £249K in each of the next four years.</td>
</tr>
<tr>
<td>What is the proposed length of this DAC?</td>
<td>Development phase – 4 months. Operational costs ongoing subject to an Agency Services Agreement</td>
</tr>
</tbody>
</table>
### 3.1 Technical Reasons or Exclusive Rights

Is this DAC being justified for technical or artistic reasons or because the supplier has exclusive rights?

Ofgem is the Energy Regulator for Great Britain and has a close working relationship with the Department of Energy and Climate Change (DECC). Ofgem acts as the delivery body for a number of DECC led renewable energy schemes including the Renewable Obligation (and the Northern Ireland Renewables Obligation), the Feed-in-Tariff and the GB RHI.

Over the past 2-3 years, Ofgem and DECC have worked closely to develop administration arrangements for the GB RHI, this has included the development of a sophisticated IT system, development of application, accreditation, monitoring and fraud prevention processes, payments processing and management reporting tools. The system is now fully operational and has been managing the administration of the GB RHI since November 2011.

The proposed NI RHI is very similar to the GB RHI. By contracting with Ofgem for the delivery of the Northern Ireland RHI, DETI would be in position to avail of the systems already developed by Ofgem, at significant cost to DECC, in the design and delivery of the GB RHI. This presents significant economies of scale, ensures consistency in approach with GB in the delivery of the two similar incentive schemes and minimises the risk associated with the implementation of the scheme.

A feasibility study has already been undertaken by Ofgem. This study has shown that it is technically feasible to use the existing GB system and tailor it for the administration of the NI incentive.

Given Ofgem's role in the GB RHI and its expertise in delivering large scale renewable energy projects, it is the view of Energy Division that it is the only viable option for the administrator of the Northern Ireland RHI.
### 3.2 Legislative Requirements

Is this DAC in respect of a good or service which must meet specific legislative requirements e.g. Home Office Approval

If Yes, please provide details of the legislative justification.

The primary legislative powers which provide DECC with the authority to introduce the RHI in GB lie within Section 100 of the 2008 Energy Act. These powers specifically define Ofgem as “the Authority” and refer to them as having the power to make payments under the RHI, enforce the scheme, require information from applicants etc. Ofgem is, within the primary legislation, described as the administrators of the RHI in Great Britain. Subordinate legislation which sets out how the GB RHI will be administered, eligibility standards and regulations, prescribe in more detail the role of Ofgem as administrator.

Northern Ireland was not included under the 2008 Energy Act but the 2011 Energy Bill provides DETI with the powers conferred on DECC under the 2008 Energy Act. Secondary legislation is now being drafted.

### Section 4. Current/previous contract

#### 4.1 Was there a Contract which has / or is about to expire? NO

<table>
<thead>
<tr>
<th>Please provide the name of the supplier</th>
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<table>
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<tr>
<th>Please provide the start and end dates of the contract including extensions</th>
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<tbody>
<tr>
<td>Start Date</td>
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| If the contract has been extended beyond the original options to extend please provide details. |
|                                                                                           |

<table>
<thead>
<tr>
<th>Was this contract awarded under Single Tender Action?</th>
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<tbody>
<tr>
<td>Yes</td>
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<table>
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<tr>
<th>If No, was there an advertisement placed in the local papers and/or the OJEU, if so please provide dates</th>
</tr>
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<tbody>
<tr>
<td>Date in Local papers</td>
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<table>
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<tr>
<th>What was the actual value of the initial contract at the time of award?</th>
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<table>
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<tr>
<th>What has been the actual spend to date form the commencement of this contract?</th>
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#### 4.2 Is this a new requirement? Yes

<table>
<thead>
<tr>
<th>Please provide the name of the proposed supplier</th>
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<tbody>
<tr>
<td>Ofgem</td>
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</table>

DF1/11/220718

v.16
Please provide justification for the DAC to this supplier
This is a new requirement. DETI is proposing to introduce a Northern Ireland Renewable Heat Incentive (RHI) and is just finalising the design of the scheme. The scheme will incentivise the uptake of renewable heat technologies to support the achievement of targets set by the Executive and obligations set by the European Union. Further to this, the increase of renewable heat in Northern Ireland will assist in increasing fuel security, reduce carbon emissions and provide opportunities for ‘green jobs’. Her Majesty’s Treasury has provided £25m over the next 4 years for the introduction of a Northern Ireland RHI.

For the scheme to be successful, accessible and not subject to fraudulent activities, it is vital that an administrator is put in place to process applications, make payments, monitor the scheme, enforce standards and eligibility, ensure accessibility and provide audit and management information.

Ofgem has been appointed to administer the GB RHI and DETI wish to also appoint them to administer the Northern Ireland RHI. Ofgem is the energy regulator in GB and is governed by an Authority, consisting of non-executive and executive members and a non-executive chair. For funding, Ofgem recover costs from the licensed companies it regulates. Licensees are obliged to pay an annual licence fee which is set to cover Ofgem’s running costs. Ofgem is independent of the companies it regulates.

Ofgem has vast experience in administrating large scale energy programmes and has a dedicated team, known as E-Serve, which currently deals with a range of energy schemes including the Feed-in-tariff, Smart Metering, the Renewables Obligation and the GB RHI. E-Serve is also responsible for the administration of the Northern Ireland Renewables Obligation (NIRO).

Ofgem has considerable in house expertise and this team will be mainly used in delivery of the NI project. If additional legal or financial expertise is required by Ofgem this will be procured via the OGC Framework Agreement to engage external services. This would be work specifically required by Ofgem in delivery of its responsibilities to DETI. If any work is directly required by DETI (eg drafting of the regulations) this will be undertaken by Arthur Cox; a legal firm previously appointed through open procurement competition.

There are a number of reasons for appointing Ofgem to this role;

- Economies of scale due to Ofgem’s role as GB administrator, DETI would be benefiting from existing expertise, guidance documents, IT systems etc. The feasibility study showed savings on the development to be between £3m and £5m.

- Consistency of approach with GB, the GB RHI and Northern Ireland RHI are largely similar, discrepancies in administration could cause confusion and prevent uptake.

- Ofgem has a track record in delivering large scale energy projects
such as the roll out of smart metering, the Feed-in-Tariff and the Renewables Obligation (including the Northern Ireland element). Furthermore the administration of the GB RHI is already operational; the risks associated with the implementation of the NI scheme will therefore be significantly reduced.

<table>
<thead>
<tr>
<th>APPROVALS</th>
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<tbody>
<tr>
<td><strong>Requestor</strong></td>
</tr>
<tr>
<td>I hereby declare that <strong>I do not</strong> have an external personal or monetary interest in the company to which this DAC will be awarded.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Signature</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Joanne McCutcheon</td>
<td></td>
<td>26/3/12</td>
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</table>

**Recommended by Head of Branch**

I hereby declare that **I do not** have an external personal or monetary interest in the company to which this DAC will be awarded.

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>Fiona Hepper</td>
<td></td>
<td>26/3/12</td>
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</table>

**CPD ADVICE – For CPD Use Only**

Based on the information provided CPD is satisfied that the conditions of Teckal can be met and an exemption can be applied in this case.

The authority therefore may make a formal arrangement with Ofgem through a Service Level Agreement for the services required without a call for competition.

*Signed:*

<table>
<thead>
<tr>
<th>Print Name: Tom Gilgunn</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade (Grade 6 and above only): 6</td>
<td></td>
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<tr>
<td>Date: 17/4/12</td>
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</tbody>
</table>

*Signed:*

<table>
<thead>
<tr>
<th>Print Name: R Bell</th>
<th></th>
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<tbody>
<tr>
<td>Grade (Grade 6 and above only): 5</td>
<td></td>
</tr>
<tr>
<td>Date: 17/4/12</td>
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</table>

**ACCOUNTING OFFICER DECISION**

I hereby declare that **I do not** have an external personal or monetary interest in the company to which this DAC will be awarded. I have read CPD Policy Guidance Note 02/10 and the comments provided by CPD.

a) I request CPD to progress this DAC on behalf of the Contracting Authority with ------------------------------.

<table>
<thead>
<tr>
<th>Name:</th>
<th>Signature:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Sterling</td>
<td></td>
<td>18/4/12</td>
</tr>
</tbody>
</table>
From: Lavery, Mary
To: McCutcheon, Joanne; Hutchinson, Peter; Stewart, Susan
Subject: FW: Submission: SUB/219/2012 BUSINESS CASE - THE APPOINTMENT OF OFGEM, VIA AN AGENCY SERVICE AGREEMENT TO ADMINISTER THE NI RENEWABLE HEAT INCENTIVE
Date: 24 April 2012 17:31:12
Attachments: SUB 219 Min Content.pdf, OTOP.png

Please see attached for info
Mary

Mary Lavery
Energy Co-ordination
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9387 (ext: 29387)
Textphone: 028 9052 9304
Web: www.detini.gov.uk

www.ni2012.com

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

From: Christine.McLaughlin@detini.gov.uk
Sent: 24 April 2012 16:47
To: Hepper, Fiona
Cc: Dolaghan, Paul; Neth_Energy; Sterling, David; Cooper, Trevor; Thomson, David; Aiken, Glynis; Stevenson, Valerie; Baxter, Clare; DG_DETI Press Office; Hegarty, Damien; McLaughlin, Christine
Subject: Submission: SUB/219/2012 BUSINESS CASE - THE APPOINTMENT OF OFGEM, VIA AN AGENCY SERVICE AGREEMENT TO ADMINISTER THE NI RENEWABLE HEAT INCENTIVE

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
Unclassified

From: Christine McLaughlin
Private Office
To: Hepper Fiona (Mrs)
Date: 24/04/2012

Action Copy: cc Energy
Hegarty Damien (Mr)
McLaughlin Christine (Mrs)

SUB/219/2012: BUSINESS CASE - THE APPOINTMENT OF OFGEM, VIA AN AGENCY SERVICE AGREEMENT TO ADMINISTER THE NI RENEWABLE HEAT INCENTIVE
The Minister has seen and read your submission of 18/04/2012 and is content.

Christine McLaughlin (Private Office)
Netherleigh House Tel: Ext 29222

OffName
From: Fiona Hepper
Energy Division

Date: 18th April 2012

To: 1. David Sterling [Content 18/4/12]
2. Andrew Crawford
3. Arlene Foster MLA

DETI SUB 219/2012

BUSINESS CASE FOR THE APPOINTMENT OF OFGEM, VIA AN AGENCY SERVICE AGREEMENT TO ADMINISTER THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE.

Issue: This submission seeks the mandatory internal approval to appoint The Office of Gas and Electricity Markets (Ofgem) to administer the Northern Ireland Renewable Heat Incentive (RHI) and to act as an External Delivery organisation on behalf of DETI.

Timing: Desk immediate – Ofgem’s work must commence immediately if we are to minimise the delay in the start of the scheme.

Need for referral to the Executive: Not applicable

Presentational issues: The appointment of Ofgem may attract some comment from local stakeholders.

FOI implications: Some elements may be exempt under of the Freedom of Information Act.

Financial Implications: The development of the administrative system is expected to cost £386K; the ongoing operational costs for the next four years are estimated to be £136K, £157K, £198K and £249K respectively.

Legislation Implications: N/A

PSA/PFG Implications: None

Statutory Equality Obligations: None.
you’ve mentioned. Now if, firstly, we could go to DFE-67951, this is an email from you of the 11th of September. You say you worked through the comments that you’d got from DETI, and, with regard to the comments, you’ve set out your response below. It’s the paragraph at the bottom of the screen that I want to ask you about. You say:

“As a final point, I note that the GB RHI Regulations were amended by the Renewable Heat Incentive Scheme (Amendment) Regulations 2012”.

And you attached a copy.

“Although some of the amendments made by the 2012 Regulations are captured in the comments that the Department has received from Ofgem on the draft NI RHI Regulations, not all have been included and I’d be grateful if the Department could confirm if it intends that all amendments made by the 2012 Regulations should be included.”

So, I just want you to explain to the panel why you asked that and what you were talking about.

4:00 pm

Mr Bissett: OK. So, on the 10th of July, DETI forwarded me a draft of the NI RHI regulations with comments from Ofgem marked up on those, and in those — so, that was 10th of July, so that’s coming up just before the GB amending regulations were made in GB, which were at the end of July. So, they’d forwarded me a document with comments from Ofgem which were referring to some changes that were going to be made in GB — we hadn’t seen, obviously, the amending regs yet — and they referred to some of the amendments as being permanent changes and to some of them as being non-permanent, and the non-permanent changes were the emergency suspension powers. And the Ofgem comments referred to the permanent changes and said to DETI, “I assume you’ll want to include these”, and DETI forwarded them to me and asked me to do that, which I did and turned another draft of the document.
And we then got to September, when I then saw a copy of the actually enacted regulations from GB — so these are the amending regulations that had come in in the interim in GB — and I noticed that, yes, the permanent changes that were there we had dealt with in our draft but the temporary provisions were a system of emergency suspension powers in relation to the GB scheme, so I sent — I must’ve thought that DETI hadn’t seen the regulations because I sent them a copy, which was — this was September, so they’d been implemented in July. It must’ve been the first time they came to my attention. I sent them to DETI and said, “Look, consistent with the approach that we’ve had to date, which is we’re following whatever GB does, and we haven’t implemented ours yet, GB have just made changes, so the document that we’re copying GB have just changed it. Do you want me to include all of the changes that have been made by GB so that we’re still being consistent?”, and that was that email. That’s why I sent that email. And then I got a response. I didn’t — sorry, I didn’t get a response: I got an email the following day saying — asking me to attend a meeting to discuss various issues in relation to the RHI scheme, so I didn’t get a response to that question.

Mr Scoffield QC: So, as far as we know, the response to that query isn’t in writing, but you have said in your witness statement that the issue was discussed at that meeting.

Mr Bissett: Well, we discussed it. We then — so, we called the meeting on — we had the meeting on the 18th September, and this was the first item that I discussed, and I asked why was it not being included. The reason that was given to me was it was because it was an interim measure and that the Department — sorry — that DETI was aware that there were issues to do with cost controls but they knew that DECC were consulting on a long-term solution to cost controls and that DETI wanted to wait to see what those were and that they would then implement those in Northern Ireland. And they didn’t. They wanted to skip the step of having interim cost controls.
Susan

We have now worked through each of the comments in your emails dated 29th and 30th August 2012 below and attach a revised version of the NI RHI Regulations in clean copy and marked against the last version which we circulated on 9th August 2012.

With regard to your comments, we have set out our response below each in this font for ease of reference.

As a final point, I note that that GB RHI Regulations were amended by the Renewable Heat Incentive Scheme (Amendment) Regulations 2012 (the “2012 Regulations”) (copy attached). Although some of the amendments made by the 2012 Regulations are captured in the comments that the Department has received from Ofgem on the draft NI RHI Regulations, not all have been included and I’d be grateful if the Department could confirm if it intends that all amendments made by the 2012 Regulations should be included.

Please let me know if you would like to discuss any aspect of this further.

Kind regards

Alan

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From: Stewart, Susan [mailto:Susan.Stewart@detini.gov.uk]
Sent: 30 August 2012 16:23
To: Alan Bissett
Cc: David Trethowan; McCutcheon, Joanne; Hutchinson, Peter
Subject: RE: ACX/RHI 003 - Review of Draft Regulations

Alan

Apologies. I seem to have omitted a Ofgem additional request of my email. Under
From: Stewart, Susan <Susan.Stewart@detini.gov.uk>
Sent: 12 September 2012 16:00
To: Alan Bissett
Cc: David Trethowan; McCutcheon, Joanne; Hutchinson, Peter
Subject: FW: Draft RHI Regs 11 09 12
Attachments: AC draft RHI Regs 11 09 12.doc

Alan

Many thanks for receipt of the draft RHI Regulations we received yesterday from you. As you are aware, we are being pressed on finalising these Regulations as soon as possible and there are a few outstanding issues we would like to discuss with you in a face-to-face meeting next week if that is possible. We would be happy to come down to your offices to discuss these issues and are currently free on Tuesday 18th, Wednesday 19th and Thursday 20th all in the morning. I would be obliged if you could facilitate us on one of these dates or offer some alternative dates when you would be available to meet.

I am sending you in advance, the attached document which has some sections highlighted in green (with comments) which are the main issues we would like to discuss with you at our meeting.

Happy to discuss

Many thanks

Susan

Susan Stewart
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Web: www.detini.gov.uk

The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

www.ni2012.com

Please consider the environment - do you really need to print this e-mail?
And we then got to September, when I then saw a copy of the actually enacted regulations from GB — so these are the amending regulations that had come in in the interim in GB — and I noticed that, yes, the permanent changes that were there we had dealt with in our draft but the temporary provisions were a system of emergency suspension powers in relation to the GB scheme, so I sent — I must’ve thought that DETI hadn’t seen the regulations because I sent them a copy, which was — this was September, so they’d been implemented in July. It must’ve been the first time they came to my attention. I sent them to DETI and said, “Look, consistent with the approach that we’ve had to date, which is we’re following whatever GB does, and we haven’t implemented ours yet, GB have just made changes, so the document that we’re copying GB have just changed it. Do you want me to include all of the changes that have been made by GB so that we’re still being consistent?”, and that was that email. That’s why I sent that email. And then I got a response. I didn’t — sorry, I didn’t get a response: I got an email the following day saying — asking me to attend a meeting to discuss various issues in relation to the RHI scheme, so I didn’t get a response to that question.

Mr Scoffield QC: So, as far as we know, the response to that query isn’t in writing, but you have said in your witness statement that the issue was discussed at that meeting.

Mr Bissett: Well, we discussed it. We then — so, we called the meeting on — we had the meeting on the 18th September, and this was the first item that I discussed, and I asked why was it not being included. The reason that was given to me was it was because it was an interim measure and that the Department — sorry — that DETI was aware that there were issues to do with cost controls but they knew that DECC were consulting on a long-term solution to cost controls and that DETI wanted to wait to see what those were and that they would then implement those in Northern Ireland. And they didn’t. They wanted to skip the step of having interim cost controls.
Mr Scoffield QC: So, when you say you were told they wanted to skip that step, were you — you were clear that you were being told, “Don’t incorporate that in the current draft”, and can you remember who it was at the meeting that said that to you?

Mr Bissett: It was probably Peter Hutchinson; I couldn’t say for definite. I don’t imagine it would’ve been Susan Stewart, but I imagine it would’ve been either Joanne McCutcheon or Peter Hutchinson, most likely Peter Hutchinson.

Mr Scoffield QC: And the reason given that you’ve mentioned was they wanted to wait to see what the long-term solution adopted by DECC was. Were there any other reasons given?

Mr Bissett: That was the only reason, and, I say, it was a concern to me because, at this point, were then — the two drafts were star— sorry, the two regulations were starting to diverge at that point.

Mr Scoffield QC: I wonder if we can just have a look at WIT-28231. I’m just taking you here to what you’ve said about this in your witness statement. And, if we focus in on the top of that page, please, we see there you’ve said:

“At the meeting at DETI’s offices at Netherleigh on 18th September 2012, DETI handed across to me and David Trethowan of Arthur Cox a hard copy of a version of the NI RHI Regulations with further comments from Ofgem … In the course of that meeting, it was explained to Arthur Cox that the interim cost control provisions of the 2012 GB amending Regulations were not to be replicated in the NI legislation as these were not intended to be permanent. It was further explained to Arthur Cox that DETI instead intended to introduce permanent cost control measures as part of what DETI referred to as Phase 2 of the RHI scheme at the time when the non domestic RHI scheme was to be expanded and a domestic RHI scheme was to be implemented.”

And then, consistently with what you’ve just said, you say you can’t recall who led the discussions on that issue. In terms of what was going to happen at phase 2, can you remember what was discussed about that?
Mr Bissett: Yes, well, phase 2 was the expansion of the non-domestic scheme to include further technologies and, I think, the larger-scale technologies and to introduce a domestic RHI scheme.

Mr Scoffield QC: Now, you were obviously aware at this stage of what had happened in GB. You’ve raised the issue, you’re being told, “We’re not intending to do that”: were you asked for or did you give any advice on that course of action?

Mr Bissett: It seemed a plausible excuse — it seemed a plausible reason to be given as to why, if they didn’t — if they were going to be amending for phase 2 and they wanted to see what the long-term solution was in relation to cost controls, it seemed a plausible explanation, and I didn’t query it further than that.

Mr Scoffield QC: I wonder if we can just look at DFE-19694, and this is, I think, the notes that you took at that meeting. So, this is, as I understand it, the document that you were given by DETI. You’ve made a reference to a number of changes which needed to be made. We see the issue about building a site in the top right-hand corner, the issue about liquid and so on and so forth. Now, correct me if I’m wrong, but it doesn’t seem that there’s anything on this note which relates to the issue that we’ve just been discussing, and I want to ask you two questions arising out of that: firstly, is that right and, secondly, if this was a significant issue, did you not feel it was appropriate to make a note of what you were being told?

Mr Bissett: Well, that document, it’s a — we had been given one document, which I brought to the meeting, and then we were given a hard copy of another document in the meeting. So, this was then — I wouldn’t consider this to be my minutes of the meeting, and I would’ve had who the attendees etc were and maybe the date of the meeting, but these are jotted-down comments in relation to drafting changes. Yes, and I think that’s the comment I made at the outset: I would’ve expected there to be some sort of minute with — detailing
that explanation as to why we weren’t introducing that. I asked the question; we were given
an answer that seemed reasonable; and that was as much as there was, so that’s all I have.

Mr Scoffield QC: And notwithstanding that you haven’t seen a note of that meeting, are
you clear in the recollection that you’ve set out in your witness statement?

Mr Bissett: Yes.

Dr MacLean: Mr Bissett, just at number 6 there, you talk about the “FITs order”. Was that
in relation to this particular topic? Because one of the reasons for DECC having introduced
the emergency powers was to avoid the same sort of runaway spike that they’d had with the
feed-in tariffs.

Mr Bissett: I was going to — I don’t — I can’t recall. I was just going to try and have a
quick look at my copy of the legislation to see if it reminds me what article 23 — or
regulation 23 says. I can’t remember.

The Chairman: To take up that point, that sort of enquiry or response to you being told by
DETI that they were going to wait to see what was done on a permanent basis, if you had
been familiar with FIT or even from your own expertise as a person in energy law, would it
not have occurred to say, “Well, GB have said that they are going to put in a permanent form
of suspension and, in the meantime, they’re putting in a temporary one, and the reason they
say they are doing this, through their consultation, is the volatility and unpredictability of
this type of scheme”? Would that not have been an energy lawyer’s response to that?

Mr Bissett: Well, yes, looking at it from this point, I can understand what you’re saying. I
was told that we were going to be making a further revision amendment to them in the
relatively near future and it would only be a relatively short period of time before the
permanent revisions — or, sorry, how cost controls would be dealt with would be
implemented. But I take your point.

The Chairman: DECC, for example, had talked about the fact that “There’s only a very low
take-up, but we are conscious of this market and what has happened in relation to a similar
scheme and we think this is a sensible safety precaution until we come to look at degression
and how we’ll do it”. That would seem to me to be a reasonable attitude to take. But you say
it was a plausible explanation.

Mr Bissett: Well, I drew it to their attention and said, “GB are doing this”, and they gave
me a reason why they decided — they had decided not to do it. I accepted that reason.

Mr Scoffield QC: You made clear in your evidence that you didn’t press them on it, but
were you surprised by the response?

Mr Bissett: I was surprised that we were — because it was contrary to everything that we
had been doing for the last whatever it was — 18 months, and this idea that we would
follow and benefit from GB learning and from DECC’s learning. I was surprised that we didn’t
implement the same provision here.

Mr Scoffield QC: Around that time — this is a separate topic — but, around that time, we
know from the documents that we’ve seen that you were told on a number of occasions by
DETI that it was being pressed to move the draft regulations forward. That’s mentioned, for
instance, in Miss Stewart’s email to you of the 10th of September and the 12th of September.
And we asked you about that, and you’ve made clear in your witness statement that you
didn’t know who was doing the pressing, but what was the general feeling at that stage
about timescales?

Mr Bissett: Through from the start until the end it was always, “Everything has to be done
very quickly”. All the timescales were very short, and that was the way it was through the
whole process.

Mr Scoffield QC: And do you know why that was?

Mr Bissett: I don’t know, no. And we worked to those, and I allocated resources etc to
meet those very demanding timelines. There was never a time when it wasn’t, you know,
Peter

Here are my comments to go with the other trim e-mail containing the Regulations as an attachment.

You will see from the tracked changes draft that I have made various amendments and have also inserted 'Notes to DETI' throughout asking DETI to check various things. Most of these should be self-explanatory. However, it might be helpful for me to comment specifically on some amendments.

**Generally**
The last footnote on page 2 seemed to jump onto the next page in my printed draft but on screen still remains on page 2. Please check the positioning of the footnotes in the final draft to make sure they are correct alphabetically.

**Preamble**
It is unnecessary to refer to sections 120 and 121 of the Energy Act. They do not confer regulation making powers on the Department.

**Regulation 24**
Please check the cross references indicated.

**Regulation 27**
As you have attracted the Interpretation Act (NI) 1954 to the draft it is unnecessary to define expressions defined in that Act again in your Regulations.

**Regulation 29**
I have made amendments here so that sub-paragraphs are correctly referred to.

**Regulations 30, 31 and 32**
I note that the NI Regulations are not going to contain a direct equivalent of GB's regulation 29. I assume this is because NI does not need a provision dealing with RHI installations with a capacity of 1MWth or above. Instead NI's Regulation 29 seems to contain a mixture of the provisions from GB's regulation 29 and 30 and the provisions of NI's regulation 29 are renumbered accordingly. This has led to some problems in the cross-references in regulations 30, 31 and 32. DETI seem to have followed the GB cross-references even though the NI provisions are lettered differently. For example, regulation 30(4)(a) refers to paragraph (8) of regulation 29 which you will see does not even exist in the NI draft. I have amended the cross-references but ask that DETI check these carefully.

**Regulation 37(2)(b)**
Please check the formula here as GB have used a different formula in their equivalent provision. Which is correct?

**Regulation 39**
Please check the reference to regulation 28 on the second last line. From what I can see it should refer to regulation 29.

I hope these amendments and comments are of assistance to you. Should you wish to discuss them further, please do not hesitate to contact me. Otherwise, subject to the amendments indicated you may consider that DSO are content for the draft to be laid before the Assembly in draft.
I should add that I cannot confirm that the technical nature of the Regulations is correct. That would be outside of my remit. I assume that DETI are content in this regard.

I also note that my colleague Brendan O’Kelly has already advised DETI that the Regulations need to be notified to the European Commission. I assume that DETI has that in hand.

I have not had the opportunity to look over the draft Explanatory Memorandum. I will come back to you on that next week.

Kind regards

Nicola

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nicola.wheeler@dfpni.gov.uk
Mrs Wheeler: Yes, and if I had have noticed the difference I might have said, “Oh, I note there is a difference”, and it would be up to the Department to decide what policy line to take on it.

Mr Lunny: And, there’s one question I want to ask you, just in relation to all of the work that was done in October 2012, and that is in relation to the GB RHI regulations.

Mrs Wheeler: Yes.

Mr Lunny: We know and you now know that, by October 2012, the analogous GB regulations, which had come into force in November 2011, we know that by October 2012 they had been amended to introduce, amongst other things, a suspension mechanism, which was a means of controlling the cost of the scheme.

Mrs Wheeler: Yes.

Mr Lunny: Now, that amendment was introduced on the 30th of July 2012. Do you know now whether, when you were doing your October ’12 work on the Northern Ireland regulations, you accessed the most up-to-date version of the GB regulations?

Mrs Wheeler: No. I now know that I didn’t, so I regret that. Normally, when things like that come in, I would ask the Department for the most up-to-date legislation and, even if they provide it, I would usually check it on the legislation websites myself. On this occasion, looking at the file, I believe that I got the 2011 GB regulations, but I didn’t see the 2012 amendment, which I regret. And it would normally be something that I would pick up, I would hope. But I didn’t know that there was an amendment at that point when I was comparing the drafts.

Mr Lunny: And I appreciate this is very much a hypothetical question: if you had been aware — if you’d seen on the website that you’ve mentioned the 30th of July ’12 amendment, what would your normal practice then be? At that point, you’d have seen, “Oh,
there’s a suspension mechanism in the GB regs which I’ve been told are the basis, the broad basis, for the Northern Ireland regulations, there doesn’t seem to be a similar mechanism in the Northern Ireland regulations”. What would you normally do in that type of situation?

Mrs Wheeler: I can honestly say that my normal practice would be to point out any deviations between Northern Ireland and GB. Usually, the DSO line, which I would be aware of, is that Northern Ireland Departments shouldn’t deviate from what GB’s doing unless there’s a very good reason to do so. So, normally, I would point — I would just say, “I note that there’s a deviation or a difference”. I would normally ask them, “Is it an omission, or was it intentional?”. If it was intentional, what were their policy reasons for doing — for differing. I would point out any risks that I would foresee with it, and, at the end of the day, say — well, if it was within their power to act that way — I would say, “Well, it’s up to the Department to —”

Mr Lunny: Make the ultimate decision?

Mrs Wheeler: — “make the decision.” But I would hope that I would point out what I saw and then leave it up to the Department to decide how to answer that.

The Chairman: Well, I think you can be satisfied, from what we have heard to date, that a very clear and positive decision had been made in terms of policy by those involved in DETI that there was not going to be a suspension power at this stage and it was going to be looked at later on. So, even had you raised it, personally I find it difficult to see what difference it would’ve been made.

Two other questions I want to ask you. You talked about your normal practice of accessing. Is there not some form of —? If a set of regulations go to you and you know that they have been brought in perhaps a year earlier or some time earlier, within the DSO is there not a normal feed-in to you to say, “And this is what has happened since then”? They don’t normally give you individual amendments or new regulations or —
take-up, but we are conscious of this market and what has happened in relation to a similar
scheme and we think this is a sensible safety precaution until we come to look at degression
and how we’ll do it”. That would seem to me to be a reasonable attitude to take. But you say
it was a plausible explanation.

Mr Bissett: Well, I drew it to their attention and said, “GB are doing this”, and they gave
me a reason why they decided — they had decided not to do it. I accepted that reason.

Mr Scoffield QC: You made clear in your evidence that you didn’t press them on it, but
were you surprised by the response?

Mr Bissett: I was surprised that we were — because it was contrary to everything that we
had been doing for the last whatever it was — 18 months, and this idea that we would
follow and benefit from GB learning and from DECC’s learning. I was surprised that we didn’t
implement the same provision here.

Mr Scoffield QC: Around that time — this is a separate topic — but, around that time, we
know from the documents that we’ve seen that you were told on a number of occasions by
DETI that it was being pressed to move the draft regulations forward. That’s mentioned, for
instance, in Miss Stewart’s email to you of the 10th of September and the 12th of September.
And we asked you about that, and you’ve made clear in your witness statement that you
didn’t know who was doing the pressing, but what was the general feeling at that stage
about timescales?

Mr Bissett: Through from the start until the end it was always, “Everything has to be done
very quickly”. All the timescales were very short, and that was the way it was through the
whole process.

Mr Scoffield QC: And do you know why that was?

Mr Bissett: I don’t know, no. And we worked to those, and I allocated resources etc to
meet those very demanding timelines. There was never a time when it wasn’t, you know,
“Something has to be done within a few days”. Everything was to be done at sort of breakneck speed.

Mr Scoffield QC: I want to move on, with the panel’s permission, to look at work request 4, briefly, and then work request 5. Perhaps we could have a look at DFE-20353. This is the covering email from Miss Stewart to you on the 3rd of September 2012, and she says:

“Please see attached a work request for legal advice on the draft Ofgem Administration Arrangements documents which is attached for your convenience.”

And, then, if we go to DFE-85073, this is your email of the 27th of September 2012. And you say:

“We had an opportunity to discuss the draft Administrative Arrangements Agreement... when we met at Netherleigh to discuss issues on the NI RHI generally on 18th September 2012.”

Now, just going back to that issue, you mentioned earlier on that you were surprised that there wasn’t a minute of that meeting. I don’t think we’ve seen any notes about the AAA from that meeting: is that right?

Mr Bissett: Which is, as I said, having mentioned at the outset, there doesn’t seem to be a minute of that meeting in the documents that I’ve reviewed from Arthur Cox.

Mr Scoffield QC: OK. What you’ve then said is:

“As requested, rather than preparing a mark-up of the AAA” —

so rather than amending it —

“we have prepared a draft with comments”.

Then you mention the three main issues, really, which you have identified:

“Definitions of ‘Administration Costs’ and ‘Ancillary Activities’”.

And there was a concern there that the draft at that stage:

“give GEMA the right to pass through all costs associated with the scheme without exclusion.”

Then the second issue was about the payment of administration costs, and, in particular, if
Private Office

Please see attached Ministerial submission in relation the Assembly Motion for the debate on the RHI Scheme Regulations scheduled for Monday 22 October 2012. I have also attached separately a copy of the RHI Scheme Regulations.

Many thanks

Susan

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The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

NI 2012 - Our Time - Our Place
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Please consider the environment - do you really need to print this e-mail?
The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

Made - - - -
Coming into operation - 1st November 2012

The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011(a).

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 1st November 2012.

Interpretation

2.—(1) In these Regulations—
“accreditation” means accreditation of an eligible installation by the Department following an application under regulation 22;
“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
(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 the application was properly made;
“the Department” means the Department of Enterprise, Trade and Investment;
“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 reforming 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(a);
“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(b) or an equivalent scheme accredited under EN 45011(c) which certifies microgeneration products and installers in accordance with consistent standards;
“municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003(a);

(a) S.I. 1996/275 (N.I.2)
(b) Details of which are available at www.microgenerationcertification.org
(c) ISBN 0580294153. Copies of which can be obtained from the British Standards Institution at www.bsigroup.com
“MWhth” means megawatt hours thermal;
“MWth” means megawatt thermal;
“NIRO” means the Northern Ireland renewables obligation as set out in the Renewables Obligation Order (Northern Ireland) 2009(b);
“ongoing obligations” means the obligations specified in Part 4;
“participant” means—
(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, or a system of pipes, for the conveyance of gas, and includes any associated apparatus comprised in that system;
“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);
“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;

(a) 2003 c.33; Section 21 was amended by S.I. 2011/2499, Regulation 6
“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(a) 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 for any of the following purposes—

(a) heating a space;
(b) heating liquid; 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

CHAPTER 1
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

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;
(d) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies;
(e) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

(a) 1954 c.33 (N.I.)
Eligible installations generating heat from solid biomass contained in municipal waste

6. This regulation applies if the plant complies with all of the following requirements—
   (a) it generates heat from solid biomass contained in municipal waste;
   (b) it has an installation capacity of less than 1,000kWth;
   (c) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

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;
   (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 liquid;
   (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(c);
   (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 NIRO; 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—
   (a) it generates heat from biogas;
   (b) it has an installation capacity of less than 200kWth;
   (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 was completed and the plant was first commissioned on or after
       1st 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, liquid 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 1st 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.

   (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.

(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(a).

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.

(a) A copy is available at www.chpqa.decc.gov.uk
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 or other public support has been provided or will be provided in respect of any of the costs of purchasing or installing the eligible installation; or

(b) such a grant or support 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 and “public support” means any financial advantage provided by 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)(c); and

(c) where applicable, send the new owner (if the new owner is the participant) a notice in accordance with regulation 22(6)(f).

(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.
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.

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 or other public support has been provided or will be provided 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, injections of biomethane produced by that applicant has commenced.

(9) In this regulation, “grant from public funds” and “public support” have the meanings given in regulation 23(2).

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.

(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—
“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);(a)
“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;
“waste” has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997(b)

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.

(a) ISBN 0580194825 Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(b) S.I. 1997/2778 (N.I. 19); Article 2(2) was amended by SR 2011 No. 127
(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;
(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 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 45kWth and 1MWth

29.—(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 45kWth and 1MWth.

(2) The participant may use solid biomass contaminated with fossil fuel provided that the participant complies with the following sub-paragraphs 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;
(b) such contaminated biomass may not be used unless the fossil fuel is present because—
(i) 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
(ii) the fossil fuel is waste and was not added to the solid biomass with a view to its being used as a fuel;
(c) for the purposes of sub-paragraph (a)—
   (i) the proportion of fossil fuel contamination is to be determined by the Department for every quarterly period;
   (ii) 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
   (iii) 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 sub-paragraphs (d) and (e);

(d) the participant may use fossil fuel (other than fossil fuel mentioned in sub-paragraph (a)) in an accredited RHI installation for the following permitted ancillary purposes only—
   (i) 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;
   (ii) the heating of the accredited RHI installation’s combustion system to its normal operating temperature or the maintenance of that temperature;
   (iii) the ignition of fuels of low or variable calorific value;
   (iv) emission control;
   (v) in relation to accredited RHI installations which are CHP systems, standby generation or the testing of standby generation capacity;

(e) the energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in sub-paragraph (d) 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.

(3) 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 (2)(d) and provide this information upon request to the Department, in such form as the Department may require, to demonstrate compliance with this regulation.

(4) Without prejudice to paragraph (3), 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.

(5) Where—
   (a) the Department is not satisfied that the proportion of fossil fuel contamination (within the meaning of paragraph 2(c)(iii) does not exceed 10 per cent; or
   (b) the Department is not satisfied as to the matters specified in paragraphs (2)(d) and (2)(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)(a), (b) and (c) and (4) 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 2(d) and (e) of regulation 29 applies.

(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 digestions 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 2(d) and (e) 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)(a), (b) and (c)(iii), of regulation 29 applies 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;
they must not generate heat for the predominant purpose of increasing their periodic support payments;

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) 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), 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 2013, 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.
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 not 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.
(2) 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.

**Fossil fuel contamination adjustment to periodic support payments for producers and combustors 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 of 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 is to comply 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 take one or more of the following actions—

(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 to undertake any one or more of the following—

(a) verify that the participant is complying with all applicable ongoing obligations;
(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 publication of specified information on the Department’s website

51.—(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

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

(a) information in aggregate form as to—

(i) the number of accredited RHI installations;
(ii) the technology and installation capacity of those accredited RHI installations;
(iii) the amount of heat those accredited RHI installations have generated;
(iv) the total amount of periodic support payments made under each tariff; and
(b) 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.

Notices

52. A notice under these Regulations—
   (a) must be in writing; and
   (b) may be transmitted by electronic means.

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

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(a);

(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;

(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;

(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;

(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.

---

(a) S.R. 2003 No. 46
SCHEDULE 2

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 specified 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 or 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) populous (also known as short rotation coppice poplar); and
   “environmental quality assurance scheme” means a voluntary scheme which establishes environmental or social standards in relation to the production of biomass or matter form which a biomass is derived.
## Table 1: SCHEDULE 3 - Tariffs

<table>
<thead>
<tr>
<th>Tariff name</th>
<th>Sources of energy or Technology</th>
<th>Installation capacity</th>
<th>Tariff Pence/kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Biomass</td>
<td>Solid biomass including solid biomass contained in municipal solid waste and CHP</td>
<td>Less than 20kWth</td>
<td>6.2</td>
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<td>Medium Biomass</td>
<td>As above</td>
<td>20kWth and above up to but not including 100kWth</td>
<td>5.9</td>
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<td>100kWth and above up to but not including 1000kWth</td>
<td>1.5</td>
</tr>
<tr>
<td>Small heat pumps</td>
<td>Ground source heat pump, water source heat pump, deep geothermal</td>
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<td>Biogas combustion and biogas injection</td>
<td>All biogas combustion below 200kWth</td>
<td>3.0</td>
</tr>
</tbody>
</table>
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) specified 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 installation 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.

THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE (RHI) SCHEME – MOTION FOR APPROVAL OF THE REGULATIONS AND SUBSEQUENT LAUNCH OF THE SCHEME

Issue: You are due to present an Assembly Motion for Approval of the draft Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 by affirmative resolution on Monday 22 October 2012. Providing the regulations are approved by the Assembly the scheme will then be ready to commence on Thursday 1 November 2012.

Timing: Debate scheduled for 22 October 2012 (provisionally scheduled for 1pm-1.30pm). Launch scheduled for Thursday 1 November 2012.

Need for referral to the Executive: This is not a cross cutting issue and does not need Executive approval. However, you informed Ministerial colleagues of your proposals in a write-round on 12 October.

Presentational Issues: Positive publicity has already been received for the proposal to introduce the Renewable Heat Incentive for the non-domestic sector in Northern Ireland. There will be a media campaign to support the launch.

Freedom of Information: Some parts of this submission may be exempt under section 35 of the FOI Act.

Financial Implications: The agreed budget of £25m to 2015 provided by Her Majesty’s Treasury (HMT) can be utilised as soon after the Regulations come into operation.
Statutory Equality Obligations: There are no Section 75 implications.

PFG/PSA implications: The NI Renewable Heat Incentive is crucial to attaining the 10% renewable heat target by 2020 as set out in the Strategic Energy Framework.

Legislation Implications: The draft Regulations for the RHI are subject to affirmative resolution by the Assembly.

Recommendation: That you (i) note the attached speaking notes and briefing for use in the debate (Annexes A-E) and (ii) note the communications plans and approve the draft press release (Annex F).

Background

All approvals (including State Aid approval) are in place for the introduction of the Northern Ireland Renewable Heat Incentive (RHI). Before the scheme can commence secondary legislation needs to be put in place and so the draft Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 were laid at the Assembly on 9 October 2012. You are due to present the draft Regulations for affirmative resolution in the Assembly on 22 October 2012. The draft Regulations have been approved by Departmental Solicitors’ Office and have been scrutinised by the Examiner of Statutory Rules and by the ETI Committee.

Assembly Debate

2. The following briefing for the debate is attached for your consideration:

Annex A: Draft opening and winding up speeches
Annex B: Q&A on the Renewables Heat Incentive Scheme
Annex C: Table of RHI tariff levels
Annex D: Draft Regulations as laid before the Assembly (attached separately)
Annex E: Explanatory Memorandum

3. Peter Hutchinson and I will be the officials in attendance at the Assembly on the day – we will provide briefing on the Regulations and on any wider energy issues that arise during the debate. We are also available for pre-brief if required. I would be grateful if your office could arrange the appropriate box passes.

Launch and planned Communications

4. Subject to the regulations being approved by the Assembly, the scheme will be ready to launch on Thursday 1 November.
5. It is proposed that a Press Release will be released to announce the start of the scheme and a draft (which has been cleared by the Press Office) is attached for your approval (Annex F). Energy Division has been working to develop appropriate marketing and communications material to highlight the opportunities provided by the RHI and also to promote the domestic Renewable Heat Premium Payment (RHPP) which was launched in May 2012. A campaign has been developed under the ‘EnergyWise’ branding and will include, in the first instance, 30 second TV advertising, outdoor billboards, bus advertising and magazine articles (Ulster Business, Farming Life, Modern Builder etc). The advertising will include both messages for domestic and non-domestic customers. It is expected that this campaign will commence on 4 November 2012 and will initially run for 4 weeks and then will recommence at end January for a further 3 weeks. The total cost of the campaign is £150K.

6. The campaign will signpost those interested to NIDirect (website and call centre) in the first instance. The subsequent administration of the RHI scheme for those who proceed to application will be handled by Ofgem; it will initially be a manual system but will migrate to an on-line system early next year. Energy Division will continue to manage the RHPP.

Recommendation

7. I recommend that you
   
   i. note the attached speaking notes and briefing for use in the debate (Annexes A-E)
   ii. note the communications plan and approve the draft press release (Annex F).

JOANNE MCCUTCHEON
Tel: 90529425

cc: David Sterling
    David Thomson
    Fiona Hepper (o/r)
    David McCune
    Clare Baxter
    Peter Hutchinson
    Susan Stewart
    Glynis Aiken
    John Murray
    Alastair Ross MLA, APS
    Paul McGinn, DSO
    Nicola Wheeler, DSO
    Neth Energy
    Press Office
OPENING SPEECH FOR DEBATE ON THE DRAFT RENEWABLE HEAT INCENTIVE SCHEME REGULATIONS (NORTHERN IRELAND) 2012

• I beg to move.

• [Mr Speaker/Mr Deputy Speaker], this statutory rule is being made under powers contained in the Energy Act 2011, which prescribes that these Regulations must be laid in draft for approval by affirmative resolution of the Assembly.

• The draft Regulations that I bring forward today relate to the introduction of the Northern Ireland Renewable Heat Incentive (RHI) and were subject to a statutory consultation that closed in October 2011. Following this consultation further work was carried out to finalise both the policy position and these Regulations.

• This legislation will provide the necessary powers for my Department to introduce the RHI scheme. The RHI will support generators of renewable heat through long-term incentive payments that are designed to cover the additional costs involved in renewable technologies, as well as providing a favourable rate of return for investors.

• Ensuring a more secure, competitive and diverse heating market is a key priority for my Department. Northern Ireland’s current reliance on fossil fuels is unsustainable and therefore heat from indigenous and renewable sources must be promoted.
• The RHI will provide businesses, community groups, schools, churches and other organisations with ongoing financial support when switching to renewable heating. In addition, the development of this sector will provide opportunities for local firms involved in this area.

• The RHI will be open for non-domestic customers in the first instance, with a view to extending it to the domestic market in due course. In the meantime, householders can avail of grant support from my Department via the Renewable Heat Premium Payment Scheme, which I launched in May 2012. My Department has already received over 300 applications and has offered over £450k worth of support. This represents a total investment in the sector of £1.7m.

• Financial incentives have already been successful within the local renewable electricity market. Since the introduction of the Northern Ireland Renewables Obligation (NIRO) in 2005, the level of electricity generated from renewable sources has increased from 3% to 14%. It is now vital that a similar commitment is made for the renewable heat market.

• It is expected that the RHI will support the installation of over 20,000 technologies by 2020 as well as securing our target of a level of 10% renewable heat. The launch of the RHI, in conjunction with the grant support already in place for domestic customers, represents up to £25m of funding to 2015. This demonstrates my commitment to this sector and my desire to see levels of renewable heating increase.
• In conclusion, I ask that Members support the passage of these Regulations that outline the arrangements for the Northern Ireland RHI. This, in turn, will allow the scheme to be launched and installers of renewable heat supported by DETI. On that basis I ask the House to support the motion.

473 words
WINDING UP SPEECH FOR DEBATE ON RENEWABLE HEAT INCENTIVE SCHEME REGULATIONS (NORTHERN IRELAND) 2012

• I would like to thank those who have contributed to today’s debate. Energy matters are obviously a major issue for this House and for our local businesses and domestic consumers.

• [In answer to some of the issues raised today, I want to say....]

BRIEFING TO BE PROVIDED BY OFFICIALS AS REQUIRED

• I am pleased that Members are broadly supportive of this incentive mechanism and recognise my Department’s work in developing the local renewable heat market.

• In these times of higher energy prices, my Department is committed to exploring opportunities to provide greater choice for consumers, promoting more sustainable technologies and supporting those wishing to change from conventional fossil fuel heating. The development of this sector is important in the realisation of a more diverse, secure and competitive heating market in Northern Ireland.

• These Regulations will support the introduction of the RHI and set a clear framework for the scheme, including how payments will be calculated and made; conditions of the scheme; and eligibility standards. The scheme will be administered by the GB energy regulator Ofgem, who have experience of managing similar large renewable energy schemes.
The RHI is a ground-breaking scheme for Northern Ireland and will support the realisation of increasing levels of renewable heating to 10% by 2020. The development of this market will have real benefits for Northern Ireland’s energy security by reducing dependence on fossil fuels. The sector also has the potential for new jobs and industries.

I commend the motion to the House.

Approx 250 words
RENEWABLE HEAT INCENTIVE - Q&A

What is the Northern Ireland Renewable Heat Incentive?

- The Northern Ireland Renewable Heat Incentive (RHI) is a DETI scheme that provides financial support to non-domestic renewable heat generators and producers of biomethane.

Why is the scheme being introduced?

- The primary objective for the Northern Ireland RHI is to increase the uptake of renewable heat to 10% by 2020 (baseline position of 1.7% in 2010). The 10% target for renewable heat equates to 1.6TWh (or an additional 1.3 TWh when considering existing levels). This target was included in the Strategic Energy Framework and an interim target of 4% renewable heat by 2015 has been included in the Programme for Government.

- In addition to achieving the set target, it is expected that the RHI will have a number of other wider benefits in terms of fuel security, lower emissions and 'green jobs'.

- Renewable heat technologies are currently unable to compete with existing fossil fuel alternatives given the often higher capital costs and also the lack of understanding and awareness amongst consumers of what are often seen as innovative technologies.

- Without the RHI in place Northern Ireland will not achieve either the targets set for renewable heat by the Northern Ireland Executive in the SEF or be able to contribute to the UK target set under the Renewable Energy Directive.

How have the tariffs been designed?

- The RHI aims to compensate investors for the additional costs of renewable heat compared to traditional fossil fuel systems.
• The RHI tariff setting methodology also includes the provision of a rate of return in order to stimulate interest in a developing unknown marketplace and to provide compensation for financing costs of making the necessary investment in capital projects. In most instances a rate of 12% has been set.

Why are the tariffs lower than those available in GB?

• The Northern Ireland tariffs tend to be lower than those offered in the GB scheme as the NI tariffs are designed against an oil counterfactual rather than a natural gas counterfactual, as in GB. This reflects the heat markets in the two areas with oil the dominant heating fuel in NI at 75%+ and natural gas the dominant heating fuel in GB 70%+. Setting the counterfactual position against oil within the NI scheme reflects the likelihood that the majority of people switching to renewable heat will be displacing oil. As oil is a more expensive fossil fuel, less of an incentive is required to switch to renewable heat.

• DETI does not think that NI consumers will be disadvantaged in comparison to GB consumers, as whilst the tariff levels are lower the ongoing savings that can be expected from switching to renewable heat will be considerably higher for NI consumers. Therefore the overall benefit for the consumer is similar.

How will the scheme be administered?

• Ofgem (the GB Energy Regulator) were selected to administer to NI RHI given their experience in developing the GB scheme and the synergies between the two schemes. This, in turn, presented significant savings and economies of scale.

• In addition, Ofgem has a proven track record in delivering large scale renewable energy schemes and have experience in the Northern Ireland market through administration of the NIRO.

• My Department has held a consultation on proposed guidance documents for those wishing to avail of the RHI. This guidance was developed in conjunction with Ofgem.
How will payments be made?

- Payments will be made on a quarterly basis by the scheme's administrator, Ofgem. Payments will be calculated by multiplying the actual metered heat output of the technology over that quarter with the designated tariff.

Why is there no support for biomass installations over 1MW in size?

- Biomass installations over 1MW in size will not receive a tariff under the current banding proposals. The reason for this is that, analysis has shown that it should be cost effective for these sites to switch to renewable heat by 2020 and therefore an additional incentive is not required. Indeed, when calculating a tariff for these technologies, using the same methodology as for the others, the calculated value is negative i.e. no tariff is required.

- DETI is however willing to examine any alternative evidence as part of the second phase of RHI.

Will tariffs change over time?

- Once an installation is accredited under the scheme they will receive a fixed level of support which will be adjusted annually in line with inflation. However, to ensure the scheme is cost effective the tariffs will be reviewed over time and the new tariffs will be applied to anyone joining the scheme. The tariffs will be amended annually to reflect the Retail Price Index.

Who is eligible to apply for the scheme?

- The scheme is available to generators of heat and producers of biomethane that meet the eligibility criteria that are based in Northern Ireland.
• At the start of the scheme only non-domestic sectors will be supported. We intend to introduce a second phase of support which will establish support for the domestic sector as well as a number of other technologies and fuel uses that we are unable to support from the outset. The non-domestic segment includes businesses; public sector; charities and not-for-profit organisations; and industry.

• A non-domestic installation is a renewable heat unit that supplies heat to anything from large-scale industrial heating to small business and community heating projects. This includes small businesses, hospitals, schools etc as well as district heating schemes (e.g. one boiler serving multiple homes).

When will the scheme close to new applications?

• It is expected that the scheme will remain open to new installations until March 2020. A review of the RHI will take place in 2014/15.

How long will the incentive payments last?

• RHI support for the first phase is for the lifetime of the technology to a maximum of 20 years.

I have already installed a renewable heat technology, am I eligible?

• Eligible equipment commissioned on or after 1 September 2010 will be able to avail of the RHI, however a suitable heat meter must be installed.

Why are domestic installations not included at this stage?

• A second phase of support will be introduced for some areas that won’t be supported from the outset, including domestic installations. There are a number of important factors, specific to the domestic sector, that we need to consider further before we can launch a full
RHI scheme for domestic buildings and ensure we pursue the most cost-effective way of increasing renewable heat at this scale.

- These include issues about how long the RHI payback period should be, given the frequency with which people move house and the ways in which households raise and pay back finance; and how payments could be made, either through metering or a ‘deemed’ approach.

What support is currently available for the domestic market?

- The Northern Ireland, Renewable Heat Premium Payment (RHPP) scheme is a government support scheme to help domestic householders install renewable heating and hot water systems in their homes.

- The scheme has attracted a high level of interest and to date there have been 316 applications. Solar thermal is the most popular technology and accounts for 45% of applications, Biomass Boilers account for 33% and the rest is made up of heat pumps.

- To date, DETI has committed £450,000 of funding. This grant funding represents a nearly £1.7m of investment in this sector.

- The voucher values for each of the technologies are listed below.

<table>
<thead>
<tr>
<th>Technology</th>
<th>Voucher Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Source Heat Pump</td>
<td>£1,700</td>
</tr>
<tr>
<td>Biomass boiler</td>
<td>£2,500</td>
</tr>
<tr>
<td>Ground Source or Water Source Heat Pump</td>
<td>£3,500</td>
</tr>
<tr>
<td>Solar Thermal Hot Water</td>
<td>£320</td>
</tr>
</tbody>
</table>
What issues will DETI consider as part of phase 2 of the RHI?

- Some of the issues that DETI wish to consider as part of phase 2 of the RHI are;
  - Extension of the scheme to the domestic sector;
  - A specific tariff level for deep geothermal heating (currently treated like ground source heat pumps);
  - The introduction of tariff for Air Source Heat Pumps, Bioliquids; Solar thermal above 200kw;
  - The need for support for large biomass installations; and
  - The potential development of an “uplift” to for community or district heating schemes.

- There may be further issues that DETI wish to consider relating to land fill gas, direct air heating and large biogas.

What is the timescale for phase 2?

- At this stage DETI is keen to implement phase 2 in autumn 2013. A public consultation on this matter will be held in early 2013.
### RHI TARIFFS

<table>
<thead>
<tr>
<th>Tariff name</th>
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<th>Installation capacity</th>
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<td>Solid biomass including solid biomass contained in municipal solid waste and CHP</td>
<td>20kWth and above up to but not including 100kWth</td>
<td>5.9</td>
</tr>
<tr>
<td>Large Biomass</td>
<td>Solid biomass including solid biomass contained in municipal solid waste and CHP</td>
<td>100kWth and above up to but not including 1000kWth</td>
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<td>Ground source heat pump, water source heat pump, deep geothermal</td>
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<td>Ground source heat pump, water source heat pump, deep geothermal</td>
<td>&gt;100kWth</td>
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<td>All Solar collectors</td>
<td>Solar collectors</td>
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<td>Biomethane and biogas combustion</td>
<td>Biomethane injection and biogas combustion</td>
<td>&lt; 200kWth</td>
<td>3.0</td>
</tr>
</tbody>
</table>
Draft Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

(Separate attachment)
EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEME REGULATIONS
(NORTHERN IRELAND) 2012

SR 2012 NO.

INTRODUCTION

1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Statutory Rule. It does not form part of the Statutory Rule.

1.2 The Statutory Rule is made under Assembly under Section 113 of the Energy Act 2011 and is subject to the draft affirmative resolution procedure.

PURPOSE

2.1 The Statutory Rule establishes a Renewable Heat Incentive ("the RHI scheme") to facilitate and encourage the renewable generation of heat by giving subsidy payments to eligible generators of renewable heat and producers of biomethane. The Statutory Rule will give functions to the Gas and Electricity Markets Authority ("Ofgem") to administer the scheme. The key functions for Ofgem will include:

- Accreditation of installations eligible for the RHI scheme;
- Calculating and paying periodic support payments to participants;
- Publication of annual tariff rates;
- General administrative functions needed to operate the scheme, including enforcement auditing provisions and an appeals process; and
- Providing guidance to participants on the scheme criteria.

BACKGROUND AND POLICY OBJECTIVES

Background

3.1 Heating energy accounts for around half of all total energy consumed within Northern Ireland however over 98% of our heating fuels come from imported fossil fuels. Increasing the level of renewable heat to 10% by 2020 is in line with Northern Ireland’s expected contribution to the United Kingdom’s obligations under the EU
Renewable Energy Directive\(^1\) as well as the Department’s wider energy policy goals of increased security of supply, reduced emissions and potential for ‘green jobs’ and skills.

3.2 Grant support had previously been available through the Department for renewable energy installations under the Reconnect scheme. More recently, the Department has been investigating the introduction of an appropriate long-term incentive scheme for Northern Ireland in line with the proposals announced by the Department of Energy and Climate Change (DECC) for a RHI in Great Britain. The differences between the heat markets in Northern Ireland and Great Britain (GB) meant that it has been more appropriate for the Department to make a separate assessment on the most suitable, sustainable and cost-effective method for incentivising the local market rather than simply replicating all aspects of the gas proposal.

3.3 The NI RHI has some similarities to the GB RHI, but it has been specifically designed and tailored for the Northern Ireland heat market.

Policy Objectives

3.4 The Statutory Rule has a number of objectives:

- The NI RHI will be available to all those in the non-domestic sector and will support new renewable heat installations, commissioned after the 1 September 2010;

- Payments may be claimed by, and paid to, the owner of the heat installation or the producer of biomethane;

- Payments will be made quarterly over a 20 year period for all installations following accreditation;

- For small and medium-sized installations (up to and including 45kWth), the installers and the equipment must be certified under the Microgeneration Certification Scheme (MCS), to ensure quality assurance and consumer protection;

- Tariff levels in Northern Ireland have been calculated to bridge the financial gap between conventional heating systems (oil, gas and coal) and renewable heating technologies. Tariffs have been designed to address capital costs, ongoing operating costs as well as non-financial ‘hassle’ costs; and

- The rule sets out the functions of the administrator of the scheme. This will include dealing with applications, accrediting installations, making incentive payments and monitoring compliance with the rules and conditions of the scheme.

CONSULTATION

4.1 The Department went out to consultation on implementation of a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses were analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered and, where appropriate, incorporated in the final design of the scheme. The consultation document, the responses, the final policy position and other associated papers can be accessed at:

www.energy.detini.gov.uk

EQUALITY IMPACT

5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise was carried out in relation to implementation of the proposed RHI scheme and no adverse effects were identified. The purpose of the RHI is to incentivise people to move from fossil fuel heating to renewable energy sources. These measures will therefore benefit all of the Northern Ireland general public who use heat by providing an alternative option for heat demand and therefore increasing diversity of supply. It does not have any negative implications for equality of opportunity.

REGULATORY IMPACT

6.1 A Regulatory Impact Assessment (RIA) was been prepared in respect of implementation of the RHI scheme and is attached at Annex A of this document.

FINANCIAL IMPLICATIONS

7.1 The benefits and cost estimates of the RHI scheme are discussed in the Regulatory Impact Assessment prepared by the Department.

SECTION 24 OF THE NORTHERN IRELAND ACT 1998

8.1 This Statutory Rule does not contravene Section 24 of the Northern Ireland Act 1998.

EU IMPLICATIONS

9.1 This policy was notified to the European Commission regarding compliance with State Aid Rules. The EU Commission advised in June 2012 that they were content with the policy as outlined and gave approval to proceed. In addition, these Regulations were
notified separately to the EU Commission as a requirement under EU Directive 98/34/EC relating to technical standards.

PARITY OR REPLICATORY MEASURE

10.1 Similar legislation has been introduced in Great Britain in respect of the RHI scheme. Ofgem is responsible for developing and administering the scheme on behalf of DECC. However, the Department is legislating for a specifically tailored Northern Ireland RHI scheme. It has been agreed that Ofgem will also administer the NI scheme.

ADDITIONAL INFORMATION

Commencement

11.1 The Statutory Rule comes into operation on 1st November 2012.

ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
OCTOBER 2012
New incentive scheme for renewable heat launched

Energy Minister, Arlene Foster, today announced the implementation of a long-awaited financial incentive scheme for renewable heat installations.

The Renewable Heat Incentive (RHI) has a budget of around £25m up to 2015 and will provide long term financial support for non-domestic properties wishing to switch from conventional heating to renewable heating solutions, such as biomass; heat pumps and solar thermal.

Payments will be made quarterly and for the lifetime of the installation (maximum 20 years) and will be determined by the heat output of the installation and the relevant tariff set by DETI.

Commenting on the launch of the scheme the Minister said; “The RHI is a ground-breaking scheme for Northern Ireland. It will help support our aim of increasing levels of renewable heating to 10% by 2020 by supporting over 20,000 new installations.

“Now that it is in place, local businesses, and other non-domestic properties, can take advantage of the incentives for using renewable heating solutions and should see a return on their investment.

“The development of this market will have real benefits for Northern Ireland’s energy security by reducing dependence on fossil fuels. The sector also has the potential for new jobs and industries.”
The scheme is open to all non-domestic properties and will support installations commissioned since 1 September 2010. The scheme will be administered by the GB energy regulator, Ofgem.

The Minister continued: “My Department is committed to seeking ways to support consumers in these times of higher energy prices. The RHI bridges the gap in costs that currently exist between renewables and fossil fuels and therefore will create a new choice for those wishing to better manage their energy bills.”

Whilst the RHI is only available to non-domestic customers it is expected to be extended to the domestic market by Autumn 2013. In the interim, the Renewable Heat Premium Payment scheme is open to domestic consumers and provides a grant of up to £3500 for householders wishing to switch to renewable heating. Since its launch in May 2012, DETI has received over 300 applications and offered grant support in excess of £450k.

Notes to editors:

1. The Northern Ireland RHI is now open for those wishing to accredit renewable heat installations. All eligible installations commissioned since 1 September 2010 will be able to avail of the incentive payments and the GB Energy Regulator Ofgem will act as the scheme administrator. Queries regarding accreditation should be directed to Ofgem.


3. The Renewable Heat Premium Payment scheme is open to domestic customers. Queries on this scheme should be forwarded to [ni.rhi@detini.gov.uk](mailto:ni.rhi@detini.gov.uk)

4. The Minister was able to launch the scheme following passage of appropriate legislation and finalisation of the necessary administrative arrangements.
dumping heat with the sole purpose of claiming incentive payments.”

Now, if you can’t remember then please just say, but is that something that you would’ve particularly noticed at the time or would have been viewed as important or not?

Mrs Foster: Well I can’t remember, but it’s certainly something when I reread the submission that I did notice.

Mr Scoffield QC: If it had been something that you had noticed at the time, how would you have understood that objective to have been secured? What would you have understood to be underlying that particular representation?

Mrs Foster: Well I would’ve imagined that it would’ve been defined in the legislation what useful heat was.

Mr Scoffield QC: Did you at any stage read the regulations yourself?

Mrs Foster: No. No, I didn’t so there’s —. Absolutely not. I didn’t read the regulations.

Mr Scoffield QC: I know we’re moving further on down the timeline here, but when it comes to the stage where you’re moving a motion in the Assembly that the regulations be affirmatively approved, would you have read them at that stage?

Mrs Foster: No, I don’t believe I would’ve read them at that stage. I probably read the explanatory note but not the regulations in full.

Mr Scoffield QC: Then paragraph 9, we see at the bottom of that page that:

“It is proposed that the NI RHI will be introduced in two phases. The first phase will commence as soon as possible after 1 April 2012”.

That’s for non-domestic installations and then the second phase, as we know, was going to relate to domestic and the expansion of the non-domestic scheme. That’s dealt with in paragraphs 13 and 14, but just over the page in paragraph 9 there’s then a table that you’ve referred to earlier on which indicates what the tariffs had been in the July 2011 consultation, and it informs you of what the proposed tariff is. And you’ve correctly said that, on each
Scheme to go ahead as soon as possible and did not wish to wait for amended GB regulations. They told us that they planned to reconsider the design of the regulations in future (and they subsequently consulted on the introduction of cost controls in 2013). This approach had the result that they were exposed to the same risks and issues inherent in the original 'unamended' GB regulations, but this method of proceeding was a choice that, as we were told, reflected Ministerial wishes." Arising out of this:

a. Please indicate if you "wanted the Scheme to go ahead as soon as possible" and, if so, why.

Yes, I did want the Scheme to go ahead as soon as possible. This was because we were lagging behind the rest of the UK in the introduction of a renewable heat scheme and had a budget available. However, I would consider “as possible” to be the operative words. I did not ask officials to ignore warnings or proceed with a scheme that was inherently flawed. The warnings from Ofgem were not spelled out to me. I would have expected these warnings to be clearly and straightforwardly brought to my attention, by way of a submission, in order that I could make a properly informed decision as to whether it was appropriate to proceed without making the amendments Ofgem considered necessary. This was not done.

I am now aware that there was also an Ofgem memo bringing difficulties with the GB regulations to DETI’s attention as early as November 2011 but that these risks were not addressed in the RIA in March 2012.

b. If you did want the Scheme to go ahead as soon as possible, please also indicate how you communicated this to officials.

I cannot remember specific dates and times but would have
RIA. I was also advised there would be reviews providing an opportunity to amend the Scheme if required.

13. The RIA also stated under the heading "Risk of insufficient budget for administration or future payments" that there "may be the possibility of a higher than expected uptake leading to overspends in annual budget and higher administration costs. This will be mitigated with ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget". Please describe how you were assured that the arrangements in place with Ofgem were sufficiently robust to deliver the information required to mitigate this risk.

I trusted the officials within the Department to put robust measures in place and interact with Ofgem in order to do this. The discussions as to the arrangements took place between Energy Division and Ofgem directly. I was aware that Ofgem were already administering the Northern Ireland Renewables Obligation (NIRO) scheme for renewable electricity generation and, as they were being considered for administration of the NI RHI scheme, I believed there was a good relationship between the Department and Ofgem. I was also aware that Ofgem had been involved in developing and administering the scheme for DECC and would have therefore anticipated similar arrangements being made between Ofgem and DETI. I had no reason to anticipate that the arrangements would not be sufficiently robust.

14. You are referred to paragraphs 10 and 11 of the Ofgem corporate statement (at WIT-95014 to WIT-95015) which state that: "The issues over the absence of cost control in the original GB regulations were well publicised... and DETI were aware of this before they made their Regulations. We had both drawn their attention to it and identified for them the relevant policy person in DECC to talk to about amendments planned to the GB RHI Regulations. DETI's response to Ofgem's comments - which was not to proceed with its regulations in advance of the amendment to the GB regulations - was that NI Ministers wanted the
terms of securing value for public money?

Mrs Foster: Well it is part of what I do, because you’re a public servant, therefore you’re using public money. As I’ve said before, this was a scheme which had a public good in so far as we were trying to incentivise a move away from fossil fuels, so, in that respect, it was a public good. And we knew it was going to cost money to do that, but, at the same time, you’d want to keep that cost as low as you can to achieve the policy that you’re trying to deliver. You don’t try and deliver a policy at the highest possible cost; you try and deliver it at the lowest cost to the public purse.

Mr Scoffield QC: Well, I think you’ve accepted that there may be circumstances where —.

Mrs Foster: Yes, yes. Within an envelope, you may say, “Well, that’s going to cost slightly more, but, on the other side, this is gonna bring a whole range of benefits, so it’s worth going with the more expensive option”, but what I’m saying to you is we didn’t have that discussion when this final report came in.

Mr Scoffield QC: And are you saying you’re not able to help the panel, even with hindsight, as to where, you think, the tipping point may be as to how much more expensive the scheme would have to be before you would say, “All of these other benefits may be highly desirable, but they’re just not worth the money”?

Mrs Foster: Well, I certainly think that £200 million is a very significant amount of money, and so that’s why I’m saying I would’ve said, “Pause and let’s have a discussion around whether this is worth doing, given that it is costing £200 million or more”.

Dame Una O’Brien: Mrs Foster, without prejudice to this point we’re discussing at the moment that of things being brought to your attention — and we acknowledge absolutely what you’re saying: that this wasn’t referenced in the submission — I’m just curious to understand whether you could’ve asked more questions at this stage or at the submission stage. I’m just mindful, hearing what you were saying yesterday, that, I mean, energy was
complicated; it wasn’t your favourite subject. Could that have had an effect that, perhaps, it was an area — I know you say you relied on the officials — is this one of those areas where there might’ve been scope for being more curious, asking more questions?

Mrs Foster: Well, of course, with hindsight, one wishes that one had asked more questions at that time, but, when the final report came — and we’d been told, you know, “It’s going to come. There’s not going to be a material changes” — it comes along and nothing is drawn to your attention, then I don’t think it’s unfair to think that there hasn’t been any huge change, and that’s clearly what I thought at the time.

Dr MacLean: Did your relationship with the officials perhaps lead them to believe that you weren’t really that interested in it and therefore the materiality threshold was maybe much higher than it otherwise would’ve been? Because, for most people, a change of £200 million or a £200 million gap and the big increase that there was from one to the other would seem to be material. So I’m trying to understand how you had built up an overall relationship with your officials that they would’ve felt that that wasn’t material enough for you to — well, either for them to tell you or, turning it the other way round, that you wouldn’t have really been that interested anyway.

Mrs Foster: I don’t think any official would make the assumption that 200 million wasn’t of interest to the Minister.

Dr MacLean: But they did on this occasion.

Mrs Foster: Yes, I know they did, but I don’t think —. “My goodness, something’s going to cost £200 million more, but we’ll not bother telling the Minister” is quite a significant thing to do. I would’ve expected them to have pointed that out to me.

Dr MacLean: Can I just —?

Mrs Foster: Sorry, to go back to your question. Did they believe that, because I wasn’t as interested or enthusiastic about energy as I was about economic development or tourism or
So, if we could just go through some of that step by step. Firstly, you say that you didn’t ask officials to:

“proceed with a scheme that was inherently flawed.”

Is that how you interpret what Ofgem — with what you now know —

Mrs Foster: Yes.

Mr Scoffield QC: — what Ofgem’s advice was, that the scheme was inherently flawed?

Mrs Foster: Well, now that I’m aware of the document, which I think is referred to as the legal review, which had over 50 issues highlighted, and then this warning by teleconference to stop and desist almost, I mean, yes, I would have expected to have been told about all of that.

I think I said in my last day’s evidence that I would have expected to have been told about the November exchange, and I wasn’t. I know there’s a conflict between myself and Mrs Hepper about the June 2012 issue, but I should’ve been told, by way of submission, that this was happening, because this was a pretty fundamental warning, as far as I can see, having read the papers.

Mr Scoffield QC: Is your position that you weren’t told about the warning at all?

Mrs Foster: Well, I have no recollection of being told that there was a warning. And I have to say, looking back at my diary, and again it’s been very useful to have my diary provided by the Department for the Economy at that time — and I don’t know whether the panel should be made aware of this — I mean, at the end of June, beginning of July 2012 was an incredibly busy period.

We had a visit from Her Majesty The Queen on the 26th/27th of June. We had the Irish Open, which had returned for the first time to Northern Ireland for I don’t know how long, and I was very much involved in that in terms of having inward investors come to Northern Ireland and be a part of that. So, it wasn’t just a tourism initiative, it was also an economic
development piece of work that was going on there as well. I was preparing to go to
Kurdistan shortly after the 12th of July.

So, if you look at my diary, it’s an incredibly busy time. There is no reference to any
meeting, either on the telephone or in person, with Fiona Hepper, but yet, elsewhere in the
diary, there are references to officials coming to meet with me on different subs, including
Mrs Hepper. And there are records of phone conversations with officials and, indeed, with
other outside people as well, so the diary is quite clear in terms of not having anything noted
in it. So, if the statement is that there was a meeting or there was a telephone call, there is
no record of either of those, and, in any event, given the seriousness of this issue, I should
have been given a submission to explain the background to it.

And can I say, thirdly, as well, if the allegation is that I had a phone conversation with Mrs
Hepper, there is no way I would have taken that decision not to proceed without having
spoken to Dr Crawford, and I’m very clear in relation to that.

Dame Una O’Brien: Sorry, Mrs Foster, can you just run through the logic of what you’re
saying? If there had been a phone call —

Mrs Foster: Yes.

Dame Una O’Brien: — and that had led you to question whether or not to proceed,
you’re saying you would have then discussed it with Dr Crawford?

Mrs Foster: Yes, I would have, most definitely.

Dame Una O’Brien: I just want to be clear —

Mrs Foster: Yes.

Dame Una O’Brien: — that I’ve understood that. Thank you.

Mrs Foster: So, there was no submission, there’s no dates in the diary for either a
telephone call or a meeting. It was an incredibly busy time in terms of the end of
June/beginning of July, and I think it might be helpful to the panel if they were to look at my
diary at that particular point in time. And, if I did receive a telephone call in the back of a car or whatever, I most certainly would’ve spoken to Dr Crawford about it.

11:00 am

Mr Scoffield QC: You’ve given a number of answers or made a number of points in the course of what you said over the last few moments, and I want to look at some of those points in —

Mrs Foster: Sure.

Mr Scoffield QC: — a bit more detail individually.

You’ve suggested it might be helpful to the panel to have a look at your diary. I hope the reference for that, for that time period, is DFE-423739. Now, just while that’s being called up — we’ll come back to this in a moment — I think Mrs Hepper’s —.

Dame Una O’Brien: That’s very useful. [Laughter.]

Mrs Foster: I hadn’t realised it was redacted.

Mr Scoffield QC: I think Mrs Hepper’s evidence about this is that it would’ve been more likely that this discussion would’ve occurred by means of telephone call. Now, a point that you’ve made is that some of your telephone calls are recorded in your ministerial diary. If this was a telephone call which occurred around this time, that hasn’t been recorded. Now, I just wanted to ask you about that. Would the telephone calls which get recorded in the ministerial diary only be where there’s been a prearrangement that an official will ring you for a discussion by telephone and that’s scheduled in, as it were, and blocked out for that purpose?

Mrs Foster: Well, given that this was an incredibly busy time, if one of the officials had a need to speak to me, they would’ve spoken to my private secretary and said, “I need to speak to the Minister”. Glynis would then have scheduled in a telephone call when she knew I had 15 minutes or half an hour, and that’s why I would’ve expected to have seen it in the
diary.

Mr Scofield QC: So the officials wouldn’t have your mobile number, as it were, just to give you —

Mrs Foster: No.

Mr Scofield QC: — a call off the cuff.

Mrs Foster: No. It would be —. I can’t recall any time when officials would’ve came straight through. They would’ve always came through Glynis, either by ringing her mobile by prearrangement or by ringing her here at Parliament Buildings or, indeed, down at Netherleigh either.

Mr Scofield QC: And sometimes would that call then be put straight through to you or would your private secretary always have said, “I’m writing that in the diary. This is the time slot. Ring back then”?

Mrs Foster: Most times, officials would’ve said to her, “I need to speak to the Minister”, and she would’ve given them then a time to ring back at. That’s the way it worked.

Mr Scofield QC: And that would generally have gone into the ministerial diary.

Mrs Foster: Yes.

Mr Scofield QC: Were there ever occasions when there would’ve been a telephone call which didn’t make its way into the diary in that way?

Mrs Foster: Well, I can’t, hand on heart, say that all telephone calls went into the diary. It’s just that, when I looked back at the diary, I do note that there’s a number of telephone calls in it. So any prearranged telephone calls, I think, would’ve been in the diary. If someone rang up, and I was in the office, and said, “I need to speak to the Minister. Could I speak to her now?”, would that go into the telephone? I can foresee that that may not have gone into the diary. Absolutely. And it may well be the case that Mrs Hepper’s saying that’s what occurred.
Mr Scoffield QC: It’s something that we could maybe take up with Miss Aiken in —

Mrs Foster: Yes.

Mr Scoffield QC: — in due course, because, of course, it might’ve been the case that, even if the call is put straight through, that she may have made a record that the call had gone through and put it into the diary.

Mrs Foster: Yes.

Mr Scoffield QC: We’re just not sure.

Now, I recognise that what we’ve now got on the screen isn’t terribly helpful because all of the entries around this time are, on their face, unrelated to RHI and therefore have been taken out by the Inquiry team.

The Chairman: There is one telephone call.

Mr Scoffield QC: There is, yes. I think probably the point that Mrs Foster is wanting to make by reference to this is that there’s an awful lot going on which is nothing to do with RHI and therefore her time would’ve been particularly pressed. We’ll have that redaction removed, either over the short adjournment or over lunch, and we’ll come back to that.

Are you also making the point, then, Mrs Foster that, where it is a particularly busy time and where you are out and about quite a bit, it’s more likely that there would be an entry in the diary because an official would have to speak to your private secretary to try to find a slot?

Mrs Foster: Yes. That’s exactly the point I’m making.

Mr Scoffield QC: Well, I just want to see where that point is leading to. I mean, are you ultimately saying that you think it’s more likely than not that there wasn’t a telephone call and the discussion didn’t happen at all?

Mrs Foster: Well, I certainly don’t have any recollection of a discussion, either on the telephone or in person with Mrs Hepper. I’d like to think that if I had a discussion of such an
important issue of a stark nature, which, frankly, this was — I mean, these were people saying that we shouldn’t proceed with a scheme for which I had signed off a couple of days earlier. I think I signed off on the 28th of June the submission to go ahead. I mean, this was a very big deal, and I have absolutely no recollection of having a discussion with Mrs Hepper either on the telephone or in person.

Mr Scoffield QC: Just to explain the reference to the 28th of June. We know that your approval for the scheme was given in April. I think you’re referring there to —.

Mrs Foster: Yes, 28th of June is the SL1, I think, is it not and the consultation?

Mr Scoffield QC: Yes, there’s correspondence going to the ETI Committee. I think there’s a submission of the 22nd of June, which you sign off on the 28th. The point that you’re making is that you had on the 28th — I’ll find a reference to this for the panel in due course —. On the 28th, you’d given approval to take a further step forward.

Mrs Foster: Yes.

Mr Scoffield QC: And is the point you’re making out of that then that, if there was something which happened soon after that to say, “Hold on, we need to put the brakes on this”, that’s more likely to have stood out in your memory?

Mrs Foster: Yes.

Mr Scoffield QC: I wanted to take you to paragraph 14c of your second witness statement, which we find at WIT-20581. Again, it’s just to try to tease out what your ultimate position is on this insofar as you can assist us. But we see there again you are asked some questions around the exchanges at this time, and you say:

“I have no recollection of being clearly informed about the risks of proceeding without cost controls. If this issue was raised to me I believe that Ofgem’s warnings must have been significantly downplayed”.

We’ll come back to that. But you’ve said:

“I have no recollection of being clearly informed about the risks of proceeding without cost controls.”
Now, I accept, as we discussed on the last occasion, that, at this remove, several years later, you won’t have a perfect recall of a conversation which may have been a short conversation at a time when you were preoccupied with other things. That sentence:

“I have no recollection of being clearly informed about the risks of proceeding without cost controls.”

could mean a variety of things. It could mean that you’re saying, “I just wasn’t informed”. It could mean that you accept that you might have been informed but you just can’t recall. Or it could mean that you do recall being informed of the risks, but you know that you weren’t informed clearly. I’m just not entirely sure what your ultimate evidence is on this: whether you’re saying the call didn’t happen, or the call did happen but it wasn’t clear, or where you ultimately get to, or if you know yourself.

**Mrs Foster:** Well, I am saying to you that I have no recollection that either a telephone call or a meeting took place with Mrs Hepper. I do recognise that that is somewhat different to saying it didn’t take place, which is why I then go further to say, if it did take place, then I wasn’t warned in stark terms that I had to make a decision as to whether to proceed or not with the scheme, because I certainly would recall that, cos this was a scheme that was about to go live. I’m simply saying to you, looking at the diary, circumstantial evidence seems to point to the fact that I didn’t have a telephone call, although I do understand that I might’ve had a call that wasn’t put down in my diary. So I’m sorry I can’t be any clearer on that, but what I am saying is that if I had’ve been given the very stark warning that I understand was given by Ofgem to the DETI officials, that I would recall that.

**Mr Scoffield QC:** I think what you say in paragraph 15b of your statement — maybe if we just go on to the next page — is consistent with what you’ve just described. So, again, you’re being asked some detailed questions about this. You’re being pressed for clarity. You refer back to your previous response. You say:

“I have no recollection of being provided with a choice on these terms” —
ie, do you want to proceed or do you want to wait for the GB amendments? You say:

“in any event, I don't believe I was made properly aware of the concerns raised by Ofgem and their possible implications.”

So again, just trying to clarify what your evidence to the Inquiry is on this. You're saying you can’t say one way or the other whether the conversation happened —

Mrs Foster: Yes.

Mr Scoffield QC: — which Ms Hepper says she had with you at that time, but you do make a positive case that, even if that did happen, you don’t believe that you were made properly aware of the concerns and their implications.

Mrs Foster: Yes, because, I mean, this would’ve been the first time that I was being made aware that there was an issue with Ofgem. I wasn’t aware of the legal review back in November of the previous year and the fact that a number of issues had been raised. So, if Fiona then comes to me and says, “We have a real problem here in terms of Ofgem are saying x, y and z. What do you want to do?” —. And it’s my understanding Mrs Hepper said she didn’t give me a recommendation one way or the other, that she just presented to me what Ofgem had said, which I have to say, I find that a bit strange as well, that an official is coming up and saying, “I’m not going to give you a recommendation one way or the other”, given that I had no knowledge of the dialogue that was going on between Ofgem and the Department. I was being presented for the very first time, if we take Mrs Hepper’s evidence, with this choice, not having any of the background of the discussions that were taking place, and I was to take a decision to proceed, which is why I have then said, “Why was there not a submission in relation to all of these matters?”. I just don’t think a telephone call was appropriate given the background to all of this.

Mr Scoffield QC: Well, that’s a slightly separate point as to whether it happened or not.

Mrs Foster: It is a slightly separate point, I accept that.
Mr Scoffield QC: But just drawing together what you’ve said on that, I understand you to be saying that, if the warning had been conveyed, in terms, reflecting or similar to what Ofgem had said, that’s something that you believe you would remember because it would effectively have stopped in you in your tracks, or changed your course, or at least given you a pause for thought as against the direction of travel to date.

Mrs Foster: Well, I certainly would’ve had, as I’ve indicated, a discussion with Dr Crawford around the issue.

Mr Scoffield QC: Can you remember any such discussion?

Mrs Foster: No.

Mr Scoffield QC: Why would you have needed to speak to him?

Mrs Foster: Because this was a big decision to have to take. Given that I hadn’t any of the background knowledge of what had been going on, I would want to have asked him was he aware of any of the discussions that were going on; what, given what had been present—what would his opinion be given what Mrs Hepper had said; where did he think we should go on this. It was not a decision, I think it’s fair to say, that I would’ve taken on my own.

Mr Scoffield QC: Now, you mentioned there — and, as I said a few moments ago, I will take you to a number of things that Mrs Hepper has said about this in her evidence. But you mentioned her evidence to the effect that she didn’t come to you with any particular advice or recommendation. And just for the panel’s note, we find that at TRA-02691, lines 18 to 20, and something similar at TRA-02687, line 6. And I think you made the point, Mrs Foster, that that would be strange.

Mrs Foster: Yes.

Mr Scoffield QC: Why do you say that?

Mrs Foster: Well, it was very — I was going to say it was very unlike Fiona to come without a recommendation. But, generally, given that I wasn’t aware of the background of
what had been going on with Ofgem, and I was being — this was just being laid before me on a telephone call, “What do you want to do?”, I would’ve asked, “Well, what do you think we should do?”. And I know that Mrs Hepper’s evidence is the fact that she says she didn’t give a recommendation, but that makes it all the more likely that I would’ve asked for a submission so that I could look at what had been going on.

Mr Scoffield QC: You say that would be unusual. Is that because it would be unusual for any official coming to you in those circumstances not to say, “And here, Minister, is my advice about what we should do”, or are you making a particular point about Mrs Hepper’s general approach in terms of providing you with advice?

Mrs Foster: Mrs Hepper was a very experienced civil servant. I would’ve expected her to have had an opinion in relation to this matter and she had, in the past, given me recommendations and opinions on a whole wide range of issues. So, I would’ve expected her to have given me an opinion in this instance.

Mr Scoffield QC: As I mentioned, I want to take you just —.

Mrs Foster: I mean this is all hypothetical. If the call took place, is what I’m saying, I would’ve expected a recommendation.

Mr Scoffield QC: I’m going to take you to a number of the things that she says about the call. And again, it may well be, as was the case when we went through the 14th of June 2011 meeting, that your answer on a number of instances is you just can’t recall or you can’t assist one way or the other. But in fairness to you — and I think we can do it reasonably quickly — I want to take you through a number of these points. I’m happy to do that now, Chair. I see the time. I’m happy to do it after the short break.

The Chairman: I think we’ll take the break. I don’t think it really matters one way — it’s not going to break your course or anything; is it, no?

Mr Scoffield QC: No, Chair.
The Chairman: Half past.

Mr Scoffield QC: Thank you.

[The hearing was suspended at 11:15 am]

[The hearing resumed at 11:32 am]

Mr Scoffield QC: Chair, I was about to take Mrs Foster back to a number of things which Mrs Hepper had said in her evidence about the exchange she says occurred after the Ofgem warning on the 26th of June. Just before we do that, I understand that we now are in a position to reveal the secrets of the ministerial diary from around that time.

So, if we go back to DFE-423379. So, I —.

The Chairman: I was going to say, do we need security clearance for this? Or —.

Mr Scoffield QC: Well, I haven’t read it yet, so maybe someone could tell us as we go through. [Laughter.] I think, probably, what has happened is we’ve lifted the redactions from the 26th of June, which is the date of the telephone conference itself, through to the 5th of July —

The Chairman: Yes. Yes.

Mr Scoffield QC: — which is the date of the ETI Committee meeting. And, I think Mrs Hepper’s evidence is that that’s the available window, really, for the message to have been received by her and passed on. And, I think, her evidence was that a quick conversation would have been had, because there was an expectation that the ETI Committee would be meeting on the 5th of July, and she wanted to know what the Minister’s view was before that meeting went ahead because obviously if the Minister’s decision was to accept the Ofgem advice and pause, the ETI Committee would need to be told that.

So, I don’t intend to take you to any of this, but maybe we could just scroll through, that will now be available to the panel. Is there anything else that you want to draw out of that, Mrs Foster? Or, anything in particular that you want to comment on?
Mrs Foster: No, I don’t think so. I think it’s quite self-explanatory. [Long pause.]

Mr Scoffield QC: OK. Thank you. If we just take that down. And, as I said before, the fact that there is no note of the telephone discussion — assuming it was a telephone discussion — is probably not determinative, but that’s something that we can take up with Ms Aiken to see if there’s any further light that she can shed on the issue in response to that.

I want to take you, then, as I said, to just a number of things which were said in Mrs Hepper’s evidence, just to give you the opportunity to comment on those. And I wonder if we can begin by going to TRA-02686, line 23, just at the bottom of that page. So, she’s talking about having a discussion with Mr Thomson, which she says occurred before she came to you. She says:

“once David was comfortable with that, those were the two options, I sought a word with the Minister, on the basis that I needed to have the word with her quickly, because the Committee were meeting in the next day or so, and there was a chance that this would be on their agenda, and we would want to pull it from the agenda before it got there.

I did so. I spoke to the Minister, and she considered the options and agreed the way forward.”

Then, I think we’ve already mentioned Ms Hepper’s evidence to the effect that she didn’t give you any particular advice or recommendation, and you’ve commented on that.

Then, if we go to TRA-02691, line 23, Mrs Hepper says she can remember that she had a discussion with you. What she can’t remember, and it’s in her witness statement, is whether it was a face-to-face in your office or whether it was a phone call, but she says she:

“would probably be on the side of it being a phone call, given it was probably the following day and she’d’ve been out and about on business. I definitely didn’t speak to her that Tuesday, because she would’ve been up in the Assembly.”

There’s a further suggestion — I don’t think we need turn to this — from Mrs Hepper that she thought it was a telephone call rather than a face-to-face meeting. You’ll find that, Chair,
Then if we go to TRA-02696, there’s some discussion here about the conversation, but the tenor of this is that — as you see just at line 3, there — Ms Hepper says that she outlined the detail of the issue to you:

“what DECC had done; the point that Ofgem was raising now, at the end of June; where we were in the context of the scheme with the Committee; and what the two main options were, as I saw it, and the consequences of following one route or the other route. So, all of the information was, you know, laid out in detail for her” —

that’s you, the Minister —

“and particularly that this was something that DECC were bringing in, they didn’t think they needed — they would need it because they’d done their projections, but it was a fail-safe, you know, a bit of belt and braces.”

So, that’s referring to the interim cost control, and she’s making the point, there, that DECC didn’t feel that they would need to use the interim cost control because their scheme uptake was low at that point — that’s something I want to talk to you about again, separately — but that it was being brought in as a fail-safe, and Ms Hepper’s evidence is that all of this was discussed, including:

“The consequences of us stopping, pausing, doing the work and when we’d be launching the scheme versus following what DECC had done, running for a period of time, consulting and then bringing it in.

She” —

that’s you, the Minister —

“was content on the assurance that we would be bringing forward the consultation the following spring/summer and bring it into play. And we did so.”

And then if we go to lines 24 to 25 on that page, just at the bottom, she says specifically:

“I think I would’ve told her” —
again, that’s you, the Minister —

"that the Ofgem legal view was, you know, ‘Stop, and take this forward now’, but that there were consequences for that the Ofgem legal people didn’t need to consider, which were the length of time that would take and the delay that that would have on the actual launching of the scheme, and also in the context of the approach that DECC had taken, and, you know, she would’ve had all of the information."

Then TRA-05190, there’s a question there from Dr MacLean. He says:

“You say, obviously, you have a clear recollection of this meeting and that’s what you’ve recounted to us and —. So did you also cover, for instance, the fact that DECC, despite having started off with no cost controls, was now introducing them, even though it had no immediate reason for concern in terms of uptake numbers because they had realised how exposed they were, or could be, if there was an unexpected spike? So was that one of the details of the discussion that you had with the Minister?”

Ms Hepper says:

“I certainly went over the points as to what DECC were doing and the context within which they were doing it. Yes.”

And she is then asked if she explained that clearly. She says she:

“can’t remember the exact wording, but the essence of that point” was made. If we just go further down that page. And she said:

“I don’t think I used the exact words that” Dr MacLean had

“used, but the essence of that point would have been one of the key issues that I would have covered. So I would be clear on that.”

So, again, that’s this point about DECC introducing the interim cost control, even though uptake was low and they thought they wouldn’t need to use it but as a fail-safe.

And then, finally, TRA-02697. Consistent with what she says in some of her other evidence, line 9 to 10:
“The Minister was content, in the context that we would be bringing this forward in the next consultation, that we go ahead and launch the scheme.”

So, again, the picture which emerges is that Ms Hepper says there was discussion on this. It was on the phone, but all of the information was laid out: both Ofgem’s warning; what DECC had done and why it was doing it; and the ramifications of each choice. But it was laid out for you to take the decision, without any particular recommendation from her.

So, as I said previously, it might be, given that you have indicated clearly you don’t recall (a) if this conversation happened or (b) if it did, precisely what was said, that there’s not very much you can add, but I want to give you an opportunity to comment on each of those pieces of evidence.

Mrs Foster: Just in relation to the first transcript that you pulled up, I think Mrs Hepper makes the point that she: “sought” to have a meeting or a telephone call with me. That suggests to me that she would’ve spoken to my private secretary as opposed to, “I lifted the phone”. So, the use of the words that she’s used: “I sought” to have “a word with the Minister” suggests to me that she would’ve gone through Glynis to speak to me. So, that’s something perhaps you might want to raise with Ms Aiken.

In terms of the rest of what is quite a detailed recollection of the conversation, as I said, if it had’ve been put in terms that said, “Ofgem has indicated”, bearing in mind I hadn’t heard any of the further — or the warnings before that, then I think it’s something that I would recall. Um, but as I’ve indicated, I have no recollection of a meeting or a telephone call
taking place of this nature.

**Mr Scoffield QC:** OK. Now, the point that you’ve gone on to make, accepting that, is that, if it did happen, you think that the concerns which had been raised by Ofgem:

“must have been significantly downplayed”.

You’ve said that in your witness statement, and I understand that you say that because, consistent with what you’ve said to the panel this morning, had the warnings been conveyed to you clearly —

**Mrs Foster:** Yes.

**Mr Scoffield QC:** — as you now see it, you think you would have remembered that or it may have led to other actions, which you don’t think occurred?

**Mrs Foster:** Yes.

**Mr Scoffield QC:** Now, again, just to give you the opportunity to comment on that, in light of the fact that you’d said that in your second witness statement, that specifically was put to Mrs Hepper, and she dealt with that as well, and we find that at TRA-05188. And an exchange here is, I think, from line 15. And she says there:

> “the position is — I mean, I have a clear recollection of the conversation with the Minister. I had a conversation prior to that with David Thomson. We went over the options. I don’t believe that it was downplayed in any way, and there was most certainly — the rationale — part of the rationale for continuing to move ahead was that we would bring forward the work on the cost controls, and I gave a commitment to do so and, in fact, delivered upon that, so, I mean, I stand by the evidence that I gave. I was upfront in what the issue was with Ofgem, what DECC were doing, the impact that it would have on us moving forward in the timetable, the fact that DECC themselves had moved forward for a period of time in the same way without this suspension mechanism being in place and that we would do the same, and that that’s what was agreed.”

So, I then summarise her evidence — that it was discussed with you and Ofgem’s concerns
were not downplayed — and she agrees with that.

And then she’s asked if she can remember if you were specifically told that Ofgem’s recommendation was not to proceed. She says:

“Yes. And I did not downplay that; I said that’s what the advice from their lawyers are. However, it was in the context of what DECC had done, and we were at the same point with DECC; the scheme would be launching without it and we would bring this into play.”

So, again, just to give you the opportunity to comment on that, in light of having seen what you’d said in your witness statement, Mrs Hepper was standing by or, if anything, firming up her evidence: do you have any observations on that?

11:45 am

Mrs Foster: Well, just to say that there seems to be a very clear recollection of the conversation but not whether it was a meeting or a telephone conversation. If it was a meeting, it would be in the diary, of course. I would also say, if she hadda sought a telephone call with me through my private secretary which was prearranged, it should also have been in the diary, and it’s not, and I think that’s quite clear.

Mr Scoffield QC: In terms of the actual content of the conversation, on the assumption that it happened, there’s nothing further that you can say to assist —

Mrs Foster: No, there’s nothing.

Mr Scoffield QC: — the panel with that?

Mrs Foster: No.

Mr Scoffield QC: I want to come at that issue in a slightly different way, because one of the things which was giving Ofgem cause for concern was the fact that DECC were building in the interim cost control, and that, as you know, was a mechanism whereby, if certain triggers were hit in terms of scheme budget in-year, then action could be taken to suspend the scheme. So it’s a bit like the cost control which was consulted on in phase 2 of the RHI
scheme here, which we’ll talk about in due course — not identical but the same type of idea.

Now, I want to have a look at INQ-22023, because in March of that year there had been a consultation on the interim cost control which was launched by DECC. We see the front page there; it’s dated:

“26 March 2012”.

Can you recall —? Did you ever see that document, or was that ever shown —

Mrs Foster: No, I —.

Mr Scoffield QC: — to you?

Mrs Foster: No, I don’t think that was ever shown to me.

Mr Scoffield QC: Now, I think we discussed on the last occasion briefly whether this may have been sent to you by your counterpart in DECC, Minister Barker. Now, I want to come on to talk about the letters which were sent to DETI from DECC over the life of the scheme in due course. I should say, I don’t think it is right to say that this consultation was the subject of such correspondence, so I don’t think, insofar as we can see, that there was a letter sending this across, but we understand from other DETI witnesses that it would’ve been available to them. And I just wanted to check with you whether, in the context of the conversation or at any other time, you think you would’ve seen this.

Mrs Foster: No.

Mr Scoffield QC: No. The reason I want to take you to it is just on this point about the deployment of this cost control by DECC, notwithstanding that there was some [Short pause] notwithstanding that the uptake of the scheme in GB was fairly modest at that stage. And just to make good that point, maybe we can have a look at paragraphs 3 and 4. We find those at —. In fact, maybe we’ll first of all just go to the ministerial foreword, which is at INQ-22026. This is a fairly short consultation document in terms of some of the consultation documents that we’ve seen. We see there’s a:
“Ministerial Foreword”,

Mr Barker’s picture in the top right-hand corner, and just the third paragraph on that page:

“Until we are able to introduce the longer-term solution, we need assurance that the scheme will not exceed its budget for the next financial year. Therefore, we are consulting on a short-term measure to give us the confidence that spending will not exceed our budget. The measure proposed is that we suspend the scheme until the next financial year if our evidence shows that the budget could be breached.”

And then the next paragraph says:

“Current uptake levels are very low relative to the available budget and if this lower than anticipated uptake continues we will not need to use the proposed interim cost control mechanism. However, the RHI is a new policy in an immature market, which means that there is a high degree of uncertainty about deployment in the short-term. We recognise that suspending the scheme would be a serious event. However, we are consulting now because we want to be transparent about our future intentions. We will be publishing the data which would determine whether suspension occurs so that the market is aware of the estimated spend relative to our budgets. Then there would be no surprises if the RHI was suspended.”

Then he says:

“If we had no way of controlling short-term spending we could jeopardise the long-term future of the RHI and the renewable heat sector.”

So, making the obvious point there that, if the budget runs away in one particular year, that might have much wider ramifications for the scheme as a whole.

Then, if we go to INQ-22032, paragraph 9 talks about the uptake of the scheme in GB at that stage. And, at that stage — just at the end of that paragraph:

“Based on the current number of applications received”

DECC expected

“to spend approximately £2m for the 2011/12 financial year.”

And that’s out of a budget of £56 million for that financial year, so nowhere near breaking
the budget, obviously, at that stage.

Then paragraphs 11 to 13 ask the question:

“Why do we need this measure?”.

And the answer there is given that:

“The experience of Feed-in Tariffs and solar PV uptake has taught us that we need to be prepared for unexpected and rapid surges in uptake and be transparent about what we plan to do should they happen.”

The point is made that:

“There are differences between solar PV and renewable heat ... rapid cost reductions are less likely and there are more barriers to deployment. Nevertheless, uptake of renewable heat could vary based on volatile variables such as the price of oil. And given the infancy of the renewable heat market in the UK, we have to assume a significant level of variance from our modelling projections.”

And then, again:

“recognise that suspending the scheme is likely to have a negative short-term impact”

but there are wider reasons why this protection is required. Then the Government response to that is published in June, just to complete the little series of references to this, and that’s at INQ-22038.

And then, if we go to INQ-22043:

“Why is this measure needed?”.

And, again, the point there is made, consistently with what we’ve seen before, that DECC doesn’t:

“believe that rapid cost reductions are likely in renewable heat technologies in the way that has been seen with solar PV ... There are ... more barriers to the deployment ... Clearly, if application rates continue to be low relative to the budget then the stand-by mechanism would not be needed and suspension would not occur.

9. However, there is a high degree of uncertainty about how the market will respond to the RHI and it is
right to be cautious and be prepared for unexpected changes in application rates.”

So, all of that goes to show that DECC recognised that bringing this interim cost control in at that time was something which was possibly unlikely to be used but required in case things go badly wrong. And the point I want to ask you about that is whether that point was drawn to your attention. Can you say “Yes” or “No” to that, or is there anything else that you can add in relation to what advice you may or may not have been given at this stage in June 2012?

Mrs Foster: No, it wasn’t drawn to my attention.

Mr Scoffield QC: Now, whenever you’ve said that you can’t remember the detail of the discussion with Fiona Hepper, how can you be sure that that point, then, wasn’t drawn to your attention?

Mrs Foster: Well, I’d like to think I’d remember if — I mean, this is quite a significant issue, I have to say, and I would’ve expected that, given the close relationship between DECC and energy division, that energy division would’ve been aware that this was happening in terms of the consultation. And, as I understand, looking at the consultation now, it wasn’t part of a consultation stuck in at the end; it was a very specific consultation on this issue, so it wasn’t just something — a general consultation and, “By the way, we’re also going to do cost controls”. It was a very specific issue, and it wasn’t drawn to my attention in — at the time of the consultation or, indeed, at the time of the responses to the consultation.

The Chairman: Those documents were TRIM-ed, weren’t they?

Mr Scoffield QC: They were at one point, Chair. I don’t think they were — certainly, the consultation I don’t think was TRIM-ed in March, but they were TRIM-ed at a later stage, but I think Mr Hutchinson’s evidence was that he would’ve been aware of the March 2012 consultation at the time it was released.

The Chairman: Yes, and, presumably, Fiona Hepper would’ve been aware, too.
Mr Scoffield QC: Um —.

The Chairman: There would be no secrets between Hutchinson and Hepper, would there?

Mr Scoffield QC: Well, Chair, I can’t remember precisely what Fiona Hepper’s evidence was on that, but, certainly, I don’t think there was any attempt on her part to suggest that there would’ve been a reason for keeping this from her.

The Chairman: Well, then, to suggest that it was merely a belt-and-braces effort months after bringing in the — when it was, in fact — the consultation was started within five months, half that time.

Mr Scoffield QC: Certainly, Chair, the —

The Chairman: Fiona Hepper — it’s not one of the excerpts you’ve quoted, but she says at some stage that the reason she spoke to David Thomson was that she thought it was important and that he thought it was an important issue, too. Now, David Thomson is, what, the deputy permanent secretary?

Mr Scoffield QC: Yes. He’s the grade 3, Chair.

The Chairman: And yet, where the head of energy and the deputy permanent secretary consider it’s an important point, there’s no submission, nothing in writing. Nothing in writing, even in relation to the phone call or face-to-face.

Mr Scoffield QC: And we’re coming on to deal with that, Chair. Just to complete the reference on this point, I wanted to take you then to WIT-20601. This is, maybe, more for the panel’s benefit than for yours, Mrs Foster, but it’s back to your second witness statement. It’s paragraph 35(d), so the paragraph just at the top of the screen now and six lines from the bottom. You say there:

“I was not, for example, made aware that GB had introduced cost controls at a stage where there was relatively low risk because of low uptake.”

So that's the point that we’ve just been on. And I wanted to ask you — maybe you’ve already
answered this — how you can be so assertive about that, when there’s so little else about
this conversation or exchange that you can recall?

Mrs Foster: Well, I’m not basing this on a conversation; I’m basing this on the fact that I
should have been made aware of this in a submission, given that this was quite a significant
occurrence in the scheme in GB. And, I mean, I think I’m right in saying that this happened
before June, am I? This happened in March?

Mr Scofield QC: The consultation in March, yes.

Mrs Foster: So, again, I mean, I didn’t know about the legal review in November of the
year before, in terms of Ofgem sending a number of warnings. I wasn’t made aware that
there was a consultation going out in GB in March or, indeed, what the response was to that
consultation and what the decision was. So, I’m trying to give you a sense of if I had been
then told at the end of June/beginning of July that “All of this has happened. You don’t know
anything about it, but we should stop the scheme now on the back of that”, I think it’s quite
a stark thing to be told, and that’s why I think it’s rather strange that I don’t recall that
having taken place.

Mr Scofield QC: Just tying together the strands of what you’ve said there: you’re not in a
position to say categorically that this point — that DECC was introducing the interim cost
control notwithstanding low uptake — you are not in a position to say that wasn’t
mentioned in the conversation.

Mrs Foster: No, because I can’t recall the conversation.

Mr Scofield QC: But you don’t recall being made aware of it at any other stage.

Mrs Foster: That’s correct.

Mr Scofield QC: It wasn't the subject of a submission.

Mrs Foster: That's correct.

Mr Scofield QC: Are you saying that this particular point should have been the subject of
a submission?

Mrs Foster: Yes, I am saying that. It was a fundamental change to the GB scheme, which we were tracking or, at least, I thought we were tracking.

Dr MacLean: Mrs Foster, are you saying, just through the sequence of events, that the legal review at the end of 2011, this consultation and then the issues of the Ofgem meeting, those are all things that you would have wanted a legal — a written submission on?

Mrs Foster: Yes. I think they all merit a written submission.

Mr Scoffield QC: Now, Mrs Hepper's evidence is that, in this conversation, which, I accept, you can't recall, the discussion was that, albeit if the scheme proceeded at that time, it would be without the interim cost control and without the other scheme improvements. That's precisely what DECC had done. They'd started their scheme off in the preceding year, and they'd then fixed it at some stage into the scheme, and they were able to do that at a time when nothing really was lost, because the scheme uptake had been fairly low since the introduction of the scheme. Mrs Hepper also says that you were assured and accepted the assurance that DETI, in the next iteration of its scheme, would address these issues and, in particular, that the interim cost control would be introduced in phase 2. So those are the reasons why she says that it was a legitimate option to proceed without taking the Ofgem advice to pause. And the further point that she makes about that is if DETI had paused at that stage, had consulted on an interim cost control, and had followed that through and amended the regulations, and so on and so forth, that would have pushed scheme launch back into 2013, probably, I think she said, around March 2013, as a guess. Can you remember any discussion around that last issue, the timescale of how long it would take if the Ofgem advice was adhered to?

Noon

Mr Foster: No, I can’t. But I do note your use of language to say that Mrs Hepper has
indicated that I was “assured” that we could deal with these matters earlier on, which seems to run contrary to what Mrs Hepper says around I didn’t give a recommendation in terms of what the best way forward was.

Mr Scoffield QC: I think Mrs Hepper’s evidence is that she wasn’t pushing you down one particular route or another, but, in looking at the option of proceeding with the scheme then, if that was the option that was chosen, she did say, “And, in that context, we will be coming back to this in phase 2”.

Mrs Foster: Yes.

Mr Scoffield QC: You can’t recall any discussion about timescales in terms of how long scheme launch would be delayed if the Ofgem advice was followed?

Mrs Foster: No, I can’t. And, I mean, I do go back to the point that, if this was a phone conversation, it seems to have been a very long phone conversation, and I cannot think that I would not have asked for a submission in that context. I know I’m repeating myself around that, but I’m just making the point again.

Mr Scoffield QC: As I’ve said, we will come on to this, but just since you’ve raised it, why didn’t you ask for a submission? Is it because you’re saying the call didn’t happen?

Mrs Foster: That is the point. I mean, I — it’s not in the diary. I have no recollection of it. Mrs Hepper says it did take place. The point I’m making to you if it did take place, if this all had been laid out in front of me, which is why I go to the point that if the call did take place it must have been downplayed because if everything had’ve been laid out in front of me in the fashion that is now claimed, I would’ve asked for a submission in relation to that, is the point I’m making.

Mr Scoffield QC: And —.

Mrs Foster: So that leads me to the point that, if there was a telephone conversation, the warnings must have been downplayed. Because, bear in mind, this was the first time I had
heard anything about warnings or cost controls or anything around that — if the call took
place.

Mr Scoffield QC: Are you able to offer a view now as to what you think you might have
done, had there been a submission which set all of these matters out? And I want you to try,
if you can, to resist the temptation, with hindsight, to say, you know, “It’s totally obvious
that I would have said: ‘Hold off’”. I imagine your response, a bit like some of the issues that
we talked about last week, is that there would at least have been further discussion and
analysis of the pros and cons, but, if it’s not an unfair question, can I ask you what you think
might have happened if this had been spelt out in a submission in the way in which you now
say it ought to have been?

Mrs Foster: Well, I would have had that discussion which I would have had with Dr
Crawford because I would not have taken this decision on a phone call without having a
discussion with him.

Dame Una O’Brien: Mrs Foster, there was a regular meeting with the top officials in the
Department.

Mrs Foster: Yes, that’s correct.

Dame Una O’Brien: That’s right. And Mr Thomson would have come to those meetings.
Were those issues that were problematic that were aired in those meetings because they
were open discussion meetings happening weekly? Would you have expected something like
this to have found its way into —?

Mrs Foster: An issues meeting?

Dame Una O’Brien: Yes.

Mrs Foster: Yes. Well, I just noticed, if you back to the diary, there was an issues meeting
on the 2nd of July. I’m not sure whether Mr Thomson was at that meeting, given that it was
probably annual leave time around that time, but there certainly was an issues meeting, I
2012 No. 396

ENERGY

The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

Laid before the Assembly in draft

Made - - - - 31st October 2012
Coming into operation - 1st November 2012

£9.75
2012 No. 396

ENERGY

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The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011(a).

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 1st November 2012.

Interpretation

2.—(1) In these Regulations—

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

"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;

(a) 2011 c. 16
(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

(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 the application was properly made;

"the Department" means the Department of Enterprise, Trade and Investment;

"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 reforming 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(a);

"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(b) or an equivalent scheme accredited under EN 45011(e) which certifies microgeneration products and installers in accordance with consistent standards;


"municipal waste" has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003(e);

"MWhth" means megawatt hours thermal;

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(a) S.I. 1996/275 (N.I.2)
(b) Details of which are available at www.microgenerationcertification.org
(c) ISBN 0580234153. Copies of which can be obtained from the British Standards Institution at www.bsigroup.com
(e) 2003 c.33, Section 21 was amended by S.I. 2011/2499, Regulation 6

Sourced by RHI Inquiry on 26.10.2017
Annotated by RHI Inquiry
“MWth” means megawatt thermal;
“NIRO” means the Northern Ireland renewables obligation as set out in the Renewables Obligation Order (Northern Ireland) 2009(a);
“ongoing obligations” means the obligations specified in Part 4;
“participant” means—
(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, or a system of pipes, for the conveyance of gas, and includes any associated apparatus comprised in that system;
“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);
“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 MWth 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(a) 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 for any of the following purposes—

(a) heating a space;
(b) heating liquid; 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

CHAPTER 1

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

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;
(d) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies;
(e) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

(a) 1954 c 33 (N.I.)
Eligible installations generating heat from solid biomass contained in municipal waste

6. This regulation applies if the plant complies with all of the following requirements—
   (a) it generates heat from solid biomass contained in municipal waste;
   (b) it has an installation capacity of less than 1,000kWth;
   (c) it is not accredited under the NIRO as a generating station generating electricity from anaerobic digestion.

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;
   (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 liquid;
   (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(c);
   (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 NIRO; 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—
   (a) it generates heat from biogas;
   (b) it has an installation capacity of less than 200kWth;
   (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 was completed and the plant was first commissioned on or after
       1st 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, liquid 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 1st 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.

   (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 capacitics 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 generated heat 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.

(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(a).

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.

(a) A copy is available at www.chpqa.decc.gov.uk
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)(c) 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 or other public support has been provided or will be provided in respect of any of the costs of purchasing or installing the eligible installation; or

(b) such a grant or support 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 and "public support" means any financial advantage provided by 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)(c); and

(c) where applicable, send the new owner (if the new owner is the participant) a notice in accordance with regulation 22(6)(f).

(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 or other public support has been provided or will be provided 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, injections of biomethane produced by that applicant has commenced.

(9) In this regulation, “grant from public funds” and “public support” have the meanings given in regulation 23(2).

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.

(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—
“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); (a)
“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;
“waste” has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (b)

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.

(a) ISBN 0580194825 Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/
(b) S.I. 1997/2778 (N.I.19); Article 2(2) was amended by SR 2011 No. 127
(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;

(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 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 45kWth and 1MWth

29.—(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 45kWth and 1MWth.

(2) The participant may use solid biomass contaminated with fossil fuel provided that the participant complies with the following sub-paragraphs 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;

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

(i) 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

(ii) the fossil fuel is waste and was not added to the solid biomass with a view to its being used as a fuel;
(c) for the purposes of sub-paragraph (a)—

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

(ii) 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

(iii) 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 sub-paragraphs (d) and (e);

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

(i) 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;

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

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

(iv) emission control;

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

(e) the energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in sub-paragraph (d) 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.

(3) 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 (2)(d) and provide this information upon request to the Department, in such form as the Department may require to demonstrate compliance with this regulation.

(4) Without prejudice to paragraph (3), 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.

(5) Where—

(a) the Department is not satisfied that the proportion of fossil fuel contamination (within the meaning of paragraph 2(e)(iii) does not exceed 10 per cent; or

(b) the Department is not satisfied as to the matters specified in paragraphs (2)(d) and (2)(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)(a), (b) and (c) and (4) 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 2(d) and (e) of regulation 29 applies.

(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 digestions 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 2(d) and (e) 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) (a), (b) and (c)(iii), of regulation 29 applies 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 kWh 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: 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)(c);

(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) 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), 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 2013, 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.

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

(b) \( B \) is the heat in kWhth generated by the installation during the relevant quarterly period; and

(c) \( C \) 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) \( A \) is the tariff for the installation determined in accordance with regulation 36;

(b) \( B \) is the heat in kWh used by the heating system of which the installation forms part during the relevant quarterly period for eligible purposes;

(c) \( C \) 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 not such heat, zero;

(d) \( D \) is the heat in kWhth generated by the installation during the relevant quarterly period; and

(e) \( E \) 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.

(2) 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.
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) A is the biomethane and biogas combustion tariff determined in accordance with regulation 36;

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

(c) C is the kWh of propane contained in B;

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

(f) 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 of 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 is to comply with the ongoing obligation;

(e) the consequences of the participant failing to take the steps required pursuant to subparagraph (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 with-held 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 take one or more of the following actions—

(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 payments, 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 to undertake any one or more of the following—

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

(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 publication of specified information on the Department’s website

51.—(1) The Department must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

(2) The Department must publish the following information on its website—
   (a) information in aggregate form as to—
      (i) the number of accredited RHI installations;
      (ii) the technology and installation capacity of those accredited RHI installations;
      (iii) the amount of heat those accredited RHI installations have generated;
      (iv) the total amount of periodic support payments made under each tariff; and
(b) 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.

Notices

52. A notice under these Regulations—
   (a) must be in writing; and
   (b) may be transmitted by electronic means.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 31st October 2012.

L.S.

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(a);

(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;

(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;

(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;

(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.

(a) S.R. 2003 No. 46
SCHEDULE 2

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 biogas

1. This Schedule specified 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 or 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); and
   “environmental quality assurance scheme” means a voluntary scheme which establishes environmental or social standards in relation to the production of biomass or matter form which a biomass is derived.
### SCHEDULE 3 - Tariffs

#### Table 1

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

BUDGETARY ISSUES ASSOCIATED WITH THE ADMINISTRATION OF THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE (RHI) AND RENEWABLE HEAT PREMIUM PAYMENTS (RHPP)

You will recall that in March 2012 I briefed you on the budget requirements for the administration of the NI RHI over the next four years. At that time the forecasted costs associated with the administration of the NI RHI (as per the feasibility study) for the next four years were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Development Costs</th>
<th>Operating costs</th>
<th>Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>£386K (plus £386K contingency)</td>
<td>£136K</td>
<td>£522K (plus £386K contingency)</td>
</tr>
<tr>
<td>2013-2014</td>
<td>£157K</td>
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<td>£157K</td>
</tr>
<tr>
<td>2014-2015</td>
<td>£198K</td>
<td>£198K</td>
<td>£198K</td>
</tr>
<tr>
<td>2015-2016</td>
<td>£249K</td>
<td>£249K</td>
<td>£249K</td>
</tr>
</tbody>
</table>

Ofgem was already administering the GB RHI and these costs were based on NI accounting for 3% of the overall costs of both schemes.

Current Position

2. The original feasibility study was based on the NI RHI launching in April 2012 (and no later than June 2012). However, the commencement of the scheme was delayed due to time taken to secure State Aid approval and the need to lay legislation in the Assembly. As a result the testing of the NI system no longer dove-tailed with work on the GB system and this has impacted on both the development and operational costs for this year. The updated costs for the scheme are given in the following tables.

Development and Operational costs 2012/13

<table>
<thead>
<tr>
<th>Delivery Component</th>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Scheme Development delivery team (including:</td>
<td>£96,000</td>
</tr>
<tr>
<td>Band C Operational Manager – recruitment process &amp; Stakeholder</td>
<td></td>
</tr>
<tr>
<td>Engagement Costs</td>
<td>Cost (£)</td>
</tr>
<tr>
<td>------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Internal Ofgem legal costs</td>
<td>£67,000</td>
</tr>
<tr>
<td>IT delivery costs</td>
<td>£190,000</td>
</tr>
<tr>
<td>Independent risk assessment</td>
<td>£5,000</td>
</tr>
<tr>
<td>Overheads</td>
<td>£75,000</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>£433,000</strong></td>
</tr>
</tbody>
</table>

**Operational Costs**

<table>
<thead>
<tr>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised 2012/13 operational costs (pre IT delay)</td>
</tr>
<tr>
<td>Additional 2012/13 operational costs due to delay to IT launch</td>
</tr>
</tbody>
</table>
| **Total:** | **£140,000**

| Total 2012-13 forecast costs: | £573,000 |

- You will wish to note that the £433K development costs are inclusive of £49K contingency.

### Estimated Operational Costs 2013/14 – 2015/16

<table>
<thead>
<tr>
<th>Financial years</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIRHI Estimated costs</td>
<td>£164,636</td>
<td>£223,809</td>
<td>£341,639</td>
</tr>
</tbody>
</table>

- The above figures are current estimates based on NI still accounting for 3% of the total scheme operating costs. These costs are higher than the original forecasts due to the fact that Ofgem now has a clearer idea of the times taken to process applications (the GB scheme has now been running for over a year).

- However, Ofgem proposes to actually charge DETI on the following basis:-

  \[
  \text{DETI costs} = \frac{\text{Total RHI operating cost} \times \text{Value of NI tariff payments}}{\text{Value of Total (NI+GB) tariff payments}}
  \]

- If NI volumes are more than 3% of the total scheme, we anticipate that NI will have smaller installations compared to GB which are quicker to process, resulting in reduced accreditation time/ resources required. This means that the 3% would still be a reasonable maximum estimate.

- Should any additional funding be required this will need to be agreed via the Change Control process.
From: Fiona Hepper
Date: 21 December 2012
To: RHI Casework Committee members: Trevor Cooper
Shane Murphy

Copy Distribution List Below

Update on the NI Renewable Heat Incentive Scheme Administrative Costs

Background

You met as a Casework Committee on 9 March 2012 to consider the NI Renewable Heat Incentive Scheme. The forecasted costs presented at that time were as follows:-

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<td>2015-2016</td>
<td>£249K</td>
<td></td>
<td>£249K</td>
</tr>
</tbody>
</table>

Para 38 of the Synopsis provided for the meeting stated (when referring to the Feasibility Study undertaken):

‘The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload. In any case, Ofgem has confirmed that it will only pass through actual costs to DETI.’

Current Position

1. The original feasibility study which was what was presented to Casework was based on the NI RHI launching in April 2012 (and no later than June 2012). However, the commencement of the scheme was delayed due to time taken to secure State Aid approval and the need to lay legislation in the Assembly. As a result, the testing of the NI system no longer dove-tailed with work on the GB system and this has impacted on both the development and operational costs for this year and has meant that some of the contingency has had to be used. The
updated costs for 2012/13 are given in the following table.

**Development and Operational costs 2012/13**

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<thead>
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<td>Additional 2012/13 operational costs due to delay to IT launch</td>
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<tr>
<td><strong>Total:</strong></td>
</tr>
</tbody>
</table>

**Total 2012-13 forecast costs:** £573,000

- You will wish to note that the £433K development costs are inclusive of £49K contingency.

2. Ofgem has also recently provided updated forecasts of the operational costs for the years 2013/14 to 2015/16 and they are as follows:

<table>
<thead>
<tr>
<th>Financial years</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
</tr>
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<td>£223,809</td>
<td>£341,639</td>
</tr>
</tbody>
</table>

- The above figures are current estimates and are still based on NI accounting for 3% of the total scheme operating costs.

- The higher forecasts are due to the fact that Ofgem now has a clearer idea of the times taken to process applications (the GB scheme has now been running for over a year).
3. Ofgem has always said it will charge NI a proportion of the actual costs of running the two schemes, including apportioned overheads. The forecasts above have used 3% as an approximation of the NI share of costs based on the anticipated volume of installations.

4. The uptake of the scheme is unpredictable and neither we nor Ofgem can be sure at this stage whether NI will comprise more or less than 3% of the volume of applications. However, it is likely given the nature of the heat market that the average NI installation will be smaller than the average GB one.

5. The Ofgem resource required to administer an installation is closely correlated with the size of the installation and for this reason Ofgem has proposed that the most equitable way to apportion the costs is to charge DETI according to the following formula (rather than a straight 3%).

\[
\text{DETI costs} = \frac{\text{Total RHI operating cost} \times \text{Value of NI tariff payments}}{\text{Value of Total (NI+GB) tariff payments}}.
\]

The value of tariff payments will therefore depend on both the volume and the size of the installation rather than simply the volume and I am of the view that this offers the best option for NI.

6. As stated above the current figures are only forecasts and the actual figures will be calculated annually on the basis of the formula given. We will work closely with DECC to ensure that the total RHI operating cost each year is closely monitored; I would anticipate that colleagues in DECC will be particularly keen to ensure these costs are kept to a minimum given that they will be contributing in the region of 97%. You will also wish to note that our Agreement with Ofgem is such that we can terminate the administrative arrangement with 60 days notice.

7. I would be grateful if you could consider this further clarification on funding and indicate if you are content. I am of course happy to discuss further.

FIONA HEPPER
Ext 29215

cc: Joanne McCutcheon
    Peter Hutchinson
From: Fiona Hepper
Date: 29th March 2012
To: Trevor Cooper, Chair RHI Casework Committee

ADMINISTRATION OF THE NI RENEWABLE HEAT INCENTIVE (RHI)

This purpose of this note is to address the issues raised at the Casework Committee on 9 March in relation to the appointment of Ofgem as the administrator of the RHI.

Background

2. The RHI requires a system capable of managing enquiries and applications, accrediting installations, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. The expertise required to develop such a system is not available within Energy Division, nor is there the resource to operate the scheme on an on-going basis. The Office of Gas and Electricity Markets (Ofgem) has developed a bespoke system for DECC and is already managing the administration of the GB RHI.

3. A feasibility study, undertaken by Ofgem, has concluded that Ofgem has the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K (plus £386K contingency). Forecasts of operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload.

4. At the Casework Committee meeting on 9 March, a number of questions/actions arose regarding the nature of the proposed arrangement with Ofgem and in particular the inclusion of performance targets, remedies and breakpoints in any contract/agreement. Assurance that there would be a right of audit entry included in the agreement and clarification of the legal contingency was also sought.

Agency Services Agreement

Action from Casework: Energy Division to confirm to Casework Committee that any contract with Ofgem for administration of the RHI scheme would have performance targets, remedies, safeguards in place for under-performance, and breakpoints.

5. It is proposed to have an Agency Services Agreement (ASA) between DETI and Ofgem (as per para 2.6 of the Ofgem feasibility study previously circulated with the Casework papers). This is the same type of arrangement as exists between NIAUR and Ofgem under the NIRO and NI REGO schemes. The ASA is agreed by both
parties at the outset and sets out the terms, obligations and costs of the arrangement.

6. This has been discussed with colleagues in CPD who have indicated that they are content; such an agreement would normally be termed a Service Level Agreement (SLA). Advice from CPD is that we

‘should ensure that the SLA records a common understanding about services, priorities, responsibilities, guarantees, and warranties. Each area of service scope should have the “level of service” defined. The SLA may specify the levels of availability, serviceability, performance, operation, or other attributes of the service, such as billing. The "level of service" can also be specified as "target" and "minimum," which allows customers to be informed what to expect (the minimum), while providing a measurable (average) target value that shows the level of organization performance. In some contracts, penalties may be agreed upon in the case of non-compliance of the SLA (but see "internal" customers below). It is important to note that the "agreement" relates to the services the customer receives, and not how the service provider delivers that service’.

7. A preliminary discussion has taken place with Ofgem, outlining the conditions discussed at Casework. In light of these discussions, I do not anticipate any difficulty having these included as part of the ASA. The finalising of the agreement will be a collaborative process and I will ensure that the issues raised by Casework and CPD are fully addressed within in. In addition, I will seek input from colleagues in DETI Finance and Audit as the agreement is drafted.

Right of Audit Entry

Action from Casework: Energy Division to engage with Internal Audit regarding Ofgem management arrangements and, in particular on the requirement for External Delivery Organisation (EDO) audit inspections to be carried out on Ofgem as administrators of the scheme.

8. The right of audit entry has been discussed with both Internal Audit and Ofgem. Although this is not included as part of any other ASA that Ofgem is party to, Ofgem is content and has agreed in principle to its inclusion. The specification of what audit activity might entail will be agreed as part of the ASA and, once again, I will ensure that DETI Audit colleagues are involved in these discussions.

Legal Contingency Fund

9. The Ofgem feasibility study referred to the need for DETI to provide a £1m per year legal contingency fund to meet any legal challenge. As an alternative Ofgem had agreed that DETI could assume the legal risk. The Casework Committee sought further clarification of what this meant.

10. We have discussed the matter further with Ofgem and in its experience of administering environmental schemes; it believes legal challenge could arise either in relation to DETI’s policy or to the administration of the scheme as carried out by Ofgem. In the case of a challenge to DETI’s policy, it is clear that the responsibility would rest with DETI. In respect of the administration of the scheme, everything possible will be done to minimise the risk and to rectify problems that occur. For
d. **Explain in detail how the Department monitored the Scheme from the outset (in terms of numbers of applications, progress against budget, etc.):**

7.50 On launch of the Scheme in November 2012 there were a number of different methods for monitoring the Scheme – this was aided by reports provided to the Department from Ofgem.

7.51 On a weekly basis, Ofgem provided data on the applications received and the progress of these applications towards accreditation. Information within this spreadsheet included elements such as type of technology; installation capacity; efficiency; average hours of operation each week; application status (approved / with applicant / in review); commissioning date etc. I developed a simple spreadsheet to track NI information against readily available information from the GB scheme at the same point of time. The spreadsheet therefore recorded number of applications, number of accreditation and total installed heat capacity. To ensure a like for like comparison I recorded NI information for the first month of the Scheme compared to GB information in the first month of their Scheme i.e. Dec 12 uptake for Northern Ireland compared to Dec 11 uptake for GB. The spreadsheet\(^{156}\) provided a % comparison between NI and GB for the three areas mentioned and was a tool to see how uptake in the NI scheme compared with GB.

7.52 I also used this data to attempt to project the level of uptake required to secure the 4% PfG target to 2015 and the 10% target to 2020. In a sheet within the spreadsheet entitled “Target forecasting”, I outlined the expected overall heat demand in each year between 2010 and 2020 (based on the AECOM / Pöyry analysis); recorded the renewable heat supported to date; and calculated various scenarios (low / medium / high) within the domestic and non-domestic market that could take place to support the target. This was purely indicative but sought to provide some understanding on the requirements in terms of uptake if the targets were to be achieved.

\(^{156}\) See Annex 66
On a monthly basis, Ofgem provided data to DETI on the accredited installations that required payment. The information included the accreditation number, the submitted heat data (from the required heat meters) and the required payment. Ofgem also provided a summary of the information and details on the total payment required to be submitted by DETI to Ofgem. This process was co-ordinated by a colleague within Energy Division who co-ordinated all Divisional budgets. I checked the information and advising my colleague whether I was content for the payment be made to Ofgem. Joanne McCutcheon was also been involved in this process. Once our colleague was content approval had been given the payment was processed through Account NI. The funding being provided to Ofgem was recorded and profiled against our annual budgets set for the Scheme. On occasion, I sought to forecast the expected spend for the financial year based on uptake, trends and expected payments.

On an annual basis Ofgem provided a brief report\(^{157}\) on the operation of the Scheme. In my time there was only one such report, received from Edmund Ward on 22 November 2013. It provided a high level overview of information relating to the accredited installations such as types of technology, sizes and general locations.

As uptake increased in early 2014\(^{158}\), the comparison between NI and GB got to over close to 7% in terms of cumulative applications, whilst only 4.1% of accredited heat capacity. This, in itself, wasn’t seen as a major cause of concern but rather a trend to be kept under review. As the NI Scheme had started 12 months after the GB Scheme it could be expected NI figures would be higher than the 3-5% comparator expected given increased maturity in the market and understanding of the Scheme – however it was worth tracking and keeping under consideration.

\(^{157}\) See Annex 65

\(^{158}\) January 2014 – 10 applications; February 2014 – 19 applications; March 2014 – 18 applications; April 2014 – 18 applications.
Review of draft NI RHI Regulations

First Ofgem legal review of the draft Northern Ireland Renewable Heat Incentive (“NI RHI”) Regulations, concentrating on issues of administration by the Gas and Electricity Markets Authority (“GEMA”) of the NI RHI scheme and deficiencies in the draft NI RHI Regulations

From
Faye Nicholls
To
Jonah Anthony and Catherine McArthur
Marcus Porter; Ashley Malster; Jacqueline Ballan.
cc
Date
4 November 2011

1. Introduction

1.1. This purpose of this memo is to highlight to the Department of Enterprise, Trade and Investment ("DETI") issues which have arisen during the course of the development stage of the Great Britain RHI scheme ("GB RHI") and identified as areas which require review and revision in amending regulations. It also considers viries issues specific to the proposed administration of the NI RHI scheme by GEMA. Due to time constraints, this review does not incorporate those issues which have arisen during the legal review by Ofgem’s legal team (Commercial Legal) of the latest version of Ofgem’s guidance document for the GB RHI. We propose to inform DETI of these further issues with our comments on the next iteration of the draft NI RHI Regulations during the Development phase. This memo does not discuss the terms of arrangements to be made between the Northern Ireland authority and GEMA for the administration of the NI RHI scheme.

2. Viries flowing from primary legislation

2.1. Section 114 of the Energy Act 2011 provides that the Northern Ireland authority ("NIa") and GEMA are entitled to enter into arrangements for GEMA to act on behalf of the NIa for, or in connection with, the carrying out of any functions that may be conferred on the NIa under, or for the purposes of, any scheme that may be established under s. 113. We note a distinction between s.114 of this Act and s. 121 of the Energy Act 2004 (which provides for GEMA to act on behalf of the Northern Ireland Authority for Utility Regulation ("NIAUR") in the administration of the NIRO), which has an additional provision that NIAUR and GEMA may "give effect to" these arrangements.

We would welcome DETI’s view on whether or not s. 114 of the Energy is deficient in not expressly stating that the NIa and GEMA may “give effect to” the arrangements stated in s114(1).

2.2. We note that the powers in ss. 113 and 114 of the Energy Act 2011 don’t come into force until two months after the date on which this Act was passed. Therefore, the NI RHI Regulations and any arrangements between GEMA and the NIa cannot be made before 21st December 2011.

3. Procedural issues

3.1. Confirmation is sought from DETI that the Regulations will be subject to Confirmatory Resolution (meaning that the Regulations cannot be made unless a draft of the Regulations has been laid before and approved by a resolution of the Northern Ireland Assembly) and that no Parliamentary approval is required from Westminster.

3.2. Because the NI RHI will involve State aid within the meaning of Article 107(1) of TFEU, DETI will need to obtain State aid approval before the NI RHI Regulations are made. We note that, in relation to the GB RHI scheme, DECC submitted a pre-notification for State
Aid approval to the Commission in late December 2010 and did not receive the Commission’s decision until 29 September 2011.

**We would welcome clarification from DETI in relation to its timetable for obtaining State aid approval.**

3.3. The provisions of the draft Great Britain RHI Regulations also required a technical specification notification to be made to the European Commission. It’s likely that a similar notification will be required to be made by DETI. If so, we note that the NI RHI Regulations cannot come into effect until the expiry of a standstill period of 3 months, running from the date of receipt of the notification by the European Commission.

**We would welcome clarification from DETI in relation to its timetable for submitting any relevant technical standards notifications.**

4. **Costs of administration of the scheme**

4.1. It’s our understanding that the NI RHI, like the GB RHI, will be funded directly from treasury funds, rather than by fossil fuel suppliers. Consequently, an issue which has arisen in relation to the administration of the GB RHI is that of ensuring sufficient funds to meet the administrative requirements of the scheme. Funding arrangements will need to be discussed in detail by DETI, NIAUR and GEMA.

5. **Scope of GEMA’s administration of the NI RHI**

5.1. Discussion of the scope of GEMA’s administration of the NI RHI scheme is outside the scope of this memo. However, DETI and GEMA will need to discuss the nature and extent of GEMA’s agency and those functions that will be reserved to the NIa (for example it is unlikely that GEMA will be able to recoup debts owed to the NIa). This will require further legal analysis.

5.2. The Energy (Northern Ireland) Order 2003 bestows duties and functions upon NIAUR which are substantively the same as those to which GEMA is subject to pursuant to the Electricity Act 1989 and the Gas Act 1986. Any arrangements between NIAUR and GEMA must not fetter either of the parties’ ability to discharge their regulatory powers, obligations and duties.

6. **Review of the draft NI RHI Regulations**

6.1. During development of the GB RHI scheme, Ofgem noted a number of deficiencies in the drafting of the GB RHI Regulations. Because DETI has chosen to use the GB RHI Regulations as the basis for the NI RHI Regulations, we attach a table detailing our notes on the GB scheme at Appendix 1, which we have revised in order to make sense of this in relation to the draft NI RHI Regulations. This table is a working draft because work is yet to commence in earnest on the next iteration of the GB RHI Regulations, at which point further issues may come to light (which we may share with DETI). Likewise, further issues may arise in relation to the operation of the GB RHI scheme, when it goes live. Again, we may share information on these issues with DETI.

6.2. Please see Appendix 2 for further comments specifically in relation to the working draft NI RHI Regulations (dated 4 October 2011). We note that there remain a significant number of issues that have yet to be resolved by DETI at at policy level.

**We welcome further discussion with DETI on areas where policy is in development.**
## Appendix 1

### Issues relevant to both the GB RHI Regulations and the draft NI RHI Regulations

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
<th>Overview</th>
<th>Suggested solution</th>
<th>Priority level (H/M/L)</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Biomethane duration</td>
<td>Policy is to stop payments after 20 years but regulations don't have a mechanism to do that.</td>
<td>Added by FN: In meeting of 15.8.11, DECC stated that they were comfortable with biogas being tankered within GB as in 9 a). However it was not DECC's original policy intent to allow biogas from outside of GB. Ofgem noted that there was a risk of non-GB biogas or biomethane being used for injection in GB. DECC noted that they were unsure whether it would actually be possible for biogas produced outside the GB to be used as an input in GB, however DECC recognised that without specific reference disallowing non-GB biogas/biomethane in the regulations, such biogas/biomethane would have to be allowed. Ofgem legal commented that restricting the ability of other EU member states to produce biogas or biomethane for combustion/biomethane injection in the UK could restrict trade between member states but that DECC should raise this with DECC legal, as state aid provisions may permit this kind of restriction. Either way, amending regulations would be required to impose such a restriction.</td>
<td>AM</td>
<td></td>
</tr>
<tr>
<td>1c</td>
<td>Biomethane provenance</td>
<td>Biogas from outside GB shouldn't be allowed.</td>
<td>Added by FN: There is no specific provision in the RHI Regulations which deals with the geographical location of facilities used to produce the biogas or biomethane for injection. We believe this means that: a) Biogas that is produced in one location can then be tankered (or piped?) to a different location for upgrading to biomethane and injecting into the grid b) Biogas from Biogas Production which is undertaken outside GB could potentially be used as an input to Biomethane Processing which occurs in GB; and/or c) Biomethane Processing may occur outside GB, with the end product being delivered for Biomethane Injection in GB.</td>
<td>AM/FN</td>
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</tr>
<tr>
<td>1e</td>
<td>Heat pump immersion heaters</td>
<td>Difficult to follow DECC’s policy of ignoring built in immersion heaters given the way the Regs are drafted.</td>
<td>DETI should expressly state whether or not (or to what extent) such systems are eligible. This will be of particular importance for the NIAUR, who must only pay for heat generated</td>
<td>AM</td>
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<tr>
<td>Issue</td>
<td>Suggested solution</td>
<td>Priority level (H/M/L)</td>
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<tr>
<td>1g</td>
<td>Double counting There is no general provision excluding heat use for parasitic loads from double counting for PSPs.</td>
<td>Include parasitic loads as ineligible use, add general avoidance provision, add in any new specific loads identified (least good option)</td>
<td>RZ/AM</td>
<td></td>
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</tr>
<tr>
<td>1h</td>
<td>Moving equipment rendering it ineligible Uprooting an already-accredited installation and moving it to a new site, would render it ineligible – as it would constitute a different application with a now “old” installation. This issue has come up a few times in guidance consultation events, because of concerns that finance companies would want to take back equipment in the event of a default, install it at a new location and still be able to claim RHI.</td>
<td>DECC agreed (15.08.11) that moving a plant to a new site would render a plant ineligible. DECC did acknowledge the issue that has been raised about finance companies wanting to be able to take stranded equipment and would be concerned if this was a big blocker to RHI take-up, but they agreed this was something that would need to be taken forward in separate regulations (e.g. 2012). DETI to consider its position in light of these comments.</td>
<td>H</td>
<td>FN/AM</td>
<td></td>
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<tr>
<td>1i</td>
<td>Gasification/pyrolysis Further clarity on gasification/pyrolysis. DETI should clarify what they’re actually incentivising.</td>
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<td>OM</td>
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2 Ambiguities (i.e. regulations unclear and sufficient risk of legal challenge)

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<thead>
<tr>
<th>No.</th>
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<tr>
<td>2a</td>
<td>“Natural” loss systems</td>
<td>Clarity on heat eligibility and metering requirements for “natural” system losses – particularly in pipes between buildings.</td>
<td>Ofgem is currently working on a methodology for calculating heat loss across systems. Consider whether or not to include such a methodology directly in the NI RHI Regulations (or the insertion of a provision providing NIAUR with the discretion to set a methodology to determine heat loss.</td>
<td>H</td>
<td>AM/FN</td>
</tr>
<tr>
<td>2b</td>
<td>Installation definition</td>
<td>What counts as an installation for purposes of what must be ‘new’ and which plant may not receive grants – currently relying on Ofgem guidance, but open to legal challenge where our interpretation doesn’t suit applicant.</td>
<td>Ofgem requires clear direction from DETI in relation to exactly what plant forms each type of eligible installation/ biomethane production plant. This information should be gathered in the course of DETI’s research into the costs of purchasing and installing heat generation plant (from which it will calculate the appropriate tariff levels). It may be that a lack of such detailed information prolonged the time which the European Commission needed in order to assess overcompensation for the purposes of awarding state aid approval for the GB RHI Regulations.</td>
<td>H</td>
<td>AM</td>
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<tr>
<td>2c</td>
<td>Building definition</td>
<td>Requires greater clarity, particularly what is meant by “permanent and long lasting”, as there is no useful legal precedent for this term, which is opaque</td>
<td>Issue raised with DECC 15.8.11 – DECC did not have a strong policy intent in this area. The two year minimum period approach taken</td>
<td>H</td>
<td>AM/FN</td>
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<tr>
<td><strong>Review of draft NI RHI Regulations</strong></td>
<td><strong>Memo</strong></td>
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<td>and problematic. Definition would include moored boats but exclude boats that went up and down a waterway as installations need to be in one place. However, note the fraud risks of allowing installations to move around. Issues arising from space heating – why is it important that it’s in a building when certain industrial processes may need heat to be vented post-process e.g. drying.</td>
<td>by Ofgem seemed a little short, but they were content with us taking this approach on the basis that it allowed us to draw a line using existing precedents. It is not satisfactory that Ofgem should be ‘clarifying’ what is a key definition in the Regulations. Ofgem Legal considers that this definition requires clarification in the NI RHI Regulations. DETI should give further thought to unusual buildings e.g. portacabins, tents, polytunnels, barges, distillation columns etc. and consider minimum energy efficiency standards for buildings (see comment below).</td>
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<tr>
<td>2d</td>
<td>Process definition</td>
<td>More relevant to DETI for the purposes of cost control than an issue which creates administrative issues.</td>
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<tr>
<td>2e</td>
<td>Biogas production plant</td>
<td>As biogas production plant generally forms the most expensive part of biomethane production facilities/ biogas combustion facilities, this will affect the tariff levels that DETI wish to set/ may mean that DETI expressly states that biomethane production plant forms: i) part of the equipment used to produce biomethane and ii) part of the an eligible installation generating heat using biogas.</td>
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<tr>
<td>2f</td>
<td>Heat pumps – ground water source</td>
<td>Amend Regulations to give clarity on this (amendment to 8(1) to include ground water view that it should be)</td>
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<tr>
<td>2g</td>
<td>Regulation 14</td>
<td>Legal re-draft</td>
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<tr>
<td>2h</td>
<td>Regulation 14 (3) specifically</td>
<td>Legal re-draft</td>
<td></td>
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<tr>
<td>2i</td>
<td>Reg. 17 (2) (a) Complex metering</td>
<td>Legal re-draft required. This ties in with the point on &quot;Natural&quot; heat loss, above. Ofgem is currently working on a methodology for calculating heat loss across systems. Consider whether or not to include such a methodology directly in the NI RHI Regulations (or the insertion of a provision providing NIAUR with the discretion to set a methodology to</td>
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**Notes:**
- DFE-66117
- Received from DFE on 02.05.2017
- Annotated by RHI Inquiry
### 2j Reg. 15(c)
Suggest moving this section to the additional capacity section (Reg. 43/44) to ensure Regulations are not spread out (Reg. 15(c) was a last minute addition and could be missed if AC section read in isolation).

Re-position of Reg. 15(c) to additional capacity section (Reg. 43/44).

AV

### 2k Definition “naturally occurring”
Defining this could help clear up the eligibility of heating systems that use interseasonal heat transfer methods (DECC policy intent).

Definition allowing for interseasonal heat transfer technology, within the naturally occurring Reg. 8 & Reg. 10 sections.

AV

### 3 Administrative difficulties resulting from the regulations

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</table>
| 3a  | Access rights                | Lack of clear right to require access to heat distribution system to check for eligible uses (in non-domestic properties). Accreditation condition is a second best. This represents a clear fraud risk. | i) Insert an ongoing obligation in Reg. 34 to the effect that participants must procure access to non-domestic properties in/on/over which an installation and/or its associated infrastructure is located; and  
ii) Consider clarifying/revising the term “associated infrastructure” in Regulation 50; and  
iii) Add a further subparagraph to Reg. 50(1) to “verify eligible heat use”. | H                      | AM      |
| 3b  | Biomethane production       | Lack of right in Regs. to inspect any aspect of biomethane production. May have been expectation that gas conveyor would be verifying but they won’t be verifying that it came from renewable sources. |
Added by FN: I’m worried that if we don’t audit then the figures will be open to fraud. We would like to be able to audit:
• Whether the kWh figures they have been providing to us match the measurement readings from the facility itself (e.g. they will have volume and GCV readings at the site, resulting in kWh figures, which we need to be able to check).
• Whether kWh figures from propane they’re providing us are correct.

There is no power for NIAUR to inspect the biogas plant used to supply the biogas for the biomethane.  
This links with the loopholes in the Regulations (at 2(e) above, 32 below and in... | H                      | AM      |
production process. This means that NIAUR will not have the ability to verify or audit compliance with Reg. 33 feedstock/ biomass composition requirements, use of external heat in biogas plant, integrity of supply chain up to injection, sustainability reporting requirements etc.  

relation to the exclusion on inspections of biomethane production plat at Regs. 34(i) and 50) which means that biogas plant is not considered to be part of the biogas combustion installation/ biomethane production plant. The other related issues need to be addressed in order to be able to insert provisions dealing with the issue highlighted here.

| 3c | Sanctions | Currently only downside of applying for something wholly ineligible is that we won’t give them the money they’re not eligible to receive, plus perceived risk of a successful fraud prosecution. | AM |
| 3d | Metering | Do Regs. have the right balance of allowing pragmatic approach whilst giving us enough backup to impose requirements?: We are keen to revisit this in light of (i) the heat loss approach we adopt; (ii) any approach we can formalise on a mixture of eligible/ ineligible uses within buildings; and (iii) any changes to the building definition noted above | EW |
| 3e | Data accuracy | A condition is to be applied stating that participants will submit accurate data. There is not an explicit power under the regulations to require this, which means that in circumstances where inaccurate data is submitted (either knowingly or unknowingly) there is no clear enforcement action that can be taken. | H LM |

### 4 Potential perverse outcomes

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<tr>
<th>No.</th>
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</thead>
<tbody>
<tr>
<td>4a</td>
<td>Lack of regulation of biomethane producers.</td>
<td>The Regs impose few obligations on producers of biomethane in relation to those placed on owners of accredited RHI installations.</td>
<td>We would suggest that a full review of the draft Regs, as they are intended to apply to biomethane producers, be carried out to ensure that DETI’s policy objectives are met.</td>
<td>H FN</td>
<td></td>
</tr>
<tr>
<td>4b</td>
<td>Biogas and biomethane boundary</td>
<td>This could encourage (wasteful) quenching of gas just to claim RHI biogas tariff. What type of biogas production does DETI want to encourage?</td>
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<td>AM</td>
<td></td>
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<tr>
<td>4c</td>
<td>Brand new equipment</td>
<td>Requirement that all relevant equipment must be brand new could lead to wasteful throwing away of acceptable ancillary equipment, but permitting it may create extra complications in working out which piece of equipment is accredited and tracking its movement.</td>
<td>Further consideration to be given to eligibility of older/ refurbished plant. Is this possible without making administration difficult?</td>
<td>L AM</td>
<td></td>
</tr>
<tr>
<td>4d</td>
<td>Separate heating circuits/systems</td>
<td>Some participants may install additional pipework</td>
<td>Could consider imposing a requirement that</td>
<td>M EW</td>
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</tbody>
</table>
and multiple smaller (and potentially less efficient) units in order to meet eligibility or higher-tariff thresholds where separate heating systems serve the same end heat use purpose, they are considered to be part of the same heating system – amounts to a tightening (statement) of the definition of a heating system

5 Gaming opportunities

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<th>No.</th>
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</thead>
<tbody>
<tr>
<td>5a</td>
<td>Useful heat</td>
<td>Currently minimal restrictions on what counts as eligible heat use and our powers are quite limited here. Please see legal comments below.</td>
<td></td>
<td>H</td>
<td>AM</td>
</tr>
<tr>
<td>5b</td>
<td>Industrial heat use</td>
<td>Industrial heat use outside of a building is not allowed but inefficient space heating is.</td>
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<td>AM</td>
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</table>

6 Stakeholder requests (common requests that may merit consideration)

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<tbody>
<tr>
<td>6a</td>
<td>Biomass from waste</td>
<td>At present, only municipal waste may be used and this is narrowly defined and excludes many would-be participants.</td>
<td>DETI should consider the possibility of opening up the biomass from waste category beyond municipal waste – or at least allowing non-municipal waste to be counted as legitimate contamination that is not paid for. Also, is there good reason to prohibit supplementing municipal waste with other biomass (e.g. wood) if source is temporarily unavailable for example? In all cases, any opening up of this category must be capable of proper administration.</td>
<td>L</td>
<td>AM</td>
</tr>
<tr>
<td>6b</td>
<td>Energy efficiency</td>
<td>Shouldn’t there be a minimum energy efficiency requirement before participation in the RHI?</td>
<td>This also concerns the definition of building, above. DETI should consider whether or not any existing standards of energy efficiency in building legislation may assist in setting such a minimum level.</td>
<td>H</td>
<td>JB</td>
</tr>
<tr>
<td>6c</td>
<td>Extend scope of Preliminary Accreditation</td>
<td>As per 8a below - there are a number of smaller businesses that would like to install but feel constrained by uncertainty of eligibility and not willing to commit large sums of money on basis of uncertainty.</td>
<td>As per 8a below</td>
<td>L</td>
<td>EW/DS</td>
</tr>
</tbody>
</table>

7 Legal
<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
<th>Overview</th>
<th>Suggested solution</th>
<th>Priority level (H/M/L)</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a</td>
<td>Publication of information</td>
<td>There is no ability for NIAUR to restrict publication of (aggregated) RHI info where this may reveal commercially sensitive information relating to a participant.</td>
<td>Express provision required giving NIAUR the power to restrict publication of information in these circumstances?</td>
<td>H</td>
<td>FN</td>
</tr>
<tr>
<td>7b</td>
<td>Repayment of grant monies in relation to biomethane production plant</td>
<td>Insert equivalent of r 23(1)(b) into r.25.</td>
<td></td>
<td>H</td>
<td>FN</td>
</tr>
<tr>
<td>7c</td>
<td>Power for the NIAUR to inspect participants’ premises for eligible heat use</td>
<td>As the regulations are currently drafted, NIAUR has the power to inspect a participant’s installation (providing this is not on third party premises) but does not have the power to inspect the participant’s premises for eligible heat use.</td>
<td>According to Counsel’s opinion (see email from Morag Drummond dated 2 Aug 2011 at 18:00), incidental to the performance of NIAUR’s accreditation/registration duty under Reg. 22 is a power to ensure that the eligibility criteria truly have been met. But it’s not clear that this extends to inspection of the participant’s premises. The regulations should be amended to incorporate a power to inspect eligible heat use.</td>
<td>H</td>
<td>FN</td>
</tr>
<tr>
<td>7d</td>
<td>How is the 10% ancillary energy content amount determined?</td>
<td>Reg. 28 provides for NIAUR to determine the proportion of solid biomass that is contained in municipal waste but does not have a similar provision in relation to the 10% energy content. Reg. 29 provides for NIAUR to determine the proportion of fossil fuel contamination that is contained in solid biomass but does not have a similar provision in relation to the 10% energy content limit for ancillary purposes.</td>
<td>At present, Ofgem has stated, in its Guidance, that it will consider the person who pays for the biomethane to be produced to be the “producer of biomethane”. Although this reflects the policy position, it is an unsatisfactory and risky approach, which is not clearly supported by the Regs. If the present drafting is adopted by DETI, this places NIAUR under risk of challenge, if the same approach is to be taken. The regulations should clearly state that/define a ‘producer of biomethane’ to be the person who pays for biomethane to be processed so that it is suitable for injection.</td>
<td>M</td>
<td>FN</td>
</tr>
<tr>
<td>7f</td>
<td>Biomethane producer definition</td>
<td>DECC's intention is that the party who injects biomethane on to the grid should be regarded as the “producer of biomethane” for the purposes of the Regs. We consider that the Regulations do not make this clear. Where “producer” is not defined, there is a risk that several parties in the biomethane production process may claim to be a “producer” under the Regs, including one or more of: i) The person who produces the biogas ii) The person who processes biogas inputs into biomethane e.g. by removing inert compounds such as CO2 and nitrogen iii) The person who adds propane etc. to</td>
<td>At present, Ofgem has stated, in its Guidance, that it will consider the person who pays for the biomethane to be produced to be the “producer of biomethane”. Although this reflects the policy position, it is an unsatisfactory and risky approach, which is not clearly supported by the Regs. If the present drafting is adopted by DETI, this places NIAUR under risk of challenge, if the same approach is to be taken. The regulations should clearly state that/define a ‘producer of biomethane’ to be the person who pays for biomethane to be processed so that it is suitable for injection.</td>
<td>H</td>
<td>FN</td>
</tr>
<tr>
<td>7g</td>
<td>Retrospective application of new eligibility criteria and ongoing obligations: Has DETI considered if and how existing participants will be affected?</td>
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<td></td>
<td>E.g. where subsequent changes to the regulations alter the eligibility criteria and ongoing obligations, is an existing participant obliged to comply with eligibility criteria and ongoing obligations from time to time or do they only have to comply with the requirements that were set at the time the accreditation date for the duration of the tariff lifetime?</td>
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<td></td>
<td>This also relates to point 7h below. DETI should also consider this issue in relation to regulation 22(8) regarding changes to accreditation and cf. regulation 26 in relation to preliminary accreditation.</td>
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</table>

<table>
<thead>
<tr>
<th>7h</th>
<th>Power to amend conditions of accreditation once participation has commenced.</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>The regulations do not enable NIAUR to amend, revoke or add conditions, once an installation is accredited/ producer registered. Over the twenty year tariff lifetime, it’s highly likely that this power will be required and without correction, NIAUR’s administration will be fettered and could lead to perverse outcomes.</td>
</tr>
<tr>
<td></td>
<td>Express provision needs to be added to the Regulations.</td>
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</table>

<table>
<thead>
<tr>
<th>7i</th>
<th>Regulations 23 and 25</th>
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<tbody>
<tr>
<td></td>
<td>Because Regs 23 and 25 are not ongoing obligations, it appears that participants will not be required to not receive/ pay back grants once they’re participating in the scheme; NIAUR does not have the power to use the part 7 enforcement powers in this case. Attaching a condition of Clarification of Regs. 23 and 25 (add non-receipt of grant monies to the ongoing obligations for all participants) and possible exception to use Part 7 sanctions to remedy examples of double-funding.</td>
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<td></td>
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<tr>
<td>7j</td>
<td>Change of ownership</td>
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<tr>
<td>7k</td>
<td>Revoking accreditation</td>
</tr>
<tr>
<td>7l</td>
<td>Applicability of Part 7 to previous participants</td>
</tr>
<tr>
<td></td>
<td>Reporting requirements for installations between 45kW and 1MW</td>
</tr>
<tr>
<td></td>
<td>Reg. 2</td>
</tr>
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<td></td>
<td>Reg. 2</td>
</tr>
</tbody>
</table>
definition:

• heating system (see comment at Reg. 14)
• economically justifiable heat requirement (see comment at Reg.
• process/qualifying process (see Reg. 2)

Reg. 2

"Process" is defined in the Regs as "any process other than the generation of electricity". DECC has advised that, in their initial view, the dictionary definition of process should otherwise apply to that term (responses to Ofgem comments on 21 Feb draft RHI Regs). Process is there defined as "a continuous and regular action or succession of actions taking place or carried on in a definite manner; a continuous (natural or artificial) operation or series of operations" (as cited in R v AI Industrial Products Plc [1987] IRLR 296 a case pertaining to the meaning of process under the Factories Act 1961 where a one-off demolition of a kiln was not a "process").

"Process" or "process heating" does not appear to be explicitly defined in any existing UK legislation. Process heating is referred to in Annex I of the Detailed guidelines for the implementation and application of Annex II to Directive 2004/8/EC (Cogeneration Directive, 11 Feb 2004), s.5.6, which provides guidance on useful heat but process heating is not itself defined. The US Department of Energy defines process heating as "the direct process end use in which energy is used to raise the temperature of substances involved in the manufacturing process". The Carbon Trust produces a Technology Overview (CTV031) for process heating which describes process heating as "a diverse area". The Overview lists the following "more common" processes covered by the term: cooking, baking, drying, evaporation, laundering, sterilisation, forced air drying, distillation, heat treatment, annealing, chemical processing, catalytic and steam cracking, firing ceramics, smelting, glass melting and arc furnaces.

The definition of the term "process" in the Regs does not currently seek to limit the meaning of the term "process", other than to exclude electricity generation. Therefore, based on the above analysis, the current definition of “process” should be replaced with an alternative defined term of “qualifying process” which should be used at r. 3(2)(c) and r.12 (1)(c) (although note comments below on streamlining the drafting of r. 12(1)(c). The definition of “qualifying process” could be then be developed as necessary without affecting other occurrences of the term “process” in the Regs.
process/process heating is likely to lend itself to wide interpretation. DETI should consider from a policy perspective if there are any process to which heat might be supplied which the government does not consider suitable for RHI support so that the definition can be drafted more narrowly in order to cover these off and ensure that NIAUR can administer in line with clear policy.

In addition, we note that "process" is used in other contexts in the draft RHI Regs (e.g. r. 22(6)(f); 25(2)(c); 28(7)(b); 29(3)(a); 33(7) and Sch. 2, para 2(d). These occurrences would also attract the definition given in r. 2.

| Reg. 2 | The definition of MCS as presently drafted (…or equivalent scheme accredited under EN45011 which certify microgeneration products and installers in accordance with consistent standards“ creates the risk that NIAUR would be obliged to evaluate whether an EN45011 accredited scheme for the certification of microgeneration products and installers is "equivalent" for the purposes of the NI RHI. This is not workable in practice bearing in mind the range of schemes which participants may claim meet the equivalency test and could cause unacceptable delays in the accreditation process. It should be a policy matter for DETI to agree those schemes which it deems equivalent.

Therefore, the drafting should be amended to read “means the Microgeneration Certification Scheme or other scheme accredited under EN45011 which certifies microgeneration products and installers in accordance with consistent standards and which has been recognised as equivalent to the Microgeneration Certification Scheme by the Department.”

We note in this regard that a similar issue arose in connection with the use of schemes equivalent to the Carbon Trust Standard for early action metrics under the CRC Energy Efficiency Scheme. In the Scheme Order, Schedule 8 para 5 (6) (b) the drafting used was "such other rules concerning the certification of emissions which the administrator and the participant agree.” This drafting led to uncertainty for the Environment Agency and
participants and resulted in the need to issue a DECC guidance document on the issue (see: http://www.decc.gov.uk/assets/decc/what%20we%20do%20low%20carbon%20uk/crc/1_20100219140648e_@_ctsequivalentsguidance.pdf.)

Reg. 2

The term "premises" appears in the definition of "commissioned" and "domestic premises" and in Regulation 50 regarding inspection.

"Premises" is defined in varying ways in other legislation. The Electricity Act 1989 states that "premises" "includes any land, building or structure" and The Rights of Entry (Gas and Electricity Boards) Act 1954 defines "premises" as "a building or part of a building" (s.3). The Health & Safety at Work Act 1974, Part 1, S.53, reads "premises includes any place and, in particular, includes—(a) any vehicle, vessel, aircraft or hovercraft, (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and (c) any tent or movable structure". A similar approach is taken in public sector guidance on interpreting this term, for example, HMRC guidance manuals state that "premises include any building or structure, any land and any means of transport". This suggests that "premises" is wider in scope than the phrase used in the draft regulation’s definition of eligible purpose ("building or other enclosed structure") (see later comment on this phrase) and introduces uncertainty in relation to the meaning of "commissioned".

Therefore, the definition of "commissioned" requires clarification. Could the phrase “delivering heat to the premises or process for which it was installed” be replaced by “delivering heat for eligible purposes”? This approach has already been used at r. 17 (2) (a). See also our comments on "process" at r. 3 (2).

Reg. 2

In definition of "participant" suggest changing "a producer" to "the producer" to ensure that only one (or one representative of multiple owners) producer of biomethane may apply.
<table>
<thead>
<tr>
<th>Reg. 2</th>
<th>The definition of “participant” states that “where there is more than one... owner”, the participant is “the owner with authority to act on behalf of all owners in accordance with Regulation 22(3)”. Ofgem considers that this person should be defined as the “representative owner” in the Regulations. Ofgem considers that similar provision needs to be made in relation to multiple producers of biomethane.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reg. 2</td>
<td>A definition of “solid biomass” is required in order to provide clarity on ineligible forms of biomass. E.g. is tallow eligible – this is solid at ambient temperatures, but is likely to be a liquid when combusted.</td>
</tr>
<tr>
<td>Reg. 2</td>
<td>The definition of “steam measuring equipment” includes the phrase &quot;means all the equipment needed to measure to the NI Authority’s satisfaction the mass flow rate and energy of steam...&quot;. This places the onus on NIAUR to determine a satisfactory degree of accuracy for steam measurement. It is not yet practicable to introduce a minimum standard (e.g. the 2% accuracy level which has been discussed) or for NIAUR to issue detailed guidance on satisfactory levels of accuracy, there will not be a transparent benchmark for steam measurement which applicants need to meet to gain accreditation. Therefore, if NIAUR sought to reject an application on the basis that the measurement accuracy delivered by steam measurement equipment was not satisfactory, there is a potential risk of challenge to such a decision on grounds of fairness, due process etc. There will also be practical difficulties in achieving a consistent approach to assessing satisfactory levels of measurement accuracy without setting a &quot;de facto&quot; minimum standard internally within NIAUR. The phrase &quot;to the NI Authority’s satisfaction&quot; should be removed. If it is DETI’s intention to introduce a minimum standard, this should be dealt with by introducing an additional sub-clause at r.20 (2).</td>
</tr>
<tr>
<td>Reg.5(b) and schedule 1, para (2)(i)</td>
<td>We note that the section of the Energy Act 2011 which refers to eligible technologies for the RHI (s. 113 (4)) refers to sources of energy rather than fuels (presumably as fuel is not relevant to particular technologies such as heat pumps, solar etc.). In addition, &quot;fuel&quot; is not defined either in the Energy Act 2011 or the Regs. Therefore, it would be preferable to use this wording from the primary legislation in describing eligible installations. We suggest amending Reg. 5(b) to read “...installed to...”</td>
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</table>
**Review of draft NI RHI Regulations**

<table>
<thead>
<tr>
<th>Memo</th>
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<tbody>
<tr>
<td>use solid biomass as its only source of energy” and replace “fuel” with “source of energy” in Schedule 1, para (2)(i)</td>
</tr>
<tr>
<td><strong>Reg. 12(1)(c)</strong></td>
</tr>
<tr>
<td>We note that paras (c) and (d) could be combined to read: “the plant generates heat used for an eligible purpose and uses water or steam as a medium for delivering such heat”.</td>
</tr>
<tr>
<td><strong>Reg. 14</strong></td>
</tr>
<tr>
<td>There is no equivalent of this regulation which applies to biomethane producers</td>
</tr>
<tr>
<td>The effect of not requiring specific detail in relation to biomethane production plant is that specifics do not form part of a biomethane producer’s eligibility criteria for the RHI scheme. Therefore, for the purposes of audit, the Authority will have no knowledge of the capacity of such plant at registration and therefore no way of verifying the authenticity or accuracy of the figure provided at element “D” of Reg. 42.</td>
</tr>
<tr>
<td><strong>Reg. 14</strong></td>
</tr>
<tr>
<td>“Heating system” should be defined as this concept is a key determinant of whether multiple plants should be treated as a single installation, the treatment of additional capacity and the calculation of payments. The term “heating system” appears at: Regs 14(2)(b); 15; 17(2)(a); 17(3); 34(1); 37(6); 39(2); 43(1); 43(5); 43(7); Sch. 1(2)(v)(iv) and Explanatory note (Part 6).</td>
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<tr>
<td>DETI should add a defined term to ensure clarity. It is not acceptable for this to be clarified in guidance.</td>
</tr>
<tr>
<td><strong>Reg. 15</strong></td>
</tr>
<tr>
<td>There is no equivalent of this regulation which applies to biomethane producers</td>
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<tr>
<td>The effect of this is to make all biomethane production plant eligible for the scheme, regardless of its capacity or composition. DETI may wish to reconsider this matter.</td>
</tr>
<tr>
<td><strong>Reg. 15(2)</strong></td>
</tr>
<tr>
<td>If it is DETI’s policy that previously adapted premises which are now used wholly as a private residential dwelling (e.g. a former guest-house now in use as a purely residential property) should be treated as domestic, the drafting could be amended to read “…not been adapted for a non-residential use which is continuing.”</td>
</tr>
<tr>
<td>DETI to consider.</td>
</tr>
<tr>
<td>Ofgem’s approach to determining whether or not premises are domestic is based on the treatment of such premises by the Valuation Office for rating purposes. Is this a consistent approach that can be used in Northern Ireland? If not, further provisions may need to be included in the Regulations.</td>
</tr>
<tr>
<td><strong>Regs. 16-21 (metering)</strong></td>
</tr>
<tr>
<td>There is no equivalent of these regulations which applies to biomethane producers</td>
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</tbody>
</table>
| The effect of this is that there is no obligation on a biomethane producer to install meters of any particular standard. It is our understanding that this is because DECC and Ofgem are satisfied that appropriate
<p>| Reg. 22 | It is DECC policy that only owners, not agents, can participate in the scheme. The Regulations do not effect this policy because the Regs don't prevent the owners giving a nominal share to an agent to enable it to administer the scheme as an owner. | If DETI considers this to be undesirable from a policy perspective, this could be resolved by requiring that the person who has day to day interaction with the Authority (the person who is authorised to access the central register) is someone who exercises management control over the participant (or to whom such management control has been delegated). | L | FN |
| Reg. 22(a) | Before the words &quot;as the Authority may require&quot; please insert &quot;in such manner and form&quot; | DETI should provide clarity on what constitutes a &quot;grant&quot; and the bodies who qualify as a public authority. | H | FN |
| Regs. 23 and 25 | The terms “grant” and “public authority” must be defined | DETI to clarify. For example, in the GB scheme, consideration was given to whether or not the benefit derived from CERT, CESP, CCL, RO and WHD schemes was to be considered as a grant. | H | FN |
| Regs. 23 and 25 | Not clear whether or not any other form of existing environmental incentive constitutes a grant. | In relation to the transfer of part of the ownership of an accredited RHI installation DETI should consider the option of requiring the representative owner (see comments in Reg. 2 in relation to the definition of &quot;participant&quot;, above) to inform NIAUR of partial changes in ownership. (See also comments on Reg. 34(m) below. | H | FN |
| Reg. 24 | Subpar. (1) makes each of the provisions of Reg. 24 apply to new owners who may have only acquired part ownership. The effect of subpara. (2) is that NIAUR may not pay the new owner until the provisions of Reg. 24 have been satisfied. The effect of this provision means that NIAUR would have to cease payments to the other owners of the installation (via the representative owner), which is not satisfactory. The provision also places a significant administrative burden on new owners who have only acquired part ownership and increases the administrative burden for NIAUR too. | In relation to the transfer of part of the ownership of an accredited RHI installation DETI should consider the option of requiring the representative owner (see comments in Reg. 2 in relation to the definition of &quot;participant&quot;, above) to inform NIAUR of partial changes in ownership. (See also comments on Reg. 34(m) below. | H | FN |
| Reg. 24(2) | Where multiple ownership exists, paragraph (2) implies that NIAUR will split payments between owners | Reg. 37 needs to clarify that NIAUR will make payments to a single bank account held in the participant’s name, as provided to NIAUR by the particular owner that has day to day interaction with the Authority. | H | FN |
| Reg. 24 | Fails to acknowledge that ownership of an | Ofgem considers that provisions that are | H | FN |</p>
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Description</th>
<th>Memo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reg. 24</td>
<td>Fails to acknowledge that the transfer of ownership of biomethane production plant may occur and that such transfers may also mean that ownership changes from being 100% ownership by one person to multiple ownership.</td>
<td>Ofgem considers that provisions which are similar to Regs. 22(2)(c) and (3) should be added to Reg. 24 in relation to biomethane production plant.</td>
</tr>
<tr>
<td>Reg. 25</td>
<td>Producers of biomethane may be in the position of producing biomethane at different locations for injection into the grid at different metered points. It is not clear whether, in these circumstances, a biomethane producer might seek to register as a participant under one single accreditation or as multiple “participants”. This may also affect how new biomethane capacity at one location is dealt with e.g. could such additional production be accredited as a new participant, thus restarting the tariff lifetime?</td>
<td>We suggest that further work is done in this area to clarify the desired policy outcomes.</td>
</tr>
<tr>
<td>Reg. 25</td>
<td>There is no concept of multiple owners of biomethane production plant.</td>
<td>Ofgem considers that provisions that are similar to Regs. 22(2)(c) and (3) should appear in Reg. 25.</td>
</tr>
<tr>
<td>Reg. 33</td>
<td>Should the title be “Producers of biomethane” for consistency with the definition of “participant” and the rest of the Regs.?</td>
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<tr>
<td>Reg. 34</td>
<td>It is not desirable that multiple owners can interact at will with NIAUR, not only for administrative simplicity but also because interaction with multiple owners, on a day to day basis, could present unmanageable risks for the Authority, such as duplication of, and disputes in relation to, the submission/validity of data and receipt of payments, not to mention the increased risk of fraud.</td>
<td>Ofgem considers that r.22(3)(b) does not clearly cover ongoing participation and requests that a provision be added to regulation 34, stating that, where multiple ownership exists NIAUR may require that day to day interaction with NIAUR is conducted by the representative owner (see comments at Reg. 2 above), including receiving payments from NIAUR into its nominated bank account and distributing such payments to the other owners. This would also mean that Reg. 24(2) would need to be redrafted to clarify that payments are made to the representative owner, not the new part owner. E.g. “no periodic support payment may be made to a new owner to a participant until”</td>
</tr>
<tr>
<td>Reg. 34(m)</td>
<td>Regulation 34(m) does not oblige owners who have relinquished ownership of an installation to notify the NIAUR of the change in ownership, as this provision only applies to ‘participants’. Participants</td>
<td>Easiest fix is for Reg. 34(m) to be amended to read “they must notify the Authority within [[28] days] prior to a change in ownership of all or part of their accredited RHI”</td>
</tr>
</tbody>
</table>
are, by definition, owners of RHI installations. Therefore, if someone has relinquished ownership of an installation, they are no longer a participant and therefore not obliged to comply with Regulation 34(m).

Reg. 34(m)  
At present representative owners (see comments on definition of "participant" above) only need to acquire the consent of all other owners to act on their behalf when making their application. Over twenty years, it is possible that ownership of parts of the accredited RHI installation will change ownership, but there is no ongoing obligation on the representative owner to have new part owners’ consent.

This means that it may be possible for NIAUR to pay a representative owner (see comments at Reg. 2 in relation to the definition of "participant" above) who does not have the consent from other owners to act on their behalf.

Reg. 34(m) should make it an explicit requirement that, where there has been a transfer of ownership of part of the accredited RHI Installation, the representative owner must also have authority from the new owner to be the participant for the purposes of the scheme and provide to the Northern Ireland Authority, in such manner and form as the Northern Ireland Authority may require evidence of that authority.

Reg. 34(p)  
Useful heat: DECC’s RHI policy document sets out the intention that heat which is to be eligible for RHI must be supplied to meet (i) an economically justifiable heating requirement and (ii) a new or existing heat load which is "not created artificially, purely to claim the RHI" (page 25). This requirement is referred to in this clause in the wording.

In a broader context, we note that the draft RHI Regs do not appear to fully address DECC’s policy objectives in terms of useful heat.

Depending on DETI’s intentions in this regard, it should consider clarifying r. 3 (2), for example, "...where the heat is used in a building and meets an economically justifiable heat requirement." The term "economically justifiable heat requirement" should then be defined in line with DETI policy e.g. a new or existing heat load that would otherwise be met by an alternative form of heating. Please note that, were such additional requirement to be introduced, we would require an express accreditation requirement indicating that participants will need to demonstrate the economic justification to NIAUR if required so there is no expectation that NIAUR will be determining what is or is not economically justifiable.

Reg. 35  
Ofgem considers that the issues arising in relation to notification of a partial change of ownership of an accredited RHI Installation (see Reg. 34(m) above) should apply equally to producers of biomethane, in order to mitigate against the possibility of paying the same producer twice, or paying a representative producer (see comments at Reg. 2 in relation to the definition of “participant” above) who does not have the consent from other biomethane production plant owners to act on their behalf.

Suggest removal of timescales.

H  FN

M  FN
### Part 7

Ofgem considers the timeframes placed on NIAUR in the Regulations to be inappropriate and unworkable. In our view they present a material risk to the enforcement of the NI RHI scheme. NIAUR is already bound by statute to carry out its functions with regard to: (i) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, targeted only in cases in which action is needed; and (ii) in accordance with those principles that appear to it to represent the best regulatory practice. Such obligations establish a prerequisite that NIAUR must perform its functions within reasonable timescales. Consequently, the timescales set by the Regs. are superfluous to requirements. More importantly, if they remain, they will constrain NIAUR’s ability to discharge its functions in the most appropriate manner.

### Reg. 44(7)

To make sense of Reg. 44(8) the word “no” should be removed from Reg. 44(7).

**H** **FN**

### Reg. 44(4), and (10)

The six month timeframe could be a problematic restriction for NIAUR and was inserted into the GB Regulations against Ofgem’s wishes. It means that, at the end of the 6 month period, NIAUR must repay withheld monies or apply another sanction, when an extension of this sanction may be the most proportionate approach (the wording of paragraph (10) means that the Reg. 44 sanction cannot be re-applied). What happens if the investigation requires further time?

DETI to reconsider the appropriateness of the present wording in light of Ofgem’s concerns.

**H** **FN**

### Reg. 44(8)

Repayment within 28 days may be problematic for Ofgem’s payment systems and may lead to increased risk of challenge to the NIAUR and/ or failure to pursue enforcement action due to a breach by NIAUR of this requirement.

DETI should consider removing the timeframe and replace this with “as soon as reasonably practicable”.

**M** **FN**

### Reg. 44(9)(b)

Repayment should also be subject to any overpayment or offsetting measure deemed to be appropriate by NIAUR.

**M** **FN**

### Reg. 45(4)

Repayment should also be subject to any overpayment or offsetting measure deemed to be appropriate by NIAUR.

**M** **FN**

### Reg. 46(1)(b)

The period immediately following what?

Clarity of drafting is required.

**M** **FN**

### Reg. 46(3)

10% limit on penalty: Ofgem is concerned that limiting the level of reduction to 10% of a single payment may not be an adequate penalty and therefore not actually “deter further abuse” (the objective stated in DECC’s policy document).

DETI should consider removing r. 49(3): NIAUR is already bound by statute to carry out its functions with regard to the principles under which regulatory activities should be transparent, accountable, proportionate.

**M** **FN**
Review of draft NI RHI Regulations

### Memo

<table>
<thead>
<tr>
<th>Reg.</th>
<th>Description</th>
<th>Suggestion/Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>There is no equivalent of Reg. 47(1)(b) for biomethane producers.</td>
<td>It’s not clear why biomethane producers do not face the same sanction as owners of installations. DETI to consider imposing an equivalent provision.</td>
</tr>
<tr>
<td>48</td>
<td>Where there are multiple owners of an accredited RHI installation, it is not clear what, if any, ability NIAUR has to enforce this provision against owners who are not the representative owner.</td>
<td>DETI to consider adding an express provision (perhaps at Reg. 22(3)) that, where there are multiple owners of an accredited RHI installation/ producers of biomethane, each owner is jointly and severally liable to comply with the eligibility criteria and ongoing obligations and enforcement provisions.</td>
</tr>
<tr>
<td>48(2)(a)</td>
<td>This implies that a separate notice will need to be issued in relation to each PSP where an overpayment has been made.</td>
<td>DETI to consider whether this Reg. should refer to “payment or payments” to address this administrative issue.</td>
</tr>
<tr>
<td>48(2)(b)</td>
<td>Present drafting suggests that NIAUR must decide on either repayment or offsetting, but does not allow for a mixture of both.</td>
<td>The word “whether” should be replaced by the words “to what extent”</td>
</tr>
<tr>
<td>50</td>
<td>Where heat is exported from an accredited installation to a third party user, NIAUR’s powers of inspection, as currently drafted, arguably do not allow it to inspect such third party premises, where output heat from the installation might be used, in order to verify that heat is being used for an eligible purpose. It is critical to the calculation of RHI payments and the enforcement of the scheme that participants have a legal obligation to ensure rights of access for the purposes of inspection by the Authority e.g. by means of the contractual arrangements for the supply of heat from the RHI installation to the end user.</td>
<td>Express provision to be added to the Regulations.</td>
</tr>
<tr>
<td>51</td>
<td>Reviews. The provision does not fulfil DECC’s</td>
<td>DETI is strongly advised to remove this</td>
</tr>
</tbody>
</table>
### 8 Other

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
<th>Overview</th>
<th>Suggested solution</th>
<th>Priority level (H/M/L)</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>9a</td>
<td>Extend scope of Preliminary Accreditation</td>
<td>At present limited access to use PA. Particularly an issue for smaller biomass installations &lt;200kw. There are a number of smaller businesses that would like to install but feel constrained by uncertainty of eligibility and not willing to commit large sums of money on basis of uncertainty.</td>
<td>By extending scope we would also be potentially cutting work on enquiry handling – at present they are asking a lot of questions that take up our time, and it may be quicker/more efficient to allow PA instead. I would suggest extending to all non MCS installations.</td>
<td>M</td>
<td>DS</td>
</tr>
<tr>
<td>8b</td>
<td>Participant restrictions</td>
<td>Possibility of restricting participants to those 18 years and over. At the moment there's no restriction on the age of a participant.</td>
<td>DETI may wish to consider restricting the NI RHI Regulations to allow participation for only those over the age of 18.</td>
<td>M</td>
<td>AA</td>
</tr>
<tr>
<td>8c</td>
<td>Fraud prevention</td>
<td>At present, there is no requirement for medium-sized installations to provide an independent metering report. This has clear fraud risks.</td>
<td>DETI to consider adding this requirement.</td>
<td>H</td>
<td>AO</td>
</tr>
<tr>
<td>8d</td>
<td>'Records to be retained' requirement</td>
<td>NIAUR may want to require biogas/biomass participants to produce planning permission documents upon request as a condition (part of the 'records to be retained' requirement). There is however no explicit power for this in the regulations.</td>
<td>Add this requirement to the regulations.</td>
<td>L</td>
<td>LM</td>
</tr>
<tr>
<td>8e</td>
<td>Biomethane producers ongoing obligations</td>
<td>Reg. 34, subparas. (c), (g), (i), and (m) do not apply to biomethane producers.</td>
<td>In light of this deficiency, Ofgem has, for example, imposed a condition that biomethane producers must notify Ofgem within 28 days of any changes to their registered biomethane plant which may affect their eligibility. Because there is not an explicit provision in the Regulations to require this, imposing a condition is not satisfactory and places NIAUR at risk if the same approach were adopted. The ongoing obligations should be reviewed in consideration of the fact that many do not apply to producers of biomethane, so that</td>
<td>H</td>
<td>LM</td>
</tr>
<tr>
<td>8f</td>
<td>Class 2 meters</td>
<td>While the draft NI RHI Regulations currently state that a 'class 2 meter' must be installed, the guidance has been updated and now states that 'class 2 meters or better' are sufficient.</td>
<td>DETI to consider clarifying the Regulations. But not e the administrative burden on NIAUR of deciding what may or may not be 'better' than a class 2 meter.</td>
<td>M</td>
<td>LM</td>
</tr>
<tr>
<td>8g</td>
<td>Steam meters</td>
<td>Regulation 20 (2) (c) states that 'All steam measuring equipment...must be capable of displaying the current steam mass flow rate and the cumulative mass of steam which has passed through it since it was installed...'. The guidance has been updated and now states 'since it was installed or calibrated...'.</td>
<td>Update the regulations to reflect this change</td>
<td></td>
<td>LM</td>
</tr>
<tr>
<td></td>
<td>Biomethane producers’ requirement to comply with eligibility criteria</td>
<td>Due to the drafting of the Regulations (registration of biomethane producers falls under Part 3 (which is outside the 'eligibility criteria’ provisions of Part 2), 34(e) does not apply to biomethane producers. DECC’s reasoning is that the requirements already imposed on such persons in order to inject onto the grid would in themselves provide evidence of suitable quality and health and safety practices.</td>
<td>DETI may wish to consider whether or not the DECC approach is sufficient or whether additional eligibility criteria should be set.</td>
<td></td>
<td>L</td>
</tr>
</tbody>
</table>
Appendix 2

Issues specific to the draft NI RHI Regulations

<table>
<thead>
<tr>
<th>No.</th>
<th>Provision</th>
<th>Issue</th>
<th>Suggested solution</th>
<th>Priority level</th>
<th>DETI response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>headnotes</td>
<td>Does NI drafting procedure require headnotes stating briefly the nature of the instrument, the statutory provision prescribing the procedure which it must follow and the form of that procedure?</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Heading</td>
<td>Should the word 'draft' be inserted before the words &quot;Statutory Rules of Northern Ireland&quot;? Should references to 2011 be to 2012?</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Title</td>
<td>The title of the GB RHI Regulations has been revised. Should the title of the NI Regulations be: &quot;The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012&quot;?</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Preamble and words of enactment</td>
<td>Should the section numbers missing (marked by square brackets) be 113 and 121? Should a footnote provide the year and chapter number of the Energy Act 2011 (2011 c. 16)?</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Citation and commencement</td>
<td>Does modern drafting practice for Northern Ireland follow the same principles as that for GB? If so should references to “shall” be “will”? Please also clarify any rules or procedures which will affect the commencement date.</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Reg. 2</td>
<td>Definition of &quot;the Department&quot; already appears in the enabling Act: is this definition superfluous?</td>
<td>DETI to clarify</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Reg. 2</td>
<td>Definition conflicts with the definition in The Energy Act 2011 (the &quot;enabling Act&quot;). Three issues arise here: 1. Definition of the Gas and Electricity Markets Authority already exists in the enabling Act (&quot;GEMA&quot;), which makes</td>
<td>Suggest removal of definition and all references to the Gas and Electricity Markets Authority in the draft NI RHI Regulations. In relation to point 3, The Renewables Obligation Order (Northern Ireland) 2009</td>
<td>H</td>
<td></td>
</tr>
</tbody>
</table>
## Review of draft NI RHI Regulations

### Memo

<table>
<thead>
<tr>
<th>8.</th>
<th>Reg. 2</th>
<th>Definition of “the Gas Order”. Should there be a footnote detailing the Statutory Rule and Order year and number?</th>
<th>DETI to clarify</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>Reg. 2</td>
<td>Definition of &quot;NI&quot;. Should Northern Ireland be abbreviated?</td>
<td>DETI to clarify</td>
<td>L</td>
</tr>
<tr>
<td>10.</td>
<td>Reg. 2</td>
<td>Definition of &quot;NI Authority&quot;</td>
<td>Should this be the &quot;Northern Ireland authority&quot;, to be consistent with the enabling Act?</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Reg. 2</td>
<td>Definition of &quot;pipe-line system&quot;</td>
<td>This differs from the definition of &quot;pipe-line system&quot; under the GB RHI Regulations. We would be grateful for clarity from DETI as to the intention and practical implications of this revised definition.</td>
<td>M</td>
</tr>
<tr>
<td>12.</td>
<td>Regs. 3(2) and (3); 37(2); 37(8);45(4); 46(1); 48(1)(a); and explanatory note references at para. 1, Reg. 3, Part 5,</td>
<td>References purporting to confer powers, functions and obligations on the GB Authority</td>
<td>See comments above concerning the vires of this provision. We consider that these functions, powers and obligations should be changed conferred on the Northern Ireland authority.</td>
<td>H</td>
</tr>
</tbody>
</table>

2. If a definition of the Gas and Electricity Markets Authority is considered necessary, should this be “GEMA”, so as not to conflict with the enabling Act?: and, most importantly.

3. We do not consider that GEMA should be referred to at all in the NI RHI Regulations, as the enabling Act confers powers on DETI (pursuant to s.113 (2)) to make regulations providing for the Northern Ireland authority (either DETI or the NIAUR) to administer an NI RHI scheme. The arrangements whereby GEMA may carry out these administrative should not form part of the Regulations. Therefore, any provision in the NI RHI Regulations which purports to confer powers or functions on GEMA will, in our opinion, be ultra vires.

("NIRO") may provide a useful precedent: references to the Authority relate to NIAUR (as defined by The Energy (Northern Ireland) Order 2003) and there is no reference to GEMA acting as agent for NIAUR in relation to the performance of the NIAUR’s functions. Instead, a separate and subsequent agreement, between NIAUR and GEMA, exists and provides for the carrying out by GEMA of certain of NIAUR’s functions under the NIRO. We suggest that a similar arrangement is made between GEMA and NIAUR in relation to the administration of the NI RHI scheme and that this approach accords with the intention of ss. 113 and 114 of the enabling Act.
<table>
<thead>
<tr>
<th>Reg.</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>Regs. 5(c); 7(c); 8(b); 19; 15(l(c)(i)); 26(l)(c);</td>
</tr>
<tr>
<td>14.</td>
<td>Regs. 7(b); 11(b); 15(l(c)(iii)); 26(l)(c);</td>
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<tr>
<td>15.</td>
<td>Regs. 8(a)(i); 9(c); 10;</td>
</tr>
<tr>
<td>16.</td>
<td>Reg. 8(c)</td>
</tr>
<tr>
<td>17.</td>
<td>Reg. 10</td>
</tr>
<tr>
<td>18.</td>
<td>Regs. 12(1)(a), (2) and (3); 23(1)(b);</td>
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<tr>
<td>19.</td>
<td>15(l)(c)(l)</td>
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<tr>
<td>20.</td>
<td>28(2)</td>
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<tr>
<td>21.</td>
<td>28(5); 29(2)</td>
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<tr>
<td>22.</td>
<td>28(7)(a) and (b)</td>
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<tr>
<td>23.</td>
<td>29(1)</td>
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<tr>
<td>24.</td>
<td>29(6)</td>
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<td>25.</td>
<td>30</td>
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<tr>
<td>26.</td>
<td>30(4)(a)</td>
</tr>
<tr>
<td>27.</td>
<td>34(k),(l),(m)</td>
</tr>
<tr>
<td>28.</td>
<td>35(l)(b)</td>
</tr>
<tr>
<td>29.</td>
<td>36(3)</td>
</tr>
<tr>
<td>30.</td>
<td>37(1)</td>
</tr>
<tr>
<td>31.</td>
<td>37(7)(a) and (b) and (8)</td>
</tr>
<tr>
<td>32.</td>
<td>37(9)(a)</td>
</tr>
<tr>
<td>33.</td>
<td>37(10)</td>
</tr>
<tr>
<td>34.</td>
<td>39(2)(a)</td>
</tr>
<tr>
<td>35.</td>
<td>40(1)(b)</td>
</tr>
<tr>
<td>36.</td>
<td>43(3)</td>
</tr>
<tr>
<td>37.</td>
<td>43(4)</td>
</tr>
<tr>
<td>38.</td>
<td>43(6)</td>
</tr>
<tr>
<td>39.</td>
<td>44(2)</td>
</tr>
<tr>
<td>40.</td>
<td>44(4)</td>
</tr>
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<tr>
<td>41.</td>
<td>44(5)</td>
</tr>
<tr>
<td>42.</td>
<td>44(7)</td>
</tr>
<tr>
<td>43.</td>
<td>44(8)(b)</td>
</tr>
<tr>
<td>44.</td>
<td>45(2)(c)</td>
</tr>
<tr>
<td>45.</td>
<td>45(3)</td>
</tr>
<tr>
<td>46.</td>
<td>45(4)</td>
</tr>
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<td>47.</td>
<td>45(5)</td>
</tr>
<tr>
<td>48.</td>
<td>46(2)</td>
</tr>
<tr>
<td>49.</td>
<td>46(3)</td>
</tr>
<tr>
<td>50.</td>
<td>47(2)</td>
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<td>51.</td>
<td>48(2)</td>
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<tr>
<td>52.</td>
<td>49(2)</td>
</tr>
<tr>
<td>53.</td>
<td>50(1)</td>
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<tr>
<td>54.</td>
<td>50(2)</td>
</tr>
<tr>
<td>55.</td>
<td>51(2)(a)</td>
</tr>
<tr>
<td>56.</td>
<td>51(5)</td>
</tr>
<tr>
<td>57.</td>
<td>53(2)</td>
</tr>
<tr>
<td>58.</td>
<td>53(4)</td>
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<tr>
<td>59.</td>
<td>53(5)</td>
</tr>
<tr>
<td>60.</td>
<td>53(7)</td>
</tr>
<tr>
<td>61.</td>
<td>Sch. 1(2)(n)</td>
</tr>
<tr>
<td>62.</td>
<td>Sch. 1(2)(v)</td>
</tr>
</tbody>
</table>
### 63. Sch. 2(2)(j)
Date relating to land use
DETI to confirm position – is the decision subject to purely policy or legal issues?

### 64. Sch. 2(5)
Date relating to planting of energy crop
DETI to confirm position – is the decision subject to purely policy or legal issues?

### 65. Sch. 3
Tariff levels to be confirmed
DETI to confirm position and share data with Ofgem so that it understands what plant has been included in the calculations.

### 66. Explanatory note
Regs 29 and 30 – 1MWth threshold to be confirmed
DETI to confirm position

**ENDS**
The Renewable Heat Incentive: Consultation on Interim Cost Control

Presented to Parliament by the Secretary of State for Energy and Climate Change by command of her Majesty.

26 March 2012
Ministerial Foreword

We are extremely proud that this Government launched the Renewable Heat Incentive (RHI) last November. The first of its kind in the world, the RHI provides the long-term financial support to enable a significant shift away from fossil fuels to renewable heating in this country. It is an essential policy to help us meet our legally binding renewables targets but also crucial to reducing our carbon emissions. It will help us deliver our strategic framework for heat - which will be published shortly - and to build the kind of sustainable economy we need. We are already seeing participation in the scheme across small businesses, industry and the public sector. We remain fully committed to the RHI and look forward to renewable heating playing a much larger role in fulfilling our heat needs in the years to come.

However, the RHI is funded from Government spending and we have to ensure that we maintain value for money for the taxpayer and do not spend more than the annual budgets allocated to fund it. We have to learn lessons from the Feed-in Tariffs and ensure that we maintain budgetary control whilst providing appropriate certainty to stakeholders about how we will do this. The RHI must be a long-term, sustainable policy in order to be effective. For this reason, we plan to introduce a comprehensive cost control mechanism which ensures the long-term future of the RHI whilst also providing the transparency and certainty that the market needs to drive investment. We will be consulting on a degression-based mechanism in the summer which would automatically reduce tariffs should spending against the overall budget or deployment of certain technologies exceed forecasts.

Until we are able to introduce the longer-term solution, we need assurance that the scheme will not exceed its budget for the next financial year. Therefore, we are consulting on a short-term measure to give us the confidence that spending will not exceed our budget. The measure proposed is that we suspend the scheme until the next financial year if our evidence shows that the budget could be breached.

Current uptake levels are very low relative to the available budget and if this lower than anticipated uptake continues we will not need to use the proposed interim cost control mechanism. However, the RHI is a new policy in an immature market, which means that there is a high degree of uncertainty about deployment in the short-term. We recognise that suspending the scheme would be a serious event. However, we are consulting now because we want to be transparent about our future intentions. We will be publishing the data which would determine whether suspension occurs so that the market is aware of the estimated spend relative to our budgets. Then there would be no surprises if the RHI was suspended.

If we had no way of controlling short-term spending we could jeopardise the long-term future of the RHI and the renewable heat sector. We want to spend the budgets assigned to the RHI to promote investment in renewable heat, to put us on a path of sustainable growth in the sector for years to come. We want the RHI to be a flagship policy to decarbonise heating and help the shift to a sustainable, greener future.

Greg Barker
Minister of State Department of Energy and Climate Change
General information about this consultation

How to respond
Comments on aspects of the proposals contained in this document are welcomed. Responses to this consultation should be sent to rhi@decc.gsi.gov.uk. The consultation closes on 23 April 2012.

Responses should be clearly marked: Consultation on an Emergency Cost Control measure for RHI.

Hard copy responses and any enquiries related to the consultation, should be addressed to:

Geraldine Treacher
Department of Energy & Climate Change,
3 Whitehall Place, London,
SW1A 2AW
Tel: 0300 068 6858
Email: geraldine.treacher@decc.gsi.gov.uk

Territorial extent
This consultation applies to England, Scotland and Wales.

Additional copies
You may make copies of this document without seeking permission. An electronic version can be found at http://www.decc.gov.uk//en/content/cms/consultations/rhi_cost/rhi_cost.aspx

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection
Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request. The Department will summarise all responses and place this summary on its website. This summary will include a list of names or organisations that responded but not people’s personal names, addresses or other contact details.

Quality assurance
This consultation has been carried out in accordance with the Government’s Code of Practice on consultation, which can be found at www.bis.gov.uk/files/file47158.pdf. If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:
What happens after the consultation
Responses should be submitted by 23 April 2012. At the end of the period we will summarise all responses and place this summary on our website at http://www.decc.gov.uk/en/content/cms/consultations/rhi_cost/rhi_cost.aspx

The material received will inform the development of the statutory instrument to introduce the emergency measure.
Executive summary

- The Renewable Heat Incentive continues to be a top priority for Government as a means to reduce our carbon emissions and because it is central to delivering our strategic framework for heat. It is therefore essential that the RHI policy is sustainable and that we have the ability to ensure that year to year spending does not exceed available funding.

- This consultation sets out a proposed interim cost control measure that would suspend the RHI until the next financial year should estimated spending reach a level where the budget could be breached.

- Only new applications would be affected. Accredited installations already receiving the RHI tariff from Ofgem would continue to receive that tariff. Applications submitted to Ofgem prior to the suspension would be processed as normal.

- Current application levels are low relative to the available budget and if these levels were to continue the proposed interim cost control measure is unlikely to be needed. However, there is a high degree of uncertainty about how the market will respond and we need to be prepared for unexpected changes in uptake. Having this interim approach set out in advance will ensure that Government is able to respond quickly if required and that stakeholders will be sighted on future action.

- The proposed circumstances under which suspension would occur will be specified in the RHI regulations and will include a predetermined trigger that would set off suspension and a fixed notice period before the suspension begins.

- We intend to frequently publish the data being used to monitor progress towards the trigger. This will allow the market to make informed decisions about the likelihood of suspension.

- We are proposing this policy as an interim measure. Over summer we plan to consult on a longer-term flexible degression-based mechanism which would automatically reduce tariffs should spending against the overall budget or deployment of certain technologies exceed forecasts.
The Renewable Heat Incentive

1. The Renewable Heat Incentive (RHI) is a long-term tariff scheme to encourage the replacement of fossil fuel heating with renewable alternatives. It opened for applications in November 2011 and currently supports renewable heat installations in business, industry and the public sector as well as district heating schemes.

2. The RHI was introduced primarily to help meet the UK’s target of 15% of our energy coming from renewables by 2020. Renewable heat will contribute approximately a third of this overall energy target, but, in order to make that contribution, around 12% of our total heat demand in 2020 will have to come from renewables, increasing from less than 2% currently.

3. In addition, renewable heat is also essential to the delivery of our carbon budgets and our target of an 80% reduction in carbon emissions by 2050. There is a lot we can achieve by reducing demand through better energy efficiency. But we cannot reduce demand for heat to zero, so we also need to reduce the emissions from the heat we will continue to generate. The strategic framework for heat, being published shortly, provides the vision for how we can make that happen and the RHI is a fundamental policy for our long-term carbon reduction ambitions.

Budgets

4. The RHI is funded directly from Government spending and has been assigned annual budgets for the four years of this Spending Review period.

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Budget (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/12</td>
<td>56</td>
</tr>
<tr>
<td>2012/13</td>
<td>133</td>
</tr>
<tr>
<td>2013/14</td>
<td>251</td>
</tr>
<tr>
<td>2014/15</td>
<td>424</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>864</strong></td>
</tr>
</tbody>
</table>

5. This includes budget for the Renewable Heat Premium Payment (RHPP) in 2011/12 and a spend of up to £25m for the second phase of the RHPP (expected to be spent primarily in 2012/13 but with flexibility for some spend in 2013/14).

6. The budgets are based on the estimated trajectory of growth needed to achieve 12% of renewable heat coming from renewables in 2020. Each annual budget is for money which will be paid for renewable heat generated by RHI accredited installations in a given year. New installations added each year have to be funded for that year and for the subsequent years they are in the scheme. Budgets beyond 2015 will be set as part of the standard Spending Review process and they will have to include payments made to existing as well as new installations in order that the RHI continues to support growth in renewable heat.
7. The budgets are not flexible; spending less than the allocated budget in one year does not permit that underspend to be transferred to future years. Spending more than the budget in any given year could result in a stop-start scheme, which would undermine supply chain development. Though we have forecasts for renewable heat growth, these are based on limited data given the relative infancy of that market in the UK. As we supplement our data and refine our assumptions, our forecasts and the budgets on which they are based will become more accurate.

The scheme to date

8. The RHI opened for applications on 28 November 2011 and the application rate has been relatively steady. Many of the applications are for installations commissioned since 15 July 2009, before the scheme launched, and most installations have lead-in times of several months. This means that it is not possible to accurately gauge the positive impact of the RHI at this point. We are also aware that companies are reluctant to change their heating systems during the winter. So, while generation of heat will be lower in summer, the number of installations is likely to be higher.

9. We are encouraged to see that there is a variety of applications coming forward across industry, small businesses, supermarkets and schools. As of 18 March 2012 we have received 298 applications, 11 of which have been accredited. Based on the current number of applications received we expect to spend approximately £2m for the 2011/12 financial year.

10. For 2012/13 we are expecting around £15m of spend from installations that have already been accredited and predicting total expenditure on the RHI to be around £40m as a result of new installations coming on stream. Clearly, if uptake continues along these lines, the proposed interim cost control measure would not be needed and suspension would not occur. We continue to monitor uptake and the wider market closely to ensure that there are no surprises for Government and so that we can refine policy accordingly in future years.

Why do we need this measure?

11. The experience of Feed-in Tariffs and solar PV uptake has taught us that we need to be prepared for unexpected and rapid surges in uptake and be transparent about what we plan to do should they happen.

12. There are differences between solar PV and renewable heat technologies; rapid cost reductions are less likely and there are more barriers to deployment. Nevertheless, uptake of renewable heat could vary based on volatile variables such as the price of oil. And given the infancy of the renewable heat market in the UK, we have to assume a significant level of variance from our modelling projections.

13. We recognise that suspending the scheme is likely to have a negative short-term impact on the renewables market. However, putting a protective measure in place will preserve the sustainability of the scheme and the renewable heat industry. We will alleviate some of the uncertainty that suspending the scheme could cause, by clearly setting out what would happen in the event of overspend and frequently publishing data to inform market participants about estimated RHI expenditure.
Future cost control measures

14. In the longer-term, we propose to introduce a more sophisticated cost control mechanism which would include a flexible degression-based system. In this context, degression works by reducing tariffs gradually in the event of greater than expected uptake to avoid exceeding annual budgets. Such a mechanism would be designed to prevent the need to suspend the scheme and should address a root cause of very high uptake – i.e. tariffs that are too high.

15. We have been working with industry participants to inform the design of the longer-term mechanism to ensure that while controlling costs, we will also provide certainty about when tariffs will change and by how much.

What is the proposal?

16. The proposed interim cost control mechanism is a simple system that suspends the RHI scheme. The terms of suspending the scheme would be set out clearly in advance, including the timing and use of any triggers. Accredited installations would not be affected and the owners of accredited installations will continue to receive their RHI tariff at the same tariff rates (adjusted for RPI).

17. The suspension would be in place for the financial year and the scheme would re-open at the start of the next financial year. This will enable budgets to be controlled until the longer-term cost control measures are in place and able to replace the interim mechanism. We anticipate that regulations for the longer term mechanism will be in force from February 2013.

Calculating progress towards the budget

18. Progress towards a budgetary trigger relating to estimated spend will be carefully monitored and reported weekly online.

19. Calculated spend within the financial year will be based on spend to date combined with estimated expenditure for existing installations and applications that have been submitted. Estimated expenditure will be based on the best evidence available about the load factor and operation of installations for each tariff band. This may be a combination of evidence provided within applications, as well as other evidence on load factors such as the amount of metered heat being used by accredited installations.

Triggers and notice periods

20. It would be possible to provide a notice period before suspending the scheme, during which time it the scheme would be open to applications. However there is a trade-off between the amount of notice and the extent to which the trigger would need to be set conservatively. This is because the uniqueness of the RHI means that there is very little evidence to inform an understanding of deployment and the rates at which deployment may take off.

21. Not using a notice period would enable the trigger to be set at or very close to the total available budget. This removes the risk of triggering a suspension which might not have
been needed. In practice, we expect stakeholders to pay close attention to progress towards the trigger so little or no official notice may be needed.

22. A short notice period would allow Government a reasonable amount of certainty about what might happen within that period and still enable the trigger to be set at a much higher percentage of the budget. For stakeholders, a notice period of a week might allow those with almost complete applications to ensure that they complete the paperwork before the suspension begins and avoid inadvertently submitting a day late. A notice period of a month might allow the final stages of an installation and the paperwork to be completed prior to the suspension.

23. If the notice period were to be longer and allow time for more installations to be planned and installed, this would increase uncertainty even further. It would also potentially be unfair that some smaller installations could be started and completed whereas larger installations could not. So, for example, while it might be possible to provide for a three month notice period, it would be very uncertain what might happen in that period – both in terms of demand already coming on-stream and the potential response to a suspension announcement – and this would necessitate the trigger being set very low, possibly 50% of the budget or less. For this reason we do not propose to pursue a three month notice period.

24. Possible options for notice periods and trigger levels are:

<table>
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<tr>
<th>Notice Period</th>
<th>Trigger (%)</th>
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<tbody>
<tr>
<td>1 week</td>
<td>97%</td>
</tr>
<tr>
<td>1 month</td>
<td>80%</td>
</tr>
<tr>
<td>No notice</td>
<td>100%</td>
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25. Whichever trigger is used, it would be activated if estimates indicate that the spend over the course of the financial year will be greater than the trigger’s value.

26. New installations will have a much bigger impact on the budget if applications are made at the beginning of the financial year than at the end of the year, so the risk of breaching the budget within the 1 month notice period at the end of the year is lower. It could therefore be appropriate, particularly under option 1, to allow the trigger to be closer to the total budget at the very end of the year.

**Consultation Question**

Given the trade-off between the length of the notice period and the impact on how conservatively the trigger needs to be set, would it be preferable to have no notice, one week’s notice, or one month’s notice, and why?
What would happen if the scheme was suspended?

27. Should the trigger be set off, the scheme will be suspended until the start of the next financial year. Cost control measures can only apply to new RHI applications. If the scheme is suspended, installations already receiving the RHI will continue to receive their current tariff (adjusted for RPI) for the full 20 year duration. Similarly, applications submitted to Ofgem before the suspension date would still be processed.

28. New applications would not be accepted during the suspension. If it is decided that a notice period will be given (see consultation question) it might be necessary to make an adjustment for the suspension period, to prevent last minute speculative applications for installations that are incomplete. This requirement would be that applications made during the notice period should have been commissioned prior to the suspension date. An installation is commissioned if all of the necessary tests and procedures required by industry standards to show that the plant is able to deliver the heat required are complete. If accredited by Ofgem, these applications would be accredited and subsidy would then be paid to these participants.

29. Registrations for biomethane producers would be treated in the same way: no further application for registration would be permitted during the suspension, but applications for registration submitted before the suspension would continue to be processed by Ofgem.

30. Similarly, applications for additional capacity for accredited installations would not be processed during the suspension.

31. Preliminary accreditation is available for medium and large biomass and energy from waste installations, biogas, and deep geothermal. Those with preliminary accreditation are able to submit an application to convert to a full accreditation, provided that the installation has been built in line with the plans submitted and any conditions set out by Ofgem. Applications to convert preliminary accreditations granted after the interim cost control regulations come into force could not be submitted after suspension. However, we do not propose to change the terms of existing preliminary accreditations. Therefore, if an application for preliminary accreditation was made prior to the proposed interim cost control regulations, and accredited by Ofgem, it would be possible to apply to convert this during the suspension.

Re-opening the scheme

32. If suspension is triggered this will be because supply chain and demand growth will have been very high. This would imply that tariffs offer a much higher rate of return on investment than was intended when the tariffs were set. Overly high tariffs would need to be corrected prior to the scheme reopening, to ensure sustainability of the RHI within current budgets.

33. The proposed longer term cost control package, which we will be consulting on during the summer, is expected to include a contingent degression system where tariff reductions are triggered if uptake reaches certain levels. As part of this, we will consult on how the tariffs should be recalibrated for re-opening in the eventuality of the scheme being suspended. This will include a transparent formula setting out clearly in advance what could be expected to happen.
Next steps

34. We intend to run the consultation on the package of policy options for longer-term cost control over the summer. Proposals for air quality and biomass sustainability will be included in the consultation. Following the consultation, regulations will be laid before the end of the year and implemented as soon as possible subject to Parliamentary approval.
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**General information**

This document sets out the Government's response to the consultation, “The Renewable Heat Incentive: consultation on interim cost control”. The consultation was open between 26 March and 23 April 2012 and copies of the consultation document can be found on the Department of Energy and Climate Change (DECC) website. The consultation applied to England, Scotland and Wales.

There were 53 responses, received from a variety of organisations, summarised below:

- Trade Associations (13)
- Certification bodies (1)
- Companies (30, including manufactures, installers, suppliers, users and utilities)
- Individuals (1)
- Universities (1)
- Public sector (4)
- Charities/community organisations (3)
Executive summary

- We received 53 responses to our consultation. Many of the respondents recognised the need to ensure that RHI costs are managed. However, many also expressed views that: the mechanism is unlikely to be needed; the consultation raised concerns about the Government’s commitment to the Renewable Heat Incentive (RHI); the potential for suspension would have a negative impact on the market.

- In response to the question asked about the preferred length of the notice period, given the trigger levels that would be needed, respondents’ preferences were as follows:
  - 30% (16) preferred a one month notice period and trigger set at 80% of budget;
  - 19% (10) preferred a one week notice period and trigger set at 97% of budget;
  - 6% (3) preferred no notice;
  - although not a consultation question, 8% (4) argued for a longer notice period to allow for project completion;
  - not all respondents answered the question.

- We recognise that the potential for the RHI scheme to be suspended is a difficult issue for market confidence. But we must be prepared for the unexpected so that we are not caught unable to act, given the timeframes for introducing legislation. Therefore, we are pressing ahead with the introduction of the stand-by mechanism for budget management.

- The mechanism will work such that the scheme is suspended for the remainder of the financial year if we forecast that the budget could be breached. To enable sustainable growth in renewable heat year-on-year, we have identified that no more than £70m should be spent on the RHI in 2012/13. Spending more would be likely to exhaust next year’s budget through the cost of installations already receiving RHI funding, leading to a boom and bust approach.

- Given the £70m cap, we believe that the cost control mechanism should suspend the scheme at 97% of the annual budget, or £67.9m, with one week’s notice. We want to avoid a premature suspension or overspend; a longer notice period increases the risk of both of those.

- However, we will provide a weekly update on the DECC website setting out progress towards the suspension trigger, alongside a methodology used to calculate the forecast. This will allow the market to make informed judgements about the likelihood of suspension.

- Those installations that have already been approved will not be affected. Applications made before the notice period will be processed as normal. Applications made during the notice period will be processed if the installation has been commissioned before the suspension date. Applications made after the suspension date will not be processed.

- We currently estimate that RHI expenditure in 2012/13 will be around £42m. While this amount could vary, weekly RHI application rates would need to increase by around 500% by the end of the year to reach £70m. Therefore, we assess the likelihood of suspending the scheme as low.
Introduction

Why the stand-by mechanism for budget management is being proposed

1. The Government is fully committed to the Renewable Heat Incentive (RHI) and to supporting the deployment of renewable heat. It is central to delivering our Strategic Framework for Low Carbon Heat, as well as being an essential policy to help us deliver our legally binding renewables target and our carbon emissions reductions. We are already seeing participation in the RHI across small businesses, industry and the public sector and remain fully committed to expanding the range of technologies eligible for the RHI and to introducing longer term support for renewable heat in the domestic sector.

2. On 26 March we issued a consultation on an interim cost control measure for the RHI. The consultation proposed a simple mechanism that would suspend the RHI scheme to new applicants until the next financial year if our evidence showed that the available budget could be breached. The intention of the measure is to ensure that the scheme does not exceed its budget and enable us to develop a more sophisticated longer-term cost control mechanism for implementation by the beginning of the 2013/14 financial year.

3. We have learned lessons from other schemes and recognise that to ensure the sustainability of the RHI we must have a way of maintaining budgetary control, as well as providing assurance to stakeholders about how we will do this. We want the RHI to promote investment in renewable heat and believe this can be achieved with the right budget management framework in place.

4. Any changes to RHI Regulations need to be debated in Parliament and, therefore, we must work within the Parliamentary timetable. Parliament is not in session for a large part of the summer which means that if we do not make regulations before the summer Parliamentary recess, then it will not be possible to have regulations in place before November. While we do not expect extreme growth in the RHI in this period, we are aware that heating systems are frequently replaced during the summer. If RHI spending were to exceed budgets. It would be difficult in retrospect to justify a lack of action now.

Update on scheme applications and delivery

5. Since we published the consultation on interim cost control, Ofgem has continued to receive applications for the RHI. As of 27 May 2012 Ofgem had received 533 applications (43 preliminary), had accredited 88 installations and rejected two (on account of these installations having received a grant). Ofgem has completed a series of presentations around Great Britain to support potential applicants in ensuring that they provide the right information upon application and have in place the correct metering arrangements. This is expected to increase the quality of applications and the rate at which they can be processed.
6. We now expect the 2011/12 spend to be approximately £3m, although this will only be confirmed once all applications made in that year have been processed and meter readings for heat generated in that year received. We expect the cost of installations already in place in 2011/12 to be £16m in 2012/13 and currently predict total 2012/13 RHI expenditure of around £42m.

7. We are aware that there may be concerns about the current backlog of applications for accreditation. Ofgem is working to resolve the delays that are causing this through reallocation of staff resource in the short term, as well as through reviewing approval processes to identify where these can be improved. Ofgem is committed to working with applicants to achieve accreditation and is helping applicants to provide consistent and complete applications. While this can take some time, so far only two applications have had to be rejected.

**Why is this measure needed?**

8. We do not believe that rapid cost reductions are likely in renewable heat technologies in the way that has been seen with solar PV technologies. There are also significantly more barriers to the deployment of renewable heat. Clearly, if application rates continue to be low relative to the budget then the stand-by mechanism would not be needed and suspension would not occur.

9. However, there is a high degree of uncertainty about how the market will respond to the RHI and it is right to be cautious and be prepared for unexpected changes in application rates.

**Proposals and Responses**

**What we proposed**

10. The stand-by mechanism would suspend the scheme to new applications for the financial year if estimated expenditure shows that the scheme is likely to go beyond its available budget. Accredited/registered installations would not be affected and owners would continue to receive their RHI tariff. If suspension occurs, the scheme would reopen to new applications in the following financial year.

11. Applications submitted to Ofgem prior to a suspension would be processed as usual, but those submitted during the suspension would not be accepted. Registrations by biomethane producers and applications for additional capacity would be treated in the same way.

12. The exception for processing applications during the notice period is where, to prevent last minute speculative applications for installations that are incomplete, applications must have been commissioned prior to the suspension date. An installation is commissioned if all of the necessary tests and procedures required by industry standards to show that the plant is able to deliver the planned heat are complete.
13. Those with preliminary accreditation – which is available for medium and large biomass, energy from waste installations, biogas and deep geothermal – would not generally be able to apply for full accreditation during a suspension. The exception would be where the preliminary accreditation application was made before the standby mechanism legislation is in force, since we do not propose to change the terms of existing preliminary accreditations.

14. As part of our consultation on the longer-term approach to budget management we intend to set out in more detail over the summer what would happen to the tariffs in the following year if suspension were triggered.

15. Progress towards the RHI budget and trigger for suspension will be closely monitored by DECC, using Ofgem data on existing accreditations and applications to the RHI, and updated weekly online.

**What we asked**

16. We recognise that a notice period would bring benefits to those who are in the final stages of preparing their RHI application. But it is important to avoid announcing a suspension so far in advance that it drives an increase in applications or encourages people to put in applications that are not in reality ready to go.

17. There is a trade off between the amount of notice of a suspension that can be given and the level of forecast expenditure at which the suspension is triggered; with a longer notice period there is less certainty about the volume of installations that will come forward during that period. The consultation therefore asked whether it would be preferable to have no notice, one week’s notice or one month’s notice and why.

18. The options identified were:

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<tr>
<th>Option</th>
<th>Notice period</th>
<th>Trigger (% of budget)</th>
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<tbody>
<tr>
<td>1</td>
<td>1 month</td>
<td>80%</td>
</tr>
<tr>
<td>2</td>
<td>1 week</td>
<td>97%</td>
</tr>
<tr>
<td>3</td>
<td>No notice</td>
<td>100%</td>
</tr>
</tbody>
</table>
What respondents said

19. Many of the respondents were supportive of interim cost control measures while also confirming the view that renewable heat is unlikely to experience the same kind of surges as solar PV. Others questioned the need for cost control, given that applications to the RHI are currently low, and suggested that under-spend was a greater risk.

20. There were 53 responses to the consultation. In response to the question asked in the consultation, 30% of respondents (16) preferred a one month notice period, compared to 19% of respondents (10) who preferred a one week notice period and 3% (3) preferring no notice. Some respondents argued for a longer period than offered in the consultation (as long as three or six months) to allow time to complete a project within the notice period. Not all respondents answered the question.

21. Respondents in favour of one month’s suspension preferred this option to allow time for installations to be completed. Installers noted that very few installations will have a lead time of less than one month. Those in favour of a one week notice period said that this would allow applicants to complete applications. They also commented that this notice period would reduce the number of speculative applications that could be made following the announcement of a suspension.

22. Both those who preferred one month and those who preferred one week asked for clear information that was transparent, up-to-date and easily accessible, so that industry would be able to predict a likely suspension and act accordingly. Some respondents stated they would support any notice period, as long as there was transparency, with progress towards the trigger being published on a weekly basis. One respondent also asked for further information about the level of investment being made in RHI technologies.

23. A key concern raised in many responses was that scheme suspension could lead to a stop-start market and have a negative impact on market confidence. Other respondents expressed the concern that the introduction of the interim cost control policy itself and the possibility of suspension would have a similarly negative effect on market confidence. Some stakeholders took the consultation to mean that the RHI would be cancelled or tariffs decreased for existing installations despite the current low deployment rates.

24. Respondents asked for assurance that once longer-term cost control measures come into force the power to suspend the scheme will end. The proposed interim cost control measure should, therefore, be time-limited and revoked once longer-term cost control measures have been developed and implemented. Many respondents were keen to see a long-term cost control measure introduced as soon as possible to provide vision and clarity and retain industry confidence in the scheme. They expressed support for a more sophisticated longer-term cost control mechanism, including predictable tariff degression.

25. To mitigate the potentially negative impact of any suspension on market confidence, some respondents suggested we should allow installation owners who had preliminary accreditation to apply for full accreditation during the suspension period. This would provide certainty for larger projects. Other suggestions included reopening
at the old tariff rate for installations put in during the suspension or providing certainty about the rates that will be in place upon reopening.

26. Many respondents suggested that a reserve system or extension to preliminary accreditation should be considered to provide certainty for investors and support growth in an environment of cost control. At present, preliminary accreditation is only available to certain technologies, and stakeholders pointed out that other technologies such as ground source heat pumps could also benefit.

27. Many of the responses referred to recent changes to Feed-in Tariffs (FITs), suggesting that amendments to FITs have eroded investor confidence in DECC’s commitment to renewables and suggesting that RHI cost control would make this worse. Others, particularly those writing on behalf of renewable energy manufacturers and installers, suggested that cost control was unnecessary as, unlike solar PV, there would not be the same level of rapid growth of renewable heat. One respondent suggested removing the inflation-linked increases for RHI tariffs for new applications, in order to avoid closing the scheme.

**Government consideration**

28. Government remains fully committed to renewable heat. However, we must ensure that the RHI remains fiscally sustainable in the long term. Whilst current application levels to the RHI are low relative to the available budget, there is a high degree of uncertainty about how the market will respond over time. The impact of an overspend would be significant, so it is better to plan measured and transparent actions, rather than carrying out an emergency review if budgets are breached.

29. Therefore, having considered the consultation responses alongside the impacts of overspend, we intend to take forward the interim cost control proposal that we consulted on, which will simply suspend the RHI scheme to new applicants until the next financial year if evidence shows that the budget could be breached.

**The budget**

30. Since the consultation we have reviewed the RHI budget and possible scenarios which would lead to the 2012/13 budget being spent. Our analysis shows that if we spend all of the available £108m budget this year then the legacy cost would be likely to exhaust all of the available budget of £251m for 2013/14 and leave no funds available for new installations. This is the case because, unless they are accredited on 1 April in any year, installations will tend to receive higher annual payments in the second financial year of them receiving the RHI. The later in the financial year they are accredited, the higher the ratio between their legacy payments next year and the total they will receive this year. This is illustrated by the fact that we expect to have spent £3m on RHI installations in 2011/12 but estimate that expenditure on those installations will be £16m in 2012/13.

31. To spend £108m on the RHI this year, weekly application rates would need to increase from their current levels by around 1500% by the end of this year. If new RHI installations were unable to be supported at all in 2013/14, we believe that the
impact on the supply chains that would have been created by that growth would be significantly worse than the impact of a temporary suspension in 2012/13 followed by the scheme re-opening in April 2013. Job losses could be expected and businesses may cease to be viable. Those making long-term investment decisions in renewable heat technology could face significant losses.

32. Therefore, to ensure sustainable growth and the ability to stay within budgets over time, we have concluded that the RHI budget limit will need to be reduced to £70m this year. This limit allows for a high rate of growth, as it would require weekly application rates to increase to around 500% of current rates by the end of this year. The £70m budget is not expected to be reached unless the current rate of applications of roughly 10MW per week (of which only around 5MW per week are projects completed since the RHI opened) were to rise steadily to 50MW per week by the end of the year.

33. The £70m budget also ensures that the funding available for next year would support the supply chain that would have developed, though we expect that some degression would be necessary. This does not affect budgets for the remainder of the spending review period to 2014/15. Those budgets are still at a level which allows for a sufficient amount of renewable heat to be on track to meet the heat proportion of our 2020 renewables target. Given current levels of applications to the RHI, we still consider a suspension unlikely under a budget of £70m.

34. We recognise that this may come as a disappointment to market participants. However, allowing expenditure higher than £70m this year would simply delay the scheme suspension and then prolong it once it did begin. The potential for boom and bust would be greater under such an approach.

The trigger and notice period

35. The stand-by mechanism for budget management would suspend the scheme at 97% of the annual budget, with one week’s notice. Therefore, if our forecast shows that we expect to spend £67.9m in 2012/13, we would give notice of suspension and the scheme would be suspended one week later. Given the uncertain levels of deployment in the market, we are concerned that one month’s notice at 80% increases the risk of both premature or unnecessary suspension and overspend because of the uncertainty of what would happen during the month of notice. Having a higher trigger with a shorter notice period reduces that risk and is more appropriate when considered alongside a budget of £70m. At a forecast spend of 97% of budget, we would be much more sure that a suspension was going to be necessary.

36. We will provide weekly updates on the DECC website of the forecast 2012/13 RHI expenditure. In addition, to respond to stakeholder concerns about wanting greater advance notice than one week, we propose to provide informal notice in advance of the formal notice of scheme closure. We would do this one month before we estimated that the scheme would need to close via the DECC website. This would be indicative notice only, and the set trigger and formal notice period would then be applied as described in paragraph 35 above.
While the majority of respondents were supportive of a notice period of one month or less, we appreciate that some stakeholders felt a longer notice period was needed. Given that this is a new market and there is little existing market data on which to base forecasts, it is difficult to anticipate how many installations are in the pipeline. If we provided a longer notice period we would need to set an even more conservative trigger level, increasing the likelihood of suspension.

**Suspension**

38. The stand-by mechanism will not affect installations which have been accredited or registered at the time when notice of suspension is given. Their eligibility and tariff rate will remain as before.

39. Applications received prior to the notice period will be processed as before, subject to the eligibility criteria and application requirements.

40. For applications received during the suspension notice period, the installation will only be accredited if it has been commissioned and if the accreditation date will be prior to the start of the suspension period.

41. Applications received during the period of suspension will not be processed. All of the above applies to applications for additional capacity as well as for new installations. Applicants will need to re-apply when the scheme re-opens at the beginning of 2013/14.

42. The stand-by mechanism will not be retrospective, therefore installation owners who successfully applied for preliminary accreditation prior to the regulations coming into force will be able to apply for full accreditation during the suspension period. Owners who applied for preliminary accreditation after the regulations come into force will not be able to apply for full accreditation during the suspension; they will need to re-apply once the scheme opens again in April 2013/14.

43. New applications for preliminary accreditation made during a suspension will only be considered once the scheme re-opens.

44. We understand stakeholder requests for greater certainty around the scheme, in particular their suggestion to extend preliminary accreditation. We are considering this within our work to develop a package of longer-term measures for budget management, on which we intend to consult in the Summer. This will allow us time to undertake the policy development needed to make the accreditation process more robust. If preliminary accreditation was extended as it currently stands we believe this leaves open the possibility of a large increase in speculative applications, which would increase the chance of hitting the trigger for suspension of the scheme early, or even needlessly.
**Forecasting**

45. An important consideration for us is that our intended actions are transparent and many responses to the consultation asked for data and spending estimates to be available. Therefore, we intend to provide clear and transparent information on progress towards the suspension trigger. This will be published weekly on DECC’s website and will enable potential applicants to track progress towards possible implementation of the stand-by measure and plan their installations accordingly. These will formally begin from the date that the amending regulations come into force and we intend to start providing forecasts shortly on the DECC website.

46. A detailed forecasting methodology will be published alongside these forecasts and legally binding requirements for the way that the forecasting will be done are included in the regulations. Forecasts will be based upon applications received, with information from deployment used wherever possible, including using metering data to estimate the amount of heat used by installations coming online.

47. Because our forecasting will be based on application and accreditation data, the higher the quality of the data the better the forecasting methodology will be. Poor data quality is likely to result in a more conservative approach to forecasting which could result in premature suspension of the scheme. We would encourage RHI applicants and participants to take care to disclose accurate, high quality data in order to improve the forecasting for the stand-by mechanism but also to ensure that the longer-term approach to cost control is well designed. High quality data provision as part of the application process will also speed up the accreditation process.

**Biomethane**

48. While planning our forecasting approach we identified that we do not have a reliable start date for information about the registrations of biomethane installations received to date. Because the planning process for biomethane is very long and there are no timing restrictions for biomethane registrations, it is currently possible to register a long time before biomethane injection is planned to begin. This means that it is difficult to obtain an accurate picture of when registered biomethane installations will begin to inject into the gas grid, based on the application data. If we are unable to adequately take account of this, we risk either overestimating the cost to the RHI and triggering a suspension unnecessarily, or underestimating the cost and increasing the chance of budget overspend.

49. To ensure that we can forecast the annual payments for biomethane accurately, we will require biomethane producers to have begun injecting into the grid before they are able to register for the RHI. This does not affect biomethane producers already registered. Furthermore, as part of the planned July consultation, alongside the longer-term proposals for budget management, we plan to consider in more detail how the process for biomethane applications can be made more consistent with that of other RHI technologies.
Timing of this measure

1. In the responses to the consultation, stakeholders asked that interim cost control should be time-limited and revoked once longer-term measures were in place. Therefore, we propose bringing forward legislation which covers only the 2012/13 financial year, until longer-term cost control can be implemented. If, for unforeseen reasons, longer-term cost control is not implemented by the beginning of the 2013/14 financial year we will amend the legislation to extend the stand-by mechanism for a further year.

Next steps

2. Taking account of the responses to the consultation, regulations to deliver the stand-by mechanism for budget management are being laid before Parliament in June 2012 and alongside this document, subject to Parliamentary scrutiny, for them to come into force before Summer Recess. The regulations will be called The Renewable Heat (Amendment) Regulations 2012.

3. We will consult on a longer-term framework, which will include measures to respond to some of the concerns raised in responses to this consultation, in the Summer.
Responses to this consultation were received from:

Matthew Hindle  Anaerobic Digestion and Biogas Association
Chris Reynolds  Chemical Industries Association
Roger Salomone  EEF
Amisha Patel  Energy UK
Christian Rakos  European Pellet Council
Bill Wright  Electrical Contractors Association
Terry Seward  Heat Pump Association
Richard Leese  Mineral Products Association
Charlotte Partridge  Micropower Council
Andrew Burke  National Housing Forum
Paul Thomson  Renewable Energy Association
Peter Clark  Scotch Whisky Association
Janice Fenny  Scottish Land and Estates Limited
Richard Pagett  Ascertiva Group Limited
Julian Tranter  Abacus Wood Limited
Grant Feasey  AES Limited
Carl Thomson  Agri Energy
Chetan Lad  British Gas
Paul Sellars  BritishEco Limited
Vera Tens/  BSW Timber Ltd
Hamish McLeod  Buccleuch Energy
Doran B Binder  Carbonic Savings Limited
Ali Marsh  Centre for Green Energy
Emma Cook  Ecotricity
Diego Sanchez  EDF Energy
Brian Seabourne  EON
Tim Pratt  Farm Energy Centre
Bruno Prior  Forever Fuels
Robert Kyriakides  Genersys Plc
Simon O’Neill  GT Energy
Bob Foley  GTC
David Parfitt  Henley Heating and Plumbing Ltd
Scott Greening  Ice Energy Heat Pumps
THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE AND RENEWABLE HEAT PREMIUM PAYMENTS

Issue: This submission seeks approval to proceed with the introduction of a Northern Ireland Renewable Heat Incentive (NI RHI) and the associated Renewable Heat Premium Payments (RHPPs).

Timing: Urgent

Need for referral to the Executive: Not at this time.

Presentational Issues: None

Freedom of Information: Elements of this submission may not be disclosable at present on grounds of policy development.

Programme for Government: A target for renewable heat is in the Programme for Government.

Financial Implications: HMT has advised that £25m of AME is available over the spending period 2011-2015 for a Northern Ireland RHI.

Statutory Equality Obligation: An equality screening form has been completed for this policy.

Legislation Implications: None.

Recommendation: It is recommended that you note this briefing, approve the final NI RHI and RHPP policies and confirm that you are content for the schemes to proceed. You are also asked to endorse and sign the statement at the foot of the Regulatory Impact Assessment.
Background

The EU Renewable Energy Directive (RED) (2009/28/EC) set a binding target that 20% of the EU’s energy consumption should come from renewable sources by 2020. The UK share of this target commits the UK to increasing the share of renewable energy to 15% by 2020 and Northern Ireland is expected to contribute to this share. The Department of Energy and Climate Change (DECC) has indicated that renewable heat levels of around 12%, coupled with 30% renewable electricity consumption are required for the UK to meet its requirements and a target of 10% renewable heat for NI by 2020 was therefore included within the Strategic Energy Framework; this is a challenging target given that the current level is 1.7%.

2. £860million has been made available from central Government funding to support the introduction of a Renewable Heat Incentive (RHI) in GB over the period 2011-2015; HMT has notified the Northern Ireland Executive that £25million of funding is available for a NI RHI over the same period.

3. You are aware that in July 2009 the Department for Energy and Climate Change (DECC) announced its intention to introduce a Renewable Heat Incentive (RHI) in GB on 28 November 2011. Given the very different heat market in Northern Ireland, it was agreed that it would be appropriate to separately assess how the NI renewable heat market could be best be developed. You will recall that you announced, in September 2010, that a NI RHI would be introduced to support renewable heat installations (commissioned from 1 September 2010) if, after a full economic appraisal, it was considered to be viable and economic to do so.

4. A procurement exercise was undertaken resulting in the appointment of Cambridge Economic Policy Associates in conjunction with AEA Technologies (CEPA/AEA) to conduct an economic appraisal to consider the most appropriate form of a Renewable Heat Incentive (RHI) for Northern Ireland. This work was completed in June 2011 and formed the basis for the proposals contained in the public consultation which was launched on 20 July 2011. The consultation ended on 3 October 2011; 78 responses were received and you received briefing (11/11/11) on the main issues raised by consultees. In light of the consultation responses, DETI engaged CEPA/AEA in December 2011 to conduct some further analysis, particularly regarding tariffs, banding & technologies. CEPA/AEA produced a report on this additional analysis (Feb 2012) and that has informed the final policy presented here for approval.

NI Renewable Heat Incentive (NI RHI)

5. The NI RHI represents a long term approach to developing the renewable heat market by providing consistent, secure, long term payments for renewable heat generation. The incentivisation involves payments to installers of renewable heat technologies, with tariffs dependent on the type and size of technology installed, and in the form of pence per kilo watt hour (p/kWh) for heat generated. Payments will be made quarterly over a 20 year period for all eligible installations (following accreditation) and it is proposed that the scheme will be open to new installations until 31 March 2020; this is in line with the GB RHI.
6. The NI RHI tariffs have been calculated to cover the cost difference between traditional fossil fuel heating systems and a renewable heat alternative. The tariffs account for the variances in capital costs, in operating costs, as well as seeking to address non-financial ‘hassle’ costs. The tariff is generated against a counterfactual position of heating oil; this is due to the fact that Northern Ireland is primarily dependent on oil and most of those switching to renewable heat will be oil consumers.

7. Tariffs vary depending on the type and size of technology to ensure that financial support is targeted for the specific installation and so over-compensation is avoided. Tariffs are paid for 20 years (the lifetime of the technology) and are ‘grandfathered’; however they will be amended on a yearly basis, for existing installers and new schemes, to reflect the rate of inflation.

The tariff setting methodology has three general principles:

- Renewable installations are divided depending on the type of technology and size of installation;

- Within each banding a reference technology\(^2\) is chosen to develop a consistent tariff across technologies and scales; and

- The net costs (difference between capital and operating costs of fossil fuel counterfactual and renewable alternative) are calculated and a tariff determined

To generate the appropriate tariff the difference in costs between the renewable technology and the fossil fuel counterfactual is determined and this figure is divided by annual heat output to demonstrate the appropriate tariff.

8. RHI payments will be made on a quarterly basis and are determined by multiplying the applicant’s actual (metered) heat output with the relevant tariff level. Under the RHI only ‘useful heat’ is deemed eligible; this is defined as heat that would otherwise be met by fossil fuels, this excludes deliberately wasting or dumping heat with the sole purpose of claiming incentive payments.

9. It is proposed that the NI RHI will be introduced in two phases. The first phase will commence as soon as possible after 1 April 2012 and will be for non-domestic installations. There will be four eligible technologies – biomass, biomethane, ground source heat pumps and solar thermal – and tariffs will be as presented below.

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\(^1\) Provides certainty for an investor by setting a guaranteed support level for projects for their lifetime in a scheme, regardless of future reviews

\(^2\) In order to set a fixed incentive rate for each band a ‘reference installation’ is chosen and the tariff set relates to this installation and provides appropriate subsidy to make it viable. In line with DECC’s methodology, the reference installation is chosen as the installation requiring a subsidy that would incentivise half of the total potential output from the technology that could be taken up across the period 2011-20 if that rate was offered to that band in every year. Total potential output is calculated as heat output that could be achieved if all technically viable segments within the band installed the technology.
<table>
<thead>
<tr>
<th>Technology</th>
<th>Size</th>
<th>Proposed tariff</th>
<th>Equivalent tariff in July 2011 consultation</th>
<th>GB equivalent tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Biomass</strong></td>
<td>Less than 20kWth</td>
<td>6.2</td>
<td>4.5</td>
<td>Tier 1: 7.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tier 2: 2.0</td>
</tr>
<tr>
<td></td>
<td>Between 20kWth and 100kWth</td>
<td>5.9</td>
<td>4.5</td>
<td>Tier 1: 7.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tier 2: 2.0</td>
</tr>
<tr>
<td></td>
<td>Between 100kWth and 1000kWth</td>
<td>1.5</td>
<td>1.3</td>
<td>Tier 1: 4.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tier 2: 2.0</td>
</tr>
<tr>
<td><strong>Biomethane</strong></td>
<td>Biomethane, all scales,</td>
<td>3.0</td>
<td>2.5</td>
<td>6.8</td>
</tr>
<tr>
<td></td>
<td>biogas combustion less than</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>200kWth</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Less than 20kWth</td>
<td>7.8</td>
<td>4.0</td>
<td>4.5</td>
</tr>
<tr>
<td></td>
<td>Between 20kWth and 100kWth</td>
<td>4.3</td>
<td>4.0</td>
<td>4.5</td>
</tr>
<tr>
<td></td>
<td>Between 100kWth and above</td>
<td>1.3</td>
<td>0.9</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>Ground source</strong></td>
<td>Solar thermal</td>
<td>8.5</td>
<td>8.5</td>
<td>8.5</td>
</tr>
<tr>
<td><strong>heat pumps</strong></td>
<td>Below 200kWth</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10. You will wish to note that biomass installations over 1MW in size will not receive a tariff under the current banding proposals. The reason for this is that, following the additional analysis, it appears that it would be cost effective for these sites to change to a renewable technology without an incentive. Indeed, when calculating a tariff for these technologies, using the same methodology as for the other tariffs, the proposed value is negative i.e. no tariff is required. The assumptions used in considering the over 1MW tariff are as follows;

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3 Tiering is used to ensure the technology is not ‘over-used’ just to receive an incentive. It works by dropping the paid tariff after the technology reaches its optimum use for the year; this is deemed at 1314kWhrs (15% of annual hours). After this level is reached the tier 2 tariff is paid. Tiering is not included in the NI scheme because in each instance the subsidy rate is lower than the incremental fuel cost.

4 Previous consultation set out a tariff of 4.5p/kWh up to 45kWth and then 1.3p/kWh above

5 The GB RHI has an open band above 1000kW of 1p/kWh. Given the oil counterfactual it is deemed that Northern Ireland installations over 1000kWth are already cost-effective to 2020 and therefore do not require an incentive. If evidence to the contrary is provided by stakeholders this upper limit will be reviewed under Phase 2 of the RHI.

6 As the GB banding is different the tariff of 7.9p/kWh applies up to 200kWth and then it drops to 4.9p/kWh

7 This tariff reflects a deeming approaching for the domestic sector. If a metered approach was introduced a tiered tariff would be more appropriate. This would be 9.3p/kWh for the first 1314 hours and then 4.9p/kWh after that.
Using these assumptions the following example can be generated for a 3MW biomass system being installed instead of a similar oil system.

<table>
<thead>
<tr>
<th></th>
<th>Biomass (3MW)</th>
<th>Oil (3MW)</th>
<th>Difference in costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overall capital cost</strong></td>
<td>£995,000</td>
<td>£95,000</td>
<td>£900,000</td>
</tr>
<tr>
<td><strong>Yearly operating cost</strong></td>
<td>£43,000</td>
<td>£600</td>
<td>£42,400</td>
</tr>
<tr>
<td><strong>Annual fuel costs</strong></td>
<td>£800,000</td>
<td>£1,210,000</td>
<td>£410,000</td>
</tr>
<tr>
<td><strong>Total annual operating cost</strong></td>
<td>£843,000</td>
<td>£1,210,600</td>
<td>(£367,600)</td>
</tr>
</tbody>
</table>

In this scenario, whilst the upfront capital cost is £900k more than the counterfactual on an annual basis around £370k is being saved, this results in the capital costs being recovered in less than 3 years. If a tariff of 1p/kwh was set for installations over 1MW the annual payment for this installation would be around £215,000, this would reduce the payback to around 18 months. Given these figures and these assumptions, a tariff for larger biomass heating systems cannot be justified. However, if evidence is produced to challenge the underlying assumptions, a tariff could be considered under Phase 2 of the scheme.

In Phase 1, as the RHI only applies to the non-domestic sector, all renewable heat installations will be required to be accompanied with a heat meter that will determine actual heat output. Heat meters are already common in many commercial applications and therefore should not be a barrier to uptake. Meters will allow for accurate readings to be taken of actual heat usage and appropriate payments made. They will also ensure accurate statistics are maintained throughout the lifetime of the scheme. All beneficiaries will also be required to submit an annual declaration to the scheme administrator to confirm that the installation is in working order, being maintained and is being used for eligible purposes. There is an obvious incentive to keep the equipment maintained given that payments are made on metered output.
12. It is expected that the NI RHI will be open to new installations until 2020, meaning the final payment from the scheme will be in 2040. The NI RHI will have scheduled reviews built-in to the scheme to allow DETI to ensure that the scheme remains fit for purpose and value for money for the duration. The scope of these reviews will include analysis of tariffs (either to be reduced or increased), the appropriateness of technologies (remove existing technologies or add new innovative ones) and the assessment of effectiveness and success.

13. Phase 2 of the scheme will extend the NI RHI to domestic installations. As the sector with the largest heating demand, the deployment of renewable heat within the domestic sector will be vital in supporting the achievement of the 10% target. However, a phased approach will allow DETI to carry out the further analysis that is necessary to understand the appropriate design for the domestic market scheme including whether heat should be metered or deemed. This is in line with the approach taken in GB.

14. Phase 2 may also include the introduction of further eligible technologies if these are shown to be viable and require an incentive to develop the market within NI. The timing of Phase 2 will be dependent on progress on Phase 2 of the GB scheme as we can then benefit from the lessons learned and from economies of scale in terms of developing the administrative system. DECC has publicly indicated that Phase 2 of its scheme will commence in October 2012. However, following recent discussions it would appear that this phase of the scheme might well be delayed in GB; it is therefore proposed that the second phase of the NI RHI will commence as soon as possible after 1 April 2013.

**Renewable Heat Premium Payments (RHPPs) for the domestic sector**

15. In the interim it is proposed to introduce a RHPP for the domestic market. These one off grant payments will assist in the capital costs of the renewable heat installation.

<table>
<thead>
<tr>
<th>Technology</th>
<th>Support per unit (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Source Heat Pump</td>
<td>1700</td>
</tr>
<tr>
<td>Biomass boiler</td>
<td>2500</td>
</tr>
<tr>
<td>Ground Source Heat Pump</td>
<td>3500</td>
</tr>
<tr>
<td>Solar Thermal</td>
<td>320</td>
</tr>
</tbody>
</table>

16. In line with GB, all installations under the scheme will be required to be certified under the UK Microgeneration Certification Scheme (MCS) and installed by MCS accredited installers. Applicants will be required to provide routine information on the technology installed, to assist in developing the understanding of renewable heat performance and use in the domestic sector. As well as surety in product and installation standards, by following this route Northern Ireland will also be able to learn from all the experience and research gained through the GB RHPP.

17. Those availing of the RHPP will remain eligible for a longer term tariff when Phase 2 of the RHI commences. However, the lifetime of the tariff under the RHI will be reduced accordingly so that all customers are equally incentivised. For example, a domestic customer who has availed of the RHPP will only receive 18 years of an RHI rather than the standard 20 years (the value of the RHPP has been set at the equivalent of 2 years RHI payments).
18. The RHPP scheme was part of the consultation exercise and the majority of those responding agreed with the rationale for treating the domestic sector separately. However it was also felt that any delay in introduction should be kept to the minimum and that clear plans were made for domestic customers as soon as possible to remove any uncertainty from the market.

19. The RHPP scheme will be administered within DETI Energy Division. Customers will apply direct to the Department where an initial assessment of eligibility will be undertaken. Successful applicants will then be issued with a voucher guaranteeing the RHPP once the technology is installed subject to terms and conditions. Once the installation is completed it will be inspected and payment made. Vouchers will not be redeemable beyond 31 March 2013.

Legislation

20. The primary power to enable DETI to make regulations for a NI RHI scheme to encourage renewable heat was incorporated into the Energy Act 2011 which was given Royal Assent on 18 October 2011. The necessary secondary legislation is now being drafted; we will then proceed to lay the Renewable Heat Regulations through draft affirmative resolution procedure in the Assembly. A SL1 letter is attached at Annex A for onward transmission to the ETI Committee, if you are content to proceed.

21. A Regulatory Impact Assessment (RIA) has been completed in respect of the RHI scheme and accompanying Regulations (Annex B). There is no requirement to issue the RIA to the ETI Committee. It is retained in DETI and made available on the Department’s website.

Development of an administrative system

22. The introduction of a RHI requires an administrative system capable of managing enquiries and applications, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. The Office of Gas and Electricity Markets (Ofgem) has developed such a system for DECC and is already managing the administration of the GB RHI. In addition, it has experience of delivering other large scale incentive schemes such as the Renewables Obligation, (including the NI Renewables Obligation for DETI), and the Feed-in-Tariff. It was considered that there could be significant advantages in utilising the existing systems and so a direct award contract was awarded to Ofgem to carry out a feasibility study into how the DECC GB RHI system could be used as a basis for an administrative system for the NI RHI.

23. The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload. In any case, Ofgem has confirmed that it will only pass through actual costs to DETI.

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24. Exploiting synergies with the GB RHI will drive down the costs of administering the scheme whilst maintaining a high quality service to generators. For example, using the existing Customer Relationship Management (CRM) Software will save NI an estimated £100-150K, while using the existing SUN system to make generator payments, instead of a payment service provider, could save in the range of £100 - 500K. In addition, using the main existing RHI register instead of commissioning a bespoke IT system is expected to save between £2m and £3m. Overall, it is estimated that using Ofgem's existing systems could save somewhere between £3.2million and £5.15million with additional ongoing operational savings.

25. Responses to the consultation were mixed in terms of who should administer the NI RHI. Some consultees felt that the use of Ofgem would be beneficial in terms of efficient delivery, consistency and reduced administrative costs. Others argued that the scheme should be administered locally with the possibility of creating new jobs and skills in NI. However, the completion of this feasibility study provides clear evidence that there are substantial gains (both in terms of efficiency and cost) to be had from utilising the existing GB system. Looking forward, there is the additional advantage that we would only be required to pay our share of any future development or enhancement costs.

26. It is therefore proposed to appoint Ofgem to administer the scheme under a Direct Award Contract (DAC). This has been discussed with colleagues in Central Procurement Directorate and they are content. A separate paper will be coming to you via the Accounting Officer for your formal approval to appoint Ofgem.

Approvals

27. Before the NI RHI can be introduced we need approval from the EU Commission that the proposals are compatible with the Guidelines on State Aid. A notification paper was submitted to the Commission in December 2011. The application was timed to benefit from the lessons learned by DECC from its RHI application (as the two schemes are similar). It is hoped that by addressing the Commission’s concerns regarding the GB scheme prior to submitting our application, the approval process might run more smoothly. It is hard to predict exactly how long the approval process will take. In the last few days we have been told we can expect to hear from the Commission in the next two weeks; however, this contact may simply be to request further information or to pose questions. It is unlikely therefore that we will begin the scheme much before June given that we need the State aid approval, DFP approval and the Regulations have to be passed by draft affirmative resolution which includes a debate in the Assembly.

28. The proposals for the NI RHI and associated Premium payments were considered by the DETI Casework Committee on 9 March 2012. The Committee was content subject to us gaining Accounting Officer approval for the DAC, alerting TMT to the ongoing administrative costs associated with the projects (as these will have to be found within DETI’s existing budgets), approval of the minutes of Casework and further discussion with CPD regarding the specific terms of the Ofgem contract.

29. If the Minister is content with the scheme as outlined above, final approval will be sought from DFP (a Strategic Outline Case has already been approved by DFP).
30. The NI RHI scheme cannot commence until all the approvals are in place. The RHPP scheme can commence once Ministerial & DFP approval is obtained i.e. State Aid approval is not required.

Recommendation

31. It is recommended that you:

i. note this briefing, approve the final NI RHI and RHPP policies and confirm that you are content for the schemes to proceed subject to the necessary approvals (as outlined above);

ii. agree the SL1 (attached at Annex A) for onward transmission to the ETI Committee; and

iii. consider and, if content, sign the Regulatory Impact Assessment (attached at Annex B) which should be returned to Energy Division for filing.

FIONA HEPPER
Ext 29215

cc: David Sterling
    David Thomson
    David McCune
    Clare Baxter
    Joanne McCutcheon
    Peter Hutchinson
    Sam Connolly
    Susan Stewart
    Glynis Aiken
Dear Jim

**SL1 – RENEWABLE HEAT REGULATIONS (NORTHERN IRELAND) 2012**

1.1 The Department of Enterprise, Trade and Investment (the Department) proposes to make a Statutory Rule in exercise of the powers conferred by the Energy Act 2011.

1.2 The Department of Energy and Climate Change (DECC) in GB agreed that an amendment could be made to the Energy Act 2011 that would extend powers for renewable heat, similar to those contained within the Energy Act 2008, to Northern Ireland. For this to be achieved a Legislative Consent Motion (LCM) was required. Following Executive approval on 10 February 2011 and ETI Committee support at its meeting on 24 February 2011, a LCM was tabled and passed in the Assembly on 14 March 2011.

1.3 The Energy Act makes special provisions for Northern Ireland in terms of renewable heat.\(^1\)

1.4 DECC obtained Royal Assent on 18 October 2011 and the Bill became the Energy Act 2011. The Act deems that the Statutory Rule will be subject to the draft affirmative resolution procedure before the Assembly.

**Purpose of the Statutory Rule**

2.1 The Department carried out an economic appraisal of a potential Northern Ireland incentive scheme with the aim to assist in achieving the target of 10% renewable heat by 2020. The appraisal considered various options for incentivising the local renewable heat market, and advised on appropriate tariff levels. It also considered the costs/benefits and the impact of each of the options.

2.2 The Department carefully considered the findings of the economic appraisal to reach a view on the proposed design of an incentive scheme for Northern Ireland (NI) and has obtained Ministerial clearance on the proposed way forward.

2.3 The Statutory Rule has therefore been drafted based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB

Regulations). The GB Regulations were approved by both Houses of Parliament and by Scottish Ministers on 10 November 2011.

2.4 The Statutory Rule will set in place a structured mechanism which will allow a RHI scheme to be introduced which will provide long-term guaranteed financial support for renewable heat installations in Northern Ireland. The Rule will underpin the tariff scheme and will specifically prescribe matters relating to eligibility criteria, obligations for participants of the scheme, methods of payment and accreditation and registration.

Consultation

3.1 The Department went out to consultation on a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered.

3.2 Following the consultation, further economic analysis was carried out considering issues that were raised by stakeholders. This analysis completed in February 2012 and has informed the final policy decision.

Position in Great Britain

4.1 DECC originally legislated for an incentive scheme in the Energy Act 2008 and, following a consultation process, published final proposals on the RHI in March 2011. DECC obtained parliamentary approval of the GB regulations in November 2011.

4.2 The Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC.

Equality Impact

5. In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, a screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

Regulatory Impact

6.1 A draft Regulatory Impact Assessment (RIA) has been prepared in respect of these Regulations. The Regulations will support the implementation of the Renewable Energy Directive 2009/28/EC (RED) which requires the UK to ensure that 15% of its energy consumption comes from renewable sources including electricity, heating and cooling and transport.

6.2 Five options were considered as part of the RIA –

(a) **Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 7% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by Her Majesty’s Treasury (HMT) (discussed under point 7) would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market.

(b) **50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the Reconnect scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than an administratively awarded grant.

(c) **A renewable heat challenge fund**

A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The first to consider is that the administration costs are likely to be prohibitive. Previous experience of running Reconnect demonstrated administration costs of £1.48m for a grant scheme worth £10.5m (14%). The Reconnect scheme was for domestic customers only, and on a ‘first-come-first-served’ basis. A challenge fund, dealing with commercial applications and involving complex evaluation metrics, could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within DETI budget.

The scheme could be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised. This would not support the development of a more diverse market.

The final issue with a ‘challenge fund’ is that of risk. As the Challenge Fund would be contributing to the capital costs of the installation (rather than the whole life costs under the RHI) a risk would develop that, after a short time, installations would stop...
generating renewable heat. This could be because the renewable heat fuel is no longer affordable, that a fossil fuel alternative (such as gas) become available or more attractive, that the site is no longer in business etc. In these circumstances clawback arrangements would need to be initiated, which could be costly and complicated, and the target would be hindered.

(d) **Joining in with the GB RHI scheme**

There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administrating an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The major issue that would arise would be that customers could be potentially over-incentivised and inefficient technologies supported. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables.

(e) **A specifically tailored NI RHI scheme**

The NI RHI option offers the highest potential renewable heat output at the best value. It also would incentivise a wide range of technologies and provide investors with long-term support. Whilst it would only be open to non-domestic market, in the first instance, it would eventually be open to all consumers and therefore provide greater accessibility.

The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The ‘cost’ of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower.

Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

6.3 **Preferred option**

As mentioned in the consultation exercise in July 2011, the Department’s preferred option is a specifically tailored NI RHI scheme. This has been determined as the most appropriate method of providing long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO₂ emissions as fossil fuels are displaced, an increase in fuel security as Northern
Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

Financial Implications

7. HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2 million in the first year, followed by £4 million and £7 million, with £12 million available in the final year. DETI has sought and received approval for the funding profiled for year 1 of the scheme to be made available in year 2. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers’ energy bills.

EU Implications

8.1 The RED requires the UK to ensure that 15% of its energy consumption comes from renewable sources – for the first time the requirement extends beyond electricity to heating and cooling and transport. This is an important shift in emphasis: almost half of the final energy consumed in the UK is in the form of heat, producing around half of the UK’s CO₂.

8.2 The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target. In light of the obligations within the RED, the Department has undertaken to introduce a renewable heat scheme in Northern Ireland.

Section 24 of the Northern Ireland act 1998

9. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

Section 75 of the Northern Ireland Act 1998

10. The Department had considered section 75 of the Northern Ireland Act 1998 and is satisfied that the proposed Regulations will have no negative implications or possible infractions under Section 75.

Operational Date

11.1 It is proposed that the Regulations will come into operation in June 2012.

11.2 I would be grateful if you would bring this matter to the attention of Enterprise, Trade and Investment Committee.

Yours sincerely

FIONA HEPPER
Head of Energy Division

cc Human Rights Commission

Legislative Programme Secretariat
IMPLEMENTATION OF A RENEWABLE HEAT POLICY IN NORTHERN IRELAND

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Renewable Heat Incentive Regulations (Northern Ireland) 2012

2. Purpose and intended effect of measure

a) The background

The Department of Enterprise, Trade and Investment (the Department) is responsible for the development and maintenance of an appropriate legislative and policy framework for energy in Northern Ireland. The vision is for a competitive, sustainable, reliable energy market at the minimum cost necessary. Four key policy goals have been identified to support this vision as follows:

- Competitiveness
- Security of Supply
- Infrastructure
- Sustainability

The agenda for developing renewable energy solutions and securing real reductions in energy consumption to enhance sustainability is driven by environmental policy, aimed at reducing harmful emissions. However, pursuing sustainability in energy also offers opportunities to enhance security of energy supply by introducing alternative generation sources, which are not subject to the price volatility of imported fossil fuels. Furthermore, development of indigenous sources offers opportunities for diversification and alternative sources of income.

Renewable Heat

Renewable heat is simply heat produced from renewable sources, for example wood pellet boilers, solar thermal water heating units, heat pumps and, on a larger scale, industrial biomass boilers or biogas plants.

The EU Renewable Energy Directive (2009/28/EC), published in the Official Journal of the European Union on 5 June 2009, requires that Member States ensure that 15% of their energy consumption comes from renewable sources by 2020. This requirement extends beyond electricity to heating and cooling and to transport.

As heat energy accounts for almost half of all the energy consumed in the UK and produces around half of the UK’s CO₂ there is considerable scope to explore and increase the use of renewable heat technologies in order to help meet the new Renewable Energy Directive target.

GB Renewable Heat Incentive

The Department of Energy and Climate Change (DECC) has set a target of 12% renewable heat for England and Wales by 2020, this target, coupled with the 30%
target for renewable electricity consumption, will assist in Great Britain meeting its requirements under the Renewable Energy Directive. Scotland has a separate target of 11%.

In order to achieve this target, DECC legislated for an incentive scheme in the Energy Act 2008 and, following a consultation process, published final proposals on the RHI in March 2011. DECC obtained parliamentary approval of the GB Regulations in November 2011.

The RHI in Great Britain opened to applications in November 2011, the scheme is initially for the non-domestic sector with the domestic sector to be eligible for RHI payments as part of ‘phase 2’ of the scheme. In the interim, domestic consumers wishing to install renewable heating technologies can apply for ‘renewable heat premium payments’ to support the capital cost of the installation. These premium payments have been available since July 2011 and will close on 31 March 2012.

Over the next 4 years, DECC has anticipated that £860m will be invested in new renewable heat installations, this investment will go beyond 2015/2016 as new installations are supported for 20 years under fixed tariffs.

The Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC.

Northern Ireland Heat Study
Northern Ireland is not included as part of the wider Great Britain RHI. There are many differences between the heat and renewable heat markets in Great Britain and Northern Ireland that mean that it has been more appropriate for a separate assessment to be taken on how the local market can be developed.

In December 2009, DETI commissioned research into the existing heat and renewable market so an assessment could be made on the optimum growth potential of the market, methods for developing the market and an appropriate target for 2020. The study was carried out by AECOM Ltd and Pöyry Energy Consulting and was part financed by the European Regional Development Fund under the European Sustainable Competitiveness Programme for Northern Ireland.

Economic Appraisal of a Northern Ireland RHI
In February 2011, Cambridge Economic Policy Associates (CEPA), in conjunction with AEA Technologies, were commissioned to undertake an economical appraisal on the feasibility of a Northern Ireland RHI.

The economic appraisal has considered various options for incentivising the local renewable heat market, and has advised on appropriate tariff levels. It has also considered the costs/benefits and the impact of each of the options.

Following a public consultation on the introduction of a Northern Ireland RHI further economic analysis was carried out. This analysis focussed on issues raised by stakeholders and assisted in developing final tariff levels and banding. This has, therefore, informed the final policy position.

b) The objective

The overall objective is to deliver the maximum possible renewable heat in Northern Ireland, but this has to be delivered in a way that is consistent with other Departmental policies and objectives. In addition, the target must be delivered within the agreed budget of £25m to 2015 provided by Her Majesty’s Treasury (HMT).

In September 2010, the Northern Ireland Executive endorsed a target of 10% renewable heat by 2020 (against a baseline of 1.7% in 2010). This target is included in the Strategic Energy Framework.

The achievement of this target is the overall objective of developing the renewable heat market, in doing so there will be significant benefits for fuel security in Northern Ireland and the opportunity to reduce carbon emissions. There may also be the potential to develop ‘green jobs’ and ‘green skills’ within the renewable heat industry.

c) Risk assessment

The Department recognises that there is some degree of risk and uncertainties in implementing a renewable heat incentive to Northern Ireland and seeks to consider those uncertainties in this paper.

Risk of incorrect subsidy level

Probably the most obvious risk is that the subsidy levels proposed for the RHI are either too high or too low. In the former case, those installing renewable heat will be over-subsidised and less heat will be delivered per pound than under more optimal subsidy levels. In the latter, renewable heat will not be deployed to the extent expected.

The normal method of dealing with this risk is firstly to have carefully analysed and researched data in developing the tariffs. The tariffs have been developed by CEPA and AEA Technologies, subject to a public consultation and then subsequently reviewed by CEPA and AEA. Departmental Economists have also assessed the tariffs and assumptions behind the calculations and have deemed them appropriate.

In addition it is the intention to have regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions. It is currently proposed that the first review will begin in January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market.

Risk of harm to other sectors

An increase in renewable heat will, inevitably, lead to a reduction in the demand for conventional heating (oil, gas, coal and electric heating). At a high level, the short term harm to any sector should be relatively small. However, even this, if it impacted disproportionately on the gas sector, could have negative consequences for the extension of the gas network.
Risk of failure of renewable heat supply

Just as supplies of conventional fuels may be disrupted, there is a risk that supplies of renewable fuel (i.e. biomass, biogas and bioliquids) will be disrupted. Biogas can be replaced with conventional gas in the short term, so disruptions to it should be relatively low risk. Bioliquids, since locally sourced by assumption, should be less risky than biomass, much of which will be imported. This suggests that the biomass supply chain, and the security of biomass imports, will be an important factor in the actual or perceived riskiness of renewable heat.

Risk of low take-up

This could be a result of tariffs or other possible barriers include planning restrictions, a lack of awareness, and negative perceptions of the reliability and/or cost of renewable heat.

Risk of failure to implement targets set by EU Renewable Energy Directive

The RED set a binding target that 20% of the EU’s energy consumption should come from renewable sources by 2020. The UK share of this target commits the UK to increasing the share of renewable energy to 15% by 2020. The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target.

Risk of insufficient budget for administration or future payments

There may be the possibility of a higher than expected uptake leading to overspends in annual budget and higher administration costs. This will be mitigated with ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget.

Risk of not receiving State Aid Approval

The EU Commission may refuse to approve the NI RHI scheme because of a lack of information provided to Commission; the inability to justify the need for, or the design of, the NI RHI scheme; or possibly the tariffs are set at too high a level and amounting to over-incentivisation.

The Department has consistently kept the Commission informed of proposed changes to the Scheme and took on board the lessons learned from the GB state aid application. In December 2011, the Department sent a detailed submission outlining the NI RHI proposals which was based on the GB application that was approved in November 2011. An addendum to December application was submitted in February 2012 advising on proposed changes.

Risk of instances of fraud

Instances of fraud could include duplicate applications, unusual meter readings (too high for expected output), lack of information being provided to the administrator and using unregistered installers.
The Department has put in place measures to counteract instances of fraud including:

- Assessment of applications and verification of installations and meter readings;
- Liaison with Ofgem on instances of suspected fraud;
- Physical verification of sites under RHPP scheme;
- Random checks to sites and meters under RHI scheme;
- Requirements of detailed information for each installation;
- Use of MCS under 45kw installations; and
- Meter readings assessed against expected output.

Where there are instances of suspected fraud, the participant will be investigated and payments will be stopped.

**Risk of failure in administration of RHI**

There is the potential for delays in dealing with applications, accreditations and payments for the NI RHI scheme which would lead to stakeholders complaining about application process. This could be as a result of difficulties in IT systems or a lack of communication between Ofgem and the Department.

In order to mitigate this risk, the Department will establish a joint project team with Ofgem as the scheme is implemented. The Department has also acknowledged the lessons from the GB RHI implementation. It has also developed a robust and detailed feasibility and ensured that there are sufficient resources earmarked for the NI RHI scheme. The IT systems have been well developed and tested (through GB scheme).

3. **Options**

A number of options for DETI’s support of the renewable heat market were considered:

**Option 1 - Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 7% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by HMT would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market.

**Option 2 - 50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. Under this scheme 5.35% renewable heat could be delivered by 2015. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the Reconnect scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than an administratively awarded grant.
Option 3 - A renewable heat challenge fund
A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The first to consider is that the administration costs are likely to be prohibitive. Previous experience of running Reconnect demonstrated administration costs of £1.48m for a grant scheme worth £10.5m (14%). The Reconnect scheme was for domestic customers only, and on a ‘first-come-first-served’ basis. A challenge fund, dealing with commercial applications and involving complex evaluation metrics, could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within DETI budget.

The scheme could be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised. This would not support the development of a more diverse market.

The final issue with a ‘challenge fund’ is that of risk. As the Challenge Fund would be contributing to the capital costs of the installation (rather than the whole life costs under the RHI) a risk would develop that, after a short time, installations would stop generating renewable heat. This could be because the renewable heat fuel is no longer affordable, that a fossil fuel alternative (such as gas) become available or more attractive, that the site is no longer in business etc. In these circumstances clawback arrangements would need to be initiated, which could be costly and complicated, and the target would be hindered.

Option 4 - Joining in with the GB RHI scheme
There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administrating an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables.

Option 5 - A specifically tailored NI RHI scheme
The NI RHI option is the preferred approach and offers the highest potential renewable heat output at the best value. It also would incentivise a wide range of technologies and provide investors with long-term support. Whilst it would only be open to non-domestic market, in the first instance, it would eventually be open to all consumers and therefore provide greater accessibility.
The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The ‘cost’ of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower.

Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

4. Benefits

Quantitative Benefits for options 2 to 5

• **10% target for renewable heat**
  The overarching benefit would be the achievement of the 10% target of renewable heat, set by the Executive within the Strategic Energy Framework. The achievement of this target would contribute to the UK renewable energy targets set under the Renewable Energy Directive.

  Looking towards 2020, analysis undertaken indicates that Northern Ireland’s overall heat demand is predicted to fall from 17.4 TWh per year to 16.7 TWh with rises in demand from new development being outweighed by reductions in demand and energy efficiency improvements. Taking into account the 300 GWh of renewable heat already present in Northern Ireland, a target of 10% for 2020 equates to an additional 1.3 TWh or 1300 GWh of renewable heat.

• **Carbon Savings**
  In addition, there would be quantitative benefits driven by carbon savings. Under the Northern Ireland RHI it is estimated that 5.1 million tonnes of carbon emissions. The value of these savings is in the order of £240million.

Qualitative benefits

This section covers the benefits that are not quantified and looks at the qualitative benefits of the implementation of renewable heat in Northern Ireland.

• **Employment and capacity building, particularly in green sectors**
  DECC has estimated\(^2\) that there are 150,000 jobs in the heating industry in Great Britain. In relative terms, this equates to around 3,750 jobs in this sector in Northern Ireland. The Renewable Energy Installers Academy lists 92 firms or individuals in Northern Ireland that are qualified to install renewable heat; this could be expected to grow significantly with a robust, long term renewable heat subsidy in place. In March 2011 there were 26 firms that were MCS (microgeneration scheme) accredited and qualified to install at least one of the renewable heat technologies and based in Northern Ireland. Investment in renewable energy is likely to create direct jobs as well as indirect jobs across the entire supply chain of the renewable industry including:

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• Environmental monitoring;
• Development design;
• Commissioning and procurement;
• Manufacturing;
• Installation;
• Project management;
• Transport and delivery and operations; and
• Maintenance.

A 2007 European Commission study\(^3\) found that, overall, a 10% substitution towards renewable energy sources compared to non-renewable sources has a positive impact on jobs.

Employment can be created or safeguarded in the following ways:

• Direct employment in the installation, construction or operation of a project.
• Direct employment in the manufacturing of renewable heat technologies.
• Indirect employment from supplying goods and services to a project.
• Induced employment through jobs created due to increase spending due wealth creation by the project.

Biomass and bioenergy schemes in particular offer the greatest potential for jobs relating to the ongoing operation of a facility. Jobs may be created both from the operation of larger plants, and also from the ongoing management and supply of fuels. Bio-energy schemes can result in additional jobs through:

• The management of forestry and production of forestry residues.
• Transport and delivery of fuels.
• Utilising unused land for energy crop production.

• **Reduction in oil imports**

  Analysis suggests that the majority of the fuel displaced will be oil, which is as expected since nearly 80% of heating in NI is from oil. For comparison purposes, NI’s current demand for oil is around 17,558 GWh/ year\(^4\), which is around 10.3 million barrels\(^5\). The NI RHI with the highest level of renewable heat deployment displaces less than 10% of oil imports. This reduction in oil imports would reduce Northern Ireland’s exposure to the price of oil and to the risk of disruptions in oil supplies.

• **Air quality**

  There could be air quality impacts from widespread take-up of biomass heating, particularly if this is in urban areas. However, the relative impact will depend significantly on the fuel displaced. The impact assessment for the GB RHI\(^6\) notes that where renewable heat displaces oil, the "[air quality] impacts can be positive".

**Sectors affected**

The following sectors are likely to be affected by the introduction of these Regulations:

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\(^{4}\) Source: AECOM/ Pöyry, 2010, op. cit.

\(^{5}\) Assuming 1 barrel of oil =6.119GJ, source: Energy Information Agency [www.eia.gov](http://www.eia.gov)

\(^{6}\) DECC, 2011, Renewable Heat Incentive Impact Assessment
### Sector and Effect

<table>
<thead>
<tr>
<th>Sector</th>
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<tr>
<td>Domestic</td>
<td>Opportunity and availability of support to convert new renewable heat technologies</td>
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<tr>
<td>Green</td>
<td>Possible creation of new jobs/ growth of the industry</td>
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<td>Public</td>
<td>Opportunity to convert public buildings to new renewable heat technologies</td>
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<tr>
<td>Commercial</td>
<td>Opportunity and availability of grant to convert new renewable heat technologies</td>
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<tr>
<td>Existing heating industries</td>
<td>Increasing demand for renewable heat may lead to a reduction in the demand for conventional heating</td>
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### Other impact assessments

#### Equality

In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

### 5. Costs

- **Funding**

  HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2million in the first year, followed by £4million and £7million, with £12million available in the final year. DETI has sought and received approval for the funding profiled for year 1 of the scheme to be made available in year 2. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers’ energy bills. HMT have already indicated that any spending commitments made via the initial NI RHI (i.e. through the £25m) will be met by ongoing RHI payments from HMT. Additional funding post 2015 will need to be negotiated with DECC and HMT in due course.

- **Administration costs**

  The introduction of a NI RHI requires an administrative system capable of managing enquiries and applications, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. Ofgem has developed such a system for DECC and is already managing the administration of the GB RHI. In addition, it has experience of delivering other large scale incentive schemes such as the Renewables Obligation and the Feed-in-Tariff. It is considered that there could be significant advantages in utilising the existing systems and so a direct award contract was awarded to Ofgem to carry out a feasibility study into how the DECC GB RHI system could be used as a basis for an administrative system for the NI RHI.

  The study concluded that Ofgem had the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K. Forecasts of
operating costs for the next four years are £136K, £157K, £198K and £249K based on NI accounting for a 3% share of the workload.

Exploiting synergies with the GB RHI will drive down the costs of administering the scheme whilst maintaining a high quality service to generators. For example, using the existing Customer Relationship Management (CRM) Software will save NI an estimated £100-150K, while using the existing SUN system to make generator payments, instead of a payment service provider, could save in the range of £100 -500K. In addition, using the main existing RHI register instead of commissioning a bespoke IT system is expected to save between £2m and £3m. Overall, it is estimated that using Ofgem's existing systems could save somewhere between £3.2million and £5.15million with additional ongoing operational savings.

6. Consultation with small business: The Small Business Impact Test

The businesses most affected by these proposed Regulations will be those companies which install and manufacture renewable components. As previously mentioned under the Benefits section of this impact assessment, there is likely to be a positive effect on installers of renewable technologies as investment in renewable energy is likely to create direct jobs as well as indirect jobs across the entire supply chain of the renewable industry including:

- Environmental monitoring;
- Development design;
- Commissioning and procurement;
- Manufacturing;
- Installation;
- Project management;
- Transport and delivery and operations; and
- Maintenance.

The incentive scheme will also be available to businesses across NI as well as the public sector and the other elements of the non-domestic sector (community groups, not-for-profit organisations etc). It is expected that the domestic sector will be introduced into the NI RHI from during phase 2 of the scheme, following further analysis, in the interim support in the form on “Renewable Heat Premium Payments”.

This scheme will help to incentivise the industrial sector into changing its heating from oil which produces high carbon emissions to one of the “green” heating technologies offered under the incentive scheme which could help them cut costs on their fuel bills significantly.

7. Enforcement and Sanctions

Many aspects of the Renewable Heat Regulations will be implemented by Ofgem by which participants in the incentive scheme must abide. Compliance with the incentive scheme will be enforced by the Ofgem who has the power to impose sanctions on those participants in the event of a failure to comply with the eligibility criterion or ongoing obligation set out in the Regulations.

Ofgem’s powers include the following –

- Temporarily withholding periodic support payments for a maximum period of 6 months commencing from the date of the notice served on the participant;
• Suspend periodic support payments where ongoing failure to comply with an eligibility criterion or ongoing obligation for a maximum period of 1 year;
• Stop or reduce participants’ periodic support payments where there has been a material or repeated failure by a participant to comply with an eligibility criterion or ongoing obligation during any quarterly period; and
• Exclude a participant from the scheme where there has been a material or repeated failure by a participant to comply with an eligibility criterion or ongoing obligation.

Ofgem can also at any time revoke a sanction imposed.

8. Monitoring and Review

The Department, in liaison with Ofgem, will monitor the operation of the Northern Ireland renewable heat market to assess if the elements of the incentive scheme are delivering the anticipated benefits.

It is expected that Ofgem will be responsible for developing and administering the scheme on behalf of DETI. Ofgem has significant experience in the delivery of large scale energy incentive schemes such as the Renewables Obligation (RO) and the Feed-in-Tariff (FIT). In addition, Ofgem has administered the Northern Ireland Renewables Obligation (NIRO) since its inception and therefore has an understanding of the local energy market and a working relationship with the Department.

9. Consultation

The Department went out to consultation on a proposed RHI scheme including the draft the Renewable Heat Regulations (Northern Ireland) 2012 on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered.

10. Summary and Recommendation

A specifically tailored NI RHI scheme will provide long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO₂ emissions as fossil fuels are displaced, an increased in fuel security as Northern Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

The RHI will be open to all non-domestic consumers in the first instance, with the domestic market introduced at a later date. In the interim, the domestic sector will be able to avail of support in the form of Renewable Heat Premium Payments.
11. Declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed

Date

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