

To: Lindsay Goater[Lindsay.Goater@ofgem.gov.uk]
From: Jacqueline Balian
Sent: 2012-08-31T14:12:20Z
Importance: Normal
Subject: FW: NIRHI changes
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[Changes made to NIRHI Guidance Document.docx](#)

In response to your question about resources to review NI documentation – here is the single document which could be reviewed next month ie Monday. It's 10 pages so maybe one for the train?

Jacqueline

From: Michelle Murdoch
Sent: 31 August 2012 15:06
To: Jacqueline Balian
Subject: NIRHI changes

Dear Jacqueline,
As per your request, please find attached the 'short cut'!
Kind Regards
Michelle

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Changes made to RHI Guidance Documents to create NIRHI Guidance Documents.

A word of explanation..

- The NI guidance will be branded as DETI guidance and will be published by them.
- Ofgem is administering the scheme on behalf of DETI as made possible under section 114 of the Energy Act 2011. Any mention of 'The Energy Act' relates to the 2011 version and not the 2008 as in the GB guidance.
- This guidance began as the GB RHI guidance. It has been amended/added to, to ensure its relevance to the NIRHI scheme. Therefore, some issues in the wording from the GB guidance may still be visible in the NI guidance documents.
- Pronouns have been changed to reflect that the Guidance is from DETI and not Ofgem.
- A text in green in the following document denotes text added in. Any in red denotes text taken out.

Across both Volumes....

1. Chapter 1: Introduction is exactly the same across both volumes; you've read one, you've read them both.
2. Participants in the scheme interaction diagram in Chapter 1 amended to include DETI not DECC
3. 1.13 – 1.14 Reporting Requirements; what DETI will publish on their website. The following changes have been made:
 - a. Taken out Biomass Sustainability reporting and replaced with Biomethane Sustainability reporting.
 - b. Kept in the reporting of 'total amount of heat generated for which payments have been made under the RHI' taken out 'as well as details of what this heat has been used for' as it is not supported by Regulation 51.
 - c. Taken out 'we will aim to update this information daily' for the same reason as above.
4. 1.25 – Headed 'Territorial Applicability' instead of 'Devolved Administrations'.
5. Amended regulation footnotes to match up with NI draft statutory Regulations.
6. DECC replaced by DETI.
7. "Government" replaced by NI Assembly/ Executive. The Assembly is the devolved legislature of Northern Ireland and sits at Parliament Buildings at Stormont. The Executive is the administrative branch of the devolved legislature and is answerable to the Assembly.
8. RHI replaced by NIRHI.
9. References to Feed in Tariffs taken out as not relevant in Northern Ireland.

10. Reporting provisions amended to DETI's specifications – They will put the information up on their website quarterly. Please see Regulation 51 in the NI Regulations for specifics.
11. Footnote website references changed to NI equivalent websites for reference materials
- Domestic rates not CT rates <http://www.dfpni.gov.uk/lps/>
 - RHPP NI – Deti website not energy saving trust. http://www.detini.gov.uk/ni_rhpp_faqs-2.pdf
 - Northern Ireland Ombudsman www.ni-ombudsman.org.uk
 - Trading Standards UK replaced with DETI Consumer affairs branch www.detini.gov.uk/deti-consumer-index.htm
12. Replaced GB acts with the relevant NI acts (where known)
- ie. Pollution Prevention & Control Regulations (Northern Ireland) 2003.
13. Biomethane definition: The definition corresponding to the definition in the 2008 Act is contained in section 113 of the Energy Act 2011, the definition being worded in the same way as in the 2008 Act, save that the reference is to the NI Gas Order of 1996, so that's the definition (in s.113) that applies to NI.
14. Emails, phone no.s updated to NI ones. (Awaiting confirmation as to what these are)
- NI notification of additional capacity NIRHI.notification@ofgem.gov.uk
- New number to replace 0845 200 2122
- NIRHI.Enquiry@ofgem.gov.uk
- Notification of additional capacity email address
15. DECC Policy document taken out of Guidance. In the GB version it is mentioned at the following times:
- A description of all eligible types of heat pump (Vol. 1)
 - Mentioned later on regarding reversible heat pumps (Vol. 1)
 - Stated as setting out the principles underlying the Government's policy on heat uses that are eligible for RHI support (Vol. 1)
 - Mentioned regarding the calibration of meters and associated components (Vol. 2)
 - Tariff levels for the different eligible technologies and the formulae to determine the payments (Vol. 2)
16. CHPQA scheme **IS** relevant to Northern Ireland. DETI requested DECC's permission to use link to documents on their website. (Have not had confirmation from DETI as yet – however left in guidance)

Vol 1

3.6 Overall eligibility checklist – changed date for an eligible installation that was completed and first commissioned on or after 15th July 2009 (GB) to the 1st Sept 2012 (NI).

5.8 Heat pump document – linked to guidance. DECC version removed and NI version (supplied by DETI) attached. http://www.doeni.gov.uk/niea/grg_002_final.pdf

5.42 “Whereas some technologies have an upper limit on capacity to be eligible under the NIRHI, solid biomass boilers are eligible at all scales up to but not including 1000kWth. “ The green words added in to reflect changes in NI Regulations.

5.51 “The Regulations do not provide that plants of this scale are permitted to burn any fossil fuel or biomass contaminated with fossil at the plant (ie in the same boiler). It will therefore be a condition of accreditation that these biomass plants must use 100 percent biomass fuels.” Taken out of guidance completely – not supported by the regulations.

5.62 GB document “Future Emission Limits “In March 2011, the [Government] announced information of introducing emission limits of 30 g/GJ particulate matter and 150g/GJ for NOx on combustion of biomass boilers below 20MWth. These emissions limits do not currently apply but we expect them to be introduced in phase two.” Deleted altogether. According to DETI it only applies to GBRHI.

5.82 [Renewables Obligation Order 2009 or Renewables Obligation (Scotland) Order 2009] replaced with Renewables (Northern Ireland) Obligation (NIRO)

6.9 “ In considering the length of time for which a building or structure is expected to remain in its location, Ofgem would not generally consider any building or structure that has a planned time of use of two years or less [which would be eligible for exemption from the energy efficiency requirements of Schedule 1, Part L of the Buildings Regulations 2010 on the basis that it has ‘a planned time of use of two years or less’], to be ‘permanent or long-lasting’. **(OFGEM LEGAL)Having looked at the NI equivalent of the Building Regs 2010, it is clear that there is no NI equivalent to the energy efficiency requirements of Schedule 1, Part L of the Buildings Regulations 2010, (and therefore no exemption that is engaged where the building has ‘a planned time of use of two years or less’ on which we can base our determination of whether a building is permanent or long-lasting). We should adopt the 28 day exemption under the NI building regs as this will lead to very different administration as between the GB and NI schemes of an identical definition.**

8.31 Metering Volume. “In your FMS questionnaire, you will be asked to provide information on the volume meters used at the injection point to measure the volume of gas entering the network. This information will include how many and what meters are being used at the injection point, and what the opening meter readings are on the day the application for registration is made. This may be included in the contractual or Network Entry Agreement information detailed above.” **Taken out text in red as not relevant to NI.**

8.32 - Once registered, participants should use the volume meters that are used for the balancing and settlement and other industry transaction purposes for measurement of volume in the NIRHI. These are detailed in the Uniform Network Code. **Same as above.**

8.33 – “The equipment used for measuring the GCV of the gas for regulatory purposes which (our Smarter Grids and Governance Team need to agree and approve for non-NIRHI purposes the Utility Regulator Northern Ireland would agree and approve of for non NIRHI purposes) should be used for calculating the weighted average GCV of the gas over the quarterly period for NIRHI purposes. This would be adjusted to standard temperature and pressure.” **Not relevant to NI – replaced with green.**

8.9 – “For the gas to be considered ‘suitable for conveyance’ (or transported in accordance with a gas transporter’s licence), it will have to meet the health and safety criteria (as defined in the transporter’s Safety Case), regulated by the Northern Ireland Health and Safety Executive, and any consumer protection measures that have been agreed by our Networks Team and / or industry”
 Upon discussion with DETI now changed to: “For the gas to be considered ‘suitable for conveyance’ (or transported in accordance with a gas transporter’s licence), It will have to meet any health and safety criteria laid down by the Health and Safety Executive HSE (NI) and any consumer protection measures that are in place within the industry”.

Volume 1, Appendix 4 – (DETI)In NI the European Waste Catalogue is enacted under the List of Wastes (Northern Ireland) Regulations (2005), which includes the EU list as an appendix. We don’t have an equivalent to the 2006 DEFRA guidance on interpreting the list. This is a policy decision for NIRHI which wastes we allow to be included **and subject to us making the same policy decision as DECC we could use their interpretation of the List of Wastes.**

Therefore – Vol 1 5.68 now reads: “In assessing whether household waste or mixed waste may be treated as municipal waste under section 21 of WSET, Ofgem, upon the direction of DETI, will use the interpretative guidance on the meaning of municipal waste contained in the Department of Environment, Food and Rural Affairs’ ‘Consultation on meeting EU Landfill Diversion Targets’ and subsequent decision document, ‘Summary of responses to the consultation on meeting EU Landfill Diversion Targets in England’ (the ‘Defra Guidance’). The Defra Guidance regards waste as meeting the WSET definition of municipal waste when it falls into specified categories of the List of Wastes (formerly known as the European Waste Catalogue).The first table at Appendix 4 shows the categories from the List of Wastes that DEFRA has concluded should be classed as municipal waste. The second table at Appendix 4 shows examples of the categories from the List of Wastes that DEFRA has concluded should not to be classed as municipal waste.” Green added in.

Vol 2

4.3 Overview of ancillary fossil fuel and contamination requirements

Technology	Size	Is fossil fuel permitted for ancillary	Is contamination allowed?	Is ancillary fossil fuel and contamination deducted from

		purposes?		payment?
Solid biomass	45kW and below	√	√	√
	Between 45kW – 1MW	√	√	√
Biogas - gasification or pyrolysis	Under 200kW only	√	√	Only contamination deducted
Biogas - anaerobic digestion	Under 200kW only	√	√	×
Municipal waste	All	√	√	√
Biomethane - gasification or pyrolysis	All	N/A	√	Only contamination deducted
Biomethane - anaerobic digestion	All	N/A	√	×

1MW and above has been taken out. 45Kw and below – now all ticks.

5.10 Removal of explanation regarding two tier tariffs for small and medium biomass, including the example tables as not relevant to the NI scheme.

5.19 “The table of NIRHI tariffs will be updated on an annual basis, with the updated rates commencing on 1 April and ending on 31 March of the following year. The tariff for your installation will be adjusted by the percentage increase or decrease in the UK Retail Price Index (RPI)¹ for the previous calendar year (the resulting figure being rounded to the tenth of a penny, with any twentieth of a penny being rounded upwards)” Amended to ‘rounded up to 100th of a penny’ due to DECC amending their regulations to this for the GB Scheme.

4.52 Table – updated and agreed with DETI

Technology	Size	Where plant uses contaminated fuel is fuel measurement and sampling required?	Where plant uses fossil fuel for permitted ancillary purposes, is fuel measurement and sampling

			required?
Solid biomass	45kW and below	N/A (not permitted)	N/A
	Between 45kW - 1MW	Yes	Yes
Biogas - gasification or pyrolysis	Under 200kW only	Yes	No
Biogas - anaerobic digestion	Under 200kW only	No	No
Municipal waste	All	Yes	Yes
Biomethane - gasification or pyrolysis*	All	Yes	N/A
Biomethane - anaerobic digestion*	All	Yes	N/A

6.7 As part of DETI’s reporting obligations under the Regulations DETI will publish sustainability information in aggregate form, on a quarterly and annual basis, on the DETI website. At this stage there are no minimum criteria for Sustainability Reporting as this is for information purposes only. However, you should be aware that while the current requirement is merely to report on the sustainability of fuels, [the [Government] NI Executive has stated that they will look to consult on the possible introduction of mandatory sustainability criteria for biomass from 2013 onwards as part of any changes to be made to the NIRHI from phase two] , if appropriate, DETI will consult on the possible introduction of mandatory sustainability criteria for biomass from 2013 onwards, this will be dependent on any changes to be made to the NIRHI from phase two. Text in red taken out and text in green added in.

7.32

	Year first commissioned	Capacity	Tariff	Lifetime
Biomass boiler 1	2012	400kWth	400kWth tariff in 2012	20 years from 2012
Biomass boiler 2	2014	400kWth	800kWth tariff in 2014	20 years from 2014

Changed KWth capacity to in total under 999kwth, the maximum for Biomass Boilers under the NI Regulations.

10.5 “Once Ofgem are satisfied that they are in possession of the relevant facts of a case, they will decide what further action, if any, may be appropriate to deal with the matter. Ofgem’s approach may include confirming that a participant is in compliance, contacting the participant informally to advise them of any non-compliance and advising them of what they should do to rectify the situation, or we exercising one or more of the range of enforcement actions that are available to them under the Regulations. “In circumstances where Ofgem is satisfied that a participant has received a payment which exceeds the amount that the participant is entitled to, or that the

participant is in failing to comply with its ongoing obligations, and the participant refuses to voluntarily repay the overpayment and Ofgem is otherwise unable to offset the overpayment against future payments made to the participant, we (DETI) may seek to recover such overpayment as a civil debt. **As currently drafted, the Arrangements provide that all of the enforcement powers (other than recoupment of an overpayment as a civil debt) are exercisable by Ofgem, not DETI.**

12.22 “The decision will be reviewed by DETI’s SRO. The SRO will be of equal or greater seniority to the original decision maker or Ofgem’s FRO, as applicable, and will not have been involved in the events leading to the decision. The statutory review will be based on all the evidence, information and representations submitted by the affected person to the original decision maker or Ofgem’s FRO. In addition, Ofgem may request such information and declarations relating to information within the affected person’s possession as they require to determine the review. “ **Taken out text in red due to have no means of comparing DETI’s and Ofgem’s officers.**

Appendix 1: Replaced GB Tariff Table with NI table.

Appendix 4: 12.28 Rectified formatting issue -

The approach that should generally be used when developing a robust sampling regime is to:

- Take a series of incremental samples.
- Combine these to form a composite sample.
- Extract a representative sub-sample of the composite sample for analysis.
- While some factors that can affect the precision and accuracy of sampling are:
 - The size of the sample relative to the whole.
 - The number of increments taken during the sampling period to produce a composite sample.
 - The method used to extract the sample.
 - The location of sample extraction. If the fuel is not sampled immediately before combustion, it is generally expect the fuel sampled to be as representative as possible to what is combusted.
 - The method used to extract a sub-sample from the composite sample for subsequent analysis.

Indented the ‘factors’.

Appendix 5. Added in the web address to support the use of Carbon-14 for the determination of the biomass content of feedstocks – was missing in the GB docs.

Outstanding concerns...

Vol. 1 4.40 onwards... Council tax bandings - As you are aware, there is no council tax in NI, only housing rates. The Rates (Northern Ireland) Order 1977 provides all the definitions for dwellings, domestic purposes, etc and also confirms, as in GB, that agricultural building are exempt from rates (Schedule 11). <http://www.legislation.gov.uk/nisi/1977/2157/contents> However, Marcus is still

concerned; **In my view (Marcus) DETI need to look carefully at this section, including the footnotes, as there are multiple references to council tax and business rates and it is unclear whether these concepts apply in NI. If not then the appropriate changes will need to be made. I have rewritten 4.49.** Will to contact DETI direct on this one. No point raising until Peter returns

Vol 1 7.22 All large or ‘complex’ installations that deliver heat by hot liquid will be required to provide an independent report that verifies the metering arrangements in place as part of the accreditation process. This will provide further information about the heat meters and the heating system, allowing Ofgem to verify that all the relevant eligibility criteria have been met. Please see the ‘Independent report on metering arrangements’ Section in this Chapter for further details of this report, and the NIRHI website for a template of the report². **NEED EQUIVALENT WEB PAGE TO www.ofgem.gov.uk/rhi**

Vol 1 8.9 For the gas to be considered ‘suitable for conveyance’ (or transported in accordance with a gas transporter’s licence), it will have to meet the health and safety criteria (as defined in the transporter’s Safety Case), regulated by the Northern Ireland Health and Safety Executive, and any consumer protection measures that have been agreed by our Networks Team and/ or industry (e.g. as laid out in the Uniform Network Code). – **awaiting feedback from DETI**

Vol 2 4.7 Waste When biogas produced by anaerobic digestion is used to generate heat or to produce biomethane, that biogas is only eligible when certain ‘feedstocks’ have been used in its production. Feedstocks are the material (e.g. slurry, sewage or food waste) that is converted into the biogas. The eligible feedstocks are:

- solid biomass
- solid waste
- liquid waste.

DETI COMMENT – Most recent draft of NI regs has following definition “waste” has the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997. (S.I. 1997/2778 (N.I. 19), Article 2(2) was amended by SR 2011 No.127) **Will to check that this is the equivalent of GB. (WILL)I have not yet had a chance to check the NI legislation but on the basis of DETI’s comments my understanding is that the NI legislation provides for an equivalent interpretation of waste as the GB legislation and they are happy for us to refer to the NI legislation referred to here. I will review the NI legislation on my return on 4 September, although this is really something that DETI should be asking their lawyers to do.**

Vol 2 4.37 “As set out above, solid biomass plants with an installation capacity of less than 45kW are allowed to use contaminated solid biomass fuels, but the energy content of these fuels cannot exceed 10 per cent of the energy content of the biomass fuels used in the quarter.”..the regs do not actually provide for this. Consequently, this whole section may need deleting? I understand that Will Elliott raised this in his email to you earlier this week.

² www.ofgem.gov.uk/rhi

DETI's reply....Think we should remain consistent with GB – we will need to amend our Regs.

Legal have concerns about DETI's comments on Vol 2 4.37 "as you and I (Marcus and Will) both share concerns about the way in which we currently address this issue under the GB regs (ie by imposing a condition of accreditation on <45kw installations). DETI have not yet reverted substantively on this issue, which I explained in detail to them when sending across the draft Arrangements, so this is something we will need to address with them the w/c 3rd September.**Having spoken with Paul, I understand that the majority of biomass installations <45 Kw are unable to use fossil fuel, so this may be more of an issue in theory than in practice.**

Vol 2 12.23 DETI's SRO will aim to reach a decision within **20 working days**. If it is not possible to do so in that time, the SRO should provide the affected person with an update within this time. The update will give a timescale (normally 20 working days) for when DETI will next be in contact regarding the request for review. Within 21 days of DETI's SRO reaching their decision, they will write to the affected person (and any other person whom we believe to be affected by the decision), to inform them of the statutory review decision with reasons. **Legal believe this time frame is far too small given that Ofgem will most likely be preparing the case materials and making a recommendation to DETI.**

Will to discuss with Marcus concerning DETI and time limits re. Statutory Review. (WILL - LEGAL)
 My only comment here is the same as the one I made on the guidance that I emailed to you earlier, which is that I think it unlikely that DETI will be able to complete a statutory review within 20 days. This is not just a legal issue, but an issue that needs to be addressed with the wider team.

As a matter of law (public law and Article 6 ECHR) statutory remedies must be effective, which, in the case of a statutory reviews requires that they should be completed in a timely manner. While it is not something I have looked at in any detail, I am pretty certain that DETI can carry out the review over a significantly longer period than 20 days and still comply with applicable public law/ECHR requirements.

Vol. 2. Table 3 4.52 – Circumstances where the FMS is required

Technology	Size	Where plant uses contaminated fuel is fuel measurement and sampling required?	Where plant uses fossil fuel for permitted ancillary purposes, is fuel measurement and sampling required?
Solid biomass	45kW and below	?	?
	Between 45kW - 1MW	Yes	Yes

Biogas - gasification or pyrolysis	Under 200kW only	Yes	No
Biogas - anaerobic digestion	Under 200kW only	No	No
Municipal waste	All	Yes	Yes
Biomethane - gasification or pyrolysis*	All	Yes	N/A
Biomethane - anaerobic digestion*	All	Yes	N/A

DETI to confirm as to how this table should look re. NIRHI

Possible changes in the future which could affect the Guidance moving forward

- GBRHI scheme open letter consultation – no confirmation as to what parts will be applied to GB guidance or when so cannot be incorporated into NI.
- Draft administration document. The Guidance right now reflects this. If changes are made, the Guidance may need to be amended.
- The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 have not been ratified as yet. If significant changes are made, the Guidance may need to be amended.