

NI RHI Guidance Documents

This paper sets out the case for having either a single guidance document for both the GB and NI RHI schemes or having two separate guidance documents.	From To cc Date	Paul Heigl Matthew Harnack Luis Castro 31 July 2012
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1. Summary

- 1.1. Following your earlier steer we have scoped out the proposal to have one guidance document covering both the Northern Ireland RHI and the GB RHI. A number of issues have come to light should we work to this option which we want to flag to you and seek further views.

2. Aim

- 2.1. There are significant issues with producing either two separate guidance documents for the NI and GB RHI schemes or maintaining a single guidance document for both schemes. This paper presents the options and weighs up the benefits and disadvantages of each, with the aim to facilitate discussion and secure your steer on progress.

3. Background

- 3.1. DETI have provided Ofgem with their draft Regulations which *largely* mirror the GB Regulations for the RHI (the differences between the two are attached). So logically, given the similarities, it might seem to make sense to use the same guidance documents for NI as those we use for GB. Ofgem will also use the same register and business processes to administer both schemes so operationally they will be *almost* identical.
- 3.2. The issue arises in the first instance that there is now in force a cost-control mechanism (Stand-by Budget Management) for the GB scheme which is not included in the NI Regulations. This is not of great significance given that it is hoped that this measure will never be used. However it does highlight the advent of issues as the schemes are set to diverge further in the near future.
- 3.3. The project team have consulted on options internally, including both policy leads, the GB RHI Operational and Development teams and legal representatives and have externally consulted DETI for their perspectives and preferred option. The results of these discussions are presented below.

4. Options

Option 1: One guidance document for both schemes

- 4.1. The benefits of this option are:
- A single source of information for scheme users that have installations in both the GB and NI areas;
 - At least to start with, the majority of the document will be identical for both schemes and so reduces duplication in the immediate short-term; and

- From an administrative perspective it might be easier to direct customers to a single source for all information on both RHI schemes.

4.2. The risks associated with this option are:

- Legally they are two separate schemes, they are not identical and the number of differences between them is only set to increase further making it challenging to ensure that the text of a combined guidance document properly reflected both schemes;
- It is arguable that the NI equivalent of regulation 52¹ in the GB Regulations will require a standalone NI RHI guidance document as a matter of law;
- Ofgem are not named within the NI RHI Regulations as the administrator, therefore DETI will need to consult on any guidance documents for their scheme – risking further divergence between the GB and NI guidance documents. If the NI guidance and GB Guidance were included in one document it would seem anomalous if Ofgem were not involved in consulting on amendments to that;
- The project team are aware that there are specific areas of the GB guidance that are either not 'fit for purpose' or causing confusion for GB users. We would aim if time permits to address those sections for the NI RHI guidance documents to ensure that guidance better reflects the operation of the NI scheme. It would be difficult to present these improvements to a combined GB and NI document without making parallel improvements to the corresponding elements in the "GB part" of the guidance;
- DETI intends to introduce phase 2 changes to the NI Regulations in summer 2013. While DETI has indicated that it will seek to mirror the current changes being made to the GB Regulations, there is no guarantee that such changes will be adopted wholesale. Moreover, DETI has intimated that there may be additional amendments that they will bring in. Any such amendments would require further amendments to, and consultation on, the guidance;
- Although large sections of the guidance would be similar at least initially, for those sections that are bespoke to each scheme it is likely to be significantly more complex and time-consuming than would otherwise be the case to edit the text while retaining the integrity of both schemes. As the schemes diverge, this issue is likely to become increasingly problematic; and
- The end-product is likely to be less user-friendly than two standalone sets of guidance, both initially and increasingly so as the schemes diverge.

Conclusion

- 4.3. Forecasts suggest that the uptake of the NI RHI scheme could be a 3 per cent proportion of the GB scheme. The question must be asked as to why we would want to potentially jeopardise the integrity of the GB scheme by introducing additional confusion by including the NI RHI guidance in a combined document with the GB guidance. In order to accommodate a small proportion of potential users in Northern Ireland within the existing GB guidance we are likely to create a less user-friendly document for both sets of users, with confusing references and tariff structures. A single document is likely to be significantly more difficult and time consuming to edit than two separate documents.

Option 2: Standalone guidance document for NI RHI

¹ Regulation 52: "The Authority must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme"

4.4. The benefits of this option are:

- It enables DETI to conduct the consultation on the guidance document without Ofgem's involvement. This is beneficial to both DETI and Ofgem as it allows DETI to present the scheme as a Northern Irish scheme, and also eliminates the legal risk to Ofgem in carrying out the consultation. There is additional risk to Ofgem where it undertakes consultation on the guidance before the Administrative Arrangements between Ofgem and DETI have been signed off. This is because Ofgem's statutory authority to carry out functions under or in connection with the NIRHI Regulations on DETI's behalf, including consulting on any guidance, only arises on the parties' entry into the Administrative Arrangements;
- By separating the guidance documents it allows each scheme to make bespoke changes without impacting on the other. For example, the outcome of the Northern Ireland consultation and subsequent amendments to the guidance to improve accessibility for NI users would be difficult to implement on a single GB and NI RHI guidance document. Any major departure from the original text would then instigate another round of consultation with GB RHI users and vice versa; and
- This option future-proofs against divergence. Although we have been assured DETI will mirror the current changes being made to the GB Regulations when they introduce NI RHI Phase II (expected summer 2013), this is by no means guaranteed (at the very least there may be a delay in securing convergence) and has already been intimated by DETI that they will go further.

4.5. There is already scheme divergence:

- The tiers and tariff tables are different for the NI and GB RHI schemes. Separating this information would have two primary benefits, first that it reduces the potential for confusion between the schemes by users and second that it reduces the likelihood of unwelcome comparisons between the schemes. Comparing the tariff levels for most tiers illustrates that the GB scheme has more generous tariff levels which could lead to reputational damage, particularly for DETI.
- Referencing Regulations within a single document would become unwieldy with segregated references for each set of Regulations. Currently the footnotes and references are already unrelated to the text in many instances and this would only be exacerbated by doubling the number of references or footnotes.
- In many instances, the guidance documents refers the reader to outside organisations to obtain further information such as DECC, DEFRA, the ombudsman etc. In many of these instances, NI has its equivalent and therefore the document would need to reflect the different organisations. Again this impacts on how user-friendly the guidance is.
- Enforcement processes are different for both schemes, Ofgem will have limited enforcement rights in Northern Ireland compared to GB and again this is likely to cause confusion for users.
- Discussion in the GB guidance regarding phase 2 and domestic users will only help to confuse NI potential scheme users.

4.6. The risks of this option are:

- It *may* present more development work in the short-term for the NI guidance.

Conclusion

- 4.7. Whilst development time for a standalone NI RHI guidance *may* be slightly elevated in the short-term, in the medium (post-January 2013) and long-term (post-summer 2013) the costs for maintaining separate functioning guidance documents will be significantly lower than maintaining a combined document. This option ensures we minimise the risk of jeopardising the integrity of the GB scheme and confusing both sets of scheme users.

5. Preferred Option

- 5.1. The project team, legal and GB RHI operations and development are unanimous in advising adopting a standalone NI guidance document.