

To: Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]
From: Keith Avis
Sent: 2012-09-10T14:09:59Z
Importance: Normal
Subject: RE: NIRHI Guidance Documents
Received: 2012-09-10T14:10:00Z

Mins probably. Meeting with Marcus was OK. Key issue for him was enforcement....needs to be cleared through Michael Brocklehurst which could take a while, so I have said that we need to make sure that we don't say we haven't got time, and have asked them to think how they would work around the problem.

From: Michelle Murdoch
Sent: 10 September 2012 15:07
To: Keith Avis
Subject: RE: NIRHI Guidance Documents
 Ok...do you mean mins or half and hour?

From: Keith Avis
Sent: 10 September 2012 15:06
To: Michelle Murdoch
Subject: RE: NIRHI Guidance Documents

Michelle
 Am on call for Bob's surgery, so we are a bit delayed.
 Keith

From: Michelle Murdoch
Sent: 10 September 2012 14:42
To: Marcus Porter
Cc: William Elliott; Oliver More; Lindsay Goater; Felicity Beverley; Rory Edwards; Keith Avis; Paul Heigl; Rita Chohan; Sophie Jubb; Niketa Patel; Louisa Mallon; Ade Obaye; Jessica Ladbury; Morag Drummond; Luis Castro
Subject: RE: NIRHI Guidance Documents

Hi Marcus,
 Thanks for speaking to me earlier on – please see my comments in red to each of your individual points. Have not managed to go through all of them – will continue after Bob's surgery.
 Also, bearing in mind our timeframes, our conversation and direction from Keith, I will be putting a meeting into the calendar tomorrow for legal, ops, Keith, myself, Paul and Joanne and Peter to thrash out the outstanding issues, or at least to begin to bring them to a conclusion. Joanne and Peter will be available for a meeting at 12 noon so will calendar for then. I understand everyone is busy, however I cannot underestimate the importance at this time of attendance so that we can keep to the timelines agreed.
 Cheers
 Michelle

From: Marcus Porter
Sent: 10 September 2012 12:01
To: Michelle Murdoch
Cc: William Elliott; Oliver More; Lindsay Goater; Felicity Beverley; Rory Edwards; Keith Avis; Paul Heigl; Rita Chohan; Sophie Jubb; Niketa Patel; Louisa Mallon; Ade Obaye; Jessica Ladbury; Morag Drummond; Luis Castro
Subject: RE: NIRHI Guidance Documents

All
 I have been reviewing both volumes of the draft NI guidance (I commented on vol 1 before my recent leave but did not have time to comment on vol 2) and, based on that, it appears that the issues listed below either remain outstanding or require comment in any event. The issues listed are not in any particular order.
 It goes without saying (I hope) that any issue which is of any substance at all ought to be resolved before DETI consult on the draft guidance, even if this impacts on their overall timetable, both because it won't be apparent until then what the part of the guidance concerned should say (and we can't leave a gap) and partly because otherwise certain aspects of the guidance may be wrong/misleading - thereby giving rise to the need to amend the guidance and probably re-consult on it before doing so. The guidance documents are of course important documents and it is essential to ensure that they are as accurate and fit for purpose as possible.
 I also attach a further copy of the clean copy of vol 2 that was attached to Michelle's email below, showing with track changes further amendments to that which in my opinion need to be made. These supplement those already suggested by Will. I have had a look at the track changes and most are pronoun changes. I estimate that they will take me approx 1 hour to complete.

Biomass, large, medium and small – rules regarding presence of fossil fuel contaminants and use of fossil fuels for ancillary purposes
 This is a thorny issue and potentially the most difficult of the guidance issues for us to resolve, not least because it affects a number of

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paragraphs and tables in the draft NI rules and because, as currently drafted, the relevant requirements in the draft NI Regulations may fall to be interpreted differently to the corresponding ones in the GB Regs. I have yet to finalise my view on the matter and will write separately on it. It is already apparent though that some revision of the draft NI guidance in this respect is likely to be necessary before DETI can sensibly commence consultation on the guidance. This is the ongoing 45MWTH issue which is the most important outstanding and is on the briefing document for Bob's surgery this pm. This will be the main item to discuss with DETI tomorrow.

Vol 1 para 8.32

The advice to potential bio-methane applicants suggested by Lindsay and agreed by Peter Hutchinson of DETI in his email of 21/8 timed at 1648, for inclusion in para 8.32, has not yet been included. Will amend in clean document via track changes.

Vol 1 paras 5.67-8 and Appendix 4

This concerns permissible types of waste where biomass is contained in municipal waste. DETI have said that the lists in Appendix 4 to the GB Regs are not appropriate for the purposes of the NI guidance and that the list in the List of Wastes (Northern Ireland) Regulations 2005 should be used instead. I take this to mean the entire list. However this seems to me to be inappropriate: the list in those Regulations (which were amended in 2011) is very wide and appears to encompass the list in Appendix 4 to the GB guidance of items which DEFRA have concluded are *not* municipal (e.g. agricultural waste). Clearly, having regard to the fact that the DEFRA list is presumably the product of lengthy consideration, this is a matter of concern. Plainly it would not be appropriate for us to administer the NI Regs on the basis that "municipal waste" extended to waste categories which cannot reasonably be described as municipal. We thus need to discuss further with DETI whether they intend the whole list in the 2005 Regs to be included and, if so, on what basis they justify that and, if not, which wastes they want included. We will then be in a position to determine how, if at all, the DETI list differs from the DEFRA one.

Whatever the answers in the above regard, it will be necessary to determine what to do about paras 5.67-8 and appendix 4. It appears para 5.68 should be deleted. Para 5.67 will require substantial adjustment and, in particular, should not include the reference to "direction" by DETI that seems to have found its way in there (given Ofgem's independent role). As for Appendix 4, this will need to be retained in a different format; it will need to include the list of wastes that DETI have in mind and, probably also, as now, a list of those wastes that are *not* regarded as municipal.

- 1) It would still be possible (as originally suggested) if DETI were content, to use the same lists as in the GB Regs, but simply make no reference there to DEFRA, other than perhaps by way of acknowledgement. The following was DETI's answer to this..this could be brought up tomorrow in the meeting.... **"The List of Wastes (NI) Regs 2005 should be used (this of course includes the EU list within the Appendix in any case). We are content for DECC to be referred to in guidance document as the source, no need to anonymise. "** email of 20th Aug 2012 17.30

Vol 2 para 3.22

Is it correct that the system will be up and running straight away? I was under the impression that we were going to have to resort to paper applications initially. Perhaps I've misunderstood, in which case doubtless someone will set me right! Already agreed that at the beginning of the guidance there will be a note explaining it will be manual paperwork up to a certain date

Vol 2 para 7.10

I note that the last part of this paragraph, which concerned the need for an independent metering report in certain cases, has been removed. This should be re-instated in my view since it is not merely biomass plants but also ground source heat pumps which may have an installation capacity exceeding 1MW and the latter, unlike the former, are eligible for RHI payments. Thus the part removed is still needed. Will need to look at this.

Both volumes – paras 1.13-14

In light of Joanne McCutcheon's email of 28 August timed at 1135, these paras seem to require some amendment. First, the reference to DETI publishing annually (as well as quarterly) appears wrong as Joanne states in her email that it will be quarterly, which I take to mean quarterly only. Secondly, she states that the items to be published should be those covered by regulation 51(2). As pointed out previously, the list reproduced in these paras in the draft guidance goes further than that reg (as in the corresponding part of the GB Regs guidance) and so those items not listed in the reg will need to be removed from the NI guidance. Will need to look at it and confirm only 1/4ly not yearly also.

References (in both volumes?) to CHPQA

It has been established that this is applicable in NI but we await hearing from DETI as to whether DECC are content for the relevant link to be used. Confirmed by DETI at 09.24 on 03.09.2012 – DECC have given authorisation for the link to be used.

(Both volumes?) material for incorporation in the draft NI guidance replicating whatever changes are to be made to the GB guidance following the recent consultation on proposed changes thereto

Following a meeting which I attended last week, I understand from Jess that decisions as to this are being finalised and that she is preparing a paper on the subject detailing the proposed changes in light of consultee responses to the consultation. Once this is to hand the necessary changes to the draft NI guidance will need to be made. Still awaiting information on this...Will speak to Jess

Para 2.67 volume 2

This has not yet been amended in line with Joanne's email of 28 August timed at 1135.

Para 5.19 vol 2

This is covered in Joanne's email of 28 August timed at 1135, though referred to there as para 5.25. I presume (but would appreciate confirmation) that it is not being suggested that there should be any amendment at this stage to the draft NI Regulations in the respect

mentioned (as that would seem to pre-empt the outcome of the DECC consultation referred to) and consequently that no amendment to the relevant part of the draft NI guidance should be made at this stage either.

Para 6.2 vol 2 (Table)

This concerns the table in this para providing examples of sustainability reporting requirements. I gather Michelle is seeking confirmation from Ops that all the examples given are all pertinent to bio-methane and that none are relevant simply to biomass. Any falling into the latter category would of course have to be removed.

The enforcement role

Save in the case where periodic payments are recovered “as a civil debt”, the draft guidance (and draft arrangements) are worded on the assumption that the enforcement role will fall entirely to Ofgem. However this issue has yet to be resolved conclusively. Whilst DETI appear amenable to enforcement being dealt with in this way, they have referred the matter to their lawyers for a view and we do not yet know the outcome of that. Moreover, the matter is to be deliberated on here at tomorrow's fortnightly NI Implementation Board meeting and by the Authority. It is not, therefore clear when it will be resolved. Should it transpire that we end up with arrangements that differ from what is currently envisaged then this may necessitate quite a large number of amendments to the draft NI guidance.

Internal and statutory reviews

Again, the position is unclear as at today's date. The draft NI guidance and the draft arrangements proceed on the basis that there will be a split – i.e. that Ofgem, as in the case of the GB Regs, will be allocated the informal review role, whereas any statutory reviews will be handled by DETI. However the matter is set to be deliberated on as in the case of enforcement and any change of course will entail a re-assessment of the relevant Sections of the guidance.

Statutory review and time for DETI to deal

This will be a related issue in the event that it is decided that DETI should indeed undertake statutory reviews. The point here is that, under the corresponding para of the GB guidance, Ofgem commit to endeavouring to deal with statutory reviews within 20 days. Will has made the point that DETI are unlikely to be able to complete the process in that time, given their staff shortages and relative lack of familiarity with the scheme and with individual cases. This suggests that the corresponding bit of the NI guidance will need to be amended either to provide for DETI to have a longer period (which may attract unwelcome comparison with the GB scheme) or to provide for no time limit at all.

Badging of guidance to DETI

It was previously decided that the guidance should be badged to DETI (they are certainly content) and the draft NI guidance has been drafted on that assumption. However this was questioned during last week and a paper has been prepared which will be considered by Bob (this afternoon)? Again, in the event of a change of tack it will be necessary to identify the (probably numerous) references in the draft guidance which are worded as they as a consequence of the badging to DETI, decide how they should be amended and make the amendments concerned.

Meaning of “waste” in Part 4 of the NI Regulations – other than in the term “municipal waste”

There was previously no definition of this in Part 4 of the draft NI Regulations. Apparently this is rectified in the latest draft (which we have not seen) of the NI Regs, the meaning attributed to the term being the same as in Art 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997. Although I'm not sure that it was essential to do so (since DETI can choose to allocate to the term whatever meaning they choose and their guidance should follow their Regulations) a check has been carried out to determine whether this definition aligns with the corresponding one in the EPA applicable for the purposes of the GB Regs. Research carried out by Irène Solomon shows that it does indeed align.

Tariff for biogas and biomethane production and whether or not it extends to biogas production plants

This was covered by Peter in his email of 21 August timed at 1648, but not satisfactorily in my view. The advice we had from counsel was that, whether or not the BPC was covered by the tariff notified to Brussels during the state aids process was determinative as to whether the BPC should be regarded as part of the eligible plant. We thus need to know, as with the GB Regs, what was said in this regard during the DETI discussions with Brussels. Peter, however, simply states that there were “no specific issues” raised on the matter with the Commission and that he “expects” that the tariff would include the costs of the BPC as part of the “CAPEX”. I'm not sure what this all amounts to, so we need to seek clarification. Until we have it we will not be clear as to whether or not BPCs should be regarded as part of the eligible installation.

Paragraph 8.9 of vol 1

Michelle has recently asked DETI whether the references to HSE and networks team in this para are correct for NI. Has a response been received?

Context (both volumes)

It was recently agreed that we should check with DETI whether or not it is intended to extend the scheme to domestics and that the answer would determine whether any further adjustment was needed to each volume in this respect. Do we yet have the answer?

Paras 4.40 to 4.49 of vol 1

This concerns the “single domestic premises” issue. Broadly speaking I am content that this section of the draft NI guidance is in reasonable shape. If need be I think it would suffice in its current form. However Will has asked that we enquire of DETI as to how they confirm the basis on which valuation officers determine that a dwelling should be included as a separate hereditament. Do we have an answer as to that yet? This would provide a more complete picture.

Marcus

From: Michelle Murdoch

Sent: 30 August 2012 17:15

Received from OFG on 18.10.2017

Annotated by RHI Inquiry

To: Matthew Harnack

Cc: Marcus Porter; William Elliott; Oliver More; Lindsay Goater; Felicity Beverley; Rory Edwards; Keith Avis; Paul Heigl; Rita Chohan; Sophie Jubb; Niketa Patel; Louisa Mallon; Ade Obaye; Jessica Ladbury

Subject: NIRHI Guidance Documents

Dear Matthew,

I attach the draft of the NIRHI Guidance document for your review. I will be booking a slot in your surgery for 6 September so that you can discuss with myself and the team. I appreciate that this is a weighty document, but I have included clean versions and marked up versions from the GB RHI guidance so that you can decide on your preference for reviewing.

Please find attached the following documents:

- NIRHI Guidance Vol. 1 (Clean Version)
- NIRHI Guidance Vol. 2 (Clean Version)
- Vol 1 and 2 in draft version (if you wish to cross reference)
- Changes made to NIRHI Guidance Document.

The latter file is divided into: Changes across both volumes, Volume 1, Volume 2, Outstanding Concerns and lastly Possible changes in the future which could affect the Guidance moving forward. I recommend that this is the document you read along with the clean versions of the NIRHI Guidance Volumes as it explains all the changes/key areas/issues which were thrown up during this process.

Drafts of these documents have been reviewed by Paul Heigl, Marcus Porter and William Elliot, and I have revised based upon their feedback.

The timescale that we are hoping to work to regarding this Guidance is listed below:

30 August: Send around Guidance for Review

6 September : Matthew's surgery

13 September: Send Guidance to DETI

20 September: Consultation starts

18 October: Consultation finishes

19 October: Guidance updates made.

22 October: Clearance meeting with Matthew

24 October: Send guidance to DETI for publication

I will also be asking those cc'd into the email to review the document(s) within the same timeline and will update you on any comments at your surgery session. I hope that this process works for you. Of course I stand ready to discuss or take any action as you direct prior to your surgery session.

Kind Regards

Michelle

Michelle Murdoch

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