

**To:** Marcus Porter[Marcus.Porter@ofgem.gov.uk]  
**Cc:** Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]  
**From:** Lindsay Goater  
**Sent:** 2012-12-10T15:42:02Z  
**Importance:** Normal  
**Subject:** RE: Enquiry 2x800kW boilers NIRHI  
**Received:** 2012-12-10T15:42:00Z

For "many areas" read "guidance document contents" – where we explain how we interpret the Regs  
 It is as much guidance for DETI as any other stakeholder – whilst we have any relationship with them at all, they are a stakeholder.  
 Thx

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**From:** Marcus Porter  
**Sent:** 10 December 2012 14:15  
**To:** Lindsay Goater; Michelle Murdoch  
**Cc:** Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster  
**Subject:** RE: Enquiry 2x800kW boilers NIRHI

Lindsay  
 As you may know, in the run up to NI RHI going live at the beginning of November there were numerous exchanges between Legal and the NI RHI policy development team on the subject of the arrangements and the associated correspondence, including as regards the issue of whether or not we should yield to DETI's demand that our relationship with them be underpinned by KPIs. Our firm and repeated advice was that it should not be and that remained (and remains) our position up until the point, at about the time of go live, when we ceased actively to advise in relation to this documentation - in the absence of any new issues.

If it is the case that the KPI referred to below would be used purely *internally* then I welcome that news, though I confess it seems to me that the wording of Michelle's email suggests otherwise.

Also, I'm not sure which "stakeholder" you refer to on this occasion: Unless I've misunderstood, the enquiry emanated from DETI and, there being as yet no arrangements in place, I don't see how they (still less any potential NI RHI applicant that may have approached them) could be regarded as being our stakeholder.

Moreover I take it that, if a KPI which is purely internal is missed by a couple of days, that won't necessarily be regarded as the end of life as we know it – though of course I accept that you will wish to minimise any delay.

I'm happy to advise for GB purposes and hope to do so by the end of the week. However, if it is intended that the advice be shared with DETI then I am likely to have more to say on that subject – as foreshadowed in my email below.

Don't follow your reference to "many areas". Does it relate to substantive advice given to DETI re scheme operational issues? Leaving the side the question of whether we could currently provide such advice to DETI, I wasn't aware that we had yet done so.

Marcus

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**From:** Lindsay Goater  
**Sent:** 10 December 2012 12:10  
**To:** Marcus Porter; Michelle Murdoch  
**Cc:** Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster  
**Subject:** RE: Enquiry 2x800kW boilers NIRHI

Hi Marcus,

KPIs would be *internal*, as for GB, with the simple aim being to ensure good service to our stakeholders, with a measure on which to judge achievement of that aim

Any ETA on a response welcome pls

I think we can take this as indicative of a generic issue in relation to Additional Capacity on which DETI would like to know our position. We have done that in many areas, and arguably this is an area on which more explicit guidance would be welcome for the GB scheme too – the Regs being the same on this issue (bar the specific biomass capacity limit – but for GB this could be taken as solar thermal or biogas) (I take your point on the AA and the money)

Lindsay

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**From:** Marcus Porter  
**Sent:** 10 December 2012 12:01  
**To:** Michelle Murdoch  
**Cc:** Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster  
**Subject:** RE: Enquiry 2x800kW boilers NIRHI

Michelle

I am a bit under the cosh at the moment with other things. So there may be a little further delay before I could look at this I'm afraid, quite apart from the considerations below.

I ought also to make the point that, so far as I am aware, we still currently have no arrangements that we have entered into with DETI for us to administer the scheme on their behalf – so legally, as at today's date, we have no role to play in connection with the scheme and, in

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law, it is for DETI to administer it.

Also, part and parcel of the arrangements and associated documents are what we are agreeing with DETI as to payment for our services and as to being indemnified by them in the event that any claim is brought against us. As all this documentation has yet to be finalised it's not at all clear that we will be paid for any work I may do or that we will be able to rely on DETI's support should a legal challenge result from our involvement.

As for KPIs, legal advice has been given repeatedly in the context of RHI NI and GB RHI and otherwise that they ought to be an internal procedure only and should not be shared with DECC/DETI for the purpose of enabling them to check on the standard of our performance. It is not clear to what extent that advice has been/will be taken on board in the case of NI RHI. I suspect it will not be but, of course, the absence of any arrangements cuts both ways and, assuming I'm right in thinking that as yet there are no arrangements (**am I Keith?**) we have not yet committed ourselves to any KPIs with DETI.

Marcus

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**From:** Michelle Murdoch

**Sent:** 10 December 2012 11:33

**To:** Marcus Porter

**Cc:** Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua

**Subject:** RE: Enquiry 2x800kW boilers NIRHI

**Importance:** High

Good Morning Marcus,

Hope you had an excellent weekend. Just wanted to know where you are with the below query as DETI asked me this question on 3<sup>d</sup> Dec. KPI's indicate that enquiries should be answered within 10 working days, which brings us to Friday this week. I appreciate we have not received this query direct from an applicant, however DETI obviously has!

Kind Regards

Michelle

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**From:** Berta Paniagua

**Sent:** 05 December 2012 16:20

**To:** Marcus Porter

**Cc:** Lindsay Goater; Nadia Carpenter; Michelle Murdoch; Oliver More

**Subject:** Enquiry 2x800kW boilers NIRHI

Hi Marcus,

We have received an enquiry regarding capacity of biomass boilers and eligibility under NIRHI (however, we might see similar cases in future under either GB and NI). I raised this to Lindsay in our Issues and Precedents meeting but we would like to receive your confirmation on this.

The case is an installation with 2 biomass boilers of 800kW capacity each. Assuming that both boilers meet the criteria for both being regarded as part of the same installation (Reg 14(2) and (3)) then this plant is ineligible under NIRHI as total capacity is higher than 1MW. In order to make the installation eligible, they would be looking to claim the second boiler as ineligible. They would propose to do this by commissioning the boilers at different dates i.e. commissioning one of the boilers 12 months later. Therefore, they would apply for accreditation for an initial capacity of 800kW and then for a later 'additional capacity' to the installation to declare the second boiler. From this scenario we have come up with the following questions.

- Can they make the second boiler non eligible 'in purpose'? They might claim this under Reg 14(3) "*where each component meets the eligibility criteria...*"
- If accepted and accreditation granted for one of the boilers, would they be able to claim RHI payments for the heat generated before commissioning the second boiler?

The other scenario would be where both boilers are commissioning at the same time therefore it is our understanding that the installation would be ineligible for the NIRHI scheme as they would not be able to apply for only one of the boilers (following Reg 14).

Thanks

Regards

Berta

**Berta Paniagua**

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