

**To:** Russell Ogilvie[Russell.Ogilvie@ofgem.gov.uk]  
**Cc:** Samantha Turnbull[samantha.turnbull@ofgem.gov.uk]  
**From:** Omolade Barker  
**Sent:** 2015-06-15T14:42:19Z  
**Importance:** Normal  
**Subject:** RE: NDRHI Regulations Meeting - Summary for Approval  
**Received:** 2015-06-15T14:42:00Z

Hi Russell,

Sorry for the delay coming back to you on this, with the office move last week and review of draft guidance documents x 4, it was very hectic week. See my tracked changes / comments in red below by your summary notes. Also pasted below is the extract from the 2015 Amendment Regulation that I referenced during our meeting.

- Regarding the NDRHI information sharing with 3<sup>rd</sup> parties, the gateway for information sharing depends on who it is we are sharing the information with. For example we have obligation to provide information to DECC under Regs 53 & 54 and we can also use section 105 Utilities Act as a gateway for providing information to DECC, whilst exchange of information with DETI is done via the Administrative Arrangement we have agreed with them. Additionally to aid the information exchange with both DETI and DECC, we have data sharing protocol that define the scope of the information sharing.
- For any other 3<sup>rd</sup> parties, we would need to consider each request on case to case basis and determine (a) whether there is personal information which would engage the data protection legislation (i.e. personal details like names, address, bank account details which are not in the public domain). Personal data would engage Data Protection Act 1998 (DPA), (b) whether or not we can use the section 105 Utilities Act as a gateway for disclosure, although we would still need to consider DPA and ensure that we can use one of the exemption for disclosure (i.e. section 29 Crime and Taxation exemption may be relevant in this case as it covers prevention or detection of crime) and (c) whether the RHI privacy notice which each participant sign up to covers the disclosure we are proposing to make.
- Obviously including a direct statutory obligation in the RHI regulation to disclose such information will strengthen the justification for disclosure.

Extracts from Renewable Heat Incentive Scheme (Amendment) Regulations 2015

**23 Amendments to regulation 44 (power to temporarily withhold periodic support payments to investigate alleged non-compliance)**

In regulation 44—

(a) for paragraph (1) substitute—

“(1) Where the Authority has reasonable grounds to suspect—

(a) that a participant has failed or is failing to comply with an ongoing obligation; or

(b) that an accredited RHI installation has been given accreditation or a producer of biomethane has been registered as a result of the provision of information which is incorrect in a material particular, and the Authority requires time to investigate, it may withhold all or part of that participant's periodic support payments pending the outcome of that investigation.”;

(b) for paragraph (2)(a) substitute—

“(a) the respect in which the Authority suspects the participant has failed or is failing to comply with an ongoing obligation, or a description of the information which the Authority suspects to be incorrect and upon which the accreditation or registration was based;”;

(c) for paragraphs (9) and (10) substitute—

“(9) Subject to paragraph (11), immediately upon conclusion of its investigation under this regulation, the Authority must send the participant a notice specifying—

(a) the outcome of the investigation;

(b) the action the Authority proposes to take under this Part; and

(c) the participant's right of review.

(10) Subject to paragraph (11), where the Authority concludes that there has been no breach of an ongoing obligation or no provision of incorrect information, it must resume payment of periodic support payments and pay to the participant any periodic support payments withheld during the course of its investigation.

(11) Within 6 months of the date specified further to paragraph (2)(c), the Authority must either resume payment of periodic support payments or must send the participant a notice under regulation 45, 46, 47 or 48.”.

**NOTES**

**Initial Commencement**

***Specified date***

Specified date: 12 February 2015: see reg 1.

**24 Substitution of regulation 45 (power to suspend periodic support payments where ongoing failure to comply)**

For regulation 45 substitute—

**“45 Power to withhold periodic support payments: further provisions**

(1) Where the Authority is satisfied—

(a) that a participant is failing to comply with an ongoing obligation; or

(b) that an accredited RHI installation has been given accreditation or a producer of biomethane has

been registered as a result of the provision of information which is incorrect in a material particular, it may withhold all or part of that participant's periodic support payments.

- (2) Within 21 days of a decision to withhold periodic support payments the Authority must send a notice to the participant specifying—
- where there is a failure to comply with an ongoing obligation, the respect in which the Authority is satisfied that the participant is failing to comply;
  - where the accredited RHI installation was given accreditation, or the participant registered as a producer of biomethane, as a result of the provision of incorrect information, details of the respect in which the information is incorrect;
  - the amount of periodic support payments that the Authority intends to withhold in respect of each quarterly period;
  - the date from which periodic support payments will be withheld;
  - where applicable, the steps that the participant must take to satisfy the Authority that it is complying with the ongoing obligation;
  - where applicable, the steps that the participant must take to satisfy the Authority that, notwithstanding the provision of incorrect information, the accredited RHI installation should continue to be accredited, or the participant should continue to be registered;
  - the date by which the steps referred to in sub-paragraph (e) or (f) must be completed;
  - the consequences of the participant failing to take the steps referred to in sub-paragraph (e) or (f) by the date specified; and
  - details of the participant's right of review.
- (3) The Authority may extend the time specified in paragraph (2)(g) where it is satisfied that it is reasonable to do so.
- (4) Where the Authority is satisfied that the participant has taken the steps specified in paragraph (2)(e) or (f), as applicable, within the time specified, it must resume payment of the periodic support payments.
- (5) If, within 6 months of receipt by the participant of a notice sent under paragraph (2), the Authority is satisfied that the participant has taken the steps specified in that notice, the Authority may pay, within 28 days of being so satisfied, all periodic support payments withheld under this regulation.”.

## NOTES

### Initial Commencement

#### ***Specified date***

Specified date: 12 February 2015: see reg 1.

### **25 Substitution of regulation 47 (revocation of accreditation or registration)**

For regulation 47 substitute—

#### **“47 Revocation of accreditation or registration**

- (1) Where the Authority is satisfied—
- that there has been a material or repeated failure by a participant to comply with an ongoing obligation (except where sub-paragraph (c) applies);
  - an accredited RHI installation has been accredited or a producer of biomethane has been registered as a result of the provision of information which is incorrect in a material particular; or
  - there has been a failure to comply with a notice under regulation 45(2);
- it may take any of the actions in paragraph (2).
- (2) The actions in this paragraph are that the Authority may—
- revoke accreditation for the accredited RHI installation in respect of which paragraph (1) applies;
  - revoke accreditation for any other accredited RHI installation owned by that participant; or
  - in relation to a participant who is a producer of biomethane, revoke that participant's registration.
- (3) Before revoking an accreditation or registration under this regulation, the Authority must send a notice to the participant specifying—
- the reason for the intended revocation including details of the respect in which the participant has failed to comply or the information is incorrect;
  - an explanation of the effect of the revocation; and
  - details of the participant's right of review.
- (4) Where accreditation of an accredited RHI installation, or a participant's registration as a producer of biomethane, 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.”.

## NOTES

### Initial Commencement

#### ***Specified date***

Specified date: 12 February 2015: see reg 1.

### **26 Substitution of regulation 48 (overpayment notices and offsetting)**

For regulation 48 substitute—

#### **“48 Overpayment notices and offsetting**

- (1) Where the Authority is satisfied that a participant or former participant has received periodic support payments which—
- exceed that participant's entitlement;
  - were paid whilst there was a failure by that person to comply with an ongoing obligation, or following such a failure; or

- (c) were paid as a result of the provision of information which was incorrect in a material particular, it may take one of the actions set out in paragraph (2).
- (2) The actions in this paragraph are that the Authority may—
- require a participant or former participant who has received periodic support payments to which paragraph (1) applies, to repay a specified sum in relation to some or all of those payments; or
  - offset a specified sum in relation to some or all of those payments against future periodic support payments.
- (3) Before taking either of the actions set out in paragraph (2), the Authority must send the participant or former participant a notice specifying—
- the sum it is seeking to recover;
  - the basis on which that sum is calculated;
  - whether the specified sum must be repaid or will be offset;
  - where applicable, the date by which the sum must be repaid;
  - where applicable, the amount which will be offset in each quarterly period and the time it will take for the sum to be recovered;
  - details of the participant's or former participant's right of review.
- (4) Where a participant or former participant who is required to repay a specified sum under this regulation fails to make payment in full by the date specified under paragraph (3)(d), the Authority may recover any outstanding sum as a civil debt.”.

**NOTES****Initial Commencement****Specified date**

Specified date: 12 February 2015: see reg 1.

**27 Provision of information to the Authority etc**

After regulation 52 insert—

**“52A Provision of information to the Authority etc**

- (1) Where under these Regulations the Authority requests information or a declaration from an applicant or a participant, or an applicant or participant is required to provide information or a declaration to the Authority—
- that information or declaration must be provided within such time and in such manner and form as the Authority may reasonably request and must be accurate to the best of the applicant's or participant's knowledge and belief, and
  - the costs of providing the information are to be borne by that applicant or participant.
- (2) When exercising any functions under these Regulations the Authority may treat any declaration given by an applicant in support of an application under these Regulations or by a participant as conclusive evidence of the matters to which that declaration relates, unless the Authority has reason to believe that any such declaration is not accurate.”.

**NOTES****Initial Commencement****Specified date**

Specified date: 12 February 2015: see reg 1.

**28 Amendment to Schedule 1**

In sub-paragraphs (2)(n)(ii) and (5)(a) and (b) of paragraph 1 of Schedule 1, after “designed” insert “and installed”.

**NOTES****Initial Commencement****Specified date**

Specified date: 12 February 2015: see reg 1.

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**From:** Russell Ogilvie

**Sent:** 08 June 2015 14:47

**To:** Omolade Barker

**Cc:** Samantha Richards

**Subject:** NDRHI Regulations Meeting - Summary for Approval

Good afternoon Lade,

Thank you again for your time last week when you met with Samantha and I to discuss possible changes to the NDRHI regulations to increase sanctions for fraud on the scheme and to reduce the incentive for fraud.

I have set out a brief summary of our conversation below and I wonder if you would please confirm if you are happy with this summary or if you would like to suggest any changes?

- The Renewable Heat Incentive Scheme (Amendment) Regulations 2015 which came into force on 12 February 2015 made changes which have already tightened up the sanctions available to us. For example they allow us to pursue a previous participant of the scheme if we need to recover money from them (see Reg 48 above). Also, for accredited installations, if we find that incorrect information was given at the time of application we are able to revoke accreditation (see Reg 47 above). “Where accreditation of an accredited RHI installation, or a participant's registration as a producer of biomethane, 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 inspection at any future date." (reg 47(4)). This is a discretionary power which is subject to public law test of reasonableness, so we need to be satisfied that there is a reasonable justification for refusing to accredit – this would depend on the circumstances of each case and the seriousness of the non-compliance that led to the revocation in the first instance. and we have the authority to refuse future applications from the applicant involved (although there is no automatic refusal of such applications; we just have the right to refuse).

- If we find that false information was given at the point of application and the application is still at the review stage we can reject the application on the basis that it was not properly made, but even if we do so we cannot stop the applicant involved from re-applying to the scheme as each application has to be considered on its merit (i.e. apply the eligibility criteria, regulation 22 and the schedule 1 information provided in support of the application ). We discussed the possibility of suggesting **amendments to Regulation 22** to give us **provision to refuse future applications** from an applicant who has **previously provided false/incorrect information** even if the applicant never became a participant in the scheme (i.e. the application involved was never accredited).
- We discussed that in cases where meters are not installed until after the date claimed on the application form and that the current practice is simply changing the effective date. Where we are satisfied that there is evidence to suggest that fraud might have taken place by way of providing false information as part of the application as in this scenario, (e.g. meters not installed until after the date claimed on the application form); as the information is false it then follows that supporting information required under Reg 22, schedule 1 have not been met ( i.e. no metering arrangement in place). Consequently we can reject the application as not having been properly made. The current practice of simply changing the effective date. This is on the basis that the application was not properly made. . We can then pursue the suspected fraud element through the usual channels such as Action Fraud or the Police - this would however depend on the evidence we have to support such allegation.
- We discussed the possibility of amending the NDRHI Guidance to include an expectation that when applicants submit photographs of their meters as part of the application process they should take them in such a way as to show them in situ/show the surrounding wall/area. This will give additional assurance that meters are installed on the date claimed.

One thing which we did not discuss last week but we feel would be a useful addition to the NDRHI regulations would be something which would make information sharing between Ofgem and third parties easier, where it is necessary for the investigation of allegations of suspected fraud. My colleagues Samantha and Leanne have discussed this with Marcus Porter in the context of DRHI and his initial thinking is that a line which would effectively 'override' or 'trump' the Data Protection Act to allow us to share information more easily with third parties could be added to the regulations. I wonder if you would please be able to let me know your thoughts on this in the context of NDRHI? Lade comment – see my comments above

Many thanks,

Russell

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