

**THE INDEPENDENT PUBLIC INQUIRY
INTO THE NON DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) SCHEME
(known as the 'RHI Inquiry')**

Redaction, Anonymity and Restriction Orders Protocol

to be followed by the RHI Inquiry

Introduction

[1] This Redaction, Anonymity and Restriction Orders Protocol ('the Redaction Protocol') should be read with, and is subject to, the Inquiries Act 2005 ('the 2005 Act'). It should also be read in conjunction with the Inquiry's Terms of Reference and the other protocols published by the Inquiry.

[2] The powers of the Inquiry are set out in the 2005 Act. The 2005 Act specifically requires the Chairman, in making any decision as to the procedure or conduct of the Inquiry, to act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

[3] This Redaction Protocol is intended to provide general information and guidance as to how the Inquiry will deal with matters relating to redaction and anonymity and how an individual or organisation may, if necessary, apply to the Inquiry for what is known under the 2005 Act as a "restriction order". This Redaction Protocol is not intended to cover every eventuality that may arise.

The Powers of the Inquiry

[3] Section 17 of the 2005 Act provides that the procedure and conduct of the Inquiry are to be such as the Chairman may direct, having regard to his duty to act with fairness and to avoid unnecessary expense.

[4] Subject to any restriction orders made under section 19 of the 2005 Act (discussed further below), section 18 of the 2005 Act requires the Inquiry Chairman to take such steps as he considers reasonable to ensure that members of the public (including reporters) are able to:

- (a) attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
- (b) obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.

[5] The Chairman of the Inquiry has already publicly committed to holding as public and transparent an inquiry as is possible. It is for this reason that arrangements are being made for public attendance at oral hearings, streaming of

the oral hearings on the internet, and the publication of the transcript from each day of the hearings (alongside the documents examined by the Inquiry during each relevant day's hearings).

[6] Therefore, the Chairman of the RHI Inquiry intends to exercise his statutory powers to make restriction orders in only some very limited, but necessary, circumstances.

[7] Section 19 of the 2005 Act provides the Chairman with power to make a restriction order in relation to:

- (a) attendance at the Inquiry; and/or
- (b) disclosure or publication of any evidence or documents given, produced, or provided to the Inquiry.

[8] This means that, through the 2005 Act, the Inquiry can, as necessary, take steps to:

- (i) protect the identity of witnesses appearing before it by the regulation of who can attend the Inquiry's public hearings; and
- (ii) prevent, or limit, the publication of information given to the Inquiry in whatever form.

The considerations relevant to the making of a restriction order

[9] The Chairman's power to make a restriction order is limited to imposing restrictions which:

- (a) are required by any statutory provision, enforceable EU obligation, or rule of law; or
- (b) he considers to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the following:
 - (i) the extent to which any restriction on attendance, disclosure, or publication might inhibit the allaying of public concern;
 - (ii) any risk of harm or damage that could be avoided or reduced by a restriction (where "harm or damage" is defined as meaning death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or of any part of it, or damage caused by the disclosure of commercially sensitive material);

- (iii) any conditions as to confidentiality subject to which a person acquired information which that person is to give to the Inquiry;
- (iv) the extent to which not imposing the restriction would be likely to cause delay or to impair the efficiency or effectiveness of the Inquiry or otherwise to result in additional cost.

[10] Having considered the legal obligations which he is under, and the particular circumstances and needs of the Inquiry, the Chairman has decided, at this stage, to make four restriction orders, which are discussed further below.

The intention of the Inquiry in relation to the limited redaction of some documents provided to it and which the Inquiry will publish in due course

[11] The Chairman has made a general restriction order, Restriction Order No 1 of 2017, in respect of personal or irrelevant information within documentation received by the Inquiry which the Inquiry intends to publish in due course.

[12] Pursuant to this restriction order, the Inquiry will redact from documents to be published by the Inquiry:

- (a) Personal information of individuals such as addresses, telephone numbers, dates of birth, national insurance numbers, *etc.*, save to the extent that the Chairman of the Inquiry considers the personal information of sufficient evidential value to justify publication by the Inquiry; and/or
- (b) Material which the Inquiry considers irrelevant, and which it consequently considers should be redacted, in documents which contain otherwise relevant material.

[13] This will mean that the information which is subject to Restriction Order No 1 of 2017 will be blacked out in any versions of those documents which are published by the Inquiry. It will also then not be permissible for anyone to publish the information which lies behind the redactions in connection with the Inquiry or in any publication relating to the Inquiry.

[14] The reason for this limited restriction on what the Inquiry will ultimately publish from the material it receives is to protect the personal information of individuals, other than their names, which it is not necessary to place in the public domain.

[15] It is also to ensure that material which the Inquiry does decide to publish is that which is relevant to the Inquiry's Terms of Reference and its investigation. It is the case that some documents which contain relevant information (and which the

Inquiry will publish) also, for some reason, contain additional information which is irrelevant. It is only the information which the Inquiry considers to be irrelevant which will be redacted for that reason. The Inquiry will of course have seen all of the contents of the document; and it is the Inquiry which will decide what portions of the content of a document are relevant or not.

[16] In addition, the Chairman has made a general restriction order, Restriction Order No 4 of 2017, in respect of investigative information or commercially sensitive information within documentation received by the Inquiry which the Inquiry intends to publish in due course.

[17] Pursuant to this restriction order, the Inquiry will redact from documents to be published by the Inquiry:

- (a) Certain information which the Inquiry considers to be commercially sensitive; and/or
- (b) Certain investigative information the disclosure of which, in the Inquiry's view, would be prejudicial to the public interest.

[18] This will mean that the information which is subject to Restriction Order No 4 of 2017 will be blacked out in any versions of those documents which are published by the Inquiry. It will also then not be permissible for anyone to publish the information which lies behind the redactions in connection with the Inquiry or in any publication relating to the Inquiry.

[19] The first reason for this limited restriction on what the Inquiry will ultimately publish from the material it receives is to protect information which the Inquiry considers to be commercially sensitive information, and which it is not necessary to place in the public domain. The Inquiry will of course have seen the information; but it is for the Inquiry to determine whether the evidential or investigative value of disclosing the information outweighs the public interest in avoiding economic damage by the disclosure of commercially sensitive information.

[20] The second reason for this limited restriction on what the Inquiry will ultimately publish from the material it receives is to protect the integrity of ongoing investigations, and the investigative process generally, in relation to complaints made to appropriate authorities about matters such as misconduct, abuse of the RHI Scheme or fraud. The Inquiry wishes to avoid a situation where disclosure of information by it impedes an ongoing investigation (including, but not limited to, its own investigative work). The Inquiry also recognises that a person who makes a complaint to the appropriate authorities, in the expectation that it will be treated confidentially, has an interest in maintaining that confidentiality; and that there is a wider public interest in not deterring individuals from coming forward to make complaints. Where it is considered necessary in the public interest, or conducive to

the Inquiry fulfilling its own terms of reference, the Inquiry will redact information falling within this category.

The intention of the Inquiry in relation to material gathered by it which it provides to others

[21] The Chairman has made a further restriction order, Restriction Order No 2 of 2017, prohibiting anyone who receives documentation from the Inquiry from publishing that documentation in any way (save that they may show it to their legal representative) without first obtaining the consent in writing of the Chairman of the Inquiry.

[22] This restriction order only relates to documentation provided to an individual or organisation by the Inquiry. It does not apply to an individual or organisation's own documents. An individual or organisation is at liberty to deal with their own documents in the normal way, even if they have provided a copy to the Inquiry. It is copies of material received from the Inquiry which are covered by the terms of this restriction order.

[23] The purpose of Restriction Order No 2 of 2017 is to ensure that those who receive documentation from the Inquiry, for Inquiry purposes, handle that material in the appropriate way. The Inquiry has indicated that it will publish the material it gathers at the appropriate time. That is the responsibility of the Inquiry and not of those who receive material from the Inquiry.

The intention of the Inquiry in relation to witness statements produced on foot of requests made by it

[24] The Chairman has also made a further restriction order, Restriction Order No 3 of 2017, prohibiting anyone who is required to provide a witness statement to the Inquiry from publishing that witness statement in any way beyond its provision to the Inquiry.

[25] A public inquiry must be free to conduct its investigations in the manner it considers best suited to completing the tasks set for it by its Terms of Reference. This includes publishing evidence when it is the right time for the Inquiry to do so. The Inquiry would be hampered in its work if statements which it seeks from individuals were being published randomly by those persons or others, and other than at the time the Inquiry has considered is in the best interests of the Inquiry's work.

[26] The Inquiry will, during the course of its work, publish witness statements obtained by it; but the Inquiry will do so as and when it considers it appropriate to do so in the furtherance of its Terms of Reference.

The intention of the Inquiry in relation to anonymity and the use of designations

[27] At present the Chairman of the Inquiry does not consider that it will be necessary, save in the most exceptional of circumstances, for individuals to be given anonymity before the Inquiry.

[28] The Inquiry is a public inquiry; and the Inquiry considers that the public should know the identity of those who give evidence to it.

[29] However, the Inquiry recognises that there may be circumstances where, as a matter of law, an individual may be entitled to the protection of their identity before the Inquiry, and such an individual may consequently apply to the Inquiry for anonymity and/or some other protective measure. The Inquiry is of the view, based on the work it has conducted to date, that such applications are likely to be extremely rare.

[30] If an individual is successful in making an application for anonymity, and an Order protecting their identity is made, then the Inquiry will make use of a designation for that person as a public identifier of them in published documents and in its public hearings.

Applications for the making of a restriction order

[31] It may be that an individual or organisation will wish to apply to the Chairman for the making of a restriction order during the course of the Inquiry.

[32] Examples of what could conceivably be covered by a restriction order include:

- (a) The non-disclosure of part or all of a document;
- (b) The non-publication of part or all of a particular document;
- (c) That certain individuals or groups of individuals be excluded from the Inquiry proceedings while a witness is giving their evidence;
- (d) That a witness's evidence be given in a closed hearing;
- (e) That nothing relating to a witness or their evidence is published in newspapers, television, or on the internet (including on social media).

[33] If a person wishes to apply for a restriction order of some kind then they should do so in writing to the Solicitor to the Inquiry. The application should include:

- (i) The name, address, and contact information of the applicant;

- (ii) Specific details of what restriction or restrictions the Inquiry is being asked to make;
- (iii) Particulars of why the Inquiry is being asked to make those restrictions; and
- (iv) Representations addressing the criteria which the Chairman has to apply when deciding whether to make a restriction order and why it is said that those criteria are met in respect of the application.

[34] Applications should be sent to the Solicitor to the Inquiry, Patrick Butler, preferably by email to Patrick.Butler@rhiinquiry.org or, if that is not possible, by post to the RHI Inquiry, 1st Floor, Headline Building, 10-14 Victoria Street, Belfast, BT1 3GG.

[35] The Chairman of the Inquiry will then consider the application. If the Chairman considers that, on foot of an application, a restriction order is justified in the manner requested, then a restriction order will be made by the Chairman and the applicant will be notified of that decision.

[35] If the Chairman considers that a restriction order is not justified, or is justified but not in the manner requested, then the Inquiry may engage further with the applicant about what the Inquiry is minded to do and may request that the applicant make further representations to it in relation to the application. If necessary an oral hearing may be required before a final decision is made.

[36] It may be, particularly if an application relates to some evidence which has been provided to the Inquiry, and the order sought would entail the withholding of evidence from the public, that the Chairman will need to disclose the application and/or that evidence to another individual in order to properly determine the application. If that is necessary then the Chairman will first afford the applicant an opportunity to make representations about whether that evidence should be disclosed to the other individual before deciding to do so.

[37] It should be noted that if anyone is shown evidence by the Inquiry which is the subject of a restriction order application, this evidence will be provided to them only on the basis that they are subject to a legal duty of confidence to the person who produced the evidence to the Inquiry which, if breached, may lead to a civil action for breach of confidence. This is in addition to the legal obligations arising from Restriction Order No 2 of 2017, discussed above.

[38] If it is determined that the making of a restriction order in some form is appropriate, then a restriction order will be made by the Chairman. Either way, the applicant for such an order will be notified of the Chairman's decision in relation to the application.

Power to vary or revoke a restriction order

[39] The Inquiry intends that restriction orders made by it will continue in force indefinitely unless the Chairman varies or revokes a restriction order under section 20(4) of the Act.

[40] If someone wishes to apply to the Inquiry for the variation or revocation of any restriction order then the application should be made in writing. The application should be sent to the Solicitor to the Inquiry, Patrick Butler, preferably by email to Patrick.Butler@rhiinquiry.org, or, if that is not possible, by post to RHI Inquiry, 1st Floor, Headline Building, 10-14 Victoria Street, Belfast, BT1 3GG.

[41] The Chairman will then consider the application. If the Chairman deems it necessary he may invite submissions from others who would be affected by the application to vary or revoke. It may be, particularly if the application relates to some evidence which has been provided by the applicant to the Inquiry, and which has been withheld from the public on foot of a restriction order, that the Chairman will need to disclose that evidence to another individual in order to properly determine the application. If that is necessary then the Chairman will first afford the relevant parties an opportunity to make representations about whether that evidence should be disclosed to the other individual before deciding to do so.

[42] It should again be noted that if anyone is shown evidence which is the subject of an application to vary or revoke a restriction order then that will be shared only on the basis that they are subject to a legal duty of confidence to the person who produced the evidence to the Inquiry which, if breached, may lead to a civil action for breach of confidence. This is in addition to any obligations arising from the restriction order itself to which the material is subject.

[43] If it is determined that a restriction order is to be varied or revoked then the Chairman will do that. Either way, the applicant for variation or revocation will be notified of the Chairman's decision in relation to the application.

[44] The Chairman has power at any time to revoke or vary any restriction order made by him.

Review

[45] The Inquiry intends to keep the existence of, and necessity for, any restriction orders made under the 2005 Act under continual review.

Enforcement

[46] If someone fails to comply with, or acts in breach of a restriction order, or any other order made by the Inquiry, or threatens to do so, then, pursuant to section 36 of the 2005 Act, the Chairman may certify the matter to the High Court. The High

Court, after hearing any evidence or representations on the matter certified to it, may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court. This may include committal to prison or a fine.

Generally

[47] The Inquiry retains the right to suspend, alter or modify the procedure set out in this Redaction Protocol at any time as the circumstances may require.