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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Domestic Renewable Heat  
Incentive Scheme Regulations 2014**

**PART 10**

**Inspection and enforcement**

**Inspection**

**56.**—(1) The Authority or its authorised agent may request entry at any reasonable hour to inspect an accredited domestic plant and its associated infrastructure and to do one or more of the following—

- (a) verify that the participant is complying with all applicable ongoing obligations;
- (b) verify meter readings;
- (c) take samples and remove them from the premises for analysis;
- (d) take photographs, measurements or video or audio recordings of the accredited domestic plant and its associated infrastructure;
- (e) verify that a participant who is a party to a registered metering and monitoring agreement is complying with any conditions imposed under regulation 51 in relation to the agreement and that the terms of the agreement are being complied with.

(2) Where the Authority is satisfied that a request made under paragraph (1) has been unreasonably refused by the participant or an occupant of the RHI property, or that the participant or occupant has unreasonably failed to cooperate with the Authority or its authorised agent, the Authority must send a notice to the participant specifying—

- (a) details of—
  - (i) the request for entry and the reason why the refusal is considered unreasonable; or
  - (ii) the manner in which the participant or occupant has failed to cooperate and why that failure is considered unreasonable; and
- (b) the action the Authority proposes to take under this Part, if any.

**Power to withhold RHI payments during investigation**

**57.**—(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 domestic plant has been given accreditation wholly or partly 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 RHI payments pending the outcome of that investigation.

(2) Within 21 days of a decision to withhold RHI payments under paragraph (1), the Authority must send a notice to the participant which—

- (a) specifies—
  - (i) the respect in which the Authority suspects the participant has failed or is failing to comply with an ongoing obligation; or
  - (ii) a description of the information suspected to be incorrect and upon which the accreditation was based; and
- (b) sets out the date from which RHI payments will be withheld and the next steps in the investigation.

(3) The Authority's investigation must be commenced and completed as soon as is reasonably practicable.

(4) Immediately upon conclusion of its investigation under this regulation, the Authority must inform the participant of—

- (a) the outcome of the investigation;
- (b) the action the Authority proposes to take under this Part, if any; and
- (c) the participant's right of review.

(5) Subject to regulation 46, where the Authority concludes that there has been no material breach of an ongoing obligation or provision of incorrect information, it must resume payment of RHI payments in accordance with these Regulations and pay to the participant any RHI payments withheld during the course of its investigation.

(6) Within 6 months of sending of a notice under paragraph (2), the Authority must either resume payment of RHI payments or must send the participant a notice under regulation 58, 59 or 60.

### **Power to withhold RHI payments in the case of non-compliance**

**58.**—(1) Where the Authority is satisfied—

- (a) that a participant is failing to comply with an ongoing obligation; or
- (b) that an accredited domestic plant has been given accreditation wholly or partly 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 RHI payments.

(2) Within 21 days of a decision to withhold RHI payments the Authority must send a notice to the participant specifying—

- (a) 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;
- (b) where the accredited domestic plant was given accreditation as a result of the provision of incorrect information, details of the respect in which the information is incorrect;
- (c) the amount of RHI payments that will be withheld, to the extent this is known to the Authority;
- (d) the date from which RHI payments will be withheld;
- (e) where applicable, the steps that the participant must take to satisfy the Authority that it is complying with the ongoing obligation;
- (f) where applicable, the steps that the participant must take to satisfy the Authority that, notwithstanding the provision of incorrect information, the accredited domestic plant should continue to be an accredited domestic plant;
- (g) the date by which the steps referred to in sub-paragraph (e) or (f) must be completed;

- (h) the consequences of the participant failing to take the steps required under subparagraph (e) or (f) by that date; and
- (i) details of the participant's right of review.

(3) Subject to regulation 46(2)(b) and (7), 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 RHI payments in accordance with these Regulations.

(4) The Authority may extend the time specified in paragraph (2)(g) where it is satisfied that it is reasonable to do so.

(5) If, within 3 months of receipt by the participant of a notice served 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 RHI payments withheld under this regulation.

### **Revocation of accreditation**

**59.**—(1) Where the Authority is satisfied that—

- (a) there is or has been a serious or repeated failure by a participant to comply with an ongoing obligation;
- (b) there has been a failure to comply with a notice under regulation 58(2); or
- (c) an accredited domestic plant has been given accreditation wholly or partly as a result of the provision of information which was incorrect in a material particular,

the Authority may take one or more of the steps set out in paragraph (2).

(2) Where paragraph (1) applies the Authority may—

- (a) revoke the accreditation for the relevant accredited domestic plant; or
- (b) revoke the accreditation for any other accredited domestic plants owned by that participant.

(3) Before revoking accreditation the Authority must send the participant a notice specifying—

- (a) the reason for the intended revocation of accreditation including details of the respect in which the participant has failed to comply or details of the incorrect information;
- (b) an explanation of the effect of the revocation; and
- (c) details of the participant's right of review.

(4) Where accreditation of an accredited domestic plant has been revoked, the Authority—

- (a) may reject any further accreditation application for a plant owned by the same person; and
- (b) must, if the Authority has given registration relating to the accredited domestic plant, withdraw that registration.

### **Overpayment notices and offsetting**

**60.**—(1) The Authority may take one of the steps set out in paragraph (2) where the Authority is satisfied that a participant or former participant has received RHI payments ("overpayments") which—

- (a) exceed the amount to which that person was entitled under these Regulations;
- (b) 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 for an accredited domestic plant which was given accreditation wholly or partly as a result of the provision of information which was incorrect in a material particular.

(2) The steps set out in this paragraph are—

- (a) requiring a participant or former participant who has received overpayments to repay a specified sum in relation to some or all of those overpayments; or
  - (b) offsetting a specified sum in relation to some or all of those overpayments against future RHI payments.
- (3) Within 21 days of a decision to take action under paragraph (1) the Authority must send the participant or former participant who has received any overpayments a notice specifying—
- (a) the value of any RHI payments which the Authority believes are overpayments;
  - (b) the specified sum which the Authority is seeking to recover;
  - (c) whether the specified sum must be repaid or will be offset;
  - (d) where applicable, the date by which the specified sum must be repaid; and
  - (e) 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.
- (5) The Authority must not require a participant or former participant to repay, or offset, a specified sum which exceeds any overpayments received by that person.

### **Revocation of sanctions**

- 61.**—(1) The Authority may at any time revoke a sanction imposed in accordance with this Part if it is satisfied that—
- (a) there was an error involved in the original imposition of the sanction; or
  - (b) it is just and equitable in the particular circumstances of the case to do so.
- (2) Where, as a result of the imposition of a sanction to which—
- (a) paragraph (1)(a) applies, a participant or former participant has been deprived of RHI payments to which the participant or former participant was entitled, the Authority must repay to the participant or former participant a sum equivalent to those payments;
  - (b) paragraph (1)(b) applies, a participant or former participant has been deprived of RHI payments which the participant or former participant would otherwise have received, the Authority may repay to the participant or former participant a sum equivalent to those payments if in the Authority's view it is just and equitable in the particular circumstances of the case to do so.
- (3) Within 21 days of a decision to revoke a sanction, the Authority must send a notice to the participant or former participant specifying—
- (a) the sanction which has been revoked;
  - (b) the reason for the revocation; and
  - (c) where paragraph (2) applies, the amount which will be repaid.
- (4) In this regulation, "sanction" means an action taken by the Authority under regulation 57(1), 58(1), 59(2), 59(4) or 60(2).

### **Right of review**

- 62.**—(1) Any prospective, current or former participant aggrieved by a decision by the Authority in the exercise of its functions under these Regulations (other than a decision made in accordance with this regulation) may have that decision reviewed by the Authority.

(2) An application for review must be made by notice in such format as the Authority may require and must—

- (a) be received by the Authority within 28 days of the date of receipt of notification of the decision being reviewed;
- (b) specify the decision which that person wishes to be reviewed; and
- (c) specify the grounds on which the application is made.

(3) A person who has made an application in accordance with paragraph (2) must provide the Authority with such information which is in that person's possession as the Authority may reasonably request to allow it to discharge its functions under this regulation.

(4) A review under this regulation may not be carried out by any person who was involved in the decision which is being reviewed.

(5) On review the Authority may—

- (a) affirm its decision;
- (b) revoke or vary its decision.

(6) Within 21 days of completing a review under this regulation, the Authority must send the person who made the application a notice setting out its decision and giving reasons for that decision.