

Consultation

Consultation on proposed revisions to the NDRHI (GB and NI) formal review process

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This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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Foreword

Ofgem are consulting on the proposal to consolidate and improve our internal processes by removing the internal Ofgem 'formal review' process from the current Non-Domestic Renewable Heat Incentive scheme in Great Britain (NDRHI GB). Additionally, Ofgem and DfE are jointly consulting on the proposal to consolidate and improve our internal processes by removing the internal Ofgem 'formal review' process from the current Non-Domestic Renewable Heat Incentive scheme in Northern Ireland (NDRHI NI).

Executive summary

Through our administration of both the NDRHI (GB) and NDRHI (NI), where any prospective, current or former participant is unhappy about a decision Ofgem has made regarding their participation in the scheme, they may ask us to review the decision. Statutory reviews of decisions are specifically provided for in the Regulations under Reg. 50 [NDRHI NI]; and Reg. 86 [NDRHI GB]. For the NDRHI (GB) scheme, Statutory reviews are undertaken by Ofgem; whereas for NDRHI (NI) scheme, Statutory reviews are undertaken by Department for Economy (DfE).

Historically we have additionally offered a 'formal review' process, prior to the Statutory review. This 'formal review' process is carried out by a formal review officer who is independent of the initial decision. This current process can often result in participants not receiving a swift and definitive resolution and unlike the Statutory review, the decision is not definitive and final. Statistics show that the decision rarely changes between the 'formal' and Statutory reviews, therefore, we are proposing to improve our process by moving to a single Statutory review which will allow us to make a final, robust decision in a much shorter timescale.

1. Introduction

What are we consulting on?

The Non Domestic Renewable Heat Incentive Scheme in Great Britain (NDRHI GB), is administered by Ofgem on behalf of the Department for Business, Energy and Industrial Strategy (BEIS); and, is governed by the Renewable Heat Incentive Scheme Regulations 2018, which replaced the 2011 regulations and came into force on 22 May 2018 (the GB Regulations).

The Non Domestic Renewable Heat Incentive Scheme in Northern Ireland (NDRHI NI), is administered partly by Ofgem on behalf of the Department for the Economy (formerly DETI). DfE established a NDRHI Scheme under section 113 of the Energy Act 2011 and the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 as amended (the NI Regulations).

As part of Ofgem's administration of the NDRHI GB scheme, "any prospective, current or former participant affected by a decision made by the Authority in exercise of its functions under these Regulations may have that decision reviewed by the Authority" as documented within Regulation 86 – Right of Review (NDRHI GB Regs).

As part of Ofgem's administration of the NDRHI NI scheme, "any prospective, current or former participant affected by a decision made by the Department in exercise of its functions under these Regulations (other than a decision made in accordance with this regulation) may have that decision reviewed by the Department" as documented within Regulation 50 – Right of Review (NDRHI NI Regs).

Currently, as per the administrative process and the guidance documents, where an applicant/participant is dissatisfied with a decision made by Ofgem, they can request a review of the decision. Ofgem initially undertake a formal review of the decision, of which there can be a number of formal reviews for a case. The formal review process provides Ofgem up to twenty working days to respond to the customer with a decision. If after the formal review process, the applicant/participant is still unhappy with the conclusion they may then request a Statutory Review. As an example, this means that a customer who goes through two formal reviews can have a forty working day delay before requesting a Statutory review to reach a definitive, final decision. Statistics show that only 14% (across both GB and NI NDRHI) of cases result in the original decision being overturned by a Statutory review. This suggests that it is unlikely that the original decision will change across a multiple review process and for the majority of cases only delays the customer in reaching a definitive answer.

As noted, there are statutory provisions under both the NDRHI GB Regulations (Reg 86) and the NDRHI NI Regulations (Reg 50) that give rights to participants under both NDRHI NI and NDRHI GB schemes to request statutory reviews of Ofgem's decisions. However there is no statutory right to request a formal review. The formal review process was created by Ofgem/DfE and is set out in their respective guidance documents as part of the administrative process.

While the number of requests for review is relatively low in comparison to the volume of decisions taken on the scheme, as highlighted there is a significant period of time where applicants/participants are placed in a period of uncertainty while the reviews are taking place. Given this context, we now wish to review the dispute resolution process and remove the formal review stage, so that when a request for review is raised, it is dealt with as a Statutory Review in the first instance, with the aim of improving the review and decision making process for those requesting reviews of decisions.

Proposed Changes

We are seeking stakeholder views on changes we are proposing to make to the:

- Formal review process (NDRHI GB and NI); and,
- NDRHI GB and NDRHI NI guidance

Proposed Changes to the NDRHI (GB) and NDRHI (NI) dispute resolution process and guidance documents

We are proposing to remove the formal review stage from our decision review process; and instead carry out review of any decision requested by applicants / participants under the Statutory reviews process provided by the schemes Regulations, thereby creating a one stage review process. These changes will require amendments to the guidance documents for both schemes. For the NDRHI GB Guidance Volume 2, this will result in the removal of sections 17.5 – 17.19 which discusses the formal review process; and the revision of sections 17.21-17.24 to remove references to 'FRO' (Formal Review Officer) and the formal review process.

For the NDRHI NI Guidance Volume 2, this will result in the removal of sections 12.5 – 12.17 which discusses the formal review process; and the revision of sections 12.18-12.22 to remove references to 'FRO' (Formal Review Officer) and the formal review process.

Consultation question:

Are you content with the changes proposed to remove the formal review process? And if not please explain any concerns

How to respond

- 1.1. We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.
- 1.2. We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.3. We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

- 1.4. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.5. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do*

not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

- 1.6. If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.
- 1.7. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

1.8. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

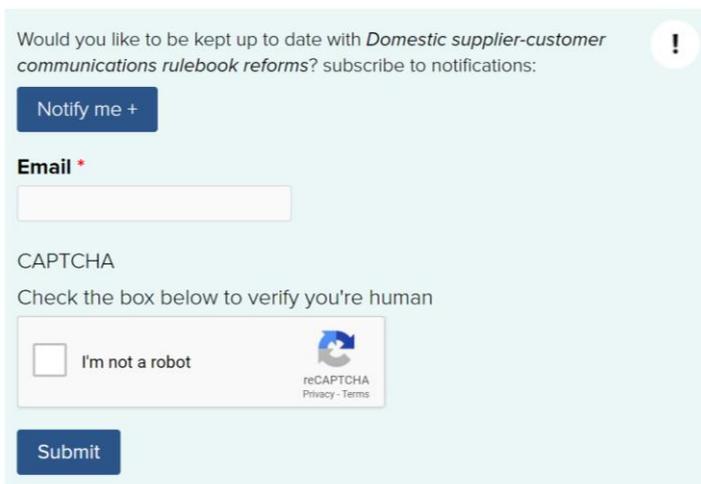
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

Notifications



Would you like to be kept up to date with *Domestic supplier-customer communications rulebook reforms*? subscribe to notifications: !

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Check the box below to verify you're human

I'm not a robot  reCAPTCHA
Privacy - Terms

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



Appendix 4 – Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. I.e. a consultation.

3. With whom we will be sharing your personal data

(Include here all organisations outside Ofgem who will be given all or some of the data. There is no need to include organisations that will only receive anonymised data. If different organisations see different set of data then make this clear. Be as specific as possible.)

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for ***(be as clear as possible but allow room for changes to programmes or policy. It is acceptable to give a relative time e.g. 'six months after the project is closed')***

5. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- To lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use "the Data you provide directly will be stored by Survey Monkey on their servers in the United

States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system. (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

9. More information for more information on how Ofgem processes your data, click on the link to our [“Ofgem privacy promise”](#).