

## Document Version Control

Version	Date	Author	Rationale
1.0	13/07/2018	CM	Document issued to coincide with official launch of AoR.
1.1	12/09/2018	LH	Small edit to add link to approved model contract

## **Assignment of Rights Guidance for Investors entering into contracts with homeowners**

### **Introduction**

The Assignment of Rights (AoR) is designed to help homeowners access the funds they need to install renewable heating systems. Investors pay for all or part of a renewable heating system and arrange for it to be installed for a homeowner. In return, the homeowner assigns all the payments under the Domestic Renewable Heat Incentive (DRHI) to the investor. The homeowner will be the sole owner of the renewable heating system at all times. This guidance should be read in conjunction with the [Ofgem Essential Guide to Assignment of Rights](#).

### **The Domestic Renewable Heat Incentive**

The DRHI offers homeowners payments over seven years to encourage them to install renewable heating systems. The size of these payments depends on a number of factors such as:

- the household's energy demand;
- the size and type of the technology being installed;
- the tariffs available under the scheme; and
- meter readings (where applicable).

Both you and the homeowner must comply with the DRHI regulations and the obligations they include. It is important that you note and understand the obligations that apply to both the homeowner and you as an investor. The best guide to the DRHI and those obligations is the [Ofgem Domestic Renewable Heat Incentive: essential guide for applicants](#).

*Please note:* While AoR can be arranged between investors and other businesses and organisations (such as Registered Social Landlords) this guidance is for investors seeking to agree contracts with domestic homeowners only (owner-occupiers or private landlords).

### **Why is AoR being introduced?**

The DRHI scheme is intended to help consumers and the Government reduce the carbon dioxide emissions associated with domestic heating. In theory, many householders should be able to recoup the cost of installing a renewable heating system through a combination of:

- the DRHI payments they receive; and
- any fuel savings they make.

However, the up-front capital cost of renewable heating remains too high a hurdle for many homeowners. By removing all or part of the cost barrier, AoR is designed to help more homeowners benefit from the lower fuel bills and reduced carbon dioxide emissions that renewable heating systems can bring. The greater the number of renewable heating systems installed, the greater the reduction in carbon dioxide emissions from domestic heating.

#### **Getting the information right**

Renewable heating may not be appropriate for every household. For example, energy savings can be small or non-existent. It is therefore important that you make every effort to ensure that potential customers and their properties are suitable for the system you are offering them, and that you give them all the information they need to make an informed choice. These issues are set out in more detail below.

#### **What are the AoR basics?**

If you, as an investor, register with Ofgem you can finance all or part of a homeowner's renewable heating system and/or installation costs in return for the DRHI payments due. The homeowner will own the system once it's installed. The homeowner applies to Ofgem for accreditation under the DRHI in the normal way and 'assigns' the DRHI income to you. You, as the investor, can never own the renewable heating system.

It is essential that you agree a contract with the homeowner that clearly sets out both parties' obligations and considerations to each other. As the investor you will be taking responsibility for the entire installation, even if you subcontract the actual installation work. You are strongly encouraged to use the approved Model Contract for AoR available on the Renewable Energy Consumer Code (RECC) website. If you use your own contract then you will need to make sure it covers all the terms in the approved Model Contract. The RECC application process will take longer if you do not use the Model Contract.

The actual installation must be carried out by an installer certified under the Microgeneration Certification Scheme (MCS). If you are not an MCS-certified installer you must subcontract the installation to someone that is. If you arrange the installation in this way then you will still be responsible to the homeowner for all aspects of the installation. You will have a separate contract with the installer. The installer will only be expected to have a very limited direct

contract with the homeowner that will cover system commissioning and registration. The installer will also confirm that the installation will comply with all relevant MCS product and installer standards. These different relationships are explained in more detail below.

### **How do I register for AoR?**

Firstly, you need to join one of the Chartered Trading Standards Institute (CTSI)-approved Consumer Codes taking part in AoR: RECC or the Home Insulation & Energy Systems (HIES).

*Please note:* This document refers only to your obligations under RECC.

When you apply to become a RECC member we will carry out our due diligence checks as usual, and we will also look at the AoR contract you are intending to use with homeowners. If you do not use the approved Model Contract we will have to assess your own contract to make sure it complies with the scheme's requirements and with the AoR Regulations. RECC can advise on your other pre-contractual information and processes.

### **RECC membership**

RECC members agree to comply with the Code which is approved by CTSI under the Consumer Codes Approval Scheme (CCAS). By becoming a RECC member you agree to its regular monitoring to ensure high consumer standards.

After you have joined, and RECC has approved your AoR contract, you need to apply to Ofgem for acceptance as a Registered Investor under the AoR scheme. Once accepted, you can then sign AoR contracts with homeowners. A homeowner will then apply to Ofgem for accreditation under the DRHI and, as part of the application process, must nominate you as the Nominated Registered Investor before the DRHI payments can be assigned to you. If the application is successful, the homeowner (or applicant) will be known as the 'Participant' for that specific renewable system. The Participant cannot assign some of the DRHI payments: they must assign all of them.

### **Important**

Registered Investors must accept a range of ongoing obligations under the DRHI. These are described in the following pages.

### **How can I market AoR to homeowners?**

You can market products and services using AoR as you wish provided you follow the *Advertising Standards Authority CAP Codes*<sup>1</sup> and the industry rules under *RECC* and the *Microgeneration Certification Scheme (MCS)*.

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<sup>1</sup> The Committees of Advertising Practice (CAP) Codes: <https://www.asa.org.uk/>

Under the CAP Codes, marketing must be legal, decent, honest and truthful. It is critical that you get performance claims right and you *avoid misleading and exaggerated claims about potential fuel savings*. Many homeowners can reduce their fuel bills significantly through the installation of renewable heat – but this is not always possible. For example, some homeowners may see little or no financial benefit if they switch from gas heating to renewable heat via a heat pump or a biomass boiler. There may only be a marginal financial benefit for others. The viability of a proposal depends on the installation design chosen for the specific household.

Your marketing, therefore, should never imply that savings are always likely or that renewable heating systems provide a specific efficiency common in all domestic situations. RECC can advise you further about this.

**What information do I have to provide?**

You will need to give the homeowner:

- all the contractual information related to the AoR (as set out below) and as detailed in the Model Contract; and
- all the information required under the MCS installer standards and the Consumer Code.

*Please note:* Only MCS-certified installations and products are eligible for the DRHI.

If you are an MCS-certified installer and a Registered Investor, then you will be able to provide the homeowner with the compulsory information under the relevant MCS installer standards. If you are using a *sub-contracted* MCS-certified installer you will need to ensure that the installer provides you with the necessary technical information required under MCS. This includes the compulsory performance estimate described below.

**What the proposal should contain:**

A quote detailing the finance you will provide in return for the assigned rights to the RHI payments. The quote or supporting documentation should also describe, but is not limited to:

- an itemised list of the goods to be supplied and the Property;
- an itemised list of all the survey, design, installation and other services to be supplied;
- the amount of any payment to be made by the homeowner and any timetable for this payment or payments;
- the total value of the DRHI payments;
- who is responsible for any planning permissions or building control applications;
- the warranties and how the workmanship warranty will be insurance-backed;
- the complaints process; and

The proposal should also include:

- the compulsory MCS performance estimate (important - see below);
- arrangements for the installation;
- terms and conditions including information on cancellation rights and a cancellation form (see: 'What do I need to cover in my contract with RHI applicants?' and 'The Right to Cancel' below); and
- any other obligations on either party you want to include (provided they comply with the Consumer Code).

You should also include details about maintenance services and, if necessary, fuel supplies:

- all details about necessary maintenance and how the homeowner must have a separate contract in place for maintenance services;
- if you are supplying a biomass boiler, all details about eligible fuel and the need for a separate fuel supply contract.

For more information about maintenance services and, if necessary, fuel supply see below:

*What about agreements for maintenance and/or fuel supply?*

For more detail on what must be provided before the contract is agreed see Part 3 of the model contract: Pre-Contract Sales Information – Proposal.

### **The formal Performance Estimate**

Strict rules apply to the formal performance estimates that you must give the homeowner. This performance information must be as accurate possible, and you should be meticulous about the veracity of any performance claims you make, verbally or in writing.

Under all of the MCS technology standards, it is critical that the homeowner is given the formal MCS-compliant performance estimate **before** the contract is agreed. The information forms the basis of the sale and will demonstrate to the homeowner whether the installation will result in energy and/or carbon dioxide savings.

When you offer a homeowner a proposal to supply and install a heat pump system then you must provide the performance estimate using the *MCS Heat Pump System Performance Estimate* template (see 4.2.16 of MIS 3005 V5).

### **What do I need to cover in my AoR contract with homeowners?**

We recommend that you use the approved AoR Model Contract. It is available on the RECC website here <https://www.recc.org.uk/join/assignment-of-rights-investors>.

The exact information you must provide in your contract and in any accompanying documents will depend on the service you offer and how you offer it. For example:

- you may be intending to fund the whole of the cost of the heat generator or just part of the cost<sup>2</sup>; and/or;
- you may need the homeowner to carry out important preparatory work.

Contracts should spell out both parties' obligations clearly. They should explain what you will do for the homeowner and what they will do for you.

If you choose not to use the Model Contract, then the contract you do use must set out the terms of service precisely and clearly and it must contain specific details including, but not limited to:

- the homeowner's right to cancel the agreement (see The Right to Cancel, below);
- who will pay for the cost of any repairs or replacement that may be necessary;
- who will pay for the necessary fuel;
- the dispute resolution process;
- what happens if the homeowner moves or the owner of the heat generator changes;
- what happens if you transfer the agreement to another investor; and

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<sup>2</sup> Please note – you may provide finance for all or part of the heat generator cost. However, the Participant cannot assign some of the DRHI payments: they must assign all, or none, of them.

- what happens if circumstances change and the system needs to be metered for payments.

It is crucial that you get your contract terms right because the homeowner cannot be bound by terms that are 'unfair' in law. This is particularly important when the service involves complex goods and services such as the supply and installation of an energy generator.<sup>3</sup> You should also remember that, under the *Consumer Rights Act 2015*, all the claims you make (including verbal statements and marketing) can form part of your contract with the homeowner. If those claims are wrong or misleading you can be in breach of contract and homeowners can seek redress.

### **What about agreements for maintenance and fuel supply?**

Your contract must ensure that the homeowner has a separate contract in place for maintenance services to make sure the Renewable Heating System remains in good working order. This contract must cover the whole period from installation to the end of the AoR contract period. You can provide those maintenance services or the homeowner can choose to agree a maintenance contract with a different organisation; for example a nearby MCS installer (for more on this see: *What are my obligations and what if something goes wrong?*).

If you are supplying a biomass boiler then you must ensure that the homeowner has a separate fuel supply contract. This must include essential information about the fuel quality, supply, delivery, frequency and lead times. As with the maintenance contract, you can choose to offer a fuel supply contract or the homeowner can agree a contract with a different organisation such as a fuel supplier. Irrespective of who supplies the fuel, it must be approved as eligible under the DRHI scheme and listed on the Biomass Sustainability List (BSL). See [this guidance](#) for more information on the DRHI Scheme and the BSL.

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<sup>3</sup> For more information about these terms and on writing fair contracts generally see this [guidance](#). There is also detailed information about unfair contracts law in the [members' section](#) of the RECC website.

## **The Right to Cancel**

The rights homeowners have in law to cancel contracts will depend on how and where the contract is agreed.

### Off-premises contracts

If you agree contracts 'off-premises' then the homeowner will have strict legal rights to a cancellation period. A contract is defined as 'off-premises' if, for example, it is agreed in someone's home in the presence of your company's sales agent. These strict legal rights also apply if your sale is defined as a 'distance contract.' This is normally defined as a contract that has been negotiated and agreed exclusively by distance means (by post or email). Where agreements are defined as 'off-premises' or 'distance' and the contract relates to the delivery of equipment for installation then a 14-day cancellation period starts on the day after the last equipment part relating to the contract is delivered to the consumer. The homeowner can also cancel at any time up to the time of delivery. If you want to start any installation work before the end of this cancellation period then you must obtain express permission for this in writing from the homeowner.

### On-premises contracts

'On-premises' contracts are defined simply as any contract between a trader and consumer that are neither distance contracts nor off-premises contracts. If the contracts your company agrees are defined as 'on-premises' contracts then the strict legal rights described above do not apply. However, all RECC member companies must offer a standard cancellation period of 14 days (starting when the contract is signed).

More guidance about what information you must provide and cancellation rights can be found in the [Consumer Code](#). Please also see RECC's detailed [guidance](#) on the homeowner's right to cancel available from the RECC website (see: Guidance on the Consumer Contract Regulations 2013).

## **You, the installer and MCS Certification**

Only Registered Investors can have the DRHI payments assigned to them by homeowners. The contract for supply and installation of the heating system will be agreed between you and the homeowner. Therefore:

- If you are an *MCS-certified installer* and you want to offer AoR contracts you will need to register with RECC and Ofgem as a Registered Investor.
- If you are a *Registered Investor*, but not an MCS-certified installer, you will need to subcontract the supply and installation work to an MCS-certified installer. You, as the investor, will be responsible for the installation and your contract will require the MCS installer to provide the service in full compliance with the appropriate MCS product and

installer standards.

See our related guidance on the relationship between the investor and the installer for more on this.

### **What are my obligations and what if something goes wrong?**

#### RECC

Your responsibilities under the [Renewable Energy Consumer Code](#) cover all aspects of your relationship with the homeowner from marketing through to complaint handling following installation.

#### The DRHI Scheme

##### **Important**

The DRHI is a Government scheme run by Ofgem. Your obligations under the scheme are detailed in the RHI regulations. This section below describes your key obligations with a focus on the scheme eligibility. Both you and the homeowner must comply with the RHI regulations in full. Ofgem's [Essential Guide for Applicants](#) explains the obligations that apply to the homeowner and the Registered Investor in this respect.

DRHI eligibility requirements apply to the Registered Investor, the homeowner (or 'Participant'), the heating system and the property throughout the seven years payment period. These include the requirement to make sure the system remains eligible and ongoing obligations continue to be met over the whole DRHI payment period.

Your ongoing obligations include, for example, the obligation to:

- maintain your RECC (or HIES) membership;
- provide annual declarations and comply with all conditions related to your registration as an Investor;
- inform Ofgem of any information or change in circumstance which could affect your registration or any contract for AoR; and
- repay any overpayments which Ofgem may identify.

You will also have specific obligations related to your individual agreements with homeowners. For example, you must inform Ofgem:

- if a fault develops in the installation that prevents it from generating renewable heat;
- if the homeowner intends to sell the property;
- about any changes in your status as a nominated investor; and
- if you become aware of any changes to the heating system or circumstances

that may impact on the eligibility for the RHI payments.

These obligations are explained more fully in Ofgem's [Essential Guide to Assignment of Rights](#).

The exact ongoing obligations you will have in your contract, and how you fulfil them, will depend on the service you offer. For example: your obligations related to liability will depend on the contract you have with the installer.

Remember, you may also have obligations related to any contract you may have with the homeowner for the provision of maintenance services and, if necessary, fuel. For more on this, see (above): *What about agreements for maintenance and fuel supply?*

If your contract is clear and unambiguous about your obligations and the homeowner's obligations then this should help avoid misunderstandings leading to complaints and disputes. However, if something does go wrong and the homeowner registers a complaint, then you must follow the procedure set out in your contract and co-operate with RECC to find a mutually acceptable resolution. If no resolution can be found within the agreed timescales, the homeowner will have the opportunity to refer the complaint to the independent arbitration service provided on RECC's behalf by CEDR.

Please note, both RECC and Ofgem use a range of monitoring strategies to ensure compliance including audits. See this [page](#) for more information about RECC's monitoring.

### **How can I build a viable proposal?**

As an Investor, you will need to compare the potential returns from the DRHI with the purchase and installation costs of the heating system together with any long-term commitments you may have for their servicing, maintenance, supplying fuel and repair. (For more on this see above: *what do I need to cover in my AoR contract with homeowners?*).

Other factors will also be important. For example, the costs associated with your finance and your chosen route to market, any agreements you make with installers, and maintaining Code membership. Your overall calculation must also include:

- your ongoing obligations under the Consumer Code; and
- the DRHI scheme requirements.

A range of links to detailed information is provided in the box below.

### **FCA approval**

You should get your own advice from the Financial Conduct Authority (FCA) on whether or not your business model would be considered as a credit agreement and if you need to get FCA Approval or not. You should do this before signing any contracts with home-owners.

**The returns available through the DRHI scheme vary depending on the following factors:**

The size and type of technology.

Four technologies are eligible for the Domestic RHI: biomass, air source heat pumps, ground source heat pumps and solar thermal. There are strict eligibility requirements and, if you intend to subcontract an MCS-certified installer, then your chosen installer should be able to advise you on these technical issues. See Ofgem's [Essential Guide for Applicants](#) for more on this.

The household's energy demand.

The DRHI payments are based on the heat demand of the property or the heat demand limit. [Heat demand limits](#) cap the financial support available for individual households for biomass and heat pump installations. There is no cap for solar thermal. The size and performance of the energy generator will also be important.

The tariffs available.

The [tariffs](#) set the rate for the DRHI payments made over seven years. The tariffs depend on the renewable technology chosen and they can be subject to degression, which means that if total spending on the DRHI for any technology exceeds specific thresholds then this can trigger a tariff reduction for new applicants. See this [guidance](#) for more information.

Metering for payment.

Some installations may need to be metered for payment. For example, where a property is occupied for less than half the year. In these cases, the payments are calculated by multiplying the tariff rate by the units of heat measured by the meter. See this [guide to metering](#) for more. Where a homeowner's circumstances change meaning that metering is required, then the homeowner may need to pay you compensation for any reduction in the DRHI payments that you receive. See paragraph 11 of the model contract for more on this.