

NOTE OF DISCUSSION POINTS AND ACTIONS From RHI NORTHERN IRELAND: FEASIBILITY STUDY
REVIEW SESSION – 14:30-16:00 22 MAY 2012

Those in Attendance:

Keith Avis
 Adam Tackley
 Luis Castro
 Richard Kayan
 Marcus Porter

Apologies: Andrew Amato (available but not possible to contact via conference call), Catherine McArthur, Ruth Lancaster, Felicity Beverley.

Linking to GB Scheme

1. It was recognised that there are a number of issues with DETI mirroring the GB scheme directly, assuming that what they have in mind is replicating the GB Regs as they currently stand. Most notably, the GB scheme operational processes will be updated to accommodate legislative changes which have taken place and will take place during this financial year and in July next year. It was agreed that DETI will need to consider how this dovetails into the timing of the delivery and the content of their scheme. Equally, if after considering, DETI wish to have something more bespoke for their scheme, there are cost and operational implications for Ofgem that will need to be considered.

Action: As part of discussions on the Agreement needed to reflect the arrangements whereby Ofgem will carry out certain functions conferred by the NI scheme that would otherwise fall to DETI or NIAUR ("arrangements agreement"), it was agreed that we will need to be absolutely clear on how and when DETI will wish to reflect the GB legislation and accommodate the GB legislative changes coming down the line.

NI RHI Regs

2. The point was made that the GB Regs are not ideally drafted in a number of respects, including some important ones, and as such modifications are being made to pick up on issues that have come to light during the operation of the scheme, e.g. in connection with metering, which is currently causing the GB Regs Ops team significant difficulty. In this connection the wisdom of NI copying legislation which requires improvement in a number of respects shortly before that legislation is twice amended and then, in quick succession, introducing similar (NI) amendments to reflect the GB ones was doubted, given the implications for use of resources, the prospect that, if this course were adopted, the NI legislation would include similar shortcomings to those which currently affect the GB Regulations, with all the associated legal risks and that successive technical standards notifications may be required rather than one only.
3. At the end of last year Ofgem Legal produced a table of corrective amendments which it considered desirable. They mentioned that they passed this onto the New

Schemes Development team. It is unclear whether DETI have even had sight of this table, still less taken it into account in preparing their latest draft of the NI Regulations, though it is believed that was the intention at the time it was prepared. Keith Avis took away a commitment to establish whether the table was shared with DETI. It was also believed that Catherine MacArthur had written to DETI in November last year setting out the options as regards reflecting the GB legislation and Keith undertook to check this too.

4. In the same connection it was observed that, if it transpired that DETI are unaware of the current shortcomings with regard to the GB Regs, it was not clear how we could responsibly keep the information from them, though lines would obviously need to be cleared with DECC in this respect.
5. DETI had confirmed that they will be sending their second draft of the Regs by the end of the week. It was not clear how long we would have to comment. Keith Avis took away an action point to seek clarity from DETI on this point.

Action: Keith Avis to secure a timeline from DETI on their early delivery milestones.

Action: Keith Avis to find out from Catherine McArthur whether the list of anticipated corrective amendments was sent to DETI last year.

Agency Services Agreement

6. In a telephone conversation before the meeting DETI had confirmed that they would be content to enter into an 'arrangement', along the lines of an arrangements Agreement, that would underpin all of the development work and associated costs going forward and it was noted around the table that this was an essential pre-requisite before Ofgem undertake any significant further work in relation to development. Keith Avis agreed to send DETI a framework document that would serve as the starting point for ongoing discussions between DETI and Ofgem. Keith will check with Ofgem colleagues before sending the framework document to make sure that they had no objection to this and that there was nothing contentious in that which was being sent.

Action: Ofgem legal to pass Keith Avis an agreement framework document that he will send to DETI.

Timeline for Delivery

7. Concern was expressed around the table over the delivery of Ofgem's development functions by September, which is when DETI would apparently like the scheme to go live. Although DETI had agreed to add 4-6 week recruitment time and a minimum of 2 weeks Olympics time to the 4 month delivery timescale in the Feasibility Study, it was still considered extremely challenging to deliver all that was necessary without compromising the quality of the product or incurring additional costs. Even if the NI Regulations simply replicate the GB ones exactly, with only such minor differences as reflect the fact that the territory of application will be NI, it had to be borne in mind that the arrangements agreement had first to be prepared, that the Regulations would be affirmative resolution, that making them would presumably have to be preceded by 3 months consultation, that if (as seemed likely) technical standards notification was required, that would entail a minimum three month standstill period and that lengthy guidance would need to be prepared. Mirroring the GB Regs would help speed up the process in the short term, but for the reasons given above this could be considered a false economy.

Action: As part of the Arrangements Agreement the timeline will need to be set in place. Similarly, in establishing the PID and the Project Plan, the Project Manager will need to fully scope out the timeline for delivery.

Key scheme features

8. While the Feasibility Study and DECC agreement to proceed on the basis of the detail did give direction of DETI' scheme feature preferences, it was felt that DETI did need to be talked through these areas individually so that we can be assured that they are making an informed decision and would not be asking for individual features to be individually tailored to their scheme further down the line. It was agreed that a sensible next step would be to invite DETI officials to a meeting at Ofgem where the detail of the GB operational process (manual and IT) and the legal implications can be presented to DETI.

Action: It was agreed that we should invite DETI officials over to a workshop at Ofgem so that officials from the GB operational team, IT team and legal team can discuss the full operational aspects of RHI.

Resourcing

9. Recruiting the development team continues. There remains an issue over adequate resourcing for the operational team after scheme go-live, given that the time for dealing with applications is under the GB scheme is taking longer than originally envisaged and that it is not unlikely that this experience will be replicated in the case of the NI scheme.

Action: As part of the operational workshop we will flag to DETI that there are a number of ~~cost implications covering the operation of the scheme and linked to the decisions that they~~ make on the individual delivery aspects of the scheme.

Legal are to investigate the budgetary position in relation to provision of legal advice in connection with the NI scheme, including in relation to the arrangements agreement and the wording of successive drafts of the NI SI.

Costs

10. Following the meeting with DETI on scheme features we would wish to revisit costs to make sure that those in the Feasibility Study remain appropriate this will also dovetail into the arrangements Agreement.

Action: Keith Avis to secure written confirmation from DETI that we are able to start to incur costs in developing the Agency Services Agreement and other preliminary workstreams.

Next Steps

11. Keith will speak to DETI to get hold of their immediate delivery timeline and will secure their formal agreement to start incurring costs, prior to starting the development work in earnest. Keith will also arrange the meeting to go through all of the delivery processes.

Keith Avis
24 May 2012