From:	Hughes, Seamus
To:	Moore, Stephen (DfE)
Cc:	Stewart, Chris (DFE); Clydesdale, Alison; Wightman, Stuart; Marten, Lucy; McIlwrath, Linda
Subject:	FW: NI RHI programme - possible meeting with DG Comp to discuss whether SA.34140 needs to be revised
Date:	15 July 2016 12:12:00
Attachments:	image001.gif State Aid RHI options papers.tr5

Stephen

Please see email thread below. Attached please find position paper as suggested by Chris to go with an email from yourself seeking an informal view.

Many thanks

Regards

Seamus

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cid:image001.gif@01D1DE88.DB562730

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From: Stewart, Chris (DFE)
Sent: 15 July 2016 11:09
To: Wightman, Stuart
Cc: Hughes, Seamus; Clydesdale, Alison; Marten, Lucy; Moore, Stephen (DfE); McIlwrath, Linda; McIlwrath, Linda
Subject: RE: NI RHI programme - possible meeting with DG Comp to discuss whether SA.34140 needs to be revised

Stuart

Thank you.

My understanding of the action point is that we are to make **an informal** approach to the Commission for an initial view, rather than formally notify anything at this stage. Therefore, an email from Stephen is probably the best route, but the content should be as reflected in your draft letter.

My suggestion is that the draft should be recast as a position/background paper, and should issue under cover of an email from Stephen (who is probably best placed to advise on the correct recipient and cc list), asking for an informal view.

C

From: Wightman, Stuart
Sent: 15 July 2016 10:55
To: Stewart, Chris (DFE)
Cc: Hughes, Seamus; Clydesdale, Alison; Marten, Lucy; Moore, Stephen (DfE); McIlwrath, Linda
Subject: FW: NI RHI programme - possible meeting with DG Comp to discuss whether SA.34140 needs to be revised

Chris

At next Tuesday's Steering Group Meeting, you have to provide an update on work on drafting a notification to the European Commission. I attach a draft letter to the Commission seeking advice on whether a formal notification is required given the increased rate of return that RHI recipients are now receiving in comparison to the original 2012 approval. I also include a copy of a draft email from Stephen Moore to UKRep which was recalled and not sent.

I know I haven't been involved in the recent discussions around the handling of the Commission but should we not just be formally notifying the 18 November 2015 tariff changes (which we're required to do so). Through that notification we will have to set out why we've changed the tariffs and confirm the increased rate of return that RHI recipients (who joined the scheme before 18 November 2015) are getting. We can also mention that we're considering introducing further cost controls that will affect those businesses that joined the scheme before 18 November 2015.

Happy to discuss.

Thanks, Stuart

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Please consider the environment - do you really need to print this e-mail?

From: Moore, Stephen (DETI)
Sent: 01 July 2016 10:09
To: Steven.McGregor@fco.gov.uk
Cc: Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; [redacted]; Murphy, Shane; Hughes, Seamus; Marten, Lucy; Kelly, Andrea
Subject: RE: NI RHI programme - possible meeting with DG Comp to discuss whether SA.34140 needs to be revised

Steven

Please ignore my email below.

Thanks

Stephen

Stephen Moore
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NEW - 'State aid: A Beginner's Guide for Public Bodies in Northern Ireland' can now be accessed through the DFE Internet site: https://www.detini.gov.uk/publications/state-aid-beginners-guide-public-bodies-northern-ireland

cid:image001.gif@01D1D380.790B18A0

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Please consider the environment - do you really need to print this e-mail?

From: Moore, Stephen (DETI)
Sent: 01 July 2016 09:47
To: Steven.McGregor@fco.gov.uk
Cc: Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; Irrelevant information redacted by the RHI Inquiry; [redacted]; Murphy, Shane; Hughes, Seamus; Marten, Lucy; Kelly, Andrea
Subject: NI RHI programme - possible meeting with DG Comp to discuss whether SA.34140 needs to be revised

Steven

Energy colleagues have asked me to speak to UKRep with a view to setting up a meeting with DG Comp to discuss revisions they need to make to the Renewable Heat Initiative programme in Northern Ireland. The no objection decision letter for the RHI programme is attached for information.

In particular, they need to know whether the revisions they are making, which are essentially a tightening of the rules of the scheme, need to be notified or not.

As you will see paras 15 and 80 of the decision letter requires them to notify the Commission of any changes they are planning to make to the scheme.

15. The UK authorities are minded to review the scheme periodically, including renewed analyses of tariffs, technologies and the overall results achieved. Upon the need to commence such reviews, UK authorities committed to re-notify the scheme to the Commission.

80. The Commission reminds the UK authorities that, in accordance with Article 108(3) of the TFEU, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to the provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

They are drafting a paper that sets out the background and explains the changes they need to make but have suggested this could be worked into a formal letter, if this would be a better approach.

I am hoping to see a draft of this paper this morning.

What do you think? Would it be best to submit a non-paper setting out the changes they want to make to the scheme (that UKRep could email to the Commission) or a formal letter to DG Comp?

If a meeting is needed, I would guess they would want this to be as soon as possible, probably before the end of July. Happy to discuss on the phone why this is the case.

Stephen

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NORTHERN IRELAND RENEWABLE HEAT INCENTIVE – STATE AID APPROVAL POSITION

Background

State aid approval for the Northern Ireland Renewable Heat Incentive Scheme was granted by the Commission on 12 June 2012 (SA.34140). The scheme supports the UK objective of contributing to the Renewable Energy Directive target of 20% overall EC energy consumption from renewable sources by 2020 of which the UK's share of the target is 15%. The UK plans to achieve this through a combination of 12% renewable heat and 30% renewable electricity by 2020. Locally in Northern Ireland the renewable heat the target is 10% by 2020. The current assessment is that around 6% has been achieved to date. The state aid approval in place covers a 20 year scheme supporting the following technologies and open to new applications until 2020:-

- Biomass
- Ground Source Heat Pumps
- Biomethane
- Solar Thermal

The Commission noted the rate of return to incentivise renewable heat production was in the range between 8 and 22%, (for biomass, biogas and ground source heat production), and concluded that the chosen rate of 12% was at the lower end of that range and the same rate used in the mainland UK scheme. The rate for solar thermal was set at 6%.

Having assessed all the information related to production costs over the 20 year period and the revenues of the beneficiaries from the tariff levels the Commission was satisfied at that time that the total tariff payments did not exceed the difference between renewable and heat production costs and therefore there was no over compensation.

Payments are made quarterly based on eligible metered heat consumption. Rates are fixed but are adjusted annually in line with the Retail Price Index, (RPI). The grandfathering' principle is in place whereby levels are guaranteed for existing installations. This is intended to provide investor certainty and is in line with the mainland UK scheme.

Plans to expand the range of technologies under the non domestic scheme, which were suggested in our original notifications, were not progressed but the scheme was extended to the domestic sector in December 2014, again in line with the UK mainland.

Scheme experience to date

Uptake of the scheme was slow in the early years and there was an under-spend of budget in those years 2011/12 – 2014/15. However, applications started to increase significantly from mid 2015, particularly with the biomass technology, largely driven by uptake in the Poultry Sector which has a high prominence in Northern Ireland. This, coupled with a reduction in technology costs and queries raised through audit reports, has led us to look again at our scheme and review the rate of return position. We are currently conducting a detailed assessment of the position but it is likely that the 12% rate previously chosen and approved has been exceeded.. This review of the rate of return only concerns the biomass technology which represents the vast majority of installations. There is no change for the other technologies. We would welcome advice as to whether or not, pending the outcome of our analysis, we would need to re-notify the scheme to the Commission.

Cost control options

On 18 November 2015 a number of cost control measures were introduced for biomass installations which in summary were:-

- A change in the medium biomass banding for 20- 199kWh, (in line with the UK mainland scheme);
- Introduced an annual tiered tariff, (first 1314 operating hours at standard rate, reducing thereafter to 1.5 p per kWh; and
- Introduced an annual cap of 400,000kWh after which no payment would be made.

Whilst these changes impacted on new installations post 18 November 2015 they were not enough to reduce budgetary pressures. In the run up to the changes we experienced a significant and unprecedented spike in applications which saw some 900 applications, (approx the same number as had applied throughout the entire three years of the scheme to date) in the six week period immediately prior to the changes. This, coupled with a reduction in available RHI budget in the Chancellor's November statement, ultimately resulted in the scheme being suspended to new applications from midnight on 29 February 2016.

However, despite the scheme being closed to new applications, budgetary pressures remain and we must now consider further cost control measures that could be applied to all accredited installations to bring expenditure back into line.

We will be consulting on potential cost control options for those businesses that joined the scheme before 18 November 2015 which are likely to include the introduction of:-

I. a reduced tariff after a set level of usage (hours/kWh)) each year; and/or
II. a cap on annual payments.

We are currently exploring the legal implications around making such changes. Whilst wanting to address any potential over compensation we are mindful of the 'grandfathering' rights under the scheme and the need to ensure a reasonable rate of return for participants.

We are confident that such actions, subject to consultation and all the relevant approvals and legislative change, would bring the rate of return back towards the approved 12% rate. At this stage we would welcome any views the Commission may have around these proposed measures.

Alongside these actions we are also increasing our monitoring of the scheme and will be introducing a programme of sight audits to ensure compliance with the scheme and to minimise the potential for misuse and abuse of the scheme.

Next steps

As indicated above we would welcome the Commission's initial views/comments and perhaps if you considerate appropriate we could arrange an early meeting to discuss further.