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To: [Cooper, Trevor](#); [Thomson, David](#)
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Subject: Meeting this afternoon re RHI : Some points covered in discussion with Ofgem
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Attachments: [attc4701.png](#)

Trevor

David

Ahead of the meeting this afternoon, I asked Peter to have a further word with Ofgem and he was able to do so on Friday afternoon. The focus was on the 'risk' aspects of the engagement we will have with them - in particular the legal contingency - and builds on the note I sent to you previously. Hopefully the information below will be helpful in our discussions later today :

- Expected risk is low both in terms of challenges to administration and challenges to policy, this is backed by experience of GB RHI, RO and NIRO etc. Risks are also mitigated by the Ofgem risk assessment to be carried out during development and work scrutinising the legislation where Ofgem will highlight any potential areas of concern and will close these off. When asked about real-life examples of legal challenge these are minimal – the only example that could be thought of was the recent Solar PV / FiT challenge – however this was entirely a policy issue.
- Despite the low risk the fund is needed because, they feel, it would not be appropriate for Ofgem to fund legal defence out of their own revenue as this comes directly from GB consumers – not appropriate for GB consumer to be paying NI legal bills. DECC also hold a legal contingency for the GB RHI – not sure what the figure for this is.
- In addition, as the RHI is funded directly from govt there is no existing pot of money to call on for legal issues – hence the need for contingency funds. The RO/NIRO is a self funding scheme and therefore the Buyout Fund acts as a legal contingency fund. There is no such mechanism in RHI (especially as HMT have stated that no part of the £25m can be used for administrative purposes).
- The biggest risk in administration would be the overpaying or underpaying of tariffs, this would be easily rectified by Ofgem adjusting payments in future months to compensate or recoup monies – the only area of concern would be where a site goes out of business/commission before money could be recouped. Again the risk and impact is low but the pursuit of owed monies would be up to DETI in this instance. Any issues resulting from attempts to de-fraud the system or tamper with equipment would be highlighted by Ofgem but for DETI to consider and advise on action.
- When asked if there could be challenge due to poor administration again the risk was suggested as low given the experience in setting up the GB RHI and by the time the NI RHI is in place any issues would be resolved. As the system is computerised there is little danger of misplaced forms.
- Overall the risk of challenges are deemed as low and any potential areas of concern will be addressed within legislation and Ofgem risk assessment. The need for the fund is to protect GB consumers from having to meet legal costs associated with the RHI. There are few examples of previous legal challenge and where issues arise because of problems in administration these are rectified internally and do not lead to legal challenges/costs.
- DETI will also have its own risk register and undertake ongoing review of risks and measures to mitigate same. (Casework papers included a copy of the risk register and Casework Committee considered this as part of its assessment.)

Fiona

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