

**From:** [Rooney, Eugene](#)  
**To:** [Cooper, Trevor](#)  
**Subject:** RE: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM  
**Date:** 30 October 2015 11:01:09

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Thanks Trevor – I am wondering should we send a response to Emer to clarify the legislative position regarding the DFP approval so that there is clarity on that point.

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**From:** Cooper, Trevor  
**Sent:** 30 October 2015 10:55  
**To:** Rooney, Eugene  
**Subject:** FW: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM  
Eugene

This would not be apparent from business case. Indeed at the casework meeting John did say that any changes could be subject to outcome of spending review.

If the point is/was that we cannot make changes within a timeline other than a doomsday scenario (in which we can act in an emergency capacity and not consult and “blame GB”) then we should be clear what that timeline is – but there clearly is the potential for an SR outcome which would be a variant on closure which could involve a constraint on new applications that would result in spend above a certain amount (“perhaps again we can blame GB”).

One reason for the DFP timeline to March was that they felt time available to them to consider case did not give them time to fully be comfortable that the proposals were most appropriate at this time.

Trevor

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**From:** Brankin, Bernie  
**Sent:** 30 October 2015 08:33  
**To:** Cooper, Trevor; McFarlane, Iain  
**Subject:** FW: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM  
Iain/Trevor

Eugene has asked did the business case made clear that there was a 6 month lead in time to get legislation in place to close the scheme to new applicants as Energy Division would have to start working on the legislation now if the scheme was to close to new applicants at the end of this financial year. Please advise Eugene on this.

Bernie

## **Bernie Brankin**

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

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**From:** Rooney, Eugene  
**Sent:** 29 October 2015 17:06  
**To:** Brankin, Bernie  
**Subject:** FW: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

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**From:** Mills, John (DETI)  
**Sent:** 29 October 2015 16:27  
**To:** Cooper, Trevor; Wightman, Stuart  
**Cc:** Rooney, Eugene; Murphy, Shane; McFarlane, Iain; Hutchinson, Lee-Anne; Stewart, Chris (DETI)  
**Subject:** RE: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

Trevor,

Agree first sentence but April '16 on would not be covered. Agree any number of possibilities from CSR.

We can respond to an SR outcome with legislation. Thus, DECC/HMT say no more money. We recommend Minister pushes through urgent legislation (no consultation, no notice, Westminster to blame). At same time we would point out to GB that it would take us time to do legislation and they might legislate for NI as they offered to do on NIRO. But, Minister/Executive may have choice of funding RHI locally.

Compare this with NI choosing to do legislation to suspend/end scheme – as required to meet this DFP point.

But I take your point – the situations, logically, are the same – I was just assuming that the former would be a lot easier to deal with time-wise. Will now take steps to address this risk – get Minister to write to DECC SofS? Probably need to proceed with the current legislation but DFP approval would be better based on longer period but given, “subject to SR outcome and review at March ‘16” or something like that.

The way the approval’s currently worded tells us now there’s no money beyond March ‘16 and we have to act now to suspend/end scheme.

**From:** Cooper, Trevor

**Sent:** 29 October 2015 14:02

**To:** Mills, John (DETI); Wightman, Stuart

**Cc:** Rooney, Eugene; Murphy, Shane; McFarlane, Iain; Hutchinson, Lee-Anne; Stewart, Chris (DETI)

**Subject:** RE: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

**Importance:** High

John

Thanks for this.

I do not fully understand what your response means.

The DFP approval would cover us for spend on commitments beyond 2015/16 which had been entered into as legal obligations prior to 1 April 2016. There could be a number of potential outcomes as a consequence of Spending Review including no new commitments beyond 31 March 2016, new commitments to be constrained within a certain amount etc.

We had I believe previously indicated that we could respond to SR outcome. If you are saying that because of the way the legislation was originally drawn up by DETI it does not matter what the outcome of the SR is (as DFP is stating that approval for new obligations post 31 March 2016 would be subject to further approval between now and the year end and would be dependant upon affordability) then we should be clear on the position with them.

Trevor

**From:** Mills, John (DETI)

**Sent:** 29 October 2015 13:31

**To:** Cooper, Trevor; Wightman, Stuart

**Cc:** Rooney, Eugene; Murphy, Shane; McFarlane, Iain; Hutchinson, Lee-Anne; Stewart, Chris (DETI)

**Subject:** RE: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

Trevor,

Yes, there seems to be a elementary misunderstanding of the legal position. As a matter of law DETI is obliged to make payments under the scheme regardless of whether DFP approve funding or not. In this sense DFP “approval” is irrelevant (as was the case previously) as the administrative decision of an official cannot overturn a legal requirement which has been approved by the Assembly.

Of course, the law can be changed by the Assembly (and, happily, we recently received legal advice that this need not be done by primary legislation) if a Minister wants to propose changes to the scheme. Assuming that that would be the case, we would need to start developing proposals now with a view to consulting and taking forward legislation in 2016 to be able to

suspend or close the scheme. This would probably need to be limited to enabling the giving of notice for suspension or closure. The need for a notice period would add to timescales. It is very unlikely this could be done by March 2016.

We might also speculate on the effect that the announcement of such a proposal might have on the industry. Experience suggests that such deadlines creates spikes in applications. In terms of budgetary control it may have the opposite effect to that intended. This might all be overtaken by a DECC announcement.

This would all have to be put to the Minister as would the promise to prioritise certain work I think – as he, again, as a matter of law, is responsible for direction and control of DETI.

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**From:** Cooper, Trevor

**Sent:** 29 October 2015 11:21

**To:** Mills, John (DETI); Wightman, Stuart

**Cc:** Rooney, Eugene; Murphy, Shane; McFarlane, Iain; Hutchinson, Lee-Anne

**Subject:** FW: NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

John, Stuart

DFP approval attached - which gives prospective approval until March 2016, to be revisited following Spending Review announcement.

Can you review in detail and confirm that the DFP conditions of approval do not conflict with your proposed legislation (legislation when we got original approval in 2012 did not seem to align with terms of the dfp approval at that time).

Trevor

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**From:** Dynes, Fiona

**Sent:** 29 October 2015 09:42

**To:** Cooper, Trevor

**Cc:** Brennan, Mike; Rooney, Eugene; Scott, Michelle; McNally, Noel; Millar, Angela (DFP); Finlay, Christine

**Subject:** NON-DOMESTIC RENEWABLE HEAT INCENTIVE: ADDENDUM

Please see attached from Emer Morelli.

Thank you.

Fiona Dynes

PS/Emer Morelli

Head of Supply

PSD

DFP

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