

- (b) the powers could be introduced for DETI by a free standing clause in the Energy Bill in equivalent terms to the Energy Act 2008.

3.6 Counsel is asked to consider which of these is appropriate and draft the relevant provisions accordingly.

*General scope of the proposed RHI*

3.7 In terms of its broad scope and purpose, the RHI in NI is intended to be the same as that proposed for England, Scotland and Wales by DECC, save for one point relating to the definition of biofuels, addressed below.

3.8 Accordingly, whilst the underlying regulations will need to differ to cater for issues specific to Northern Ireland, the primary legislation does not need to be different save for one point relating to biofuels, explained below. DETI requires the same powers as those set out in Section 100 and currently being implemented by DECC.

3.9 Any local differences in terms of payment levels or eligibility rules can be dealt with by the secondary legislation which will, in any case, be required.

*Administrator*

3.10 The Energy Act 2008 confers administrative functions on the Gas & Electricity Markets Authority (Ofgem) for the purposes of the RHI. For the purposes of the NI scheme, the equivalent administrative functions will need to be conferred on the Northern Ireland Authority for Utility Regulation (NIAUR), which is the regulator for all Energy, Electricity, Gas and Water and Sewerage industries in Northern Ireland. (NIAUR was established under the Energy (Northern Ireland) Order 2003 as the Northern Ireland Authority for Energy Regulation to regulate gas and electricity in Northern Ireland. When the Water & Sewerage Services (Northern Ireland) Order 2006 (the "Water Order") came into force on 1st April 2007, its name changed to NIAUR.)

3.11 In addition, provision will be required to deal with the delegation of functions from NIAUR to Ofgem. In practice, the day to day administration of the NI RHI will be carried out by Ofgem on NIAUR's behalf. For example, it is intended that Ofgem will hold the funds, make payments to eligible parties, and make decisions on eligibility for payments.

3.12 Counsel's attention is drawn to the analogous situation under the Renewables Obligation, where NIAUR is given the legislative function of regulator, but there are provisions written into the legislation (Section 121 of the Energy Act 2004) to allow NIAUR and Ofgem to enter into agreements / arrangements to allow Ofgem to perform NIAUR's functions on its behalf.

3.13 It is suggested that similar provisions will be appropriate in connection with the RHI.