

Cc: Clydesdale, Alison; Wood, Charles; Phakey, Rajan; Bowdren, Helen; Kojecky, Krista
Subject: RE: Urgent - Final draft instructions to Parliamentary Council -RHI powers

Thanks Peter - sorry not to revert earlier, I have been on a long telephone conference this morning. I am having these changes made in the office (I am working remotely today) and an amended document, in clean and compare version, will be sent to you in due course.

Kind regards.

Sam

From: Hutchinson, Peter [mailto:Peter.Hutchinson@detini.gov.uk]
Sent: 15 March 2011 11:18
To: Boileau, Sam
Cc: Clydesdale, Alison; Wood, Charles; Phakey, Rajan; Bowdren, Helen
Subject: FW: Urgent - Final draft instructions to Parliamentary Council -RHI powers

Sam,

Please see email below from Nicola Wheeler (Departmental Solicitor's Office). There remains a number of minor drafting issues that need to be resolved before DSO will sign-off.

Grateful if you would consider Nicola's email below, and previous comments from DSO, and ensure that all footnotes/references are drafted as per Nicola's instructions.

DSO have also advised that they are content not to include specific instructions on cost of administration.

Grateful for your immediate consideration.

Many thanks,

Peter

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Wheeler, Nicola
15 March 2011 10:59
Hutchinson, Peter
RE: Urgent - Final draft instructions to Parliamentary Council -RHI powers

Peter

I have considered the draft instructions and your query regarding the issue of potential administration costs.

Some of the citations for the legislation have not been inserted correctly. In Northern Ireland the drafting convention is to refer to Northern Ireland Orders in Council and Northern Ireland Statutory Rules in different formats. It can be a bit confusing to distinguish between them as NI Statutory Rules are Orders but you can also have Orders and Regulations that are Northern Ireland Statutory Rules. Basically, NI Orders in Council have Statutory Instrument numbers (SI numbers) whereas Statutory Rules have SR numbers. SI numbers are referred to in the format - S.I. 2003/419 (N.I. 6). SR numbers are shown in the format - S.R. 2009 No. 35. Therefore, the citations should have been inserted into the draft instructions in the exact format I set out in my previous e-mail.

Paragraph 2.4 should refer to SI 2003/419 (N.I. 6)

The grid under paragraph 3.15 also requires amendment. In the second column, the citation for the Gas (NI) Order should be S.I. 1996/275. You wouldn't need to include the citation for the 2003 Order again as it has already been provided earlier in the document. Footnote 2 refers to a Northern Ireland Statutory Rule, not an SI, so should be referred to as S.R. 2009 No. 35.

I agree with your conclusion that the powers in section 100(1)(b) of the Energy Act 2008 are broad enough to enable the issues of administration and financing to be dealt with in the subordinate legislation provided DETI are granted similar powers.

I hope this is of assistance.

Best wishes

Nicola

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, Paul; Wheeler, Nicola
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Urgent - Final draft instructions to Parliamentary Council -RHI powers
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Paul / Nicola,

Following Nicola's email of 9 March 2011, SNR Denton's has amended the draft instructions for Parliamentary Council for the RHI powers and produced a final version. This final version incorporates Nicola's proposed changes and a few other amendments requested by DETI.

I now attach a final draft (one copy is final version and one showing the tracked changes from previous for your information).

I would be grateful if you would consider this as a matter of urgency. The LCM was passed in the NI Assembly today and DECC need to see the instructions to Parliamentary Council as soon as possible so work can begin on drafting the amendment, DECC are under time pressure already to have the Bill reach Royal Assent by July 2011.

<< File: DWSLIB-9003370-v6-Instructions to Parliamentary Counsel - RHI - FINAL.DOC >> << File: DWSLIB-9003370-vDOC-Instructions to Parliamentary Counsel - RHI - TRACKED CHANGES.DOC >>

The only remaining issue that I would draw your attention to relates to potential administrative costs. SNR Denton had enquired on whether a paragraph would need to be included to address this issue, having considered the powers in Section 100 of the 2008 Energy Act I advised that this may not be necessary as this issue could be dealt with via the subordinate legislation providing powers akin to subsection 1, paragraph b of Section 100 of the 2008 Energy Act are included in the specific provisions for Northern Ireland. There are no further reference in Section 100 about administration and therefore consider that the issue could be dealt with in the subordinate legislation. SNR Denton's agreed that section 100(1)(b) power is broad enough to mean

that any provisions which are required to deal with administrative costs can be introduced through secondary legislation. However, they have asked that you specifically consider this issue to ensure you are content.

Finally, just for your information, I attach the draft regulations that DECC have published this week which will be used to introduce the RHI in GB.

<< File: 1382-proposed-text-regulations-rhi.pdf >>

Grateful if you would consider these final instructions as a matter of urgency, with particular consideration given to the point raised about administrative costs, and advise on whether you are content for these to issue to DECC and Parliamentary Council.

Many thanks,

Peter

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aler, Nicola
rch 2011 11:44
son, Peter
Draft Instructions for Parliamentary Council - Extension of Renewable Heating Powers to NI

Peter

I have had a look over the draft instructions to Parliamentary Council as drafted by SNR Denton's. They seem perfectly clear and well drafted to me. I just have a few suggested amendments in connection with some of their references to legislation. I will list them below.

Paragraph 1.1

It would be helpful if SNR would either footnote the reference to the Energy Act 2008, or insert it's citation number in brackets immediately after the reference to it. The citation is 2008 c.32.

Paragraph 2.4

As above, it would be helpful if SNR could provide the reference for the 2003 Order. It is S.I. 2003/419 (N.I. 6)

Paragraph 3.17

In the grid, in the second column, second entry, reference is made to 32M of the Electricity Act 1989. This section 32M does not yet appear on the statute law database version of the 1989 Act, which obviously needs to be updated. It would be helpful if SNR's could provide details of the legislation that inserts section 32M in a footnote. They should say, "Section 32M was inserted by 2008 c.32, section 37."

In the grid, in the third column, under the first entry, the correct title for the Gas Order 1996, as referred to, is the "Gas (Northern Ireland) Order 1996 and it's citation is S.I. 1996/275 (N.I. 2).

In the third column, in the second entry, 'section 55(f)' is referred to. The use of the word 'section' is incorrect, it should be 'Article'. Also, there isn't an Article 55(f). I think this should be Article 55F. Article 55F provides a definition of 'renewable sources' and was inserted by SR 2009 No. 35, Article 2. This should be footnoted. Also the word 'sources' should be inserted after the word 'renewable'.

There appears to be a few more matters needing finalised between DETI and SNR's but I assume that will be taken care of.

I hope this is of assistance to you.

Best wishes

Nicola

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