

**From:** Moore, Stephen  
**To:** "[Porter, Kate \(CCP\)](#)"  
**Cc:** [Ryan, Damien](#); [Carr, Paul](#); [McCutcheon, Joanne](#); [Hutchinson, Peter](#)  
**Subject:** RE: Renewable Heat Initiative - NI scheme State Aid notification  
**Date:** 11 November 2011 16:08:00

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Kate - Many thanks.

Peter - As discussed earlier, will you have another chat with DECC.

Thanks

Stephen.

**Stephen Moore**

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**From:** Porter Kate (CCP) [<mailto:Kate.Porter@bis.gsi.gov.uk>]  
**Sent:** 11 November 2011 15:59  
**To:** Moore Stephen ()  
**Cc:** Ryan, Damien; Carr, Paul; McCutcheon, Joanne; Hutchinson, Peter  
**Subject:** RE: Renewable Heat Initiative - NI scheme State Aid notification

Hi Stephen,

Thanks for the warning on this. I don't think the RHI decision has been published yet because we have written back to the Commission with some redactions and inaccuracies, so they may still be considering these - I'm sure DECC will be able to provide you with a copy however. I know you have the original prenotification documents, however the policy changed after this was submitted so I would also suggest you ask DECC for their submission to the Commission of February 2011 which updated the Commission on these changes, as well as the Commission questions and DECC response so you can see what additional information was required.

As you know even simple aid cases can be expected to take 6-9 months to be approved so I agree that getting a decision by April 2012 would be challenging at the best of times. At the moment we do have a particularly high number of difficult environmental and energy aid cases coming up, so cases can be expected to take even longer than usual to be approved. Please also be aware that the high number of cases and the need to coordinate and prioritise across these may also mean that DECC might take more of an interest in all of these. There is also a possibility that we might need to put some cases on the backburner in order to get a higher priority one through. The best thing you can do to speed approval of this case will be to build a strong case with convincing and clear evidence that you meet all of the relevant requirements in the environmental guidelines (see para 109 of the EAG), to notify this ASAP and be prepared to answer the Commission's questions as quickly as possible. You should also make suitable contingency plans in case approval is not received in time and reflect the possibility of delay in your project plans, advice etc as appropriate.

As you say, the fact that we now have approval for RHI means that it should be easier for the Commission to approve this because we've established that the principle is approvable. However you will still need to demonstrate that the detail of the scheme complies with the rules e.g. by quantifying the positive effects of the scheme, demonstrating that you have chosen the correct reference investment and calculated the eligible costs correctly, selecting an appropriate rate of return etc. One particular problem we have had with the detail of the UK scheme is overcompensation. The large biomass tariff was set at a level which was intended to bring forward 100% of the potential supply, so the tariff was set at the top of the cost curve. The Commission took the view that the tariff should be set on the basis of midpoint of the cost/rate of return range to ensure that there is no overcompensation on average and so the UK large biomass tariff had to be amended back down to 50%. All the other tariffs were ok because they were set at 50% or lower. It sounds like your tariffs are lower so hopefully we won't have the same problems here, but the devil will be in the detail. Please just be aware that the Commission can and do insist on changes where we don't have the evidence that we comply with the rules, and be ready to make changes if you have to.

I think you are right that you probably won't have to do the detailed assessment (for the UK one we had to agree to individually notify anything which hit the limits), however I think the Commission will refuse to treat operating aid under the simplified procedure.

Kate

Kate Porter | Assistant Director | State Aid | Department for Business, Innovation & Skills | 1 Victoria Street | London | SW1H 0ET | Tel: 44 (0) 20 7215 2298 | Fax: 44 (0) 20 7215 0357 | [kate.porter@bis.gsi.gov.uk](mailto:kate.porter@bis.gsi.gov.uk) | [www.bis.gov.uk](http://www.bis.gov.uk)

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**From:** Moore, Stephen [<mailto:Stephen.Moore@detini.gsi.gov.uk>]  
**Sent:** 10 November 2011 12:49  
**To:** Porter Kate (CCP)  
**Cc:** Ryan, Damien; Carr, Paul; McCutcheon, Joanne; Hutchinson, Peter  
**Subject:** Renewable Heat Initiative - NI scheme State Aid notification

Kate

You may recall that we had a brief email exchange in relation to the GB RHI scheme back in August.

I thought you might appreciate a NI update and a heads up that colleagues in Energy Division have now concluded their consultation on a Renewable Heat Initiative scheme for Northern Ireland and, once they have a steer from our Minister on a number of specific policy direction questions, they will be submitting their State Aid notification.

They advised me this morning that they intend to submit this to the Commission before the end of November with the hope of obtaining a decision from the Commission before April 2012 to allow them to implement the scheme from the start of April 2012.

I have explained to them that it might be unrealistic (although not impossible) to expect a decision from the Commission before April 2012 and I noted that it took 7 months to get a State Aid decision on the GB RHI scheme (SA. 32125).

In respect of the NI scheme. It now looks like it will have to be almost identical to the GB scheme. The only significant difference being that our RHI tariffs will be lower than the GB tariffs. This is because the main fuel in NI is oil, as opposed to natural gas in GB, and as oil is more expensive, a lesser financial incentive is needed to persuade companies to switch to renewable heat. I can't see this being a problem for the Cion as a lower tariff means there is less chance there can be any overcompensation.

Consequently, I expect the NI notification paper will be very similar to the GB notification paper.

In terms of timescales and how the Cion might react, my colleagues tell me that the GB scheme was accepted by the Commission with just one relatively minor variation (i.e. the Cion felt the GB tariff rate for biomass was too high and this was reduced), so I don't anticipate any major problems.

I also think we might ask for treatment under category 1 of the simplified procedure, because the NI RHI scheme (like the GB scheme) will be within the scope of para 3.1.6 (aid for renewable energy sources) and as such falls within the 'standard assessment' part of the Environmental Aid Guidelines. I also can't see how our NI scheme would fall within the scope of the 'detailed assessment' of the Environmental Aid Guidelines, which only seems to be triggered in respect of 'renewable heat' projects when the electricity generation capacity of a Combined Heat and Power scheme exceeds 125MW.

Would you let me know if there were any other issues with the notification of the GB scheme that I should watch out for?

I see that the public version of the GB RHI decision has still to be published on the Commission's website and I have asked my Energy Division colleagues to ask DECC to send us a copy. Is there any significant reason for the delay in publishing the public version?

Finally, could you have the following added to the SANI users list.

Peter Hutchinson - email [peter.hutchinson@detini.giv.uk](mailto:peter.hutchinson@detini.giv.uk); phone 028 9052 9208  
Joanne McCutcheon - email [joanne.mccutcheon@detini.gov.uk](mailto:joanne.mccutcheon@detini.gov.uk); phone 028 9052 9425

Happy to discuss.

Stephen

## Stephen Moore

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**From:** Moore, Stephen  
**Sent:** 04 August 2011 13:36  
**To:** 'Porter Kate (CCP)'; Christie Peter (Office for Renewable Energy Deployment)  
**Cc:** Irrelevant information redacted by the RHI Inquiry  
**Subject:** RE: Renewable Heat Initiative - GB State Aid assessment

Kate

Many thanks.

Peter

Could I have a copy of your State Aid notification please?

Many Thanks

Stephen

**Stephen Moore**

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**From:** Porter Kate (CCP) [<mailto:Kate.Porter@bis.gsi.gov.uk>]

**Sent:** 04 August 2011 13:23

**To:** Moore Stephen ()

**Cc:** [Redacted] Irrelevant information redacted by the RHI Inquiry

**Subject:** RE: Renewable Heat Initiative - GB State Aid assessment

The text below isn't quite right and I hadn't seen it before. It's not the case that approved aid schemes don't distort competition, it's more that the Commission have decided that on balance the distortive effects are outweighed by the positive effects of the aid. The RHI will have the potential to distort competition and it will be aid and we're currently waiting for approval for the scheme from the Commission, this is being done under the renewables provisions in the guidelines.

DECC and I considered a couple of non-aid arguments, some stronger than others, but none of these worked out:

- 1) No distortion of competition - clearly there is the potential for some distortion to competition
- 2) No selectivity - the scheme is regionally selective so this doesn't work. The Commission would also be bound to take the view that the measure has a selective benefit at the level of the indirect beneficiaries.
- 3) No state resources - this did not work out because the means of funding the scheme changed.

If I remember correctly, RHPP for landlords runs under the de minimis rules, which would obviously put a cap on what can be done.

The contact in DECC on this scheme is Peter Christie (cc'd above) - please refer any questions about the workings of the scheme to him.

Kate

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**From:** Moore, Stephen [<mailto:Stephen.Moore@detini.gsi.gov.uk>]

**Sent:** 04 August 2011 12:58

**To:** Porter Kate (CCP)

**Cc:** [Redacted] Irrelevant information redacted by the RHI Inquiry

**Subject:** Renewable Heat Initiative - GB State Aid assessment

Kate

Policy colleagues in NI have just launched a consultation on the introduction of a Renewable Heat Initiative for Northern Ireland that is very similar, in operation, to the Renewable Heat Initiative for Great Britain.

The differences are many because we have an underdeveloped natural gas market.

The 'impact assessment' document on DECC's webpages suggests that State Aid is not considered to be a significant issue. I quote from para 87.....

"The RHI tariff aims to compensate for the additional costs of the renewable heat equipment and for the higher risks and uncertainties associated with its use. Therefore subsidies that are received by firms for the installation of a renewable technology are not expected to impact on the competitiveness of these firms relative to other firms that operate in the same market and choose fossil fuels for their generation of heat. To ensure that the RHI support does not distort competition both within and outside the UK all subsidies proposed under the RHI will need to be in compliance with the European State aid rules. This assessment will be finalised before the RHI is launched in 2011."

<http://www.decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Renewable%20energy/policy/renewableheat/1381-renewable-heat-incentive-ia.pdf>

Q1 - Have you seen this assessment and, if so, can you provide me with a copy or tell me who can provide me with a copy?

I also note the Q&A document suggests that there may be 'limits' in the amount of 'Premium Payments' that can be received by landlords, because of State Aid limitations.

Q2 - Do you know anything about this?

Happy to discuss.

Stephen