

From: Moore, Stephen (DETI)
To: [Hutchinson, Peter](#)
Cc: [Mills, John \(DETI\)](#); [Sinton, Dan](#); [Pauley, Alberta](#); [Brush, Paul](#)
Subject: RE: TRIM: Carbon Trust issues
Date: 14 May 2014 17:40:00
Attachments: [image001.gif](#)
[SA.34140 Renewable Heat Initiative \(Northern Ireland\) 2012 - 2020.pdf](#)

Peter

Yes, I was aware (from Joanne) that the position was deteriorating.

In relation to the three options, is option 3 not what we agreed with Ofgem?

Re option 1 – does this mean the schemes are compatible with the UK regulations or the EU regulations?

If it means the latter and, specifically, compatibility with the EC's RHI decision (SA.34140), are Ofgem trying to reopen the discussion about whether the fact that the cumulation section in the decision letter refers to 'grants' in some way lets Ofgem off the hook because the Carbon trust is providing a 'loan'? If so, I think this is a risky approach and Ofgem really need to undertake robust due diligence to demonstrate that the cumulation of the aid in the interest free Carbon Trust loan with the RHI aid will never result in the accredited systems being overcompensated.

I would make a similar comment about option 2 – the point again being we need to be satisfied that the cumulation of the aid in the interest free Carbon Trust loan with the RHI aid is not overcompensating the accredited systems.

In relation to liabilities and responsibilities, I am almost certain DETI has no 'legal' responsibility for ensuring that the 'aid providers' (i.e. Ofgem and Invest NI) are complying with the State aid rules, but clearly it would reflect badly on the department if we are aware there are breaches of the State aid rules and did nothing to rectify the situation, in particular to ensure there could be 'no overcompensation' of the accredited systems.

In this case, the biggest concern I have is the hassle that might result (for us and the accredited schemes) if there was to be a complaint and a Commission investigation.

The Commission does not undertake routine detailed 'monitoring' of de minimis aid (i.e. the Carbon Trust loan) or notified aid (i.e. the RHI scheme) but it will 'investigate' if there is a complaint and it thinks there has been a breach of the rules.

The only thing I can think of that might trigger a complaint is if Ofgem don't deal with this situation quickly and one of the schemes that is waiting for accreditation decides to complain.

Finally, we also have to remember that the financial risk always sits with the accredited systems. It is these that would have to repay the aid, if, and it is a very big if, the Commission decides illegal aid is being provided (i.e. the cumulation of the aid in the interest free Carbon Trust loan with the RHI aid is overcompensating the accredited systems).

Happy to discuss.

Stephen

Stephen Moore

European Support Unit
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9415 (ext: 29415)
Mob: Personal information redacted by the RHI Inquiry
TextRelay: 18001 028 9052 9415
Web: www.detini.gov.uk

Visit the website for the European Sustainable Competitiveness Programme for NI - www.eucompni.gov.uk

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From: Hutchinson, Peter
Sent: 13 May 2014 17:08
To: Moore, Stephen (DETI)
Cc: Mills, John (DETI); Sinton, Dan
Subject: FW: TRIM: Carbon Trust issues

Stephen,

You will recall the discussions we have had previously regarding the Carbon Trust loan and the RHI. We had understood from Ofgem that this issue had been rectified in that the two were compatible however as the Carbon Trust loan was classed as “de minimis” aid then anyone availing of it and applying for RHI would have to receive the RHI under the “de minimis” guidelines (rather than operating aid).

However, Ofgem has now notified the Department that the position isn’t rectified and they are delaying accreditation on a number of applications, I understand Joanne may have discussed this with you recently.

The options considered by Ofgem for dealing with the applications are;

- Accredit based on the fact the schemes are compatible under the Regulations.
- Accredit the applications but notify DETI that an accreditation has been made on which the Carbon Trust loan had been received – this is the position in GB.
- Do not accredit applications until it is confirmed that any relevant threshold would not be breached by Loan aid + RHI aid. For accredited systems the aid would be provided under “de minimis” guidelines and DETI could record this separately.

Grateful for a view on the Ofgem options and potential approach. A key question is who would be liable if “de minimis” thresholds were breached – the Department or the applicant? If it is the applicant then the GB model (option 2) could be used but applicants would need to be notified and provided guidance. If the Department is liable, then I would expect the third option is most

appropriate, with applicants that could breach the threshold either barred from the scheme or paid no more than the relevant limit?

Grateful for your advice on this matter so we can inform Ofgem on how to proceed.

Regards,

Peter

From: Teri Clifton [<mailto:teri.clifton@ofgem.gov.uk>]

Sent: 25 April 2014 16:33

To: McCutcheon, Joanne

Cc: Hutchinson, Peter; Edmund Ward

Subject: TRIM: Carbon Trust issues

Hi Joanne

These are the main points that we discussed last week, and would like to discuss and agree further with Stephen Moore next week.

- With regard to Carbon Trust loans, we are administering the scheme on the basis that these do not present an exemption from our duty to accredit.
- We note that DETI has made a separate notice that it intends to operate the scheme with respect to 'de minimis' aid
- Any change regarding 'de minimis' funding would necessitate a change to the Arrangements between Ofgem and DETI
- Until such time as that might be addressed, we will continue to accredit installations according to our understanding of the regulations currently in force - The impact of this is that we may be accrediting installations in receipt of state aid funding, so long as they are eligible under the current regulations [which is consistent with the general approach taken in GB]
- In the interim, in line with the approach taken on the GB scheme, we will provide DETI with an indication of those installations which we believe may have been funded in whole or in part by any state aid support

As I mentioned, this has been past our lawyers and they are happy with this as a pragmatic approach. I noted that your concerns were mainly around the fact that we needed to be clear on whether we were taking an operational approach or a de minimis approach, and that you felt they couldn't be mixed.

Please let me know when is a good time for us to conference call

Regards

Teri

Teri Clifton