

From: Stuart Wightman
Energy Division

Date: 01 October 2014

To: 1. Andrew Crawford
2. Arlene Foster MLA

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COR/444/2014: Irrelevant information redacted by the RHI Inquiry – **RENEWABLE HEAT**

Issue:	Correspondence on Renewable Heat and Carbon Trust Loans.
Timing:	Routine
Need for referral to the Executive:	None.
Presentational Issues:	Of concern to those affected.
Freedom of Information:	Not be discloseable at present on grounds of policy development.
Financial Implications:	None.
Statutory Equality Obligations:	There are no Section 75 implications.
PFG/PSA implications:	None.
Legislation Implications:	None.
Recommendation:	A draft response to Mr Wilson is attached at Annex A.

Background

Sammy Wilson, MP, MLA has written to you regarding funding for a biomass boiler installation at [irrelevant information redacted by the RHI Inquiry] through the Renewable Heat Incentive Scheme, (RHI). [irrelevant information redacted by the RHI Inquiry] have availed of a Carbon Trust interest free Loan and the interest benefits from this when coupled with estimated RHI payments has caused a difficulty with EU state aid de minimis rules.

Carbon Trust loans and the RHI

2. An issue previously arose around the compatibility of RHI support and Carbon Trust loans. After discussions involving Ofgem, (who operate the scheme on DETI's behalf), DETI and State Aid colleagues, it was agreed that the two were compatible. However RHI would be classified as "de minimis" aid to comply with EU rules. If there is no other state aid, the funding is classified as "operating aid" and there is no limit.
3. Under EU guidelines a company cannot receive more than €200,000 of de minimis aid over a three year period, (or in the case of agriculture €15,000). An agreement was reached that where an RHI applicant was also in receipt of a carbon trust loan, Ofgem would seek a state aid declaration from applicants. Where it is clear that the EU limits will not be breached, (when combining all aid), the process is straightforward. However, a small number of applications have been received which may exceed this limit. Working with Ofgem we have managed to resolve several cases. However, some cases raise more complex issues, perhaps requiring legislative change, and, unfortunately, the position of [irrelevant information redacted by the RHI Inquiry] is one of these.
4. The basic solution is to obviate the issue of State Aid by repaying the Carbon Trust loans in full. However, under the RHI regulations which provide the legal basis for the Non-domestic RHI Scheme, the option to repay grant funding is only available to applicants who commissioned their technology before 1 November 2012 i.e. the launch of the scheme. Therefore should any renewable heating system installed after November 2012 be found to exceed the State Aid "de minimis" levels, the applicant would not have the option of repaying the Carbon Trust loan to allow it to avail of the RHI. Legislative changes are therefore needed to facilitate pay-back of the Carbon Trust loan. Officials are liaising with Departmental Solicitors Office on this.

[irrelevant information redacted by the RHI Inquiry]

application

5. [irrelevant information redacted by the RHI Inquiry] installed two biomass wood pellet heating systems to heat glasshouses in January 2014. To part fund the capital costs they secured a Carbon Trust Loan for £87,600 which was drawn down in April 2014. Under EU state aid de minimis rules, the agriculture sector is ineligible and is therefore excluded on the Carbon Trust application as a sector. However, [irrelevant information redacted by the RHI Inquiry] made a loan application under the retail sector, and it was processed on this basis. In contrast, Ofgem has classified the [irrelevant information redacted by the RHI Inquiry] RHI application as agricultural, applied the lower €15,000 state aid de minimis limit and rejected it on this basis. The question of whether the application should or should not be defined as "agriculture" is being investigated by DSO and DARD.

Way Forward

6. If it is agreed by DSO and DARD that [Irrelevant information redacted by the RHI Inquiry], the only way that [Irrelevant information redacted by the RHI Inquiry] could be eligible for RHI is if the State Aid is removed by repaying the Carbon Trust loan in full. This will require legislation (as discussed in paragraph 4 above) and may prove to be an unpopular proposition for those applicants affected. However, it is worth highlighting that the estimated combined RHI payments for [Irrelevant information redacted by the RHI Inquiry] two biomass boilers are over £6000 / month compared to their existing Carbon Trust loan payments are £2400/month. Drawing down private finance (in place of the Carbon Trust loan) should therefore be an affordable alternative.
7. If, on the other hand DSO and DARD confirm that the heating system for [Irrelevant information redacted by the RHI Inquiry] can be classified as retail the higher general State Aid de minimis limit, (€200,000), can be applied. This would enable a similar RHI application from [Irrelevant information redacted by the RHI Inquiry] to be approved. [Irrelevant information redacted by the RHI Inquiry] could however only proceed with an RHI application for one of its two biomass boilers to keep its RHI payments below the €200,000 threshold. The second boiler would only be eligible for RHI after the Carbon Trust loan has been repaid and the necessary legislative changes made.

Conclusion

8. We are engaged in trying to find a solution to this and similar cases. But the cases are complex and ongoing. Nonetheless we hope to be able to resolve them shortly even if we cannot state this definitively while awaiting legal advice.

Recommendation

9. It is recommended that you note the background to this issue and respond to Mr Wilson using the draft attached at **Annex A**.

S. Wightman

STUART WIGHTMAN
Energy Division

cc: Andrew McCormick
Chris Stewart
John Mills
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DRAFT REPLY

Sammy Wilson MP, MLA
East Antrim DUP
116 Main Street
LARNE
BT40 1RG

Dear

Re: Irrelevant information redacted by the RHI Inquiry – Renewable Heat

Thank you for your letter of 22 September 2014 regarding the Irrelevant information redacted by the RHI Inquiry biomass boiler project and difficulties the firm has have experienced in accessing Renewable Heat Incentive, (RHI), funding .

This has arisen because Irrelevant information redacted by the RHI Inquiry availed of a Carbon Trust interest free loan and when the interest benefit from this is combined with the estimated RHI payments it exceeds the EU de minimis limit which, Irrelevant information redacted by the RHI Inquiry . It is the EU that sets the limits and DETI cannot change these.

My officials have been working with Ofgem to assess what can be done in respect of a small number of RHI applicants who have found themselves in this situation. We have managed to resolve several cases. However, these cases raise complex issues, perhaps requiring legislative change, and, unfortunately, the position of Irrelevant information redacted by the RHI Inquiry is one of the more complex. Nonetheless, we are continuing to work with all parties and will keep them informed of developments. .

Yours sincerely

ARLENE FOSTER MLA
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT