From:	Moore, Stephen (DETI)
To:	Wightman, Stuart; Hughes, Seamus
Cc:	Pauley, Alberta; Kelly, Andrea; Ryan, Damien
Subject:	FW: Northern Ireland RHI scheme State Aid Notification - Phase 2 Review Non-Domestic Renewable Heat Incentive
Date:	10 February 2015 10:00:00
Attachments:	COMP_Answer to UK request (Art. 36-49) of 5-08-2014.docx 2014 - 2020 GBER - Reg 651_2014 - 17 June 2014.pdf 2014 environmental protection and energy guidelines.pdf

Stuart / Seamus

As discussed yesterday briefly with Seamus, it doesn't look like the GBER would provide you with all the State aid cover you will need so I think you need to start working on a full notification for the inclusion of:

- Air Source Heat Pumps
- District Heating
- Deep Geothermal
- Large biomass over 1MW
- Extending the existing 6.3 pence biomass tariff up to 199kW

When do you need a decision from the Commission?

You will see that the GB extension notification took three months from pre-notification to the decision, so you need to allow at least three months for your notification to get through the system.

You must also have a close look at the GB domestic decision – see weblink below.

As you will see the Commission (and DECC) consider 'landlords' to be undertakings and hence subject to the State aid rules. In the GB case, you will see they notified the domestic scheme, possibly because the domestic scheme was put in place before the 2014 – 2020 Environmental Aid Guidelines and the 2014 – 2020 General Block Exemption Regulation came into effect.

In our case, **I think we are also providing State aid to landlords via our domestic scheme**, but, we should be able to avoid a full notification by availing of Article 43 in the GBER.

We can use the GBER if:

a. The aid per unit of energy does not exceed the difference between the total levelized costs of producing energy from the renewable source in question and the market price of the form of energy concerned.

b. The levelized costs are updated regularly and at least every year;

c. The maximum rate of return used in the levelized cost calculation does not exceed the relevant swap rate plus a premium of 100 basis points. The relevant swap rate shall be the swap rate of the currency in which the aid is granted for a maturity that reflects the depreciation period of the installations supported.

d. Aid is only be granted until the installation has been fully depreciated according to generally accepted accounting principles.

e. Any investment aid granted to an installation is deducted from the operating aid.

However, as the scheme is now live, I would be keen that you start work on the GBER registration ASAP and provide me with the information requested in Part I of Annex II of the GBER.

I would also remind you that no State aid can be granted to an undertaking unless it is from an 'approved' GBER scheme/ad hoc project or a Commission decision.

Happy to discuss.

Stephen

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From: Mukherjee Sinjini (International Energy EU & Resilience) [mailto:sinjini.mukherjee@decc.gsi.gov.uk]
Sent: 09 February 2015 10:34
To: Moore, Stephen (DETI); Kate Porter (kate.porter@bis.gsi.gov.uk)
Cc: Wightman, Stuart; Pauley, Alberta; Hughes, Seamus; Kelly, Andrea; Ryan, Damien; Irrelevant information redacted by the RHI Inquiry
Subject: RE: Northern Ireland RHI scheme State Aid Notification - Phase 2 Review Non-Domestic Renewable Heat Incentive

Stephen,

DECC did look at whether the RHI could fit under the revised GBER (and whether we could make use of Article 43 for future amendments to the scheme). We came to the conclusion that at present the risks on this were too high for us to be able to advise ministers to rely on GBER. We worked on this quite a while ago so I have to admit that my memory is a bit fuzzy on all the detail

so it may be best for colleagues in Northern Ireland to contact policy leads here directly [redacted]

We did give BIS some questions on this to pass on the Commission which were included as part of a UK list submitted before summer 2014 – the answers on the environmental protection provisions are attached – you will see that there were quite a few on Article 43 (most the questions came from our RHI team so hopefully useful to you).

Kind regards
Sinj

From: Moore, Stephen (DETI) [mailto:Stephen.Moore@detini.gsi.gov.uk]
Sent: 06 February 2015 16:40
To: Mukherjee Sinjini (International Energy EU & Resilience); Kate Porter (kate.porter@bis.gsi.gov.uk)
Cc: Wightman, Stuart; Pauley, Alberta; Hughes, Seamus; Kelly, Andrea; Ryan, Damien; [redacted]
Subject: Northern Ireland RHI scheme State Aid Notification - Phase 2 Review Non-Domestic Renewable Heat Incentive

Sinj / Kate

Please see the email below from colleagues in Energy Division that relates to a widening of the scope of the NI RHI scheme (SA.34140 – see attached).

I see that the UK has twice re-notified the original UK scheme (SA.32125).

State aid No SA.35766 (2013/N) – United Kingdom Extension of the Renewable heat Incentive (RHI) to the domestic sector
http://ec.europa.eu/competition/state_aid/cases/249393/249393_1508242_89_2.pdf

State aid No SA.37562 (2013/N-2) – United Kingdom Amendments of the Renewable Heat Incentive (RHI) scheme for the non-domestic sector
http://ec.europa.eu/competition/state_aid/cases/249933/249933_1516864_75_2.pdf

Before we start work on a full notification of the NI scheme, I was wondering whether it would fall within any of the provisions in the 2014 GBER.

In particular, I see that Article 43 exempts operating aid for the promotion of energy from renewable sources in small scale installations.

I note in the definitions, 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources and that 'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases.

I also note that the notification thresholds for operating aid for the promotion of energy from renewable sources in small scale installations is EUR 15 million per undertaking per project.

Can either of you clarify whether Article 43 is intended for schemes like the RHI?

Have there been any discussions with the Commission on whether Article 43 could be used to amend our RHI schemes, rather than submitting a full notification?

Happy to discuss.

Stephen

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From: Hughes, Seamus
Sent: 03 February 2015 12:15
To: Moore, Stephen (DETI)
Cc: Wightman, Stuart; Pauley, Alberta
Subject: RE: State Aid Notofication - Phase 2 Review Non-Domestic Renewable Heat Incentive

Stephen

In summary the phase 2 review will bring in new technologies/tariffs, namely:-

Air Source Heat Pumps
District Heating
Deep Geothermal
Large biomass over 1MW
Extending the existing 6.3 pence biomass tariff up to 199kW

I hope this helps.

Regards

Seamus

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From: Moore, Stephen (DETI)
Sent: 03 February 2015 09:48
To: Hughes, Seamus
Cc: Wightman, Stuart; Pauley, Alberta
Subject: RE: State Aid Notofication - Phase 2 Review Non-Domestic Renewable Heat Incentive

Seamus

Can you send me some details on how the Phase 2 review changes the RHI scheme?

Thanks

Stephen

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From: Hughes, Seamus
Sent: 03 February 2015 09:26
To: Moore, Stephen (DETI)
Cc: Wightman, Stuart
Subject: State Aid Notofication - Phase 2 Review Non-Domestic Renewable Heat Incentive

Stephen

I had a brief chat yesterday with Stuart about the State Aid Notification in terms of the phase 2 review of the RHI and would be grateful for your initial advice on what needs to be done. I note in the original RHI State Aid Notification there is a reference to a further notification being submitted f additional technologies are being introduced to the scheme, and this is likely to be the case under the phase 2 review.

I suppose my first question would be, is a new full notification required or would it be an addendum to the original?

Many thanks

Regards

Seamus

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Questions of clarification on the new General Block Exemption Regulation (GBER) – Environmental protection.

Environmental Protection

1. Article 38(3)(a) & Article 39(3) – where 'hassle costs' have been identified and appropriately evidenced for particular measures we presume that these may be included as part of the investment costs – does the Commission agree?

   Answer: Article 38 and Article 39 of the GBER both refer to investment aid in favor of energy efficiency, the latter specifically for energy efficiency projects in buildings.

   Article 38(3)(a) limits the eligible costs to the ´extra investment costs´ and does not include operating costs. To the extent hassle costs stem from setting up the investment itself and are directly linked to the energy efficiency investment they could be part of the eligible costs under Article 38. Often, however, hassle costs are operating costs, related to the operation of the investment. Such operating costs are not eligible under Article 38.

   Article 39(3) defines the eligible costs as the ´overall costs of the energy efficiency project´. Article 39 considers all costs of the project without making a distinction between investment and operating costs. To the extent hassle costs are directly linked to the energy efficiency project they could be part of the eligible costs under Article 39.

2. Article 41(7) – we presume there is currently a mis-reference and that it is intended to cross-refer to sub-paragraph 6 of the same article not sub-paragraph 5.

   Answer: The reference is indeed to sub-paragraph 6 of the same Article. However, the GBER as published in the OJ of 26 June 2014 (L 187/15) correctly references to this sub-paragraph.

3. Article 43(5) – We would be grateful if the Commission could confirm that:

4. where there is no market price for the form of energy concerned, the GBER permits the total levelised costs of producing energy from the counterfactual fuel to be used as a proxy;

5. if so, that it is open to the Member State to identify the appropriate counterfactual fuel;

   Answer: The GBER only refers to the market price of the energy concerned in Article 43(5) to which there is a cross reference in Article 42(8). Article 43 specifies the conditions for granting operating aid to renewable energy in small scale installations.

   Article 43(5) essentially caps the aid to the difference between the production costs of renewable energy and the market price of the energy concerned. In most cases market prices are readily available, notably in the case of electricity prices.

   In some cases the market price may not be readily available. In such case the best proxy for the market price should be taken. Such best proxy could be the total levelised costs of the counterfactual form of energy.

Article 43(5) does not define the market price of the energy concerned. It is for the Member State to identify the correct market price in line with the rules set out in Article 43.

6. where the GBER is being used for a scheme rather than ad hoc aid, "total levelised costs" refers to average costs of all plants to which the scheme applies;

   Answer: Article 43 specifies the conditions for granting operating aid to renewable energy in small scale installations. Article 43(5) limits the aid amount to the difference between the total levelised costs of producing renewable energy and the market price of the energy concerned.

   In case of a scheme the total levelised production costs can be based on typical representative production costs of producing renewable energy for each relevant category of renewable energy.

   The calculation of the total levelised production costs could be based on the average costs of all plants to which the scheme applies where this provides for the correct typical representative production costs. The plants to which the scheme applies should be a relevant category ensuring that the calculated production costs can be considered typical an representative for all plants.

7. where the GBER is being used for a scheme, that the GBER permits the level of support to a particular plant for a set period (e.g. 20 years) to be determined when the aid is given (i.e. so the requirement to update levelised costs regularly applies in relation to the setting of support levels for future applications for aid only

   Answer: Article 43 specifies that the levelised costs need to be updated at least every year. The update of the levelised costs impacts on the maximum amount of aid that can be granted. Once the aid is granted to an installation, payment of the ad can take place in line with the support period set out in the conditions of the scheme (until depreciation).

   Adjustments in the levelised costs would therefore only impact on new applications for which the aid was not yet granted.

   CONTEXT: As there is no market price for heat in the UK, the UK's Domestic Renewable Heat Incentive (D-RHI) tariffs (currently an approved scheme under the Environmental Aid Guidelines) provide a specified rate of return to the 50th percentile on the supply curve. The tariff compensates for the difference between the levelised costs of the renewable heating technology and the levelised cost of plants using heating oil (+ Levelised Barriers). Our interpretation therefore uses an average cost (rather than a cost per plant). The D-RHI tariffs are conservative, using heating oil as the counterfactual fuel (instead of for example on-grid gas), and reflects the policy that the D-HRI is trying to incentivise renewable heat in off-grid homes where high carbon fuels (e.g. coal, heating oil etc.) are heavily used, and where there is no heat market price but heating costs are high.

   This is the approach the Commission has already agreed for us to use in their approval for DECC to use state aid for the scheme and we would like to confirm that this approach is

consistent with the revised GBER if the UK uses this as cover for third party ownership models for the D-RHI.

8. Article 45 - We would be grateful if the Commission could confirm that the definition of 'hazardous substances' and/or 'environmental damage may include concrete and other materials associated with permanent structures in order to clear derelict or brownfield land.

   We would also be grateful for confirmation that the UK's 'support for land remediation' scheme can be covered under GBER. Which is;

   Contaminated land is any land which appears to be in such a condition – by reasons of substances in, on or under the land – that

   – significant harm is being caused or there is a significant possibility of such harm being caused; or

   – pollution of controlled waters is being, or is likely to be caused.

   Brownfield land – more recently referred to as 'previously developed land' – is land which is or was occupied by a permanent structure and associated fixed surface infrastructure. Previously developed land may occur in both built-up and rural settings. The definition includes defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures.

   Derelict land is land that is so damaged by industrial or other development such that it is incapable of beneficial use without treatment.

   Greenfield land is land that has not previously been developed.

   Answer: Article 45 GBER specifies the conditions for granting aid for the remediation of contaminated sites when no liable person is identified or can be made to bear the costs. A contaminated site is defined in Article 2(121) as a site where there is a confirmed presence, caused by man, of hazardous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land.

   The eligible costs are defined in Article 45(4) as the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

   For determining whether a site is eligible for support, it is required that there are hazardous substances of such a level that they pose a significant risk to human health or the environment. The GBER does not provide further specific conditions and therefore it does not exclude that such risk relates from derelict or brownfield land, as long as they pose a significant risk to human health or the environment.

9. Article 43(6) – where a market does not exist and therefore neither does a futures market or a relevant swap rate we presume that this test does not apply – does the Commission agree? CONTEXT: A general heat market does not exist in the UK, hence there is no relevant swap rate

   Answer: Article 43 specifies the conditions for granting operating aid to renewable energy in small scale installations. Article 43(5) limits the aid amount to the difference between the total levelised costs of producing renewable energy and the market price of the energy concerned.

   The calculation of the total levelised production costs is sensitive to the rate of return used. Therefore, Article 43(6) caps that rate of return that can be used for the calculation of the total levelised costs. Article 43(6) is phrased in a general way referring to generally available swap rates and does not require to identify a rate for a specific market (e.g. heat market).

   In order to benefit from the GBER, all conditions of the Articles need to be respected, including Article 43(6). If these conditions are not respected and the Member State would still put in place the measure, such measure would need to be notified.

10. Article 46(6) – although the sub-paragraph doesn't specify, our understanding is that the duration of any clawback mechanism for operating profit may be the operating lifetime of the asset (but may be shorter than this subject to the specific circumstances of a project) – does the Commission agree?

    Answer: Article 46 specifies the conditions for granting aid to district heating and cooling. The Article distinguishes between aid for the production plant and aid for the distribution network.

    Article 46(5) caps the eligible costs for the distribution network to the investment costs. Article 46(6) limits the aid amount to the difference between the investment costs and the operating profit.

    The clawback mechanism referred to in Article 46(6) serves to avoid that the aid amount exceeds the above mentioned difference. The GBER does not specify the design or duration of the clawback mechanism, but rather the purpose of a clawback mechanism and what it needs to ensure.

    In view of the purpose of a clawback mechanism the duration of a clawback mechanism would logically equal the operating lifetime of the asset. Without excluding the possibility of a shorter duration, general circumstances that justify a shorter duration of the clawback mechanism cannot be identified ex ante.

11. Article 49(1) – our understanding is that studies do not have to be related to a specific investment for environmental protection in order to comply with this requirement (e.g. a study looking at identifying and addressing barriers to investment in energy efficiency measures would met the 'directly linked to investments' requirement) – does the Commission agree?

Answer: Article 49(1) clarifies that aid for environmental studies can only be granted if it serves the specific purpose for environmentally friendly investments mentioned in section 7 of the GBER to be carried out. Article 49(1) does not require that the study is linked to an individual investment.