

From: [McCormick, Andrew \(DFE\)](#)
To: [Simms, John](#)
Cc: [McMurray, Stephen](#); [McAdams, Jonathan](#); [McCann, Brendan](#); [Dukelow, Victor](#); [Moore, Stephen \(DFE\)](#); [Marten, Lucy](#); [Cartland, Dan](#)
Subject: Andrew McCormick e-mail to John Simms on State aid and the role of the NI Executive and Ministers
Date: 09 February 2017 10:05:20
Attachments: [image001.png](#)
[image002.png](#)

There are a lot of DfE/DETI cases in the lists of current and expired State Aid decisions (first hyperlink in Stephen's email). I think we need a simple check of which, if any of these were put to the Executive for approval before the Department proceeded with the policy and/or implementation.

Re other Departments, I would leave aside the Stadia case (now Communities) given its profile and controversy. But there are a couple of DARD/DAERA cases where a quick call to their DALO might establish whether they know the facts as to whether these cases went to the Executive and if they have a general view of the issue (ie does the requirement for State Aid approval suggest that Executive approval may also be relevant).

Happy to discuss.

Many thanks.

From: Moore, Stephen (DfE)
Sent: 08 February 2017 17:58
To: Marten, Lucy
Cc: McCormick, Andrew (DFE); McMurray, Stephen; McAdams, Jonathan; McCann, Brendan; Dukelow, Victor
Subject: (1) List of NI State aid decisions (2) State aid and the role of the NI Executive and Ministers

Lucy

- (1) As discussed, please find below a link to NI State aid decisions.

<https://www.economy-ni.gov.uk/articles/list-ni-state-aid-decisions>

In addition to these 'fully notified' schemes and projects, there are many other programmes and projects that do not have to be notified to the EC for approval, as these fall within the terms and conditions of one of the EC's 'exemption' regulations. These exempt Member States from having to notify the State aid and the second link below will take you to a list of all the NI General Block Exemption Regulation (GBER) schemes. The GBER is the main exemption regulation and all GBER schemes have to be 'registered'.

<https://www.economy-ni.gov.uk/articles/gber-schemes-northern-ireland>

Not sure which of these schemes and project, if any, would have required NI Executive approval.

- (2) In relation to the role of the NI Executive and State aid

I do not believe the NI Executive is required to approve any matters that require State aid approval and legal responsibility for this sits completely with the relevant Minister or Northern Ireland department.

The NI Act 1998 details that the Committee shall also have the function of discussing and agreeing upon:

- (a) **significant or controversial** matters that are clearly **outside the scope of the agreed programme** referred to in paragraph 20 of Strand One of that Agreement; and
- (b) significant or controversial matters that the First Minister and deputy First Minister acting jointly have determined to be matters that should be considered by the Executive Committee.

Para 20 in the Belfast Agreement reads as follows...*20. The Executive Committee will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis.*

As far as I can see State aid is not mentioned in the 2011 – 2015 PfG.

<https://www.northernireland.gov.uk/sites/default/files/publications/nigov/pfg-2011-2015-report.pdf>

I also see that while the NI RHI scheme is not specifically mentioned, but there is a ‘commitment’ to “encourage achievement of ... 4% renewable heat by 2015”.

I am guessing the argument might be that while there was a ‘commitment’, as the NI RHI scheme itself is not specifically mentioned in the PfG, it is therefore outside of the scope of the PfG and because it was or has become ‘significant or controversial’, it should have been approved by the NI Executive.

This is probably easier to argue for the changes made in 2017 than those made in 2015 or the original scheme in 2012.

However, it is also hard to see how the implementation of the scheme in 2012 and the review in 2015 could be significant or controversial when all parties expressed their support.

Nonetheless, in relation to State aid and European Law, the position is clearer in that the NI Act 1998, provision 24(1)(b) states that a **Minister** or **Northern Ireland department** has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act is incompatible with Community law.

The NI Executive is not mentioned anywhere in provision 24.

Therefore, the NI Executive is not required to approve any matters that require State aid approval and legal responsibility for this sits completely with the relevant Minister or Northern Ireland department, unless there is something specifically in the Programme for Government