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Energy



From: Jenny Pyper
Energy Division
28 October 2008

Copy recipients listed below

1. Andrew Crawford
2. Arlene Foster MLA

ENERGY BILL – LORDS AMENDMENTS ON RENEWABLE ENERGY

Issue:	UK Government amendments to the Energy Bill on micro-generation feed-in-tariff (FIT) and renewable heat incentive (RHI).
Timing:	Urgent – Minister will need to write to ETI Committee as soon as possible. Amendments to be introduced on 29 October for debate on 5 November.
Need for referral to the Executive:	Not at this stage.
Presentational Issues:	Depending on timing of the UK bringing into force clauses on micro-generation FIT, NI could end up as the only part of the UK with a Renewables Obligation (RO) for micro-generation.
Freedom of Information:	Exempted under Section 35 of the FoI Act.
PfG/PSA Implications:	Not applicable.
Financial Implications:	None at present.
Legislation Implications:	NI will probably have to follow rest of UK on micro-generation FIT – and possibly also on renewable heat incentive - We will need primary legislation if we decide this route is suitable for NI.
Statutory Equality Obligations:	No equality implications identified.
Recommendation:	That the Minister: (i) notes introduction of amendments to the Energy Bill; (ii) sends a letter on the issue to the ETI Committee as soon as possible; and (iii) notes that we will probably need to reflect any Energy Bill amendments following analysis of the implications for Northern Ireland in legislation here.

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Background

Further to my submission of 22 September (attached for ease of reference **Annex A**) and our subsequent discussion, you indicated that you were content that Northern Ireland should not seek to be included in any potential amendments to the Westminster Energy Bill on a feed-in tariff (FIT) for electricity micro-generation and a renewable heat incentive (RHI). Yesterday we received confirmation from DECC that it will introduce clauses to the UK Energy Bill on 29 October, for debate on 5 November, to give its Secretary of State powers to introduce a FIT and an RHI.

Policy aspects – electricity micro-generation FIT

2. NI has followed BERR (now DECC) policy in proposals to reform the Renewables Obligation (RO). We are currently consulting on banding the NIRO which would give micro-generators the additional incentive of two Renewable Obligation Certificates (ROCs) per mega-watt hour (MWh) instead of one. BERR had made it clear in the UK Renewable Energy Strategy currently out for consultation, that it will stick with the RO for large-scale renewables at least until 2020, to provide certainty for investors.
3. Now that powers for a micro-generation FIT are to be introduced for GB through the Energy Bill, we believe that it will be difficult to maintain the NIRO for micro-generation when the rest of the UK and ROI have a FIT. We are not sure exactly when DECC will exercise any new powers for micro-generation FIT if the Energy Bill receives Royal Assent. However, we do understand that DECC is pressing ahead with amendments to the GB Renewables Obligations to introduce banding by 1 April 2009. It is likely therefore that it will bring in the micro-generation FIT at a later date so we should not abandon our own current work on amending the NIRO. There is a Northern Ireland Gas Bill planned for 2009/10 and that may be an appropriate vehicle for necessary amendments to our own primary legislation to reflect what DECC is doing, but in a way which is appropriate to the NI circumstances.

Policy aspects – renewable heat incentive

4. As outlined in my 22 September submission, we are not in a position to advise you on what form of heat incentivisation might be best for Northern Ireland. Our feeling is that, since, for example, NI's domestic heat market is so different from GB's (eg 70% oil supplied in the main by small local companies as opposed to 80% gas there provided by a handful of large companies), there are likely to be very different issues for legislation here; but we cannot be certain without further work. We have not, as yet, been in a position to devote resources to this area of work – and indeed we currently have no vires in this area.
5. Since powers for a renewable heat incentive are being brought forward in the Energy Bill, we will come under pressure to explain what we are doing in this area and to legislate similarly. We had planned to do some work on this issue in late 2009 but the DECC action has moved it up the agenda.

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6. Since we would, in principle, wish to develop the amount of renewable, heat available in Northern Ireland, we will want to incentivise it in some way. We would need a study to determine what is required here and, if necessary, to legislate. Again, the Gas Bill planned for later in 2009/10 may be an opportunity to legislate for a renewable heat incentive if we are to follow DECC's policy. However, if we decide that NI requires a different policy, then it may take longer to develop. There are significant resource implications in taking forward work in this area including expanding the Gas Bill team to what looks increasingly like an NI Energy Bill.
7. The ETI Committee should be informed of these developments (draft letter attached at **Annex B**). We believe it is likely to support similar developments here. However, the option of a FIT for micro-generation provides another opening for those who believe we should harmonise incentives with the Republic for all levels of electricity generation.

Recommendations

8. I recommend therefore that you:
 - (i) note the introduction of DECC amendments to the Energy Bill;
 - (ii) send a letter on the issue to the ETI Committee as soon as possible; and
 - (iii) note that we will probably need to reflect any Energy Bill amendments, following analysis of the implications for Northern Ireland, in legislation here.



Jenny Pyper
Head of Energy Division

cc: Stephen Quinn
David Sterling
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ANNEX A

From: Jenny Pyper
Energy Division
22 September 2008

Copy recipients listed below

1. Andrew Crawford
2. Arlene Foster MLA

ENERGY BILL – POTENTIAL LORDS AMENDMENTS AND IMPLICATIONS FOR NORTHERN IRELAND

Issue:	To inform you of Northern Ireland implications of <u>potential and confidential</u> Government amendments to the Energy Bill on microgeneration feed-in-tariff (FIT) and renewable heat incentive.
Timing:	Energy Bill must receive Royal Assent in December. BERR needs an answer from Northern Ireland by end September – clauses unlikely to be introduced to Lords before October.
Need for referral to the Executive:	Timing would prevent an LCM (and associated Executive referral stage) even if it is decided that Northern Ireland <u>should</u> be covered by potential amendments. Whatever you decide, the ETI Committee will need to be briefed if the clauses are introduced.
Presentational Issues:	If the clauses on microgeneration FIT are brought forward in the Lords, Northern Ireland could end up as the only part of the UK with a Renewables Obligation (RO) for microgeneration.
Freedom of Information:	Exempted under Section 35 of the Fol Act.
Programme for Government /PSA Implications:	Not Applicable.
Financial Implications:	None at present.
Legislation Implications:	If microgeneration FIT and renewable heat incentive legislated for in the Lords this autumn, we will need a timetable for similar Northern Ireland legislation.
Statutory Equality Obligations:	No equality implications identified.
Recommendation:	That the Minister: (i) agrees that we should <u>not seek to be included</u> in these potential amendments to the Energy Bill; (ii) agrees that NI should <u>not</u> be covered by a UK heat strategy and that DETI should

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provide BERR with a form of words to cover Northern Ireland; and
 (iii) notes that we may need to reflect any Energy Bill amendments following analysis of the implications for Northern Ireland in legislation here.

Background*Parliamentary*

1. You may recall that a Legislative Consent Motion was taken through the Assembly early this year to agree that, through the Energy Bill, Westminster would take on responsibility for licensing offshore gas storage etc. in NI waters.
2. It was expected that the Energy Bill would reach Royal Assent before the summer 2008 break, but this did not happen. Now the Bill must reach the end of its passage through Parliament before the end of this Parliamentary session (the new one starts 3 December) or it will fall. There is increasing concern in BERR that the Lords will bring forward a number of amendments which might result in “ping-pong” between Lords and Commons, putting the timetable of the Bill in jeopardy.
3. BERR officials are preparing potential Government concessions to the Lords in case they might be needed late in October at Lords Report stage. Those concessions are likely to be around introduction of a Feed-in Tariff (FIT) for electricity microgeneration and some form of incentivisation for renewable heat. We have had regular dialogue with BERR but it seems to us that much of the thinking around such measures has been very rushed and without detailed consultation on how such measures would operate or their impact.
4. It is important to stress that no decision has been made by GB Ministers on introduction of concessions and that any work is being done on a contingency basis – it is highly confidential. BERR officials have nonetheless been frank about the depth (or lack of it) in the analysis and scoping and we have recently had sight of the draft clauses.

Devolution aspects

5. We had some initial concern that Treasury wished to view both these measures as taxes and therefore excepted matters, but, while their lawyers have stated that they are taxes for administrative purposes, they have agreed that for devolution purposes the matters are transferred for Northern Ireland, and OLC here agrees.
6. This means that, if Northern Ireland wanted to be included, a legislative consent motion (LCM) would be required. LCMs have been done in short time-frame: DSD got one through in less than a month. The issue would, however, probably need to be uncontroversial in order to squeeze the 26-stage process of an LCM through the Assembly before third reading in the Lords. This would be the very last point at which any NI specific clauses could be pulled out if the LCM were not approved. Getting an LCM through would also depend on the exact timing of the tabling of Lords amendments relative to ETI and Executive Committee meetings. The provisional information received from BERR would simply not allow for an LCM, particularly given the Assembly recess at the end of October.

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7. NI has followed BERR policy in proposals to reform the Renewables Obligation (RO) and consulted on banding (see submission of 10 September from Malachy McKernan on this issue) which would give microgenerators the additional incentive of two Renewable Obligation Certificates (ROCs) per mega-watt hour (MWh) instead of one. BERR has made it clear in the UK Renewable Energy Strategy currently out for consultation that it will stick with the RO for large-scale renewables at least until 2020 to provide certainty for investors. We could not do otherwise without causing the same potential issues for investors.
8. The majority (over 90%) of grants given out by DETI under the Reconnect scheme were for heat technologies – of these, most were for solar hot water – since most households do not have much capacity for electricity generation through micro-wind or photovoltaics. We do not know at this stage whether the Reconnect programme might be continued – that will be subject to the outcome of an evaluation this autumn. However, the provision of 2 ROCs for microgeneration (or indeed a generous electricity FIT) might provide a limited (limited because heat is the main form of domestic microgeneration) form of incentive in the absence of a grant scheme.
9. If powers for a microgeneration FIT were to be introduced for GB through the Energy Bill, we would have to consider how to handle the NI position – but it would undoubtedly be difficult to maintain the RO for microgeneration when the rest of the UK and ROI had a microgeneration FIT. Having said that, we would be heavily criticised for agreeing to have BERR legislate for NI without an evidence-based consultation or impact analysis here.
10. However, the option of a FIT for microgeneration provides another opening for those who believe we should harmonise incentives with the Republic for all levels of electricity generation.

Policy aspects – renewable heat incentivisation

11. If concessions are required in the Lords, BERR may also offer amendments to introduce broad powers on what will probably be a Renewable Heat Incentive (rather than a Renewable Heat Obligation). We are not in a position to advise you on what form of heat incentivisation might be best for Northern Ireland: our feeling is that, since, for example, NI's domestic heat market is so different from GB's (eg 70% oil supplied in the main by small local companies as opposed to 80% gas there provided by a handful of large companies) there are likely to be very different issues for legislation here, but we cannot be certain without further work. We have not, as yet, been in a position to devote resources to this area of work.
12. If powers for a renewable heat incentive are brought forward in the Energy Bill, we will come under pressure to explain what we are doing in this area and to legislate similarly. This is not an area where we have a strong evidence base either – we had planned to do some work on it in late 2009 but the BERR pressure has moved it up the agenda.

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13. When you announced in June that Northern Ireland would be covered by the UK Renewable Energy Strategy consultation, the press release stated that there would be a seminar on the RES in Northern Ireland. In light of BERR developments we decided that the most useful focus of such a seminar would be on renewable heat and held that seminar on 8 September with a significant input from the Director of Heat Policy in BERR. It was well attended and received so we hope that the contact list will be useful in creating a stakeholder group on the issue.
14. Since we would wish to develop the amount of renewable heat in Northern Ireland we will want to incentivise it in some way. We will need a study to determine what is required here and, if necessary, to legislate. There is a Gas Bill planned for later in 2009/10 and it may be that we could use that opportunity to legislate for a renewable heat incentive if we are to follow BERR and perhaps also make provision for a microgeneration feed-in tariff. If we decide that NI requires a different policy, then it may take longer to develop.

Heat as a policy area – GB and NI

15. Heat and renewable heat are new policy areas for the UK, the latter driven mainly by the proposed Directive on renewable energy, but also by other factors such as climate change targets e.g. through low-carbon heat. BERR plans to launch a heat strategy (renewable heat is only a sub-set of heat policy) later in the autumn, probably mid-November, in conjunction with an Energy Savings (the new name for energy efficiency) plan from DEFRA. BERR has prioritised this area and deployed an additional 20 staff. BERR has asked if NI wishes the heat strategy to cover us as well – they need a response by the end of September.
16. Heat does not currently exist in NI statute nor as a discrete policy area in DETI. BERR's outline heat strategy is very much an early draft but at this stage we see no reason why Northern Ireland could not be included. It would be useful to use the greater resource that BERR has to enable NI to be able to claim some form of "heat strategy".
17. However, there are cross-cutting implications in the draft strategy for NIAUR, DSD on fuel poverty, DOE on planning, and DFP on subsidies/grants (though it looks at this stage as though grants for e.g. district heating networks are not envisaged). Inclusion in the BERR heat strategy might: (a) raise expectations on heat policy in NI which we would be unable, at this stage, to satisfy; and (b) would require us to resource a paper to the ETI Committee and Executive which would jeopardise other workstreams this autumn. I cannot see how we could develop a credible position in the timeframe so instead I propose that we give BERR a positive form of words for a short section on Northern Ireland which would allow us to be included in general terms but spell out areas of policy difference which will require a tailored NI plan.

Recommendations

18. I am sorry that this is such a lengthy submission but in the circumstances I wanted to set out as full an understanding as possible of the situation and our limited options. I recommend therefore that you:

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- agree that we should not seek to be included in these potential amendments to the Energy Bill (para 6);
- agree that NI should not be covered by a UK heat strategy and that DETI should provide BERR with a form of words to cover Northern Ireland (para 17); and
- note that we may need to reflect any Energy Bill amendments following analysis of the implications for Northern Ireland in legislation here.

19. The resource implications of the accelerated BERR work programme for Energy Division are currently being scoped and prioritised.



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Head of Energy Division

cc: Stephen Quinn
David Sterling
Sharon Murdock, OLC
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Olivia Martin
Alison Clydesdale
Paul Dolaghan
Fred Frazer
Jim Hamilton, OFMDFM
Peter Hughes
David McCune
Malachy McKernan
Dan Sinton
Barbara Swann

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DRAFT LETTER TO CHAIR OF ETI COMMITTEE

Mark Durkan MP MLA
Chairman, ETI Committee

**UK GOVERNMENT AMENDMENTS TO THE ENERGY BILL:
MICROGENERATION FEED-IN TARIFF AND RENEWABLE HEAT INCENTIVE**

On my return to Northern Ireland from the US, I learned that the Department of Energy and Climate Change (DECC) has laid amendments (attached) to the UK Energy Bill which will give the DECC Secretary of State powers to introduce a feed-in tariff (FIT) for electricity micro-generation as well as broad powers to introduce a renewable heat incentive (RHI).

I was consulted on a confidential basis on the potential for these amendments in late September. We took legal advice which confirmed that these amendments deal with transferred matters and would therefore require a Legislative Consent Motion (LCM) for Northern Ireland to be included in these clauses of the Energy Bill.

I took the view that for Northern Ireland to be included in these amendments would have rushed the requisite LCM process to the extent that I would have been unhappy that sufficient time and scrutiny had been devoted to the complex issues involved, with no evidence base to develop NI – specific policy.

Having said that, I believe that the introduction of a FIT in GB will mean that Northern Ireland will almost certainly have to follow suit in order to stay in step with policy both in GB and the Republic of Ireland. I understand that DECC intends to press on with reforms to the Renewables Obligation which would give micro-generation 2 ROCs per MWh. As you know, we are also consulting on a similar basis on reforms to the NI Renewables Obligation due to be introduced by 1 April 2009. It seems likely that the micro-generation FIT will be introduced in a slower time-frame and my officials can discuss this with you and the committee when we have more information.

As you know, my Department does not currently enjoy vires on renewable heat. I will have to examine in more detail the amendment on a RHI to see if it would be the best course of action for Northern Ireland whose heat market is, on the face of it, quite different from the rest of the UK's. My officials will brief you on this issue in due course, but that work is likely to take longer.

I am sorry I could not give you earlier warning of these changes while I was away on business. We will of course give further consideration to them as we develop a revised Strategic Energy Framework on which my officials will brief you on 20 November.

ARLENE FOSTER
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

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