

From: [McLaughlin, Christine](#)
To: [Hepper, Fiona](#)
Cc: [Clydesdale, Alison](#); [Sinton, Dan](#); [Hutchinson, Peter](#); [Duffy, Michael](#)
Subject: Draft Executive Paper (Version 1) re: Approval for a Legislative Consent Motion to Grant Enabling Powers for Renewable Heat to Northern Ireland
Date: 03 February 2011 14:03:10
Attachments: [SUB 049 Minister content.pdf](#)
[SUB 049 Minister signed Min Colleagues.pdf](#)
[Exec Paper LCM Renewable Heat Executive Paper.DOC](#)
[Appendix 1 - 2008 Energy Act RHL powers.PDF](#)

Please find attached Ministerial clearance, for your records.

Christine McLaughlin

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From: McLaughlin, Christine
Sent: 02 February 2011 11:44
To: DCAL Assembly Section; DCAL, Private Office; Private Office DE; DEL Private Office Mailbox; Private Office DOJ NI; Private Office DFP; Private Office DHSSPS; Private, Office DOE; Private Office, DRD; DSD Private Office; PS Ministers; Private-Office, DARD
Cc: Hepper, Fiona; Sterling, David; Hill, Janice; Thomson, David (DET1); Clydesdale, Alison; Williamson, Ann; Press Office; McCune, David; Assembly Liaison Unit; Sinton, Dan; Connolly, Samuel; Neth_Energy; Press Office; Williamson, Ann; Attorney General NI; McConville, Eamonn; Paulin, Oswyn; Gray, George; excomm secretariat; Coleman, Roisin; Harkin, Michael; Aiken, Glynis; Stevenson, Valerie; Duffy, Michael
Subject: Draft Executive Paper (Version 1) re: Approval for a Legislative Consent Motion to Grant Enabling Powers for Renewable Heat to Northern Ireland

Please find attached Draft Executive Paper (Version 1) re: Approval for a Legislative Consent Motion to Grant Enabling Powers for Renewable Heat to Northern Ireland

Grateful for your comments to reach private.office@detini.gov.uk by close of play

4 February 2011.

Please ensure that you copy to your respective Special Advisor.

Christine McLaughlin

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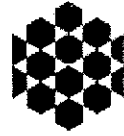
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Minister : Grateful for your
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Department of
**Enterprise, Trade
and Investment**

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Michaels
31/1/11

Copy Distribution List Below

From: Fiona Hepper
Energy Division

Date: 31 January 2011

To: 1. Andrew Crawford
2. Arlene Foster MLA

DETI SUB 049/2011

A content + Survey
1/2
- SPAD has indicated he is content
however has queried why can
we not go to the next EC
Meeting on 10th - why do we
have to wait until the 24th? SA
31

**LEGISLATIVE CONSENT MOTION FOR ENABLING POWERS FOR
RENEWABLE HEAT**

Issue: The opportunity has arisen to amend current GB legislation so that powers relating to renewable heat could be extended to Northern Ireland. In order for this to be achieved a Legislative Consent Motion needs to be agreed by the Executive and approved by the Assembly.

Timing: DESK IMMEDIATE : consideration and clearance is needed immediately if a Legislative Consent Motion is to be remotely possible before the Assembly is dissolved.

PfG implications: Not applicable

Need for referral to the Executive: The Executive will need to agree to the Legislative Consent Motion in advance of it being debated in the Assembly.

Presentational Issues: Not applicable.

Freedom of Information: Elements of this submission may be exempt under Section 35 of the Freedom of Information Act.

Financial Implications: HMT has advised that £25m of AME is available over the spending period should

Northern Ireland choose to introduce a RHI.

Statutory Equality Obligation: **Compliant; there are no Section 75 implications.**

Legislation Implications: **If the Executive approve the Legislative Consent Motion and it is passed in the House, DECC will amend the current 2011 Energy Bill in order to extend renewable heat powers to Northern Ireland.**

Recommendation: **That you agree to Energy Division seeking an LCM to extend enabling powers for renewable heat to Northern Ireland via an amendment to the DECC Energy Bill (2011).**

Background

In September 2010, you announced that DETI would seek to introduce a Renewable Heat Incentive (RHI) in Northern Ireland. The development of the renewable heat market will also support the wider energy policy goals of increased energy security, reduced CO₂ emissions and opportunities for 'green jobs'.

2. The Northern Ireland RHI would be similar to the scheme proposed in Great Britain by the Department of Energy and Climate Change (DECC) however because of the differences between the heat markets in GB and Northern Ireland it is important that a scheme is specifically tailored for the local market. This will be achieved by a detailed economic appraisal which will assist in designing a scheme which is both value for money and effective in Northern Ireland.

Legislative Position

3. As renewable heat is largely a new area of work, DETI does not currently have any primary powers that would allow the introduction of a RHI or payments to be made to generators of renewable heat. Therefore, for a scheme to be implemented DETI needs to take general enabling powers for renewable heat and then once a scheme has been developed, designed and agreed DETI would then draft secondary regulations which would specify how the scheme would be administered.

DECC Amendment

4. Officials in DECC have now offered to make an amendment to the current 2011 Energy Bill that would extend enabling primary powers for renewable heat to Northern Ireland. This would allow DETI to take more specific powers for a RHI scheme via secondary regulations, this is the method DECC have used in seeking to introduce the GB scheme (i.e. primary powers in the 2008 Energy

Act and secondary regulations currently being drafted.) For this to be achieved the Executive must agree to a Legislative Consent Motion (LCM) being tabled, and the Assembly must debate and approve such a motion.

5. The amendment required would extend the primary powers for renewable heat, taken by DECC in the 2008 Energy Act, to Northern Ireland. Energy Division officials are already in discussion with the Departmental Solicitor's Office (DSO) about the drafting of a potential amendment and, if appropriate wording can be agreed with DECC, we are hopeful that renewable heat powers could be extended to Northern Ireland via this method.
6. If wording can not be agreed at this stage, but Executive approval for the LCM can be achieved, there may be potential to continue discussions with DECC with a view to passing a LCM early in the life of the next Assembly. At that stage the 2011 Energy Bill will be in the House of Commons and, providing it would not delay the passage of the Bill, an amendment could still be made. However it is of utmost importance that DETI strives to gain Executive approval, agree an amendment with DECC and pass a LCM in advance of *purdah* if possible.

Way Forward

7. In order for this to be achieved the following actions are required;
 - a. Circulation of an Executive paper for agreement at the 24 February meeting..
 - b. Energy Division officials to work with DECC lawyers and DSO to agree an appropriate amendment to the 2011 Energy Bill.
 - c. DECC to table agreed amendment to the 2011 Energy Bill.
 - d. A Legislative Consent Motion to be taken in the Assembly before the Assembly is dissolved for elections.

Recommendation

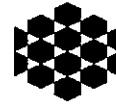
8. I recommend that you;
 - i. Agree to Energy Division officials seeking to introduce a Legislative Consent Motion to extend powers for renewable heat to Northern Ireland;
 - ii. Approve the draft Executive paper attached at **Annex B** (covering letter at **Annex A**); and
 - iii. Approve the letter to the ETI Committee Chair at **Annex C**.

(signed)
FIONA HEPPER
ENERGY DIVISION
(Ext 29215)

Distribution List:

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From the Office of the Minister



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Our Ref: DETI SUB 049/2011

FROM: ARLENE FOSTER MLA

DATE: 02 FEBRUARY 2011

TO: MINISTERIAL COLLEAGUES

APPROVAL FOR A LEGISLATIVE CONSENT MOTION TO GRANT ENABLING POWERS FOR RENEWABLE HEAT TO NORTHERN IRELAND

I attach a draft paper (version 1) which I intend to bring forward for consideration by the Executive at its meeting on 10 February 2011.

The paper relates to the scheduling of a Legislative Consent Motion (LCM) in the Assembly in order to grant the Department of Energy and Climate Change (DECC) the authority to amend current legislation to extend powers for renewable heat to Northern Ireland. The attached paper provides a background to renewable heat, an overview of the policy area and a discussion as to why taking these powers, via this route, is absolutely essential and time critical.

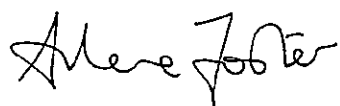
The essence of the issue is that if my Department is to positively support the renewable heat market and increase the levels of renewable heat in Northern Ireland, legislative powers must be taken as a matter of urgency. An opportunity to take these primary powers via an amendment to GB legislation has arisen. These general primary powers would allow my Department to introduce an incentive scheme in due course, once it is designed, appraised, consulted on and agreed by the Executive.

Taking these powers via this route is the most effective method in terms of timing; if this opportunity is missed it will result in an undue delay in introducing a renewable heat incentive in Northern and could also lead to the loss of a significant portion of the funding allocated by Her Majesty's Treasury. This is only the first step in developing a RHI, and in no way will commit DETI or the Executive to a certain course of action; instead it will ensure that DETI can act in an effective and timely manner once a scheme is agreed.

Supporting and developing the renewable heat market provides positive opportunities for Northern Ireland to reduce its' dependence on imported fossil fuels, to cut carbon emissions and to develop the emerging renewables industry with new 'green jobs'.

I trust that the attached Executive Paper will give you sufficient information on this policy area and the need for this course of action, **if you have any queries or issues with this proposal I should be grateful if you could raise them as a matter of urgency and no later than 4 February 2011** to allow for Executive consideration at the 10 February meeting.

I am also copying this paper to the Attorney General, the Departmental Solicitor, the First Legislative Counsel and the Executive Secretariat.

A handwritten signature in black ink, appearing to read 'Arlene Foster', written in a cursive style.

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

RESTRICTED EXECUTIVE**FROM: ARLENE FOSTER MLA****MEMORANDUM E (09) []****DATE: FEBRUARY 2011****TO: EXECUTIVE****APPROVAL FOR A LEGISLATIVE CONSENT MOTION TO GRANT ENABLING POWERS FOR RENEWABLE HEAT TO NORTHERN IRELAND****Introduction**

1. This paper seeks the agreement of the Executive for DETI to table a Legislative Consent Motion (LCM) in order to take powers for renewable heat via an amendment to the current Department of Energy and Climate Change (DECC) 2011 Energy Bill.
2. The powers sought by DETI are general enabling powers for renewable heat that, in turn, would allow DETI to seek the introduction of an incentive scheme for renewable heating technologies via secondary regulations in due course. In advance of a future incentive scheme being introduced all Government Departments will be fully consulted and the approval of the Executive sought.

Background

3. DETI is responsible for the development and maintenance of an appropriate legislative and policy framework for energy in Northern Ireland. The Strategic Energy Framework (SEF), agreed by the Executive in September 2010, covers the next 5-10 year period with a vision for a competitive, sustainable, reliable

energy market at the minimum cost necessary. Four key policy goals have been identified to support this vision as follows

- Competitiveness
- Security of Supply
- Infrastructure
- Sustainability

4. The agenda for developing renewable energy solutions and securing real reductions in energy consumption to enhance sustainability is driven by environmental policy, aimed at reducing harmful emissions. However, pursuing sustainability in energy also offers opportunities to enhance security of energy supply by introducing alternative generation sources, which are not subject to the price volatility of imported fossil fuels. Furthermore, development of indigenous sources offers opportunities for diversification and alternative sources of income.

Renewable Heat

5. Renewable heat is simply heat produced from renewable sources such as solar radiation, biomass materials, heat pumps, geothermal energy, anaerobic digestion and waste materials.
6. The EU Renewable Energy Directive (2009/28/EC), published in the Official Journal of the European Union on 5 June 2009, requires that member states ensure that 15% of their energy consumption comes from renewable sources by 2020. This requirement extends beyond electricity to heating and cooling and to transport. In line with this, the SEF includes a target to achieve a level of 10% renewable heat by 2020. This is broadly in line with targets of 12% for England and Wales, 11% for Scotland and 12% for the Republic of Ireland over the same time period.

The Great Britain Renewable Heat Incentive

7. In order to develop and encourage the renewable heat market in Great Britain, the Department of Energy and Climate Change (DECC) intend to introduce a Renewable Heat Incentive (RHI) from June 2011. This policy was first suggested in the DECC Renewable Energy Strategy in July 2009 with the detail regarding the design and implementation of the scheme published in February 2010 through a public consultation document¹.
8. DECC are currently in the process of submitting final proposals for the design and implementation of the RHI to Ministers. It is expected that the final details of the scheme will be published by the end of February 2011 in order for the scheme to be in place for June 2011. DECC are also currently drafting regulations for the implementation of the scheme, these will be laid in Parliament in May/June 2011.

The Northern Ireland Heat Market

9. The scheme proposed for GB will not apply to Northern Ireland as the differences between the heat markets mean that a separate assessment of the appropriate method of developing the local market is required. Northern Ireland is largely dependent on oil (77% of total heat demand) with a developing natural gas market, whereas in GB the gas market is well established and is the predominant fuel source. There are also differences in fuel prices between GB and Northern Ireland and the amount of our income that goes towards heating our homes and businesses, as a consequence the levels of fuel poverty tend to be higher. Finally the geography of Northern Ireland is very different to GB, with Northern Ireland being more rural with fewer larger cities and therefore having a very different heat density. All these factors have meant that it was appropriate for a separate consideration to be given as to how the heat market here might be encouraged and incentivised.

¹ <http://www.decc.gov.uk/en/content/cms/consultations/rhi/rhi.aspx>

10. Over 98% of Northern Ireland's heat demand is met through imported fossil fuels, with only 1.7% coming from renewable sources, this has obvious implications for fuel security issues and carbon emissions. Oil provides the majority of heating at 77% of the overall demand. Gas is the second largest heating provider at 17% of the overall demand. Coal currently meets around 3.2% of the overall demand, electricity (E7) and biomass both provide about 1.5% of the overall heating. The majority of heat used is in the domestic sector, at 61% of the total heat demand or 10.6 TWh. The large industrial sector consumes an estimated 22% of the total heat demand; interestingly this heat demand is generated by only 17 large industrial sites. The commercial sector accounts for 12% of heating demand and finally the public sector 4%.
11. Looking forward to 2020, Northern Ireland's overall heat demand is predicted to drop from current levels of 17.4 TWh to 16.7 TWh, with rises in demand from new development being outweighed by reductions in demand with efficiency improvements in the existing sector. Considering the net reduction of heat demand to 16.7 TWh in 2020, the 10% target for renewable heat therefore equates to 1.6TWh. With current renewable heat levels around 300 GWh, an additional 1300 GWh or 1.3 TWh of renewable heat therefore needs to be developed.
- 12.²A study undertaken by DETI has demonstrated that whilst the current uptake of renewable heating technologies is low there is significant potential for development and growth. By developing and supporting this industry there are opportunities to increase fuel security by reducing Northern Ireland's dependence on imported fuels, cut carbon emissions by switching to cleaner more sustainable technologies and create 'green jobs' in new industries.
13. In September 2010 I announced that my Department would seek to support the renewable heat market in Northern Ireland by developing a RHI scheme³, similar to the GB proposals, but specifically designed and tailored to incentivise

² http://www.detini.gov.uk/executive_summary_-_renewable_heat_study

³ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-deti/news-deti-september-2010/news-deti-200910-foster-recognises-importance.htm>

the local market, work on this has already begun. In response to this announcement, Her Majesty's Treasury (HMT) allocated £25m for the spending review period for a Northern Ireland RHI, should one be introduced. This is a significant level of funding and will have a positive impact on this emerging industry.

The need for legislative powers

14. In order for an incentive scheme to be introduced in the future, DETI will need legislative powers to create tariff structures, set eligibility standards, make payments etc. Currently DETI does not hold any primary powers for this area of work. DECC took primary powers for renewable heat via last minute amendments to the ⁴2008 Energy Act, these are very general enabling powers that in turn will allow the RHI to be designed and implemented through specific secondary regulations.

15. Through discussions my Department has held with counterparts in DECC the opportunity has arisen to amend the current DECC Energy Bill (2011)⁵ to grant general renewable heat powers in Northern Ireland. Taking these powers through this route will allow my Department to introduce an incentive scheme via detailed secondary regulations in a timely manner. If this opportunity is missed there could be significant ramifications for the date at which an incentive scheme could be introduced which, in turn, would have a negative impact on the local market and result in losing an element of the funding provided by HMT.

The way forward

16. Therefore, if the Executive is in and agreement and if an appropriate legislative amendment can be agreed between my Department and DECC within the necessary timescales, it would be my intention to seek an immediate Legislative Consent Motion to allow DECC to extend general powers for renewable heat to

⁴ <http://www.legislation.gov.uk/ukpga/2008/32/part/5/crossheading/renewable-heat-incentives>

⁵ <http://services.parliament.uk/bills/2010-11/energyhl.html>

Northern Ireland. These general powers would be akin to those taken by DECC in 2008 and are attached separately at **Appendix 1** for your information.

17. The next steps in the renewable heat policy work include the ongoing economic appraisal of a RHI for Northern Ireland, the subsequent design of a RHI, and finally the development of a Strategy for Renewable Heat. It would be my intention that there would be significant co-operation and consultation across relevant departments as this work progresses and, in turn, a full public consultation.

Recommendation

18. I therefore recommend that the Executive agrees to the tabling of a Legislative Consent Motion, once appropriate legislative language is agreed by DETI and DECC, that would enable DECC to amend the current Energy Bill (2011) to extend general powers for renewable heat to Northern Ireland.

ARLENE FOSTER MLA

Minister of Enterprise, Trade and Investment