

**From:** [Hepper, Fiona](#)  
**To:** [Private Office DETI](#)  
**Cc:** [Sterling, David](#); [Thomson, David \(DETI\)](#); [Clydesdale, Alison](#); [Williamson, Ann](#); [Hutchinson, Peter](#); [Aiken, Glynis](#); [Neth Energy](#); [Press Office](#)  
**Subject:** DECC ENERGY BILL - RENEWABLE HEAT INCENTIVE POWERS  
**Date:** 03 March 2011 08:32:05  
**Attachments:** [DECC SoS re RHI LCM.DOC](#)  
**Importance:** High

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Private Office

See attached which would need to issue before the RHI LCM debate on 14 March

Fiona

## **Fiona Hepper**

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**From:** Fiona Hepper

**Date:** 3<sup>rd</sup> March 2011

1. Andrew Crawford
2. Arlene Foster MLA

**DECC ENERGY BILL – RENEWABLE HEAT INCENTIVE POWERS**

**Issue:** Following Executive approval for a Legislative Consent Motion in regards to Renewable Heat it is recommended that you write to Chris Huhne, Secretary of State for the Department of Energy and Climate Change (DECC), to inform him of progress.

**Timing:** Desk Immediate : This letter should issue in advance of the LCM debate, currently scheduled for 14 March 2011.

**Need for referral to the Executive:** Not applicable at this stage.

**Presentational Issues:** None.

**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.

**Legislation Implications:** A Legislative Consent Motion is required so DECC can amend current legislation so renewable heating powers can be extended to Northern Ireland.

**PSA/PFG Implications:** None at present, but it is likely that new PSA targets in relation to renewable heat will have to be developed.

**Statutory Equality Obligations:**            **Not applicable.**

**Recommendation:**            **I recommend that you write to Chris Huhne to update him on progress in relation to the LCM. A draft is attached at Annex C for your consideration.**

## **Background**

You have previously corresponded with Chris Huhne on joint areas of interest within the current Energy Bill. The issue of an amendment to cover renewable heat was raised in Chris Huhne's letter of 10<sup>th</sup> November 2010 (attached at **Annex A**) and you reinforced the need to co-operation in this area again in your response of 3<sup>rd</sup> December 2010 (attached at **Annex B**).

2. At its meeting of 10<sup>th</sup> February 2011, the Executive agreed to the tabling of a Legislative Consent Motion (LCM) to extend powers relating to renewable heating to Northern Ireland. Following the ETI Committee's consideration of this issue on 24<sup>th</sup> February, the Motion has now been scheduled for debate on 14<sup>th</sup> March.
3. Energy Division's external legal advisors (SNR Denton) have drafted instructions for parliamentary council to assist in this process. These instructions are currently with Departmental Solicitor's Office (DSO) for consideration and should be cleared and available to send to DECC this week.

## **DECC Position**

4. Through discussions between Energy Division officials and DECC officials it had been agreed that an amendment could be made to the current Energy Bill 2011 that would extend powers for renewable heat, contained within the 2008 Energy Act, to Northern Ireland. For this to be achieved a LCM needs to be passed in the Assembly granting DECC powers to legislate on behalf of Northern Ireland and appropriate legislative wording must be agreed between DETI and DECC.
5. Whilst DECC have offered to consider the option of amending the current Energy Bill to extend renewable heat powers to Northern Ireland, I understand that officials and Ministers in DECC do not wish to delay the Bill and are seeking Royal Assent in July 2011. Indeed, DECC officials have advised that they still need to gain written agreement from their Ministers' that they are content to allow the RHI amendment as part of this Bill.
6. Therefore it is considered appropriate, at this stage, for you to write to Chris Huhne reinforcing the Northern Ireland Executive's commitment to

the amendment and DETI's full commitment to meeting the challenging timescale that the process brings.

7. Although the timescales for our proposed amendment are challenging, both from a DECC and DETI point of view, we are confident that they can be achieved, as the timely endorsement of the Executive for the LCM and the fact we already have the LCM drafted indicates.

**Recommendation**

8. In order to update DECC on our progress and current position, to reinforce the absolute necessity of this amendment and to provide assurance from the highest level in the Department that we are ahead of schedule on our aspects of this work, I would recommend that you write to Chris Huhne, Secretary of State for DECC. A draft letter is attached at **Annex C** for your consideration.

**(signed)**  
**FIONA HEPPER**  
**ENERGY DIVISION**  
**(Ext 29215)**

Distribution List:

cc: David Sterling  
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## Annex A



**The Rt Hon Chris Huhne MP**  
Secretary of State

Department of Energy & Climate Change  
3 Whitehall Place  
London  
SW1A 2AW

[www.decc.gov.uk](http://www.decc.gov.uk)

Arlene Foster MLA  
Minister for Enterprise, Trade and Investment  
Department of Enterprise, Trade & Investment  
Netherleigh  
Massey Avenue  
Belfast  
BT4 2JP

10 November 2010

Dear Arlene

### **ENERGY SECURITY AND GREEN ECONOMY BILL**

I wrote to you on 4 October 2010 outlining our plans to introduce the Energy Security and Green Economy Bill as a first step in our legislative programme to implement some of the key elements of the Coalition Agreement and Annual Energy Statement. I am pleased to be writing to you now to inform you of my intention to seek Parliamentary Business and Legislation Committee approval, with the aim of introducing the Bill in the House of Lords around the second week of December 2010.

I am pleased your officials have continued to work closely with mine and I would like to thank them for their hard work and support as they have helped develop the Bill to a very challenging timetable.

I understand our officials have reached agreement and would like to confirm only two measures in the Bill will apply to Northern Ireland, those related to nuclear funded decommissioning and to the UK Continental Shelf, which relate to reserved matters.

The first measure, on nuclear funded decommissioning programmes, will enable me to enter into an agreement with an operator of a new nuclear power station setting out the manner in which I will, or will not, exercise my power to propose a modification under the Energy Act 2008. The measure is designed to ensure that there is an appropriate balance between my powers to protect the taxpayer and the operator's need for clarity over how those powers will be exercised. In entering such an agreement I will, to some extent be fettering my future discretion, but will have done so with a view of securing prudent provision is made for the liabilities. This policy will contribute to clarifying liabilities by giving prospective operators greater certainty over the costs of their decommissioning and waste management.

The second is to provide flexibility in designating areas of UK continental shelf. This will enable better management of resources, including hydrocarbon resources, thus contributing to improved energy security for the UK.

Our officials are in agreement that these are reserved matters and as such a Legislative Consent Motion will not be required.

Through the Bill I am also repealing the Home Energy Conservation Act in England, Wales and Scotland as I do not believe it is effective in GB in delivering its intended objective of increasing energy efficiency. However, officials from your Department for Social Development (DSD) have confirmed they do not want to repeal the Act in Northern Ireland, as it remains a useful tool in Northern Ireland.

I understand your officials also made a number of recent requests involving: the Renewables Obligation in Northern Ireland; offshore decommissioning; and the Renewable Heat Incentive. My officials are working constructively together with them on the development of these policies.

I look forward to your agreement on how the Bill applies to Northern Ireland and will ensure my officials continue to engage with yours throughout the legislative process.

I am copying this letter to the Secretary of State for Northern Ireland and Sir Gus O'Donnell.

A handwritten signature in black ink, appearing to read 'Chris Huhne', with a long, sweeping horizontal stroke extending to the right.

**CHRIS HUHNE**

## Annex B

From the Office of the Minister



Department of  
**Enterprise, Trade  
and Investment**  
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Our Ref: DETI COR 553/2010

The Rt Hon Chris Huhne MP  
Secretary of State  
Department of Energy and Climate Change  
3 Whitehall Place  
LONDON  
SW1A 2AW

3<sup>rd</sup> December 2010

*Dear Chris,*

### **ENERGY SECURITY AND GREEN ECONOMY BILL**

Thank you for your letter of 10 November advising of your intention to seek Parliamentary Business and Legislation Committee approval for the Energy Security and Green Economy Bill that you plan to introduce in December.

I am content that only two of the measures, namely those related to nuclear funded decommissioning and to the UK Continental Shelf, will apply to Northern Ireland. I agree that both of these areas relate to reserved matters and as such a Legislative Consent Motion will not be required.

I welcome this legislative action as it helps to improve security of energy supply for the United Kingdom as a whole. I am pleased that this work further supports the work underway between DECC and DETI officials to advance collaborative action on security of supply. This will strengthen the links between the two Departments and ensure early compliance with the new Security of Gas Supply Regulation.

There are a number of other issues, in the wider context of this Bill that I would like to comment on:-

#### **Renewable Heat Incentive Powers**

We remain grateful for the way that DECC has included Northern Ireland in the funding for the Renewable Heat Incentive. I understand that officials are working towards an amendment to the Energy Bill in due course to extend the RHI powers to Northern Ireland. We are keen to also work with DECC to maximise economies of scale in relation to delivery of an RHI and we would appreciate early sight of your final proposals for the RHI prior to public release.

#### **Green Deal**

The Green Deal proposals only extend to GB, however our officials are working closely to ensure that some elements of the Green Deal can operate across the UK – for example the accreditation scheme, and the list of Green Deal suppliers. This would be useful, not only to allow Northern Ireland companies access to the GB marketplace

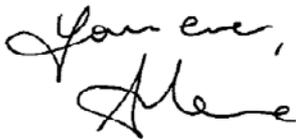
but also to allow us to maximise economies of scale, should we choose to roll out a similar scheme here. I would welcome ongoing co-operation in this area.

### **Offshore decommissioning**

The current arrangements for decommissioning of offshore renewable electricity installations under the 2004 Energy Act extend to Northern Ireland. But, unfortunately, our territorial waters were not included in the definition of geographical coverage and therefore these provisions have no practical effect in Northern Ireland.

I accept that the Northern Ireland Assembly may have legislative authority in this area. However, I believe that there are good reasons why the work should be undertaken by DECC, in a similar manner to the way in which DECC handles licensing for gas storage in Northern Ireland waters. I understand DECC staff have offered to advise Northern Ireland on this issue but, unfortunately, we do not have the experience to undertake this work. I believe it would be better if this issue could be handled on a UK wide basis by an expert and experienced team, to ensure the consistency of approach on a key issue for the development of the offshore sector. Also from a potential inward investment perspective, UK wide legislation administered by one body would be a much more reassuring and attractive proposition. I would therefore be very grateful if DECC could reconsider the position on this, as the current Energy Bill presents a very timely opportunity to make the necessary changes and include Northern Ireland.

I look forward to the progression of the Bill and I have asked my officials to keep me updated on progress with the renewable heat amendment.

A handwritten signature in black ink, appearing to read 'Arlene Foster', with a small mark to the right.

**ARLENE FOSTER MLA**  
Minister of Enterprise, Trade and Investment

**Annex C****DRAFT LETTER**

The Rt Hon Chris Huhne MP  
Secretary of State  
Department of Energy and Climate Change  
3 Whitehall Place  
London  
SW1A 2AW

Dear

**ENERGY BILL – RENEWABLE HEAT INCENTIVE POWERS FOR  
NORTHERN IRELAND**

We previously corresponded in regards to the Energy Security and Green Economy Bill, now known as the Energy Bill. In your letter of 10<sup>th</sup> November 2010, you updated me on progress with the Bill and mentioned areas where our officials were working constructively together, one of these areas was in relation to **powers for renewable heat**. In my reply (3<sup>rd</sup> December 2010), I specifically highlighted this as an issue in which officials from our respective Departments would need to work collaboratively and I am very grateful for the assistance that my officials have received so far.

You will be aware that my Department does not currently hold primary powers for renewable heat as the powers taken by DECC as part of the 2008 Energy Act (Section 100) do not extend to Northern Ireland. Through our correspondence and discussions at official level the opportunity to use the current Energy Bill to amend the existing powers has arisen.

I understand the timescales involved in achieving Royal Assent for your Energy Bill by July 2011 are challenging and therefore if an amendment is to be made to extend renewable heating powers to Northern Ireland my Department must move quickly. I want to assure you that work is well underway by my officials on this matter.

Indeed given the importance of this issue, and the pressing timetable, I have already taken the step of gaining the agreement of the Northern Ireland Executive to pursue this course of action. Given that I have all party support for this measure, the LCM is due to be debated, before dissolution, on the 14<sup>th</sup> March in the Northern Ireland Assembly. I have attached the Legislative Consent Memorandum at **Appendix I** for your information.

Instructions to parliamentary counsel, as requested by your officials, have now been drafted in relation to the amendment and should be with your officials week no later than commencing 7<sup>th</sup> March.

I wish to assure you that I fully appreciate the challenging timescales you face to ensure Royal Assent by the end of the parliamentary session and I would not wish to jeopardise the passage of the Energy Bill in any way.

However I want to stress that an amendment that would extend the same powers held in Section 100 of the 2008 Energy Act to Northern Ireland is vital to allowing my Department to introduce a specific RHI for Northern Ireland, using separate secondary regulations, in time to utilise HMT funding and support the achievement of both DETI and UK-wide targets. In addition it will ensure that Northern Ireland's renewable heat market is not disadvantaged in comparison to the rest of the United Kingdom.

I would therefore seek your support in securing this amendment to the Energy Bill so that the development of the renewable heat market in Northern Ireland can make a substantial contribution to the UK's renewable energy targets.

**ARLENE FOSTER MLA**

**Minister of Enterprise, Trade and Investment**

## Appendix I

## LEGISLATIVE CONSENT MEMORANDUM

## ENERGY BILL – EXTENSION OF RENEWABLE HEATING POWERS

## Draft Legislative Consent Motion

1. The draft motion is:

***"That this Assembly agrees that the UK Parliament should consider amendments to the Energy Bill to provide powers for the Department of Enterprise, Trade and Investment to establish a scheme to facilitate and encourage renewable generation of heat, including the administration and financing of the scheme."***

## Background

2. The Energy Bill was introduced in the House of Lords on 8 December 2010. The Bill can be found at:

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

3. DETI is seeking an amendment to this Bill that would extend powers relating to renewable heating to Northern Ireland, in turn these powers would allow DETI to establish a Renewable Heat Incentive (RHI) in Northern Ireland to encourage the development and uptake of renewable heat generation.
4. The Department of Energy and Climate Change (DECC) already have powers for renewable heat, these were taken as part of the 2008 Energy Act. DETI is seeking an extension of these powers to Northern Ireland via an amendment to the current Bill. The relative powers can be found at:

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

## 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 Strategic Energy Framework (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.

7. In order to develop and encourage the renewable heat market in Great Britain, 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 document.
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 in March 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.

#### **A Renewable Heat Incentive for Northern Ireland**

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.
10. A 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.
11. DETI is currently undertaking an economic appraisal of a RHI for Northern Ireland. This work will assess the various options for incentivising the renewable heat market and assist in designing a cost-effective RHI which

is tailored specifically for the local heat market. This work will complete in April 2011.

### Content of the Energy Bill

12. The Energy Bill has three principal objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and enabling investment in low carbon energy supplies. In summary, the Bill seeks provisions for:

- The Green Deal in GB.
- The Private Rented Sector.
- Energy Company Obligation.
- Measures to improve energy efficiency.
- Measures to improve energy security.
- Measures to enable low carbon technologies.
- Measures extending the role of the Coal Authority.

13. None of the current provisions of the Bill apply to Northern Ireland.

### Aims of the amendment to the Energy Bill

14. **The sole purpose of this legislative consent motion is to allow DECC to amend the current Energy Bill to include provisions to extend renewable heating powers to Northern Ireland.** This is required to provide DETI with the legislative base to introduce an incentive scheme in the future, via secondary legislation, and to create tariff structures, set eligibility standards, make payments etc.

15. 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 2008 Energy Act, these are general enabling powers that in turn will allow the RHI to be designed and implemented through specific secondary legislation. The amendment to the Energy Bill will extend these powers to Northern Ireland.

16. The actual design and implementation arrangements of a RHI for Northern Ireland will be prescribed by secondary legislation, to be agreed and passed in the Assembly. The taking of primary powers, in this way, will allow the timely introduction of these regulations in the new mandate.

### Consultation

17. The target of achieving an energy mix of 10% renewable heat by 2020 was included on the wider consultation on the draft Strategic Energy Framework in July 2009. There was positive response in terms of the renewable heat target and plans to develop the market similar to the plans in Great Britain.

18. DETI intend to carry out a full public consultation on the design and implementation of a RHI for Northern Ireland once the scheme is developed and agreed. The public consultation is likely to begin in June 2011.

### **Financial implications**

19. Her Majesty's Treasury (HMT) has allocated £25m for the spending review period for a Northern Ireland RHI, should one be introduced. The funding is split over the budget period with £2m in year one, £4m in year two, £7m in year three and £12m in the final year. This is a significant level of funding and will have a positive impact on this emerging industry.
20. If the introduction of a RHI in Northern Ireland is delayed, because of the lack of the necessary powers or other issues, there is a danger that this funding would not be utilised. The amendment in the Energy Bill will assist in the timely introduction of a RHI scheme.

### **Conclusion**

21. DETI is committed to developing a diverse, sustainable and secure heat market in Northern Ireland. The development of the renewable heat market will support this goal as well as creating new opportunities for 'green jobs' and assisting in reducing overall carbon emissions. The design and implementation of a Northern Ireland RHI will support the development of the renewable heat market and the achievement of the Executive-endorsed 10% for 2020.
22. It is the view of the Minister of Enterprise, Trade and Investment, as supported by the Northern Ireland Executive, that by amending the current Energy Bill to extend renewable heating powers to Northern Ireland that a RHI could be introduced locally in a timely manner to ensure funding is utilised and to prevent the local industry being unduly disadvantaged.
23. In order to support the local renewable heat market and to assist in increasing the uptake of renewable heating technologies, the Minister of Enterprise, Trade and Investment commends this Legislative Consent Motion to the Assembly.

**Department of Enterprise, Trade and Investment  
March 2011**