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From: Fiona Hepper

Date: 18 March 2011

1. Andrew Crawford
2. Arlene Foster MLA

COR 146/11: ENERGY BILL – RENEWABLE HEAT INCENTIVE POWERS

Issue: Chris Huhne, Secretary of State for the Department of Energy and Climate Change (DECC), has written to inform you of progress with the ongoing DECC Energy Bill. The letter also raises a number of issues regarding potential amendments to the Bill.

Timing: Urgent : The timescale to amend the Energy Bill is challenging, therefore it is essential that a reply issues to DECC as soon as possible to ensure the RHI amendment is included.

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 was passed in the Assembly on 14 March 2011, to enable DECC to amend the Energy Bill to include Renewable Heating powers for Northern Ireland.

Subordinate Legislation will be required in due course.

PSA/PFG Implications:	None at present, but it is likely that new PSA targets in relation to renewable heat may have to be developed.
Statutory Equality Obligations:	Not applicable.
Recommendation:	That you reply to Chris Huhne using the draft attached at Annex A.

Background

Chris Huhne, Secretary of State of the Department of Energy and Climate Change (DECC), has written to you to provide an update on the Energy Bill and to raise a number of issues where officials have been working closely, namely the Green Deal, the Renewable Heat Incentive (RHI) and Offshore Decommissioning.

2. You have previously corresponded with Chris Huhne on joint areas of interest within the current Energy Bill.

Renewable Heat Incentive Amendment to the Energy Bill

3. You will be aware, that through discussions between Energy Division 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 Legislative Consent Motion was required. Following Executive approval on 10th February 2011 and ETI Committee support at its meeting on 24th February 2011, a LCM was tabled and passed in the Assembly on 14th March 2011.
4. Energy Division's external legal advisors (SNR Denton) have drafted instructions for parliamentary council to assist in this process. These instructions have been cleared with Departmental Solicitor's Office (DSO) and have been forwarded to colleagues in DECC to advise on the wording of the required amendment. A copy of the instructions is included in the response to Chris Huhne and is attached at **Appendix I**. It is recommended that these are included with the letter to Chris Huhne.
5. Whilst DECC have offered to consider the option of amending the current Energy Bill to extend renewable heat powers to Northern Ireland, officials and Ministers in DECC do not wish to delay the Bill and are seeking Royal Assent in July 2011. The speedy passage of the recent LCM and the drafting of Parliamentary Instructions should assist DECC in drafting and tabling the amendment in a timely manner.

5. 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.

GB Renewable Heat Incentive

6. DECC has also just recently published the final design of the RHI scheme to be introduced in Great Britain in June 2011. DECC are now proposing a two phased approach, with the RHI only available to the non-domestic market in the first phase. The domestic market will then enter the RHI scheme from October 2012 and will be aligned to the Green Deal in GB. In the interim DECC intend to provide "Renewable Heat Premium Payments", basically a capital grant, for early adopters within domestic market from July 2011.
7. It is clear from the GB scheme that DECC is focussed on the most cost-effective renewable heating installations, hence the focus on non-domestic in the first phase. However the DECC document does state that the GB RHI is subject to state aid approval. There is also an acknowledgment that new installations should be targeted off the gas-grid where possible.
8. Officials in Energy Division will consider the GB proposals as the economic appraisal of a Northern Ireland scheme continues. There will also need to be further discussions with DECC in order to understand how the RHI in GB will be implemented and administered..
9. The issue of funding post 2015 remains uncertain, however it now appears highly unlikely that DECC will impose a fossil fuel levy. DECC has committed to 20 year tariffs in the non-domestic sector at this stage and as DETI develops proposals for Northern Ireland it will be important to understand the funding position post 2015 so similar decisions can be taken.

Offshore Decommissioning

10. This is a firm and negative response from Chris Huhne, even though certain DECC officials have acknowledged that our approach makes sense since DECC administers decommissioning schemes for GB. We have no choice but to accept this decision and move on. However, it may be that once we have appropriate NI legislation in place there might be scope for us paying DECC to undertake the actual decommissioning work on our behalf. We will follow this up in due course.

Electricity Market Reform (EMR)

11. A submission is still with you with a draft letter to Charles Hendry setting out the significant adverse consequences of DECC's EMR package on both conventional and renewable generation in Northern Ireland. While both Chris Huhne and Charles Hendry have travelled to Scotland to

discuss Scottish issues around EMR, and a DECC official was present at the DETI EMR stakeholder event, there has as yet been no DECC Ministerial engagement on this issue with Northern Ireland. It appears that DECC officials have not fully taken into account the potential impact on Northern Ireland and, since the opportunity of engaging with the DECC Secretary of State presents itself, it may be worth advising Chris Huhne that you are planning to write separately to Charles Hendry on EMR. .

Recommendation

12. I would recommend that you respond to Chris Huhne, Secretary of State for DECC, using the draft letter attached at **Annex A**.

(signed)
FIONA HEPPER
ENERGY DIVISION
(Ext 29215)

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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

Thank you for your letter of 10 March 2011, outlining the progress of the Energy Bill and providing an update on areas where officials have been working constructively together.

Renewable Heat Incentive

I am delighted that our officials have been able to work constructively on this issue and that good progress has been made. I wish to assure you that I fully appreciate the challenging timescales you face to ensure Royal Assent by July 2011 and I would not wish to jeopardise the passage of the Energy Bill in any way.

I have therefore already brought this matter before the Executive and the Assembly. At its meeting of 10th February the Executive was content with the proposal that your Department would consider amending the current Energy Bill to extend primary powers for renewable heat to Northern Ireland. Consequently, a Legislative Consent Motion (LCM) was tabled and passed in the Northern Ireland Assembly on Monday, 14th March, to enable your Department to legislate on behalf of Northern Ireland in this area. The timely passage of the LCM highlights the importance my Department, the

Executive and the Assembly gives to this issue and demonstrates the commitment to developing the renewable heat market in Northern Ireland. Instructions to Parliamentary Council, which will assist in the drafting of the proposed amendment, have been drafted and circulated to relevant officials in your Department; I have also attached a copy of the instructions at **Appendix I** for your information.

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 unduly disadvantaged in comparison to the rest of the United Kingdom.

I would therefore ask for your support and assistance 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.

In addition, I have read with interest your Department's final proposals for the RHI to be in place from June 2011 in Great Britain. My Department is currently carrying out an economic appraisal of a potential Northern Ireland RHI to advise on structure, tariff levels, eligibility etc. Obviously, my officials will consider your proposals as a parallel scheme specifically for Northern Ireland is designed and developed. I am sure that you would agree that it would be useful if officials from our respective Departments could work closely together as my Department's work progresses. Specifically, it will be important for my officials to fully understand how the GB RHI will be implemented and administered; as well as how it will be funded post 2015.

Offshore decommissioning

Thank you for your consideration of the offshore decommissioning issue. I am sorry that Northern Ireland will be the only devolved administration in the UK that will have to administer its own decommissioning scheme. My officials would be glad to engage with yours and learn from their experience in this field: they will be in touch in due course as they develop the relevant legislation.

Electricity Market Reform (EMR)

Although officials have been engaging with DECC on this issue, you may not yet be aware of the significant impact that the EMR package will have on Northern Ireland, both for conventional and renewable electricity generation. My Department has submitted a detailed response to the EMR consultation and it is my intention to write separately to Charles Hendry on this matter.

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

Appendix I

Instructions to parliamentary council attached separately