

From: [Stewart, Chris \(DFE\)](#)
To: [Wightman, Stuart](#); [McCormick, Andrew \(DFE\)](#)
Cc: [Marten, Lucy](#); [McCann, Brendan](#); [Smith, Alan](#); [Cousins, Heather](#); [McIlwrath, Linda](#)
Subject: RE: Options for RHI Consultation Document
Date: 10 November 2016 12:24:27
Attachments: [image001.png](#)
[image002.gif](#)

Stuart

Thank you.

Andrew has asked that we seek legal advice from the Attorney General (via DSO).

I suggest that we focus initially on the fundamental legal position, to test the scope for the sort of action that we envisage (this could be followed up with more detailed a request for advice on particular options, on the assumption that the initial advice does not rule everything out).

May I suggest a paper along the following lines for DSO to send:

- policy background to the scheme;
- key features of the legislation and guidance (including known weaknesses, limitations, ambiguities and errors);
- a timeline of 'events';
- the core problem to be addressed i.e.
 - without action, rates of return for many participants would significantly exceed the terms of the state aid approval for the scheme; therefore
 - we face a choice between taking action to bring rates of return back within limits, or clawing back excess aid;
- types of option
 - legislation and tariffs unchanged – action limited to inspection and enforcement action for 'category 2, 3 and 4 cases' where it is reasonable to do so (null / do minimum option – won't work);
 - tariff changes for installations of certain technologies and size (your options 2 and 3); and
 - terminating existing payment agreements and making compensatory payments.

I would be wary of including too much detail on options at present (we need legal advice on fundamental issues first), but you could make it clear that, under the second and third options, revised tariffs or compensatory payments would be calculated to ensure that each generator received a rate of return of between 12% and 22%.

A variation on option 3 that may be worth testing would be a mechanism to seek voluntary agreements to compensatory payments, with a backstop power for compulsory termination with compensation. The former might be made a little more generous than the latter (subject to the state aid limits) to provide an incentive.

C

From: Wightman, Stuart
Sent: 08 November 2016 17:57
To: McCormick, Andrew (DFE); Stewart, Chris (DFE)
Cc: Marten, Lucy; McCann, Brendan; Smith, Alan; Cousins, Heather
Subject: Options for RHI Consultation Document

Andrew / Chris

I am meeting Victor and his team tomorrow to discuss the analysis work needed for the Cost Control Options to be included in the Consultation Document. I am therefore keen to narrow down the options. Further to our recent discussions, I propose to proceed on the basis of the three possible options below. We have to seek legal advice on Option (1). Options (2) and (3) are effectively the same in terms of what participants are likely to receive but option (3) will be much easier to administer and predict monthly payments with no tiering involved.

Please let me know if you wish to amend or extend the proposed options.

Thanks, Stuart

(1) Buy-out / Scheme Termination

This option would involve revoking the Regulations to terminate the scheme for all technologies and provide the 2,100 scheme participants with a single payment to cover their capital costs plus the 12% rate of return (approved by the EU Commission).

I think we would have to accept that some participants will receive more than the 12% because of the payments they've made to date. The EU State approval for the 12% rate of return was set against a range of 8-22%. To try and estimate the capital return that participants have received to date so this can be netted off their payments will be particularly challenging. A complex analysis will need to be carried out to estimate how much capital individual recipients will have received up to the point of termination so that this can be netted off their payment. This is compounded by the fact that there are still around 200 applications still to be processed.

(2) Place all the medium biomass installations onto the post November 2015 tariff (6.5p/Kwh reducing to 1.5p/Kwh after 1,314 hours capped at 400,000KWh)

This option would involve amending the Regulations to move all the medium biomass installations on the flat 6.5p onto the tiered tariff that was introduced in November 2015. The other technologies on the scheme would not be changed. This would bring all recipients back within the 8-22% rate of return range.

To accurately calculate the rate of return, a complex analysis will again be needed to estimate how much of capital return individual recipients will have received up to the point of termination so that this can be added to their future returns under the new tariff. This is compounded by the fact that there are still around 200 applications still to be processed.

(3) Place all the medium biomass installations onto a flat 1.5p tariff (capped at 400,000KWh) and provide single annual capital payment.

This option is effectively the same as Option (2) but instead of providing an uplifted tariff for the first 1,314 hours to provide capital return/payback, a flat lower tariff is provided to cover the additional running costs of biomass (over oil) and a single annual payment is provided to cover the capital payback. The 1.5p tariff would be reviewed annually.

Stuart Wightman

Energy Efficiency
Department for the Economy
Netherleigh
Massey Avenue
Belfast, BT4 2JP

Tel: 028 9052 9425 (ext: 29425)

Mob:

Personal information redacted by the RHI Inquiry

TextRelay: 18001 028 9052 9425

Web: www.economy-ni.gov.uk



[NI Year of Food & Drink 2016](#)

Please consider the environment - do you really need to print this e-mail?