

**From:** [Moore, Stephen \(DFE\)](#)  
**To:** [Kelly, Angela](#)  
**Cc:** [Marten, Lucy](#); [McMurray, Stephen](#); [McGinn, Paul](#); [Murphy, Shane](#); [McCormick, Andrew \(DFE\)](#); [Willis, Adele](#)  
**Subject:** NI RHI scheme - compliance with EU law  
**Date:** 19 January 2017 14:23:08  
**Attachments:** [image001.png](#)

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Angela

Thanks for your call earlier. Hope that my explanations were helpful.

Just to confirm the question and what we discussed.

Q - What must we do to comply with EU law?

As discussed, State aid approval is only needed for the non-domestic NI RHI scheme as it provides financial assistance to 'undertakings', as set out in Articles 107(1) to 107(3) of the Treaty on the Functioning of the European Union (TFEU).

TFEU - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2008.115.01.0001.01.ENG&toc=OJ:C:2008:115:TOC#C\\_2008115EN.01004701](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2008.115.01.0001.01.ENG&toc=OJ:C:2008:115:TOC#C_2008115EN.01004701)

**Article 107(1)** - *Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*

Undertakings are entities that engage in 'economic activities' and the legal status of the entity doesn't matter. Essentially companies, partnerships, sole traders, charities, social economy enterprises, even public authorities (e.g. councils) can all be classified as 'undertakings' and, if State aid is provided to them, regardless of what the State aid is for, because they are engaged in economic activities, the State aid rules need to be respected.

As you will see, Article 107(1) details that 'any aid' is 'incompatible with the internal market' unless 'otherwise provided in the Treaties' and Articles 107(2) and (3) then go on to explain the types of aid that 'shall be compatible' and 'may be considered to be compatible'.

In the case of the non-domestic NI RHI scheme, you will see in the opening paragraph of the EC's State aid decision letter (SA.34140), the Commission considered the non-domestic NI RHI scheme to be compatible with common market in accordance with Article 107(3)(c) of the TFEU.

This decision essentially provides the Commission's view, at that time, that the non-domestic NI RHI scheme complied with EU law.

However, as detailed in the decision letter (SA.34140) the State aid approval was provided on the basis of certain principles and points of understanding that have now changed.

For example, the annual budget (see section 2.3), the level of support (section 2.5), the functioning of the system (section 2.6) and no overcompensation (section 2.7).

These changes, mean that the State aid we are providing to the non-domestic NI RHI scheme participants has been 'altered' and therefore, as altered aid is considered to be new aid (see Article 1 (c) of the Procedural Regulation) we are required to notify this new aid to the Commission and seek its approval (see Article 108(3) of the TFEU and Article 2 of the Procedural Regulation).

Procedural Regulation - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1589&from=EN>

In this notification, we must provide all necessary information in order to enable the Commission to take a decision.

In practice this means we have to demonstrate to the Commission's satisfaction that the changes we are proposing to make to the non-domestic NI RHI scheme meet all of the relevant compatibility criteria set out in the commission's Guidelines on State aid for environmental protection and energy 2014-2020.

Guidelines for EP&E - [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628(01)&from=EN)

As discussed, this notification document will be finalised and submitted as soon as the revised regulations are adopted by the NI Assembly.

The process thereafter is as detailed in Adele's email yesterday:

1. DfE upload all the required documents to the State Aid Notification System (an EC web portal), complete the requisite on line notification forms and 'finalise' the notification;
2. The State aid unit in the Department of Business Energy and Industrial Strategy in London checks all is in order and then 'signs up' the notification;
3. The UK Permanent representatives Office in Brussels 'validates' the notification; and
4. The notification is accepted and assessed by DG COMP in the European Commission.

If DG COMP are content, the European Commission will then adopt a fresh State aid decision for the non-domestic NI RHI scheme that will provide European Commission approval for the scheme for the period up 31 March 2018.

If we need State aid cover beyond 31 March 2018, which is expected to be the position, we (i.e. DfE) will therefore need to submit a new notification for the NI RHI scheme and go through steps 1 – 4 again, as detailed above.

Hope this is clear enough, but happy to discuss further as required.

Stephen

**Stephen Moore**  
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**NEW** - 'State aid: A Beginner's Guide for Public Bodies in Northern Ireland' can now be accessed through the DFE Internet site: <https://www.economy-ni.gov.uk/publications/state-aid-beginners-guide-public-bodies-northern-ireland>

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

**From:** Willis, Adele  
**Sent:** 18 January 2017 18:50  
**To:** Kelly, Angela  
**Cc:** Moore, Stephen (DfE); Marten, Lucy; McMurray, Stephen  
**Subject:** FW: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Angela,

Further to our telephone conversation earlier I include a link to Renewable Heat [State Aid approval](#) and pdf version attached.

The State aid notification was notified by the department (i.e. DETI), through the State Aid Notification System (SANI).

SANI is a web based system through which all Member States notify State aid to the European Commission.

In practice:

1. DfE upload all the required documents to the SANI system, complete the requisite on line notification forms and 'finalise' the notification;
2. The State aid unit in the Department of Business Energy and Industrial Strategy in London checks all is in order and then 'signs up' the notification;
3. The UK Permanent representatives Office in Brussels 'validates' the notification; and
4. The notification is accepted and assessed by DG COMP in the European Commission.

If they require any further details on the notification process or have any other queries on the notification, Stephen Moore, State Aid Unit, Department for the Economy Tel: 028 9052 9415 (ext: 29415) would be happy to help.

Thank you,

Regards,

**Adele Willis**

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