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To: [Cooper, Trevor](#)
Cc: [Thomson, David](#); [Angus, Philip](#); [Murphy, Shane](#); [McFarlane, Iain](#); [Brankin, Bernie](#); [McCutcheon, Joanne](#); [Hutchinson, Peter](#); [Cardwell, Mark](#)
Subject: ADMINISTRATION OF THE NI RENEWABLE HEAT INCENTIVE (RHI)
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Attachments: [Note to Trevor Cooper re Administration of RHI.DOC](#)
[Picture \(Metafile\) 1.jpg](#)

Trevor

See attached

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From: Fiona Hepper

Date: 29th March 2012

To: Trevor Cooper, Chair RHI Casework Committee

ADMINISTRATION OF THE NI RENEWABLE HEAT INCENTIVE (RHI)

This purpose of this note is to address the issues raised at the Casework Committee on 9 March in relation to the appointment of Ofgem as the administrator of the RHI.

Background

2. The RHI requires a system capable of managing enquiries and applications, accrediting installations, ensuring participants meet ongoing obligations throughout the life of the scheme, processing payments, preventing fraud and providing management information. The expertise required to develop such a system is not available within Energy Division, nor is there the resource to operate the scheme on an on-going basis. The Office of Gas and Electricity Markets (Ofgem) has developed a bespoke system for DECC and is already managing the administration of the GB RHI.
3. A feasibility study, undertaken by Ofgem, has concluded that Ofgem has the operational structures in place to deliver an administrative system, tailored specifically for NI, following a development phase of approximately 4 months. The cost of the development work would be £386K (plus £386K contingency). Forecasts of operating costs for the next four years are £136K, £157K, £ 198K and £249K based on NI accounting for a 3% share of the workload.
4. At the Casework Committee meeting on 9 March, a number of questions/actions arose regarding the nature of the proposed arrangement with Ofgem and in particular the inclusion of performance targets, remedies and breakpoints in any contract/agreement. Assurance that there would be a right of audit entry included in the agreement and clarification of the legal contingency was also sought.

Agency Services Agreement

Action from Casework: Energy Division to confirm to Casework Committee that any contract with Ofgem for administration of the RHI scheme would have performance targets, remedies, safeguards in place for under-performance, and breakpoints.

5. It is proposed to have an Agency Services Agreement (ASA) between DETI and Ofgem (as per para 2.6 of the Ofgem feasibility study previously circulated with the Casework papers). This is the same type of arrangement as exists between NIAUR and Ofgem under the NIRO and NI REGO schemes. The ASA is agreed by both

parties at the outset and sets out the terms, obligations and costs of the arrangement.

6. This has been discussed with colleagues in CPD who have indicated that they are content; such an agreement would normally be termed a Service Level Agreement (SLA). Advice from CPD is that we

'should ensure that the SLA records a common understanding about services, priorities, responsibilities, guarantees, and warranties. Each area of service scope should have the "level of service" defined. The SLA may specify the levels of availability, serviceability, performance, operation, or other attributes of the service, such as billing. The "level of service" can also be specified as "target" and "minimum," which allows customers to be informed what to expect (the minimum), while providing a measurable (average) target value that shows the level of organization performance. In some contracts, penalties may be agreed upon in the case of non-compliance of the SLA (but see "internal" customers below). It is important to note that the "agreement" relates to the services the customer receives, and not how the service provider delivers that service'.

7. A preliminary discussion has taken place with Ofgem, outlining the conditions discussed at Casework. In light of these discussions, I do not anticipate any difficulty having these included as part of the ASA. The finalising of the agreement will be a collaborative process and I will ensure that the issues raised by Casework and CPD are fully addressed within in. In addition, I will seek input from colleagues in DETI Finance and Audit as the agreement is drafted.

Right of Audit Entry

Action from Casework: Energy Division to engage with Internal Audit regarding Ofgem management arrangements and, in particular on the requirement for External Delivery Organisation (EDO) audit inspections to be carried out on Ofgem as administrators of the scheme.

8. The right of audit entry has been discussed with both Internal Audit and Ofgem. Although this is not included as part of any other ASA that Ofgem is party to, Ofgem is content and has agreed in principle to its inclusion. The specification of what audit activity might entail will be agreed as part of the ASA and, once again, I will ensure that DETI Audit colleagues are involved in these discussions.

Legal Contingency Fund

9. The Ofgem feasibility study referred to the need for DETI to provide a £1m per year legal contingency fund to meet any legal challenge. As an alternative Ofgem had agreed that DETI could assume the legal risk. The Casework Committee sought further clarification of what this meant.
10. We have discussed the matter further with Ofgem and in its experience of administering environmental schemes; it believes legal challenge could arise either in relation to DETI's policy or to the administration of the scheme as carried out by Ofgem. In the case of a challenge to DETI's policy, it is clear that the responsibility would rest with DETI. In respect of the administration of the scheme, everything possible will be done to minimise the risk and to rectify problems that occur. For

example, any overpayments can be remedied by adjusting subsequent payments to the installation. Nevertheless some risk remains and Ofgem requires DETI either to accept this legal risk or provide a contingency fund.

11. The reason for this is that Ofgem is a not for profit organisation. DETI will only be paying its share of the costs incurred for the RHI; there will be no other funding available to Ofgem for the scheme and no fund available to meet legal challenge costs. Ofgem has indicated that the arrangement it is seeking is the same as is in place for other schemes it administers where there is no buy out fund.

12. I hope this clarifies the issues raised and I am happy to discuss further if required.

(signed)

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cc David Thomson
Philip Angus) Casework Committee Members
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