

**From:** Bagdonaite, Dovile  
**To:** [Wightman, Stuart](#); [Hughes, Seamus](#)  
**Cc:** [Woods, Michael \(DETI\)](#); [Saunders, David](#)  
**Subject:** ability to close the scheme  
**Date:** 11 March 2016 10:44:00  
**Attachments:** [image001.gif](#)

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Morning Stuart/Seamus

In relation to non domestic RHI we have a question around the ability to close the scheme. There seems to be a lot of conflicting information and interpretations whether the scheme could have been closed sooner. What are your thoughts around this?

Would you please let us have any advice given from Energy Branch to the Minister in relation to closure of the scheme. You also told that you had sought DSO advice on this, can we get a copy of the advice received, please?

In relation to the domestic RHI and the former RHPP scheme, our understanding is that because the scheme was part of the overall NIRHI scheme it could not be closed on its own right not having an effect on the overall scheme. Is that correct?

Many thanks

Dovile

**Dovile Bagdonaite**

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**From:** [Wightman, Stuart](#)  
**To:** [Bagdonaite, Dovile](#)  
**Cc:** [Woods, Michael \(DETI\)](#); [Saunders, David](#); [Hughes, Seamus](#); [Briggs, Peter](#); [Willis, Adele](#)  
**Subject:** RE: ability to close the scheme  
**Date:** 11 March 2016 11:15:56  
**Attachments:** [image001.gif](#)  
[Grant Making powers Legislation.pdf](#)  
[DESK IMMEDIATE - Future of Renewable Heat Incentive.msg](#)  
[Submission to Minister - NI Renewable Heat Incentive Closure - Timelines.DOCX](#)  
[Submission - Closure of RHI - Urgent Executive Approval \(without consultation\) - 3 Feb 2016.DOCX](#)

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Dovile

I have addressed your comments below.

Thanks, Stuart

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**From:** Bagdonaite, Dovile  
**Sent:** 11 March 2016 10:44  
**To:** Wightman, Stuart; Hughes, Seamus  
**Cc:** Woods, Michael (DETI); Saunders, David  
**Subject:** ability to close the scheme

Morning Stuart/Seamus

In relation to non domestic RHI we have a question around the ability to close the scheme. There seems to be a lot of conflicting information and interpretations whether the scheme could have been closed sooner. What are your thoughts around this?

I can confirm that both RHI schemes could not have been closed without legislation. The legislation we recently introduced gave us power to close both schemes by Notice. We didn't have these powers before. In hindsight, one could of course argue that this legislation should have been done sooner. But the need to close both schemes only transpired in Nov/Dec 15 when we received had experienced the spike in applications and then received confirmation from HMT that our funding was being capped at 3% of DECC's going forward.

In terms of whether we could have closed the scheme sooner than 29 February once we received the confirmation from HMT in December 2015. The answer is no. Following Ministerial agreement to proceed in early January, we got the legislation drafted and passed by the Assembly on 15 February 2016. We effectively did this in a few weeks (usually 3-6 months). This meant not consulting, bypassing the normal legislative processes (such as the ETI Committee). The legislation was passed on the understanding that the schemes would close on 29 February to give a couple of weeks to enable live projects to be completed. We still can't rule out a legal challenge being taken against the decision to close without consultation.

Would you please let us have any advice given from Energy Branch to the Minister in relation to closure of the scheme. You also told that you had sought DSO advice on this, can we get a copy of the advice received, please?

The Submission (advice) to the Minister on closure is in the attached email. The next attachment is our advice (and DSO advice) on the need to consult. The final attachment is the subsequent submission (which includes OFMDFM letter) following the Minister's decision not to consult.

In relation to the domestic RHI and the former RHPP scheme, our understanding is that because the scheme was part of the overall NIRHI scheme it could not be closed on its own right not having an effect on the overall scheme. Is that correct?

Yes, as mentioned above both the domestic and non domestic RHI schemes were open ended with no ability to close. The legislation we recently introduced gave us the powers to close both schemes.

RHPP is different. It is not RHI and is not demand led. Applicants applied to DETI before installing. This gave DETI the opportunity to stop processing applications if the budget was exhausted. RHPP funding was provided under the general powers in the Northern Ireland (Miscellaneous Provisions) Act 2006 (see attached).

Many thanks

Dovile

**Dovile Bagdonaite**

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# Northern Ireland (Miscellaneous Provisions) Act 2006

## 2006 CHAPTER 33

### PART 5

#### MISCELLANEOUS

#### 24 Financial assistance for energy purposes

For Article 61 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) substitute—

#### “61 Financial assistance for energy purposes

- (1) The Department may give financial assistance to any person if, in the opinion of the Department—
  - (a) the form and amount of the assistance is reasonable having regard to all the circumstances; and
  - (b) the giving of the assistance is likely to achieve one or more of the purposes set out in paragraph (2).
- (2) Those purposes are—
  - (a) to secure a diverse and viable long-term energy supply;
  - (b) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;
  - (c) to promote efficiency and economy on the part of persons engaged in the generation, production, transmission, distribution or supply of energy;
  - (d) to promote the efficient use of energy;
  - (e) to promote the development or the bringing into use of—
    - (i) energy from renewable sources, or
    - (ii) technologies for the production of energy from such sources;

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*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Northern Ireland (Miscellaneous Provisions) Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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- (f) to promote research and development in relation to other matters connected with energy supply;
  - (g) to promote the generation, production, transmission, distribution or supply of energy from renewable sources;
  - (h) to promote the production, distribution or use of renewable transport fuels;
  - (i) to limit or reduce emissions of greenhouse gases, or other effects on the environment, resulting from the generation, production, transmission, distribution, supply or use of energy;
  - (j) to conduct research, or to raise awareness, about matters referred to in sub-paragraph (i);
  - (k) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.
- (3) Financial assistance under this Article may be given—
- (a) in respect of particular activities carried on or supported by the recipient; or
  - (b) generally in respect of all or some part of the activities carried on or supported by the recipient.
- (4) Financial assistance under this Article shall be given—
- (a) in such form, and
  - (b) subject to such conditions,
- as the Department considers appropriate.
- (5) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given in one or more of the following forms—
- (a) by making grants (whether or not repayable) or loans;
  - (b) by giving indemnities;
  - (c) by making investments in bodies corporate;
  - (d) by incurring expenditure for the benefit of a person;
  - (e) by providing services, staff or equipment for the benefit of a person.
- (6) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given subject to conditions—
- (a) as to repayment;
  - (b) requiring payments to be made to the Department (which need not be limited by reference to the value of the assistance given).
- (7) In this Article—
- “greenhouse gases” has the meaning given by section 82(9) of the Energy Act 2004;
  - “renewable sources” means sources of energy other than fossil fuel, peat or nuclear fuel, and includes waste (and for this purpose, “fossil fuel” and “peat” have the meaning given by Article 52(7));
  - “renewable transport fuel” means—
- (a) liquid or gaseous fuel that is produced wholly or mainly from biomass; or
  - (b) any other description of fuel specified in an order made by the Department;