

From: [McMurray, Stephen](#)
To: [Willis, Adele](#)
Cc: [Marten, Lucy](#); [McCann, Brendan](#); [Coyne, Terence](#); [Murphy, Shane](#); [Montgomery, Paul](#); [Dukelow, Victor](#); [Woods, Michael \(DfE\)](#)
Subject: Re: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017
Date: 19 January 2017 08:20:55
Attachments: [image001.png](#)

Thanks Adele, will discuss when I get in

Stephen

Sent from my BlackBerry 10 smartphone.

From: Willis, Adele
Sent: Thursday, 19 January 2017 08:09
To: McMurray, Stephen
Cc: Marten, Lucy; McCann, Brendan
Subject: FW: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Stephen,

Grateful if you could advise whether you wish the information set out below to be shared with the Examiner.

PLEASE NOTE THE EXAMINER HAS ADVISED THAT SHE MAY USE EXTRACTS OF THE SUPPORTING INFORMATION PROVIDED BY US IN HER REPORT ON THE REGULATIONS.

The Examiner has afforded us the opportunity to advise if there are any documents already shared that we wouldn't want referenced in her report. I propose advising that reference should be made to the guidance documents and not to the application and sample accreditation letter provided as these are Ofgem documents. I don't think there are any issues with the Examiner referencing our lines on 1st protocol, but I have sought confirmation from Paul McGinn to be on the safe side.

I am currently looking at the information provided by Shane Murphy and will forward tracked changes for your consideration as soon as possible.

Regards

Adele

From: Moore, Stephen (DfE)
Sent: 18 January 2017 19:01
To: Willis, Adele
Cc: Marten, Lucy; McMurray, Stephen
Subject: RE: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Adele

Would it also be worth clarifying three further points.

1. Once the Regulations are adopted, we will be notifying the revised RHI scheme to the European commission and that we have already been in informal contact with the

Commission in relation to this.

2. Although the scheme is clearly operating outside the terms and conditions of its State aid approval, on a number of points, this does not automatically invalidate the State aid approval. The Commission would first have to adopt a decision to investigate the RHI scheme and then, following this investigation, adopt a second decision to rescind the original State aid approval.
3. Informal soundings with the Commission suggest the Commission will be happy that we take action to remove the possibility of over-compensation and restore the internal rates of return in the scheme back to what they were supposed to be originally.

Stephen

Stephen Moore

State Aid Unit
Department for the Economy
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9415 (ext: 29415)
Mob: Personal information redacted by
TextRelay: 18001 028 9052 9415
Web: www.economy-ni.gov.uk



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

Renewable Heat
Department for the Economy
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9898 (ext: 29898)
TextRelay: 18001 028 9052 9898
Web: www.economy-ni.gov.uk



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

From: Willis, Adele
Sent: 18 January 2017 17:29
To: 'Kelly, Angela'
Subject: FW: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Dear Angela,
Please see below response to the Article 1 First Protocol issue raised in your email earlier.

Article 1 First protocol

The Department has carefully considered the vires of the above Regulations particularly in the context of Article 1 First Protocol and the legitimate expectations of beneficiaries under the Scheme. It should be noted, in particular, that Article 1 First Protocol is a highly qualified and conditioned right. Even where it is engaged, interference with property rights can be justified where that interference is lawful, pursues a legitimate aim in the public interest and strikes a fair balance between the competing rights. In this context, the Court of Human Rights emphasises respect for the national legislature's judgment as to what is and is not in the public interest.

It is also worth mentioning that loss of future income as such does not engage Article 1 First Protocol, although a loss in the value of a business attributable to a loss of future income may

do.

The key issue is proportionality. In brief the Department's view is that the present Scheme strikes a very poor balance between the public and private interests. The Department considers that the terms of the Scheme do not serve the purpose which the Energy Act and the Scheme itself intended in that they encourage poor or overuse of energy and even in some instances, purposeless use of energy. Finally, the Department would point to severe public spending implications if corrective action is not taken.

In addition, the basis on which the European Commission granted state aid approval must be taken into account. This rested on the belief that the Northern Ireland Scheme would not give rise to 'over-compensation' and that the rate of return was about 12%. In many cases, the return grossly exceeds this rate.

It cannot, in the view of the Department, be disproportionate to ensure that the Scheme reflects the requirements of the European Commission's state aid approval.

In any rate of return which significantly breached the limitation set out in the Commission's state aid approval would be outside the scope of that approval and, accordingly, unlawful. Moreover, an expectation to continue to receive payments in excess of the level of return approved by the Commission cannot, in the view of the Department, be a legitimate one for the purposes of legitimate expectation.

I will follow up with impact information tomorrow morning.

Thank you,
Regards,

Adele Willis

Energy Efficiency
Department for the Economy
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9898 (ext: 29898)
TextRelay: 18001 028 9052 9898
Web: www.economy-ni.gov.uk



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

From: Willis, Adele
Sent: 18 January 2017 15:27
To: 'Kelly, Angela'
Cc: Marten, Lucy; McMurray, Stephen
Subject: RE: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Dear Angela,

As agreed in our recent telephone conversation please find attached initial information relating to communications to participants when applying for and accredited to the Renewable Heat Incentive(RHI). The first two attachments are the [guidance documents](#) also available on the Ofgem website, the third is the application form for the RHI Scheme and the fourth attachment is a sample letter issued upon successful accreditation on the RHI Scheme.

I will forward additional information when received.

Thank you,

Regards

Adele Willis

Renewable Heat Incentive Taskforce

Department for the Economy

Netherleigh

Massey Avenue

Belfast, BT4 2JP

Tel: 028 9052 9898 (ext: 29898)

TextRelay: 18001 028 9052 9898

Web: www.economy-ni.gov.uk



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

From: Kelly, Angela [<mailto:Angela.Kelly@niassembly.gov.uk>]

Sent: 18 January 2017 12:50

To: Willis, Adele

Subject: The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Dear Adele

Further to our telephone conversation today in relation to these Regulations. As discussed, I should be most grateful to receive as much background information as you are able to provide on the operation of the scheme at present, and how that will change, and the impact upon present participants. Can you also advise me what was communicated to any participants about the scheme as they joined the scheme, perhaps you can provide me with examples of any agreements or promotional materials?

I should be grateful too to hear your views on the engagement of the Article 1 Protocol 1 rights, your consideration of the public interest objective, and the issue of proportionality.

Many thanks.

Best Regards,

Angela

ANGELA KELLY



*Examiner of Statutory Rules /
Senior Legal Adviser*
Legal Services

Angela.Kelly@niassembly.gov.uk

028 90520311

Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

This communication/document and any enclosure may contain legal advice supplied in confidence to the Northern Ireland Assembly may be subject to legal professional privilege. If you have received this communication/document in error, please notify the author immediately by telephone.

This email is strictly confidential. It may be privileged. It is intended for use only by the intended addressee.

If you have received it in error, we would be grateful if you would tell the sender, and then permanently delete it. If you are not the intended addressee, then any copying, distributing, disclosing of, or relying on the information in the email is prohibited.

Opinions or facts expressed in this email are not necessarily those of the Northern Ireland Assembly or the Northern Ireland Assembly Commission.

This email has been checked for viruses, but the Northern Ireland Assembly Commission disclaims any liability for damage caused by any virus transmitted by it. The Commission may monitor any email on its system.
