

From: [Montgomery, Paul](#)
To: [Reid, Victoria](#); [Crozier, Lorraine](#)
Subject: FW: Minutes of 23 February update meeting on RHI
Date: 01 March 2017 16:50:29
Attachments: [Supply - DfE -Minute of RHI Update meeting February.docx](#)

For info

From: Scott, Michelle
Sent: 01 March 2017 16:20
To: Cousins, Heather; Montgomery, Paul; McCann, Brendan
Cc: McMurray, Stephen
Subject: Minutes of 23 February update meeting on RHI

All

Please see attached minute of last week's meeting on RHI.

Happy to consider additions, revisions or amendments

Many thanks

Michelle

Minute of Non-Domestic Renewable Heat Incentive update meeting**23 February 2017 4pm
Netherleigh****Present**

| | |
|----------------|-----------------|
| Mike Brennan | Heather Cousins |
| Emer Morelli | Paul Montgomery |
| Michelle Scott | Brendan McCann |

1. Update on implementation of 'Addressing the Deficiencies in the non-domestic RHI scheme' business case (to include latest position on State Aid and Judicial Review)

Judicial review – DfE reported that work is ongoing within the department in preparation for the judicial review of the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017. It was noted that the judicial review was scheduled to be held in the coming weeks with a decision expected by end of March. It was acknowledged that the timescale was within the gift of the Court and could move.

DoF asked if the amended regulations can be introduced on April 2017 if the JR is still ongoing. DfE asked their DSO advisor to join the meeting to consider this question. Martin McAvoy (DSO) joined the meeting and confirmed that the regulations can be introduced if the JR is ongoing.

DoF asked for an update on the need to accrue the higher RHI cost in 2017-18, to cover the risk of the 2017 regulations falling – and issue which had been raised at the 20 December 2016 Ministerial meeting in Netherleigh. DfE commented they saw no need to accrue any expenditure beyond that required under the 2017 regulations.

DoF asked that this position could be confirmed by DfE Finance Division as agreed at the December Meeting.

There followed a detailed discussion on the legal implications of a challenge on the 2012 and 2017 Regulations and the precedence of EU or domestic law in such circumstances DSO agreed to provide written advice on these matters to DfE, who would in turn share the advice with DoF.

ACTION: DfE

State Aid Approval – DfE officials expect a mid-march decision from the EU commission, and are currently responding to the second round of queries on the proposal. DfE officials commented there appeared to be no 'show-stoppers' within the queries raised to date and agreed to inform DoF when a decision was received.

ACTION: DfE

2. Contingency Plan for 2017-18

When asked what contingency plans the department has in place should the 2017 Regulations fall, DfE officials commented that it would depend on the basis for the judgement.

When asked how any revised regulations could be brought forward post purdah DfE officials commented that as the focus has been on the current actions, a contingency plan has not yet been thought through. DfE did comment that a consultation document had been prepared during 2016.

3. Update on 'Comprehensive Audit of non-domestic RHI scheme installations' business case

DoF officials confirmed they are working through the response to DoF comments on the business case received that morning.

DfE outlined their intended timeline for the audit, and requested DoF approval before 6 March, which would allow the contract to be awarded in early May with field audits taking place in early June.

There was a discussion on a number of points within the DfE 23 February 2017 letter. DfE confirmed that the response on the ability to remove dormant applications was informed by Ofgem's legal advice. While Ofgem does not consider that there is any enforceable cut-off, DfE confirmed this was being considered further by the department.

DoF sought an update on the status of those boilers which had been reported as destroyed by fire. DoF sought an assurance that these boilers were no longer part of the scheme and were not included in cost projections. DfE advised that this was a live issue with the Department and Ofgem.

There was also a discussion around the ability of the inspectors to access all sites. It was agreed that there may be limited, exceptional circumstances for not gaining access, for example animal disease, however each instance would be thoroughly tested.

The department also confirmed that the work to clarify definitions in the guidance that underpinned the scheme would be subject to a closed, 6 week consultation with the participants of the scheme. Revised guidance should be in place by June – in time for the 100% audit field work. DfE confirmed that the targeted consultation process was in line with good practice and not a statutory requirement.

4. Update on business case for second stage of comprehensive programme to ensure VFM and financial sustainability.

DfE confirmed that a business case is currently with their Minister in support of the consultancy advice the department will require to complete the business case for the second stage business case. The business case would be submitted to DoF for approval once approval by the Economy Minister.

The work being taken forward will include a review of the post November 2015 tariff.

DfE asked DoF what confirmation could be secured from HMT on the funding available post 2019-20. There followed a general discussion on the status of the GB scheme, which remains open albeit with degression in operation. DoF agreed to liaise with HMT on the longer term funding plans for the RHI scheme.

ACTION: DoF

DoF asked DfE officials what engagement there had been with BEIS over recent months on the policy position vis-a-vis RHI, commenting this information would be key to both ensure we remain sighted on the level of funding, and any scheme amendments which could inform the current work of the department. DfE officials confirmed there had been no recent engagement on these issues, however agreed to follow up on this point.

ACTION: DfE

In relation to the AME finding available, DoF confirmed that the scheme amendments should be focused on securing a value for money outcome, rather than spending up to an AME limit.

5. Latest cost projections

DfE officials confirmed that the 2017-18 cost projects for the RHI scheme had not been revised since the business case was submitted in January 2017.

In relation to the unfunded pressure in 2016—17, DfE confirmed this has reduced slightly to £19.1m.