McCay, Davina

From: Edmund Ward [Edmund.Ward@ofgem.gov.uk]
Sent: 23 June 2014 08:12
To: McCay, Davina; Moore, Stephen (DETI)
Cc: Gareth John; Teri Clifton; Cathryn Scott; Ruth Lancaster; Omolade Barker; Edmund Ward; Nadia Carpenter
Subject: NIRHI: Next steps on de minimis funding matter

Davina, Stephen

Many thanks for your input on Wednesday, and to Stephen for making time during your trip to London.

I thought it might be useful to follow up with a brief summary of my understanding of possible next steps in addition to providing an update on Ofgem actions.

We discussed the immediate, medium- and long-term options available to address DETI's preference to further align operation of the scheme with State Aid requirements. We noted that some of the possible options involve regulatory change, to account for a mechanism for repayment or offsetting of other state aid funding (such as grants or public support) that would remove the requirement for the RHI to be considered under de minimis rules. [Potentially, for separate reasons but as part of that process, it may be worth considering updating the regulations to remove the reference to 'public support'].

I noted that one option would be to agree to (i) continue to operate in line with the published guidance (and in line with the approach taken on decisions under the scheme to date where applicants have taken Carbon Trust loans) until such time (ii) as a clear line on de minimis funding can be published (and having consideration of any consultation or lead-in period). This administrative approach (ii) would involve de minimis assessments being undertaken – this would necessitate agreement under the Administrative Arrangements between DETI and Ofgem, which would need to take into account the methodology to be used and a consideration of the associated costs and risks. Given this may still leave some Carbon Trust loan recipients unable to repay the loan benefit to access the RHI, a further regulatory change (iii) (signposted when providing guidance or consulting on the interim approach) could be made to extend the grant/public support repayment window.

We also discussed the approach to 8 current cases in receipt of Carbon Trust loans. We noted that it was likely that any de minimis treatment of Carbon Trust loan cases [or other cases it was identified may be in receipt of de minimis funding which was not excluded by the current regulations] would result in at least some of these applications being unable to avail themselves of RHI support. The factors leading to this would be where their anticipated de minimis income would exceed the relevant threshold over 3 rolling financial years. We discussed that while a EUR200k threshold would apply for many of these 8, it seemed likely that a lower threshold of c. EUR7,500 or EUR15,000 would apply for 3 installations with organisations active in the primary agriculture sector. We also noted the limits imposed by the current NIRHI regulations on grant repayment in some cases.

We discussed the approach to estimated hours of use for the purposes of determining the value of de minimis funding under the RHI. While we are still gathering evidence to consider our approach, we agreed at your request to seek information on this figure, as presented to the Carbon Trust, and further to our exchange of emails on this with Davina last week, Nadia will provide a progress update on Tuesday.

I took an action to provide a link to the relevant section of the updated GB regulations dealing with grant repayment - it's the (2014) amended regulation 23 which came into force on 28 May 2014, and for ease of reference the 'before' and after are copied below.

I also took an action to confirm, if possible, company names for installations already accredited onto the NI scheme and in receipt of a Carbon Trust loan, and to provide any update on our view of the value of aid received for those installations. We will update you on this separately and in line with data sharing considerations.

I believe you were expecting to discuss this matter further on Friday and consider how this would be progressed. Please note that I will be out of the office this week (23-27 June) but this would not be any barrier to progressing this issue from our side - please direct any correspondence to those cc'd; Nadia would progress this with you in the first instance.

We have been careful to manage expectations when requesting the additional operating hours information from the affected applicants, but I expect we will continue to have frequent requests for updates – our current line remains that Ofgem and DETI are working closely on that matter, and that if there has been no update from us in the next two weeks the enquirers would be welcome to contact us again. Davina, can I suggest we have a call early next week to discuss progress and next steps?

Thanks again for your engagement on this issue.

Kind regards,

Edmund

Links to relevant NI and amended GB regulations regarding repayment of grants – highlighted a relevant difference in yellow. [Note the GB amendment also seeks to make other changes, including a reduced payment mechanism].

NI regulations:

http://www.legislation.gov.uk/nisr/2012/396/pdfs/nisr_20120396_en.pdf

Exceptions to duty to accredit

23.—(1) The Department must not accredit an eligible installation unless the applicant has given notice (which the Department has no reason to believe is incorrect) that, as applicable—

(a) no grant from public funds has been paid or will be paid or other public support has been provided or will be provided in respect of any of the costs of purchasing or installing the eligible installation; or

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(b) such a grant or support was paid in respect of an eligible installation which was completed and first commissioned between 1st September 2010 and the date on which these Regulations come into force, and has been repaid to the person or authority who made it.

(2) In this regulation, "grant from public funds" means a grant made by a public authority or by any person distributing funds on behalf of a public authority and "public support" means any financial advantage provided by a public authority.

(3) The Department must not accredit an eligible installation if it has not been commissioned.

(4) The Department may refuse to accredit an eligible installation if its owner has indicated that

one of the applicable ongoing obligations will not be complied with.

(5) The Department may refuse to accredit a plant which is a component plant within the meaning of regulation 14(2).

2014 amendment to GB regulation 23, made on 27 May 2014 (note this also makes other changes ncluding a reduced repayment mechanism, and changes specific to National Lottery grant funding):

http://www.legislation.gov.uk/uksi/2014/1413/regulation/18/made

Substitution to regulation 23 (exceptions to duty to accredit)

18. For regulation 23 substitute—

"Treatment of grants from public funds

23.—(1) Subject to paragraphs (2) to (5), the Authority must not accredit an eligible

installation or register a producer of biomethane unless the applicant has given notice

(which the Authority has no reason to believe is incorrect) that, as applicable—

(a) no grant from public funds has been paid or will be paid in respect of any of the

costs of purchasing or installing the eligible installation or any of the equipment

used to produce the biomethane for which the applicant is intending to claim

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periodic support payments; or

(b) such a grant was paid and has been repaid to the person or authority who made it.

(2) Where some or all of the purchase or installation costs of the eligible installation or the equipment used to produce biomethane were funded by any grant from public funds and—

(a) the applicant demonstrates to the satisfaction of the Authority that the person or authority who made the grant has—

(i) refused to accept repayment of the grant, or

(ii) ceased to exist; or

(b) paragraph (3) applies,

the Authority may accredit the eligible installation or register the producer of biomethane (as the case may be), but a grant funding deduction must be deducted from each quarterly periodic support payment in accordance with paragraphs (4) to (6).

(3) This paragraph applies where—

(a) a grant originates from funds raised by the National Lottery; and

(b) on or after 15th July 2009 but not later than 6 months after the third relevant date—

(i) installation of the plant was completed and the plant was first commissioned; or

(ii) installation of the equipment used to produce biomethane was completed and

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injection of biomethane produced by that applicant has commenced.

(4) A grant funding deduction for each quarterly period is calculated in accordance with the following formula—

A ÷ 80

where A is calculated in accordance with paragraph (5).

(5) For the purposes of paragraph (4), A is—

(a) for the quarterly period commencing on the tariff start date, the figure that the Authority believes, based on all relevant information available to the Authority at the time, represents the total value of any grants from public funds to which paragraph (2) refers;

(b) for any subsequent quarterly period that does not include 1st April of any year, the value of A in the previous quarterly period;

(c) for any subsequent quarterly period that includes 1st April of any year, the value of A in the previous quarterly period adjusted by the percentage increase or decrease in the retail prices index for the previous calendar year (the resulting figure being stated to two decimal places and rounded to the nearest hundredth of a penny).

(6) Where a grant funding shortfall arises, the Authority must deduct from the periodic support payments ("P") payable in the subsequent quarterly period and any quarterly period thereafter, the grant funding deduction for that period together with such part of the grant funding shortfall as remains outstanding provided that the total amount so deducted does

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not exceed P.

(7) Where an eligible installation is accredited or a producer of biomethane is registered and paragraph (2) applies, the tariff start date shall be the date of accreditation or registration, or the third relevant date, whichever is the later.

(8) In this regulation—

"grant from public funds" means a grant made by a public authority or by any person distributing funds on behalf of a public authority;

"grant funding shortfall" means the amount by which the grant funding deduction exceeds the periodic support payment in any quarterly period;

"National Lottery" means the National Lottery as referred to in the National Lottery Act 1993(a).".

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