



To: Paul McGinn
Departmental Solicitors Office

Date: 27 January 2011

From: Fiona Hepper
Energy Division

INTRODUCTION OF A RENEWABLE HEAT INCENTIVE (RHI) IN NORTHERN IRELAND – LEGISLATIVE POWERS

Issue

1. I would be very grateful for your urgent opinion on a matter relating to the introduction of a Renewable Heat Incentive (RHI) in Northern Ireland and the legislative position for this.

Background – Renewable Heat Incentive

2. In September 2010, Arlene Foster MLA announced that DETI would be seeking to introduce a RHI in Northern Ireland, providing that it was economically viable and there was appropriate finance available. The Strategic Energy Framework (SEF), which sets out energy policy goals, includes a target of 10% renewable heat by 2020. A tailored RHI for Northern Ireland would be the main driver in achieving this target, as well as contributing to wider energy goals such as energy security, reduced emissions and new 'green jobs'.
3. A RHI will work by rewarding new renewable heating technologies (solar thermal, biomass boilers, heat pumps etc) through a tariff, set depending on the size and type of technology in question, to be paid over a number of years. The Department of Energy and Climate Change (DECC) intend to introduce a RHI in Great Britain from June 2011¹, Northern Ireland is not included in this measure as the distinctive nature of the heat market here means the scheme needs to be tailored specifically for Northern Ireland.

Legislative Position

4. DECC took general primary powers for renewable heat via last minute amendments to the 2008 Energy Act² (Clause 100 of the Energy Act 2008 outlining the powers is attached at **Annex A**). DETI now need this clause expanded to include Northern Ireland. DECC intend to take more specific

¹ <http://decc.gov.uk/en/content/cms/consultations/rhi/rhi.aspx>

² http://decc.gov.uk/en/content/cms/legislation/energy_act_08/energy_act_08.aspx

powers for the RHI via 2:2 regulations later in the year and DETI would intend to pursue separate 2:2 regulations over the summer period if the enabling powers can be taken.

5. As DETI currently have no powers for renewable heat it had been intended to introduce a new primary bill early in the lifetime of the next Assembly. However meantime DECC has allocated £25m of funding for a RHI in NI and it is now necessary to take primary powers as soon as possible. Discussions with DECC indicate that an option now exists to amend the current 2011 Energy Bill³ to include renewable heat powers for Northern Ireland. This option would certainly be preferable as it would allow DETI to take general primary powers for renewable heat at this stage and then more specific RHI powers through subordinate legislation at a later date. DECC are willing to accommodate an amendment but the timescales are exceptionally challenging. A Legislative Consent Motion will be required and advice from OFMDFM is that we should aim for the Executive meeting on 24 February.
6. In order to explore this option further I would be grateful for your urgent opinion on two specific issues;
 - i. What would be the appropriate wording to be included or amended to Clause 1000 in the Energy Act to accommodate Northern Ireland?
 - ii. Are you aware of any other way to quickly take the enabling powers required?

Funding and Timescales

7. Her Majesty's Treasury has allocated £25m to DETI for the spending period for the introduction of a localised RHI (11/12 £2m, 12/13 £4m, 13/14 £7m and 14/15 £12m) should one be introduced. At present DETI has no legislative powers to spend this money, hence the urgency of the need to take the primary powers as quickly as possible. If the opportunity to take the primary powers is missed then the Department is likely to come in for severe criticism.
8. An economic appraisal on a RHI which will assist in designing an appropriate scheme for Northern Ireland is currently underway and will complete by end March 2011. This will be followed by a full public consultation and then implementation, once appropriate legislation is in place. DECC intend to have the GB scheme in place from June 2011.
9. It is of vital importance that this scheme is introduced in Northern Ireland in a timely manner to prevent the loss of budget, so the SEF target can be achieved and so the local market is not unduly disadvantaged in

³ http://www.decc.gov.uk/en/content/cms/legislation/energy_bill/energy_bill.aspx

comparison to GB. Your opinion on the various legislative options would therefore be greatly valued.

10. I and/or my team are happy to meet to discuss these issues further if required. Alternatively you may wish to direct any queries in the first instance to the DECC lawyer Irrelevant information redacted by the RHI Inquiry who can be contacted directly at Irrelevant information redacted by the RHI Inquiry @decc.gsi.gov.uk

11. Many thanks, in anticipation.

Fiona

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