

## Departmental Solicitor's Office



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Fiona Hepper  
Department of Enterprise  
Trade and Investment  
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31 January 2011

Our Ref:

Dear Fiona

### **INTRODUCTION OF RENEWABLE HEAT INCENTIVE IN NORTHERN IRELAND**

Thank you for your minute of 27 January in relation to this matter.

You ask for my comments on two points. The present proposal is to expand the existing provision in Section 100 of the Energy Act to Northern Ireland and you ask whether there is an alternative approach available. Certainly, as far as I am aware, there is no corresponding legislation already in force in Northern Ireland. It is, in principle, possible to use the Budget Act to establish an administrative scheme to provide incentives for things like renewable heat. However this would not be recommended. First of all, there are in any event lengthy procedures to be gone through before we could use this approach. A Business Case would have to be made to DFP and that case would have to be agreed. Secondly, because we are operating under the Budget Act, the scheme could only be of a year's duration. Thirdly, we would be operating without any statutory framework so, any rights of recovery would have to be contractual and if there were any fraud or other wrongdoing by applicants we would have to rely on the existing criminal law rather than introducing specific offences. We do, therefore, I think need new legislation. We can only introduce secondary legislation where we have the power to do so. I note that DECC intend to take what you refer to as "more specific powers" for the



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Renewable Heat Incentives via regulations made under Section 2(2) of the European Communities Act 1972. However, such regulations could only be made to implement a Community obligation or to take up a right granted under EU law. Is there any EU legislation that provides for the establishment of the sort of grant aid scheme to which Section 100 of the Energy Act relates? If not, then such a scheme would have to be introduced under primary legislation. Obviously, at this stage, a Bill on the normal timetable is out of the question. Nor do I think there is any realistic prospect of getting a Bill through on the Accelerated Procedure. This does, therefore, seem to leave the present proposal as the only viable route.

As far as the drafting of the appropriate provisions are concerned, this is a matter strictly for Parliamentary Counsel. The procedure would require the Department to draft a set of instructions for Parliamentary Counsel which should then be seen and vetted by this Office for transmission to DECC for them to pass on to Parliamentary Counsel. Counsel will then liaise directly with this Office in addressing matters outstanding or arising.

Yours sincerely

*Paul McGinn*

**PAUL McGINN**  
**Director Division 2**