

From: Stewart, Susan
To: [McCutcheon, Joanne](#); [Hutchinson, Peter](#)
Subject: FW: Review of Draft Regulations
Date: 26 March 2012 17:49:00
Attachments: [image002.jpg](#)
[Draft NI RHI Regulations - 14.03.12.doc](#)
[DV 14.03.12 against DSO version November 2011.pdf](#)
[att56beb.png](#)
Importance: High

Joanne/Peter

I have begun to review the Regulations sent in by Arthur Cox on 14 March 2012 and have already come across a quite significant anomaly. There appears to be some confusion around the definition of "the Northern Ireland Authority". In previous incarnations of the drafting, I had asked Arthur Cox to distinguish between the roles of NIAUR and Ofgem and to make sure that each had a definitive role (if one existed) in the Regulations. Arthur Cox did this but gave the NI Authority (NIAUR) as they defined it, all the functions of administering the scheme, and none to the GB Authority (Ofgem).

In our recent conference call, we asked Arthur Cox to define the Department as the Northern Ireland Authority in line with Section 114 of the Energy Act 2011 which defines DETI or NIAUR under this umbrella. Therefore all the functions are now assigned to the Department who have taken the lead in renewable heat.

I also highlighted to Peter regarding that if all the tasks and functions are assigned to DETI then there may have to be an additional Regulation to give DETI the vires to sub-contract the administration of the RHI to a third party, in this case, this would be Ofgem (There has been similar legislation amended in the Gas Order to give NIAUR the authority to sub-contract one of its functions to the National Measurement Office).

I have also had a look at the GB Regulations and the Energy Act 2008 where the powers were given to DECC to implement a GB RHI. In the 2008 Act, DECC were defined as the Secretary of State and Ofgem were defined as the Authority. This has carried through to their 2011 Regulations which gives the Authority (Ofgem) all the administrative functions with reports given to the Secretary of State (DECC).

In their recent email below, Arthur Cox has asked if NIAUR can be removed from the definition of "the Northern Ireland Authority". This seems sensible but probably should be flagged to DSO for their approval.

I am happy to discuss and feel that this is an important issue to raise at this point. I want to ensure we get this right in our minds before progressing - we may also have to engage Ofgem on this matter if you feel it beneficial.

Thanks

Susan

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

From: Alan Bissett [<mailto:alan.bissett@arthurcox.com>]
Sent: 14 March 2012 19:29
To: Stewart, Susan
Cc: McCutcheon, Joanne; Hutchinson, Peter; Thompson, Sandra; David Trethowan
Subject: RE: Review of Draft Regulations

Susan

In accordance with the Work Request Form for this matter, please find attached for your review a revised draft of the Northern Ireland Renewable Heat Incentive Scheme Regulations (the "**NI RHI Regulations**"). As previously discussed and for ease of reference, we have attached a blacklined version marked to show the changes made to the DSO version that you shared with us.

As you will see, we have incorporated the amendments which were introduced into the GB RHI Regulations prior to them being enacted which were not included in the version to be debated in Parliament that we used to prepare the previous draft of the NI RHI Regulations. We have dealt with the issues flagged by the DSO by making some additional amendments and have also addressed those issues raised in Appendix 2 of the Ofgem report which relate to drafting rather than policy issues.

We should be grateful if the Department would provide us with some clarification on a few points at this stage:-

1. In our discussions with you last week, we note that you referred to the definition of the term "Northern Ireland authority" that appears in Section 114 of the enabling legislation (the Energy Act 2011) – this term is defined for the purposes of Section 114 only as the Department or the NIAUR. We note that the powers in the enabling act provide for the Department or the NIAUR to have *vires* to establish the scheme and you mentioned that it has been determined that the Department is to establish the scheme. If this is the case, we could dispose of the definition of "NI Authority" altogether from the NI RHI Regulations and refer only to the "Department" where the term "NI Authority" is currently used – I should be grateful if you would confirm if this is appropriate.
2. In relation to Part 4, Chapter 1 which refers to the reporting functions relating to the use of