

From: McCutcheon, Joanne
To: [Millen, Patrick](#)
Cc: [Hutchinson, Peter](#); [Hepper, Fiona](#)
Subject: FW: NIRHI: Administrative Arrangements
Date: 30 January 2013 15:03:00
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.gif](#)
[image004.png](#)
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[image006.png](#)

Pat

You will probably recall some of our previous conversations around the NIRHI. The Administrative Arrangements between DETI/Ofgem were eventually signed (see pdf above) and the scheme is underway.

However, as soon as there was an applicant to the scheme, DETI asked Ofgem for the name of that applicant. Ofgem said there was a data protection issue around providing us with the name and have now issued the applicant with a privacy document to sign; they say once this is signed they will provide us with the information. This seems slightly bizarre to us given that the Regulations at every point talk about applications being made to DETI, information being provided to DETI etc. etc. . . I appreciate there are issues around storage/ databases etc – this application would have been e-mailed or posted to ofgem. My first question is - is Ofgem correct in saying it cannot provide us with the info?

This question then gives rise to a further issue. We sent the following e-mail query to Ofgem

The regulations governing the NI scheme clearly state that

‘all applications for accreditation must be made in writing to the Department’ where the Department is defined as ‘the Department of Enterprise, Trade and Investment’ and accreditation is defined as ‘accreditation of an eligible installation by the Department following an application’

There is no mention of Ofgem in the Regs – it is clear that the application is to be to DETI and that it is DETI that accredits; so, legally the power and responsibility resides with DETI .

We are of the view that Ofgem is carrying out this work on our behalf in which case I cannot understand how there could be any issue in providing us any information provided by an applicant. If you do not consider that you are doing this work on our behalf I would be grateful for your view on how you think your position sits with the Regulations as drafted – in layman’s terms how is DETI’s legal responsibilities under the Regs, transferred to Ofgem?

and their response is as attached below. Ofgem has repeatedly stated that they do not consider that they are doing this work on our behalf. I’d be very grateful for your view on the e-mail below.

<http://www.legislation.gov.uk/nidsr/2012/9780337989193>

Thanks again for your help
Joanne

Joanne McCutcheon

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

From: Keith Avis [mailto:Keith.Avis@ofgem.gov.uk]
Sent: 30 January 2013 13:48
To: Hepper, Fiona
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Matthew Harnack
Subject: RE: NIRHI: Administrative Arrangements

Fiona

As promised, I can now respond to your question.

In Ofgem's view the reason DETI and not the Authority are referred to in the Regulations is because that is what the relevant legislation calls for. You could not in our view lawfully have referred to Ofgem in the legislation, so it is right that this did not happen. This is the case with or without signed arrangements.

Nevertheless, the Ofgem position is that most of the functions which the Regulations allocate to DETI now fall to be carried out by Ofgem. This is because the signed arrangements, which were entered into under the same legislation, provide for that to be the case. The practical effect of the signed arrangements in our view is that, in relation to the functions transferred to Ofgem under the arrangements and for as long as the arrangements are in place, the Regulations have to be read and given effect to *as if* they referred to the Authority rather than to DETI.

I hope that this helps to clarify the position from Ofgem's perspective.

Best regards

Keith

Keith Avis

Senior Manager
New Scheme Development
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From: Matthew Harnack
Sent: 29 January 2013 16:17
To: 'Hepper, Fiona'
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Keith Avis
Subject: RE: NIRHI: Administrative Arrangements

Hi Fiona, good to hear that you're content with what we've done/are doing on the current issue. Keith is getting something together on your question. As it stands I'm pretty sure he'll be able to get back to you tomorrow. I'm working from home today but I'll check with him in the morning. It may be worth us booking in a phone catchup next week, regardless of where we are at on all of these issues, so that we've got time to chat about these and any other operational points you may have on your mind. If you agree I'll get Jane to set something up.

From: Hepper, Fiona [<mailto:Fiona.Hepper@detini.gov.uk>]
Sent: 29 January 2013 10:38
To: Hepper, Fiona; Matthew Harnack
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Keith Avis
Subject: RE: NIRHI: Administrative Arrangements

Matthew

further to below, I had a word with Joanne. We are content that the current issue regarding the release of names is being resolved. However, as Joanne discussed with Keith, we would still like a response to the question asked in my e-mail of 17 January – 'If you do not consider that you are doing this work on our behalf I would be grateful for your view on how you think your position sits with the Regulations as drafted – in layman's terms how is DETIs legal responsibilities under the Regs, transferred to Ofgem?'

I think it important that we address this issue and I understand Keith has agreed to provide a response.

Look forward to hearing from you

Regards

Fiona

Fiona Hepper

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From: Hepper, Fiona
Sent: 24 January 2013 15:14
To: Matthew Harnack
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Keith Avis
Subject: RE: NIRHI: Administrative Arrangements

Thanks Matthew - sorry I have been very tied up on other matters. I will speak to Joanne and get an update
regards
Fiona

Fiona Hepper

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The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk

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

From: Matthew Harnack [<mailto:Matthew.Harnack@ofgem.gov.uk>]
Sent: 24 January 2013 15:00
To: Hepper, Fiona
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Keith Avis
Subject: RE: NIRHI: Administrative Arrangements

Hi Fiona,

I've left a couple of messages to speak with you about this, but as we've not been in touch I thought I should drop you a quick email to say that Keith has given Joanne an update on this matter. From what I hear she seemed comfortable with it and is going to provide you with an update. Amongst other things there does seem to have been a bit of misunderstanding here which hopefully now has all been cleared up. But please don't hesitate to call me if you'd still like to discuss it.

Regards
Matthew

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From: Keith Avis
Sent: 17 January 2013 17:37
To: 'Hepper, Fiona'
Cc: Robert Hull; Matthew Harnack; Mary Smith; Luis Castro; McCutcheon, Joanne; Hutchinson, Peter
Subject: RE: NIRHI: Administrative Arrangements

Fiona

Thank you for your email. I have spoken to Matthew who would like to give you a call tomorrow to give you some comfort around this issue. I will ask Matthew's secretary to talk to your secretary to see if a mutually convenient slot in your diaries can be found.

Regards

Keith

From: Hepper, Fiona [<mailto:Fiona.Hepper@detini.gov.uk>]

Sent: 17 January 2013 11:56

To: Keith Avis

Cc: Robert Hull; Matthew Harnack; Mary Smith; Luis Castro; McCutcheon, Joanne; Hutchinson, Peter

Subject: RE: NIRHI: Administrative Arrangements

Keith

I understand from Joanne that Ofgem is not going to provide us with the names of applicants until a privacy policy (currently being drafted) is signed by applicants. I thought we had found a pragmatic way to progress the 'Who owns the data?' issue before Christmas and I am disappointed that the very first time we seek some information (and it is only a name and address) there appears to be an obstacle.

The regulations governing the NI scheme clearly state that

'all applications for accreditation must be made in writing to the Department' where the Department is defined as 'the Department of Enterprise, Trade and Investment' and accreditation is defined as ' accreditation of an eligible installation by the Department following an application'

There is no mention of Ofgem in the Regs – it is clear that the application is to be to DETI and that it is DETI that accredits; so, legally the power and responsibility resides with DETI .

We are of the view that Ofgem is carrying out this work on our behalf in which case I cannot understand how there could be any issue in providing us any information provided by an applicant. If you do not consider that you are doing this work on our behalf I would be grateful for your view on how you think your position sits with the Regulations as drafted – in layman's terms how is DETI's legal responsibilities under the Regs, transferred to Ofgem?

Furthermore, it seems completely bizarre that if we were to terminate the Agreement you would provide us with the information (as previously agreed) but you will not share it while the arrangement is in place (without a signed privacy policy).

This current issue does not bode well moving forward as I am sure we will be seeking further information in the future. If we cannot reach a workable solution then I think the best way forward is for DETI to amend our processes to ensure that applicants approach DETI in the first instance – applications could then be passed on to Ofgem.

Grateful for a quick response

Regards

Fiona

Fiona Hepper

Head of Energy Division

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From: Keith Avis [<mailto:Keith.Avis@ofgem.gov.uk>]
Sent: 16 January 2013 12:12
To: Hepper, Fiona
Cc: Robert Hull; Matthew Harnack; Mary Smith; Luis Castro; McCutcheon, Joanne; Hutchinson, Peter
Subject: RE: NIRHI: Administrative Arrangements

Fiona

For clarity I thought I should pick up on the fact that in signing off the Administrative Arrangements I am assuming that you were also content with the baseline scope document that accompanied them in my email of 21 December. Suffice to say, the document is as discussed and agreed between DETI and Ofgem, but for completeness, if you could confirm that you are content by way of a reply that would be much appreciated.

Kind regards

Keith

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From: Hepper, Fiona [<mailto:Fiona.Hepper@detini.gov.uk>]
Sent: 31 December 2012 10:59
To: Keith Avis