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Stephen McMurray
Finance Director
DfE
Adelaide House
39-49 Adelaide Street
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13 December 2016

Dear Stephen

NON-DOMESTIC RENEWABLE HEAT INCENTIVE

The issue of the Non-Domestic Renewable Heat Incentive scheme was discussed in detail at a DfE/ DoF meeting on 17 October 2016. A number of actions were agreed at that meeting as set out in the agreed minutes of the meeting, copy appended to this letter.

At the meeting it was noted that DfE had given an undertaken, at an earlier meeting with DoF on 27 May 2016, that urgent steps would be taken to address the ongoing budgetary pressures associated with the RHI scheme going forward. These included legal advice on the options available to reduce the ongoing RHI financial pressure. DfE therefore agreed at the 17 October 2016 meeting to document the actions that have been taken and will be taken to address the failure of this scheme, including all engagement with DSO, from when problems with this scheme first became evident.

I should be grateful if DfE could now provide this information as a matter of urgency.

The issue of RHI was also discussed in detail at a routine DfE/ DoF stocktake meeting on 11 November 2016. In respect of the action points from the 17 October meeting, DfE reported that while it had been the intention to have a submission with the Economy Minister by end of October, this target was not met. DfE agreed to provide DoF with a revised timeline.

I should be grateful if DfE could now also provide this information as a matter of urgency.

I also acknowledge that DfE has established a Steering Group to oversee this work and that an invitation has been extended to DoF Supply to attend a meeting of the Group. I would advise that DoF Supply could only have observer status at a Steering Group meeting given Supply's potential approval role in respect of any business case underpinning a recommended way forward. I should be grateful if the Steering Group could advise as to whether it is content for any future DoF Supply representation to be on this basis.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Emer Morelli', is written on a light-colored rectangular background.

EMER MORELLI

**cc David Sterling
Mike Brennan
Heather Cousins
Michelle Scott**

Renewable Heat Incentive - Meeting between DoF Supply and DfE

Note of meeting
Netherleigh, 17 Oct. 2016

In attendance:

DoF: Mike Brennan, Emer Morelli, Michelle Scott, Giulia ní Dhulchaointigh.

DfE: Heather Cousins, Stephen McMurray, Stuart Wightman, Lucy Marten.

Item	Description	Action
1	<p>Update since last meeting</p> <p>DoF asked for an update since the last meeting on this issue. DfE said that the situation remained the same –with an in-year pressure of £32 million for this scheme .</p> <p>The departmental officials stated that the £32 million pressure is a realistic scenario, the actions that they are taking to address deficiencies in the scheme will not have a major impact on the funding required for this year.</p> <p>In respect of the in-year pressure, DfE confirmed that approx £5 million of the £12 million has been found from within the departmental baseline.</p> <p>DfE asked whether there was any way that the necessary AME funding could be found from AME underspend elsewhere in the NI Block. DoF advised that this has been explored with Treasury and is not an option.</p>	
2	<p>DSO advice</p> <p>DoF asked for an update on the legal advice which DfE has sought from DSO. DfE said that there were two separate issues on which they were taking advice:</p> <ul style="list-style-type: none"> • Taking any necessary enforcement action • Revising the scheme to bring the rates of return in line with the original policy intent <p>DfE advised that they are waiting for a response from the EU on notifying changes from the assumptions DfE had made about the operation of the scheme at its beginning. In the meantime, advice from DSO has confirmed that concerns regarding continued State Aid compliance are a solid rationale for consulting on the introduction of cost controls.</p> <p>In response to a query from DoF, DfE confirmed that DECC are aware of the engagement on State Aid issues.</p>	

3	<p>Enforcement</p> <p>DfE advised that payments to a small number of installations are on hold following the PWC report. These were in category 4. However these payments are not significant in terms of the scale of the overall cost of the scheme the scheme.</p> <p>DoF asked, in light the views expressed regarding Ofgem's administration of the scheme, if DfE were considering terminating their contract with Ofgem. DfE said that they were considering taking inspection and decision-making responsibility following inspections for this scheme from Ofgem. DoF highlighted concerns previously raised by the department in relation to the in-house capacity to administer the domestic scheme. DfE confirmed that if elements of the administration were taken in-house the department would have to buy in appropriate expertise.</p> <p>DoF asked whether, there will be an attempt to claw back administration fees paid to Ofgem. DfE said that they have been advised that legally this will not be possible. DoF asked if DSO advice had also been sought on a prospective clawback through a reduction in future administration fees rather than a retrospective clawback mechanism.</p>	
4	<p>Regulations</p> <p>DoF asked whether any changes to primary legislation would be required should DfE decide to amend any component of the scheme. DfE advised that none were necessary and that the necessary changes could be made through subordinate legislation. DoF queried whether DECC approval was required at any stage given that the primary legislation was UK wide, albeit with specific NI clauses. DoF also queried whether there was any concern at a UK level as to potential EU infringement fines.</p> <p>DoF asked whether there was scope to adjust the time period over which payments would be made.</p> <p>DoF asked whether the regulations were drafted in such a way that the tariffs could be changed again if market conditions changed to ensure that there was no possibility of over-incentivisation. DfE agreed to seek DSO advice on this.</p>	<p>DfE</p> <p>DfE</p>
5	<p>Consultation</p> <p>DfE said that they aim to have a paper with the Minister by the end of October seeking his approval to consult on new draft regulations that would amend the tariffs for the scheme. DfE will conduct pre-consultation with major stakeholders prior to consultation. DoF queried whether the consultation would only consider amendments to tariffs or if any other cost control</p>	

	<p>measures would also be included including the definition of eligible usage etc.</p> <p>DoF asked whether there was a statutory duty to consult on these regulations. DfE said that although there was no statutory duty they have received strong advice from DSO that they will need to consult those involved.</p> <p>DoF asked DfE consider all options on speeding up consultation if consultation has to be undertaken, by reducing the number of weeks of consultation or carrying out a focused consultation with those affected rather than a full public consultation. DfE agreed to seek DSO advice on these points.</p>	DfE
6	<p>Legal challenges</p> <p>DfE advised that a legal challenge could lead to delays. The risk of any challenge was more likely when the regulations had been implemented. The regulations would remain in place while any challenge proceeds.</p>	
7	<p>New Combined Heat and Power (CHP) installations</p> <p>DoF asked about the large installations that are coming into the scheme. DfE said that there was no legal way to stop these from proceeding. However, they will be adding a time limit to the new regulations and reducing the tariff. DoF asked whether there was any danger of the same problem arising with these installations as with others. DfE advised that there was not as it was different technology. DoF asked whether this was State-Aid complaint. DfE confirmed that it was.</p>	
8	<p>Documentation</p> <p>DoF asked DfE to document the actions that have been taken and will be taken to address the failure of this scheme, including all engagement with DSO, from when problems with this scheme first became evident.</p>	
9	<p>Finance Minister statement</p> <p>DoF said that the Finance Minister will have to make a statement to the Assembly around October Monitoring. He will need to include some detail on RHI as this accounts for such a large percentage of the Resource DEL over-commitment. DfE agreed to put together lines for this including the remedial actions that have been taken.</p> <p>DoF said that due to the challenging nature of the cuts that will be announced, RHI will come under renewed scrutiny and DfE will</p>	DfE to provide lines

	<p>want to explore every option available to reduce the overall cost of this scheme and take all actions as necessary moving forward.</p> <p>DfE asked if it was possible to go back to Treasury for additional funding in light of high take up of scheme in NI. DoF commented that discussions had taken place with Treasury on this point following the Autumn statement in 2015, however HMT set out their final position in the January 2016 letter from the CST.</p>	
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From: [Brennan, Mike](#)
To: [Caldwell, Alison](#); [Sewell, Julie](#)
Subject: FW: Letter to DfE RHI 13 December 2016
Date: 13 December 2016 15:03:38
Attachments: [image001.jpg](#)
[Letter to DfE RHI 13 December 2016.docx](#)

From: Cairns, Robyn
Sent: 13 December 2016 14:08
To: McMurray, Stephen
Cc: Brennan, Mike; Sterling, David; Cousins, Heather; Morelli, Emer; Downie, Jill
Subject: Letter to DfE RHI 13 December 2016

Good afternoon Stephen

Please find enclosed Letter from Emer Morelli regarding Non-Domestic Renewable Heat Incentive

Kind regards

Robyn



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