

From: [Scott, Michelle](#)
To: [Brennan, Mike](#); [Morelli, Emer](#)
Subject: FW: RHI Options discussion
Date: 06 January 2017 14:24:01

From: Montgomery, Paul
Sent: 06 January 2017 14:21
To: Scott, Michelle
Cc: McMurray, Stephen; Moore, Stephen (DfE)
Subject: FW: RHI Options discussion

Michelle,

Apologies for the delay in getting back to you on this.

Whilst it may seem that the RHI scheme is not operating in accordance with the terms and conditions of the State aid decision that gave the EC's formal approval for the scheme, this is not the Commission's view.

In order to do as Brian has suggested, the Commission would first have to undertake a formal investigation and adopt a negative decision, which would require the UK to recover a specific amount of aid from those beneficiaries that have been overcompensated.

However, rather than take this line, the Commission seems prepared to adopt a new revised State aid decision that would give its approval for reduced tariffs.

Furthermore, at a meeting with the Commission on 7th December, Celine Gauer, Director of the Energy and Environmental aid Division in DG Comp, specifically suggested that we should not make an argument that the scheme was in breach of the State aid regulations.

Paul

Paul Montgomery
Room C5.5
Department of Health
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From: McClure, Brian <Brian.McClure@finance-ni.gov.uk>
Date: Thursday, 22 Dec 2016, 2:05 pm
To: Scott, Michelle <Michelle.Scott@finance-ni.gov.uk>, McMurray, Stephen <Stephen.McMurray@economy-ni.gov.uk>
Cc: Brennan, Mike <Mike.Brennan@finance-ni.gov.uk>, Morelli, Emer <Emer.Morelli@finance-ni.gov.uk>
Subject: Re: RHI Options discussion

Thanks Michelle

My tel no Stephen is

Personal information redacted by the
RHI Inquiry

I am on leave but will take a call.

Brian

Sent from my BlackBerry 10 smartphone.

From: Scott, Michelle
Sent: Thursday, 22 December 2016 13:06
To: McMurray, Stephen
Cc: Brennan, Mike; Morelli, Emer; McClure, Brian
Subject: RHI Options discussion

Stephen

As part of a broader discussion on the various options open to DfE regarding the future operation of the RHI scheme Brian McClure, head of rating policy division, has made the comments below, which he sees as a potential interim measure:

'Why doesn't DfE write to all scheme participants now?

Advise them that "the Department, DfE, is under an obligation to notify you that the scheme is flawed. Providing a subsidy for production of useless energy contravenes EU Environmental Aid Guidelines, which means the scheme is non compliant with State Aid rules. As such the UK Government, as Member State, is at serious risk of infraction which would place a requirement on the Government to recover excessive payments made under the scheme to date from recipients."

The NI Executive, however is prepared to allow you to withdraw you from the scheme now and cover the reasonable costs incurred by you (less any betterment?) over a 5 year period (or whatever).

This will of course be a voluntary thing but those that choose to ignore it carry the risk. It should also serve to moderate consumption of useless energy'.

It has also been commented that the suggested communication to scheme participants might be combined with notification of imminent inspections of all successful applicants? (reinforces the point that change is inevitable one way or another).

Clearly, you will be best placed to consider the viability of this suggestion in the context of your legal, economic and state aid advice, and against the other options which you are currently considering as part of the business case process. In the event this option was taken forward, the wording of any correspondence to scheme participants along the lines above would need to be reviewed by legal experts to ensure that there is no prejudicial impact on the implementation of any option going forward and to minimise the risk of legal challenge.

Clearly your ongoing engagement with the EU over State Aid compliance is key to the consideration of any options.

Brian McClure has indicated he is content to discuss his views in more detail if that would be helpful, and I have copied him into this email.

Kind regards

Michelle