

Wheeler, Nicola

From: McCutcheon, Joanne
Sent: 18 October 2012 13:38
To: Wheeler, Nicola
Cc: Hutchinson, Peter
Subject: RE: Renewable Heat Incentive- Administrative Arrangements

Attachments: Picture (Device Independent Bitmap)

Nicola

Many thanks for these very helpful comments which we will address in our ongoing discussions with Ofgem.

Regards

Joanne

Joanne McCutcheon

Renewable Heat
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9425 (ext: 29425)
Textphone: 028 9052 9304
Web: www.detini.gov.uk

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www.ni2012.com

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From: Wheeler, Nicola
Sent: 11 October 2012 15:22
To: McCutcheon, Joanne
Cc: Hutchinson, Peter
Subject: Renewable Heat Incentive- Administrative Arrangements

Joanne

I have had a look over the draft administrative agreement between DETI and GEMA and have a few comments and suggestions to make.

Parties

Am I correct in thinking that DETI was originally called the Department of Manpower Services? If so, in the first paragraph you should probably include the words 'formerly the Department of Manpower Services' after the reference to DETI as the legislation DETI was originally established under probably refers to that name.

Paragraph 1.1

I advise the words 'howsoever incurred' be removed from the end of the definition of 'Administration costs'.

Clarke, Helen

SOL34916/12 6

From: McCutcheon, Joanne
Sent: 19 November 2012 10:58
To: McGinn, Paul
Cc: Hutchinson, Peter
Subject: FW: Renewable Heat Incentive- Administrative Arrangements

Paul
I note that Nicola Wheeler is out of the office at present and that you will be dealing with this query. We are coming under a lot of pressure to sign this Agreement with Ofgem as the RHI scheme launched on the 1 Nov and they are to act as Scheme Administrators.. I was wondering therefore if you could give me some idea of how long it might be before you are in a position to respond.
Thanks
For your help
Joanne

From: Caher, Margaret
Sent: 13 November 2012 14:11
To: McCutcheon, Joanne
Subject: RE: Renewable Heat Incentive- Administrative Arrangements

Joanne
I have forwarded this query back up to Paul McGinn. He has confirmed that he is content to deal with it.

Regards
Margaret

Margaret Caher
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Victoria Hall
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BELFAST
BT1 4NL
Tel: 02890 (2)51204
Email: Margaret.Caher@dfpni.gov.uk

From: McCutcheon, Joanne
Sent: 13 November 2012 12:21
To: Caher, Margaret
Cc: McGinn, Paul
Subject: FW: Renewable Heat Incentive- Administrative Arrangements

Margaret
I got Nicola's Out of office – would you be able to help with this query?
Thanks
Joanne

From: McCutcheon, Joanne
Sent: 13 November 2012 12:14
To: Wheeler, Nicola

Cc: Hutchinson, Peter
Subject: RE: Renewable Heat Incentive- Administrative Arrangements

Nicola

You will recall you provided us with assistance previously re the NI RHI.
The negotiation of the Admin Arrangements document between DETI and Ofgem is still ongoing. In particular the question has been raised as to 'who owns the data?'

The Primary powers for the NI RHI are contained in the Energy Act 2011

<http://www.legislation.gov.uk/ukpga/2011/16/part/3/crossheading/northern-ireland-renewable-heat-incentives/enacted>

The secondary powers are in the NI Regulations

<http://www.legislation.gov.uk/nisr/2012/396/contents/made>

Ofgem is not mentioned in the Regulations – rather it refers in all cases to DETI.
We are engaging Ofgem to act as Administrators of the scheme on our behalf – this is via the Admin Agreement which we understand has no legal basis.

Grateful for your view on who owns the data? This is particularly relevant for us in terms of the position should the agreement be terminated and also in terms of who has the right to pass any data to a third party.

Happy to discuss and thanks again for your help
Joanne

Joanne McCutcheon

Renewable Heat
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Cc: Hutchinson, Peter
Subject: Renewable Heat Incentive- Administrative Arrangements

Joanne

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Parties

Am I correct in thinking that DETI was originally called the Department of Manpower Services? If so, in the first paragraph you should probably include the words 'formerly the Department of Manpower Services' after the reference to DETI as the legislation DETI was originally established under probably refers to that name.

Paragraph 1.1

I advise the words 'howsoever incurred' be removed from the end of the definition of 'Administration costs'.

"Retained Functions"- Is DETI content that these are the only functions that it will be retaining? Does this reflect what has been agreed? I note that DETI is retaining the function of carrying out reviews of decisions. Given that it is GEMA who makes the decisions in the first instance should it not be GEMA who then reviews such decisions?

Paragraph 2.2

Paragraph © - DETI might wish to include wording so that GEMA must not only inform DETI of any complaint or request for a formal review but also the actions taken by GEMA in response to such complaints or the outcome of any reviews.

Paragraph 3.1

Sub-paragraph (a) - I am not familiar with what the term 'on a pass through basis' means. Can DETI clarify? Is DETI content with this?

Sub-paragraph (g)- It might not be possible for DETI to always give GEMA all the information set out here, for example if DETI itself is not aware of everything necessary. I therefore advise that this clause is reworded to provide DETI with some room to manoeuvre. For example, you could say something along the lines of, 'to provide GEMA with all the information that DETI could reasonably be expected to have to ensure that GEMA is aware of local regulations...' and 'wherever possible to give GEMA advance notice of any prospective or actual changes in the local regulations.'

Paragraph 4.4

I advise this be removed all together. I read it to mean that GEMA only has to carry out the conferred functions as exist in the Regulations at the time of this agreement. This would put DETI into an impossible situation if the Regulations are amended to incorporate new functions which are closely tied in with the existing functions already being carried out by GEMA.

Paragraph 5

I would have the most concerns over this paragraph. It seems that GEMA can invoice DETI for any administrative costs at all and that DETI are obliged to simply pay them. If any dispute arises it is then to be decided by GEMA's chief operating Officer whose decision will be final. For some reason disputes about the administrative costs have been taken out of the dispute resolution procedure provided for later in relation to other aspects of the agreement. This seems very one sided in favour of GEMA. DETI would be agreeing effectively to issue a blank cheque and accordingly would be in a very exposed position financially. I advise that DETI considers this area of administrative costs more thoroughly to ascertain whether there are any guiding provisions or boundaries it wishes to include in this agreement. At the very least disputes over costs should be dealt with by the dispute resolution process given that is where disputes are most likely to arise. You will see that later I also make some suggestions about the dispute resolution process to make it less one sided in favour of GEMA.

Paragraph 6

If possible, it would be advisable for GEMA to hold all monies transferred for the payment of Northern Irish periodic support payments in a separate bank account. However, I recognise this may not be possible at their end. I advise that DETI obtain some sort of financial or accounting advice to ensure that DETI is content with the financial aspect to this.

Paragraph 8.1

Will DETI have any input into these assets? If so DETI would wish to have some share in this.

Paragraph 8.2

This doesn't safeguard any intellectual property rights held by DETI and utilised by GEMA.

Paragraph 12

As indicated earlier, I advise that dispute about administrative costs should be included in the dispute resolution procedure. I also advise at paragraph e) that Counsel be selected by both GEMA and DETI.

This is merely advice to be considered by DETI. It is of course for DETI to decide what it is prepared to accept and sign up to.

I hope this is of assistance.

Kind regards

Nicola

Nicola Wheeler

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