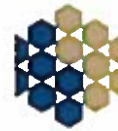


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*Our Ref:* SOL53339/2016/DETI

29<sup>th</sup> January 2016

Dear Stuart

### **SUSPENSION OF RENEWABLE HEAT INCENTIVE SCHEMES**

Thank you for your minute of 29<sup>th</sup> January.

First of all let me confirm that my view remains that, from a legal perspective, a short three-week public consultation would constitute a much lower risk to the Department's policy to suspend the above Schemes than a decision to proceed to close without consultation. ✓

I would not draw a distinction between consultation on the power to suspend on the one hand the decision to suspend on the other. Rather, this seems to me a consultation on a preliminary decision on the part of the Department to suspend and the consequent taking by the Department of the necessary power to do so. Accordingly, any challenge, based on legitimate expectation, would be to the closure of the Scheme rather than simply taking the power to do so. There is, however, a risk in proceeding with legislation to give the Department that power to suspend before consultation is completed. The argument would be that the Department has effectively closed its mind and that the consultation is a sham. ✓ One of the most important legal duties on the Department in connection with any consultation exercise is that it has an open mind and has not already pre-determined the outcome. Anything which suggests that it has already made up its mind and is going to close the Scheme regardless of the outcome of the consultation, renders the whole process vulnerable to challenge.

I accept, however, that there may be timing practicalities which will dictate the necessary legislation through its Assembly procedure.



INVESTOR IN PEOPLE

Even if the legislation is prepared and laid, the Department can certainly have a preferred policy, but it should only take a final decision on closure after it has taken into account the results of the consultation exercise.

Yours sincerely

*Paul McGinn*

**P McGINN**  
**Director Division 2**