

To: Jonah Anthony[Jonah.Anthony@ofgem.gov.uk]
From: Keith Avis
Sent: 2011-07-22T10:46:15Z
Importance: Normal
Subject: FW: NI RHI
Received: 2011-07-22T10:46:15Z

Jonah
To see. Can we discuss once you have considered
keith

From: Ruth Lancaster
Sent: 22 July 2011 11:38
To: Marisa Downham; Keith Avis
Cc: Matthew Harnack
Subject: RE: NI RHI

Marisa, Keith

I'm aware of the time constraints you're working to so I've just set out our preliminary view below for information. I can follow up with a detailed explanation of why we think this level of resource will be required if that would be helpful. In view of the limited information available (and I know this constraint applies to you as well) we have had to make a large number of assumptions. Again details of these can be provided if required.

I am aware you want to keep your budget figures at a very low level and that there is a view that minimal legal support will be required. However, in reality this is going to be an intensive period of activity requiring a high level of legal support. This is largely because the Regulations are being drafted during this period. The policy papers, "clearance" papers, drafts of the Feasibility Study etc will all need to be reviewed to ensure they reflect the Regulations (which will be under development and therefore in a state of flux throughout this period). Experience on RHI has shown that development of the Regulations where we do not have control of the drafting is labour intensive involving detailed reviews of various drafts, protracted correspondence and discussion of numerous complex issues with the drafting department. This lack of control of the drafting also increases the level of potential risk to the Authority.

On this basis and in view of the fact that all of the workstreams we are supporting would be happening in parallel we think that the level of internal legal resource likely to be required throughout most of this period is around 2 FTE. [Please note this estimate *already* includes a number of assumed limits on the scope of work referred to us.] If the budget cannot stretch to this the number can be reduced, but this would mean a severely reduced level of legal support available to the policy team. This would be a significant concern to us in view of the potential risks arising from the draft Regulations for the Authority and we would strongly advise against under resourcing this aspect of the project.

We have discussed previously the possibility of requiring input from NI-based lawyers. However, in the absence of any detailed planning information it is difficult to take a view on the likely scope or cost of this. There is also a possibility that advice from Counsel may be required on specific aspects of the draft Regulations, where we think the Authority may be exposed to unacceptable levels of risk.

Happy to discuss this in more detail, but wanted to get our initial thoughts to you a.s.a.p.

Kind regards
Ruth

From: Marisa Downham
Sent: 20 July 2011 17:03
To: Ruth Lancaster
Cc: Keith Avis
Subject: RE: NI RHI

Hi Ruth,

Yes, these were the areas that I had earmarked for Legal input within the feasibility study phase. Each bullet will be dealt with at some point during September and October but necessarily not for the whole of the two month period. I've attached the feasibility study timeline which gives you a better idea of the separate workstreams. This is the most detail we can provide at present but let me know if you need any further information.

Many thanks,
Marisa

From: Ruth Lancaster
Sent: 20 July 2011 16:57
To: Marisa Downham
Cc: Keith Avis
Subject: RE: NI RHI

Hi Marisa

Thanks for this. Can you just confirm if these are the tasks the Policy team is undertaking or if this is your view of what Legal will be

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doing.

What I need is a list of the activities Policy will be carrying out so that I can take a view on the likely legal input required, but the wording of the first bullet point in particular suggests this is your view of what we will be doing.

Re the timelines I requested, please will you also confirm that each of the activities continue through the whole of September, October.

Thanks

Ruth

Ruth Lancaster

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From: Marisa Downham

Sent: 20 July 2011 14:57

To: Ruth Lancaster

Cc: Keith Avis

Subject: NI RHI

Hi Ruth,

Further to our chat, please see below for an indication of work required from Legal for the Northern Ireland Renewable Heat Incentive. This is based over the feasibility study period for the whole of September and October. I've outlined the requirements below and wonder if you could give us an idea of how much time you would earmark for Legal resource on this.

- Review of the drafting of the feasibility study including initial policy discussions with DETI
- Refining policy assumptions for feasibility delivery at the end of October
- Ensuring new legislation matches the policy design of the scheme
- Reviewing risks
- Addressing the issue of Enforcement (we have no regulatory powers over Northern Ireland and would need this addressed in the legislation)
- Factoring in potential complications with new technology issues that may arise (over and above GB RHI scheme)

Also note that we may need our Legal representative to go to Northern Ireland for some of the discussions. We may also need to consult with Irish Legal equivalents but you probably know more about this requirement with regards to NI legislation. During the feasibility study we will work out the future development and operational costs with the Legal team.

Let me know if you have any questions and many thanks in advance for your time.

Marisa

Marisa Downham

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