

To: Hughes, Seamus[Seamus.Hughes@detini.gov.uk]; Nadia Carpenter[Nadia.Carpenter@ofgem.gov.uk]
Cc: Wightman, Stuart[Stuart.Wightman@detini.gov.uk]
From: Edmund Ward
Sent: 2014-10-08T11:52:52Z
Importance: Normal
Subject: RE: Carbon Trust Loan and EU de minimis limits cases
Received: 2014-10-08T11:52:00Z
[DRAFT NIRHI Amending Arrangements_7October2014.doc](#)

Hi Seamus,

We're hoping to be able to send something over in advance of meeting on Monday - I'm just confirming with colleagues now – but as a backstop I'm confident we'd be in a position to bring along a copy of the arrangements for signature – as per the attached which has had the 'draft' label removed and intro language updated by our lawyers but which is materially the same as the version I shared on 2nd October.

As early sight, below is my best view of a likely response that Chris would send with regard de minimis matter – hopefully in advance of our meeting.

Kind regards,
Edmund

Thank you for your letter of 10th July 2014 in which you set out your proposals for how Ofgem may treat NIRHI applications where a Carbon Trust loan or other public support has been received. Your proposals bring us closer to reaching a position on the long running issue which has caused 8 NIRHI applications to be placed on hold. I am very pleased that our teams are working together to find a solution to this matter.

I note the categorisation you propose to apply to NIRHI applicants. I also note your future intention to amend the NIRHI Regulations to make the option of repaying other public support, in order to access NIRHI support, available to all applicants. We would welcome the opportunity to input into the development of policy in this area so that we can advise on any impacts such as associated administrative costs. We would also encourage early amendment to the NIRHI Regulations to address the difficulties we are having to overcome through this correspondence.

With regard to our administrative approach prior to any regulatory amendment I can confirm that we are happy to administer all Category 1 applicants in line with your proposal (i.e. we will continue to administer applicants currently not in receipt of a Carbon Trust loan or other public support without any change of approach).

For Category 2 I have considered the administrative burden placed on us when we receive an application in receipt of a Carbon Trust loan or other potential state aid funding. I can confirm that while we are prepared to gather information on funding, we would not be in a position to make any decision on where Category 2 applicants fall in relation to the relevant *de minimis* limit. This is due to the complexities and resource requirements involved in conducting any level of state aid analysis. As a result, I suggest that we deal with your Category 2 and 3 cases in the same way, i.e. Ofgem will assess the application against the eligibility criteria, and, if it meets those criteria, the next steps will depend on the nature of any funding.

Where there is clearly a grant from public funds or the provision of other public support within the terms of regulation 23, Ofgem will (continue to) proceed to determine the application without DETI input, applying regulation 23 accordingly.

In cases where it appears to Ofgem that there *may* be a grant or the provision of other public support, and that a *de minimis* State Aid issue may be involved, we will forward the relevant information to DETI. DETI will then consider whether any funding falls below the relevant State Aid *de minimis* threshold, and will take a decision as to whether, in the light of that analysis, the funding constitutes a grant from public funds or the provision of other public support for the purposes of regulation 23. DETI will then inform Ofgem of that decision (together with the basis for it and any indication as to how that position or the relevant regulations may be amended in the future). Following this, Ofgem will proceed to formally determine the outcome of the application, as part of which we will rely on DETI's decision on the grant/public funds aspect or, should there be an indication from DETI that there may be changes to regulations in future, to write to the applicant setting out options including an option that the application be put on hold pending further clarity on potential changes to regulations.

The Administrative Arrangements will need a small, but essential, amendment to reflect this division of responsibility for the relevant functions as between Ofgem and DETI, given that Ofgem will be relying on DETI's decision on whether there is a grant/public support in such cases when determining applications. For reasons of transparency we suggest that there should be a change to the Guidance which sets out this division of responsibility.

We are well-placed to move to this position as soon as you can confirm your agreement to the approach as set out above, and as soon as the Administrative Arrangements have been amended and signed. I have appended to this letter a short draft form of further Arrangements amending the original Arrangements and containing a short provision detailing that DETI will retain the responsibility of determining the grant/public support position in State Aid cases. Once you have considered we would hope to be in a position to sign these in short order. If you have any further comments on the details of this approach I would ask you to contact my colleague Edmund Ward in the first instance to progress this.

From: Hughes, Seamus [mailto:Seamus.Hughes@detini.gov.uk]

Sent: 08 October 2014 10:07
Received from: Seamus.Hughes@detini.gov.uk on 08.10.2014 10:09:2017

Annulated by Rifi Inquiry

To: Nadia Carpenter
Cc: Edmund Ward; Wightman, Stuart
Subject: FW: Carbon Trust Loan and EU de minimis limits cases

Hi Nadia

Tried to reach you by phone just now but you are going to voicemail. I just wanted to check with you that Ofgem propose to have the amendment finalised and signed off either before or at the meeting scheduled for Monday 13. Grateful if you could confirm.

Many thanks

Regards

Seamus

Seamus Hughes

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Please consider the environment - do you really need to print this e-mail?

From: Hughes, Seamus
Sent: 02 October 2014 13:50
To: 'Edmund Ward'
Cc: Wightman, Stuart; 'Nadia Carpenter'
Subject: FW: Carbon Trust Loan and EU de minimis limits cases

Edmund

Thank you for your email and draft amendment to the administration agreement. I can confirm that DETI is content with the document as drafted which is in line with our previously agreed position. Please proceed to finalise for signing.

Many thanks

Regards

Seamus

Seamus Hughes

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From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]
Sent: 02 October 2014 10:03
To: Hughes, Seamus
Cc: Wightman, Stuart; Nadia Carpenter
Subject: RE: Carbon Trust Loan and EU de minimis limits cases

Seamus

Thanks for your email.

Thanks for progressing this and confirming the DETI position; we've now made progress on draft arrangements.

Please see attached a draft proposed amendment; grateful for any thoughts on how this would be received/whether this would be acceptable? Any

comments welcome.

Kind regards,

Edmund

From: Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]
Sent: 01 October 2014 11:19
To: Edmund Ward
Cc: Wightman, Stuart; Nadia Carpenter

Annotated by RHI Inquiry

Subject: RE: Carbon Trust Loan and EU de minimis limits cases

Edmund

Thank you for your email.

I have discussed with Stuart Wightman this morning and we are content that the process as outlined in your bullet points below reflects DETI's understanding of our agreement of how this matter should be progressed. Can you please provide a draft of your proposed amendment to the administrative arrangements to deal with this issue so that we can agree early sign off and move forward on the matter. You are already in receipt of DETI's consideration and outcome in relation to :-

- Spa Nursing Home
- Lusty Beg
- Brooklands Nursing Homes (X2 Killeel and Magherafelt)

Many thanks

Regards

Seamus

Seamus Hughes

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From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]

Sent: 30 September 2014 17:16

To: Hughes, Seamus

Cc: Nadia Carpenter

Subject: FW: Carbon Trust Loan and EU de minimis limits cases

Dear Seamus,

Apologies for the long email, I tried to call and will be happy to follow up by phone to talk through the following if this helps.

Further to my email below, first I'd like to apologise again and confirm we're actively progressing this matter.

In considering our approach, it seems likely we'll be proposing the sharing of a short (perhaps 1-2 page) amendment to the administrative arrangements, for clarity. It seems this would likely be the best way to reach a final outcome on this matter. I'd be happy to discuss your thoughts/concerns around this approach.

In terms of how an amendment to the arrangements could be drafted, there's an outstanding query from our lawyers on how roles will be shared between Ofgem and DETI. As I understand it, and to be in line with the practical approach that we have discussed (supported by the templates you have developed and shared yesterday), the roles would be:

- *Ofgem* are to collect information on funding sources and likely RHI income, and to forward to *DETI*.
- *DETI* are to have the role of determining whether there has been a public grant or public support, based on a *DETI* state aid analysis.
- [In essence, this means that *DETI* would in effect be confirming that based on your analysis, and given the stated *DETI* position regarding the European legislation concerning *de minimis* funding, for the purposes of the RHI regulations a particular organisation that was the subject of your analysis had been the recipient of, or would be the recipient of, a grant or support that would be considered a financial advantage provided by a public authority].
- *DETI* would then provide the result of that determination to *Ofgem*.
- *Ofgem* would then consider that assessment as part of our overall decision on whether regulation 23 would be engaged.
- Where *Ofgem* were in a position to accredit, we would then proceed with our normal procedures.
- Where *Ofgem* would be likely to reject, *Ofgem* would write to applicants with an initial view setting out that an analysis suggested we would not be able to accredit, and offering applicants the option either to (i) put their application on hold pending any potential changes to regulations to be enacted, on the basis of our understanding from DETI that such changes were under consideration; or (ii) for Ofgem to proceed to a formal decision on the application [and a likely rejection].

To be clear, this is contrasted with a slightly differing scenario (A) in which *DETI* would be providing an analysis of whether the de minimis threshold applies, but with *Ofgem* deciding what that means in cases where it is not clear that a 'public authority' is involved. The risk of that scenario would be that Ofgem could reach a different decision to that anticipated by DETI, and potentially out of line with the state aid requirements.

This is also contrasted with a scenario (B) where DETI are taking the ultimate accreditation decision, on the basis of an assessment of all other eligibility requirements by *Ofgem*. The risks in that option are that it would be much less straightforward for Ofgem to convey to DETI in a robust manner sufficient details of our assessment of all other eligibility requirements for DETI to be able to rely on our assessment, and if Ofgem and DETI were to separately carrying out assessments there are risks of reaching inconsistent conclusions.

Conscious of the journey to reaching the current situation, and in the interests of reaching an agreed position on this matter, I think Ofgem will be willing to be flexible between the main approach outlined above or alternative (A), but we do need to be clear on which position in order to be able to ensure both DETI and Ofgem decision-making is robust to any potential challenge.

I'd be happy to discuss this with you, and am keen to explore if this will be satisfactory from DETI's perspective so that we can progress this matter to a conclusion.

Kind regards,
Edmund

Edmund Ward

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From: Edmund Ward
Sent: 29 September 2014 12:32
To: 'Hughes, Seamus'
Cc: Mills, John (DETI); Wightman, Stuart; Nadia Carpenter; Sinton, Dan; Neth_Energy
Subject: RE: Carbon Trust Loan and EU de minimis limits cases

Dear Seamus

Thanks for your email. My apologies that the formal letter from Ofgem to DETI on this matter is outstanding; I can confirm that we are progressing this as a matter of urgency.

Thanks for providing the checklists for the 4 affected applications you reference below. We will attach these to the relevant accreditation records for these cases, and this will enable us to prepare to act swiftly in moving to a formal accreditation decision on these applications once the outcome of the formal letter exchange has been completed.

Kind regards
Edmund

From: Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]
Sent: 29 September 2014 10:41
To: Edmund Ward
Cc: Mills, John (DETI); Wightman, Stuart; Nadia Carpenter; Sinton, Dan; Neth_Energy
Subject: Carbon Trust Loan and EU de minimis limits cases
Importance: High

Dear Edmund

I refer to ongoing communication and consideration of Carbon Trust Loans and EU de minimis limits between DETI and Ofgem. Although a formal letter from Ofgem is awaited DETI has agreed that it will adjudicate on these cases and provide an instruction to Ofgem on how to proceed. DETI is in receipt of all the required information for a number of the affected applicants and has considered these cases. We are content that the following cases are within de minimis limits based on the revised operating hours submitted and should be progressed to accreditation as a matter of urgency:-

- Brooklands Nursing Homes X 2 (Kilkeel and Magherafelt) (Personal information redacted by the RHI Inquiry)
- Spa Nursing Home (Personal information redacted)
- Lusty Beg (Personal information redacted)

Copies of signed off checklists from DETI are also attached for your records.

Regards
Seamus

Seamus Hughes

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