

To: Edward Ntephe[Edward.Ntephe@ofgem.gov.uk]; Matthew Harnack[Matthew.Harnack@ofgem.gov.uk]
Cc: Omolade Barker[Omolade.Barker@ofgem.gov.uk]; Elizabeth Hillman[Elizabeth.Hillman@ofgem.gov.uk]; Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]
From: Faye Nicholls
Sent: 2011-04-19T19:43:13Z
Importance: Normal
Subject: RE: Ofgem's involvement in running schemes via service agreements
Received: 2011-04-19T19:43:14Z
Vires to administer the Renewable Heat Premium Payment

Thanks for copying me into your email, Edward.

All, I attach an email that I sent through to Liz a short while ago on the Authority's *vires* to administer the RHPP and the obligations that it may be required to meet as a consequence, based on DECC's policy.

Although, in my opinion, the Energy Act does give the SoS power to require the Authority to administer RHPP, this does not mean that the SoS has to do so. However, my email does not cover the possibility of going down the service agreement route. I will allow Edward and Ruth to come back with further points on this, but please let me know if you require further input.

Thanks

Faye

From: Edward Ntephe
Sent: 15 April 2011 17:33
To: Matthew Harnack
Cc: Omolade Barker; Elizabeth Hillman; Ruth Lancaster; Faye Nicholls
Subject: RE: Ofgem's involvement in running schemes via service agreements

Matthew

I've copied in Faye.

1. Running a RHI scheme in NI: I think we need a statutory basis for any agreement to run NI RHI. My reasons:
 - We run the NI Renewables Obligation & NI Renewables Electricity Guarantees of Origin because s.121 & s121A Energy Act 2004 [both attached] set out 'GEMA's powers to act on behalf of the Northern Ireland regulator' with regard to running the NI RO & NI REGO.
 - The powers entitle us to 'enter into arrangements'. As a result, we entered into service level agreements with NIAUR for both schemes.
 - Some legislative & DECC policy background to REGO is at http://www.legislation.gov.uk/uksi/2008/1888/pdfs/uksiem_20081888_en.pdf
 - Based on the above, I'd say we need a statutory basis to run NI RHI.
 - Am not aware of any such basis in EA08 or EA10 or in any other Act.
 - Also, though EA08 generally applies in E&W, S and NI, section 112 EA08 says that in relation to section 100, the EA08 extends only to England & Wales & Scotland. As you know, s.100 is the statutory provision that establishes the RHI scheme.
2. Running a RH Premium Payment Scheme for DECC: This is Faye's / Ruth's areas, but I'll venture a couple of thoughts:
 - We have 'schemes' as in Ofgem's for the various programmes we are statutorily obliged to carry out for DECC
 - Apart from our loosely referring to those programmes as schemes, there are 'schemes' properly so called, which generally have a statutory basis.
 - For instance, the OFT supports a number of 'schemes'. One such is Consumer Direct which is a public consumer advice scheme which caters for gas and electricity customers. OFT's expenses in respect of Consumer Direct are provided for in section 8 Utilities Act 2000 and we recover these from licensees and hand over to OFT
 - Or again, the SoS' transfer schemes & licensing schemes made under Schedule 7 Utilities Act 2000 when the regulatory frameworks for gas and electricity were restructured
 - However, the draft OFGEM / DECC MoU lists in its Appendix 2, the ten 'schemes' intended to be covered by the MoU. Nine of them are statutory programmes we run [or as in the case of the CCS, were supposed to run] for DECC, such as CERT, CESP, RO, etc.
 - Only one is non-statutory – the Energy Demand Research Project for pilot smart energy meters.
 - The reality though is that the EDRP is being [?] / intended to be run [?] by 4 major energy companies, with Ofgem supervising the trial, drawing up recommendations for grant funding and overseeing the analysis of data emerging from the work. Ofgem is supported by the Centre for Sustainable Energy (CSE) which analyses supplier reports and looks across Supplier trials for common themes and learning.
 - Doesn't seem our EDRP activities involve handling money. Ruth is better placed to say what the position is.
 - Seems the stuff we do [back office activities] for Post Comm/ Rail Regulator can be distinguished from what Renewable Heat Premium Payment scheme sounds like. Paul Heseltine will be able to say more about what we do for Post Comm & RR & Faye will be quite clear about the RHPP.

Edward

Received from Ofgem on 18/10/2017
 Annotated by RHI Inquiry

From: Matthew Harnack
Sent: 15 April 2011 15:33
To: Edward Ntephe; Elizabeth Hillman; Ruth Lancaster
Cc: Omolade Barker
Subject: RE: Ofgem's involvement in running schemes via service agreements

Hi Edward,

Do you have any thoughts on my email below?

Also, DETI in Northern Ireland have contacted us to ask us if we are interested in running an RHI scheme in NI on their (or NIAUR's) behalf. Bob and I are keen to do this on the basis of economies of scale if nothing else (it could reduce costs of delivering the RHI in GB and it could save the UK as a whole something like £15-20M over 4 years). As we already do this for the RO and REGO schemes I presume we can do the same for the RHI. Is there anything that would stop us doing this from a legal viewpoint? Or anything more that we would need to do to enable us to do it?

Edward/Liz/Ruth, let me know if these queries should be directed to another lawyer. I had asked Edward for the original advice because of the comparison to the RO and REGO services which we provide for NIAUR, which he is familiar with. To fill the picture, the emails below were in response to my question about whether we are able to administer all or part of the Renewable Heat Premium Payment scheme for DECC via a services agreement rather than via legislation.

Grateful if I could get a response on both points by next Wednesday so I can continue discussions with DECC and DETI.

Thanks

Matthew

From: Matthew Harnack
Sent: 30 March 2011 18:36
To: Edward Ntephe
Cc: Omolade Barker
Subject: RE: Ofgem's involvement in running schemes via service agreements

Thanks for the initial feedback Edward. I'm also aware though that we provide services to PostComm and the Office of Rail Regulator, and soon I think to the Pensions Regulator too. How do we do these? Is this a model we could use for providing services to DECC?

From: Edward Ntephe
Sent: 30 March 2011 15:37
To: Matthew Harnack
Cc: Omolade Barker
Subject: Ofgem's involvement in running schemes via service agreements

Matthew

As discussed yesterday, we have an agreement with NIAUR under which we carry out NIRO functions for them.

However, that SLA has a statutory basis. Section 121 of the Energy Act 2004. It is in the attachment.

Section 121A which is also in the attachment enables us to enter into arrangements with NIAUR to carry out their REGO functions

Given the current state of the legal framework in which we operate, I do not think that we can lawfully undertake functions on behalf of another body in the absence of a statutory basis.

Edward