

To: Teri Clifton[teri.clifton@ofgem.gov.uk]; McCutcheon, Joanne[Joanne.McCutcheon@detini.gov.uk]
From: Hutchinson, Peter
Sent: 2013-08-29T14:18:58Z
Importance: Normal
Subject: RE: Admin Arrangements
Received: 2013-08-29T14:19:32Z

Teri,

We receive weekly reports from Mohini Depala, these are very helpful, however as we discussed when we met it might be helpful to have additional information (post code of installation, name of applicant / company etc) depending on whether we can sort data protection issues. Grateful if you would consider.

Just in terms of the Lottery point – I have had some correspondence with DECC on this point and would believe our position to similar to theirs, in that Lottery Funding would not be compatible with NI RHI given that our legislation is similar on these issues. I don't think this should have an impact on NI applications given that Lottery funding is less prevalent in NI and I am not aware of any cases where it has been received for renewable installations. I assume this is the point that you are referring to? We might need to consider the implications further but I would expect that we would be similar to GB in terms of eligibility issues.

Thanks,
Peter

From: Teri Clifton [mailto:teri.clifton@ofgem.gov.uk]

Sent: 29 August 2013 15:02

To: McCutcheon, Joanne

Cc: Hutchinson, Peter

Subject: RE: Admin Arrangements

Hi Joanne

I am so sorry - I'm going to be completely honest and say this is the first time I've seen this although Matthew did mention it to me. I'll speak to our Data Protection person and get back to you as a priority, he's not in the office today.

Do you know who sends you the reports – just want to make sure we are updating the right ones.

Thanks
Teri

From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gov.uk]

Sent: 29 August 2013 10:16

To: Teri Clifton

Cc: Hutchinson, Peter

Subject: FW: Admin Arrangements

Teri

Re your recent e-mail and the mention of reports – just wondering if there has been any progress on para 2 below.

Regards
Joanne

From: Matthew Harnack [mailto:Matthew.Harnack@ofgem.gov.uk]

Sent: 03 July 2013 19:21

To: Hepper, Fiona

Cc: McCutcheon, Joanne; Hutchinson, Peter

Subject: RE: Admin Arrangements

Fiona,

Thanks for coming back to me on this. I agree that it's best to park the legal question for now and only return to it if and when the need arises.

I'll ask Teri Clifton to see if we're able to provide you with the additional information that you request, as part of the regular reports that you are sent. I would hope this is possible. I'll also see if she can answer your questions about registration with the Information Commissioners Office and two data controllers.

Regards,
Matthew

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From: Hepper, Fiona [mailto:Fiona.Hepper@detini.gov.uk]
Sent: 03 July 2013 09:00
To: Matthew Harnack
Cc: McCutcheon, Joanne; Hutchinson, Peter
Subject: FW: Admin Arrangements

Matthew

We discussed this matter when we met on 29 May and I indicated that we would get back to you once we had further input from our Solicitors. I have now received their response and they have reiterated their point - that the provisions of the primary legislation expressly use language indicating that GEMA acts *on behalf of* DETI i.e GEMA has not replaced or extinguished DETI's overall responsibility and interest in the scheme. I think this issue could go backwards and forwards between our legal teams indefinitely - perhaps we should park it at present and return to it if and when the need arises.

As regards the sharing of data, the Solicitors have asked whether GEMA is registered with the Information Commissioner's Office for the purposes of the NI RHI scheme – perhaps you could clarify this for us? They also raise the possibility of two data controllers – any views? In any case, it is their view that even were GEMA the sole data controller there is no impediment within the Data Protection Act 1998 which would prevent you sharing applicants details with DETI.

With regard to the assessment of fairness they refer to

- (a) para 1.24 of the Guidance which clearly envisages GEMA sharing personal data with DETI for the purposes of monitoring – applicants could not be said to possess any expectation that their details were not liable (at some stage) to be disclosed to DETI.
- (b) The fact that no one has been misled or deceived as to DETI's involvement with the scheme when the information was collected
- (c) Their inability to identify any conceivable harm to the interests of the applicant – perhaps GEMA could identify the adverse consequences/harm they envisage?

With regard to Schedule 2 they make the point that applicants have applied voluntarily, are aware from the outset that the scheme is a DETI scheme and that it is difficult to envisage what possible 'prejudice' would be caused to them by having their details disclosed to DETI. Finally, as regards Article 8 ECHR the Solicitors cannot see how disclosure would bring any risk of contravening this article.

In summary, even if we cannot achieve agreement over the 'ownership' of the data, it is the view of our Solicitors that DETI, as the specific public authority with statutory responsibility for the scheme, has a legitimate interest in the scheme and as such there should be no difficulty in disclosing the data to us for a 'legitimate purpose'.

At present we are receiving some details of applicants. The additional details that we would like access to are - name of applicant, postcode of applicant and the Standard Industrial Classification (SIC code) of business if held. The purposes for which we require the information are (i) to enable us to coordinate the RHI with other NI Department's funding initiatives to ensure there is no double funding (ii) monitoring take up in relation to our other projects e.g. gas extension and (iii) for the briefing of our Minister – Northern Ireland is a small place and our Minister regularly asks about individual companies.

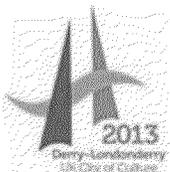
I would be very grateful if this information could be added to our regular reports. If this is possible then I would be content to park the wider issue for now.

Regards

Fiona

Fiona Hepper

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