

**To:** Claudia Cimino[Claudia.Cimino@ofgem.gov.uk]  
**From:** Edmund Ward  
**Sent:** 2013-10-11T16:11:09Z  
**Importance:** Normal  
**Subject:** RE: NI RHI and the Carbon Trust loan  
**Received:** 2013-10-11T16:11:00Z

Thanks for this by the way - much clearer than my effort!  
Edmund

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**From:** Claudia Cimino  
**Sent:** 11 October 2013 11:57  
**To:** Edmund Ward  
**Subject:** RE: NI RHI and the Carbon Trust loan

Hi Edmund

My suggested text is below. I hope I've made it clearer, but let me know if it's not factually correct.

Claudia

### **Northern Ireland RHI and money from public funds**

If you are based in Northern Ireland and you are considering taking out a grant, loan or similar to be repay your RHI project cost, please determine first whether your proposed source of funding would prevent accreditation under the RHI.

RHI regulations for Northern Ireland differ from those in Great Britain. As set out in DETI's RHI Guidance Volume One ([hyperlink](#)), public grants or financial advantage from public funds

- are a permanent barrier to receiving RHI support if used towards any or all of the cost of the installation, even if the funds were subsequently repaid
- may be used for the purchase of other elements of their project costs, such as heat networks, heat meters, or buildings such as boiler houses

This means that, under the current RHI Regulations **for Northern Ireland**, we will not be able to accredit installations where certain grants or financial advantage have been obtained from public funds where these are used towards any or all of the cost of the installation.

### ***Grants from the Big Lottery/Community Sustainable Energy Programme (CSEP)***

Due to the way these grants are distributed, we consider this source of funding to be a 'grant from public funds'. Therefore installations purchased using Big Lottery or CSEP funding would not be accredited onto the NIRHI.

### ***'Soft' loans such as 'zero interest loans'***

We consider these loans to be a 'financial advantage'. Whether these loans are a barrier to RHI accreditation will depend on the original source of finance. For example, a loan issued using public capital would not meet the definition of coming from private funds, and would therefore be suitable for an installation accredited under the RHI.

However, a 'soft' loan originating from public funds would not be compatible with RHI accreditation if used towards any of the cost of an installation.

We have previously advised that Carbon Trust 0% loans may be compatible with RHI support. However, we now understand that many Carbon Trust 0% loans in Northern Ireland are financed from public funds. Installations purchased with these loans will therefore not be suitable for accreditation under the NIRHI.

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**From:** Edmund Ward  
**Sent:** 11 October 2013 10:02  
**To:** Omolade Barker  
**Cc:** Teri Clifton; Marcus Porter; Edmund Ward; Jacqueline Balian; Claudia Cimino; Nadia Carpenter  
**Subject:** RE: NI RHI and the Carbon Trust loan

Lade

Further to our discussion on Wednesday, please see a [RLA - NIRHI grants and loans](#). I would be grateful if you could first review the proposed update to go on Ofgem website; I'll add a proposed response to DETI later this morning.

Received from OFGEM on 11.05.2017

Thanks  
Annotated by RHI Inquiry

## Northern Ireland RHI and Money from Public Funds

Ofgem must not accredit installations onto the NIRHI scheme where certain grants or financial advantage have been obtained from public funds, where these used towards any or all of the cost of the installation.

As set out in DETI's RHI Guidance Volume One, grants or financial advantage from public funds may be obtained for the purchase of other elements of their project costs, such as heat networks, heat meters, or buildings such as boiler houses.

Applicants considering taking out a grant, loan or similar are encouraged to determine in advance whether their proposed source of funding would prevent accreditation under the RHI.

They should note that under the current regulations any such support received would be a permanent barrier to receiving RHI support, even if the funds were subsequently repaid.

We note also that the RHI Regulations for Northern Ireland differ from those in Great Britain, and so enquiries should clarify which country's RHI scheme is being considered.

The following clarifies Ofgem's interpretation on two sources of funding which are likely to prevent us from accrediting installations under the Northern Ireland RHI.

### *Grants from the Big Lottery/Community Sustainable Energy Programme (CSEP)*

Due to the way these grants are apportioned, Ofgem considers this source of funding to be a 'grant from public funds'. Therefore installations purchased using Big Lottery or CSEP funding would not be accredited onto the NIRHI.

### *'Soft' loans such as 'zero interest loans'*

Ofgem considers these loans to be a 'financial advantage'. Whether these loans are a barrier to RHI accreditation will depend on the original source of finance. For example, a loan issued using private capital would not meet the definition of coming from private funds, and would therefore be suitable for an installation accredited under the RHI.

However, a 'soft' loan originating from public funds would not be compatible with RHI accreditation if used towards any of the cost of an installation.

Ofgem has previously advised that Carbon Trust 0% loans may be compatible with RHI support. However, we now understand that many Carbon Trust 0% loans in Northern Ireland are financed from public funds. Installations purchased with these loans will therefore not be suitable for accreditation under the NIRHI.

**From:** Edmund Ward

**Sent:** 08 October 2013 21:44

**To:** Jacqueline Balian; Claudia Cimino; Nadia Carpenter

**Cc:** Teri Clifton; Marcus Porter; Omolade Barker

**Subject:** FYI: NI RHI and the Carbon Trust loan

**Importance:** High

Jacqueline, Claudia, Nadia

[Marcus, Lade, no action now, but to make you aware this will come your way soon...]

I'm forwarding this to make you aware that we have had an urgent request from DETI to provide:

- Formal guidance to DETI on the position with regard to Carbon Trust 0% loans, including a 'revised' legal position, including:
  - to confirm that the Carbon Trust is a "public authority" <I don't believe this is our position, and didn't communicate so... but we will need to indicate our interpretation of the Regs, although without sharing Counsel advice>
  - that the funding for the NI portion of the 0% interest free loans is indeed from public funds <the answer will have to be 'in at least some cases'>
  - and that the fact that the loan plus RHI would indeed infringe upon State Aid Regulations. <again, we may not be able to comment definitively>
- A notification that could be placed on the Ofgem website (at the NI RHI section), emailed to those registered under the NI RHI scheme and passed to the Carbon Trust (NI Office) that would advise stakeholders of the revised position

This follows from our rejection of an NIRHI applicant in this situation, further to which *we have identified various written communications from Ofgem, confirming that Carbon Trust loans are not incompatible with the RHI (see, for example, the email sent to DETI, attached...).*

I'll do an initial draft, and then circulate further for your review - but please accept this as a warning that we may need to act urgently on this...

Many thanks,  
Edmund

[I've started a Request for Legal Advice here:]

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**From:** Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]

**Sent:** 08 October 2013 15:52

**To:** Teri Clifton; Edmund Ward

**Cc:** McCutcheon, Joanne

**Subject:** NI RHI and the Carbon Trust loan

**Importance:** High

Edmund / Teri,

Thanks for the call, from you what say the revised legal advice states that the Carbon Trust 0% loan is not compatible with the NI RHI due to Regulation 23 (1) (b) as it falls under "public support" meaning any financial advantage provided by a public authority. This reverses the previous opinion that the loan and the NI RHI were compatible, as per the 23 January 2013 email from Michelle Murdoch to Joanne McCutcheon. I also understand that the same regulation does not exist within the GB Regulations and therefore the 0% loan is currently compatible with the GB RHI.

Given that potential investors and installers have been previously advised by Ofgem (and by DETI following guidance from Ofgem) that the NI RHI and the loan scheme were compatible I think we need to move very quickly to provide clear advice and guidance to stakeholders and agree how applicants should be treated. I would be grateful if you would consider drafting a notification that could be placed on the Ofgem website (at the NI RHI section), emailed to those registered under the NI RHI scheme and passed to the Carbon Trust (NI Office) that would advise stakeholders of the revised position. This should be done as a matter of urgency.

Edmund – you also agreed to formally notify the Department of this issue, the revised legal position and the impact on applicants that have received the loan. In your response could you also confirm that you are content that the Carbon Trust is a "public authority", that the funding for the NI portion of the 0% interest free loans is indeed from public funds and that the fact that the loan plus RHI would indeed infringe upon State Aid Regulations.

Once the formal notification is received and the draft notification issued, we will also need to consider whether there are systems already accredited under the NI RHI that received the 0% loan and, if so, how they should be treated, as well as the treatment of those who received incorrect advice on eligibility. This might require a revision of the current regulations.

Grateful if you could prepare the notification for stakeholders / applicants / Carbon Trust and provide formal guidance to DETI on the revised legal position as a matter of urgency.

Happy to discuss again as required.

Regards,

Peter

**Peter Hutchinson**

Renewable Heat

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