

Are we still on track to have these consolidated by COP today? If so, I'll look at them this evening.  
Marc, we will confirm to you once we have validated these in order that they be sent to DfE via GSI.  
Kind regards  
Edmund

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**From:** Michael Knight  
**Sent:** 26 July 2016 17:35  
**To:** Shaneigh Turner  
**Cc:** Mark George; Edmund Ward  
**Subject:** RE: NDRHI Northern Ireland audit report for review [OFFICIAL Internal Only]

Hello Shaneigh

*Advice*

1. My advice is that there is a good legal basis for Ofgem sharing the audit reports that have been prepared for us in relation to accredited plants in Northern Ireland under the Northern Ireland Non-Domestic RHI scheme, with the Northern Ireland government. My advice is that if any audit report is shared, we should mention to the Northern Ireland Government that it is subject to the data sharing protocol entered into between it and Ofgem, and should be treated accordingly. Reasons in support of this advice below. I have included some legal references in the advice – please disregard these, they are there in case this issue needs to be revisited by me or my colleagues later on.

*Background*

2. I understand that the audit reports relating to accredited plants in Northern Ireland that we are considering sharing with the relevant department of the Northern Ireland government (the Department for the Economy (“DfE”)) were prepared following a call-off contract dated 9 September 2014, with Ricardo AEA. That contract includes statements that the rights to the “deliverables” prepared under the contract, which are audit reports, will be assigned to Ofgem – further, that Ofgem may use the reports to inform its “business decisions” and / or publish them (see pages 8, 65 clause 1.1.7, page 72 clause 2.2.1, page 6 for the meaning of “deliverables”). I am unaware of any modification or supplementation to those arrangements.

3. I understand that when participants for the Northern Ireland scheme have submitted applications to Ofgem for accreditation, there are “NI Terms and Conditions”. These are stated to be additional to, and to include, terms and conditions accessed through the “main” Ofgem website under the heading “Privacy and Cookies” (paragraph 3). The current iteration of those terms and conditions includes the following statements:

- a. “...[w]e will process any personal information so as to enable Ofgem to carry out its regulatory functions to administer the environmental and social programmes, e.g. ECO, FIT, RHI...”, and,
- b. “...[i]f the circumstances require, Ofgem may share personal information both internally and with: .... devolved administrations ....”.

4. I understand that the NI Terms and Conditions continue, with the current iteration stating that the Privacy Policy in their schedule one sets out the terms which govern the collection, retention and processing of personal information provided to Ofgem (paragraph 4). The “privacy policy” in schedule one to the NI Terms and Conditions includes statements that Ofgem may disclose applicants’ and participants’ personal data to the appropriate Northern Ireland government department upon request by it.

5. Ofgem administers certain functions, including the granting of accreditation, for the DfE, under arrangements dated 1 December 2015 and entered into pursuant to section 114 of the Energy Act 2011.

6. Those arrangements provide that Ofgem must provide the DfE with such information as it may reasonably request and which Ofgem holds in relation to the functions that it administers for the DfE (paragraph 3.2.(a)). An annex to those arrangements provides that Ofgem will share the outcomes of audits where those audits relate to the Northern Ireland RHI scheme.

7. A data sharing protocol, entered into between the appropriate Northern Ireland government department and Ofgem in February 2015, is sufficiently wide in its scope that it will cover sharing the results of audit reports (see paragraph 6 “Data to be