

To: Teri Clifton[teri.clifton@ofgem.gov.uk]; Edmund Ward[Edmund.Ward@ofgem.gov.uk]
Cc: Hepper, Fiona[Fiona.Hepper@detini.gov.uk]; Hutchinson, Peter[Peter.Hutchinson@detini.gov.uk]
From: McCutcheon, Joanne
Sent: 2013-10-09T08:35:00Z
Importance: High
Subject: FW: NI RHI and the Carbon Trust loan
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Edmund/Teri

This is of great concern to me and I will need to speak to Fiona Hepper as to how we move forward as I think this has serious implications for the reputation of the NI RHI and our Department. Members of the public have gone ahead in good faith on the basis of information provided directly from Ofgem and also from ourselves (on the basis of advice Ofgem gave us) and are now considered to be ineligible for the incentive.

You will see I have attached an early draft of our Regs (July 2012).

Our original draft referred only to a grant (same as DECC) but was subsequently changed on legal advice from Ofgem (tracked comments in above document). Ofgem legal was therefore well aware of the issues pertaining to this regulation when they provided advice in January 2013; I'd be grateful if you advise, in the note you are providing, what has changed between January 2013 and now, that has altered the Ofgem position.

Please do NOT place anything in the public arena until I have discussed with Fiona (hopefully later this morning).

Regards

Joanne

From: Hutchinson, Peter
Sent: 08 October 2013 15:52
To: Teri Clifton; edmund.ward@ofgem.gov.uk
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

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