

NORTHERN IRELAND RENEWABLE HEAT INCENTIVE: BRIEFING

Headline Messages

- DETI confirmed in May that they wished to enter into an arrangement with Ofgem to administer the Northern Ireland RHI scheme.
- We are awaiting sight of the draft regulations that will underpin the scheme (which will be reviewed against the original feasibility study) before agreeing the scope and cost of the 4 month development phase. *[To note: DETI confirmed on 12 June that the regulations should be sent to Ofgem by cop 13 June] as yet not seen*
- The development phase will include the drafting and joint approval with the Northern Ireland Authority for Utility Regulation (NIAUR) of an Agency Services Agreement for the operational phase of the scheme, which will mitigate any risks that could impact on Ofgem. *Note: We understand this is the for just Ofgem's?] intention, including litigation costs [and liabilities i.e. damages?] in the event of a JR [Note the discussion at MC yesterday in the context of ECO as to the issues this gives rise to.]. The arrangement will be pursuant to s.114 of the Energy Act 2011. There is a precedent from the NIRO under a similar provision in the Energy Act 2004 which could be used as a starting point but it seems that NIAUR are not willing for DETI to have sight of that document! It will therefore presumably be a case of drafting appropriate relevant provisions.*

Key Points:

- In January GEMA agreed to Ofgem administering the Northern Ireland RHI, subject to appropriate funding and resolution of remaining uncertainties.
- DETI formally wrote to Bob Hull on 4 May to confirm that they wished to enter into an agreement with Ofgem for the administration of the NI Renewable heat Incentive Scheme. A short response from Bob Hull confirmed that we need to agree funding and the specific terms to enable us to proceed.

Comment [01]: Reflects the legislative language

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Comment [02]: What is the reason for this description?

Comment [03]: As we are not a commercial contractor/service provider this is not appropriate. It also exacerbates misconceptions about the nature and role of this organisation on such schemes and makes it difficult to manage inappropriate expectations in this regard [note the recent experience with DECC on the GB schemes].

The Act refers to entering into arrangements. We would therefore suggest a [memorandum of] arrangements pursuant to section 114 of the Energy Act 2011 or similar.

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Comment [04]: We understand DETI will not cover the costs of preparing the document. Is this correct. Has specific provision been made for this? If so, in what amount?

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- DETI have confirmed that they wish to mirror the detail of the GB RHI scheme. They are unlikely to lay the Statutory Instrument before the Assembly summer recess, which will mean that the legislation is unlikely to come into force until end of September/October at the earliest. We have advised firmly that it makes little sense for DETI simply to replicate DECC's existing Regs, given that then GB Regs are due to be amended three times by next July and, in particular, that the amendments will incorporate some, and perhaps many, to rectify perceived deficiencies in the current Regs. The risks associated with so doing are clear. DETI have the opportunity to benefit from DECC's forthcoming improvements and they should avail themselves of it. Moreover it makes little logistical sense to make Regs now then amend them twice in quick succession. It is not as if DETI have not been advised of the need for amendments. They were informed of this last Autumn and were sent a detailed table of the amendments likely to be proposed by us. If DETI will not agree to await DECC's amendments it may be advisable for the Authority to consider whether it wishes to defer the point at which the arrangements for us to administer take effect until the amendments have been made to the NI scheme too.
- DETI are still working on finalising the regulations that underpin the scheme. Ofgem have made clear that we will need to review the regulations against the detail of the feasibility study before agreeing the scope, timeline and costs for the development phase of the scheme. Feasibility study was quite lengthy I believe. If they agree to take on board DECC's amendments there may be implications for the feasibility study.
- The development phase will last approximately 4 months – we have flagged to DETI that this may take a few weeks longer than anticipated to accommodate staffing issues around the Olympics. This is very difficult to predict, depending on what they want to do. If they insist on simply replicating the existing Regs then obviously it will take less time (depending on the timing of subsequent anticipated amendments).

Background:

In September 2011 the Northern Ireland Department for Enterprise, Trade and Investment (DETI) asked Ofgem to undertake a feasibility study into Ofgem administering the £25m NI RHI scheme alongside the £860m Ofgem-administered GB scheme which went live in November 2011.

This £87k feasibility study (funded by DETI) was finalised on 16 December 2011 and made clear that if DETI wish Ofgem to proceed to the next phase, detailed funding provisions, terms, and project scope will need to be agreed between the two parties.

The feasibility study emphasised that considerable synergies could be exploited between the development and administration of the GB RHI and the NI RHI. By re-using the existing structure established for GB RHI, DETI can make a cost saving of nearly 90% against the cost of developing a bespoke system.

The Authority provided approval for E-Serve to carry out the development and administration of the NI RHI scheme on behalf of DETI in January 2012. This was subject to the confirmation of final policy decisions and agreeing the proposed funding and an appropriate service agreement for operating the scheme with the Northern Ireland Authority for Utility Regulation (NIAUR) that mitigates risk to GEMA.

To take forward the process highlighted in the Feasibility Study we need DETI to confirm policy and provide the significantly finalised draft legal instruments before any development can commence.

Ofgem and NIAUR need to agree a suitable arrangement in accordance with the legislation for the operation (not development) of the scheme, which helps to mitigate the risks we have identified. This agreement will need to ensure that Ofgem can draw down adequate funds from DETI to cover all tariff payments on time.

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Comment [05]: No development? Aren't we reviewing the draft Regs? Does the drafting of the Guidance fall into development phase?

A key difference between the GB RHI and NI RHI schemes is that under the GB RHI scheme regulations the Authority is named as the scheme administrator. Under the proposed NI RHI regulations, NI AUR will be named as the scheme administrator. However, there are provisions in the Energy Act 2011 that allow NIAUR to enter into arrangements with Ofgem to carry out administrative functions on behalf of NIAUR. This is similar to how Ofgem and NIAUR administer the Northern Ireland Renewables Obligation (NIRO).

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Initially the risk of legal challenge was identified as a potential downside risk to the Authority if the administration of the scheme was carried out by Ofgem. However DETI have confirmed that they expect to carry all legal risk of challenge. We will need confirmation as to the scope of this. However, not all JR remedies are monetary and in addition there is reputational risk to consider.

Comment [06]: Costs *and* liabilities (i.e. damages)? As discussed at MC you would need to ensure this does not impact on our ability to run our own defence, appoint our own choice of Counsel etc if challenged.

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The Feasibility Study set a development budget at £386,000, with appropriate contingency (ie an additional £386,000) to cover costs arising from uncertainty around final scheme policy and the extent of IT and legal work that may be required. The forecast costs of Ofgem administering the NI RHI scheme will be between £740,000 and £900,000 over the first 4 years of the scheme. This represents between 3-3.6% of the scheme's £25 million funding envelope over the first 4 years. Assuming that DETI's regulations will mirror the GB RHI we are confident that these costs will be adequate to deliver the scheme, although we reserve our position until we have had sight of the draft final regulations.

Comment [07]: Was this the original forecast a revised one?

Comment [08]: Has this been reviewed recently?