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From: Keith Avis
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Marcus

Thanks for your detailed email yesterday. Unfortunately I have been tied up on FITs work, so have only turned my attention to this now. Picking up on your comments, with regards DETI's statement of intent you will see that in sending the draft regs DETI have stated that: "these regs largely reflect the GB RHI regs however are amended to cover specific issues with the proposed NI scheme, namely the tariffs and banding. We are aware that DECC intend to make legislative changes to the GB RHI in the near future however it would be our preference to closely follow their existing regs and then make necessary amendments in the future once DECC's legislative programme is clearer." This seems to me to be a pretty strong statement of intent, but I can go back to DETI to seek clarity further if you need more.

Appreciate the need to know what the DETI timetable will be in relation to taking forward the amendments to the GB regs. Lindsay in the RHI GB team has asked his contact in DECC for the name of someone who can speak to me about phase 2 amendments. I'll explore with them whether they would be willing to share their timetable with DETI and if so I we will be able to clarify DETI's planned course of action here.

I will ask DETI what they intend to do with interim cost controls and will get them to confirm the steps they have taken as regards the technical standards directive

I do take your point about the shortcomings of the GB scheme, and by the same token I am mindful of the need to link with the GB opps team to make sure we have a co-ordinated NSD approach to this. We do need a teleconference with DETI and their legal team to talk this through. Can I suggest that I set up a teleconference with their policy team and legal advisors once you have looked through the regulations. Of course, primary concern for me is to make sure that the Authority is not at any risk here, so thanks for making this clear, and of course I will take all necessary actions top address this.

Regards
Keith

From: Marcus Porter
Sent: 13 June 2012 10:59
To: Keith Avis
Cc: Matthew Harnack; Andrew Amato; Ruth Lancaster; Luis Castro
Subject: RE: NI RHI

Keith

Thanks for this but it seems to me that they need to let us know *in writing* (if they haven't already done so) what their decision is on this, so that we are sure. If they simply send through now a further draft of the Regs that mirrors the existing DECC Regs with only unavoidable NI "twiddles" then that's certainly indicative of their intention but not in itself conclusive and a specific statement either way as regards their (hopefully settled) intention is what is needed for our purposes if we haven't already got that.

Assuming it will indeed initially be a pure "mirroring" exercise, we also need to know what their timetable will be in relation to the amendments. Do they intend to match DECC's timetable in relation to those or reproduce the amendments after the event? If the former, we need to know whether DECC are content for DETI to be copied in on relevant material as it emerges from DECC and is shared with us but in advance of it being aired in public. This is happening already of course as DECC are proposing to consult next month on significant amendments to the GB Regs, some of which will extend the scope of those Regs and some of which, it seems, will make improvements to existing provisions. Indeed DECC have started work on their consultation letter and I have already commented on several, important instalments of this.

In the same regard, as you know the current DECC Regs will be amended with effect from early next month in relation to interim cost controls. There has been no mention form NI so far as I am aware of their considering that they may require similar provisions but, again, we need confirmation of that.

I would again draw attention to the fact that there are a couple of amendments included as part of that exercise which are of a permanent nature and not directly related to the interim cost control provisions. I assume DETI will want to include those as they will be in force before the NI Regs are, but they will need to confirm.

As I have mentioned several times, we also need to know whether they have taken any steps as regards technical standards directive requirements. If they haven't already done so they need to consider whether that directive's requirements are engaged in relation to any provisions in their draft Regs and, if they are, their draft Regs have to be notified to the Commission and other member States before they can be enacted and there is a *minimum* three months standstill period following notification before enactment of the Regs is lawful. Failure to comply with these requirements makes the Regs unenforceable. As I understand it DECC notified certain provisions (I do not know which) of the GB Regs so, on the basis that the NI Regs will simply reproduce the GB ones, it appears the NI Regs will also be caught by this requirement.

Just to pick up on your observation below regarding the presentational perspective, I would point out (or rather re-iterate) that, whilst that is certainly part of the picture, it goes beyond that. There are significant problems with the current GB Regs which, viewed collectively, suggest the need for fairly substantial amendment to them and it appears DECC accept that. Some of these give rise to legal risks, others to difficulties in the administration of the scheme and some to both. If, therefore DETI make no amendments to the current