

**To:** Keith Avis[Keith.Avis@ofgem.gov.uk]  
**Cc:** Luis Castro[Luis.Castro@ofgem.gov.uk]  
**From:** Marcus Porter  
**Sent:** 2012-06-12T17:51:17Z  
**Importance:** Normal  
**Subject:** RE: NIRHI: Securing an Agreement  
**Received:** 2012-06-12T17:51:19Z

Keith

Sorry that I haven't managed to review the list below as yet due to other things getting in the way (including last week's break of course!) I do intend to do so though.

In the meantime – one or two observations re the email exchanges below, a couple of which relate to the proposed agreement. Never mind if later emails supersede. I'll deal with them in order!

The promise to confirm DETI will meet the costs of drawing up the agreement is welcome. Hopefully this will hold good even if we decided to use outside lawyers to draw it up or at least involve them? Pressure to use them may be great given other demands on my time and that I'm the sole in house RHI lawyer.

I don't quite follow Joanne's remark that they couldn't get access to the agreement previously. This was presumably because it was refused – but isn't it worth asking again/ asking someone different/more senior?

Joanne's comment re the timeline for looking at the Regulations may or may not be right, but of course that will depend on other commitments this end and, in particular, on what DETI intend.

If, as I fear may be the case, they intend simply to copy DECC's existing Regs willy nilly (despite the fact that possibly quite substantial amendments and improvements to DECC's Regs are due in January and July next year) then the exercise should be a relatively mechanical one for us and correspondingly less time-consuming. Even then though, do bear in mind that the Regulations are some 35 pages in length.

if anything more is required it could take substantially longer to consider and offer informed comment on the draft Regulations and if adequate time is not allocated that will diminish the value of our contribution.

In particular, if my advice that DETI should await DECC's amendments (at least the next set and, depending on the content of the next set, the set after as well) is followed then of course there is more time and I cannot say when our input would cease exactly as DECC have yet to produce a first draft.

A propos of the above, I note from what you say below under the heading "issues meeting" that Joanne was going to look back at the detail of what we said last Autumn regarding amendments to DECC's Regs. I do recommend that she do so. Although the list of amendments sent through has been modified since then is still broadly right and the size of the amendment exercise confronting DECC is potentially large. If Joanne simply looks back at the Table and accompanying advice from Faye Nicholls she will see this for herself.

To my mind the case for delaying and tagging on to DECC's coat tails becomes all the more compelling if, as indicated below, there may now be some delay due to the summer recess, as that would mean that the time lag before DECC's amendments were to hand would become all the shorter.

The legal contingency assurance will be welcome, but do bear in mind that the risks associated with litigation are reputational as well as financial, that there are other legal remedies apart from monetary ones and that it can be very resource intensive.

Marcus

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**From:** Keith Avis  
**Sent:** 29 May 2012 16:02  
**To:** Marcus Porter  
**Cc:** Luis Castro  
**Subject:** NIRHI: Securing an Agreement

Marcus ci Luis

You will see from the Email trail below that DETI are unable to get hold of the NIRO ASA, but they do recognise the need to have some type of framework to start discussions with us. Of course, happy to pick up on any steer that you give me here, but as a suggestion could we just give them some broad headings. An amalgamation of the NIRO ASA and NIRHI requirements is listed below:

- Who the agreement is between
- Background to the agreement
- Definition and Interpretation
- Appointment (appointment of GEMA)
- GEM's Obligations
- DETI/NIAUR Obligations
- Amendment to the Services and Administration fee
- Payments
- Compliance with laws and regulations
- Duration and Termination
- Effects of Termination
- Confidentiality