

**To:** Keith Avis[Keith.Avis@ofgem.gov.uk]  
**Cc:** Luis Castro[Luis.Castro@ofgem.gov.uk]; Andrew Amato[Andrew.Amato@ofgem.gov.uk]; William Elliott[William.Elliott@ofgem.gov.uk]; Faye Nicholls[Faye.Nicholls@ofgem.gov.uk]  
**From:** Marcus Porter  
**Sent:** 2012-06-25T09:36:35Z  
**Importance:** Normal  
**Subject:** RE: DECC's July consultation  
**Received:** 2012-06-25T09:36:37Z  
[nisecond.docxn03.docx](#)

Keith

I attach a further copy of the draft NI Regs. This includes a couple of further amendments – in reg 25(4) and 25(8). The change to the latter is necessary because, as I have just realised, it is superfluous to refer in that provision to applications made *after* the NI Regs come into force: all applications will *necessarily* be made after that date. Applications before then cannot be made. The change to reg 25(4) is of a consequential nature.

Could you please forward to DETI.

Thanks

Marcus

---

**From:** Marcus Porter  
**Sent:** 22 June 2012 16:01  
**To:** Keith Avis  
**Cc:** Luis Castro; Andrew Amato; William Elliott; Faye Nicholls  
**Subject:** RE: DECC's July consultation

Hi Keith

Tricky one. DECC are aware I believe but it doesn't go wider.

It seems to me that we will certainly need to say something to them re this in the near future if it becomes clear that, contrary to my advice, they intend to proceed immediately to replicate DECC's Regs in their current form. We have had the advice of an experienced QC to the effect that the wording of reg 23 leaves much to be desired and, in particular, that it leaves the UK vulnerable to infraction proceedings. At the moment that arises purely from what DECC have done in the GB Regs, if DETI do the same in theirs then that will increase the overall risk of infraction and, if it were to be the NI Regs that the Commission pounced on, it would be for DETI to defend the provision (with little chance of success if counsel's view is correct). I don't see how we could justify not informing DETI of this risk.

That said, it's probably better on reflection that we say nothing in the doc attached to my last email, but instead wait a while longer to establish what DETI intend. If they do decide to wait for DECC then we can shelve making any mention of reg 23 until DECC make their amendments.

Incidentally it's not just reg 23 it's also reg 25(6).

I attach a further copy of the doc with the commentary relating to reg 23 and 25(6) omitted. Please use this as the version to send to DETI.

Marcus

---

**From:** Keith Avis  
**Sent:** 22 June 2012 14:57  
**To:** Marcus Porter  
**Cc:** Luis Castro; Andrew Amato; William Elliott; Faye Nicholls  
**Subject:** RE: DECC's July consultation

Thanks Marcus, very helpful. I am happy to send this to DETI, but just to confirm that you are happy for me to let them have sight of your supporting commentary as well. In particular there is talk about the deficiency of GB reg 23. If this is public knowledge then no problem with this, but I'm just wary of us being seen to be critical of flagging the inadequacies of another set of regs if this is not widely known.

Keith

---

**From:** Marcus Porter  
**Sent:** 22 June 2012 14:41  
**To:** Marcus Porter; Keith Avis  
**Cc:** Luis Castro; Andrew Amato; William Elliott; Faye Nicholls  
**Subject:** RE: DECC's July consultation

I suppose the attachment would be useful too.....

---

**From:** Marcus Porter  
**Sent:** 22 June 2012 14:40  
**To:** Keith Avis  
**Cc:** Luis Castro; Andrew Amato; William Elliott; Faye Nicholls  
**Subject:** RE: DECC's July consultation

Keith

It's taken me slightly longer than I anticipated but I now attach a further copy of the second draft of the NI Regs, showing with track changes my suggested amendments and, in bold, my comments. Could these please be passed over to DETI ASAP – assuming of course you are content with the suggested amendments and have no objections to the comments?

Happy to discuss.

Marcus

---

**From:** Marcus Porter

**Sent:** 19 June 2012 13:57

**To:** Keith Avis

**Cc:** Luis Castro; Andrew Amato; William Elliott

**Subject:** RE: DECC's July consultation

Keith

Copied you in on an email this a.m re the below.

Marcus

---

**From:** Keith Avis

**Sent:** 18 June 2012 14:56

**To:** Marcus Porter

**Cc:** Luis Castro; Andrew Amato; William Elliott

**Subject:** RE: DECC's July consultation

Marcus

I have sent a calendar appointment for Thursday morning. DETI are free next Tuesday for a teleconference. I'll book that in shortly. DETI are pushing for an ASA framework so that they can get going on this. I know that you were looking to review the list of headings that I sent a while ago (attached). Not sure if you have had the opportunity to do this, but if you or Will could come back to me over the next day or so, at least I can send this to DETI as a starting point.

Thanks

Keith

---

**From:** Marcus Porter

**Sent:** 18 June 2012 14:39

**To:** Keith Avis

**Cc:** Luis Castro; Andrew Amato; William Elliott

**Subject:** RE: DECC's July consultation

Keith

We discussed earlier. I await hearing from you. Can you please copy Will in on anything new?

Thanks

Marcus

---

**From:** Keith Avis

**Sent:** 18 June 2012 09:22

**To:** Marcus Porter

**Cc:** Luis Castro; Andrew Amato

**Subject:** RE: DECC's July consultation

Morning Marcus, grateful if you could let me know if you have some time slots from Wednesday onwards this week to discuss your views on the NIRHI regs. I'll then set up a meeting and invite Andrew and Luis also.

Rgds

Keith

---

**From:** Marcus Porter

**Sent:** 15 June 2012 19:03

**To:** Keith Avis

**Subject:** FW: DECC's July consultation

Keith

See useful Sharepoint link below. This would seem to suggest that the amendments to the Regs to be made by DECC will all be made in the first of the next 2 amending SIs (to come into force, probably, next January) – which I would say strengthens the argument that DETI should wait.

Marcus

---

**From:** Lindsay Goater

**Sent:** 14 June 2012 10:38

**To:** Anne-Marie Shields; Marcus Porter; Ruth Gibson; Yemi Akinsiwaju; Edmund Ward

Received from OPGSU on 16.10.2014

Annotated by RHI Inquiry