

To: Mavreen Ananura[Mavreen.Ananura@ofgem.gov.uk]; Adrian Falconer[Adrian.Falconer@ofgem.gov.uk]; Andy Luckhurst[Andy.Luckhurst@ofgem.gov.uk]; Lindsay Goater[Lindsay.Goater@ofgem.gov.uk]; Sophie Jubb[Sophie.Jubb@ofgem.gov.uk]; Mary Smith[Mary.Smith@ofgem.gov.uk]; Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]; Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]
From: Marcus Porter
Sent: 2012-11-13T13:03:13Z
Importance: Normal
Subject: RE: NI RHI Checkpoint Meeting
Received: 2012-11-13T13:03:15Z

All

Just to explain that I have discussed with Ruth and, unless there are any *new* issues to consider, it would not in our view be appropriate for me to attend this meeting.

In particular, we have advised on a number of occasions as regards what in our view should be the form and content of the Arrangements and covering letter and the DPA letter and feel that no useful purpose would be served by our considering any further iterations of those as we would be bound to reiterate our previous advice.

I would, however, be grateful if you could let me know if and when the Arrangements and associated documents are agreed and in place. In the meantime, as previously advised, there is no legal basis for the Authority to administer the NI scheme on behalf of DETI.

Marcus

-----Original Appointment-----

From: Mavreen Ananura
Sent: 13 November 2012 10:19
To: Adrian Falconer; Marcus Porter; Andy Luckhurst; Lindsay Goater; Sophie Jubb; Mary Smith; Michelle Murdoch; Keith Avis
Subject: NI RHI Checkpoint Meeting
When: 13 November 2012 15:00-16:00 (GMT) Greenwich Mean Time : Dublin, Edinburgh, Lisbon, London.
Where: 1M9

Dear all,

Please find below the agenda for the NI RHI checkpoint meeting this afternoon.

Regards,
Mav

<< File: Agenda - NIRHI Checkpoint 13.11.12.docx >>

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
From: Mary Smith
Sent: 2012-11-13T14:57:58Z
Importance: Normal
Subject: FW: NI RHI Checkpoint Meeting
Received: 2012-11-13T14:58:01Z

Hi Keith - I understand where Marcus is coming from, my only concern is that we want legal to be aware of future plans - partly so they can highlight any work that's not factored in, and also so they know well ahead what we will be doing. As such, there may be merit in them attending at least some checkpoints, or at the very least the risks and issues sessions and planning sessions that Adrian's setting up.

Mary

From: Keith Avis
Sent: 13 November 2012 14:55
To: Marcus Porter
Cc: Mary Smith
Subject: RE: NI RHI Checkpoint Meeting

Marcus cc: Mary

I note you point. Of course the checkpoint will provide an update on all scheme development deliverables including the admin arrangements and associated documents, but if there are any separate legal issues I can pick up on these with you outside of the meeting.

On the Arrangements there is one key point that DETI still need clarification. They are seeking their own legal advice so I would very much appreciate your input. It concerns the issues of ownership of data (we spoke yesterday) in connection with para 6.4, as follows:

- 6.4 On termination of these Arrangements, the Parties intend that GEMA should (subject to obtaining any necessary approvals from the scheme participants) provide DETI with all information reasonably requested by DETI and held by GEMA on DETI's behalf at GEMA's premises in connection with the carrying out of the Conferred Functions and the Ancillary Activities on condition that at least one week's notice is provided in advance to GEMA by DETI.

I have made DETI aware of our view on this point, namely that it would take some considerable time to define the ability to release what data as this could be tied up in contract law, IP law, data protection and the like. Grateful if you could confirm that it is indeed the case that if you were to seek a definitive view on ownership this would be a sizeable task that would have an impact on timescales and indeed costs for the work needed. I am not sure that there is much more that we can offer up beyond the above, which basically says that we can provide all that we are legally able to let them have. However, if there is any alternative wording that you think would help then, of course, I am happy to work on that.

Rgds

Keith

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Mary Smith[Mary.Smith@ofgem.gov.uk]; Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]
From: Marcus Porter
Sent: 2012-11-13T15:22:37Z
Importance: Normal
Subject: RE: NI RHI Checkpoint Meeting
Received: 2012-11-13T15:22:44Z

Keith

Yes I think it would almost certainly, as you put it, be a sizeable task of the sort you mention, whenever it was necessary to do it and the longer the scheme were in place the more sizeable it might be as the amount of data involved would surely increase over time.

However, as advised previously, DETI should be reassured in my view by three considerations, namely:

- (a) Whilst it can't of course be guaranteed, it seems reasonable to assume that, once the arrangements are in place, they are likely in all the circumstances to remain in place long term and perhaps indefinitely, i.e. the matter is likely to remain academic for the foreseeable future;
- (b) In the ordinary course of events the arrangements provide for a 60 day notice period before termination (assuming no one has changed this since Legal last considered the arrangements) and there would presumably be an additional period, prior to the giving of any notice, during which it would be clear that termination was on the cards. There would thus be some time available at that stage for consideration of this issue;
- (c) Since DETI would be taking over the running of the scheme, they would plainly have a need for information that would enable them to do so. In those circumstances, it goes without saying that Ofgem would aim to let DETI have the information that they needed, in relation to the conferred functions and ancillary activities, to enable DETI to carry those out in future - subject to any legal constraints - and, as regards any such constraints, I assume DETI would not expect us to overstep legal boundaries.

Marcus

From: Keith Avis
Sent: 13 November 2012 14:55
To: Marcus Porter
Cc: Mary Smith
Subject: RE: NI RHI Checkpoint Meeting

Marcus cc: Mary

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