

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Marcus Porter[Marcus.Porter@ofgem.gov.uk]
From: Ruth Lancaster
Sent: 2012-11-30T13:59:20Z
Importance: Normal
Subject: FW: NIRHI: Admin Agreement
Received: 2012-11-30T13:59:22Z

One minor amendment in red.

And to be clear we have not reviewed and therefore cannot comment on anything other than the 2 specific points you asked about.

From: Marcus Porter
Sent: 30 November 2012 13:12
To: Keith Avis
Cc: Ruth Lancaster; Mary Smith; Matthew Harnack
Subject: RE: NIRHI: Admin Agreement

Keith
 Yes, sorry, I meant to comment on the disclosure of information para as well but in the rush overlooked doing so. I am content with that being in the form below.
 Marcus

From: Keith Avis
Sent: 30 November 2012 13:04
To: Marcus Porter
Cc: Ruth Lancaster; Mary Smith; Matthew Harnack
Subject: RE: NIRHI: Admin Agreement

Marcus cc: Ruth, Mary, Matthew
 Thanks. On the basis of your input the wording in this area will be updated to read:
 On termination of these arrangements, the Parties intend that (subject to applicable legal constraints, including any requirements to respect personal or commercial confidentiality) 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. The parties envisage that this would include all data that the applicant/participant had provided, such as application forms, meter readings and original drawings, subject to the constraints mentioned.

I note that you did not comment on the small updates to the disclosure of information paragraph (as flagged below) so I am assuming that you are content with this.

GEMA may disclose Confidential Information to any relevant governmental or other authority or regulatory body, and to any employees or contractors of GEMA or of any of the above, provided that before any such disclosure GEMA will make those persons aware that the information is confidential and of these Arrangements. Where GEMA discloses such Confidential Information to another body under this paragraph, **it will have notified DETI prior to doing so**, subject to any legal constraints on its ability to do so.

The updated Admin Arrangements with both of these paras included will be sent to DETI early this afternoon.

Rgds
 Keith

From: Marcus Porter
Sent: 30 November 2012 12:31
To: Keith Avis
Cc: Ruth Lancaster
Subject: RE: NIRHI: Admin Agreement

Hi Keith
 I've now spoken to Ruth and our thoughts are as follows.
 First of all, I note that there are some additional differences (i.e. over and above those you now seek our advice on) between the version of the arrangements you sent me this week and the last version that we approved on 31 Oct. These consist of a change in the definition of "administration costs", a new para 3.2(e), a new para 4.1(d) and an extended para 4.1(h). You haven't asked about these changes and in any event our previous legal advice stands.
 The same comment, i.e. as to the legal advice remaining the same, applies to the changes proposed to para 6.4: For reasons given previously there was absolutely no legal or practical reason, so far as we can see, for us to agree to *any* change to the wording of this para as it was in the 31 October version. That is still our view and, in particular, our firm advice is that the bracketed words "subject to applicable legal constraints, including any requirements to respect personal or commercial confidentiality", which were included in that version and have now been replaced with "(subject to obtaining any necessary approvals from the scheme participants)", should be re-

instated.

We assume that the original words were removed at DETI's request and, if so, we take it that the request was made because either (a) DETI felt the need to obtain approval from a scheme participant was the *only* legal constraint or (b) they accepted there might be others as well but didn't want disclosure of data to them to be subject to any such.

On that basis our view is that the assumption described in (a) may well be wrong and that (b) would be unacceptable in principle as it implies that DETI do not care if we disclose information in breach of the law (as any adverse consequences would be visited on us not them) so long as they get what they feel they need. As previously advised, any expectation on DETI's part that we should do anything other than that which is unlawful is something they should be disabused of and they cannot reasonably expect that we should act in contravention of legal requirements.

Either way, the reference to legal constraints should be reinstated.

As to the added words "This would include..... drawings", these too are unacceptable as they stand because they are worded in a way that implies a *commitment* being made by us at this stage. As previously advised, we cannot do that because it would take some time to establish the legal position. Furthermore there could conceivably be records which may come into existence between now and any termination but which we could not at present advise in relation to as they do not *yet* exist.

That said, we think the inclusion of these words would be in order **PROVIDED** (a) the reference to legal constraints is also restored (b) the proposed words are prefaced by additional words making clear that DETI getting the docs referred to is just what the parties *envisage* DETI will get (i.e. subject to the legal constraints, such as they were) and (c) the word order is changed. Thus 6.4 would read as follows: "On termination of these arrangements, the Parties intend that (subject to applicable legal constraints, including any requirements to respect personal or commercial confidentiality) provide DETI.....Ancillary Activities, on condition that at least one week's notice is provided in advance to GEMA by DETI. The parties envisage that this would include all data that the applicant/participant had provided, such as application forms, meter readings and original drawings."

Note also that the reference to "installer" is replaced by reference to "applicant/participant". The "installer" is the person who installs the boiler etc. He may not be, and indeed is likely not to be, the applicant and of course it would be the applicant/participant who submitted the application forms, meter readings and drawings.

Marcus

From: Keith Avis

Sent: 30 November 2012 09:06

To: Marcus Porter

Subject: RE: NIRHI: Admin Agreement

Marcus

Mary and I had a meeting with Bob and Matthew yesterday afternoon. The bottom line is that we need to get the Admin Arrangements over to DETI this morning, given that is there any news on the response please?

Thanks

Keith

From: Marcus Porter

Sent: 29 November 2012 10:11

To: Keith Avis

Subject: RE: NIRHI: Admin Agreement

Keith

Ruth has responded that she is juggling with several urgent matters at the moment but that she will try to look at this later today. Sorry but I can do no more for the moment.

Marcus

From: Keith Avis

Sent: 29 November 2012 09:40

To: Marcus Porter

Subject: RE: NIRHI: Admin Agreement

Marcus

Is there any news on a response please. Sorry to push but I really do need a view on the two points raised this morning. I tried to call but I can't get through on your phone.

Thanks

Keith

From: Marcus Porter

Sent: 28 November 2012 15:34

To: Keith Avis

Subject: RE: NIRHI: Admin Agreement

Hopefully not.

From: Keith Avis
Sent: 28 November 2012 15:33
To: Marcus Porter
Subject: RE: NIRHI: Admin Agreement

OK thanks Marcus, is there anything I should be concerned about?
Keith

From: Marcus Porter
Sent: 28 November 2012 15:32
To: Keith Avis
Subject: FW: NIRHI: Admin Agreement

Keith
I have expressed some views to Ruth and await her comments.
Marcus

From: Keith Avis
Sent: 28 November 2012 10:20
To: Marcus Porter
Cc: Mary Smith
Subject: FW: NIRHI: Admin Agreement

Marcus cc: Mary

As discussed, latest Admin Arrangements can be accessed via the link below, but as we agreed if you could offer a view on the two points raised in my Monday email that would be appreciated. These points are also flagged in the arrangement in track changes.

Keith

http://sharepoint/Ops/Environ/New_Scheme_Development_Lib/New%20Projects/NIRHI/Development%20phase/NIRHI%20admin%20arrangements%2020Nov2012.docx

To: Adrian Falconer[Adrian.Falconer@ofgem.gov.uk]
Cc: Keith Avis[Keith.Avis@ofgem.gov.uk]
From: Marcus Porter
Sent: 2012-11-30T15:12:43Z
Importance: Normal
Subject: RE: Lessons Learnt and Allocating Budget for NI RHI
Received: 2012-11-30T15:12:45Z

Adrian

I ought to add that, as at today's date, we do not have the legal authority to administer the NI Scheme on behalf of DETI as the "arrangements" which, by virtue of section 114 of the Energy Act 2011, must be entered into between us and DETI before that can occur have yet to be entered into and thus DETI remains responsible for administering the Scheme. Hopefully that's about to change, but nothing happens until it happens....

Marcus

From: Marcus Porter
Sent: 30 November 2012 15:07
To: Adrian Falconer
Subject: RE: Lessons Learnt and Allocating Budget for NI RHI

Adrian

I did accept the invitation and it's in my calendar. Not sure why it hasn't registered on the system but then IT never was my strong point....

As to legal costs, potentially considerable further legal costs could be incurred this year. It depends on how many applications and queries come in and both are unknown quantities. There could even be a legal challenge theoretically, though I would have hoped that that would be unlikely to occur in the months of this year that remain. For any further detail on this could you please speak to Ruth Lancaster?

Marcus

From: Adrian Falconer
Sent: 30 November 2012 14:04
To: Marcus Porter
Subject: Lessons Learnt and Allocating Budget for NI RHI

Marcus,

I wanted to ask if you were thinking of attending the lessons learnt session for NI RHI that I have arranged for Wednesday – It would be good to have someone attend from legal but no-one has accepted yet?

Also, I note in the budget we allocated £67k for legal costs – do you know if this is how much it came to? Do you expect the NI project to incur any further legal costs this year ?

Regards

Adrian Falconer
Project Manager
Project Management
9 Millbank
London
SW1P 3GE
Tel: 0207 901 7380
www.ofgem.gov.uk

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Mary Smith[Mary.Smith@ofgem.gov.uk]
From: Matthew Harnack
Sent: 2012-12-01T20:45:09Z
Importance: Normal
Subject: RE: NIRHI: Admin Agreement
Received: 2012-12-01T20:45:10Z

Keith,

This doesn't quite reflect what I understood the approach to be. Should DETI have any issue with this when we speak on Monday, I suggest we revert to the approach I have previously stated (which Bob and I have discussed), i.e. that

- We provide DETI with all data on termination (i.e. with no exceptions or caveats). We will tackle the question of confidentiality by inserting text in an application declaration to the effect that the applicant is aware that the data will be passed on to DETI should we cease to operate the scheme, to enable them to continue to operate it.
- On disclosure of information, any disclosure of information to third parties will be agreed between DETI and Ofgem prior to disclosing it.

thanks

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To: Marcus Porter

Subject: RE: NIRHI: Admin Agreement

Received from OFGEM on 18/10/2012

Annotated by RHI Inquiry

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