

To: Marcus Porter[Marcus.Porter@ofgem.gov.uk]
From: Keith Avis
Sent: 2013-01-29T12:55:04Z
Importance: Normal
Subject: FW: NIRHI: Administrative Arrangements
Received: 2013-01-29T12:55:04Z

Thanks Marcus, much appreciated. Either Matthew or myself will go back to DETI using your suggested line.

Keith

From: Marcus Porter
Sent: 29 January 2013 12:21
To: Keith Avis
Subject: RE: NIRHI: Administrative Arrangements

Thanks for this and sorry for the delay. I am taking a break today (I hope) from DECC's degression Regs.

The text below is largely O.K, but I've suggested some amendments in red.

I don't think we should add "not legally binding". As you say, DETI will probably pick up on it and indeed they should already have done so. If they haven't, they can consult their own lawyers.

Moreover, I don't think it prudent to put ideas into their heads in this regard. We have had quite enough distractions already and don't need any more – bearing in mind in any case that there is no practical alternative to our administering the scheme and no legal one either – assuming they aren't going to do it themselves.

Can I stress also that there is a distinction to be drawn between, on the one hand, DETI asking for *Ofgem's* view as to how we interpret and apply the legislation and, on the other, asking us for legal advice. The former we can legitimately do. The latter we can't as we are not DETI's lawyers.

When going back to them can you therefore please take care to emphasise that it is the former that we are doing not the latter and that, if they need a legal view, they should consult their own Belfast lawyers.

Please *do not* refer either to the view you give them as being "legal advice" or as emanating from Legal, even if you are specifically asked about that. (There are legal reasons why you shouldn't that that I needn't go into). It should instead be characterised simply as "Ofgem's view" as per my amendments below.

On a lighter note, congratulations on your secondment. You must be counting the minutes!

Marcus

From: Keith Avis
Sent: 29 January 2013 11:04
To: Marcus Porter
Subject: FW: NIRHI: Administrative Arrangements

Marcus

Sory to be a pain, but DETI are now pushing on a response on this one, grateful if you could come back to me so that I can offer them a view please.

Many thanks

Keith

From: Keith Avis
Sent: 24 January 2013 11:25
To: Marcus Porter; Mary Smith
Cc: Morag Drummond; Michelle Murdoch
Subject: RE: NIRHI: Administrative Arrangements

Marcus

I had a discussion with Joanne today who was content with the privacy policy process. She did ask for a view on Fiona's points as to why we are not mentioned in the regs and as such are carrying out activities on their behalf. I explained our view to her (as you have mentioned below), but Joanne asked for something in an email so that she can be sure that she is not paraphrasing when passing details to Fiona. Picking up on what you have said I propose to email the following to her, but appreciating that this is a legal issue I want to make sure that we have this right, so grateful for confirmation that you are content or any further thoughts on this:

"In *Ofgem's* view the the reason DETI and not the Authority are referred to in the Regulations is because that is what the

relevant legislative calls for. You could not in our view lawfully have referred to *Ofgem* in the legislation, so it is right that this did