

**To:** Edmund Ward[Edmund.Ward@ofgem.gov.uk]; Teri Clifton[teri.clifton@ofgem.gov.uk]  
**From:** Gareth John  
**Sent:** 2015-05-26T11:48:49Z  
**Importance:** Normal  
**Subject:** FW: Tomorrow's meeting  
**Received:** 2015-05-26T11:43:00Z  
[DETI GEMA NIRHI Arrangements 12 December 2014.pdf](#)

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**From:** Cathryn Scott  
**Sent:** 26 May 2015 12:25  
**To:** Gareth John; Chris Poulton  
**Cc:** James Robinson  
**Subject:** RE: Tomorrow's meeting

Gareth,  
Many thanks for copying me in.  
You have asked if there is anything in our agreement with DETI which affects whether we are required or enabled to comply with these instructions.

I believe that the latest version of the DETI/GEMA NIRHI Arrangements are as attached.

The Arrangements envisage that GEMA will carry out the Conferred Functions (all the duties and powers conferred on DETI other than the Retained Functions) and Ancillary Activities. The Arrangements state that GEMA will **"at all times act in a manner which is consistent with any applicable obligations that arise as a matter of law..."** (clause 3.1), though the Arrangements also note that they are not intended to be legally binding (clause 1.4). Clause 3.1 is potentially important because it could expose Ofgem to liability as well as DETI if we disregard the obligations of the Regulations.

I can't see any express provision allowing DETI to require GEMA to suspend activities on instruction. The nearest provision I can see is the responsibility on GEMA to take all reasonable steps to ensure that wherever possible it will facilitate the ability of DETI to operate effectively in relation to the Regulations (clause 3.2(e)). But I don't think that really covers the present situation, since the instruction is not about operating effectively but about suspending operation.

It is possible for the Arrangements to be terminated but that requires 60 days notice unless otherwise agreed (clause 6.2). The Arrangements may also be deemed to be terminated if the Regulations have been changed (clause 5.4). That was what happened last time, from memory!

So as far as I can see, there is nothing in the Arrangements requiring us to comply with an instruction to suspend processing of applications.

I am not as familiar with the Regulations as James and his team, but from a quick review I can't see anything that allows DETI to suspend operation with no notice.

As discussed, it would be useful to clarify with DETI whether they think there is a power under the Regs simply to suspend applications and/or to refuse access to the scheme without consultation and amendment to the Regs. Superficially, this seems a bit similar to Breyer. In particular, if there is a possibility that installers would lose contracts as a result of an unlawful or disproportionate announcement, DETI could become exposed to damages claims. Moreover, there is a clear risk that Ofgem could be drawn into any challenge or damages claim.

It is therefore very important that DETI seek legal advice on this issue as a matter of urgency. I would be happy to speak to lawyers advising DETI if they provide contact details. From memory, they sit in another Department.

Best regards,

Cathryn

**Cathryn Scott**

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Personal information redacted by the  
RHI Inquiry

**ofgem e-serve**

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**From:** Gareth John  
**Sent:** 26 May 2015 11:41  
**To:** Chris Poulton; Cathryn Scott  
**Subject:** FW: Tomorrow's meeting

Cathryn/(Chris),

As discussed this morning.

I'm seeking a call today to understand the intent / implications on this before taking any action on the suggestion in the email below.

To that end – can you clarify the legal position for me in terms of the apparent proposed instruction below around applications

Rgds  
Gareth

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**From:** Teri Clifton  
**Sent:** 26 May 2015 08:17  
**To:** Gareth John  
**Subject:** FW: Tomorrow's meeting

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**From:** Wightman, Stuart [<mailto:Stuart.Wightman@detini.gov.uk>]  
**Sent:** 23 May 2015 13:17  
**To:** Teri Clifton  
**Cc:** Hughes, Seamus; Mills, John (DETI); Edmund Ward  
**Subject:** Fw: Tomorrow's meeting

Teri  
Further to my email below and your discussion with Seamus, I can confirm that due to the unprecedented increase in RHI applications over recent months it has become clear that we are currently overspent on our proposed budget this year.

DETI is currently in discussion with DFP/DECC to seek clarity on our RHI budget for 2015/16 and beyond. Until the position has been clarified DETI requests that Ofgem queues all new applications for a period pending budget confirmation. If applicants seek updates on their applications a response along the following lines should be issued:-

**Due to an unprecedented increase in application numbers DETI has instructed Ofgem to queue all new applications for a short period pending confirmation of the budget for 2015/16.**

Thank you for your assistance in this matter.

Regards

**Stuart Wightman**

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**From:** Teri Clifton  
**Sent:** Thursday, 21 May 2015 17:10  
**To:** Wightman, Stuart; Hughes, Seamus  
**Subject:** Tomorrow's meeting

Hi both  
I've just realised that Edmund, Katy and Mhairi are all off tomorrow, so I was wondering if you wanted to re-schedule for next week? I think everyone forgot about the Bank Holiday coming up.

Regards  
Teri  
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