

To: Jacqueline Balian[Jacqueline.Balian@ofgem.gov.uk]; Claudia Cimino[Claudia.Cimino@ofgem.gov.uk]; Nadia Carpenter[Nadia.Carpenter@ofgem.gov.uk]
Cc: Teri Clifton[teri.clifton@ofgem.gov.uk]; Marcus Porter[Marcus.Porter@ofgem.gov.uk]; Omolade Barker[Omolade.Barker@ofgem.gov.uk]
From: Edmund Ward
Sent: 2013-10-08T20:44:16Z
Importance: High
Subject: FYI: NI RHI and the Carbon Trust loan
Received: 2013-10-08T20:44:17Z
FW: [RHI query](#)

Jacqueline, Claudia, Nadia [Marcus, Lade, no action now, but to make you aware this will come your way soon...]

I'm forwarding this to make you aware that we have had an urgent request from DETI to provide:

- Formal guidance to DETI on the position with regard to Carbon Trust 0% loans, including a 'revised' legal position, including:
 - to confirm that the Carbon Trust is a "public authority" <I don't believe this is our position, and didn't communicate so... but we will need to indicate our interpretation of the Regs, although without sharing Counsel advice>
 - that the funding for the NI portion of the 0% interest free loans is indeed from public funds <the answer will have to be 'in at least some cases'>
 - and that the fact that the loan plus RHI would indeed infringe upon State Aid Regulations. <again, we may not be able to comment definitively>
- A notification that could be placed on the [Ofgem website](#) (at the NI RHI section), emailed to those registered under the NI RHI scheme and passed to the Carbon Trust (NI Office) that would advise stakeholders of the revised position

This follows from our rejection of an NIRHI applicant in this situation, further to which *we have identified various written communications from Ofgem, confirming that Carbon Trust loans are not incompatible with the RHI (see, for example, the email sent to DETI, attached...)*.

I'll do an initial draft, and then circulate further for your review - but please accept this as a warning that we may need to act urgently on this...

Many thanks,
Edmund

[I've started a Request for Legal Advice here: [RLA - NIRHI grants and loans](#)]

From: Hutchinson, Peter [mailto:Peter.Hutchinson@detini.gov.uk]

Sent: 08 October 2013 15:52

To: Teri Clifton; Edmund Ward

Cc: McCutcheon, Joanne

Subject: NI RHI and the Carbon Trust loan

Importance: High

Edmund / Teri,

Thanks for the call, from you what say the revised legal advice states that the Carbon Trust 0% loan is not compatible with the NI RHI due to Regulation 23 (1) (b) as it falls under "public support" meaning any financial advantage provided by a public authority. This reverses the previous opinion that the loan and the NI RHI were compatible, as per the 23 January 2013 email from Michelle Murdoch to Joanne McCutcheon. I also understand that the same regulation does not exist within the GB Regulations and therefore the 0% loan is currently compatible with the GB RHI.

Given that potential investors and installers have been previously advised by Ofgem (and by DETI following guidance from Ofgem) that the NI RHI and the loan scheme were compatible I think we need to move very quickly to provide clear advice and guidance to stakeholders and agree how applicants should be treated. I would be grateful if you would consider drafting a notification that could be placed on the Ofgem website (at the NI RHI section), emailed to those registered under the NI RHI scheme and passed to the Carbon Trust (NI Office) that would advise stakeholders of the revised position. This should be done as a matter of urgency.

Edmund – you also agreed to formally notify the Department of this issue, the revised legal position and the impact on applicants that have received the loan. In your response could you also confirm that you are content that the Carbon Trust is a "public authority", that the funding for the NI portion of the 0% interest free loans is indeed from public funds and that the fact that the loan plus RHI would indeed infringe upon State Aid Regulations.

Once the formal notification is received and the draft notification issued, we will also need to consider whether there are systems already accredited under the NI RHI that received the 0% loan and, if so, how they should be treated, as well as the treatment of those who received incorrect advice on eligibility. This might require a revision of the current regulations.

Grateful if you could prepare the notification for stakeholders / applicants / Carbon Trust and provide formal guidance to DETI on the revised legal position as a matter of urgency.

Happy to discuss again as required.

Regards,

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Annotated by RHI Inquiry

Peter

Peter Hutchinson

Renewable Heat

Department of Enterprise, Trade & Investment

Netherleigh

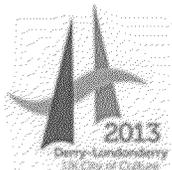
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