

To: 'Hughes, Seamus'[Seamus.Hughes@detini.gov.uk]
Cc: Wightman, Stuart[Stuart.Wightman@detini.gov.uk]; McCay, Davina[Davina.McCay@detini.gov.uk]; Sinton, Dan[Dan.Sinton@detini.gov.uk]
From: Edmund Ward
Sent: 2014-07-07T11:27:09Z
Importance: Normal
Subject: RE: NI RHI Carbon Trust and other matters - possible points for an SRO exchange of letters
Received: 2014-07-07T11:27:09Z

Seamus,
Thanks for sending this through. I'm unexpectedly out of the office today, but have asked colleagues to provide any comment – I'd hope to get back to you by 10am tomorrow with further comment. However, if you do prefer to send today my initial response would be that this appears to cover the appropriate issues and should enable us to provide a response that would enable us to move forward.
Kind regards,
Edmund

From: Hughes, Seamus [mailto:Seamus.Hughes@detini.gov.uk]
Sent: 07 July 2014 12:08
To: Edmund Ward
Cc: Wightman, Stuart; McCay, Davina; Sinton, Dan
Subject: FW: NI RHI Carbon Trust and other matters - possible points for an SRO exchange of letters

Dear Edmund
It was good to have the call last Wednesday which was helpful in getting myself and Stuart up to speed on the issues. Attached please find a draft letter which we would propose to issue to Chris but I wanted to share with you to make sure you are content before doing so. We have kept the draft succinct and focused on the main issue, the other areas can be addressed in due course.
We would hope to issue the letter today if at all possible.
Many thanks
Regards
Seamus

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Please consider the environment - do you really need to print this e-mail?

From: Edmund Ward [mailto:Edmund.Ward@ofgem.gov.uk]
Sent: 04 July 2014 10:50
To: McCay, Davina
Cc: Nadia Carpenter; Teri Clifton
Subject: NI RHI Carbon Trust and other matters - possible points for an SRO exchange of letters

Davina, Stuart, Seamus
Thank you for your time on Wednesday afternoon, and it was good to welcome Stuart and Seamus to the RHI scheme. I don't have all your emails (and apologies also if I've misspelt names!) - Davina, please could you forward?
As discussed, and with apologies for the delay, some suggestions on possible lines to take on a letter between SROs at DETI and Ofgem regarding current operation and next steps on the Carbon Trust and de minimis funding matter. I've included a much fuller drafting than you might normally expect. This in light of my having been the only one of us in post through all of these discussions - but feel free to consider and revise as you see fit – obviously this would be a DETI letter and my intention is only to provide summary coverage of the issues from a neutral perspective.
Happy to discuss. Note also that it would be help if I could see any version you are proposing, if possible, in advance of you clearing that at your end so that I can brief colleagues at this end to ensure this will be something we can progress quickly within Ofgem.

Kind regards
Edmund

Edmund Ward

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Annotated by RHI Inquiry

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Copies to:
- Gareth John, Associate Director, Non Domestic Renewable Heat Incentive, gareth.john@ofgem.gov.uk
- Edmund Ward, edmund.ward@ofgem.gov.uk
- Teri Clifton, teri.clifton@ofgem.gov.uk
- Nadia Carpenter, nadia.carpenter@ofgem.gov.uk
- [any DETI ccs]

Subject: Northern Ireland Renewable Heat Incentive - Update and Next Steps

Chris

Further to our constructive meeting on 16th April, I'm writing to note the progress that our teams have taken on the matters we discussed, and to propose next steps with particular regard to the topic of Carbon Trust loans and de minimis funding.

Budgets

We have agreed a budget for 2014/15. In line with our agreed approach to review volumes on a quarterly basis, I look forward to hearing from you following the recent completion of the first period April-June 2014.

Data sharing

I understand our teams have reached a common view on the practical measures to be put in place to facilitate the secure sharing of data. In line with that, our data storage solution is already in place. DETI has recently adopted a new system to deal with the secure transfer of data and we are in the process of confirming how this could be employed in order to receive data from Ofgem with regard to the RHI. Our teams will continue to progress this at a working level.

Domestic RHI

Thank you for again your offer to visit Ofgem to meet with you and members of your team dealing with Ofgem's administration of the GB Domestic RHI scheme.

[line on preferred action to take on this at this stage]

Future changes to the Non-Domestic RHI scheme

We are currently considering policy options relating to changes to the Non-Domestic RHI scheme. Thank you for the engagement to date during this scoping phase.

However, We are aware that, until we provide Ofgem with the intended policy changes and you can complete a feasibility study, you will be unable to begin preparations

for any future changes. I will update you on this in due course.

Carbon Trust loans and de minimis funding

Context:

As we discussed, as a result of a Statutory Review decision in December 2013 DETI took the decision that under the current NI RHI regulations, an organisation receiving financial advantage under the Carbon Trust Zero Interest loan scheme should, in some circumstances, also be able to avail of support under the Renewable Heat Incentive.

In addition, and as published on our website on 16th December 2013, we also committed to operating the scheme in line with de minimis funding arrangements, and we proposed to provide further details in due course.

In recent months, our teams have been working together to consider options to deliver this approach in line with the UK and EU legislative framework.

In operating under the current NI RHI Regulations, our view is that the combination of these two approaches, for current applicants in receipt of Carbon Trust loans,

means that there are two distinct cohorts:

- (a) applicants not in receipt of a Carbon Trust loan are provided for under the existing regulations as approved in our original submission to the European Commission.
- (b) applicants who are or have been in receipt of a Carbon Trust zero interest loan should be accepted onto the NI RHI scheme only where that approval would not lead to their exceeding the appropriate de minimis threshold for operating aid.

While this can be a complex area, at a high level this means it would be necessary to consider state aid receipts to the organisation, over a period of three rolling financial years, in line with the de minimis regulation given in EC Commission Regulation (EC) No 1998/2006. This therefore suggests two subsets of those applicants in receipt of Carbon Trust Zero interest

- (b1) applicants whose relevant state aid funding, including any likely RHI income, would not exceed the relevant de minimis amount over three rolling years - subject to meeting other eligibility requirements, these applicants would be able to access the RHI; and
- (b2) applicants whose relevant state aid funding, including any likely RHI income, would exceed the relevant de minimis amount over three rolling years - the applicants would not be able to access the RHI under current regulations

Impact:

We have noted that the current regulations do not provide a mechanism by which Carbon Trust loan recipients, even were they to repay this loan, would move from cohort (b2) to (b1) or (a). As such, under the current regulations these organisations would be unable to access the RHI as doing so could lead to their exceeding the relevant de minimis level. Both Ofgem and DETI are aware of a number of current applications which seem likely to be in cohort (b), and it is also possible that future applications will be in the same position.

Policy considerations:

To address this matter, we are considering changes to regulations, including a possibility to change the regulations to allow access to the RHI upon repayment of public support such as that coming from a Carbon Trust zero interest loan.

Guidance updates:

We are also intending to produce a guidance note setting out our position on this matter, and which could be used by both Ofgem and DETI when setting out the current position to current and future prospective applicants. We would look to share these with you for your comment in due course.

Administrative approach:

As noted above, the requirements surrounding state aid funding are complex, and can be subject to interpretation. We are keen to mitigate the risk of asking Ofgem to administer on our behalf, under the terms of the existing Administrative Arrangements, in the absence of a clear procedure setting out our intention in this regard. We are also aware that the existing Administrative Arrangements were agreed prior to any expectation that a state aid analysis would form part of the administration of the scheme by Ofgem.

In reaching an operational approach in the period prior to any revised regulations coming into force (which would in any event necessitate reconsidering the Administrative Arrangements), I would like to propose the following approach that would enable the processing of applications to continue by Ofgem, while also ensuring consistency:

- For Ofgem to continue to administer all applications in cohort (a) above, without any change in approach.
- For applications in cohort (b), Ofgem to gather information relating to the sources of funding and relevant amounts in the form of an applicant declaration
- In cases where Ofgem could be satisfied to be falling into cohort (b1), Ofgem to proceed to accreditation, informing DETI of the number of these on an aggregated monthly basis
- In cases where Ofgem could not be satisfied an application may not fall into case (b2), Ofgem would refer the relevant information gathered to DETI. In these cases, DETI would exercise its functions under the Regulations (which confer all powers to the Department) to reach a decision on whether to accredit the application, with specific regard to the relevant provisions (Regulation 23 and consideration of de minimis funding). DETI would then advise Ofgem of the outcome of its decision, for Ofgem to update the NIRHI Register on behalf of DETI.

Next steps:

I would be grateful for your view on the adoption of the above approach, and the conditions, if any, under which Ofgem might be satisfied applications would fall into (b1), i.e. taking account of a straightforward state aid analysis, while continuing to operate within the extent of the current Arrangements. One suggestion that has been initially discussed at a working level between DETI and Ofgem would be that this could be achieved where: (i) the sector (as set out in the Commission Regulation 1998/2006) in which the organisation was operating was clear, and was subject to the higher de minimis threshold of €200k over 3 years); (ii) no de minimis funding other than Carbon Trust loan support was declared by the applicant, and the Carbon Trust de minimis assessment was provided to Ofgem as evidence of the relevant amount; and (iii) the maximum possible RHI income based on either continuous operation or the hours assessed by the Carbon Trust when granting any loan amount, would not exceed the threshold, when cumulated with other Carbon Trust de minimis aid. It would be useful if you could consider this more formally and provide a response. If you are satisfied with this approach, and conscious that there are currently applications on hold pending our agreement on this issue, I would recommend that we move to this approach as soon as you are able to confirm that this is in line with your expectations.

Contact points and next steps

I hope this letter helps to clarify the work to date that our teams have made, and expresses the next steps in this matter. I would be happy to arrange a time to discuss this at your convenience, or you may wish to progress this with [Stuart/Seamus/Davina?] in the first instance.

Kind regards etc.

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