

To: Mills, John (DETI)[John.Mills@detini.gov.uk]; Wightman, Stuart[Stuart.Wightman@detini.gov.uk]; Seamus'[Seamus.Hughes@detini.gov.uk]
Cc: Chris Poulton[Chris.Poulton@ofgem.gov.uk]; Gareth John[Gareth.John@ofgem.gov.uk]; Teri Clifton[teri.clifton@ofgem.gov.uk]; Nadia Carpenter[Nadia.Carpenter@ofgem.gov.uk]
From: Edmund Ward
Sent: 2014-12-12T10:10:12Z
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Subject: Administrative Arrangements for the Non Domestic RHI
Received: 2014-12-12T10:10:13Z
[Chris Poulton to John Mills - 12 December 2014.pdf](#)
[DETI GEMA NIRHI Arrangements - 12 December 2014.pdf](#)

Dear John, Stuart, Seamus,

Please find attached a letter from Chris Poulton, and proposed Arrangements to be entered into between DETI and GEMA, in order for Ofgem to resume administrative functions on the Northern Ireland Non Domestic RHI.

I note that the Arrangements are dated today in line with Chris' signature. If it is not possible for you to sign this document today, the date on the first line of the Arrangements, and the "Commencement Date" defined in Section 2.1 of the Arrangements, would need to be amended to the date of your signature (and initialled).

Kind regards,

Edmund

Edmund Ward

Head of Technical, Development and Continuous Improvement

Non Domestic Renewable Heat Incentive

Ofgem E-Serve, 9 Millbank, London SW1P 3GE

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Making a positive difference
for energy consumers

Gwneud gwahaniaeth gwirioneddol
i ddefnyddwyr ynni

John Mills
cc: Stuart Wightman, Seamus Hughes

Department of Enterprise Trade
and Investment (DETI)
Energy Division
Netherleigh
Massey Avenue
Belfast
BT4 2JP

Direct Dial: 020 3263 9682
Email: chris.poulton@ofgem.gov.uk

Date: 12th December 2014

Dear John,

Administrative Arrangements for the Non Domestic Renewable Heat Incentive (RHI)

I am writing further to becoming aware that the Administrative Arrangements, agreed in 2012 and amended between us in October of this year, have been terminated. This is as a result of DETI's amendments to the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 made as part of the Domestic Renewable Heat Incentive Scheme Regulations (2014) which I understand came into force on 9th December 2014.

This termination arises because Clause 5.4 of the Arrangements provides that:

"In the event that the Regulations are amended or re-enacted but the parties have not been able to agree amendments to these Arrangements to reflect the same by the end of the date on which the amending or re-enacting Regulations come into force, these Arrangements will be terminated with effect from the next day."

Current Impacts

As you are aware, all powers relating to the administration of the NIRHI non-domestic scheme have therefore reverted to DETI, and we are therefore currently not able to conduct any activities previously conducted under these arrangements. This includes but is not limited to our previous administration relating to the handling of phone and email enquiries, the processing of applications, the handling of payments, the conduction of site audits, and the sharing or reporting of data.

Revised Administrative Arrangements

I understand that this has been discussed by my colleagues and that it is not your intention for Ofgem to cease conducting these activities. I have therefore requested the attached Arrangements be drawn up for your consideration. These replicate very closely the previous arrangements, and differ only in (i) referencing the amending regulations which came into force this week (in order to bring the amendments within scope of the Arrangements), and (ii) amalgamating the original 2012 arrangements and the amending

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arrangements signed on 13th October 2014. A couple of minor typographic points have also been picked up, and we have updated the reference to auditors AEA in the Annex to reflect the organisation's current name Ricardo-AEA.

In not making further changes, we have considered the Impact of the amendment to the regulations, and noted that Regulation 61 amends the Renewable Heat Scheme Regulations (Northern Ireland) 2012 to prevent a plant which is accredited, or for which accreditation has been sought, under this scheme from also obtaining accreditation under those Regulations.

Administering in line with this amendment will require our teams to share information on applications and accredited installations under both schemes. Our understanding is that will be covered by the clauses 4.1(f) and 3.2(a)(ii).

For avoidance of doubt, I note that Regulation 61(1) also makes changes to the conditions under which a grant or support may be repaid in order to access the Non-Domestic RHI, and I can confirm that our team would, upon signing of the revised Administrative Arrangements, act in accordance with those provisions.

Next steps

I would expect our teams to work together to agree an appropriate mechanism by which the impacts of these amendments can be operated in practice, and I note that until such steps have been put in place it may not be possible for us to reach accreditation decisions on applications made under the non-domestic RHI regulations. You may also be considering whether it would be possible for DETI to reach accreditation decisions on applications under the Domestic RHI regulations in the absence of equivalent procedures.

In addition to agreeing such mechanisms as described above, we expect that Guidance materials (which are published by DETI) will need to be updated to reflect the revision to the Regulations, and we would appreciate the opportunity to review any changes prior to these being published.

I would appreciate it if you could review the attached arrangements and respond as a matter of urgency. If you are not minded to pursue the route of signing new Arrangements, or are not in a position to do so within the course of this week, I would suggest we will need to agree for the transfer of all such materials as you may need to be able to conduct all functions relating to the administration of the scheme.

I hope we can resolve this swiftly to minimise the impact on our respective organisations and those affected stakeholders. If you wish to discuss this matter, you would be welcome to contact me, or you could contact my colleagues Edmund Ward (0207 901 7168) or Teri Clifton (0141 341 3991) in the first instance.

Kind regards,



Chris Poulton

Acting Managing Director
Ofgem E-Serve

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These Arrangements are entered into on 12th December 2014

BETWEEN:

- (1) The Department of Enterprise, Trade and Investment ("DETI"), whose principal address is Netherleigh, Massey Avenue Belfast BT4 2JP; and
- (2) The Gas and Electricity Markets Authority ("GEMA"), a body corporate established under section 1 of the Utilities Act 2000, whose principal address is 9 Millbank, London, SW 1P 3GE

1. BACKGROUND AND STATUS OF THESE ARRANGEMENTS

- 1.1 Section 114 of the Energy Act 2011 provides that DETI and GEMA may enter into arrangements for GEMA to act on behalf of DETI for, or in connection with, the carrying out of any functions that may be conferred on DETI under, or for the purposes of a scheme established in section 113 of the Energy Act 2011.
- 1.2 Certain functions are conferred on DETI under the scheme established by the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012, as amended by the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014.
- 1.3 This document sets out the arrangements in accordance with which GEMA intends to carry out certain of those functions on behalf of DETI.
- 1.4 These arrangements are not intended to be legally binding and no legal obligations or legal rights will arise between the parties from these Arrangements. However both parties will endeavour to comply with the provisions of these Arrangements. For the avoidance of doubt, nothing in these Arrangements is intended to, or will be deemed to, give rise to a relationship of agent and principal between the parties or overrides or is intended to pre-empt the ability of either party to discharge any of its powers or duties that arise as a matter of law.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The definitions and rules of interpretation in this Paragraph are intended to apply throughout this document:

"Administration Costs" means the costs to GEMA of carrying out the Conferred Functions and Ancillary Activities and any other activities under these Arrangements, howsoever incurred. The budget and charging methodology for calculating the Administration Costs, and the types of activity which can contribute to the Administration Costs, will be agreed separately between the parties in advance of the Administration Costs being incurred.

"Ancillary Activities" means the activities that GEMA considers are necessary or desirable for the Conferred Functions to be carried out properly.

"Commencement Date" means 12th December 2014.

"Conferred Functions" means all of the Functions other than the Retained Functions.

"Confidential Information" means information which has been designated as confidential by either of the Parties, whether, if it is passed to the other party, at the time it is so passed or at a later stage, or is of a confidential nature concerning DETI, GEMA or any third party.

"Functions" means the duties and powers conferred on DETI under the Regulations.

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"Guidance" means the document(s) entitled "Northern Ireland Renewable Heat Incentive Guidance Volume 1, eligibility and how to apply" and "Northern Ireland Renewable Heat Incentive Volume 2, ongoing obligations, payments", published in accordance with regulation 51 on 1 November 2012, as amended from time to time.

"Local Regulations" means the laws and regulations of Northern Ireland applicable to performance of the Functions.

"Party" means DETI or GEMA as a party to these arrangements, and "Parties" shall be construed accordingly.

"the Regulations" means the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012, as amended by the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014, and reference to a particular "regulation" is reference to that regulation in the Regulations.

"Retained Functions" means the powers and duties conferred on DETI pursuant to:

- i. regulation 23(1), but only for the purposes of determining whether funds used or to be used in respect of any of the costs of purchasing or installing an eligible installation amount to a grant from public funds or the provision of other public support as the result of the application of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid;
 - ii. regulation 36(8);
 - iii. regulation 47(1)(a);
 - iv. regulation 50; and
 - v. regulation 51.
- 2.2 Words used in these Arrangements and in the Regulations shall have the meaning given to them in the Regulations, unless otherwise defined herein.
- 2.3 Paragraph headings will not affect the interpretation of these Arrangements.

3. GEMA's RESPONSIBILITIES

- 3.1 GEMA will carry out the Conferred Functions and the Ancillary Activities and will at all times act in a manner which is consistent with any applicable obligations that arise as a matter of law, including any requirement to respect any personal or commercial confidentiality.
- 3.2 Subject to paragraph 3.1, GEMA will:
- a) provide DETI with:
 - i. such information as is necessary to enable DETI to carry out in a proper manner the powers and duties imposed on DETI by regulations 47(1)(a) and 50; and
 - ii. such other information as DETI may reasonably request, which GEMA may hold in relation to the Conferred Functions;

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- b) inform DETI of any complaint or request for a formal review that is received by GEMA in connection with the carrying out by it of the Conferred Functions or the Ancillary Activities;
- c) provide such assistance as DETI may reasonably request in connection with any court proceedings or other dispute with third parties in connection with the carrying out of the Functions on condition that any costs incurred by GEMA are charged to DETI at a daily rate to be agreed in advance of the provision of such assistance;
- d) nominate a person as a contact point for the purposes of these Arrangements and inform DETI of the identity of that person;
- e) take all reasonable steps to ensure that wherever possible it will facilitate the ability of DETI to operate effectively in relation to the Regulations. This may mean providing briefing or attending meetings with industry, providing resources are available to do this. GEMA will communicate with DETI on matters of common interest and common concern as appropriate;
- f) share in advance with DETI proposals for public announcements relating to or impacting on the scheme established by the Regulations when appropriate;
- g) ensure that any information it requests from DETI should be relevant to the Administration Costs, the Functions, the Ancillary Activities, the Regulations, the Guidance, Local Regulations, or any legislation made or proposed to be made under section 113 of the Energy Act 2011;
- h) ensure that where it requests information from DETI under these Arrangements, it will specify the information or nature of the information it requires, the format in which it requires it, the deadline for providing it and the reason it is required;
- i) give DETI reasonable notice of the date by which it requires information, wherever possible; and
- j) take the steps referred to in the Annex to these Arrangements.

4. DETI'S RESPONSIBILITIES

4.1 DETI will:

- a) pay the Administration Costs, on a pass through basis;
- b) transfer to GEMA the monies necessary for payment of the periodic support payments;
- c) nominate a person as a contact point for the purposes of these Arrangements and inform GEMA of the identity of that person;
- d) take all reasonable steps to ensure that wherever possible it will facilitate the ability of Ofgem to operate effectively in relation to the Regulations. This may mean providing briefing or attending meetings with industry, providing resources are available to do this. DETI will communicate with GEMA on matters of common interest and common concern as appropriate;
- e) share in advance with GEMA proposals for public announcements and consultations relating to or impacting on the scheme established by the Regulations when appropriate;
- f) share information with GEMA necessary to enable GEMA to carry out the Conferred Functions and the Ancillary Activities in a proper manner. In doing so, DETI will comply with all relevant legislation and have respect for any personal or commercial

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confidentiality. Where DETI is made aware of such information, it will notify GEMA that it holds the information and provide it to GEMA on request;

- g) only request information from GEMA under these Arrangements which is relevant to the Administration Costs, the Functions, the Ancillary Activities, the Regulations or the Guidance;
- h) provide GEMA with all information necessary to ensure that GEMA is aware of any Local Regulations that will impact upon the carrying out by GEMA of the Conferred Functions or the Ancillary Activities, and to give GEMA as much advance notice as possible of any prospective or actual changes in the Local Regulations if such would impact in any way upon the carrying out by GEMA of those functions or activities, provided that DETI could reasonably be expected to be aware of these Local Regulations. Should there be any Local Regulations that impact upon the carrying out by GEMA of the Conferred Functions or the Ancillary Activities which DETI has not notified GEMA of, GEMA will not be liable for any loss which arises as a result of not taking into account the requirements of those Local Regulations;
- i) where it requests information from GEMA under these Arrangements, specify what information it requires, in what format, by when and why it needs it;
- j) where it requests information from GEMA under these Arrangements, wherever possible give GEMA reasonable notice of the date by which it requires the information;
- k) where GEMA provides DETI with information under these Arrangements, prior to the publication of that information, not without GEMA's express consent circulate that information outside the Northern Ireland Executive until after the date of publication by GEMA and treat such information as Confidential Information, unless otherwise agreed; and
- l) provide such assistance as GEMA may reasonably request in connection with any court proceedings or other dispute with third parties in connection with the carrying out of the Functions.

5. AMENDMENT TO THE SCOPE OF THE CONFERRED FUNCTIONS AND THE ANCILLARY ACTIVITIES

- 5.1 The Parties anticipate that the Regulations and/or the Guidance may be amended from time to time.
- 5.2 Where either Party becomes aware of any actual or proposed amendments to or re-enactments of the Regulations or the Guidance, or that there is a need to effect such amendments or re-enactments, it will be responsible for informing the other Party as soon as reasonably practicable. For the avoidance of doubt such amendments are not covered by these Arrangements.
- 5.3 The Parties will discuss in good faith amendment of these Arrangements to reflect any changes to the Regulations or the Guidance
- 5.4 In the event that the Regulations are amended or re-enacted but the parties have not been able to agree amendments to these Arrangements to reflect the same by the end of the date on which the amending or re-enacting Regulations come into force, these Arrangements will be deemed to be terminated with effect from the next day.

6. DURATION AND TERMINATION

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- 6.1 These Arrangements will come into effect on the Commencement Date and will continue indefinitely until terminated by either Party giving prior written notice to the other Party in accordance with paragraph 6.2 or, as the case may be, until termination in accordance with paragraph 5.4.
- 6.2 Termination of these Arrangements other than in accordance with paragraph 5.4 will take effect on expiry of the period specified in the written notice referred to in paragraph 6.1.
- 6.3 For the purposes of paragraph 6.2, the notice period will not be less than 60 days from the date of the written notice, unless otherwise agreed by the Parties.
- 6.4 On termination of these arrangements, the Parties intend that (subject to applicable legal constraints, including any requirements to respect personal or commercial confidentiality) they 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, payment history and original drawings.

7. ASSETS

- 7.1 The Parties intend that any assets, including but not limited to intellectual property rights, created or purchased by GEMA in connection with the carrying out by it of the Conferred Functions and Ancillary Activities, will vest in GEMA following termination of these Arrangements.
- 7.2 Subject to paragraph 7.1, any materials, plan or equipment owned or held by DETI and provided by DETI for use by GEMA in carrying out the Conferred Functions or Ancillary Activities will be returned to DETI following termination of these Arrangements.

8. CONFIDENTIALITY

- 8.1 Each Party agrees to be responsible for ensuring (both during the term of these Arrangements and after their termination) that the Confidential Information is kept confidential, is not used other than strictly for the purposes of these Arrangements and is not disclosed to any third party without the prior written consent of the other Party, unless the information:
 - a) is public knowledge at the time of disclosure;
 - b) has become public knowledge other than by breach of this paragraph;
 - c) has become lawfully into the possession of the Party in question from a third party without any restrictions regarding confidentiality attaching to such information;
 - d) is required by law to be disclosed, as set out in paragraph 8.2
- 8.2 Each party recognises that disclosure of the Confidential Information may be required by law, in particular under the duties imposed on GEMA and DETI under Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and any subordinate legislation or codes of practice issued in accordance with such legislation ("the Legislation") as amended from time to time. Where disclosure of Confidential Information is required by law, each Party agrees to consult where possible with the other in advance of making any disclosure of information which is held in relation to the subject matter of these Arrangements. Each Party agrees to offer all reasonable assistance to the other in handling any requests for information made under the

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Legislation which relate to the subject matter of these Arrangements and to transfer any information requests received by that Party to the other Party if appropriate.

- 8.3 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 considered DETI prior to doing so, subject to any legal constraints on its ability to do so.

- 8.4 Both Parties intend, both during the term of these Arrangements and after their termination, to ensure that any employee or contractor to whom Confidential Information is disclosed is made aware that the information is confidential and of these Arrangements.

9. VARIATION

- 9.1 These Arrangements may only be varied by written agreement of the Parties.

10. NOTICES

- 10.1 Any notice to be given pursuant to these Arrangements should be in writing and sent by electronic mail to the relevant contact point nominated by the parties under these Arrangements.

11. DISPUTE RESOLUTION PROCESS

- 11.1 In the case of a dispute between GEMA and DETI about the interpretation or implementation of these Arrangements, the parties intend to comply with the following process:
- a) the dispute will first be discussed by the contact points from GEMA and DETI, with a view to resolving the dispute at that level;
 - b) if the contact points are unable to resolve the dispute amongst themselves within two weeks of first being notified thereof, they will each escalate the dispute to a more senior staff member within their respective organisation;
 - c) senior staff members should arrange an informal resolution meeting;
 - d) if the senior staff members are unable to resolve the dispute within four weeks of being notified thereof, they will then each escalate the dispute to the Senior Civil Service or Director level of each of the organisations for final resolution.

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Signed by _____
for and on behalf of _____
The Department of Enterprise, Trade and
Investment

Date _____

CHRIS POULTON

Signed by 
for and on behalf of _____
The Gas and Electricity Markets Authority

Date

12-12-14

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ANNEX: AUDITING

GEMA shall notify DETI immediately in writing if any financial irregularity in relation to the NI RHI is suspected, and indicate the steps being taken in response. Irregularity means any fraud, theft or other impropriety, mismanagement, or use of funds for purposes other than that approved.

GEMA will communicate with DETI regarding the Terms of Reference for the audit activity undertaken by Deloitte/Ricardo-AEA, and endeavour to ensure that any DETI concerns regarding the NI RHI are adequately addressed. Upon completion of the audits, GEMA will share the outcomes where they relate to the NI RHI.

While being consistent with the obligations set out in the arrangements, including the requirement to comply with any legal obligations, GEMA will provide any records, information, or explanations which may reasonably be required to enable DETI to follow scheme payments, including but not limited to information relating to accredited installations, calculations of payments and transfer of funds from GEMA to the installer. If DETI has any issue requiring further consideration, GEMA will provide DETI, or the Northern Ireland Audit Office, with access rights relating to the payments made to accredited installations.