

**To:** Teri Clifton[teri.clifton@ofgem.gov.uk]  
**From:** Edmund Ward  
**Sent:** 2015-05-26T14:35:33Z  
**Importance:** Normal  
**Subject:** FW: DETI letter - for Chris' signature  
**Received:** 2015-05-26T14:35:34Z  
[DRAFT NIRHI Amending Arrangements\\_7October2014.doc](#)  
[Chris Poulton to Stuart Wightman - 7 October 2014.doc](#)

Hi Teri

Is this what you need? I think I've confused myself again....

Also see my next email for the final version for reference.

Edmund

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**From:** Edmund Ward  
**Sent:** 07 October 2014 15:44  
**To:** Gareth John  
**Cc:** Teri Clifton  
**Subject:** FW: DETI letter - for Chris' signature  
Hi Gareth, thanks. Attached now as per extract below. Edmund

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#### Budgets

We have agreed a budget for 2014/15. In line with our agreed approach to review volumes on a quarterly basis, we have prepared a change control which confirms forecast and budget for 14/15 at £211,936, and this is now being taken forward between our two teams.

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**From:** Edmund Ward  
**Sent:** 07 October 2014 14:50  
**To:** Gareth John  
**Cc:** Teri Clifton  
**Subject:** DETI letter - for Chris' signature

Hi Gareth

Updates to letter as per our discussion this morning, and attached amending arrangements.

**Are you happy with this version for Chris' signature?** If so, I can give Nicola a hard copy [and email these to Chris in case he wants to do any topping/tailing].

Then I guess Nicola can PDF version of signed letter and word copy of arrangements, by email, on Chris's behalf.

I'll prepare a dated version of the arrangements and take along on Monday for signatures.

Thanks

Edmund

These Arrangements are entered into on [*date to be the date when the last to sign signs*]

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, SW1P 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 under section 113 of the Energy Act 2011.
  - 1.2. Certain functions are conferred on DETI under the scheme established by the Renewable Heat Incentive Regulations (Northern Ireland) 2012.
  - 1.3. A document dated 28th December 2012 sets out arrangements in accordance with which GEMA intends to carry out certain of those functions on behalf of DETI (the "2011 Arrangements"). Paragraph 9.1 of 2011 Arrangements provides that those arrangements may only be varied by written agreement of the parties. As part of the 2011 Arrangements, certain powers and duties conferred on DETI pursuant to those Regulations are "Retained Functions" for the purposes of those arrangements.
  - 1.4. DETI and GEMA wish to change the scope of the "Retained Functions", and this document sets out arrangements which amend the 2011 Arrangements. DETI and GEMA intend that the arrangements set out in this document are accordingly to be read as being incorporated into the 2011 Arrangements.
  - 1.5. 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. AMENDMENT OF DEFINITION OF "RETAINED FUNCTIONS" IN THE 2011 ARRANGEMENTS
3. The definition of "Retained Functions" in paragraph 2.1 of the 2011 Arrangements is amended to add, before paragraph (i) of that definition, the following paragraph:

"(ai) 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

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Restricted

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;".

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

Signed by  
For and on behalf of  
The Gas and Electricity Markets Authority



Making a positive difference  
for energy consumers

Gwneud gwahaniaeth gwirioneddol  
i ddefnyddwyr ynni

**Stuart Wightman**  
**cc: John Mills**  
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](mailto:chris.poulton@ofgem.gov.uk)

Date: 7<sup>th</sup> October 2014

Dear Stuart,

### **Non Domestic RHI – approach to Carbon Trust loans and other updates**

I'm writing further to your letter of 10<sup>th</sup> July, and to formalise some of the work that has been done between our teams further to that letter. I'd also like to take the opportunity to update you on some other areas following my meeting with John Mills and relevant Ofgem and DETI colleagues at your offices on 16<sup>th</sup> April 2014.

### **Approach to Carbon Trust loans and other *de minimis* state aid cases**

Thank you for your letter of 10<sup>th</sup> July 2014 in which you set out your proposals for how Ofgem may treat NIRHI applications where a Carbon Trust loan or other public support has been received. Your proposals bring us closer to reaching a position on the long running issue which has caused 8 NIRHI applications to be placed on hold. I am very pleased that our teams are working together to find a solution to this matter.

I note the categorisation you propose to apply to NIRHI applicants. I also note your future intention to amend the NIRHI Regulations to make the option of repaying other public support, in order to access NIRHI support, available to all applicants. We would welcome the opportunity to input into the development of policy in this area so that we can advise on any impacts such as associated administrative costs. We would also encourage early amendment to the NIRHI Regulations to address the difficulties we are having to overcome through this correspondence.

With regard to our administrative approach prior to any regulatory amendment I can confirm that we are happy to administer all Category 1 applicants in line with your proposal (i.e. we will continue to administer applicants currently not in receipt of a Carbon Trust loan or other public support without any change of approach).

For Category 2 I have considered the administrative burden placed on us when we receive an application in receipt of a Carbon Trust loan or other potential state aid funding. I can confirm that while we are prepared to gather information on funding, we would not be in a position to make any decision on where Category 2 applicants fall in relation to the relevant *de minimis* limit. This is due to the complexities and resource requirements involved in conducting any level of state aid analysis. As a result, I suggest that we deal with your

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Category 2 and 3 cases in the same way, i.e. Ofgem will assess the application against the eligibility criteria, and, if it meets those criteria, the next steps will depend on the nature of any funding.

Where there is clearly a grant from public funds or the provision of other public support within the terms of regulation 23, Ofgem will (continue to) proceed to determine the application without DETI input, applying regulation 23 accordingly.

In cases where it appears to Ofgem that there *may* be a grant or the provision of other public support, and that a *de minimis* State Aid issue may be involved, we will forward the relevant information to DETI. DETI will then consider whether any funding falls below the relevant State Aid *de minimis* threshold, and will take a decision as to whether, in the light of that analysis, the funding constitutes a grant from public funds or the provision of other public support for the purposes of regulation 23. DETI will then inform Ofgem of that decision (together with the basis for it and any indication as to how that position or the relevant regulations may be amended in the future). Following this, Ofgem will proceed to formally determine the outcome of the application, as part of which we will rely on DETI's decision on the grant/public funds aspect or, should there be an indication from DETI that there may be changes to regulations in future, to write to the applicant setting out options including an option that the application be put on hold pending further clarity on potential changes to regulations.

The Administrative Arrangements will need a small, but essential, amendment to reflect this division of responsibility for the relevant functions as between Ofgem and DETI, given that Ofgem will be relying on DETI's decision on whether there is a grant/public support in such cases when determining applications. For reasons of transparency we suggest that there should be a change to the Guidance which sets out this division of responsibility.

We are well-placed to move to this position as soon as you can confirm your agreement to the approach as set out above, and as soon as the Administrative Arrangements have been amended and signed. I have appended to this letter a short draft form of further Arrangements amending the original Arrangements and containing a short provision detailing that DETI will retain the responsibility of determining the grant/public support position in State Aid cases. Once you have considered we would hope to be in a position to sign these in short order. If you have any further comments on the details of this approach I would ask you to contact my colleague Edmund Ward in the first instance to progress this.

### **Budgets**

We have agreed a budget for 2014/15. In line with our agreed approach to review volumes on a quarterly basis, we have prepared a change control which confirms forecast and budget for 14/15 at £211,936, and this is now being taken forward between our two teams.

### **Data sharing**

We fully understand the need for you to have access to scheme data including personal data. I am pleased that we have reached a common understanding that this is something that Ofgem is happy to share, and that the only restrictions are those practical conditions incumbent on us as the organisation collecting this data to act in line with the provisions of the Data Protection Act and any other relevant legislation.

Our teams have been discussing the practical measures to be put in place to facilitate the secure sharing of data, and our IT colleagues have been engaging on this. In addition, I believe you are still addressing some areas regarding the scope of the data requested and we look forward to hearing from you in that regard, in order to prepare a finalised data

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sharing agreement that can be signed by both parties. Our teams will continue to progress this at a working level.

#### **Future changes to the Non-Domestic RHI scheme**

We will be happy to continue to engage on further intended policy changes. Our experience in conducting this process with DECC has been that early engagement has enabled us to minimise costs and reduce the burden on applicants. This is particularly relevant in the case of the Northern Ireland scheme as you will be aware that the Administrative Arrangements terminate automatically in the event that the Regulations are amended or re-enacted (clause 5.4 of the Arrangements) and so early engagement to enable another Arrangements to be agreed will aid a smooth transition (at which point the interim 'fix' added by the Amendment to the Arrangements referred to above can be incorporated or revised). We note that, in order to assess the scope of administrative and IT system changes, our normal expectation would be to complete a feasibility study at the stage you have a firm view of policy intentions. This would enable us to provide you with an assessment of costings and operational impacts of the proposal, and to indicate the likely implementation time once arrangements (including funding) were agreed.

#### **Next steps**

I look forward to any response you may have, and would also be happy to discuss any of the above when we next meet at your offices on Monday 13<sup>th</sup> October. I would also like to extend my previous offer to John Mills to yourself and/or any of your colleagues to visit our Ofgem operations, either in London or Glasgow. A visit to our offices would also provide an opportunity for you to experience the administrative approach we are currently taking to deliver the domestic RHI in Great Britain, which may be of interest. Alternatively or in addition, we would be happy to showcase the Domestic RHI application process at your Belfast offices. My colleague Teri Clifton would also be happy to engage with you on this in the first instance.

Kind regards,

Chris Poulton

Deputy Managing Director  
Ofgem E-Serve

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