



Briefing

NI RHI Administrative Arrangements

An overview of the key characteristics of the draft Administrative Arrangements pursuant to which Ofgem will administer the NI RHI scheme on DETI's behalf	From To cc Date	Will Elliott Matthew Harnack Luis Castro, Keith Avis 8 August 2012
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1. Aim

- 1.1. To ensure that there is sufficient time for the draft arrangements to be agreed and finalised before the commencement of the scheme, it is important that the arrangements (the "**Arrangements**") are shared with DETI as soon as possible.
- 1.2. This briefing is intended to provide an overview of the key characteristics of the Arrangements and to enable a decision to be made as to whether the Arrangements can be shared with DETI in their present draft form.
- 1.3. While it is not necessary to have reviewed the individual provisions in the Arrangements before Thursday's meeting, it may be helpful to have a general idea of the level of detail they contain and the issues that they cover.

2. Background

- 2.1. The Arrangements currently provide a framework for the responsibilities of both DETI and the Authority/Ofgem under the NI RHI scheme. To date, DETI have not been provided with a draft of the Arrangements, and have only been informed that the Arrangements are intended to be less contractual in nature than the arrangements under the NIRO Agreement.
- 2.2. Before incurring further development costs, it would be helpful to receive DETI's confirmation that they are happy with the form of the Arrangements, and to identify any specific issues provided for by the Arrangements that might potentially impact parties' ability to reach agreement.

3. The Arrangements

- 3.1. The Arrangements have the following key characteristics:
 - Non-contractual/not intended to have legal effect.
 - To reflect the Authority's independent regulator status and the wording of section 114 of the Energy Act 2011, no mention of "services".
 - Subordinates the Authority's responsibilities under the Arrangements to the Authority's common law and statutory obligations.
 - No indemnity – DETI to indemnify the Authority by way of a separate legally binding side letter.
 - DETI retain responsibility for enforcement activities (the precise scope of such retained activities is still to be defined)
 - The Authority to carry out all other functions arising under the NI Regulations
 - The Authority will carry out "ancillary activities" it considers necessary for the proper performance of DETI's functions under the Regulations. These activities

are not currently specified so as to provide the Authority with flexibility in respect of the activities it provides, though consideration is being given to whether specifying any of these may be appropriate.

- Disputes, other than disputes about the Administration Costs, to be resolved where possible by agreement between the parties, failing which by Counsel's opinion. Disputes about the Administration Costs to be resolved by the Authority's Chief Operating Officer.
- The default position is that Authority is not responsible for carrying out functions under the NI Regulations other than those initially provided for in the Regulations at the date they come into force. Where the Authority is happy to take on additional functions/activities following amendments to the NI Regulations, these can be agreed by the Parties through revisions to the Arrangements and reflected in the administration costs paid by DETI.
- Formula for calculating the Administration Costs, which the Arrangements oblige DETI to pay, can be included in a schedule to the Arrangements and the definition of Administration Costs amended accordingly. This formula is still to be drafted, and might need to reflect the potential for divergence of the NI and GB schemes in terms of scope and enactment dates to impact on the operational costs of the NI Scheme.
- Draw-down provisions to ensure that the Authority is in funds prior to making periodic support payments to scheme participants are still to be drafted.
- Termination on notice by either party. Notice period yet to be agreed.