

**To:** Teri Clifton[teri.clifton@ofgem.gov.uk]  
**From:** Edmund Ward  
**Sent:** 2014-08-08T07:01:52Z  
**Importance:** Normal  
**Subject:** FW: NI RHI Scheme - Carbon Trust Loans and De Minimis Funding  
**Received:** 2014-08-08T07:01:54Z  
[Letter to Chris Poulton re Carbon Trust Loans issue.DOC](#)  
[Chris Poulton to Stuart Whiteman August 2014\\_for legal review.docx](#)

Hi Teri  
Sorry, meant to cc you...  
Edmund

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**From:** Edmund Ward  
**Sent:** 08 August 2014 08:01  
**To:** Ruth Lancaster  
**Cc:** Omolade Barker; Cathryn Scott; Gareth John; Chris Poulton; Nadia Carpenter; Ranak Tebbit; James Robinson  
**Subject:** FW: NI RHI Scheme - Carbon Trust Loans and De Minimis Funding

Ruth,  
Please find attached (i) the letter from DETI to Chris re: an approach to Carbon Trust loans, and (ii) a draft response. Note the draft response also touches on other DETI relationship items, but it is the Carbon Trust section on which legal advice is sought. Specifically, the approach is in line with previous legal advice and Bob's policy steer that we should not commit to conducting state aid analyses, but that we may as an interim measure collect data on relevant de minimis funding and should hand those to DETI for review and decision under their regulatory powers. The additional legal advice requested is around the wording of approach as set out in the letter, specifically to mitigate the risks of sharing the data needed by DETI in order to reach their decision on any exception to a duty to accredit. Given the formal data sharing agreement between DETI and Ofgem has not been signed, we are proposing to share relevant data in an anonymised form. Very grateful for comments by COP Monday if possible.  
Happy to discuss.  
Kind regards,  
Edmund

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**From:** Hughes, Seamus [<mailto:Seamus.Hughes@detini.gov.uk>]  
**Sent:** 10 July 2014 09:49  
**To:** Chris Poulton  
**Cc:** Mills, John (DETI); Wightman, Stuart; McCay, Davina; Sinton, Dan; Edmund Ward; Nadia Carpenter; Gareth John; McGready, Linda  
**Subject:** NI RHI Scheme - Carbon Trust Loans and De Minimis Funding

Dear Chris  
Attached please find for your consideration a letter from Stuart Wightman setting out DETI proposals for dealing with the Carbon Trust Loans and De Minimis Funding which has been causing some difficulty with a small number of projects. This follows on from a teleconference with Edmund and Nadia on 2 July.

Best Regards  
Seamus

**Seamus Hughes**

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Gwneud gwahaniaeth gwirioneddol  
i ddefnyddwyr ynni

**Stuart Wightman**  
**cc: John Mills**  
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and Investment (DETI)  
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Direct Dial: 020 3263 9682  
Email: [chris.poulton@ofgem.gov.uk](mailto:chris.poulton@ofgem.gov.uk)

Date: 12<sup>th</sup> August 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 also to update 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**

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 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 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.

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.

For Category 2 I have considered the administrative burden placed on us when we receive an application in receipt of a Carbon Trust loan. I can confirm that while we are prepared to gather information on an applicant's funding position with regard to the de minimis requirement, we would not be in a position to make any decision on where Category 2 applicants fell in relation to the relevant de minimis limit without a corresponding change to the administrative arrangements between Ofgem and DETI. This is due to the complexities involved in conducting any level of state aid analysis. As we would not be able to make ourselves satisfied in relation to Category 2 applicants I suggest that these are treated in line with the approach to Category 3.

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I can confirm that, pending any other changes to regulations or administrative changes, we would be content in the interim to proceed under our existing Administrative Arrangements with regard to the proposal under Category 3.

Given the outstanding data sharing protocol (to which I refer separately below), it is important to note the process by which relevant information would be shared, and the basis on which any decision would be taken for Category 2 and 3 applications. For avoidance of doubt, it is our expectation that in following the approach as set out in the following paragraph we would expect to provide anonymised information so as to ensure compliance with relevant data protection legislation.

We would forward the relevant information on the 8 held cases (and any future cases in this category) to you for a decision regarding any exception to duty to accredit that the Department may have under Regulation 23. You would then need to provide a decision including, where there was an exception to duty to accredit, a statement that we could use giving reasons for rejection of the application (in line with Regulation 22(7)(f)). We would then be prepared to act on individual decisions on a case by case basis as soon as we receive written notice on the nature of your decisions.

We would welcome moving to this position as soon as you would confirm your agreement to the above. Alternatively, 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 look forward to meeting to discuss a finalised view for the first period April-June 2014. I understand a change control will be taken forward between our two teams on this matter.

### **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.

I understand our teams have been discussing the practical measures to be put in place to facilitate the secure sharing of data, and that 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 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. 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

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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 or to arrange to meet with you. 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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