MINISTERIAL ENGAGEMENT BRIEFING:
Tom Arthur, Minister for Public Finance, Planning and Community Wealth

What	Meeting with members of the Hydro sector regarding Non-Domestic Rates: [redacted] [redacted] British Hydro Power association [redacted] [redacted] Ardtornish Estate
Where	Microsoft Teams meeting **Join on your computer or mobile app** Click here to join the meeting **Or call in (audio only)** [redacted] United Kingdom, Edinburgh Phone Conference ID: 212 636 806# Find a local number | Reset PIN SCOTS Connect Learn More | Help | Meeting options
When	9:00-10:00 2 September 2021
Key Message(s)	Scottish Government values the contribution that the Hydro sector makes to the Scottish economy and to our low carbon ambitions which is why we offer the only dedicated Hydro relief in the UK The Scottish Government has: • Offered the level of support requested by the British Hydro Association (60%); • Responded to the pleas for certainty from investors and financiers by extending the relief to 31 March 2032 – 14 years of relief; and • Capped support at the maximum allowed under international trade agreements. [redacted] NDR reliefs, like other subsidy or support measures, are subject to the terms of international trade agreements signed by the UK Government. Failure to abide by international trade agreements exposes Scottish Government to financial and reputational risk – it also exposes ratepayers to financial risks. The new subsidy regime established by the EU-UK Trade and Cooperation Agreement allows the Scottish Government to almost double the level of support available to hydro operators relative to the previous Treaty of the Functioning of the European Union State Aid regime

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	NDR Rateable values are determined by independent assessors on the basis of evidence and case law Ratepayers have a right to appeal where they have evidence to indicate that their rateable values are inaccurate. Hydro rateable values are subject to ongoing litigation and it would not be appropriate for Scottish Ministers to comment.
Who	[redacted] British Hydro Power association [redacted] [redacted] Ardtornish Estate
Why	There has been ongoing correspondence between the Cabinet Secretary for Finance and Economy, Special Advisors and representatives from Ardtornish over 12-18 months. Artornish are one of a small number of relatively large scale Hydro operators who do not benefit in full from the relief due to regulations on State Aid (now called subsidy control). Ardtornish have also written to a number of other Ministers. The issues raised are the same as those raised by a minority of other schemes in the small scale Hydro sector - that the non-domestic rates relief on their bills are capped by subsidy controls. These subsidy controls were previously set out under the state aid restrictions of the Treaty of the Functioning of the European Union(200,000 euros over three fiscal years), but are now capped as a subsidy under the EU-UK Trade and Cooperation Agreement (325,000 Special Drawing Rights over three fiscal years). Ardtornish claimed more relief than they were entitled to when the relief was introduced in 2018. As a result they needed to refund the balance to Highland Council and subsequently made redundancies on the estate.
Supporting official	[redacted] – Head of Local Government Finance [redacted] – Non-Domestic Rates Policy Manager
Briefing contents	**Annex A:** Biographies **Annex B:** Background **Annex C:** Lines to take **Annex D:** Correspondence

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ANNEX A

Biographies
[redacted]

[redacted] **British Hydro Power association**

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted] **Ardtornish Estate**

[redacted]

ANNEX B

Background to Hydro

This an extremely complex case with a long and contentious history.

The hydro sector argue that the rates system delivers an excessive and 'unfair' rateable value for hydro generation plant. Their concerns existed at the 2010 revaluation and there have been many appeals. Further, there is ongoing litigation over the valuation approach. One specific case, Old Faskally Farming Company Limited and Others vs Tayside Assessor has been heard and currently sits with the Tayside Valuation Appeal Committee.

Hydro schemes installed post-2010 as a consequence of the Feed-in-Tariff[1] subsidy regime introduced by the UK Government benefited from a 'positive material change of circumstances' (i.e. values had increased but rateable values still reflected the market reference point of the 2010 revaluation).

This situation was corrected at the 2017 revaluation and newer schemes (including four out of five schemes at Ardtornish) saw significant increases in rateable value. Illustrations of the impact of the 2017 revaluation are included below.

- For a plant in existence at the 2010 revaluation, rateable values are estimated to have increased by around 4% at the 2017 revaluation (significantly below inflation which would have suggested a 22% increase)
- For a plant installed in 2011, the increase at the revaluation was around 107%
- For a plant installed in 2015, the increase at the revaluation was around 144%

The sector has argued that the Hydro sector was impacted harder than other renewable technologies and that rates liabilities' are a risk to project viability.

<u>Establishing the Hydro Review Group</u>

In response, the Cabinet Secretary for Finance, Economy and Fair Work, introduced a transitional relief of 12.5% real terms cap on increases on rates bills for Hydro Schemes for 2017/18, and subsequently introduced a 60% relief from 2018/19 onwards for the sector.

In addition, the Barclay Review Implementation plan confirmed that there would be a fast-track review of non-domestic rates for the Hydro sector. Subsequently, the Scottish Government commissioned the Tretton Review.

The Review Group included Professor David Tretton (the chair), Kenny Hunter (attendee of this meeting) and Stephen Hutt from the Hydro sector, Alastair Kirkwood and Bill Gillies from the Scottish Assessors Association and an independent

[1] The UK Government introduced the Feed in Tariff (FIT) in October 2008 with effect from 1 April 2010. The scheme is a subsidy and was designed to promote the uptake of renewable and low-carbon electricity generation technologies, by providing payments for the electricity an installation has generated and exported. The FIT Scheme closed to new applicants in March 2019 with the UK Government introducing a Smart Export Guarantee in January 2020.

academic, Professor Fiona Grant. Ian Storrie and James Messis provided secretariat to the Group. The group met seven times.

Hydro Review

The Tretton Review concluded that Hydro schemes have particular cash flow challenges in the first 7-10 years due to the capital costs involved in construction and stated:

> "The [Review] group agree that the outcome of correctly applying the regulations is resulting in adverse outcomes for some elements of the small-scale hydro sector and that concerns regarding the viability of parts of the existing hydro sector have merit. The group therefore concludes that elements of the existing sector will struggle – at least in the short term – without further public sector support"

A link to the final hydro review report published in January 2020 can be found at the following link, [Small-scale hydro plant and machinery review: report - gov.scot (www.gov.scot)](www.gov.scot).

Responding to the findings of the Tretton Review of Small Scale Hydro Plant and Machinery, the Scottish Budget 2021-22 committed to guaranteeing the existing 60% hydro relief until 31 March 2032.

Background to Meeting and Subsidy Control (Formerly State Aid)

There has been ongoing correspondence between the Cabinet Secretary, Special Advisors and representatives from Ardtornish ([redacted]). Their concerns have chiefly been around rateable value as a proportion of turnover, valuation, and state aid.

They have gained traction with their argument that they are the highest ratepayer in Scotland as a proportion of turnover without any recognition that NDR is not a tax on income or turnover. As Hydro is a capital intensive operation with few other operating costs, NDR as a proportion of turnover will inevitably be high.

In 2020-21 Ardtornish were required to pay over £500,000 in non-domestic rates on five hydro schemes. This includes a further payment resulting from relief that was over-claimed above the state aid de minimis threshold – this capped public support to individual economic actors at 200,000 euros over three fiscal years - [redacted]

In July 2020 Ardtornish were one of five Hydro operators who sought legal opinion suggesting that the small scale hydro relief should not be capped by state aid. Scottish Government disagreed with that legal advice and provided a robust response endorsed by SGLD State Aid specialists - the response to that correspondence is in the annex.

[redacted]

Subsidy Control (formerly State Aid)

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Historically state aid policy officials and SGLD consistently advised that hydro relief awards should be subject to the limits of the TFEU state aid de minimis regulation – 200,000 euros over three fiscal years - on the basis that the relief is selective and that the hydro schemes are producers of electricity, and as such they may be in cross-border competition with others in the electricity generation market.

The UK-EU Trade and Cooperation Agreement (TCA) set a new cap level of approximately £315,000 (tied to 325,000 special drawing rights) over three fiscal years. At that time there were a number of uncertainties surrounding the operation of the TCA, and on the basis of our best risk-based interpretation of the UK Government's guidance, the Scottish Government tied the awarding of the relief to the cap set out in the TCA of approximately £335,000 (tied to 325,000 special drawing rights) over three fiscal years.

The Cabinet Secretary for Finance and Economy met with [redacted] and [redacted] on 15 March 2021, at which they acknowledged that the new cap is a significant increase – almost double the cap under TFEU state aid.

The UK Department for Business, Energy & Industrial Strategy were consulting on the legislative framework to underpin the subsidy control framework in the UK. The UK Government published response to the Consultation is now available - https://www.gov.uk/government/collections/subsidy-control-bill#consultations..

The Scottish Government sought to make the case for low carbon technologies in our response to that consultation.[2]

The Subsidy Control Bill ("the Bill") was introduced to the UK Parliament on 30 June 2021. Given the time required for the Bill to be considered by Parliament and any necessary supporting legislation and guidance to be prepared, this suggests that BEIS are likely to be in a position to implement the permanent regime in summer 2022.

The sector claim that the Bill provides the framework to deliver Hydro relief as an uncapped subsidy. Officials are still trying to understand the aspects of the Bill [redacted]

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[2] In our response, we described beneficial subsidies as:

"All subsidies as long as they are targeted, proportionate and effective, that drive growth and investment and encourage innovation, research and development, such as: Low carbon economy; Green energy (e.g. emissions reduction); Digital."

Further, in response to a question regarding what type of subsidies are potentially most harmful and distortive, the Scottish Government response stated that:

"*The UK Government needs to ensure that the Devolution Settlement is fully taken into account and devolved powers are not undermined… Potentially harmful and distortive subsidies are those that are not committed to decarbonisation or reducing emissions."*

Were Scottish Government to award the relief as uncapped subsidy in line with the sectors wishes, in the event of a successful challenge, Scottish Government would likely face a fine and reputational damage. In parallel, the ratepayers would also be required to repay any over-paid relief as has already been the case with Ardtornish when they over-claimed the in 2019-20.

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ANNEX C

LINES TO TAKE

Hydro Relief

- The Scottish Government delivers the most generous non-domestic rates relief for renewable generators that offer community benefit, as well as the only dedicated relief for small scale hydro generators.
- The Scottish Government has:
    - Offered the level of support requested by the British Hydro Association (60%);
    - Responded to the pleas for certainty from investors and financiers by extending the relief to 31 March 2032 – 14 years of relief; and
    - Capped support at the maximum allowed under international trade agreements
- The new subsidy regime, which caps relief at approximately £335,000 over three years was established by the EU-UK Trade and Cooperation Agreement, and not the Scottish Government.
- The Scottish Government have treated hydro generation as a priority, with the Scottish Budget 2021-22 delivering an extension to the 60% Hydro relief to 31 March 2032.
- By that date, this will mean that the Scottish Government will have supported the sector by offering reliefs to ensure zero or reduced rates liabilities for 21 of the previous 22 years.
- Between 1 April 2018 and 31 March 2032 the current relief will have offered up to approx. £1.5 million of relief to each individual operator over that period.
- Renewables relief is estimated by the Scottish Fiscal Commission to be worth over £36 million to between 1 April 2021 and 31 March 2026, the majority of which will go to hydro operators.
- The Scottish Government went as far as it could with providing TCA-compliant Hydro relief without creating significant legal and reputational risk for Scottish Government and substantial financial risks to relief recipients.
- Scottish Ministers introduce reliefs through legislation, and we are unable to change the relief in-year.

Subsidy Control and State Aid

- NDR reliefs, like other subsidy or support measures, are subject to the terms of international trade agreements signed by the UK Government
- The new subsidy regime established by the EU-UK Trade and Cooperation Agreement allows the Scottish Government to almost double the level of support available to hydro operators relative to the previous Treaty of the Functioning of the European Union State Aid regime.
- The new relief is worth 325,000 Special Drawing Rights – approximately £335,000 – every three fiscal years

Subsidy Control Bill (response to claims the Bill will facilitate an uncapped relief):

- The Scottish Government are subject to the subsidy control regime.
- It can take time to establish the parameters within which subsidies can be made to ensure compliance with the new arrangements, which are governed by the terms of the Trade and Cooperation Agreement.

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- The permanent regime is at an early stage of preparation.
- Scottish Government officials have regular discussions with BEIS.
- However, other than the Bill, we have nothing substantive on the new regime as yet.
- We are also waiting for supporting guidance from BEIS that should accompany the Bill.
- The Scottish Government will follow the passage of the Bill closely and will have consideration for the relevant legal framework pertaining to subsidy control in any budget decisions for future years.

[redacted]

[redacted]

[redacted]

Valuation and Plant and Machinery
- Assessors are independent of Government and follow applicable statute and case law in setting rateable values (RVs).
- RVs are determined on the basis of evidence, not the personal preferences of assessors.
- Ratepayers have a right to appeal where they believe RVs are inaccurate.
- Hydro RVs are subject to ongoing litigation and it would not be appropriate for Scottish Ministers to comment.
- No evidence has been presented to justify changes to Plant and Machinery regulations for Hydro.
- A non-universal exemption would be subject to subsidy control restrictions, as might guarantee a selective advantage on one industry or sector.
- A universal exemption of any plant would have would significant implications for other sectors, and on harmonisation of legislative valuation differences between UK nations – for Plant and Machinery, these based on the same UK wide report, the Wood Reports.
- Ministers are awaiting the outcome of a UK Government review into Plant and Machinery before considering next steps on any Scottish review.

Penstocks
- Penstocks and turbines are named items in the Plant & Machinery regulations.
- However, in light of the ongoing litigation (Old Faskally case), the Assessor has taken a pragmatic approach and excluded them from the valuation for small scale hydro.
- Therefore removing penstocks from the P&M order would have no implications for the rateable value of small scale hydro subjects.
    - [redacted]

[redacted]

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Tom Arthur, Minister for Public Finance, Planning and Community Wealth

Annex D
Correspondence Recent communication from Hydro Sector and Ardtornish

[redacted] **British Hydro Association**

Dear Kate,

I do hope that you are keeping well. I am writing to you about the Trade and Cooperation Agreement and Subsidy Control Bill and the consequences for hydropower business rates relief.

The end of the transition period, and the entry into force of the Trade and Cooperation Agreement (the "TCA") between the UK and the EU this year marked a fundamental change in the UK rules and procedures relating to Subsidy Control previously all falling under the chapeau of State Aid. The new rules will be consolidated in the UK by the Government's proposed Subsidy Control Bill (the "Bill") with some minor additions to cover off subsidies that could potentially have distortive effects on intra-UK trade and competition.

The BHA believes that these changes provide you with the long-sought opportunity to enable all small-scale hydro schemes in Scotland to benefit from the 60% relief scheme introduced by your predecessor as Finance Secretary and extended by you to 2032 in the most recent Scottish Government Budget.

You have previously expressed a desire to remove the relief scheme from 'State Aid' if possible, however the advice of the Subsidy Control team within the Scottish Government, has been that you were unable to under the EU rules, and we fully appreciated that at the time. However, we firmly believe that, under the TCA rules and the new Subsidy Control legislation, you now have that opportunity.

From our understanding of the TCA and the new proposed subsidy control legislation, it appears there are different ways by which the new UK legislation can be utilised to achieve the desired outcome, ensuring all small-scale hydro schemes benefit from the full relief as was originally intended and avoid potentially catastrophic consequences.

Devolved empowerment
Under the TCA, and the new proposed legislation, devolved Governments are empowered for the first time to decide if they can issue subsidies by following a set of UK-wide principles.

Previously, devolved administrations were subject to the EU's prescriptive State Aid regime which governed the powers of elected governments in Edinburgh, Cardiff and Belfast to support viable businesses, including the requirements that all measures that could not be exempted under EU State aid rules had to be notified to the European Commission centrally via BEIS.

BEIS has clarified the new arrangements, whereby devolved Governments have greater scope and stresses that by virtue of the Bill, any decisions by a devolved Government should not negatively impact other areas of the UK. Whilst the TCA rules do not contain that latter requirement, for purposes of completion bearing in mind the coming into force of the Bill later this year, we underline that we already know that the levels of rates relief in one part of the UK have no impact on other areas of the country. As such, any further subsidy in the form of rate relief would offend neither the TCA rules nor the proposed additions under the Bill.

This is certainly true for existing hydropower schemes and the sad reality is that in the post Feed-in Tariff era, the economics of hydro do not support new build opportunities, therefore the levels of relief (subsidy) will have minimal bearing upon any future investment decisions.

Provision for renewable energy
Separately, the new legislation makes specific provision for renewable energy, as detailed in Schedule 2 C and potentially Schedule 2 F of the Bill.
Schedule 2 C (2) (b) states that 'a non-competitive process may be used to determine a subsidy for renewable energy or cogeneration if appropriate measures are put in place to prevent overcompensation and –

(a) The potential market supply is insufficient to ensure a competitive process
(b) The eligible capacity is unlikely to have a material effect on any of the following
1. Competition or investment within the UK
2. Trade between the UK and any country or territory outside the UK, and
3. Investment as between the UK and any country or territory outside the UK'

Again, these provisions mirror those of the TCA rules, with the addition of the requirement that a measure does not impact competition or investment within the UK. We firmly believe that business rates relief for hydro meets these criteria both under the TCA rules as well as the proposed rules under the Bill.

A critical issue is whether the objective is to exempt hydro business rates relief from being classified as 'subsidies' in the first place, thereby negating the applicable de minimis limits of 325,000 SDR's over a 3-year period (which under the Bill will be set at £315,000), or alternatively, to classify hydro business rates relief as being eligible subsidies under the legislation and therefore not subject to any de minimis constraints.

Current impact of the de minimis rules
As we have repeatedly expressed, there is universal gratitude for the decision to extend the 60% relief scheme to 2032. Our preference would be to resolve the underlying issue of excessive rateable values, however in the absence of such a resolution, the reliefs are essential in maintaining the viability of so many Scottish small-scale hydro schemes.
A number of portfolio operators do not receive the full amount of relief as a consequence of the Scottish Government's reliance on the State Aid/Subsidy Control de minimis limits to provide the relief. The raising of the de minimis ceiling, by virtue of the TCA rules, from 200,000 euro to 325,000 SDR's is most helpful, but it still leaves these operators facing punitively high business rate bills, which in turn have led to the loss of rural jobs, as was the case at Ardtornish.

Next steps
The most important question from the hydropower industry is how best these changes can be implemented, rather than whether it is possible. I recognise there will need to be agreement with the Subsidy Control team, so we would be most grateful if you would engage with them, if not already in train, as a matter of urgency in order to resolve this issue in time for the 2022/23 financial year.
I very much look forward to the time when we can meet and discuss these issues on face-to-face basis, but in the meantime
Yours sincerely

MINISTERIAL ENGAGEMENT BRIEFING:
Tom Arthur, Minister for Public Finance, Planning and Community Wealth

[redacted]

Recent communication from Ardtornish

[redacted]
Sent: 16 November 2020 11:38
To: Scottish Ministers <Scottish_Ministers@gov.scot>

Dear Cabinet Secretary,

I'm writing to appeal for your help with resolving the crisis we are facing at Ardtornish, as a result of the penal level of non-domestic rates we are charged.

[redacted]

A business of our scale and with our margins simply cannot afford to pay this amount. Nor was it ever the Scottish Government's intention. No other sector of our economy pays at anything like this level - some 2.4 to four times higher than small-scale wind and solar, probably the nearest equivalents to our small hydro plants. It seems perverse to us that an enterprise wholly focussed on mitigating the climate emergency should find itself in this position.

As you will be aware, a sixty per cent relief scheme was applied by the Scottish Government to small hydro rates following revaluation in 2017. For those hydro operators eligible, this brings parity with other technologies. Unfortunately the Scottish Government has determined that hydro rates relief is a State Aid, so under the de minimis provisions benefit to any business is limited to €200,000 during a three-year period.

We dispute the Scottish Government's interpretation of the State Aids provisions. We believe small hydro rates relief should be exempted, since it neither distorts competition between companies nor affects trade between EU member states.

As I'm sure you know, Morvern is among the remotest and most fragile economies in mainland Scotland. [redacted] Every penny that leaves Morvern in rates would otherwise be invested here – creating jobs, supporting families, and addressing depopulation.

I expect we are both keenly anticipating the crucial UNFCC summit in Glasgow next year. For those of us who have campaigned for decades against dangerous climate change, it is a wonderful opportunity to celebrate Scotland's leadership in combating climate disruption. It would be hugely empowering if at COP26 we could champion Scotland in unison as a place to invest. While I am very much looking forward to being there, as things stand my voice in that chorus will be rather muted.

We would be enormously grateful for your assistance, as Cabinet Secretary for climate change, in resolving an issue that is critical to the survival of our business.
Yours sincerely

[redacted]

MINISTERIAL ENGAGEMENT BRIEFING:
Tom Arthur, Minister for Public Finance, Planning and Community Wealth

Recent response from Tom Arthur of 2 August 2021

Minister for Public Finance, Planning & Community Wealth
Ministear airson Ionmhas Poblach, Dealbhachadh agus Beartas Còimhearsnachd
Tom Arthur BPA/MSP

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

[redacted]

Thank you for your correspondence dated 14 July 2021, addressed to the Cabinet Secretary for Finance and Economy, Kate Forbes MSP. I am responding to you because policy for non-domestic rates now falls within my portfolio responsibility.

As you will know, the UK Department for Business, Energy & Industrial Strategy were consulting on the legislative framework to underpin the subsidy control framework in the UK. At that time there were a number of uncertainties surrounding the operation of the UK-EU Trade and Cooperation Agreement (TCA). On the basis of our best risk-based interpretation of the UK Government's guidance, the Scottish Government went as far as it could with providing TCA compliant Hydro relief without creating significant legal and reputational risk not only for Scottish Government, but also substantial financial risks for relief recipients who would be liable to repay any excess relief in the event the scheme is deemed to be non-compliant.

The Subsidy Control Bill ("the Bill") was introduced to the UK Parliament on 30 June 2021. Given the time required for the Bill to be considered by Parliament and any necessary supporting legislation and guidance to be prepared, this suggests that BEIS are likely to be in a position to implement the permanent regime in summer 2022.

While Scottish Government are subject to the interim regime, we have to work with a lack of information generally which affects a number of areas of Scottish Government. It can therefore take time to establish the parameters within which subsidies can be made to ensure compliance with the new arrangements which are governed by the terms of the Trade and Cooperation Agreement.

The permanent regime is at an early stage of preparation. We in Scottish Government, with our colleagues from the other Devolved Administrations have regular discussions with BEIS but, other than the Bill, we have nothing substantive on the new regime as yet, we are also waiting for supporting guidance from BEIS that should accompany the Bill. The Scottish Government will follow the passage of the Bill closely and will have consideration for the relevant legal framework pertaining to subsidy control in any budget decisions for future years.

MINISTERIAL ENGAGEMENT BRIEFING:
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The Scottish Government have treated hydro generation as a priority, with the Scottish Budget 2021-22 delivering an extension to the 60% Hydro relief to 31 March 2032. By that date, this will mean that the Scottish Government will have supported the sector by offering reliefs to ensure zero or reduced rates liabilities for 21 of the previous 22 years; and between 1 April 2018 and 31 March 2032 the current relief will have offered up to £1.5 million of relief to each individual operator over that period. Renewables relief is estimated by the Scottish Fiscal Commission to be worth over £36 million to between 1 April 2021 and 31 March 2026, the majority of which will go to hydro operators.

I hope that you find this information helpful.

MINISTERIAL ENGAGEMENT BRIEFING:
Tom Arthur, Minister for Public Finance, Planning and Community Wealth

Response to BTO Solicitors

Ministear airson Ionmhas Poblach agus Eaconomaidh Dhidseatach
Ceit Fhoirbheis BPA
Minister for Public Finance and Digital Economy
Kate Forbes MSP

Scottish Government
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T: 0300 244 4000

[redacted]

[redacted]

[redacted]

I write to you in relation to your correspondence received on 14 August 2020, regarding non-domestic rates relief for small hydro schemes and European Commission State Aid.

I thank you for sharing the legal opinion regarding application of state aid, the contents of which were noted with great interest.

The Scottish Government considers that, under the existing state aid framework, the hydro relief set out in The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018, should be subject to limits set by the De Minimis regulation ((EU)1407/2013) on the basis that hydro schemes are producers of electricity, and as such they are undertakings in cross border market competition of electricity generation.

I refer you to the EU Commission's Notion of Aid paper, which states that, "energy infrastructure is used for the provision of energy services against payment, which amounts to an economic activity. Energy infrastructure is, to a large extent, built by market actors, which is evidence of significant market financing, and financed through user tariffs. Public funding of energy infrastructure therefore favours an economic activity and is likely to have an effect on trade between Member States and is hence in principle subject to State aid rules."

Further, the paper notes that "public support is liable to distort competition even if it does not help the recipient undertaking to expand and gain market share. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations."

As I set out in my previous email, the European Court of Justice has sole competence over what is and what is not state aid. It remains the Scottish Government position that the relief should be considered as state aid.

I would note that the relationship between the UK and European Union, and all the economic constituents associated with it, are subject to the ongoing negotiations between the UK Government and the European Union.

Kate Forbes