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The Rt Hon Mrs Arlene Foster MLA
DUP Headquarters
91 Dundela Avenue
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By post and email (arlene@arlenefoster.org.uk)

29 December 2017

Dear Madam

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you will be familiar, from my previous correspondence, with the RHI Inquiry's Terms of Reference, which remain available on the Inquiry's website. You will also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. In addition to having commenced its oral hearings, the Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals; and requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

I am writing further to receipt of the first substantive witness statement which you provided to the Inquiry, dated 25 May 2017, in response to Chairman's Notice No 135 of 2017. The Inquiry has had an opportunity to consider the content of that first statement and a range of other evidence touching upon your involvement with the RHI Scheme. There are a number of matters dealt with within your first substantive witness statement, or arising from it, which the Inquiry considers require to be clarified or dealt with in further detail. The Inquiry would therefore be grateful if you would provide a further substantive witness statement addressing the questions posed in the Schedule attached to the Section 21 Notice enclosed herewith.

As with previous Notices received by you from the Inquiry, the Section 21 Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it.

Again, the aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it may be that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree. As appears from the text of the Schedule, there were a number of enquiries raised in the previous Notice which you received which the Inquiry feels could and should have been answered more fully.

The subject matter of the enclosed Notice focuses on Phases 1 and 2 of the Inquiry's work; and issues which were previously raised Notice 135 of 2017. It may well be that the Inquiry will, in due course, require you to provide further detailed evidence in relation to matters arising in Phases 3 and 4 of its work (although this depends on

the extent of additional information which is provided in the further statement now required from you).

At the time of submitting your written evidence in compliance with the enclosed Notice, you will of course have had access to the Inquiry's witness statement bundle for some time in your capacity as a witness to whom enhanced participatory rights have been granted. You may include within your further witness statement comments upon other statements which you have now seen, particularly if you take issue with important or significant points made within them. (For instance, by way of example only, in your case you may wish in particular to comment upon the written statements of Timothy Cairns). However, you should not delay the provision of the evidence required by the Inquiry in the Schedule to the attached Notice in order to facilitate you providing comments on other witnesses' statements. Correspondingly, an application for extension of time is likely only to be granted if there is a strong basis for showing that it is not reasonable to require you to deal with the matters set out in the Schedule within the time specified in the Notice. It is very unlikely that an application for an extension will be granted in order to permit you to address points which you have not been asked to address in the Schedule to the Notice.

It is again vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

As before, I appreciate that you may require or desire access to some documentation, to which you previously had access in your role as Minister but to which you no longer have access, in order to assist you in preparing your statement. If so, I understand that the Department for the Economy (DfE) has made arrangements to permit such access, at least in the first instance. You should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager, to organise this. He is contactable at Terence.Coyne@economy-ni.gov.uk. I have informed Mr Coyne that you may be making contact with him to arrange access to documentation; but there is, of course, no obligation upon you to do so. A similar arrangement is available in relation to documentation held by the Executive Office and the Department of Finance. The relevant contact in the Executive Office is Ms Olive Maybin, in the

Office of the Head of the Civil Service, who is contactable at Olive.Maybin@executiveoffice-ni.gov.uk; and the relevant contact in the Department of Finance is Emer Morelli, Head of Supply, who is contactable at Emer.Morelli@finance-ni.gov.uk.

Many of the documents you may wish to consider are already available to you in the Inquiry's witness statement bundle, which has been disclosed to you and your legal representatives. Some further relevant documents, which you may not have access to in that bundle, have been provided along with the enclosed Notice.

I remind you of the terms of Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the four restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the

Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

A copy of this correspondence has also been provided to your legal representative, John McBurney of John McBurney Solicitors (by email only).

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

A handwritten signature in black ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 556 of 2017]****Phase 1***Choice of incentive scheme*

1. On 14 June 2011 you signed an Impact Assessment (a copy of which may be found in the Inquiry evidence bundles at WIT-00751 to WIT-00757). At paragraph 3 of this Impact Assessment it states: “*DETI has already indicated that a Northern Ireland RHI is the preferred method of incentivisation however before this can be designed and delivered a full economic appraisal is required. Cambridge Economic Policy Associates (CEPA) and AEA technologies are carrying out this appraisal.*” At paragraph 16 the Impact Assessment states: “*DETI has already expressed a preference for a Northern Ireland RHI.*” As to this:
 - a. When did you first consider that an ongoing subsidy scheme, on a similar model to the RHI scheme proposed or adopted in Great Britain (as opposed to, for instance, a capital grant or challenge fund type incentive), was the preferred means of incentivisation for renewable heat in Northern Ireland?
 - b. On what basis did you reach that view?
 - c. Please explain your understanding of the reference in the said Impact Assessment to DETI’s previous expression of preference for a particular type of scheme.
 - d. Was there any element of preference or predisposition (a) on your part and/or (b) on the part of officials in your Department who provided you with advice in relation to the choice of scheme at any time before the provision of the draft final CEPA report in May 2011?

- e. Please indicate the reasons, to your knowledge, for the preference expressed in the Impact Assessment which was signed prior to the final CEPA economic appraisal being produced.
2. Explain your understanding of the role and purpose of an Impact Assessment; the reasons for requiring Ministerial sign-off of such an assessment; and the responsibility attaching to you, as Minister, if any, in signing such an assessment.
3. On 8 June 2011 Fiona Hepper provided you with a submission outlining the findings of CEPA's economic appraisal (a copy of which may be found in the Inquiry evidence bundles at WIT-00739 to WIT-00749). As to that:
 - a. The recommendation section of the submission does not appear to the Inquiry to include a clear recommendation. Rather, you were asked to "*consider the overview of the CEPA economic appraisal and the options developed*" and "*indicate your preferred option for incentivisation ie either a Challenge Fund or RHI*". Did you read the submission as providing a recommendation to you? If so, what recommendation did you consider was being made? If not, were you content that no recommendation was being made?
 - b. Specify whether you discussed the submission with your Special Adviser and, if so, what advice (if any) he provided.
 - c. The submission also discloses that a meeting was arranged for 13 June 2011 in order to discuss the submission (although it may be that this meeting was re-scheduled to occur on 14 June 2011. Information provided to the Inquiry suggests that, on 14 June 2011, you as Minister agreed that a Northern Ireland RHI should be designed and implemented. As to that:

- i. Set out as fully as you can your recollection of the meeting, including where it occurred, who was present, how long it lasted and what the outcome was.
 - ii. Describe, insofar as you can, what advice (if any) was provided to you at the meeting and by whom.
 - iii. Describe, insofar as you can, what information or documentation was discussed or considered at this meeting.
 - iv. Without prejudice to the generality of the foregoing, specify (to your recollection) what you understood in relation to the relative costs of the various options discussed in the submission.
- d. The submission notes that a final *draft* of the economic appraisal had been received. Please provide details of your understanding at the time of the submission of 8 June 2011 as to whether it was based on the analysis and conclusions arising from the final version of the economic appraisal and, if that was not the case, what you understood it to be based on.
- e. In the event that you appreciated that the economic appraisal was not finalised, please indicate whether and why you were prepared to proceed on the basis of a draft report.
- f. Please provide your account of the decision you made in June 2011 (to proceed with an RHI as opposed to a Challenge Fund) and explain the reasons for that decision.
- g. Please provide details of whether you sought a view from Energy Division on the option the officials considered should be taken and, if so, what advice (if any) was received.

- h. Please specify what handwritten notation you have made beside your initials on the front page of the submission (at WIT-00739).
4. On 5 July 2011 you received a further submission from Fiona Hepper which enclosed a copy of the final version of the economic analysis provided by CEPA (dated 28 June 2011) (see DFE-380556, a copy of which is enclosed). (The 5 July 2011 submission may be found at DFE-29643 to DFE-29647, a copy of which is also enclosed. The final version of the CEPA 2011 report also appears in the Inquiry's evidence bundles, *inter alia*, at WIT-00594 to WIT-00738). As to that:
- a. Please indicate whether you read the final CEPA report or any part of it (and, if so, which part or parts).
 - b. Please indicate whether, to your knowledge, your Special Adviser read the report (and, if so, what, if any, advice he provided to you in relation to this).
 - c. If you did not read the report, please specify why not.
 - d. If you did read the report, please indicate:
 - i. What conclusions you drew from the report;
 - ii. What recommendation, if any, you considered the report to be making;
 - iii. Whether you reconsidered or reflected further on the decision you had made on 14 June 2011;
 - iv. What, if anything, you understood about the relative costs and benefits of the two main types of scheme being discussed.
 - e. Please indicate if you read the consultation document which it was proposed that the Department issue in relation to the proposal to adopt an RHI Scheme (either at the time of receiving this submission, or at some point thereafter).

5. Provide full details of any engagement or communication you had with stakeholders or interested parties in relation to the type of scheme which DETI should adopt for the incentivisation of renewable heat.

6. On 9 March 2012 minutes of the Casework Committee meeting (which may be found in the Inquiry's evidence bundles at WIT-00897 to WIT-00909) stated that the estimated cost of administering a challenge fund over the first four years "*would not be available within DETI budget*". On 15 March 2012 Fiona Hepper wrote to DETI's Top Management Team (see DFE-62230 to DFE-62233, a copy of which is enclosed herewith) indicating that the funding to be provided by HMT could not be used to cover the administration of the scheme and that she would therefore need to bid for the money to come from DETI's budget. She continued: "*I appreciate that the above costs will add pressures within the DETI system and it is unfortunate that HMT stipulated that the £25m could not include a (small) element for administration. However, it is the case that if the money for administration is not made available we will not be in a position to deliver the RHI; the £25m will have to be returned to HMT (as it was ring-fenced solely for this purpose); we will also fail to meet the Executives PfG and SEF targets as well as fail to contribute to the UK's binding EU targets (and have to thereby take responsibility for any share of an infraction that may result). I would appreciate confirmation that TMT is either content that I proceed, or, that I advise the Minister that funding is a potential difficulty and you have instructed that work stops at this point.*" On 16 March 2012 Fiona Hepper sent you a further submission seeking approval to proceed with the introduction of the Northern Ireland RHI and the Renewable Heat Premium Payments (found at WIT-00871 to WIT-00879, excluding annexes). As to this sequence of events:
 - a. Please indicate whether you were provided with a copy of the Casework Committee minutes at this, or some other, stage. If so, please indicate whether you (and/or your Special Adviser, to your knowledge) read or considered these.

- b. Please explain whether you were involved in the decision to make funds available for the administration of RHI Scheme and, if so, what that involvement was.
 - c. Please set out the role that administration costs played in your decision to opt for an ongoing incentive scheme as opposed to a challenge fund or grant scheme.
7. On 13 April 2012 you signed a Regulatory Impact Assessment on the implementation of a renewable heat policy in Northern Ireland ('the RIA') (this may be found at DFE-70749 to DFE-70760 and a copy is attached; a draft version was attached to the submission of 12 March 2012 and is to be found at WIT-00885 to WIT-00896). Under the heading "*Option 3 – A renewable heat challenge fund*" it stated that there were several issues to consider, the first of which was that "*the administration costs are likely to be prohibitive. A challenge fund ... could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within the DETI budget*". The RIA also included a section outlining "*Qualitative benefits*". As to this:
- a. Specify whether you read the RIA before signing it.
 - b. Please explain what your view was, at the time of signing the RHI, of the significance of:
 - i. Administration costs as compared to overall scheme costs in assessing the relative merits (including in relation to cost-benefit and value for money analyses) of the challenge fund and incentive support scheme options; and
 - ii. Qualitative benefits as compared to quantitative benefits of the challenge fund and incentive support scheme options.
 - c. Indicate whether, by this time, you had read either:

- i. The Casework Committee minutes; and/or
 - ii. The CEPA final economic assessment of 28 June 2011.

- d. In the RIA under the heading "*Option 5 – A specifically tailored NI RHI scheme*" it stated that the "*NI RHI option is the preferred approach and offers the highest potential renewable heat output at the best value*". Please explain whether you were content, at the time of signing the RIA, with this statement; and, if so, on what basis.

8. You also indicated that you were content with the 16 March 2012 submission on 11 April 2012 (see DFE-32032 to DFE-32040, a copy of which is enclosed). Please explain:
 - a. Why there was such a delay between receipt of the submission and your approval of it.
 - b. What, if anything, occurred in the period between receipt of the submission and your approval of it in relation to consideration of the issues raised in the submission.

9. Please indicate whether you were ever provided with (a) the CEPA addendum report of February 2012; and (b) the DETI business case to DFP in relation to the RHI Scheme. If so, please indicate (i) when you were provided with each or either of these documents, (ii) who provided them to you, and (iii) whether you read either of them, or any part of them.

10. Insofar as not addressed in response to the enquiries above, set out your understanding, at the time of making your decision to proceed with the Northern Ireland RHI Scheme, of (a) the costs differences between the challenge fund option and the ongoing incentive support scheme, (b) the relative merits of each type of incentive, and (c) the reasons why your decision was to proceed with the ongoing incentive support scheme model.

Tiering

11. On 16 March 2012 the submission from Fiona Hepper to you (at WIT-00874) stated that: *“Tiering is used to ensure the technology is not ‘over-used’ just to receive an incentive. It works by dropping the paid tariff after the technology reaches its optimum use for the year; this is deemed at 1314kWhrs (15% 12 of annual hours). After this level is reached the tier 2 tariff is paid. Tiering is not included in the Northern Ireland scheme because in each instance the subsidy rate is lower than the incremental fuel cost”*. In your reply to question 11 in your statement provided on foot of RHI Inquiry Chairman’s Notice No 135 of 2017 (‘your previous statement’) you stated: *“One of the crucial mistakes was that the tariff for small to medium business was set at a level higher than the cost of the fuel.”* As noted above, on 5 July 2011 the DETI Private Office was provided with several documents including the final CEPA economic appraisal. Arising out of these issues, please indicate:

- a. Whether you read the economic appraisal and, if so, when;
- b. Whether, at any time, you were provided with:
 - i. The CEPA February 2012 addendum report;
 - ii. The ‘synopsis’ prepared by Energy Division for the Casework Committee; or
 - iii. The DETI business case to DFP in relation to the RHI Scheme;

and, if so, whether (and, if so, when) you read any of these documents or any part of them.

- c. What you considered your role or function to be in relation to the above mentioned documents;
- d. Whether you (or, to your knowledge, your Special Adviser) queried with any officials the absence of tiering in the proposed Northern Ireland Scheme, in contrast to the position in the GB Scheme;

- e. Whether you (or, to your knowledge, your Special Adviser) realised, whether from the business case or any other source, that the cost of biomass fuel was in fact cheaper than the proposed subsidy payable in certain circumstances (and, if so, when you realised this and what, if anything, you did about it).

Cost controls

12. The RIA signed by you in April 2012 stated under the heading “*b) The objective*” that “*the target must be delivered with the agreed budget of £25m to 2015 provided by Her Majesty’s Treasury*”. Please describe how you were assured that controls existed to deliver the objective within the agreed budget.
13. The RIA also stated under the heading “*Risk of insufficient budget for administration or future payments*” that there “*may be the possibility of a higher than expected uptake leading to overspends in annual budget and higher administration costs. This will be mitigated with ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget*”. Please describe how you were assured that the arrangements in place with Ofgem were sufficiently robust to deliver the information required to mitigate this risk.
14. You are referred to paragraphs 10 and 11 of the Ofgem corporate statement (at WIT-95014 to WIT-95015) which state that: “*The issues over the absence of cost control in the original GB regulations were well publicised... and DETI were aware of this before they made their Regulations. We had both drawn their attention to it and identified for them the relevant policy person in DECC to talk to about amendments planned to the GB RHI Regulations. DETI’s response to Ofgem’s comments – which was not to proceed with its regulations in advance of the amendment to the GB regulations – was that NI Ministers wanted the Scheme to go ahead as soon as possible and did not wish to wait for amended GB regulations. They told us that they planned to reconsider the design of the regulations in future (and they subsequently consulted on the introduction of cost*

controls in 2013). This approach had the result that they were exposed to the same risks and issues inherent in the original ‘unamended’ GB regulations, but this method of proceeding was a choice that, as we were told, reflected Ministerial wishes.” Arising out of this:

- a. Please indicate if you “*wanted the Scheme to go ahead as soon as possible*” and, if so, why.
 - b. If you did want the Scheme to go ahead as soon as possible, please also indicate how you communicated this to officials.
 - c. State whether you chose to proceed with the Scheme in the knowledge that the proposed Northern Ireland Regulations contained similar issues over the absence of cost control as the original GB Regulations and, if so, state:
 - i. Why you did so;
 - ii. What risks you were aware of; and
 - iii. What circumstances or steps, if any, you considered mitigated those risks.
 - d. Set out what you were told about the risks alluded to by Ofgem in the above evidence, including by whom you were told of such risks and, as far as you can, in what terms you were told.
15. Paragraph 187 of Ofgem’s corporate statement (at WIT-95060) states: “*On 26 June 2012 at a telephone conference with the Department, Ofgem advised the Department to wait until the GB regulations were amended as the amendments would serve to negate any risk that the regulations currently posed. The Department recorded its Minister’s wish to proceed with the NI RHI Scheme without waiting or having reviewed the amendments to the GB RHI Scheme to be made.*” The minutes of this call are at OFG-03517 to OFG-03519 (a copy of which is enclosed). They state at paragraph 3.1: “*Ofgem raised concerns over the potential impact of the amendments to the GB regulations coming into force shortly after the NI RHI regulations. As the draft NI RHI regulations replicate the*

GB regulations as they currently stand, Ofgem could see logistical and presentational issues with the NI scheme initially being without these improvement updates. The point was made by Ofgem that that this would mean replicating the issues that have proven necessary to address in the GB regulations. Ofgem's advice was to wait until the GB regulations are amended as the amendments will serve to negate any risk that the regulations currently pose. However, DETI were clear that they have a commitment with their Minister to bring the regulations into force by the end of September and this could not be put back to dovetail into the legislative updates to the GB regulations. It was also felt that to do otherwise would also put financial arrangements in jeopardy. Action: In response to issues raised by Ofgem on embedding DECC GB RHI amendments into NI RHI regulations, DETI confirmed that this would need to be taken forward after their regulations came into force late September/October."

Arising out of this:

- a. To what extent were you aware of the advice offered by Ofgem personnel referred to above? Please outline, insofar as you can, any information provided to you by officials in relation to this (including who provided the information and when).
- b. Did you wish to proceed with the Northern Ireland RHI Scheme without waiting for, or having reviewed, the amendments to be made to the GB RHI Scheme to be made?
- c. If so, please provide details of how this view was communicated by you to officials (including who you communicated it to, by what means, when and in what terms).
- d. If the answer at b. above is 'yes', please also indicate:
 - i. Why you did so;
 - ii. What risks you were aware of in taking this course; and
 - iii. What circumstances or steps, if any, you considered mitigated those risks.

16. On 30 August 2012 an email from Matthew Harnack of Ofgem (at OFG-04738, a copy of which is enclosed) recorded, following a conversation with Fiona Hepper having taken place, that DETI “*noted that the Minister is adamant that the scheme must go live in October*” [original emphasis]. As to this:
- a. Were you adamant that the scheme must ‘go live’ in October 2012?
 - b. Did you consider that there was any commitment on your part, or that of your Department or officials, to commence the Northern Ireland RHI Scheme by October 2012 (or any other date)?
 - c. In the absence of any commitment to that effect, was there a desire on your part to commence the Northern Ireland RHI Scheme by October 2012 (or any other date)?
 - d. (Assuming Mr Harnack’s record of what was said in the conversation is accurate) set out on what basis you consider Fiona Hepper would have said that you were adamant that the scheme must go live in October 2012.
17. Please provide details of any conversation or exchange between you or your officials as to the timing of the commencement of the RHI Scheme.
18. Insofar as not addressed in response to the enquiries above, please provide your account of the decision to proceed to make the 2012 Regulations without cost controls or the amendments recommended by Ofgem in 2012.

Reviews

19. The minutes of the Casework Committee meeting on 9 March 2012 (referred to above) state, *inter alia*, that the RHI Scheme “*would have scheduled reviews built-in to the scheme to allow DETI to ensure that the scheme remains fit for purpose and value for money for the duration*”, to include the analysis of tariffs

and other matters. Please provide an account of what your understanding was about how scheduled reviews were built in to the scheme.

What was being supported

20. The 16 March 2012 submission from Fiona Hepper to you (referred to above) explained the concept of grandfathering as follows, namely that it “*provides certainty for an investor by setting a guaranteed support level for projects for their lifetime in a 20 scheme, regardless of future reviews.*” On 7 January 2013 you wrote to financial institutions to encourage them to look favourably on approaches from businesses that were seeking finance to install renewable technologies (see DFE-229218 to DFE-229219 as an example, a copy of which is enclosed). The letter stated: “*Tariffs are ‘grandfathered’ providing certainty for investors by setting a guaranteed support level for projects for their lifetime in a scheme, regardless of future reviews.*” Please explain your understanding, at these times:
- a. Of what specifically was being ‘grandfathered’ (for instance, was it a particular tariff; or a particular rate of return); and
 - b. Of how this commitment would interact with the commitment given in the RIA, given to the Casework Committee, and contained in the business case that there would be regular reviews of the RHI Scheme.
21. The 16 March 2012 submission from Fiona Hepper to you also stated at paragraph 8 that: “*Under the RHI only ‘useful heat’ is deemed eligible; this is defined as heat that would otherwise be met by fossil fuels, this excludes deliberately wasting or dumping heat with the sole purpose of claiming incentive payments.*” As to this, what was your understanding of how this policy aim would be delivered, either through the 2012 Regulations or otherwise?

Ofgem

22. The RIA gave examples under the heading “*Risk of instances of fraud*” of several measures which DETI had, or proposed to, put in place to counteract instances of fraud. As to this:
- a. Please describe your understanding at the time of signing the RIA of how these measures were to be delivered, including the entities that would be responsible for carrying them out, the arrangements for investigation of suspected fraud, and the arrangements for taking enforcement action in respect of identified fraud.
 - b. Please identify how you were assured that there were robust governance arrangements between Ofgem and DETI to underpin the delivery of these measures.
23. The RIA also stated under the heading “*Risk of failure in administration of RHI*” that in order to mitigate this risk “*the Department will establish a joint project team with Ofgem as the scheme is implemented*”. As to this:
- a. Please indicate whether, in any of your discussions with officials at any point while you were DETI Minister, you enquired about or were advised on the establishment and work of this joint project team.
 - b. Please indicate whether you were aware that this ‘joint project team’ was not formally established. If so, set out what steps, if any, you took as a result of this information.

Funding

24. On 27 May 2011 Fiona Hepper provided you with a submission (at DFE-29342 to DFE-29348, a copy of which is enclosed) which stated that, “*HMT has advised that £25m of AME is available over the spending period should Northern Ireland choose to introduce a RHI.*” In oral evidence, Mrs Hepper has indicated that you

were informed that there was a qualification to this AME funding, to the effect that it had a DEL consequence (see TRA-01849 to TRA-01850, a copy of which is enclosed). Please provide your account of being informed about the nature of the AME funding.

25. In your reply to question 7c in your previous statement, you stated, "*While I now understand that there was communication about RHI between DETI and DFP from May 2015 onwards, this was not escalated to Ministerial level.*" However, please specify if you were aware that there was communication between DETI and DFP before May 2015 in relation to the nature of the funding for the Scheme? If so, please provide details.
26. In your reply to question 10 in your previous statement, you stated, "*I was aware that there was a budget of just under £38 million provided by HMT for the five year period from 2011 to 2016.*" As to that:
 - a. Please explain the basis for this understanding.
 - b. The letter of 20 October 2010 from the Chief Secretary to the Treasury to the First Minister indicated that if the Northern Ireland Executive choose to introduce an NI Renewable Heat Incentive Scheme then AME funding of £2/4/7/12 million would be available over the spending review period (i.e. the years 2011/12, 2012/13, 2013/14 and 2014/15). Did you become aware that the profiling of the spend over these years changed and, if so, when did you become aware of this?
 - c. When, and by what means did you become aware that further amounts making up the £38 million you have referred to were being made available?
27. The 8 June 2011 submission from Fiona Hepper (referred to above) stated at paragraph 9: "*If no additional funding was to be available post 2015 it is questionable whether a RHI scheme would be feasible as it would need to close to new applications in March 2015.*" The submission also stated at paragraph 4 that: "*Discussions with DECC regarding funding post 2015 have revealed the*

following: DECC see no difficulties re funding going forward as both DECC and HMT regard RHI as a priority, flag-ship policy; plus, HMT fully recognise that the scheme will be open until 2020 and that significant funding post 2015 will be required. It is also the case that DETI received a pro-rata allocation of the UK RHI funding for the period up to 2015, and HMT are aware that our scheme will complement DECC's, will therefore also require funding in the next spending review and we need our portion of the 'UK pot'." As to this:

- a. Please summarise your understanding at that stage (*i.e.* in June 2011) of what funding had been made available; and what level of assurance there was as to future funding to be made available.
 - b. Please provide details of the understanding you had, at this stage, of the process or processes by which DETI and DFP respectively could obtain assurance around future AME funding.
28. On 8 June 2011 Peter Hutchinson emailed Akhil Patel of DECC with what he described as some questions about the funding arrangements for the GB RHI which might impact on the Northern Ireland scheme, and Akhil Patel replied on the same day (see WIT-00855 to WIT-00857). In relation to this email exchange:
- a. Were you aware that these discussion, or discussions of this nature, were ongoing at the time you were provided with the submission from Fiona Hepper dated 8 June 2011 and/or in your subsequent meeting with her?
 - b. Were you ever shown or provided with a copy of Mr Patel's email?
 - c. Were you ever shown or provided with a copy of the email from Mr Parker of HMT to Alison Clydesdale of 15 April 2011 (at WIT-00847 to WIT-00848)?

Timing of launch of scheme

29. On 19 July 2012 a press release announced that you would “*be seeking to put in place the legislation to enable the Renewable Heat Incentive (RHI) to launch in the early Autumn*” (see INQ-30185 to INQ-30186, a copy of which is enclosed). At this stage information on tariff levels, eligibility and administrative arrangements were also published on the DETI website. Also at this stage, the draft 2012 Regulations had been considered by the ETI Committee, although it had not yet expressed itself to be content with them. Please give your account of how the target to launch the Scheme in the Autumn of 2012 came about.
30. Set out whether you were encouraged, lobbied or put under pressure by anyone to expedite the launch of the Scheme and/or to introduce it as soon as possible. If so, please give details.

Project Management

31. Set out your understanding at the time of the creation and launch of the Scheme of the nature of project management practices, and the development of those practices, in DETI and in Energy Division.
32. Specify whether you consider that formal project management techniques should have been applied to the creation and/or running of the RHI Scheme. If so, please indicate why. If not, please indicate why not.

Phase 2*Prioritisation*

33. The RIA stated under the heading “*Risk of incorrect subsidy level*” that “*it is the intention to have regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions. It is currently proposed that the first review will begin in*

January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market". As to this:

- a. Please provide in detail your account of why the first review did not begin in January 2014.
 - b. Indicate whether you were aware, at any time before leaving office as DETI Minister, that the planned review of the Non-Domestic RHI Scheme had not been undertaken. If so, please set out how you became so aware and when you became so aware.
 - c. If you were aware, prior to leaving office as DETI Minister, that the planned review of the Scheme had not been undertaken (in January 2014 or thereafter), what steps (if any) did you take to rectify this?
 - d. If you were not aware, prior to leaving office as DETI Minister, that the planned review of the Scheme had not been undertaken (in January 2014 or thereafter), why were you not so aware?
34. On 26 June 2013 Fiona Hepper provided you with a submission in relation to *"The Northern Ireland Renewable Heat Incentive – Phase 2 – Proposed Consultation Document"* (to be found at DFE-97366 to DFE-97371, a copy of which is enclosed). It stated (at DFE-97367), *inter alia*, that the Phase 2 consultation paper built on the conclusions of the economic appraisal and was structured to include proposals for expansion of the non-domestic RHI and *"setting standards, improving performance and cost control"*. The notes on the first page of the submission (at DFE-97366) suggest that, as at 2 July 2013, you had approved recommendation c. (agreeing the draft letter to the ETI Committee, which is at DFE-97315). The email from your Private Office on the same date (at DFE-97360, also enclosed) indicated that you and your Special Adviser would consider the remaining recommendations on your return from annual leave. As to this:

- a. Please give your account of the decisions you took in respect of this submission when you returned from annual leave.
 - b. Please indicate the input your Special Adviser had in the decisions you describe above.
 - c. Did you, or (to your knowledge) your Special Adviser, read or view the Phase 2 economic appraisal referred to in paragraph (a) of the recommendation section on the front page of the submission?
 - d. Did you read the attached consultation document which was annexed to the submission?
 - e. To your knowledge, did your Special Adviser read the attached consultation document?
 - f. At the time of considering this submission, what did you understand as to what was proposed in relation to the introduction of cost control into the Scheme?
 - g. What did you understand as to why it was proposed to introduce cost control measures into the Scheme?
 - h. Please provide in detail your account of the consideration given to cost control of the Non Domestic RHI Scheme after the date of this submission until the date you ceased being DETI Minister.
 - i. If a decision was taken to defer the introduction of cost control of the Non Domestic scheme, please give your account of the reasons that this was considered appropriate.
35. In your reply to questions 7a. and b. in your previous statement, you stated: "*In the period following the consultation on Phase II of the scheme, the focus within the Department was on moving forward with the domestic scheme.*" A submission of 17 June 2014 from John Mills to you and Andrew Crawford stated:

“We have decoupled the domestic RHI from other Phase 2 changes in an attempt to speed up its implementation.” The submission from Stuart Wightman to you and Andrew Crawford indicated your instruction to *“get this [the domestic scheme] launched ASAP”*. In addition, the minutes of a Casework Committee meeting of 21 October 2015 (at WIT-02435 to WIT-02438) recorded John Mills as saying that *“it was a Ministerial decision to look at the domestic scheme rather than pushing through the trigger points on non-domestic which would have significantly delayed the implementation of the domestic scheme”*. As to these matters:

- a. Please provide in detail your account of the decision-making which led to the focus within DETI being on moving forward with the domestic scheme.
- b. Indicate specifically whether (and, if so, when) you appreciated that the cost controls proposed for the Non Domestic RHI Scheme which had been proposed in the Phase 2 consultation paper were not being taken forward.
- c. If you appreciated that the cost controls proposed for the Non Domestic RHI Scheme were not being taken forward:
 - i. How did you come by this knowledge or realisation?
 - ii. Were you satisfied with this approach?
 - iii. If you were satisfied, why?
 - iv. If you were not satisfied, what steps (if any) did you take to address this?
- d. If you did *not* appreciate that the cost controls proposed for the Non Domestic RHI Scheme were not being taken forward, provide reasons why this was so.
- e. Please also provide in detail your account of the decision-making which led to the decoupling of the Domestic RHI Scheme from other Phase 2 changes (as opposed to both aspects being progressed in tandem).

Promotion of the RHI Scheme

36. In your reply to question 12 in your previous statement you stated that, *“I was engaged in promoting the scheme to encourage uptake generally as there was a significant underspend.”* When you were engaged in promoting the Scheme:
- a. What was your understanding of what made the scheme attractive?
 - b. What was your role, if any, in communicating, or ensuring the communication of, the attractive elements of the Scheme to potential claimants, interested industries, and funders?
 - c. Did you or your officials target any particular sectors in promoting the Scheme?
 - d. Were you aware of interest in the Scheme from particular sectors?
 - e. Were you aware of interest in specific technologies supported by the Scheme?

Increased interest in the scheme

37. In your reply to questions 7 a. and b. in your previous statement you stated, *“During my time as Minister there was an underspend in the non-domestic scheme and uptake was slow.”* In your reply to question 7 c. you stated, *“By the time problems or difficulties began to emerge I was no longer DETI Minister.”* The evidence presented on behalf of the Department for the Economy is that *“by March 2015, the rate of applications to the Scheme were increasing much more noticeably than in May 2014, and hence it was no longer the case that any concerns about the Scheme were secondary to the perceived problem of low uptake”* (see paragraph 249 at WIT-00098). Further, there is evidence that in March 2015 DETI officials were urgently seeking greater clarity around the funding available for RHI; that they perceived from the figures available to them that there would be an overspend; and that they were considering tariff

reductions and trying to revise “*our AME profile ASAP*” to avoid running out of funds (see, for instance, WIT-02704 to WIT-02706). As to these matters:

- a. In light of the above, do you continue to maintain the view set out in your response to question 7 of your previous statement?
 - b. Were you aware of the increased uptake which had arisen in the Scheme before you ceased to hold office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.
 - c. Were you aware of officials’ concerns in relation to the Scheme budget which had arisen before you ceased to hold office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.
 - d. If you were not aware of the increased uptake and/or the concerns about the budget which had arisen in the Scheme at that time (March to May 2015), do you consider that you ought to have been made aware? If so, by whom?
 - e. Do you have information which suggests that your Special Adviser was aware of any of the matters referred to above? If so, please give details.
38. By May 2015, DETI Finance Division was telling Energy Division that “*The email from Jon Parker (HMT) in April 2011 specified that RHI was not treated as standard AME, and overspending would have consequences for Resource DEL budgets*”; and that Energy Division should “*stop entering into commitments immediately to ensure that monthly cumulative expenditure does not increase*”, such that potential need to close the scheme was being considered (see WIT-02721 to WIT-02722). As to these matters:
- a. Were you aware of DETI Finance Division’s concerns around this time in relation to Scheme expenditure and forecasts? If so, please indicate how

you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.

- b. Were you aware of the potential risk to DETI's DEL budget in the event of over-spending on the Scheme? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.
 - c. Were you aware any consideration being given to closing or suspending the Scheme, or of amending the Scheme or tariffs payable under the Scheme, during your time holding office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.
 - d. If you were not aware of any of the above issues which had arisen in relation to the Scheme at that time (in, or immediately preceding, May 2015), do you consider that you ought to have been made aware? If so, by whom?
 - e. Were you made aware of any of the said issues *after* you ceased to hold office as DETI Minister but in advance of the amendment of the Scheme in November 2015? If so, please indicate how you were so made aware, giving full details of each occasion when you were provided with information in relation to same, beginning with the earliest such occasion (including who informed you; when this occurred; in what terms; and what steps, if any, which you took in relation to the issue).
 - f. Do you have information which suggests that your Special Adviser was aware of any of the matters referred to above? If so, please give details.
39. Please describe the systems in place within the Department to ensure that matters of the nature referred to in the previous two paragraphs were communicated to you as Minister. Please also describe:
- a. What additional steps, if any, you took to ensure that:

- i. You were informed of issues of concern or difficulties arising within your Department; and
 - ii. You otherwise became aware of issues of concern or difficulties arising within your Department.
 - b. How you assured yourself that you were, or would be, made aware of issues of concern or difficulties arising within your Department.
 - c. What testing or other steps, if any, you undertook or caused to be undertaken to ensure that the systems to ensure that you, as Minister, were made aware of issues of concern or difficulties arising within your Department were operating effectively.
40. Please provide details of the understanding you had, while you were DETI Minister, of the process or processes by which DETI and DFP respectively could obtain clarity around the AME funding available to a specific Northern Ireland Government Department or in respect of a specific project or scheme.

Letter to banks

41. As noted above, in January 2013, you wrote to a number of financial institutions in relation to the financial benefits offered by the Scheme and the security of payments to which owners of accredited installations were entitled. Please give an explanation of (a) why this correspondence was sent; (b) who, if anyone, had asked for such correspondence to be provided from the Minister or Department; and (c) what consideration (if any) was given at that time to the prospect that tariffs payable under the Scheme may ultimately turn out to have been set at an incorrect level (including a level which was too high).

Lack of review in 2014

42. It appears to the Inquiry that the planned review of the Scheme, which was to commence in 2014, did not occur in that year or at any time in advance of your ceasing to hold office as DETI Minister. As to that:

- a. Were you aware that a planned review of the Scheme was to be commenced in 2014? If so, how did you become so aware and when did you become so aware?
- b. Were you aware during your time in office as DETI Minister that the planned review of the Scheme had not been commenced or undertaken either in 2014 or at all? If you were so aware:
 - i. What did you consider was the reason for this?
 - ii. What steps, if any, did you take to rectify the situation?

Further information required in response to questions set out in Notice 135 of 2017

[References to questions below are references to enquiries in the Schedule of Chairman's Notice 135 of 2017]

Question 2

43. Please provide the specific dates between which you held the roles you have listed in response to question 2 in your previous statement.
44. Please provide a response to all aspects of question 2 in Notice 135 of 2017. The question sought information on how and why you were appointed to the roles; what the roles entailed; and how, if at all, each role related to the Scheme.

Questions 3a and 3b

45. You have stated in your previous statement that the duties you considered you owed as Minister and the rules or codes governing the exercise of your Ministerial functions were set out in the Ministerial Code incorporating the Pledge of Office, the Ministerial Code of Conduct and the Seven Principles of Public Life. Was it

your understanding that the Ministerial Code set out the entirety of your obligations in your position as Minister?

Question 4b

46. You have stated in your previous statement that you consider that you were the only person entitled to give instructions to your Special Advisers. Please confirm whether, to your knowledge, you were the only person to give instructions to your Special Advisers.

Question 4c

47. You have stated in your previous statement that Special Advisers would have discussed issues with others, particularly where those issues were cross-cutting. Please set out the other circumstances in which the Special Advisers would have discussed issues with others.
48. Please set out whether there was an understood or accepted hierarchy within the DUP team of Special Advisers. (For example, some evidence available to the Inquiry suggests that Special Advisers in the First Minister's Office were viewed to have seniority and that Timothy Johnston was seen to have the highest degree of seniority. Do you consider that this is correct?)

Question 4d

49. You have stated that your Special Advisers' primary duty was to you, in the exercise of your Ministerial functions. Please set out in comprehensive terms the further duties you consider your Special Adviser(s) had.
50. You have also stated that in "*fulfilling this duty their role included considering the political implications of matters and advising you accordingly*". Please set out in comprehensive terms what else their role included in your view.

51. Please clarify what duties your Special Adviser(s) owed (or may have considered himself or herself to owe) to the political party to which you were affiliated and how, if at all, that affected their role or their performance of it.

Question 4e

52. For each ministerial office you held, please clarify how your Special Advisers interacted with civil servants, and the procedures that operated within each of the relevant Departments between civil servants, the Special Advisers and the Minister.
53. You have referred to receiving input from your Special Adviser, during the creation, development and operation of the Scheme, before making decisions. As to this:
- a. Please describe the process of this input being provided? (For instance, was it provided in writing or orally? If in writing, was it provided by means of handwritten notes or by email? If by email, which email accounts would have been used?)
 - b. Please set out any advice or input received from your Special Adviser in relation to the RHI Scheme which you recall.
 - c. Do you recall any occasions when the Special Adviser's advice or input was contrary to your own view? If so, please give details.
54. You have stated that the Scheme was intended to incentivise the uptake of renewable heat technologies to support the EU wide target. Please indicate whether, in your view, there were any other intended outcomes of the Scheme and, if so, what they were.
55. You have referred to underspend and low take-up in the Scheme during your time as Minister. Please describe when and how you became aware of this and what, if any, action or actions you and/or your officials took to address the

Scheme not delivering in accordance with the planned targets. Please describe whether this situation changed during the time you were DETI Minister and, if so, when you became aware of when, how and for what reasons this situation had changed.

56. You have recalled visiting a production facility at Lisburn of Warmflow Engineering Co Limited in early July 2014, when you were asked about the possible timeline for introduction of the domestic RHI scheme. As to this:
 - a. Please provide any further details about this interaction which you can recall (for instance, who spoke to you and what the substance of the exchange was).
 - b. Provide details as to your, or your party's, relationship with Warmflow Engineering and/or its owners or directors. (For instance, are they party donors or supporters?)
 - c. Specify whether this exchange (and any exchange with any other stakeholder) influenced your approach to the timing of the introduction of the Domestic RHI Scheme and, if so, how it did so.
57. Describe any other interactions you had with the renewable heating industry and/or actual or potential applicants for accreditation under the Scheme in relation to, or touching upon, the Scheme.
58. You have stated that while you now understand that there was communication about RHI between DETI and DFP from May 2015 onwards, this was not escalated to Ministerial level. Would you have expected this to be escalated to Ministerial level and, if so, what is your view on the reasons for it not being so escalated?
59. You have stated that you did not have a role in the amendment of the Scheme in Autumn 2015. In relation to this:

- a. State whether (to your knowledge or belief) your Special Adviser(s) had any role in, or discussions relating to, the amendment of the scheme in Autumn 2015 and, if so, please give full details (including the nature or the role of the discussions; who was involved; when, where and how any such communications occurred; and the substance of any relevant communications of which you are aware).
- b. It has been suggested to the Inquiry that there were meetings involving several DUP Special Advisers to discuss amendment to the Scheme in or around June 2015. It has also been suggested that you were present at one such meeting. Please give full details of any knowledge you have of any such meetings or discussions (including the nature or the role of the discussions; who was involved; when, where and how any such communications occurred; and the substance of any relevant communications of which you are aware).
- c. It has been suggested to the Inquiry that Timothy Johnston directed the approach to be taken to amendment to the Scheme. Please set out full details of any knowledge you have of this.

Question 9b

60. It has been suggested to the Inquiry that Special Advisers to other Ministers would from time to time receive instructions from the First Minister (or from the First Minister's Special Adviser(s) on the First Minister's behalf). Please confirm whether this was the case generally; and whether any such instructions concerned the Scheme and, if so, the nature of the instructions.

Question 10

61. You have stated in your previous statement that you became aware of the true funding position in relation to the RHI Scheme in or around the end of December 2016 or early January 2017, when clarification from HM Treasury was

communicated. Please set out the nature and content of this clarification and how it was communicated to you.

Question 11

62. You have stated in your previous statement that there were a number of significant flaws with the scheme and that one of the crucial mistakes was that the tariff for small to medium biomass was set at a level higher than the cost of fuel. What, in your view, were the other flaws?

Question 12

63. You have stated in your previous statement that you were involved in promoting the scheme to encourage uptake generally. Please describe the fora in which you promoted the Scheme; and the information to which you drew attention in order to publicise the benefits of the Scheme?

Question 13

64. You have stated that you do not recall instances of lobbying or encouragement of the type described in question 13 in the Schedule to Notice 135 of 2017, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

Question 14

65. You have stated that you do not recall instances of influence or pressure being exerted of the type described in question 14, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

Question 15

66. You have stated that you do not recall instances of influence or pressure being exerted of the type described in question 15, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

Question 16

67. You have stated that you do not recall instances of breaching of standards or acting in circumstances of real or perceived conflict of interest of the type described in question 16, save for those already in the public domain or within the documentation provided by you and your colleagues. Please specify and provide details of the instances to which you are referring.

Question 17

68. You have stated that you are not aware of any connections of the type described in question 17, aside from those already in the public domain or within the documentation provided by you and your colleagues. Please specify and provide details of the connections to which you are referring.
69. Without prejudice to the generality of the foregoing, in light of the publication by the Department for the Economy of the list of those in receipt of subsidies under the Non Domestic RHI Scheme and your position as Leader of the Democratic Unionist Party, set out those who have received or are receiving subsidies under the RHI Scheme who or which are or have been donors to the DUP.

Questions 18 and 19

70. You have referred to being contacted by Janette O'Hagan in September 2013 to your DETI email account and, later, to your personal email account. Please provide a full account of what actions you took as a result of receiving these

emails. Please include an account of what you did in relation to Ms O'Hagan's email of 3 September 2013.

71. You have indicated in your previous statement that only the email from Janette O'Hagan to your personal account included reference to concerns. You also state that her concerns were not escalated to Ministerial level. Can you explain how these two statements relate to each other including how, having received and being aware of her concerns, while at the same time having knowledge they were not being escalated to Ministerial level, you gained assurance that they were being dealt with adequately.
72. You have referred in your previous statement to the note you received from a constituent, George Gallagher, which was then attached to a minute from the Head of the Civil Service dated 27 January 2016. Please describe what further action, if any, you or others took on foot of this note, or what assurance you received that appropriate action was being taken.
73. You refer to becoming aware in October 2016 that an anonymous whistle-blower had made allegations about Stephen Brimstone's installation. Please provide details of how you became aware of such allegations, to whom they were made, and what their nature was. What steps, if any, did you take in relation to this issue?

Question 20

74. You have stated that you first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel in or around July 2016, when the problem was identified by the NIAO. In light of this, what was your understanding of the reason for the application spike in Autumn 2015?

Question 21

75. You have referred to being contacted by Stephen Harron. Please provide details of whether you knew Stephen Harron before 13 November 2015 and, if so, what was the nature of previous contact with him.
76. Please detail the specific representations Mr Harron had made to you on 13 November 2015 or any other date in relation to the Scheme, including (without prejudice to the generality of the foregoing, on whose behalf Mr Harron indicated he was making representations to you about the Scheme).
77. Specify whether you knew that Mr Harron worked for Hegan Biomass at that time.
78. Specify whether you were aware of any other persons connected or related to Mr Harron who were Scheme applicants, or potential Scheme applicants.
79. Please indicate why you raised the issue of Mr Harron's representations with the DETI Minister's Special Adviser, rather than the DETI Minister himself.
80. Set out your understanding, at the time of contacting Timothy Cairns in relation to Mr Harron's representations, of (a) the funding position in relation to the Scheme and (b) the extent of the over-spend in relation to the Scheme.

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 556 of 2017

DATE: 19 January 2018

Witness Statement of: ARLENE FOSTER

I, Arlene Foster, will say as follows: -

Phase 1***Choice of incentive scheme***

1. On 14 June 2011 you signed an Impact Assessment (a copy of which may be found in the Inquiry evidence bundles at WIT-00751 to WIT-00757). At paragraph 3 of this Impact Assessment it states: "*DETI has already indicated that a Northern Ireland RHI is the preferred method of incentivisation however before this can be designed and delivered a full economic appraisal is required. Cambridge Economic Policy Associates (CEPA) and AEA technologies are carrying out this appraisal.*" At paragraph 16 the Impact Assessment states: "*DETI has already expressed a preference for a Northern Ireland RHI.*" As to this:

- a. When did you first consider that an ongoing subsidy scheme, on a similar model to the RHI scheme proposed or adopted in Great Britain (as opposed to, for instance, a capital grant or challenge fund type incentive), was the preferred means of incentivisation for renewable heat in Northern Ireland?

I would have first considered this upon reading Submission 1053/2011 dated 8 June 2011, and the accompanying impact assessment.

- b. On what basis did you reach that view?



From the information contained within those documents. See further the reply to 3a.

- c. Please explain your understanding of the reference in the said Impact Assessment to DETI's previous expression of preference for a particular type of scheme.**

I do not understand this reference in the Impact Assessment. The footnote refers to my September 2010 press release made upon advice from officials (sub 364/2010 of 9 August 2010). This press release was issued following the Aecom Poyry report findings. At that stage there was no 'preference' as the economic appraisal had not been commissioned and therefore no consideration had been given to the various potential methods of incentivisation.

I do not specifically recall having noted this wording in the impact assessment at the time. I did not have, nor did I express, any preference as to the type of scheme prior to receiving advice from DETI officials in June 2011.

- d. Was there any element of preference or predisposition (a) on your part and/or (b) on the part of officials in your Department who provided you with advice in relation to the choice of scheme at any time before the provision of the draft final CEPA report in May 2011?**

(a) I did not have, nor did I express, any element of preference or predisposition as to the method of incentivisation prior to receiving advice from officials in Submission 1053/2011 dated 8 June 2011.

(b) I am not aware of any preference on the part of officials. No preference was expressed to me, as far as I can recall, prior to receiving the submission dated 8 June 2011 that made reference to the draft final CEPA report in May 2011.

- e. **Please indicate the reasons, to your knowledge, for the preference expressed in the Impact Assessment which was signed prior to the final CEPA economic appraisal being produced.**

I do not know the reason why there is a preference expressed in the Impact Assessment.

2. **Explain your understanding of the role and purpose of an Impact Assessment; the reasons for requiring Ministerial sign-off of such an assessment; and the responsibility attaching to you, as Minister, if any, in signing such an assessment.**

The Impact Assessment I signed on 14th June 2011 was a consultation stage impact assessment. I would have understood it to have been intended to set out the various options for increasing the uptake of renewable heat to meet the EU 2020 renewable energy target, and to provide a high level view of the likely costs, benefits, and impacts, prior to public consultation. I note that within it I was told there would be a full impact assessment carried out in advance of the consultation on the final design of the NI RHI. This did not take place.

As Minister, I believe it was my responsibility to consider the information provided within the impact assessment and satisfy myself that the policy was appropriate for consultation.

3. **On 8 June 2011 Fiona Hepper provided you with a submission outlining the findings of CEPA's economic appraisal (a copy of which may be found in the Inquiry evidence bundles at WIT-00739 to WIT-00749). As to that:**

- a. **The recommendation section of the submission does not appear to the Inquiry to include a clear recommendation. Rather, you were asked to *"consider the overview of the CEPA economic appraisal and the options developed"* and *"indicate your***



preferred option for incentivisation ie either a Challenge Fund or RHI". Did you read the submission as providing a recommendation to you? If so, what recommendation did you consider was being made? If not, were you content that no recommendation was being made?

I read the submission as providing a recommendation to move forward with a NI RHI scheme. Paragraph 30 presents a clear choice based on the funding profile. It states:

“(a) if there is to be no funding guaranteed post 2015 then a grant funding scheme should be implemented.... (b) If there is confidence that additional funding can be provided by DECC/HMT post 2015 then a NI RHI should be introduced based on tariff levels set in the table above. The GB RHI scheme is open to 2020 and DECC/HMT have stated that additional funding will be available in the next spending period”.

The recommendation is therefore set out in paragraph 30(b).

The fact that funding would be available post 2015 is also made clear earlier in the submission at paragraphs 4 and 9. Similarly, paragraph 16 states: *“if no funding is guaranteed post 2015, a capital grant system would be preferable to a RHI scheme”* while paragraph 24 states: *“[t]he NI RHI option is the preferred approach and offers the highest potential renewable heat output at the best value”.*

b. Specify whether you discussed the submission with your Special Adviser and, if so, what advice (if any) he provided.

I have no specific recollection of discussing the submission with my Special Adviser, Andrew Crawford. However, I believe he would have read the submission (as he always did) before the meeting with Fiona



Hepper. We would then have discussed the recommendation given within the submission and he would have advised me that the NI RHI option was preferred. This would have been in line with my own view based on my own reading of the submission and impact assessment.

- c. The submission also discloses that a meeting was arranged for 13 June 2011 in order to discuss the submission (although it may be that this meeting was re-scheduled to occur on 14 June 2011. Information provided to the Inquiry suggest that, on 14 June 2011, you as Minister agreed that a Northern Ireland RHI should be designed and implemented. As to that:**

- i. Set out as fully as you can your recollection of the meeting, including where it occurred, who was present, how long it lasted and what the outcome was.**

I cannot remember specific details of this meeting but if it took place on a Monday or Tuesday then it would have been held at my office in Parliament Buildings. If it took place on a Wednesday or Thursday it would have been held at my office at Netherleigh. Andrew Crawford and my Private Secretary, Glynis Aiken, would have been present with me for a meeting such as this. I cannot recall who, if anyone, attended with Fiona Hepper but I am aware she has said she would not have attended on her own.

- ii. Describe, insofar as you can, what advice (if any) was provided to you at the meeting and by whom.**

I cannot remember specific details of the meeting with Fiona Hepper. It is likely we discussed the submission and impact assessment. I am aware that Ms Hepper has said she went through the figures orally with me from the draft

RENEWABLE HEAT
INCENTIVE INQUIRY

final CEPA report. I have no recollection of this. Having looked at the report again recently, I think it is highly unlikely that she took me through it in detail given the report's length, the technical nature of the figures contained therein, and the fact that a meeting of this type would usually last between 30 and 45 minutes. Generally, if a technical report was to be considered, it would have been provided in advance in order that my Special Adviser and I could discuss it.

On this occasion, given that I indicated that a NI RHI should be consulted upon and signed the impact assessment, I believe Fiona Hepper must have highlighted the headline figures so that I was content with the information and advice she was presenting to me. I would have relied on her assessment of the outcomes of the CEPA work and would have expected her to accurately present figures to me.

- iii. Describe, insofar as you can, what information or documentation was discussed or considered at this meeting.**

See reply to 3.c.ii, above.

- iv. Without prejudice to the generality of the foregoing, specify (to your recollection) what you understood in relation to the relative costs of the various options discussed in the submission.**

In line with what is set out in the submission, I would have understood the NI RHI to offer the highest potential renewable heat output at the best value. I cannot recall

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the specifics of figures to which Fiona Hepper might have drawn my attention at the meeting.

- d. The submission notes that a final *draft* of the economic appraisal had been received. Please provide details of your understanding at the time of the submission of 8 June 2011 as to whether it was based on the analysis and conclusions arising from the final version of the economic appraisal and, if that was not the case, what you understood it to be based on.**

I cannot specifically recall what I understood at the time except that I would have relied upon, and been content with, the information provided to me by officials about the analysis and conclusions of the economic appraisal.

- e. In the event that you appreciated that the economic appraisal was not finalised, please indicate whether and why you were prepared to proceed on the basis of a draft report.**

I cannot specifically recall what I understood about the economic appraisal but I proceeded on the basis that I relied upon, and was content with, the information provided to me by officials who brought the submission dated 8 June 2011 to me.

- f. Please provide your account of the decision you made in June 2011 (to proceed with an RHI as opposed to a Challenge Fund) and explain the reasons for that decision.**

I would have made the decision based on the information provided to me in Submission 1053/2011 (see also my reply to 3.a., above), the impact assessment, and the information and advice provided to me by Fiona Hepper at the meeting.



- g. Please provide details of whether you sought a view from Energy Division on the option the officials considered should be taken and, if so, what advice (if any) was received.**

I cannot specifically recall details of the discussion at the meeting but upon re-reading submission 1053/2011 and the impact assessment, in preparing this statement, it appears clear to me that the NI RHI was the approach being recommended by CEPA and DETI in the documents. The discussion at the meeting presumably confirmed that the NI RHI approach was being recommended, leading to my decision to proceed with a NI RHI.

- h. Please specify what handwritten notation you have made beside your initials on the front page of the submission (at WIT-00739).**

I have written: "14/6 noted"

- 4. On 5 July 2011 you received a further submission from Fiona Hepper which enclosed a copy of the final version of the economic analysis provided by CEPA (dated 28 June 2011) (see DFE-380556, a copy of which is enclosed). (The 5 July 2011 submission may be found at DFE-29643 to DFE-29647, a copy of which is also enclosed. The final version of the CEPA 2011 report also appears in the Inquiry's evidence bundles, *inter alia*, at WIT-00594 to WIT-00738). As to that:**

- a. Please indicate whether you read the final CEPA report or any part of it (and, if so, which part or parts).**

I have no specific recollection of having done so. My usual practice was that my Special Adviser would read the detail of technical reports before they were provided to me and draw particularly significant parts to my specific attention. He also would have advised me generally on the content (within the scope of his own knowledge) as I wouldn't have had the expertise to draw conclusions given the report's technical nature. It would not have



been unusual to receive between 30 and 40 Ministerial submissions (of varying length and complexity) per day. As such, the role of Special Adviser in assisting the Minister to focus on the salient points was invaluable. I also would have expected officials to draw any significant or material changes affecting my prior decision to proceed to consult on a NI RHI directly to my attention a submission. This was not done.

- b. Please indicate whether, to your knowledge, your Special Adviser read the report (and, if so, what, if any, advice he provided to you in relation to this).**

I am not able to recall any specific discussion about this report but it would have been usual for my Special Adviser to have read it and provided advice.

- c. If you did not read the report, please specify why not.**

As stated above at a, my usual practice was that my Special Adviser would read the detail of technical reports before they were provided to me and draw particularly significant aspects of them to my specific attention. He also would have advised me generally on their content (within the scope of his own knowledge) as I wouldn't have had the expertise to draw conclusions on technical reports of this nature.

I also would have expected officials to draw any significant or material changes affecting my prior decision to proceed to consult on a NI RHI directly to my attention in the accompanying submission. This was not done.

- d. If you read the report, please indicate:**

- i. What conclusions you drew from the report;**
- ii. What recommendation, if any, you considered the report to be making;**
- iii. Whether you reconsidered or reflected further on the decision you had made on 14 June 2011;**



- iv. **What, if anything, you understood about the relative costs and benefits of the two main types of scheme being discussed.**

See reply to a, above.

- e. **Please indicate if you read the consultation document which it was proposed that the Department issue in relation to the proposal to adopt an RHI Scheme (either at the time of receiving this submission, or at some point thereafter).**

Yes, I did read the consultation document.

5. **Provide full details of any engagement or communication you had with stakeholders or interested parties in relation to the type of scheme which DETI should adopt for the incentivisation of renewable heat.**

To the best of my recollection, I did not have any engagement or communication with stakeholders or interested parties about the type of scheme DETI should adopt.

6. **On 9 March 2012 minutes of the Casework Committee meeting (which may be found in the Inquiry's evidence bundles at WIT-00897 to WIT-00909) stated that the estimated cost of administering a challenge fund over the first four years *"would not be available within DETI budget"*. On 15 March 2012 Fiona Hepper wrote to DETI's Top Management Team (see DFE-62230 to DFE-62233, a copy of which is enclosed herewith) indicating that the funding to be provided by HMT could not be used to cover the administration of the scheme and that she would therefore need to bid for the money to come from DETI's budget. She continued: *"I appreciate that the above costs will add pressures within the DETI system and it is unfortunate that HMT stipulated that the £25m could not include a (small)***



element for administration. However, it is the case that if the money for administration is not made available we will not be in a position to deliver the RHI; the £25m will have to be returned to HMT (as it was ring-fenced solely for this purpose); we will also fail to meet the Executives PfG and SEF targets as well as fail to contribute to the UK's binding EU targets (and have to thereby take responsibility for any share of an infraction that may result). I would appreciate confirmation that TMT is either content that I proceed, or, that I advise the Minister that funding is a potential difficulty and you have instructed that work stops at this point". On 16 March 2012 Fiona Hepper sent you a further submission seeking approval to proceed with the introduction of the Northern Ireland RHI and the Renewable Heat Premium Payments (found at WIT-00871 to WIT-00879, excluding annexes). As to this sequence of events:

- a. Please indicate whether you were provided with a copy of the Casework Committee minutes at this, or some other, stage. If so, please indicate whether you (and/or your Special Adviser, to your knowledge) read or considered these.**

I did not receive the Casework Committee minutes. It would not have been usual practice for these to be provided to me. Because it was relatively unusual, I do remember receiving Invest NI Casework Committee minutes from time to time where there was a large project under consideration. Otherwise I do not remember any other division, including Energy Division, providing these to me.

- b. Please explain whether you were involved in the decision to make funds available for the administration of RHI Scheme and, if so, what that involvement was.**

I do not recall being involved in this decision.



- c. **Please set out the role that administration costs played in your decision to opt for an ongoing incentive scheme as opposed to a challenge fund or grant scheme.**

I do not believe I was made fully aware of the difference in administrative costs for an ongoing subsidy scheme as opposed to a Challenge Fund but the Regulatory Impact Assessment informed me that the administration costs of a Challenge Fund were likely to be prohibitive and not available within the DETI budget.

7. **On 13 April 2012 you signed a Regulatory Impact Assessment on the implementation of a renewable heat policy in Northern Ireland ('the RIA') (this may be found at DFE-70749 to DFE-70760 and a copy is attached; a draft version was attached to the submission of 12 March 2012 and is to be found at WIT-00885 to WIT-00896). Under the heading "*Option 3 - A renewable heat challenge fund*" it stated that there were several issues to consider, the first of which was that "*the administration costs are likely to be prohibitive. A challenge fund ... could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within the DETI budget*". The RIA also included a section outlining "Qualitative benefits". As to this:**

- a. **Specify whether you read the RIA before signing it.**

Yes, I read the Regulatory Impact Assessment.

- b. **Please explain what your view was, at the time of signing the RHI, of the significance of:**

- i. **Administration costs as compared to overall scheme costs in assessing the relative merits (including in relation to cost-benefit and value for money analyses) of the challenge fund and incentive support scheme opinions; and**



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I do not believe the relative costs were brought to my attention.

ii. Qualitative benefits as compared to quantitative benefits of the challenge fund and incentive support scheme options.

My view of these benefits at the time would have been based on the information provided to me in the RIA, although I have no specific recollection. I note now, having reviewed the Regulatory Impact Assessment for the purpose of preparing this statement, that it doesn't provide a clear breakdown of each option's qualitative and quantitative benefits. However, it does state that the NI RHI option was *"the preferred approach"* offering *"the highest potential renewable heat at the best value"*.

c. Indicate whether, by this time, you had read either:

- i. The Casework Committee minutes; and/or**
- ii. The CEPA final economic assessment of 28 June 2011.**

- i. I did not receive the Casework Committee minutes and,
- ii. As stated above, the common practice with lengthy reports was that my Special Adviser would read them in detail, and draw areas of particular significance to my specific attention.

d. In the RIA under the heading *"Option 5 - A specifically tailored NI RHI scheme"*. It stated that the *"NI RHI option is the preferred*



approach and offers the highest potential renewable heat output at the best value". Please explain whether you were content, at the time of signing the RIA, with this statement; and, if so, on what basis.

I was content based on the information provided in the RIA and the advice given to me in submissions, and otherwise by officials, to that date.

8. You also indicated that you were content with the 16 March 2012 submission on 11 April 2012 (see DFE-32032 to DFE-32040, a copy of which is enclosed). Please explain:

a. Why there was such a delay between receipt of the submission and your approval of it.

The usual practice was that my Special Adviser would read and sign submissions first before passing to me for my consideration. I would not sign a submission until he had time to consider it and provide me with any advice arising from it. From time to time, he would have sought clarification on issues from officials before advising me although I am not aware if this happened on this occasion. In this case Andrew signed it on 3 April 2012 and I signed it on 11 April 2012. I believe the Easter break was between these two dates.

b. What, if anything, occurred in the period between receipt of the submission and your approval of it in relation to consideration of the issues raised in the submission.

See reply to a., above. I am not aware of anything significant occurring between my Special Adviser signing the submission and me signing it but highlight that Easter was in the intervening period. I am also not aware of any particular reason why my Special Adviser did not sign it until 3 April 2012.



9. Please indicate whether you were ever provided with (a) the CEPA addendum report of February 2012; and (b) the DETI business case to DFP in relation to the RHI Scheme. If so, please indicate (i) when you were provided with each or either of these documents, (ii) who provided them to you, and (iii) whether you read either of them, or any part of them.

(a) I have no recollection of being provided with the CEPA addendum report.

(b) I do not recall having been provided with the DETI business case to DFP. I also would not have expected to see this as it would not be normal practice for the Minister to be provided with business cases.

10. Insofar as not addressed in response to the enquiries above, set out your understanding, at the time of making your decision to proceed with the Northern Ireland RHI Scheme, of (a) the costs differences between the challenge fund option and the ongoing incentive support scheme, (b) the relative merits of each type of incentive, and (c) the reasons why your decision was to proceed with the ongoing incentive support scheme model.

My understanding would have been based on the information set out within submission 167/2012 dated 16 March 2012 and the RIA, and any advice provided to me by my Special Adviser.

Tiering

11. On 16 March 2012 the submission from Fiona Hepper to you (at WIT-00874) stated that: *"Tiering is used to ensure the technology is not 'over-used' just to receive an incentive. It works by dropping the paid tariff after the technology reaches its optimum use for the year; this is deemed at 1314kWhrs (15% 12 of annual hours). After this level is reached the tier 2 tariff is paid. Tiering is not included in the Northern Ireland scheme*

because in each instance the subsidy rate is lower than the incremental fuel cost". In your reply to question 11 in your statement provided on foot of RHI Inquiry Chairman's Notice No 135 of 2017 ('your previous statement') you stated: ***"One of the crucial mistakes was that the tariff for small to medium business was set at a level higher than the cost of the fuel".*** As noted above, on 5 July 2011 the DETI Private Office was provided with several documents including the final CEPA economic appraisal. Arising out of these issues, please indicate:

a. Whether you read the economic appraisal and, if so, when;

As stated above, I would not have read the economic appraisal in full. It was common practice that my Special Adviser would read technical documents and draw my specific attention to areas of particular significance. He would then provide advice based on the content generally. I would also have expected that anything significant affecting my decision-making would be drawn to my attention in the submission, or separately, by officials.

b. Whether, at any time, you were provided with:

- ii. The CEPA February 2012 addendum report;**
- iii. The 'synopsis' prepared by Energy Division for the Casework Committee; or**
- iv. The DETI business case to DFP in relation to the RHI Scheme;**

and, if so, whether (and, if so, when) you read any of these documents or any part of them.

I did not receive these documents.

c. What you considered your role or function to be in relation to the above mentioned documents;

As a general rule, anything to which I needed to give attention came to me by submission. I relied on officials to provide me with sufficient and accurate information in order to make decisions. As these documents were not provided to me, I can only assume that officials did not believe it was necessary for me to see and consider them.

- d. Whether you (or, to your knowledge, your Special Adviser) queried with any officials the absence of tiering in the proposed Northern Ireland Scheme, in contrast to the position in the GB Scheme;**

No, I did not query this and, to my knowledge, neither did my Special Adviser.

- e. Whether you (or, to your knowledge, your Special Adviser) realised, whether from the business case or any other source, that the cost of biomass fuel was in fact cheaper than the proposed subsidy payable in certain circumstances (and, if so, when you realised this and what, if anything, you did about it).**

I did not realise the cost of biomass fuel was cheaper than the proposed subsidy and, to my knowledge, neither did my Special Adviser.

Cost controls

- 12. The RIA signed by you in April 2012 stated under the heading "b) The objective" that *"the target must be delivered with the agreed budget of £25m to 2015 provided by Her Majesty's Treasury"*. Please describe how you were assured that controls existed to deliver the objective within the agreed budget.**

In terms of the design of the scheme, I relied on the advice given to me by officials, based on expert economic analysis from external consultants, and with the involvement of the departmental economists. This was set out within the



RIA. I was also advised there would be reviews providing an opportunity to amend the Scheme if required.

- 13. The RIA also stated under the heading "*Risk of insufficient budget for administration or future payments*" that there "*may be the possibility of a higher than expected uptake leading to overspends in annual budget and higher administration costs. This will be mitigated with ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget*". Please describe how you were assured that the arrangements in place with Ofgem were sufficiently robust to deliver the information required to mitigate this risk.**

I trusted the officials within the Department to put robust measures in place and interact with Ofgem in order to do this. The discussions as to the arrangements took place between Energy Division and Ofgem directly. I was aware that Ofgem were already administering the Northern Ireland Renewables Obligation (NIRO) scheme for renewable electricity generation and, as they were being considered for administration of the NI RHI scheme, I believed there was a good relationship between the Department and Ofgem. I was also aware that Ofgem had been involved in developing and administering the scheme for DECC and would have therefore anticipated similar arrangements being made between Ofgem and DETI. I had no reason to anticipate that the arrangements would not be sufficiently robust.

- 14. You are referred to paragraphs 10 and 11 of the Ofgem corporate statement (at WIT-95014 to WIT-95015) which state that: "*The issues over the absence of cost control in the original GB regulations were well publicised... and DETI were aware of this before they made their Regulations. We had both drawn their attention to it and identified for them the relevant policy person in DECC to talk to about amendments planned to the GB RHI Regulations. DETI's response to Ofgem's comments - which was not to proceed with its regulations in advance of the amendment to the GB regulations - was that NI Ministers wanted the***

Scheme to go ahead as soon as possible and did not wish to wait for amended GB regulations. They told us that they planned to reconsider the design of the regulations in future (and they subsequently consulted on the introduction of cost controls in 2013). This approach had the result

that they were exposed to the same risks and issues inherent in the original 'unamended' GB regulations, but this method of proceeding was a choice that, as we were told, reflected Ministerial wishes." Arising out of this:

- a. Please indicate if you "wanted the Scheme to go ahead as soon as possible" and, if so, why.**

Yes, I did want the Scheme to go ahead as soon as possible. This was because we were lagging behind the rest of the UK in the introduction of a renewable heat scheme and had a budget available. However, I would consider "as possible" to be the operative words. I did not ask officials to ignore warnings or proceed with a scheme that was inherently flawed. The warnings from Ofgem were not spelled out to me. I would have expected these warnings to be clearly and straightforwardly brought to my attention, by way of a submission, in order that I could make a properly informed decision as to whether it was appropriate to proceed without making the amendments Ofgem considered necessary. This was not done.

I am now aware that there was also an Ofgem memo bringing difficulties with the GB regulations to DETI's attention as early as November 2011 but that these risks were not addressed in the RIA in March 2012.

- b. If you did want the Scheme to go ahead as soon as possible, please also indicate how you communicated this to officials.**

I cannot remember specific dates and times but would have



communicated this from time to time orally to Fiona Hepper on the basis that I did not want Northern Ireland to fall further behind GB which already had a scheme in place.

- c. State whether you chose to proceed with the Scheme in the knowledge that the proposed Northern Ireland Regulations contained similar issues over the absence of cost control as the original GB Regulations and, if so, state:**
- i. Why you did so;**
 - ii. What risks you were aware of; and**
 - iii. What circumstances or steps, if any, you considered mitigated those risks.**

I have no recollection of being clearly informed about the risks of proceeding without cost controls. If this issue was raised to me I believe that Ofgem's warnings must have been significantly downplayed; I believe I would remember if I had been presented with a critical issue (i.e. something that Ofgem were warning ought to stop DETI in its tracks) particularly if I was being asked to take a decision informally, without the options being presented in a Ministerial submission.

Indeed, if an official presented me with a decision on something as significant as whether or not to proceed without legislative amendment, I would have asked that the issues be set out in a written submission in order that I could discuss it with my Special Adviser and make a considered decision. It is very unlikely that I would have made a decision of this type without involving my Special Adviser. I would have wanted him to understand what was going on and provide advice on the advantages and disadvantages of each option.

I understand Fiona Hepper says she cannot remember if she



spoke to me by telephone or in a face to face meeting. I would comment that it was fairly rare that officials would have spoken to me by telephone but, in either event, Ms Hepper would have made the arrangement to speak to me through my Private Secretary, Glynis Aiken.

- d. **Set out what you were told about the risks alluded to by Ofgem in the above evidence, including by whom you were told of such risks and, as far as you can, in what terms you were told.**

See reply to c., above.

15. Paragraph 187 of Ofgem's corporate statement (at WIT-95060) states: "On 26 June 2012 at a telephone conference with the Department, Ofgem advised the Department to wait until the GB regulations were amended as the amendments would serve to negate any risk that the regulations currently posed. The Department recorded its Minister's wish to proceed with the NI RHI Scheme without waiting or having reviewed the amendments to the GB RHI Scheme to be made." The minutes of this call are at OFG-03517 to OFG-03519 (a copy of which is enclosed). They state at paragraph 3.1: "Ofgem raised concerns over the potential impact of the amendments to the GB regulations coming into force shortly after the NI RHI regulations. As the draft NI RHI regulations replicate the GB regulations as they currently stand, Ofgem could see logistical and presentational issues with the NI scheme initially being without these improvement updates. The point was made by Ofgem that that this would mean replicating the issues that have proven necessary to address in the GB regulations. Ofgem's advice was to wait until the GB regulations are amended as the amendments will serve to negate any risk that the regulations currently pose. However, DETI were clear that they have a commitment with their Minister to bring the regulations into force by the end of September and this could not be put back to dovetail into the legislative updates to the GB regulations. It was also felt that to do



otherwise would also put financial arrangements in jeopardy. Action: In response to issues raised by Ofgem on embedding DECC GB RHI amendments into NI RHI regulations, DETI confirmed that this would need to be taken forward after their regulations came into force late September/October."

Arising out of this:

- a. **To what extent were you aware of the advice offered by Ofgem personnel referred to above? Please outline, insofar as you can, any information provided to you by officials in relation to this (including who provided the information and when).**

I have no recollection of being provided with Ofgem's advice. See also reply above, at 14. An issue of this seriousness should have been brought to my attention by way of a formal submission for proper consideration.

I also consider, with the benefit of hindsight, that it was open to Ofgem to write to me directly to outline their concerns. This would have ensured the matter was brought specifically to my attention, and created a formal record of Ofgem's position.

- b. **Did you wish to proceed with the Northern Ireland RHI scheme without waiting for, or having reviewed, the amendments to be made to the GB RHI Scheme to be made?**

See reply above at 14. I have no recollection of being provided with a choice on these terms and, in any event, I don't believe I was made properly aware of the concerns raised by Ofgem and their possible implications.

- c. **If so, please provide details of how this view was communicated by you to officials (including who you communicated it to, by what means, when and in what terms).**

See reply to 14, above. I have no recollection of this having been communicated to me.

d. If the answer at b. above is 'yes', please also indicate:

- i. Why you did so**
- ii. What risks you were aware of in taking this course; and**
- iii. What circumstances or steps, if any, you considered mitigated those risks.**

See reply to b.

16. On 30 August 2012 an email from Matthew Harnack of Ofgem (at OFG-04738, a copy of which is enclosed) recorded, following a conversation with Fiona Hepper having taken place, that DETI "*noted that the Minister is adamant that the scheme must go live in October*" [original emphasis]. As to this:

a. Were you adamant that the scheme must 'go live' in October 2012?

No, I do not believe I was 'adamant' that the scheme must go live in October 2012. I wanted the scheme to go ahead as soon as possible and communicated this to officials. However, I expected the scheme to be fit for purpose, and I understood that, as with any policy or programme of work, delays are sometimes inevitable. As such, I would have expected officials to advise me if the timescale was not achievable or to apprise me properly of the risks of moving forward with a scheme that was less than robust. This was not done.

b. Did you consider that there was any commitment on your part, or that of your Department or officials, to commence the Northern Ireland RHI Scheme by October 2012 (or any other date)?

The date of October 2012 was not sacrosanct. Initially the scheme was to be implemented by April 2012 (submission 1053/2011, 8 June 2011). There had been slippage in relation to this date, and as with any scheme or regulations, further slippage was possible.

- c. In the absence of any commitment to that effect, was there a desire on your part to commence the Northern Ireland RHI Scheme by October 2012 (or any other date)?**

I was keen that the scheme be implemented as early as possible because of the funding profile, and to ensure that Northern Ireland did not fall too far behind GB. I was also aware that Energy Division was a small team with limited resources so having a timeframe ensured that momentum was maintained and that the scheme didn't fall down the list of priorities within the Division. However, I stress that I was not made aware of issues that might have justified delaying implementation and therefore was not in a position to make a properly informed decision to defer or otherwise.

- d. (Assuming Mr Harnack's record of what was said in the conversation is accurate) set out on what basis you consider Fiona Hepper would have said that you were adamant that the scheme must go live in October 2012.**

I would have had conversations with my Senior Team (the Permanent Secretary and Deputy Secretary) about the need to have the Scheme implemented as soon as possible. I would have communicated this at issues meetings and I would also have spoken to Fiona Hepper about the proposed timeframe occasionally as issues arose. However, I would reiterate my replies at a to c, above, that I was not 'adamant' that the Scheme should go live in October 2012, and that my first priority would have been to ensure the Scheme was fit for purpose.

17. Please provide details of any conversation or exchange between you or your officials as to the timing of the commencement of the RHI Scheme.

I cannot recall specific exchanges about the timing of the commencement of the RHI Scheme. As set out above, I would have indicated my desire to implement the Scheme as soon as possible to my Senior Team, Fiona Hepper, and also to the ETI Committee and in the Assembly Chamber.

The conversations and exchanges that did not take place shed more light on the issue. I note, for example, there were no written submissions advising me of the risks of proceeding in Autumn 2012 without amending the regulations. I also would have expected to be told in writing that there had been a series of warnings given by external lawyers giving rise to concern on the part of officials. These types of concerns ought to be raised to the Minister in a submission so there is a formal record of decision-making. If I then had made a decision to proceed contrary to advice, it was open to officials to seek a Ministerial direction. None of this occurred.

18. Insofar as not addressed in response to the enquiries above, please provide your account of the decision to proceed to make the 2012 Regulations without cost controls or the amendments recommended by Ofgem in 2012.

This has been fully addressed above.

Reviews

19. The minutes of the Casework Committee meeting on March 2012 (referred to above) state, *inter alia*, that the RHI Scheme "*would have scheduled reviews built-in to the scheme to allow DETI to ensure that the scheme remains fit for purpose and value for money for the duration*", to include analysis of tariffs and other matters. Please provide an account of what your understanding was about how scheduled reviews were built in to the scheme.

It was my understanding that Energy Division would have scheduled reviews incorporated into their forward work programme. If a commitment had been made to have a review, I would have expected it to happen. I did not understand that this would necessarily have been in the legislation.

What was being supported

20. The 16 March 2012 submission from Fiona Hepper to you (referred to above) explained the concept of grandfathering as follows, namely that it *"provides certainty for an investor by setting a guaranteed support level for projects for their lifetime in a 20 scheme, regardless of future reviews."* On 7 January 2013 you wrote to financial institutions to encourage them to look favourably on approaches from businesses that were seeking finance to install renewable technologies (see DFE-229218 to DFE-229219 as an example, a copy of which is enclosed). The letter stated: *"Tariffs are 'grandfathered' providing certainty for investors by setting a guaranteed support level for projects for their lifetime in a scheme, regardless of future reviews."* Please explain your understanding, at these times:

- a. Of what specifically was being 'grandfathered' (for instance, was it a particular tariff; or a particular rate of return); and**

I understood that the rate of return that had been set at 12% was being grandfathered and that the tariffs had been set to deliver this rate. This was in line with the State Aid approval and was intended to make the change from fossil fuel to renewables viable.

- b. Of how this commitment would interact with the commitment given in the RIA, given to the Casework Committee, and contained in the business case that there would be regular reviews of the RHI Scheme.**



I would have understood that a review might change the tariff, to take account, for example, of changes in capital costs or the cost of fuel, but that the percentage rate of return would remain the same at 12%. The fact that it later transpired some applicants were receiving rates of return well in excess of 12% was never raised to me.

21. The 16 March 2012 submission from Fiona Hepper to you also stated at paragraph 8 that: *"Under the RHI only 'useful heat' is deemed eligible; this is defined as heat that would otherwise be met by fossil fuels, this excludes deliberately wasting or dumping heat with the sole purpose of claiming incentive payments."* As to this, what was your understanding of how this policy aim would be delivered, either through the 2012 Regulations or otherwise?

I trusted my officials to design a scheme that faithfully reproduced what was set out in submissions to me. In this instance, I probably would have expected this criterion to be set out in the legislation.

Ofgem

22. The RIA gave examples under the heading *"Risk of instances of fraud"* of several measures which DETI had, or proposed to, put in place to counteract instances of fraud. As to this:

- a. Please describe your understanding at the time of signing the RIA of how these measures were to be delivered, including the entities that would be responsible for carrying them out, the arrangements for investigation of suspected fraud, and the arrangements for taking enforcement action in respect of identified fraud.**

At the time of signing the RIA, I would have understood that anti-fraud measures would be adequately dealt with in the governance arrangements between DETI and Ofgem. At that time, Ofgem was



proposed as scheme administrator, and was already administering the GB RHI scheme on behalf of DECC. I was not made aware of any issues with Ofgem's administration of the GB RHI scheme, or with Ofgem generally, and had no reason to be concerned that the arrangements for investigation and enforcement would not be sufficiently robust.

In general, as Ofgem was to be administrator, I probably would have expected it to be responsible for the day-to-day carrying out of checks and anti-fraud investigations and to then report their findings to DETI.

- b. Please identify how you were assured that there were robust governance arrangements between Ofgem and DETI to underpin the delivery of these measures.**

See reply at a., above.

23. The RIA also stated under the heading "*Risk of failure in administration of RHI*" that in order to mitigate this risk "*the Department will establish a joint project team with Ofgem as the scheme is implemented*". As to this:

- a. Please indicate whether, in any of your discussions with officials at any point while you were DETI Minister, you enquired about or were advised on the establishment and work of this joint project team.**

I do not recall being advised about the establishment and work of this team. It is also unlikely that I would have enquired as to its work as this would have been an administrative or management issue for the Department rather than an issue for me as Minister.

- b. Please indicate whether you were aware that this 'joint project team' was not formally established. If so, set out what steps, if any, you took as a result of this information.**

I was not made aware that this team had not been established nor would I have expected to be made aware. I consider that this was an operational matter for the Department. Given the breadth of my role as Minister, I would not have been able to get involved in that level of detail.

Funding

24. On 27 May 2011 Fiona Hepper provided you with a submission (at DFE-29342 to DFE-29348, a copy of which is enclosed) which stated that, ***"HMT has advised that £25m of AME is available over the spending period should Northern Ireland choose to introduce a RHI."*** In oral evidence, Mrs Hepper has indicated that you were informed that there was a qualification to this AME funding, to the effect that it had a DEL consequence (see TRA-01849 to TRA-01850, a copy of which is enclosed). Please provide your account of being informed about the nature of the AME funding.

Fiona Hepper did not tell me there was a DEL consequence and I did not know there was a DEL consequence, whether from conversation with her, or by any other means. My understanding about the funding was as set out in the submissions provided to me, namely that there was £25m of AME funding available over the period of 2011 to 2015. I would also have understood that any commitments entered into during that period would have continued funding post 2015.

25. In your reply to question 7c in your previous statement, you stated, ***"While I now understand that there was communication about RHI between DETI and DFP from May 2015 onwards, this was not escalated to Ministerial level."*** However, please specify if you were aware that there was communication between DETI and DFP before May 2015 in relation to the nature of the funding for the Scheme? If so, please provide details.



No I was not aware of communication between DETI and DFP before May 2015.

26. In your reply to question 10 in your previous statement, you stated, "*I was aware that there was a budget of just under £38 million provided by HMT for the five year period from 2011 to 2016.*" As to that:

a. Please explain the basis for this understanding.

I was provided with the figure of £38m for the period of 2011 to 2016 in December 2016 in the course of preparing my 19th December 2016 speech to the Assembly. While DETI Minister, my understanding would have been as set out in the submissions to me i.e. that there was a budget of £25m AME for 2011 to 2015 and commitments made during that period would have funding thereafter.

b. The letter of 20 October 2010 from the Chief Secretary to the Treasury to the First Minister indicated that if the Northern Ireland Executive choose to introduce an NI Renewable Heat Incentive Scheme then AME funding of £2/4/7/12 million would be available over the spending review period (i.e. the years of 2011/12, 2012/13, 2013/14 and 2014/15). Did you become aware that the profiling of the spend over these years changed and, if so, when did you become aware of this?

I may well have been made aware but it is not something that particularly stands out in my mind.

c. When, and by what means did you become aware that further amounts making up the £38 million you have referred to were being made available?

I was made aware of this in the course of preparing my 19th December 2016 speech to the Assembly.



27. The 8 June 2011 submission from Fiona Hepper (referred to above) stated at paragraph 9: *"If no additional funding was to be available post 2015 it is questionable whether a RHI scheme would be feasible as it would need to close to new applications in March 2015."* The submission also stated at paragraph 4 that: *"Discussions with DECC regarding funding post 2015 have revealed the following: DECC see no difficulties re funding going forward as both DECC and HMT regard RHI as a priority, flag-ship policy; plus, HMT fully recognise that the scheme will be open until 2020 and that significant funding post 2015 will be required. It is also the case that DETI received a pro-rata allocation of the UK RHI funding for the period up to 2015, and HMT are aware that our scheme will complement DECC's, will therefore also require funding in the next spending review and we need our portion of the 'UK pot.'" As to this:*

- a. Please summarise your understanding at that stage (i.e. in June 2011) of what funding had been made available; and what level of assurance there was as to future funding to be made available.

In June 2011, I understood that £25m was available for the period from 2011 to 2015 and that there would be more money available after 2015 for commitments made up to that point. I was informed, for example, at paragraph 9 of sub 1053/2011 8 June 2011 that:

"HMT has already indicated that adequate budget cover would be available to ensure existing financial commitments would be honoured and that those within the NI scheme by 2015 would receive the full 20 year tariffs".

- b. Please provide details of the understanding you had, at this stage, of the process or processes by which DETI and DFP



respectively could obtain assurance around future AME funding.

I was not aware of the detail of the processes within the Departments but was aware that it was DFP's role to liaise with its GB counterpart, HMT. In general terms, I would have believed that whatever the precise mechanisms were, Northern Ireland would receive its pro rata share of the GB funding.

28. On 8 June 2011 Peter Hutchinson emailed Akhil Patel of DECC with what he described as some questions about the funding arrangements for the GB RHI which might impact on the Northern Ireland scheme, and Akhil Patel replied on the same day (see WIT-00855 to WIT-00857). In relation to this email exchange:

a. Were you aware that these discussion, or discussions of this nature, were ongoing at the time you were provided with the submission from Fiona Hepper dated 8 June 2011 and/or in your subsequent meeting with her?

No.

b. Were you ever shown or provided with a copy of Mr Patel's email?

No.

c. Were you ever shown or provided with a copy of the email from Mr Parker of HMT to Alison Clydesdale of 15 April 2011 (at WIT-00847 to WIT-00848)?

No.

Timing of launch of scheme

29. On 19 July 2012 a press release announced that you would "be seeking to put in place the legislation to enable the Renewable Heat Incentive (RHI) to launch in the early Autumn" (see INQ-30185 to INQ-30186, a copy of which is enclosed). At this stage information on tariff levels, eligibility and administrative arrangements were also published on the DETI website. Also at this stage, the draft 2012 Regulations had been considered by the ETI Committee, although it had not yet expressed itself to be content with them. Please give your account of how the target to launch the Scheme in the Autumn of 2012 came about.

See reply to 16, above. This timeframe was a broad target set after it was clear it was not possible to launch the scheme in April 2012 as had been initially contemplated. In common with any government programme, it was considered important to let the public know what was being planned.

30. Set out whether you were encouraged, lobbied or put under pressure by anyone to expedite the launch of the Scheme and/or to introduce it as soon as possible. If so, please give details.

No. I was not lobbied or put under pressure to expedite the launch of the Scheme and/or introduce it as soon as possible.

Project Management

31. Set out your understanding at the time of the creation and launch of the Scheme of the nature of project management practices, and the development of those practices, in DETI and in Energy Division.

It was not my role as Minister to get involved in internal Departmental managerial issues but I expected the team within DETI to ensure the Scheme



was being managed appropriately.

32. Specify whether you consider that formal project management techniques should have been applied to the creation and/or running of the RHI Scheme. If so, please indicate why. If not, please indicate why not.

No.

Phase 2

Prioritisation

33. The RIA stated under the heading "*Risk of incorrect subsidy level*" that "*it is the intention to have regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions. It is currently proposed that the first review will begin in January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market*". As to this:

a. Please provide in detail your account of why the first review did not begin in January 2014.

I am not aware of the reason why the review did not begin in 2014. I would have expected a submission to come up to me from officials informing me about a review, but this was not done. It is up to officials to diary significant dates within their discrete areas of work. The RHI scheme was one relatively small part of a very wide Ministerial portfolio. As Minister, I would not have been in a position to keep track of dates and timelines for every item within the Department. The onus is therefore on individual officials and the management structure within the Department to ensure appropriate procedures are in place to ensure matters are revisited at the required time.

However, I was concerned about the lack of resource within Energy Division and flagged this concern to the Permanent Secretary David



Sterling a number of times. I also raised it to both Sir Malcolm McKibbin, and his predecessor Sir Bruce Robinson during their annual appraisals of the Permanent Secretary. I felt that Energy Division was under acute pressure to keep on top of their workload (despite working very hard) because of the large number of initiatives that its significantly larger GB counterpart, DECC, was able to produce simultaneously. I observed that this had the effect of Energy Division having to constantly 'fire-fight' and re-prioritise its workload to deal with whatever was the current most pressing issue.

- b. Indicate whether you were aware, at any time before leaving office as DETI Minister, that the planned review of the Non-Domestic RHI Scheme had not been undertaken. If so, please set out how you became so aware and when you became so aware.**

No, I was not aware that the planned review had not been undertaken. It was not something that I would have remembered should have taken place.

- c. If you were aware, prior to leaving office as DETI Minister, that the planned review of the Scheme had not been undertaken (in January 2014 or thereafter), what steps (if any) did you take to rectify this?**

Not applicable as I was not aware.

- d. If you were not aware, prior to leaving office as DETI Minister, that the planned review of the Scheme had not been undertaken (in January 2014 or thereafter), why were you not so aware?**

It was the responsibility of officials to bring a review to my attention. This was not done.

34. On 26 June 2013 Fiona Hepper provided you with a submission in relation to *"The Northern Ireland Renewable Heat Incentive - Phase 2 - Proposed Consultation Document"* (to be found at DFE-97366 to DFE-97371, a copy of which is enclosed). It stated (at DFE-97367), *inter alia*, that the Phase 2 consultation paper built on the conclusions of the economic appraisal and was structured to include proposals for expansion of the non-domestic RHI and *"setting standards, improving performance and cost control"*. The notes on the first page of the submission (at DFE-97366) suggest that, as at 2 July 2013, you had approved recommendation c. (agreeing the draft letter to the ETI Committee, which is at DFE-97315). The email from your Private Office on the same date (at DFE-97360, also enclosed) indicated that you and your Special Adviser would consider the remaining recommendations on your return from annual leave. As to this:

- a. Please give your account of the decisions you took in respect of this submission when you returned from annual leave.

I have no direct recollection but assume that I must have approved the consultation document because it went out.

- b. Please indicate the input your Special Adviser had in the decisions you describe above.

I have no direct recollection but it would have been usual practice for my Special Adviser to have read the consultation document and indicate his advice that it should go out to consultation.

- c. Did you, or (to your knowledge) your Special Adviser, read or view the Phase 2 economic appraisal referred to in paragraph (a) of the recommendation section on the front page of the submission?



I do not believe I would have read the economic appraisal. In common with my usual practice, my Special Adviser would have considered detailed technical reports and brought areas of particular significance to my specific attention.

d. Did you read the attached consultation document which was annexed to the submission?

Yes.

e. To your knowledge, did your Special Adviser read the attached consultation document?

I cannot recall but it would have been usual for him to have read it.

f. At the time of considering this submission, what did you understand as to what was proposed in relation to the introduction of cost control into the Scheme?

I would have understood that there were would be trigger points introduced at which the Scheme could be suspended in-year to prevent it from going over budget.

g. What did you understand as to why it was proposed to introduce cost control measures into the Scheme?

I would have understood that it was to ensure that the budget limit wasn't breached. I was also aware that DECC had a system of cost control measures in place.

h. Please provide in detail your account of the consideration given to cost control of the Non Domestic RHI Scheme after the date



of this submission until the date you ceased being DETI Minister.

I had no submission on cost controls brought to me and therefore I was not in a position to consider it further.

- i. If a decision was taken to defer the introduction of cost control of the Non Domestic scheme, please give your account of the reasons that this was considered appropriate.**

I gave no active decision to defer the introduction of cost controls. I was not presented with a binary choice to the effect that in order to bring in the domestic scheme, it would be necessary to defer the introduction of cost controls.

35. In your reply to questions 7a. and b. in your previous statement, you stated: *"In the period following the consultation on Phase II of the scheme, the focus within the Department was on moving forward with the domestic scheme."* A submission of 17 June 2014 from John Mills to you and Andrew Crawford stated: *"We have decoupled the domestic RHI from other Phase 2 changes in an attempt to speed up its implementation."* The submission from Stuart Wightman to you and Andrew Crawford indicated your instruction to *"get this [the domestic scheme] launched ASAP"*. In addition, the minutes of a Casework Committee meeting of 21 October 2015 (at WIT-02435 to WIT-02438) recorded John Mills as saying that *"it was a Ministerial decision to look at the domestic scheme rather than pushing through the trigger points on non-domestic which would have significantly delayed the implementation of the domestic scheme"*. As to these matters:

- a. Please provide in detail your account of the decision-making which led to the focus within DETI being on moving forward with the domestic scheme.**



I believed it was important to get the domestic scheme up and running. I was aware that Energy Division had limited capacity to progress multiple strands of work simultaneously (see further above at 33a). This was particularly true during this period given that Peter Hutchinson and Joanne McCutcheon had recently left the Department, and Fiona Hepper had also left some months before. I considered that it would take their successors time to get up to speed and therefore I could understand the decision within the Department to focus initially on the domestic scheme.

- b. Indicate specifically whether (and, if so, when) you appreciated that the cost controls proposed for the Non Domestic RHI Scheme which had been proposed in the Phase 2 consultation paper were not being taken forward.**

I did not appreciate that cost controls for the Non Domestic RHI Scheme were not being taken forward.

- c. If you appreciated that the cost controls proposed for the Non Domestic RHI Scheme were not being taken forward:**

- i. How did you come by this knowledge or realisation?**
- ii. Were you satisfied with this approach?**
- iii. If you were satisfied, why?**
- iv. If you were not satisfied, what steps (if any) did you take to address this?**

I did not appreciate that the cost controls proposed for the Non Domestic RHI Scheme were not being taken forward.

- d. If you did not appreciate that the cost controls proposed for the Non Domestic RHI Scheme were not being taken forward, provide reasons why this was so.**

I did not appreciate that cost controls for the Non Domestic RHI Scheme



were not being taken forward. My understanding was that the Phase 2 changes would be taken forward after the domestic scheme was launched. The focus of the Phase 2 consultation in my mind was its expansion to include new technologies. I was never presented with any further advice about the need to introduce cost controls and the associated risks of not doing so. I was not, for example, made aware that GB had introduced cost controls at a stage where there was relatively low risk because of low uptake. The issue of cost controls should have been separated from the rest of the Phase 2 changes and specifically brought to my attention for urgent consideration.

- e. Please also provide in detail your account of the decision-making which led to the decoupling of the Domestic RHI Scheme from other Phase 2 changes (as opposed to both aspects being progressed in tandem).**

See reply to a., above.

Promotion of the RHI Scheme

36. In your reply to question 12 in your previous statement you stated that, "*I was engaged in promoting the scheme to encourage uptake generally as there was a significant underspend.*" When you were engaged in promoting the Scheme:

- a. What was your understanding of what made the scheme attractive?**

The Scheme gave a 12% rate of return to encourage businesses to change from fossil fuels to renewable forms of heating.

- b. What was your role, if any, in communicating, or ensuring the communication of, the attractive elements of the Scheme to potential claimants, interested industries, and funders?**



I cannot recall specifics of the communications I was involved in to promote the Scheme, however, I chaired the Sustainable Energy Inter-Departmental Working Group from time to time, gave speeches at the House, issued press releases, answered Ministerial Questions, and occasionally attended Energy conferences where I would have promoted renewable energy generally.

c. Did you or your officials target any particular sectors in promoting the Scheme?

I did not target any particular sector and I did not instruct the officials to target any particular sector.

d. Were you aware of interest in the Scheme from particular sectors?

I became aware as the scheme rolled out that the agri-sector was attracted to the scheme.

e. Were you aware of interest in specific technologies supported by the Scheme?

No.

Increased interest in the scheme

37. In your reply to questions 7 a. and b. in your previous statement you stated, "*During my time as Minister there was an underspend in the non-domestic scheme and uptake was slow.*" In your reply to question 7 c. you stated, "*By the time problems or difficulties began to emerge I was no longer DETI Minister.*" The evidence presented on behalf of the Department for the Economy is *that "by March 2015, the rate of applications to the Scheme were increasing much more noticeably than in May 2014, and hence it was no longer the case that any concerns about the Scheme were secondary to the perceived problem of low uptake"* (see



paragraph 249 at WIT-00098). Further, there is evidence that in March 2015 DETI officials were urgently seeking greater clarity around the funding available for RHI; that they perceived from the figures available to them that there would be an overspend; and that they were considering tariff reductions and trying to revise *"our AME profile ASAP"* to avoid running out of funds (see, for instance, WIT-02704 to WIT-02706). As to these matters:

- a. **In light of the above, do you continue to maintain the view set out in your response to question 7 of your previous statement?**

The issues that were coming to light in 2015 were not brought to my attention and I was not aware of them when making my previous statement but I have no reason to contradict the Department's evidence.

- b. **Were you aware of the increased uptake which had arisen in the Scheme before you ceased to hold office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.**

No, I was not aware of the increased uptake.

- c. **Were you aware of officials' concerns in relation to the Scheme budget which had arisen before you ceased to hold office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.**

No, I was not aware of officials' concerns in relation to the Scheme budget before I ceased to hold office.



- d. **If you were not aware of the increased uptake and/or the concerns about the budget which had arisen in the Scheme at that time (March to May 2015), do you consider that you ought to have been made aware? If so, by whom?**

Yes, I consider that I ought to have been made aware by the appropriate official. I do note that there was a general election in May 2015 and there would have been a purdah period from the dissolution of parliament. This might have influenced a decision not to bring the issues to me but I simply do not know.

- e. **Do you have information which suggests that your Special Adviser was aware of any of the matters referred to above? If so, please give details.**

No.

38. **By May 2015, DETI Finance Division was telling Energy Division that *"The email from Jon Parker (HMT) in April 2011 specified that RHI was not treated as standard AME, and overspending would have consequences for Resource DEL budgets"*; and that Energy Division should *"stop entering into commitments immediately to ensure that monthly cumulative expenditure does not increase"*, such that potential need to close the scheme was being considered (see WIT-02721 to WIT-02722). As to these matters:**

- a. **Were you aware of DETI Finance Division's concerns around this time in relation to Scheme expenditure and forecasts? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.**

No, I was not aware of DETI Finance Division's concerns around this time in relation to Scheme expenditure and forecasts.

- b. Were you aware of the potential risk to DETI's DEL budget in the event of over-spending on the Scheme? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.**

No, I was not aware of the potential risk to DETI's DEL budget.

- c. Were you aware of any consideration being given to closing or suspending the Scheme, or of amending the Scheme or tariffs payable under the Scheme, during your time holding office as DETI Minister? If so, please indicate how you were so aware; who informed you; when this occurred; and what steps, if any, which you took in relation to this issue.**

Save for the consultation in July 2013, I was not made aware of consideration being given to closing, suspending, or amending the Scheme.

- d. If you were not aware of any of the above issues which had arisen in relation to the Scheme at that time (in, or immediately preceding, May 2015), do you consider that you ought to have been made aware? If so, by whom?**

Yes, I believe I ought to have been made aware by the appropriate official.

- e. Were you made aware of any of the said issues after you ceased to hold office as DETI Minister but in advance of the amendment of the Scheme in November 2015? If so, please indicate how you were so made aware, giving full details of each occasion when you were provided with information in relation to same, beginning with the earliest such occasion (including who**



informed you; when this occurred; in what terms; and what steps, if any, which you took in relation to the issue).

I was made aware by Timothy Cairns that issues had arisen in June 2015. I was in my office in Parliament buildings when he knocked on the door and asked if he could have a word with me. Andrew Crawford was present. Timothy explained in general terms that there had been a difficult meeting with DECC in London involving the ROC Scheme for renewable electricity, and the RHI Scheme. As Andrew Crawford had been Special Adviser within DETI for a long time, Timothy asked whether I would be content for Andrew Crawford to assist him as he was a new Special Adviser to a new Minister. I said I was happy for Andrew to help him. I was not involved in, or aware of, any discussions or correspondence between them thereafter, and I did not ask or expect Andrew to report back to me in any way.

- f. Do you have information which suggests that your Special Adviser was aware of any of the matters referred to above? If so, please give details.**

See reply to e, above. This was the only information I had at the time that my Special Adviser was aware of issues with the Non Domestic RHI Scheme. I am now aware from the evidence presented to the Inquiry that there was further communication between my Special Adviser and Timothy Cairns.

39. Please describe the systems in place within the Department to ensure that matters of the nature referred to in the previous two paragraphs were communicated to you as Minister. Please also describe:

- a. What additional steps, if any, you took to ensure that:**
- i. You were informed of issues of concern or difficulties arising within your Department; and**

ii. You otherwise became aware of issues of concern or difficulties arising within your Department.

The systems in place within the Department to ensure that matters were communicated to me would primarily have been the provision of Ministerial submissions. It was not unusual to receive 30 to 40 submissions per day. They would have ranged in length and complexity depending on the issue. It was usual practice for my Special Adviser to read and annotate submissions, signing them if he was content, before they were forwarded to me for consideration.

i. and ii. Upon taking office as Minister I made it my practice to have weekly issues meetings with members of the Senior Management Team within the Department. This was to ensure a dialogue on issues and a free flow of information. In addition to this, I always made myself available through my Private Secretary if an official needed to raise something urgently. If a decision were required on the issue, I would have expected a written submission to be provided. This provided a formal record for both the Department and my Private Office of the decision taken.

b. How you assured yourself that you were, or would be, made aware of issues of concern or difficulties arising within your Department.

I relied on officials to bring forward issues of concern or difficulties.

c. What testing or other steps, if any, you undertook or caused to be undertaken to ensure that the systems to ensure that you, as Minister, were made aware of issues of concern or difficulties arising within your Department were operating effectively.

I trusted the officials within the Department to make me aware of issues of concern or difficulties. I had no reason to doubt that the systems were effective and that I was being provided with all the salient information to



allow me to perform my role. I therefore did not 'test' the systems. However, I did hold weekly issues meetings and make myself available to officials to encourage dialogue.

40. Please provide details of the understanding you had, while you were DETI Minister, of the process or processes by which DETI and DFP respectively could obtain clarity around the AME funding available to a specific Northern Ireland Government Department or in respect of a specific project or scheme.

My understanding while Minister was that DFP was the appropriate department to liaise with its GB counterpart, HMT, about funding. Within the Department I would have expected the Deputy Secretary in charge of finance, and others within that division, to liaise with DFP.

Letter to banks

41. As noted above, in January 2013, you wrote to a number of financial institutions in relation to the financial benefits offered by the Scheme and the security of payments to which owners of accredited installations were entitled. Please give an explanation of (a) why this correspondence was sent; (b) who, if anyone, had asked for such correspondence to be provided from the Minister or Department; and (c) what consideration (if any) was given at that time to the prospect that tariffs payable under the Scheme may ultimately turn out to have been set at an incorrect level (including a level which was too high).

(a) There was a meeting of the Sustainable Energy Inter-Departmental Working Group (SEIDWG) shortly after the scheme was launched in November 2012. At that meeting concern was raised that businesses were finding it difficult to access finance. Given the financial climate at the time, banks were being very careful about lending, particularly for a new initiative like the RHI Scheme. There was a concern that this would limit uptake so it



was agreed that a letter should issue to banks to outline the Scheme. It was a high level letter in general terms.

- (b) I cannot recall who at the meeting suggested that such correspondence be provided. The matter was then brought to me by Fiona Hepper in a submission 643/2012 dated 31 December 2012. I duly signed off the submission on 7 January 2013.
- (c) I do not know whether officials considered this, but I did not consider it as it was not brought to me.

Lack of review in 2014

42. It appears to the Inquiry that the planned review of the Scheme, which was to commence in 2014, did not occur in that year or at any time in advance of your ceasing to hold office as DETI Minister. As to that:

- a. Were you aware that a planned review of the Scheme was to be commenced in 2014? If so, how did you become so aware and when did you become so aware?**

I would have been aware as a result of reading the Regulatory Impact Assessment in April 2012 that the review was intended to commence in January 2014. Thereafter I would have expected a submission to be brought to me about a review, if not before the domestic scheme was introduced, as soon as possible thereafter. This was not done.

- b. Were you aware during your time in office as DETI Minister that the planned review of the Scheme had not been commenced or undertaken either in 2014 or at all? If you were so aware:**
- i. What did you consider was the reason for this?**
 - ii. What steps, if any, did you take to rectify the situation?**



I was not aware that the planned review had not been commenced or undertaken. It was not brought to my attention. If it had been, then I would have taken action to ensure the Scheme was reviewed.

Further information required in response to questions set out in Notice 135 of 2017

[References to questions below are references to enquiries in the Schedule of Chairman's Notice 135 of 2017]

Question 2

43. Please provide the specific dates between which you held the roles you have listed in response to question 2 in your previous statement.

I do not have specific dates for the first three roles.

I ceased being Minister of DETI at close of polls on 5th May 2011 and was re-appointed on 16th May 2011.

I ceased being Minister of DETI and took up role of Minister of DFP on 11th May 2015.

I was appointed as First Minister on 11th January 2016 and remained in that role until 9th January 2017.

44. Please provide a response to all aspects of question 2 in Notice 135 of 2017. The question sought information on how and why you were appointed to the roles; what the roles entailed; and how; if at all, each role related to the Scheme.

As to why I was appointed into the various Ministerial Offices, this is a matter for the nominating officer.

As Minister, my key roles were to set the Departments' strategic direction; make policy decisions; and present and account for policy to the public and the Assembly.

While DETI Minister I set the policy direction for the creation and implementation of the Non Domestic RHI Scheme and the Scheme remained in my portfolio until I left office on 11th May 2015.

As DFP Minister, I would have had overall control of the NI Budget under which RHI fell. I had no specific role in relation to the RHI Scheme.

As First Minister, when it became obvious that it was necessary to close the Scheme to new applicants, the matter was escalated to me, and I was then involved in the steps taken to ensure the Scheme was closed in a timely and ordered fashion.

Questions 3a and 3b

45. You have stated in your previous statement that the duties you considered you owed as Minister and the rules or codes governing the exercise of your Ministerial functions were set out in the Ministerial Code incorporating the Pledge of Office, the Ministerial Code of Conduct and the Seven Principles of Public Life. Was it your understanding that the Ministerial Code set out the entirety of our obligations in your position as Minister?

It is very difficult to set out the entirety of a Minister's role and obligations. As stated above, I was responsible for setting the Departments' strategic direction, making policy decisions, and advocating in relation to policy. I would have considered the role to be one of leadership and endeavoured to ensure that policies were turned into practical reality.

Question 4b

46. You have stated in your previous statement that you consider that you were the only person entitled to give instructions to your Special Advisers. Please confirm whether, to your knowledge, you were the only person to give instructions to your Special Advisers.

I am not aware of any other person having done so.

Question 4c

47. You have stated in your previous statement that Special Advisers would have discussed issues with others, particularly where those issues were cross-cutting. Please set out the other circumstances in which the Special Advisers would have discussed issues with others.

It is my understanding that Special Advisers would have discussed party policy and, in broad terms, the work of individual departments, to ensure that manifesto commitments were being implemented as far as is possible in a mandatory coalition. This allowed Special Advisers to advise their respective Ministers appropriately about what was happening in other departments so that Ministers could work together where that might be useful, and, vice versa, to pre-empt situations where the work of one department might adversely affect the policy of another department or the Executive.

48. Please set out whether there was an understood or accepted hierarchy within the DUP team of Special Advisers. (For example, some evidence available to the Inquiry suggests that Special Advisers in the First Minister's Office were viewed to have seniority and that Timothy Johnston was seen to have the highest degree of seniority. Do you consider that this is correct?)

Special Advisers are often considered to speak on behalf of their appointing officer. As such, if a Special Adviser in the First Minister's Office expresses a particular view, it is likely to be considered to be the view of the First Minister,



who is also the leader of the party, and the nominating officer for the Ministers that the other Special Advisers serve. I do not consider that there is a hierarchy *per se* but this convention may lead to the impression that the views of the Special Advisers in the First Minister's office should be given more weight than those of other Special Advisers.

Question 4d

49. You have stated that your Special Advisers' primary duty was to you, in the exercise of your Ministerial functions. Please set out in comprehensive terms the further duties you consider your Special Adviser(s) had.

I would have considered my Special Adviser to have a duty to work with officials in the Department in relation to the formation of policy. My Special Adviser was a link to officials. He would have met with officials without me and advised on the political implications of policies i.e. he linked the politics to the policy, and on policy generally.

50. You have also stated that in "*fulfilling this duty their role included considering the political implications of matters and advising you accordingly*". Please set out in comprehensive terms what else their role included in your view.

As stated above, my Special Adviser's role was to be a link to officials. I also consider that he had a duty to advise on policy generally, rather than solely on the political dimensions.

51. Please clarify what duties your Special Adviser(s) owed (or may have considered himself or herself to owe) to the political party to which you were affiliated and how, if at all, that affected their role or their performance of it.

My Special Adviser was a political appointee. He shared the political views of the party he was appointed to serve and was selected by the First Minister and party officers following discussion about who fitted the role. He therefore would have been expected to provide advice in line with the party's manifesto commitments.

Question 4e

52. For each ministerial office you held, please clarify how your Special Advisers interacted with civil servants, and the procedures that operated within each of the relevant Departments between civil servants, the Special Advisers and the Minister.

In relation to my Special Adviser's interaction with civil servants, officials would have run matters past my Special Adviser to gauge my likely view. In this way he acted as a conduit to officials who would have spoken to him both formally and informally. He also set up his own meetings with officials as and when required on issues as he saw fit.

In relation to the procedures that operated, it was usual practice for submissions to go first to my Special Adviser to read and annotate and then to come to me. If he had any issues he would have engaged with officials to gain clarity in order to advise me. He would also have been present at meetings with me, including issues meetings.

53. You have referred to receiving input from your Special Adviser, during the creation, development and operation of the Scheme, before making decisions As to this:

- a. Please describe the process of this input being provided? (For instance, was it provided in writing or orally? If in writing, was it provided by means of handwritten notes or by email? If by email, which email accounts would have been used?)**



Any advice would have been oral.

- b. Please set out any advice or input received from your Special Adviser in relation to the RHI Scheme which you recall.**

I cannot recall any specific advice given but I don't believe he advised anything contrary to the direction of the submission as if he done so I believe I would have recalled it.

- c. Do you recall any occasions when the Special Adviser's advice or input was contrary to your own view? If so, please give details.**

Not in relation to RHI.

- 54. You have stated that the Scheme was intended to incentivise the uptake of renewable heat technologies to support the EU wide target. Please indicate whether, in your view, there were any other intended outcomes of the Scheme and, if so, what they were.**

It was my belief that it would be good for the local economy by creating jobs and encouraging the growth and sustainability of the renewable heat market in Northern Ireland.

- 55. You have referred to underspend and low take-up in the Scheme during your time as Minister. Please describe when and how you became aware of this and what, if any, action or actions you and/or your officials took to address the Scheme not delivering in accordance with the planned targets. Please describe whether this situation changed during the time you were DETI Minister and, if so, when you became aware of when, how and for what reasons this situation had changed.**

I became aware there wasn't a high take-up during SEIDWG meetings. I am definitely aware it was raised at the first one. In response I issued the letter to



banks and promoted the Scheme generally, as set out below at 63. Officials were also engaged in promoting the Scheme. However, I was not aware that the situation had changed (as it now appears it obviously had) in early 2015.

56. You have recalled visiting a production facility at Lisburn of Warmflow Engineering Co Limited in early July 2014, when you were asked about the possible timeline for introduction of the domestic RHI scheme. As to this:

- a. Please provide any further details about this interaction which you can recall (for instance, who spoke to you and what the substance of the exchange was).**

I visited Warmflow as part of my work on economic development i.e. not in relation to energy specifically. The local MP or MLA most likely organised for me to attend. At the end of the visit I was shown their domestic biomass boilers. I recall two managers or directors of the firm asking me when the domestic scheme was going to go live as this would have an impact on their sales and manufacturing. I cannot remember my exact response but I would have said that we are hoping it will be later this year. The submission of 7 July 2014 came up to me quite soon after that so it was fresh in my mind hence I made the note on the front of the submission.

- b. Provide details as to you, or your party's, relationship with Warmflow Engineering and/or its owners or directors. (For instance, are they party donors or supporters?)**

I have no relationship with Warmflow and/or its owners or directors and do not believe they are donors to the party as they do not appear in the party's centrally held records of donations notified to the Electoral Commission, see also below at 69.



- c. Specify whether this exchange (and any exchange with any other stakeholder) influenced your approach to the timing of the introduction of the Domestic RHI Scheme and, if so, how it did so.**

This exchange did not influence my approach, it simply indicated to me that businesses in the heating industry were aware of the Scheme and waiting for it to be implemented.

- 57. Describe any other interactions you had with the renewable heating industry and/or actual or potential applicants for accreditation under the Scheme in relation to, or touching upon, the Scheme.**

I recall a visit to John Gilliland at Brook Hall Estate in County Londonderry where a biomass boiler had recently been installed and was operational. John Gilliland was very involved in the renewables sector and would have been proactive in engaging with DETI about renewable energy.

- 58. You have stated that while you now understand that there was communication about RHI between DETI and DFP from May 2015 onwards, this was not escalated to Ministerial level. Would you have expected this to be escalated to Ministerial level and, if so, what is your view on the reasons for it not being so escalated?**

I would only have expected for the issue to be escalated to me if it appeared to DFP that there was going to be an impact on the overall budget for Northern Ireland. Further, I might have expected to be made aware that DETI had moved into irregularity after 31st March 2015. I do not know why these issues were not escalated to Ministerial level at the time.

- 59. You have stated that you did not have a role in the amendment of the Scheme in Autumn 2015. In relation to this:**

- a. **State whether (to your knowledge or belief) your Special Adviser(s) had any role in, or discussions relating to, the amendment of the scheme in Autumn 2015 and, if so, please give full details (including the nature or the role of the discussions; who was involved; when, where and how any such communications occurred; and the substance of any relevant communications of which you are aware).**

I understand that my Special Adviser Andrew Crawford was assisting Timothy Cairns at that time. I am not aware of the substance of any discussions between them. If Andrew Crawford became aware of anything relating to the amendment of the scheme in Autumn 2015, in his role as DFP Special Adviser, I was not aware of it.

- b. **It has been suggested to the Inquiry that there were meetings involving several DUP Special Advisers to discuss amendment to the Scheme in or around June 2015. It has also been suggested that you were present at one such meeting. Please give full details of any knowledge you have of any such meetings or discussions (including the nature or the role of the discussions; who was involved; when, where and how any such communications occurred; and the substance of any relevant communications of which you are aware).**

I was only present at the meeting with Timothy Cairns and Andrew Crawford in June 2015, described above at 38. I was neither present at, nor aware of, any other meetings.

- c. **It has been suggested to the Inquiry that Timothy Johnston directed the approach to be taken to amendment to the Scheme. Please set out full details of any knowledge you have of this.**

I have no knowledge of this.

Question 9b

60. It has been suggested to the Inquiry that Special Advisers to other Ministers would from time to time receive instructions from the First Minister (or from the First Minister's Special Adviser(s) on the First Minister's behalf). Please confirm whether this was the case generally; and whether any such instructions concerned the Scheme and, if so, the nature of the instructions.

It is my understanding that Special Advisers to other Ministers would from time to time discuss issues with other Special Advisers, including the First Minister's Special Advisers. These discussions would be high level and relate to party policy generally. In that context, the First Minister's Special Advisers would, for example, communicate the desire of the First Minister (who is also the party leader) to ensure that manifesto commitments were being implemented as far as is possible in a mandatory coalition. However, a Special Adviser from within the office of the First Minister would not be aware of the detail of the wide range of policies within individual departments and therefore would not be in a position to 'instruct' other Special Advisers on work that was specific to their departments.

Question 10

61. You have stated in your previous statement that you became aware of the true funding position in relation to the RHI Scheme in or around the end of December 2016 or early January 2017, when clarification from HM Treasury was communicated. Please set out the nature and content of this clarification and how it was communicated to you.

The previous statement should read December 2015 or early January 2016. I cannot recall precisely when I was made aware of HMT's position. It may have been brought to my attention by DFP officials when it was confirmed by Treasury to DFP that RHI overspending would have to be met from DEL in



December 2015. In January 2016, after I had become First Minister, this would have been confirmed in the Chief Secretary's Settlement Letter.

Question 11

62. You have stated in your previous statement that there were a number of significant flaws with the scheme and that one of the crucial mistakes was that the tariff for small to medium biomass was set at a level higher than the cost of fuel. What, in your view, were the other flaws?

Without prejudice to what emerges throughout the remainder of the Inquiry, the following is a non-exhaustive list of what I perceive to be flaws and of which I have become aware: the lack of understanding of the nature and implications of the HMT funding; the fact cost controls were not brought up to me following the phase 2 consultation; inadequate scheme management; the failure to review the scheme as planned; the failure to seek re-approval in April 2015 that may have triggered a review; the lack of power to suspend the scheme; the fact that the regulations were not sufficiently robust and did not reflect the policy intent; the lack of capacity within Energy Division and a change in key personnel within a short period of time; and inadequate handover.

With the exception of the lack of capacity within Energy Division, I clearly did not know there were flaws in the Scheme during my time as DETI Minister, or at any time when I may have been able to take action to prevent the problems that arose.

Question 12

63. You have stated in your previous statement that you were involved in promoting the scheme to encourage uptake generally. Please describe the the in which you promoted the Scheme; and the information to which you drew attention in order to publicise the benefits of the Scheme?

I promoted the Scheme within the Assembly when, for example, I was bringing



forward the SL1 in the Chamber, via press releases, and the letter to the banks, referred to above. I also occasionally attended Energy conferences at which I would have promoted the RHI Scheme in the context of encouraging the use of all forms of renewable energy. I do not recall, for example, having promoted the Scheme by reference to the specific tariffs available.

Question 13

64. You have stated that you do not recall instances of lobbying or encouragement of the type described in question 13 in the Schedule to Notice 135 of 2017, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

I was referring to my interaction with Stephen Harron, I considered this to have been a form of lobbying given that he was a constituent who was keen for business reasons that the introduction of cost controls be delayed.

Question 14

65. You have stated that you do not recall instances of influence or pressure being exerted of the type described in question 14, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

I did not feel influenced or pressured by anybody. However, I did speak with Stephen Harron on 13th November 2015 when he enquired as to the date for the introduction of cost controls because he had clients awaiting boilers. I dealt with it by speaking to Timothy Cairns (see further my replies at questions 75 to 80).

I also now recall visiting Brook Hall Estate where John Gilliland had a biomass



boiler accredited under the Scheme. As a major proponent of renewable energy, he sought to influence me on a number of issues at that time, however, I do not recall the specifics.

Question 15

66. You have stated that you do not recall instances of influence or pressure being exerted of the type described in question 15, save for those outlined elsewhere in your statement or that might be apparent from documents provided by you and your colleagues to the Inquiry. Please specify and provide details of the instances to which you are referring.

On further consideration of this question I am unable to recall any specific instances.

Question 16

67. You have stated that you do not recall instances of breaching of standards or acting in circumstances of real or perceived conflict of interest of the type described in question 16, save for those already in the public domain or within the documentation provided by you and your colleagues. Please specify and provide details of the instances to which you are referring.

Circumstances of perceived conflict of interest of which I am aware are those already in the public domain. These are: (i) John Robinson stepping aside from advising his Minister on the Scheme because his father in law is a Scheme recipient; (ii) Stephen Brimstone being a recipient under the Scheme; (iii) Andrew Crawford having family members who are recipients under the Scheme.

Question 17



68. You have stated that you are not aware of any connections of the type described in question 17, aside from those already in the public domain or within the documentation provided by you and your colleagues. Please specify and provide details of the connection to which you are referring.

The only connection I can specifically identify is Stephen Harron. His initial contact with me in November 2015 was as a constituent whom I had known for a number of years. Later, as is apparent from my documents, he emailed to indicate his support for me.

69. Without prejudice to the generality of the foregoing, in light of the publication by the Department for the Economy of the list of those in receipt of subsidies under the Non Domestic RHI Scheme and your position as Leader of the Democratic Unionist Party, set out those who have received or are receiving subsidies under the RHI Scheme who or which are or have been donors to the DUP.

The party centrally only holds records of those donations requiring notification to the Electoral Commission i.e. those over £500. From those records, no person or business who has received or is receiving subsidies is a donor to the DUP.

Questions 18 and 19

70. You have referred to being contacted by Janette O'Hagan in September 2013 to your DETI email account and, later, to your personal email account. Please provide a full account of what actions you took as a result of receiving these emails. Please include an account of what you did in relation to Ms O'Hagan's email of 3 September 2013.

Janette O'Hagan emailed my personal email address on 26th August 2013. I would have read the email and realised that it was a matter for the Department. As was my practice I either then sent the email to my constituency office to forward to DETI Private Office or I forwarded it to the Private Office directly. It



is civil service procedure for Ministerial correspondence to be considered by officials within the Department. If, thereafter, the issue requires Ministerial attention a submission should then be brought to the Minister outlining recommended action.

When I received the email of 3rd September 2013, although I have no specific recollection, I believe I probably recognised the sender and the subject matter and considered that it was the same email I had dealt with the week before. I do not remember seeing the additional sentence referring to misuse. As such I did not also forward this email to DETI but I do believe this email prompted me to check whether an official from the Department had responded to her on foot of the 26th August 2013 email.

71. You have indicated in your previous statement that only the email from Janette O'Hagan to your personal account included reference to concerns. You also state that her concerns were not escalated to Ministerial level. Can you explain how these two statements relate to each other including how, having received and being aware of her concerns, while at the same time having knowledge they were not being escalated to Ministerial level, you gained assurance that they were being dealt with accurately.

While Janette O'Hagan had raised her concerns directly with me, I referred the email to officials within the Department, as is the proper means of ensuring that correspondence relevant to the Department is dealt with appropriately. When I state that Ms O'Hagan's concerns were not escalated to Ministerial level, I am referring to the procedure outlined in the reply to question 70, whereby following investigation by officials, the concerns would later be brought to me by submission for my consideration and action if required. I would have assumed that if anything significant arose from the engagement between Ms O'Hagan and the Department, I would have been made aware of it by submission in due course. I had no reason to believe her concerns had not been given full and proper consideration, and indeed I am now aware that she met with officials and the RHI Scheme was discussed, presumably including her concerns.



Notwithstanding this, I was not made aware of Ms O'Hagan's concerns by way of submission or any other means at any time thereafter.

72. You have referred in your previous statement to the note you received from a constituent, George Gallagher, which was then attached to a minute from the Head of the Civil Service dated 27 January 2016. Please describe what further action, if any, you or others took on foot of this note, or what assurance you received that appropriate action was being taken.

I was First Minister when Mr Gallagher came in to see me in my constituency office in Enniskillen. In accordance with civil service procedure, I passed the note to the Head of the Civil Service, Sir Malcolm McKibbin, in his role as Permanent Secretary to the Executive office. As Sir Malcolm McKibbin was the most Senior Civil Servant in Northern Ireland, I was assured that the matter would be dealt with appropriately. In fact, Sir Malcolm McKibbin escalated the matter quickly, and raised it directly with the DofE Permanent Secretary, Andrew McCormick. I did not consider that there was a need for me to take any further action in relation to the note.

73. You refer to becoming aware in October 2016 that an anonymous whistleblower had made allegations about Stephen Brimstone's installation. Please provide details of how you became aware of such allegations, to whom they were made, and what their nature was. What steps, if any, did you take in relation to this issue?

I recall being aware around this time that letters that had been sent to Robin Swann MLA and Jim Allister MLA regarding Stephen Brimstone's installation. I was not told directly about the allegations nor the specific detail of the concerns. Stephen Brimstone resigned to pursue other opportunities shortly thereafter. I did not take any steps in relation to this issue. I understand that the allegations have been fully investigated.

Question 20

74. You have stated that you first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel in or around July 2016, when the problem was identified by the NIAO. In light of this, what was your understanding of the reason for the application spike in Autumn 2015?

I considered that the spike was the natural consequence of altering a Scheme to reduce the subsidy payable to recipients. I certainly was not aware of the difficulties with the Scheme that led to it being far more lucrative for some recipients than was intended.

Question 21

75. You have referred to being contacted by Stephen Harron. Please provide details of whether you knew Stephen Harron before 13 November 2015 and, if so, what was the nature of previous contact with him.

Stephen Harron was a constituent and former client of mine when I was a solicitor in Cooper Wilkinson. I attended the funeral of his nephew who was sadly killed in a road accident, and know other members of the Harron family as they are from Fermanagh. When Stephen Harron contacted me in November 2015 I had not heard from him for quite a while.

76. Please detail the specific representations Mr Harron had made to you on 13 November 2015 or any other date in relation to the Scheme, including (without prejudice to the generality of the foregoing, on whose behalf Mr Harron indicated he was making representations to you about the Scheme).

Mr Harron had been due to come in to see me at my constituency office but later provided a mobile number for me to ring him, which I did. He told me that he was now working fitting boilers and that he had clients who had ordered boilers that hadn't yet arrived. He explained that he would not be able to get



these boilers fitted before the Scheme changed and asked me when the Scheme was changing and if anything could be done. He did not mention the names of his clients or the business he worked for. I undertook to enquire on his behalf.

77. Specify whether you knew that Mr Harron worked for Hegan Biomass at that time.

I did not know that Mr Harron worked for Hegan Biomass.

78. Specify whether you were aware of any other persons connected or related to Mr Harron who were Scheme applicants, or potential Scheme applicants.

No, I was not aware.

79. Please indicate why you raised the issue of Mr Harron's representations with the DETI Minister's Special Adviser, rather than the DETI Minister himself.

I didn't want to bother the Minister with a constituency enquiry. I felt that the Special Adviser would be able to get an answer and get back to me quickly, which he did. My understanding was that Timothy Cairns went away, asked the question, the answer was no, and I accepted that.

80. Set out your understanding, at the time of contacting Timothy Cairns in relation to Mr Harron's representations, of (a) the funding position in relation to the Scheme and (b) the extent of the over-spend in relation to the Scheme.

I wasn't aware of either which is why I asked the question. If I had been aware, I would not have enquired about the possibility of moving the introduction of tiered tariffs back.



Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed:

Dated:

19th January 2018