



**RHI Inquiry**

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Bernie Brankin

Personal information redacted by  
the RHI Inquiry

By post and email: [jimbrankin](mailto:jimbrankin)

Personal information  
redacted by the RHI  
Inquiry

20 November 2018

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').

The Inquiry is grateful for the evidence you have provided to it to date.

There are a number of further matters that the Inquiry would be grateful for your assistance with.

Therefore, please find enclosed with this letter a further Section 21 Notice requiring 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 Section 21 Notice.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

It is 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.

I remind you again of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous correspondence.

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.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to [Patrick.Butler@rhiinquiry.org](mailto: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, slightly slanted style.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE****[No 224 of 2018]**

*Email chain of 4 October 2011*

You are referred to the following documents:

- Your email to DETI Energy Division Sustainable Energy Branch's Alison Clydesdale of the 3 May 2011, with the chain of emails back to the Jon Parker email of 15 April 2011 (**WIT-00840 to WIT-00843**)
  - The transcript of your oral evidence of the 6 December 2017 (**TRA-01626 to TRA-01707**)
  - The transcript of your oral evidence of the 24 January 2018 (**TRA-03190 to TRA-03245**)
  - **Your email, with attachment, to DETI Energy Division Sustainable Energy Branch's Joanne McCutcheon of the 4 October 2011 (DFE-463386 to DFE-463391)**
  - Joanne McCutcheon's email to DETI Energy Division Co-Ordination Branch's Sandra Thompson of the 7 November 2011 (**DFE-62195**)
  - 30 November 2011 DETI Finance Division submission on January Monitoring 11/12 and AME Forecasting 11/12 (**DFE-194575 to DFE-194589**)
1. The Inquiry has been provided with email correspondence dated 4 October 2011 between you and DETI Energy Division Sustainable Energy Branch's Joanne McCutcheon, and subsequent communication from Joanne McCutcheon to DETI Energy Division Co-Ordination Branch's Sandra Thompson (**DFE-463386-7**). Embedded in (or attached to) your email sent to Joanne McCutcheon at 13.20 on 4 October 2011 (**DFE-463386**) are the emails between HMT's Jon Parker and DETI Energy Division Sustainable Energy Branch's Alison Clydesdale of 11 and 15 April 2011 and your emails to Alison Clydesdale of 15 April 2011 and 3 May 2011 (**DFE-463388-91**). Your email of the 4 October 2011 at 13.20 appears to be in similar terms to your email of the 3 May 2011; a warning not to overspend because of the consequences for DEL. As to this:

- a. The question posed to you by Joanne McCutcheon, on foot of what appears to have been an AME forecasting exercise issued on the 3 October 2011, was about re-profiling an AME underspend. Regardless of the correctness of this terminology, why did you consider it necessary to not only address the question of underspending, but also the consequences of overspending?
  - b. Why did you consider it appropriate to provide Joanne McCutcheon with a copy of your previous correspondence with Alison Clydesdale from May 2011?
  - c. In your mail to Joanne McCutcheon of the 3 October 2011 at 13.20 you stated: "*If you wish to discuss further or would like advice on particular issues, give me a telephone call or call in to see me in my office.*" Did you and Joanne McCutcheon speak about this issue at the time of your email or subsequently in 2011? If so please provide details.
  - d. What did you expect Joanne McCutcheon and DETI Energy Division to do on foot of the information you provided to her in your mail at 13.20? Please give reasons for your answer.
  - e. Having received your mail on 4 October 2011, Joanne McCutcheon wrote to Sandra Thompson saying that it "*doesn't look like we can move it*" (taken by the Inquiry to mean the unspent RHI funding for 11/12). Given the contents of your mail at 13.20, this comment by Joanne McCutcheon, and the fact that the RHI budget was subsequently re-profiled so that £1.8m was moved forward from 2011/12 to 2012/13 (confirmed by DFP through the budgetary process), was there further engagement between DETI Energy Division and Finance Division on this issue? If there was, please give an account of it.
2. If there is any further relevant evidence you can give to assist the Inquiry in respect of the 2010 and 2011 events relating to RHI funding then please do so.

4 June 2015

3. On the 4 June 2015 Stuart Wightman sent you a narrative (copying in Trevor Cooper and John Mills) for DETI Finance Division to give to DFP (DFE-146513 to DFE-146514). The narrative includes material about what is said to have been a “review” in 2013, the delaying of the introduction of cost controls because of oil prices in 2014, and the introduction of tiering for new applications to “manage demand guard and (sic) against over-incentivisation”.
  - a. What do you say about the claim that DETI started to make in June 2015 that there had been a “review” of the RHI Scheme in 2013?
  - b. Was there no challenge to this proposition? If not, why not?
4. Stuart Wightman informed you in the 4 June 2015 narrative that “we are currently developing proposals to introduce a tiered/reduced tariff for the most popular biomass tariff for new applications to manage demand guard and (sic) against over-incentivisation”. As to this:
  - a. What did you understand was meant by the expressed need to guard against over-incentivisation?
  - b. What steps did you take, or are you aware of having been taken, to find out why there was a need to guard against over-incentivisation? What was found out about what this meant?

12 June 2015

5. By the 12 June 2015 Trevor Cooper, having analysed the first draft of the 2015 Addendum Business Case from Stuart Wightman (WIT-18759 to WIT-18765), identified that RHI scheme members may be being overcompensated. As to this:

- a. What discussions were had with you about whether the RHI Scheme was overcompensating RHI scheme members?
- b. When did you reach the view that RHI scheme members were being overcompensated? Please explain your answer.

*The draft Ministerial submission circulated on 15 June 2015*

6. It appears to the Inquiry that a draft Ministerial submission was sent to you, amongst others, by Stuart Wightman on 15 June 2015 (see **DFE-278171 to DFE-278177**). You are referred to the draft letter (attached as an annex to Stuart Wightman's draft submission to the DETI Minister) for the DETI Minister to send to the then DECC Secretary of State, Amber Rudd. The draft letter sought, amongst other things, further funds beyond the population-based share (mis-described as the Barnett formula). The letter appears to conclude (see **DFE-278177**) by seeking confirmation that any further funds, beyond the population-based share, "*will have no consequences on the NI Block Grant*". As to this:
  - a. Does this mean that it was understood in DETI, by 15 June 2015, that there was at least a risk that any funds expended on RHI beyond the population-based share could have consequences for the NI Block Grant? Please explain your answer.
  - b. If so, who else (if anyone) do you say understood, by 15 June 2015, that there was at least a risk that any funds expended on RHI beyond the population-based share could have consequences for the NI Block Grant?

*Your email of 17 June 2015*

You are referred to the following documents

- Your email of the 4 June 2015 (**DFE-146515 to DFE-146523**)
  - Your email of the 17 June 2015 at 11.53 (**DFE-146694 to DFE-146702**)
  - Your email of the 17 June 2015 at 14.50 (**DFE-146777 to 146811**)
7. On the 17 June 2015 you sent Trevor Cooper a series of RHI funding related documents in advance of a meeting about the RHI Scheme involving, amongst others, the DETI Permanent Secretary. As to this:
- a. Why were you providing the material?
  - b. What position did you understand the material reflected?
  - c. What did you understand was the outworking of the 17 June 2015 meeting, and where did your understanding come from?

*Sandra Thompson, Trevor Cooper the Perverse Incentive*

8. You are referred to the witness statements of Sandra Thompson at **WIT-24239** and **WIT-24294**. Ms Thompson appears to be of the view that she gained knowledge of the perverse incentive which existed within at least the medium biomass tariff on the RHI Scheme (that the cost of renewable fuel per kwh and/or the cost of producing renewable heat per kwh was cheaper than the subsidy; the effect of which was that it rewarded scheme members to burn as much fuel as possible) from Stuart Wightman, and in advance of the Ministerial announcement on 8 September 2015. When did you find out the following:
- a. That the cost of fuel per kwh was lower than the RHI incentive per kwh for medium biomass? Please explain your answer.
  - b. That the cost of producing heat per kwh was lower than the RHI incentive per kwh for medium biomass? Please explain your answer.

- c. That the effect of the per kwh cost of fuel used to produce heat and/or the per kwh cost of producing the heat being lower than the RHI incentive per kwh for medium biomass meant it rewarded scheme members to burn as much fuel as possible? Please explain your answer.
9. You are referred to the witness statements of Trevor Cooper (**WIT-18544** and **WIT-19046**) and Shane Murphy (**WIT-19650**), and the oral evidence of Trevor Cooper on 17 and 18 October 2018 (**TRA-15634** to **TRA-15974**, in particular at **TRA-15789** to **TRA-15794** and **TRA-15886** to **TRA-15890**). A summary of the evidence appears to be the suggestion that Trevor Cooper asked Stuart Wightman whether it was possible for a scheme applicant to make money just from running their boiler(s). Stuart Wightman is said to have assured Trevor Cooper that this was not possible, based on the price of oil (although the subject of oil prices would appear irrelevant to whether someone who had a biomass boiler could make money from running it). As to this:
- a. Did Trevor Cooper ever discuss this issue with you?
- b. If he did please set out what the discussion was, when it occurred and who was involved in it?
- c. Please set out any further comments you have in relation to the evidence of Trevor Cooper and Shane Murphy identified above.

### *2015 Addendum Business Case*

You are referred to the following documents in the above regard:

- **DFE-147524 to DFE-147549**: Stuart Wightman's email of 27 July 2015 and "*draft supplementary business case*"
- **DFE-278778**: Stuart Wightman's email of 28 July 2015 explaining a revised approach following a meeting of 27 July 2015, and that Seamus Hughes would send round a revised draft of the 2015 addendum business case;



- **DFE-468647 to DFE-468677**: Stuart Wightman's email of 28 July 2015 with an attached draft Addendum Business Case with the document name "*Business Case – ND RHI 18month Extension (270715).docx*"; and
- **DFE-147551 and DFE-459743 to DFE-459769**: Seamus Hughes' email of 29 July 2015 circulating the "*Business case ND EHI (sic) 18 month extension.tr5*" (with the version available to be accessed at the time of the email being revision 2 of the TRIM document DT1/15/0125105 – RHI Business Case – Version 1 (270715) – see **DFE-458059 to DFE-458066**).

10. On the 29 July 2015 Seamus Hughes included you in an email circulating the then draft of what ultimately became the 2015 Addendum Business Case; see **DFE-147551 and DFE-459743 to DFE-459769** for Seamus Hughes' email of 29 July 2015 circulating the "*Business case ND EHI (sic) 18 month extension.tr5*" (with the version available to be accessed at the time of the email being revision 2 of the TRIM document DT1/15/0125105 – RHI Business Case – Version 1 (270715) – see **DFE-458059 to DFE-458066**). This appears to have followed a meeting that took place on the 27 July 2015 during which consideration was given to an earlier draft of the 2015 Addendum Business case. As to this:

- a. Were you involved in the meeting of the 27 July 2015? If so, please give an account of the meeting of 27 July 2015, including who was there and what the purpose of the meeting was.
- b. What discussion was there, at the meeting on 27 July 2015, as to the contents of the 27 July 15 draft paragraph 5.13 (see **DFE-147540**; that "*The introduction of the tiered tariff will reduce the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income*") and the reasons why that statement was included?
- c. The version Stuart Wightman had circulated in advance of the meeting on 27 July 2015 sought approval to 31 March 2020 (**DFE-147525 and DFE-147528**). The revised version Stuart Wightman sent to his 'detini' account on 28 July 2015 (albeit with some typing errors), and the version

subsequently made available by Seamus Hughes on 29 July 2015, appears to have been amended to seek approval for a shorter 18 month period to 30 September 2016 (see **DFE-468652**, **DFE-468655** and **DFE-459746**). How did this change in approach come about?

- d. The version Stuart Wightman circulated in advance of the meeting on 27 July 2015 contained a caveat in respect of the employment benefits aspect of the NPV analysis (see **DFE-147531**). The revised version Stuart Wightman sent to his 'detini' account on 28 July 2015 appears to still have had the caveat present (**DFE-468658**). However, by the time the document appears to have been transferred to Seamus Hughes (**DFE-459776**), and placed in TRIM (it would seem sometime on or before the morning of 29 July 2015), the caveat appears to have been removed and replaced with a new paragraph 3.10, along with an explanatory comment from Stuart Wightman. The Revision 2 document accessible from Seamus Hughes' email of 29 July 2015 (**DFE-459749**) consequently no longer retained the caveat. Please explain as fully as you can why was the caveat removed, at whose suggestion, and what consideration (if any) was given to the effect of this.

11. Seamus Hughes' email to you of the 29 July 2015 (**DFE-147551**) appears to have been intended to cause you and Trevor Cooper to consider the draft 2015 Addendum Business Case (as it then stood) in order to check if Energy Division was "on the right track". Seamus Hughes welcomed comments on it. You are referred to the TRIM metadata for the version of the 2015 Addendum Business Case that would have been accessible via Seamus Hughes' email; "DTI/15/0125105 – RHI Business Case – Version 1 (270715)", see **DFE-458059** to **DFE-458066**. According to the TRIM metadata (**DFE-458065**) you accessed the then draft of the 2015 Addendum Business Case on the 29 July 2015. As well as revision 2, you may also have been accessing the document when it was at revision 4 – see **DFE-459689** to **DFE-459715**. As to this:

- a. What was your purpose in accessing the draft 2015 Addendum Business Case?

- b. If you read this version of the Addendum Business Case:
- i. Did you realise that the caveat relating to the employment benefit aspects of the NPV calculation had been removed?
  - ii. Did you notice, understand the purpose of, or ask about the reference in par 5.13 about the introduction of tiering being to reduce the risk of gaming?
  - iii. What was the state of your knowledge at this point about whether the RHI Scheme was being exploited?

12. On the 5 October 2015 John Mills circulated a further version of the 2015 Addendum Business Case (DFE-147644). According to the TRIM Metadata for this version of the 2015 Addendum Business Case (DFE-458067 to DFE-458072) you accessed this version on the 8 October 2015 (DFE-461340 to DFE-461366). It also appears there was a meeting about the 2015 Addendum Business Case on the 8 October 2015 (see DFE-148122) which resulted in a further version of the 2015 Addendum Business Case being produced (amongst other things, the period for which approval was sought moved out to December 2016, and the passage about reducing the risk of gaming remained). As to this:

- a. Why were you accessing the 2015 Addendum Business Case at this point?
- b. Were you involved in the meeting of the 8 October 2015? If so, please give an account of it.
- c. What was the state of your knowledge at this point about whether the RHI Scheme was being exploited?

*Letter from Solmatix dated 10 July 2015*

13. At DFE-107130 to DFE-107132 there is an email of the 10 July 2015 from Frank McCullagh of Solmatix to DETI's Seamus Hughes attaching a letter regarding

*"possible changes to NI RHI grant support for non-domestic use of Biomass Boilers"*. The letter also refers to the exploitation of the RHI Scheme. The TRIM data for this email at DFE-471843 to DFE-471848 (see DFE-471848) records you having viewed the TRIM record three times on 4 February 2016. As to this:

- a. How did you come to be aware of this correspondence (in order to be looking at it on the 4 February 2016)? Please indicate how you were aware of this correspondence (for example, was it by searching RHI-related materials on TRIM for some reason, or by someone bringing it to your attention). If someone brought it to your attention please provide details, including who this was, when they engaged with you about the correspondence, and what they told or asked you about the correspondence;
- b. what was your purpose in viewing the correspondence?
- c. did you recognise that the author was saying that scheme members were "actively exploiting" the RHI Scheme?
- d. was this fact something you were already aware of on or before the 4 February 2016? Please explain your answer.
- e. To whose attention did you bring the correspondence, and for what purpose?
- f. What else did you do having read the correspondence?

### *RHI Funding*

14. Given that you had received and passed on the warning about RHI funding in 2011 (that the funding should be treated as DEL), and given that you subsequently described to PWC the Parker 5% issue as "a bit of a red herring" (PWC-04711) what steps did you take in 2015 to inform, remind and re-emphasise to DETI colleagues (particularly in the DETI Top Team, Senior Management Team, and

Energy Division) that there were likely to be DEL consequences for any overspend against the RHI profile?

15. In addition, what do you say about whether, in 2015, the DETI Top Team, Senior Management Team, and Energy Division understood that there were likely to be DEL consequences for any overspend against the RHI profile?

*General*

16. Please set out anything in the evidence that you have already given to the Inquiry that you wish to change, add to, or re-emphasise.

17. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

18. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

**NOTE:**

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.

**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME****RHI REF: Notice 224 of 2018****DATE: 27<sup>th</sup> November 2018**

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**Witness Statement of: Bernadette Brankin**

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I Bernadette Brankin, will say as follows: -

*Email chain of 4 October 2011*

You are referred to the following documents:

- Your email to DETI Energy Division Sustainable Energy Branch's Alison Clydesdale of the 3 May 2011, with the chain of emails back to the Jon Parker email of 15 April 2011 (**WIT-00840 to WIT-00843**)
- The transcript of your oral evidence of the 6 December 2017 (**TRA-01626 to TRA-01707**)
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- **Your email, with attachment, to DETI Energy Division Sustainable Energy Branch's Joanne McCutcheon of the 4 October 2011 (DFE-463386 to DFE-463391)**
- Joanne McCutcheon's email to DETI Energy Division Co-Ordination Branch's Sandra Thompson of the 7 November 2011 (**DFE-62195**)
- 30 November 2011 DETI Finance Division submission on January Monitoring 11/12 and AME Forecasting 11/12 (**DFE-194575 to DFE-194589**)



1. The Inquiry has been provided with email correspondence dated 4 October 2011 between you and DETI Energy Division Sustainable Energy Branch's Joanne McCutcheon, and subsequent communication from Joanne McCutcheon to DETI Energy Division Co-Ordination Branch's Sandra Thompson (DFE-463386-7). Embedded in (or attached to) your email sent to Joanne McCutcheon at 13.20 on 4 October 2011 (DFE-463386) are the emails between HMT's Jon Parker and DETI Energy Division Sustainable Energy Branch's Alison Clydesdale of 11 and 15 April 2011 and your emails to Alison Clydesdale of 15 April 2011 and 3 May 2011 (DFE-463388-91). Your email of the 4 October 2011 at 13.20 appears to be in similar terms to your email of the 3 May 2011; a warning not to overspend because of the consequences for DEL. As to this:

- a. The question posed to you by Joanne McCutcheon, on foot of what appears to have been an AME forecasting exercise issued on the 3 October 2011, was about re-profiling an AME underspend. Regardless of the correctness of this terminology, why did you consider it necessary to not only address the question of underspending, but also the consequences of overspending?

**As Joanne McCutcheon was asking about the possibility of carrying over RHI AME unspent budget in her email of 4 October 2011, I thought she did not understand that RHI AME was not being treated like standard AME. Therefore in my response to Joanne McCutcheon I reiterated the position that I had set out about the non- standard treatment of RHI AME in my email to Alison Clydesdale of 3 May 2011. I was aware that underspending in the 2011-12 financial year may have put additional pressure on the RHI AME budget in future financial years. Therefore, I advised about the consequences of overspending in my response. I copied Fiona Hepper into my response of 4 October 2011 to Joanne McCutcheon to remind her that RHI AME was to be treated like DEL.**



- b. Why did you consider it appropriate to provide Joanne McCutcheon with a copy of your previous correspondence with Alison Clydesdale from May 2011?

**I provided a copy of my correspondence with Alison Clydesdale from May 2011 so that Joanne McCutcheon would be aware that Treasury had advised that RHI AME was not being treated like standard AME and that DFP had advised that RHI AME was to be treated just like DEL. I also had advised that this treatment of RHI AME should be taken into account in the design of the RHI scheme. Therefore, I wanted to make sure that it was understood that if there was underspending that part of the budget would be lost and if there was overspending it would impact on the DEL.**

- c. In your mail to Joanne McCutcheon of the 3 October 2011 at 13.20 you stated: *"If you wish to discuss further or would like advice on particular issues, give me a telephone call or call in to see me in my office."* Did you and Joanne McCutcheon speak about this issue at the time of your email or subsequently in 2011? If so please provide details.

**To the best of my knowledge, I don't recall discussing this email with Joanne McCutcheon.**

- d. What did you expect Joanne McCutcheon and DETI Energy Division to do on foot of the information you provided to her in your mail at 13.20? Please give reasons for your answer.

**I expected Joanne McCutcheon and Fiona Hepper to read my email and understand that RHI AME was not being treated like standard AME. I expected this treatment to be taken into account in the design of the RHI scheme. I also expected that if the information I sent needed to be shared with other colleagues in Energy Division that they would forward to their staff/colleagues.**





- e. Having received your mail on 4 October 2011, Joanne McCutcheon wrote to Sandra Thompson saying that it *"doesn't look like we can move it"* (taken by the Inquiry to mean the unspent RHI funding for 11/12). Given the contents of your mail at 13.20, this comment by Joanne McCutcheon, and the fact that the RHI budget was subsequently re-profiled so that £1.8m was moved forward from 2011/12 to 2012/13 (confirmed by DFP through the budgetary process), was there further engagement between DETI Energy Division and Finance Division on this issue? If there was, please give an account of it.

**To the best of my knowledge, I do not recall personally engaging with Energy Division about my email of 4 October 2011 or the subsequent confirmation of the re-profiled RHI AME underspend of £1.8m moved forward from 2011/12 to 2012/13. I do not recall any of the staff in Finance Branch telling me that they had engaged with Energy Division on either of these matters.**

2. If there is any further relevant evidence you can give to assist the Inquiry in respect of the 2010 and 2011 events relating to RHI funding then please do so.

**I have no further relevant evidence to give to assist the Inquiry in respect of the 2010 and 2011 events relating to RHI funding.**

*4 June 2015*

3. On the 4 June 2015 Stuart Wightman sent you a narrative (copying in Trevor Cooper and John Mills) for DETI Finance Division to give to DFP (DFE-146513 to DFE-146514). The narrative includes material about what is said to have



been a “review” in 2013, the delaying of the introduction of cost controls because of oil prices in 2014, and the introduction of tiering for new applications to “manage demand guard and (sic) against over-incentivisation”.

- a. What do you say about the claim that DETI started to make in June 2015 that there had been a “review” of the RHI Scheme in 2013?

**I had no role in the creation and development of the RHI scheme or the consideration and approval of the original RHI business case or the administration/operation of the RHI scheme. I had no knowledge that a condition of the approval was that a review was to be carried out of the Scheme. Neither was I aware if a review had been carried out. From 2011 my involvement in the RHI Scheme was only in relation to the normal financial exercises conducted by Finance Branch. I became aware in May 2015 of potential overspending and attended meetings with DFP and Energy Division about this potential overspend. Stuart Wightman’s email of the 4 June 2015 was addressing information DFP had requested. Therefore I was not then and am not now in a position to comment on Energy Division’s claim about having carried out a review of the RHI scheme in 2013.**

- b. Was there no challenge to this proposition? If not, why not?

**I cannot answer the question for the reason given in the paragraph above.**

4. Stuart Wightman informed you in the 4 June 2015 narrative that “*we are currently developing proposals to introduce a tiered/reduced tariff for the most popular biomass tariff for new applications to manage demand guard and (sic) against over-incentivisation*”. As to this:

- a. What did you understand was meant by the expressed need to guard against over-incentivisation?

**At that time I thought the original business case would have ensured that RHI did not over-incentivise applicants and Stuart Wightman had**



**given a verbal assurance to Trevor Cooper that RHI applicants could not generate a profit from the RHI scheme. I don't think I challenged Stuart Wightman's comment about the need to guard against over-incentivisation.**

- b. What steps did you take, or are you aware of having been taken, to find out why there was a need to guard against over-incentivisation? What was found out about what this meant?

**Trevor Cooper asked Stuart Wightman if RHI applicants could generate a profit from the RHI scheme at a meeting I attended which I think was in early June 2015, but I cannot remember the exact date. Stuart Wightman gave a verbal assurance to Trevor Cooper that RHI applicants could not generate a profit from the RHI scheme. I therefore had no incentive to (nor would it have been my role) in these circumstances to challenge Stuart Wightman or enquire as to why there was a need to guard against over-incentivisation.**

*12 June 2015*

5. By the 12 June 2015 Trevor Cooper, having analysed the first draft of the 2015 Addendum Business Case from Stuart Wightman (WIT-18759 to WIT-18765), identified that RHI scheme members may be being overcompensated. As to this:

- a. What discussions were had with you about whether the RHI Scheme was overcompensating RHI scheme members?

**Please see answer provided at paragraph 4.b. I am not aware of, nor do I recollect being involved in or present for any other discussions about whether the RHI scheme was overcompensating RHI members.**

- b. When did you reach the view that RHI scheme members were being overcompensated? Please explain your answer.



**I became aware that the RHI scheme members were being overcompensated in May 2016 when I was told by Trevor Cooper that this was stated in the draft Audit Report.**

*The draft Ministerial submission circulated on 15 June 2015*

6. It appears to the Inquiry that a draft Ministerial submission was sent to you, amongst others, by Stuart Wightman on 15 June 2015 (see **DFE-278171 to DFE-278177**). You are referred to the draft letter (attached as an annex to Stuart Wightman's draft submission to the DETI Minister) for the DETI Minister to send to the then DECC Secretary of State, Amber Rudd. The draft letter sought, amongst other things, further funds beyond the population-based share (mis-described as the Barnett formula). The letter appears to conclude (see **DFE-278177**) by seeking confirmation that any further funds, beyond the population-based share, *"will have no consequences on the NI Block Grant"*. As to this:
- a. Does this mean that it was understood in DETI, by 15 June 2015, that there was at least a risk that any funds expended on RHI beyond the population-based share could have consequences for the NI Block Grant? Please explain your answer.

**I believe it was understood in DETI by 15 June 2015 that there was a risk that any funds that were expended on RHI beyond the population-based share could have consequences for the NI Block Grant. I believed that this was understood because the Jon Parker email of 15 April 2011 and my response to Alison Clydesdale of 3 May 2011 had been widely circulated through Finance and Energy Divisions. I understood from Trevor Cooper that he had advised Eugene Rooney and Andrew Mc Cormick that this was the case.**



- b. If so, who else (if anyone) do you say understood, by 15 June 2015, that there was at least a risk that any funds expended on RHI beyond the population-based share could have consequences for the NI Block Grant?

**As well as DETI knowing this, DFP knew there was a risk that any funds that were expended on RHI beyond the population-based share could have consequences for the NI Block Grant.**

*Your email of 17 June 2015*

You are referred to the following documents

- Your email of the 4 June 2015 (DFE-146515 to DFE-146523)
  - Your email of the 17 June 2015 at 11.53 (DFE-146694 to DFE-146702)
  - Your email of the 17 June 2015 at 14.50 (DFE-146777 to 146811)
7. On the 17 June 2015 you sent Trevor Cooper a series of RHI funding related documents in advance of a meeting about the RHI Scheme involving, amongst others, the DETI Permanent Secretary. As to this:
- a. Why were you providing the material?

**My email of the 4 June 2015 to Trevor Cooper was forwarding papers that Stuart Wightman had sent in response to earlier questions raised by Trevor which I refer to in my covering email to Trevor. I think I was forwarding papers on the 17 June at 11.53 that Trevor Cooper had asked me to forward to him. On the 17 June at 14.50 I was forwarding papers that Trevor had requested which I refer to in my covering email.**

- b. What position did you understand the material reflected?

**I was forwarding papers to Trevor Cooper as he was attending a meeting with Andrew Mc Cormick, Eugene Rooney, Chris Stewart, John Mills and Stuart Wightman. I did not read through these papers as I did not attend the meeting,**

- c. What did you understand was the outworking of the 17 June 2015 meeting, and where did your understanding come from?

**I have checked with the Department of the Economy and it has been confirmed I did not attend the 17 June 2015 meeting. Therefore, I am unable to answer this question.**

*Sandra Thompson, Trevor Cooper the Perverse Incentive*

8. You are referred to the witness statements of Sandra Thompson at **WIT-24239** and **WIT-24294**. Ms Thompson appears to be of the view that she gained knowledge of the perverse incentive which existed within at least the medium biomass tariff on the RHI Scheme (that the cost of renewable fuel per kwh and/or the cost of producing renewable heat per kwh was cheaper than the subsidy; the effect of which was that it rewarded scheme members to burn as much fuel as possible) from Stuart Wightman, and in advance of the Ministerial announcement on 8 September 2015. When did you find out the following:

- a. That the cost of fuel per kwh was lower than the RHI incentive per kwh for medium biomass? Please explain your answer.

**There was an Accountability and Business Case Branch headed up by a Grade 7 Accountant that reported to Trevor Cooper. This branch was responsible for gathering business case paper work and setting up casework committees to consider business cases. I was not involved in reviewing or approving the original RHI business case. As the Grade 7 in Finance Branch, I did not have a remit to review business cases. My involvement in the RHI addendum business case was to check budgetary information. I only became aware that the RHI scheme members were being overcompensated in May 2016 when I was told by Trevor Cooper that**



**this was stated in the draft Audit Report.**

- b. That the cost of producing heat per kwh was lower than the RHI incentive per kwh for medium biomass? Please explain your answer.

**As stated above in 8.a.**

- c. That the effect of the per kwh cost of fuel used to produce heat and/or the per kwh cost of producing the heat being lower than the RHI incentive per kwh for medium biomass meant it rewarded scheme members to burn as much fuel as possible? Please explain your answer.

**As stated above in 8.a.**

9. You are referred to the witness statements of Trevor Cooper (**WIT-18544 and WIT-19046**) and Shane Murphy (**WIT-19650**), and the oral evidence of Trevor Cooper on 17 and 18 October 2018 (**TRA-15634 to TRA-15974**, in particular at **TRA-15789 to TRA-15794 and TRA-15886 to TRA-15890**). A summary of the evidence appears to be the suggestion that Trevor Cooper asked Stuart Wightman whether it was possible for a scheme applicant to make money just from running their boiler(s). Stuart Wightman is said to have assured Trevor Cooper that this was not possible, based on the price of oil (although the subject of oil prices would appear irrelevant to whether someone who had a biomass boiler could make money from running it). As to this:

- a. Did Trevor Cooper ever discuss this issue with you?

**I refer to my answer at 4b. I do not recall any further discussion on the verbal assurance Stuart Wightman gave Trevor Cooper.**



- b. If he did please set out what the discussion was, when it occurred and who was involved in it?

**I refer to my answer at 4.b. Trevor Cooper, Stuart Wightman and I attended this meeting. I cannot remember if there were others attending this meeting.**

- c. Please set out any further comments you have in relation to the evidence of Trevor Cooper and Shane Murphy identified above.

**It is my recollection that following Energy Division identifying potential overspending in RHI AME in May 2015, Energy Division were asked to introduce budgetary controls as soon as possible to reduce expenditure going forward by**

- **Introducing a tiered tariff for new biomass installations where the tariff significantly reduces after an initial specified usage;**
- **Introducing a digression mechanism; and**
- **to urgently consider how to reduce already committed expenditure prior to the introduction of budgetary controls**

#### *2015 Addendum Business Case*

You are referred to the following documents in the above regard:

- **DFE-147524 to DFE-147549:** Stuart Wightman's email of 27 July 2015 and "*draft supplementary business case*"
- **DFE-278778:** Stuart Wightman's email of 28 July 2015 explaining a revised approach following a meeting of 27 July 2015, and that Seamus Hughes would send round a revised draft of the 2015 addendum business case;
- **DFE-468647 to DFE-468677:** Stuart Wightman's email of 28 July 2015 with an attached draft Addendum Business Case with the document name "*Business Case – ND RHI 18month Extension (270715).docx*"; and
- **DFE-147551 and DFE-459743 to DFE-459769:** Seamus Hughes' email of 29 July 2015 circulating the "*Business case ND EHI (sic) 18 month extension.tr5*"





(with the version available to be accessed at the time of the email being revision 2 of the TRIM document DT1/15/0125105 – RHI Business Case – Version 1 (270715) – see **DFE-458059** to **DFE-458066**).

10. On the 29 July 2015 Seamus Hughes included you in an email circulating the then draft of what ultimately became the 2015 Addendum Business Case; see **DFE-147551** and **DFE-459743** to **DFE-459769** for Seamus Hughes' email of 29 July 2015 circulating the "*Business case ND EHI (sic) 18 month extension.tr5*" (with the version available to be accessed at the time of the email being revision 2 of the TRIM document DT1/15/0125105 – RHI Business Case – Version 1 (270715) – see **DFE-458059** to **DFE-458066**). This appears to have followed a meeting that took place on the 27 July 2015 during which consideration was given to an earlier draft of the 2015 Addendum Business case. As to this:

- a. Were you involved in the meeting of the 27 July 2015? If so, please give an account of the meeting of 27 July 2015, including who was there and what the purpose of the meeting was.

**I do not believe that I attended this meeting, particularly as my duties as Grade 7 in Finance Branch would not involve considering business cases. I have checked with the Department for the Economy and there is no record of me having attended the 27 July 2015 meeting.**

- b. What discussion was there, at the meeting on 27 July 2015, as to the contents of the 27 July 15 draft paragraph 5.13 (see **DFE-147540**; that "*The introduction of the tiered tariff will reduce the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income*") and the reasons why that statement was included?



**I cannot answer this question as I did not attend the meeting of 27 July 2015.**

- c. The version Stuart Wightman had circulated in advance of the meeting on 27 July 2015 sought approval to 31 March 2020 (**DFE-147525** and **DFE-147528**). The revised version Stuart Wightman sent to his 'detini' account on 28 July 2015 (albeit with some typing errors), and the version subsequently made available by Seamus Hughes on 29 July 2015, appears to have been amended to seek approval for a shorter 18 month period to 30 September 2016 (see **DFE-468652**, **DFE-468655** and **DFE-459746**). How did this change in approach come about?

**As stated at 10.b.**

- d. The version Stuart Wightman circulated in advance of the meeting on 27 July 2015 contained a caveat in respect of the employment benefits aspect of the NPV analysis (see **DFE-147531**). The revised version Stuart Wightman sent to his 'detini' account on 28 July 2015 appears to still have had the caveat present (**DFE-468658**). However, by the time the document appears to have been transferred to Seamus Hughes (**DFE-459776**), and placed in TRIM (it would seem sometime on or before the morning of 29 July 2015), the caveat appears to have been removed and replaced with a new paragraph 3.10, along with an explanatory comment from Stuart Wightman. The Revision 2 document accessible from Seamus Hughes' email of 29 July 2015 (**DFE-459749**) consequently no longer retained the caveat. Please explain as fully as you can why was the caveat removed, at whose suggestion, and what consideration (if any) was given to the effect of this.

**As stated at 10.b.**



11. Seamus Hughes' email to you of the 29 July 2015 (DFE-147551) appears to have been intended to cause you and Trevor Cooper to consider the draft 2015 Addendum Business Case (as it then stood) in order to check if Energy Division was "on the right track". Seamus Hughes welcomed comments on it. You are referred to the TRIM metadata for the version of the 2015 Addendum Business Case that would have been accessible via Seamus Hughes' email; "DTI/15/0125105 – RHI Business Case – Version 1 (270715)", see **DFE-458059 to DFE-458066**. According to the TRIM metadata (**DFE-458065**) you accessed the then draft of the 2015 Addendum Business Case on the 29 July 2015. As well as revision 2, you may also have been accessing the document when it was at revision 4 – see **DFE-459689 to DFE-459715**. As to this:

- a. What was your purpose in accessing the draft 2015 Addendum Business Case?

**As the Grade 7 in Finance Branch, I did not review business cases. I would have accessed the 2015 Addendum Business Case to check budgetary information only.**

- b. If you read this version of the Addendum Business Case:

- i. Did you realise that the caveat relating to the employment benefit aspects of the NPV calculation had been removed?

**As stated at 11.a.**

- ii. Did you notice, understand the purpose of, or ask about the reference in par 5.13 about the introduction of tiering being to reduce the risk of gaming?

**As stated at 11.a.**



- iii. What was the state of your knowledge at this point about whether the RHI Scheme was being exploited?

**As stated at 8.a.**

12. On the 5 October 2015 John Mills circulated a further version of the 2015 Addendum Business Case (DFE-147644). According to the TRIM Metadata for this version of the 2015 Addendum Business Case (DFE-458067 to DFE-458072) you accessed this version on the 8 October 2015 (DFE-461340 to DFE-461366). It also appears there was a meeting about the 2015 Addendum Business Case on the 8 October 2015 (see DFE-148122) which resulted in a further version of the 2015 Addendum Business Case being produced (amongst other things, the period for which approval was sought moved out to December 2016, and the passage about reducing the risk of gaming remained). As to this:

- a. Why were you accessing the 2015 Addendum Business Case at this point?

**As stated at 11.a**

- b. Were you involved in the meeting of the 8 October 2015? If so, please give an account of it.

**I do not believe that I attended this meeting, indeed, my duties as Grade 7 in Finance Branch would not involve considering business cases. I have checked with the Department for the Economy and there is no record of me attending the 8 October 2015 meeting.**

- c. What was the state of your knowledge at this point about whether the RHI Scheme was being exploited?

**As stated at 8.a.**



*Letter from Solmatix dated 10 July 2015*

13. At DFE-107130 to DFE-107132 there is an email of the 10 July 2015 from Frank McCullagh of Solmatix to DETI's Seamus Hughes attaching a letter regarding

*"possible changes to NI RHI grant support for non-domestic use of Biomass Boilers"*. The letter also refers to the exploitation of the RHI Scheme. The TRIM data for this email at DFE-471843 to DFE-471848 (see DFE-471848) records you having viewed the TRIM record three times on 4 February 2016. As to this:

- a. How did you come to be aware of this correspondence (in order to be looking at it on the 4 February 2016)? Please indicate how you were aware of this correspondence (for example, was it by searching RHI-related materials on TRIM for some reason, or by someone bringing it to your attention). If someone brought it to your attention please provide details, including who this was, when they engaged with you about the correspondence, and what they told or asked you about the correspondence;

**Trevor Cooper often asked me to find papers and print them for him or forward the papers to him. I was trying to find RHI papers and either did a search for RHI related materials on TRIM or went through some TRIM RHI folders. I cannot remember at this stage the particular RHI papers I was searching for but I had no knowledge of this letter before I started my search and was not trying to finding it on 4 February 2016.**

- b. what was your purpose in viewing the correspondence?

**Retrieving papers from TRIM can be difficult if you do not know the exact title of the document which was normally the case when I was searching for RHI papers. I think I must have discarded this letter from my search without reading it when a company's name appeared as it would have been higher level documents that I would have been searching for. I believe as I changed my search field this document came up on two other occasion minutes apart from first finding it but**



again I did not read it as it was a letter to Energy Division from a company.

- c. did you recognise that the author was saying that scheme members were “actively exploiting” the RHI Scheme?

**As stated at 13 b. To the best of my knowledge I do not think I read the letter on 4 February 2016.**

- d. was this fact something you were already aware of on or before the 4 February 2016? Please explain your answer.

**As stated at 13 a.**

- e. To whose attention did you bring the correspondence, and for what purpose?

**As stated at 13 b.**

- f. What else did you do having read the correspondence?

**As stated at 13 b.**

### *RHI Funding*

14. Given that you had received and passed on the warning about RHI funding in 2011 (that the funding should be treated as DEL), and given that you subsequently described to PWC the Parker 5% issue as “a bit of a red herring” (PWC-04711)

what steps did you take in 2015 to inform, remind and re-emphasise to DETI colleagues (particularly in the DETI Top Team, Senior Management Team, and



Energy Division) that there were likely to be DEL consequences for any overspend against the RHI profile?

**I wrote to Alison Clydesdale on 3 May 2011 to explain that RHI AME was non-standard AME. This email was copied to Fiona Hepper, Peter Hutchinson and Trevor Cooper. I reiterated this message again to Joanne McCutcheon on 4 October 2011 and copied my email to Fiona Hepper, Therefore the Grade 5 in Energy Division and the Grade 5 in Finance Division had been advised of the non- standard treatment of RHI AME and that it should be treated as DEL. My emails were on TRIM in both divisions for staff to access. The RHI scheme underspent in each of the 4 years up to March 2015. The total underspend was £14.5 million. Therefore there was no risk of overspend to report to the DETI Top Team or Senior Management Team. There was no gradual build up to this RHI overspending. The RHI scheme went from spending £7.8m in 2014-15 to £35.1 million in 2015-16. The DETI Top Team and Senior Management Team were made aware of the risk of overspending and the implications for the DEL budget in May and June 2015 when the issue was raised by Energy Division.**

15. In addition, what do you say about whether, in 2015, the DETI Top Team, Senior Management Team, and Energy Division understood that there were likely to be DEL consequences for any overspend against the RHI profile?

**I understand from Trevor Cooper that he briefed the DETI Top Team and Senior Management Team on the DEL consequences for overspending against the RHI budget. Also on the 24 August 2015 I emailed John Mills which was widely circulated to Andrew McCormick, Eugene Rooney, Chris Stewart, Trevor Cooper and Stuart Wightman (WIT 02741) to remind him that while the department had secured additional RHI AME funding in June 2015 monitoring that RHI AME is not standard and that penalties would be applied for overspending. At this point in time the Department of Finance had asked Energy and Finance Divisions to investigate with DECC Jon Parker's 15 April 2011 reference to the possibility of a 5% penalty on the DEL budget. I reminded John Mills that our enquiries were still ongoing with DECC.**

*General*



16. Please set out anything in the evidence that you have already given to the Inquiry that you wish to change, add to, or re-emphasise.

**I do not wish to change, add or re-emphasis the evidence I have already given to the Inquiry.**

17. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

**I have nothing to add.**

18. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

**I have no further evidence to provide.**

### **Statement of Truth**

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

Signed: Bernadette Brankin

Dated: 27 November 2018