
Chapter 10 – The submission of 16 March 2012

- 10.1 On 16 March 2012, post the Casework Committee meeting where approval to proceed with a business case to DFP had been secured, Ms Hepper sent⁷²⁶ a further submission to Minister Foster and Dr Crawford seeking approval to proceed with the introduction of the NI RHI scheme and the associated Renewable Heat Premium Payments (RHPP), which was the interim grant scheme established prior to the introduction of the domestic RHI. The submission attached a draft SL1 letter to be sent to the ETI Committee, and a draft Regulatory Impact Assessment (RIA) for the Minister to consider and sign.
- 10.2 In between the provision of the submission and it being signed off, Energy Division officials sent, on 22 March 2012, to DFP the RHI business case for approval.⁷²⁷ DECC, on 26 March 2012,⁷²⁸ published its interim cost control consultation. Neither of these developments was drawn to the Minister’s attention before she signed off the submission.
- 10.3 Paragraph 28 of the submission⁷²⁹ informed the Minister that the Casework Committee was content with the proposals for an RHI and RHPP subject to a number of matters that were then set out, mostly relating to scheme administration and administration costs. The Minister was not told in the submission that the Casework Committee had required that Energy Division officials ensure that “the business case to DFP (and the Minister) should explicitly address the reasons why the RHI is favoured over the Challenge Fund option.” Philip Angus had required this insertion when providing his comments on the draft Casework Committee minutes on 14 March 2012, two days before the submission was lodged.⁷³⁰ There was no reference in the submission to the Challenge Fund, or a comparison with an NI RHI scheme in terms of overall cost.
- 10.4 The submission set out the proposed new tariff structure,⁷³¹ which included the proposed tariff for biomass boilers between 20kW and 100kW at 5.9p/kwh. The proposed tariff structure table, once again, had the erroneous footnote explaining that tiering of the tariff was not included in Northern Ireland because in each instance the subsidy rate was lower than the incremental biomass fuel cost.⁷³² Reviews were once more described as “built-in” to the scheme to allow DETI to ensure that the scheme remained fit for purpose and value for money for the duration.
- 10.5 The Minister was also informed in paragraph 8⁷³³ of the submission that only “useful heat” would be deemed eligible and this was explained as meaning heat that would otherwise be provided by fossil fuels. She was told that this would exclude deliberately wasting or dumping heat with the sole purpose of claiming incentive payments. The Inquiry notes however that, contrary to the recommendations contained in the Ofgem Legal Review of November 2011, no such definition of “useful heat” was included in the NI RHI 2012 Regulations when they came to be made.⁷³⁴ The submission also proposed, in paragraph 26, that Ofgem should be appointed to administer the scheme.⁷³⁵

726 DFE-31773 to DFE-31799

727 DFE-82632

728 INQ-22023 to INQ-22037

729 DFE-31781

730 DFE-80619 to DFE-80626

731 DFE-31777

732 DFE-31777

733 DFE-31776

734 WIT-01237 to WIT-01264

735 DFE-31781

- 10.6 The Minister has stated to the Inquiry that she was not provided, alongside the submission, with a copy of the CEPA addendum of February 2012, the synopsis prepared for the Casework Committee, the draft minutes of the Casework Committee, or the business case subsequently submitted to DFP by DETI on 22 March.⁷³⁶
- 10.7 The submission was signed off by the Minister on 11 April 2012,⁷³⁷ and the accompanying Regulatory Impact Assessment was signed by her on 13 April 2012.⁷³⁸ The draft RIA that the Minister signed detailed a number of risks and uncertainties anticipated by Energy Division officials as potentially arising in the course of implementing an RHI scheme in Northern Ireland. These included: the risk of subsidies proposed for the RHI being too high or too low (which was said to be mitigated by regular planned reviews); the risk of low take-up; the risk of failure to implement the targets set by the EU Directive; the risk of insufficient budget resulting from higher than expected uptake (said to be mitigated by ongoing engagement with Ofgem to assess uptake levels and expected spend against profiled budget); the risk of a refusal of State Aid; the risk of fraud (to counteract which Energy Division officials claimed to have put in place a number of measures); and the risk of administrative failure (to mitigate which DETI undertook to establish a joint project team with Ofgem as the scheme was implemented).⁷³⁹ The Minister would have been left in no doubt as to the nature and extent of the risks and the proposed mitigation; indeed she signed the document that specified these risks.⁷⁴⁰
- 10.8 Despite providing reasonably comprehensive information about the risk categories, the RIA document contained only limited information about the funding available and no quantitative information about the projected lifetime subsidy costs. It did provide some quantification of the administration costs and of the lifetime carbon saving benefits.
- 10.9 Notwithstanding this lack of information, Minister Foster signed it declaring:

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”⁷⁴¹

In her oral evidence to the Inquiry, Minister Foster agreed with Inquiry Counsel that, when signing the March 2012 RIA, she did not know what the subsidy spend over the entire period was going to be, although she did understand that the total cost of the scheme was going to be a lot more than £25 million. She agreed that she should have had a clearer understanding of what the scheme costs were.⁷⁴² In further questioning by the Panel, Minister Foster accepted that the decision-making had been effectively delegated by the Treasury to her and that she needed to make the relevant judgment about the use of public money, although that was not possible without important information about the costs being available to her.⁷⁴³

736 WIT-20576 to WIT-20577

737 DFE-143880

738 DFE-70760

739 DFE-04250 to DFE-04252

740 DFE-70749 to DFE-70760

741 DFE-70760

742 TRA-08209 to TRA-08210; TRA-08216

743 TRA-08219

Findings

- 66.** Once again the erroneous statement appeared, this time in a ministerial submission, reflecting a direct quotation from the CEPA final report, explaining that tiering of the tariffs was not included in Northern Ireland because in each instance the subsidy rate was lower than the incremental fuel cost.
- 67.** The Inquiry notes that despite a submission to her assuring the Minister that payments would only be made for “useful heat” such a condition was not laid down in the 2012 regulations.
- 68.** The Minister should have been informed at this point, 16 March 2012, that the predicted lifetime subsidy costs of the scheme had risen from £334 million to £445 million between CEPA’s final report of June 2011 and the addendum in February 2012.
- 69.** The “false economy” of the decision to prioritise the potential saving of a few million pounds in administrative costs associated with the RHI scheme over the potential saving of £200 million to £300 million in subsidy spend with a Challenge Fund, was not drawn to the attention of the Minister; it should have been.
- 70.** The Minister and/or her SpAd should have asked more questions and sought further reassurance in relation to at least some of the matters identified in the submission of 12 March 2012 and the associated Regulatory Impact Assessment. For example, they might have questioned how the reviews of the scheme were to be “built in” and they might have enquired as to the form of any “budget control” that might be required.
- 71.** Minister Foster should not have signed an RIA document in which she was declaring that the benefits justified the costs without being provided with or seeking all of the necessary information about the lifetime costs.

