

## Chapter 13 – ETI Committee – consideration of RHI proposals

### The ETI Committee and its purpose

- 13.1 The Committee for Enterprise, Trade and Investment (ETI Committee) was a statutory committee of the Northern Ireland Assembly established in accordance with paragraphs 8 and 9 of Strand 1 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The ETI Committee had a scrutiny, policy development and consultation role with respect to DETI and had a role in the initiation of legislation.
- 13.2 The Committee had power to:
- a. consider and advise on departmental budgets and Annual Plans in the context of the overall budget allocation;
  - b. approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
  - c. call for persons and papers;
  - d. initiate inquiries and make reports; and
  - e. consider and advise on matters brought to the Committee by the Minister for Enterprise, Trade and Investment.
- 13.3 Statutory Rules (SR), including regulations implementing and governing the existence of schemes such as the NI RHI, must be laid before the relevant statutory committee. Such rules proposed by DETI are referred to and considered by the ETI Committee, which was created by a resolution of the NI Assembly in May 2011.<sup>798</sup> The functions of the ETI Committee are, in accordance with section 29(1)(a)(ii) of the Northern Ireland Act 1998, to “advise and assist” the Minister for Enterprise, Trade and Investment “with respect to matters within his responsibilities as a Minister.”<sup>799</sup> It consisted of 11 members drawn from all parties represented in the Assembly.<sup>800</sup>
- 13.4 The regulations relating to the NI RHI scheme were subject to a procedure in accordance with which the ETI Committee will, in most cases, provide a recommendation to the Assembly as to whether it should or should not approve the rules. Regulations are not the subject of detailed consideration and debate by the Assembly and, therefore, the careful and effective scrutiny by the ETI Committee is of particular importance.
- 13.5 Prior to receiving the text of the relevant regulations, the Committee is supplied with a document known as an SL1 letter, which is prepared by the relevant Department to assist the Committee and sets out the underlying policy. In addition, in order to inform the decision whether to recommend regulations, a Committee may take into account submissions made by interested parties and oral briefings from departmental officials. An officer of the Assembly known as the Examiner of Statutory Rules will advise the Committee with regard to technical issues, but not on the objectives or merits of the policy as contained in the relevant SR/regulations.<sup>801</sup>

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## The SL1 for the NI RHI scheme

- 13.6 The subordinate legislation document (SL1) provided by DETI in support of the proposed RHI regulations, dated 13 April 2012, consisted of five pages signed by Ms Hepper.<sup>802</sup> The function of the SL1 document is to set out the policy underlying statutory rules/regulations.
- 13.7 It referred to the CEPA economic appraisal, which had considered various options, and to the outcome of the public consultation. Five options were described to the ETI Committee including the Challenge Fund. However all the comments relating to that option were relatively adverse and, in particular, the administrative costs were said to be prohibitive as far as DETI was concerned. No reference was made to the significant overall economic advantage offered by that option as opposed to the incentive scheme, or to the protection that it offered against potential overspending.
- 13.8 In fact, the section dealing with the specifically tailored NI RHI scheme opened with the (by now familiar) inaccurate statement that “The NI RHI option offers the highest potential renewable heat output at the best value.” The Committee was informed of the available £25 million of HMT funding but no reference was made to the associated risk to the DEL budget of overspend.

## The ETI Committee’s consideration of the NI RHI scheme proposal

- 13.9 The ETI Committee, chaired at the time by Alban Maginness MLA, first considered the SL1 for the proposed RHI regulations 2012 on 19 April 2012, when it was resolved to seek further information from DETI relating to payments to participants, tariff levels, calculation of tariffs, a summary of consultation results and incentives for domestic installations.<sup>803</sup> DETI’s response was considered at a meeting on 17 May when it was decided to await the outcome of an exchange with the EU Commission and to organise an oral briefing from DETI.<sup>804</sup>
- 13.10 On 24 May the ETI Committee received an oral briefing from Ms McCutcheon and Mr Hutchinson, which included a general discussion of the initial phase of the non-domestic RHI scheme and the proposed second phase that would include introduction of a domestic RHI scheme. They were also briefed about tariff levels, although DETI was only able to produce ‘indicative’ tariff figures as part of what the officials described as a “parallel process” seeking to obtain both EU Commission and ETI approval before the Assembly’s summer recess. The ETI Committee indicated that it was not willing to agree the SL1 without sight of the final tariff figures.<sup>805</sup>
- 13.11 On 5 July 2012 the DETI Minister notified the ETI Committee that EU approval had been received. It was then agreed, at a meeting on the same day, to receive a further oral briefing from DETI and that the views of Action Renewables would be sought. Action Renewables is an organisation originally set up by DETI to aid with the development of renewable policy, but which is now an independent body with charitable status.
- 13.12 On 13 September the ETI Committee received a further briefing from Ms Hepper, Ms McCutcheon and Mr Hutchinson. The Committee expressed concerns about monitoring and review but was assured by the officials that the electronic system used to operate the scheme would produce weekly and monthly statistics and that figures relating to energy use and cost

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802 ETI-05984 to ETI-05988

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would be published quarterly on the DETI website. The DETI officials described the project as “a living scheme we will keep under active review.”<sup>806</sup>

- 13.13 The ETI Committee also considered the response from Action Renewables, which was supportive of the proposals. Nevertheless, the response contained the following portentous warning regarding the banding of the tariffs:

“The significant drop in biomass support, from 5.9 to 1.5p/kWh at the 100kWth level, will create distortion in the market. It will lead to applicants installing boilers with a smaller capacity than is required, at the 100kW level and supplementing their heat from oil generation, as it will be the most remunerative way of exploiting the scheme.”<sup>807</sup>

- 13.14 By September 2012 Mr Patsy McGlone had taken over as chair of the ETI Committee. He considered that the control of any such distortion would be an operational matter for DETI, but confirmed that no further action was taken by the ETI Committee to explore this or to ensure that it was being addressed by DETI, although he too gave evidence to the Inquiry that the ETI Committee had been assured by DETI that the operation of the scheme would be kept under “active review”.<sup>808</sup>

- 13.15 Mr McGlone did also come back to this concern on the part of Action Renewables in his speech to the Assembly on 22 October 2012 in support of a motion to approve the 2012 NI RHI regulations. In the presence of the DETI Minister he indicated that it was something about which DETI might wish to consult and that the ETI Committee had been assured by DETI officials that the scheme would have “scheduled reviews built in to ensure that it remained fit for purpose and provided value for money.”<sup>809</sup> He said “Clearly the Committee will pay particular attention to the reviews”, but he told the Inquiry that the function of the ETI Committee was scrutiny and that it was not a management body for DETI.<sup>810</sup> He did not recall any mention at the ETI Committee’s briefing meeting with Ms Hepper, Ms McCutcheon and Mr Hutchinson on 13 September 2012, of the warnings raised by Ofgem relating to potential shortcomings in the GB and NI regulations, the need for effective cost controls and, in particular, the advice to await the outcome of the GB proposals to adopt interim cost controls. Mr McGlone conceded that the ETI Committee did not preserve the Action Renewables’ warning in a file for future reference. In retrospect he said that he wished there had been further probing of the description of the reviews as “built in”.<sup>811</sup>

- 13.16 Mr McGlone drew the attention of the Inquiry to the lack of resources available to the ETI Committee:

“...where you have four members of staff servicing the needs of a Committee which covers virtually every aspect of the economy...who are helping you to wade... through all that stuff. ...the Clerk that we had was very good at his job and, if we just had a few more resources and a few more personnel to help us do our job, it would make things a whole lot easier.”<sup>812</sup>

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806 WIT-134552

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809 TRA-03035 to TRA-03037

810 TRA-03037 to TRA-03038

811 TRA-03017 to TRA-03040

812 TRA-14639 to TRA-14640

- 13.17 Mr McGlone highlighted the difference between a Department and the ETI Committee, with the former having “400” members of staff while “we’re sitting with 4 good members of staff.” He emphasised how fundamental it was for the ETI Committee to have a free flow of comprehensive and open information.<sup>813</sup> With hindsight, he considered that the evidence presented to the ETI Committee by DETI presented “a very poor picture” compared to that which had emerged before the Inquiry.<sup>814</sup>
- 13.18 The Inquiry notes the frustration expressed in evidence by Mr McGlone about the unsatisfactory practice that often left the ETI Committee without the timely and relevant information that was needed by it to carry out its statutory functions to hold the Department to account and challenge policy proposals. Mr McGlone told the Inquiry that the ETI Committee was “utterly reliant” upon the professionalism of the department officials concerned and, in a written statement, he emphasised that the ETI Committee depended upon being supplied by DETI with all the relevant facts and information.<sup>815</sup>

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813 TRA-14711 to TRA-14713

814 TRA-02956

815 TRA-02959 to TRA-02962

## Findings

- 84. In relation to briefings linked to the NI RHI SL1, the ETI Committee was provided by DETI Energy Division officials with incomplete and inaccurate information about the RHI scheme; among other omissions, information was not included about risks that DETI had been made aware of by Ofgem.**
- 85. The ETI Committee expressed a number of concerns and received third party advice about a number of risks (for example, information from Action Renewables); nevertheless they accepted the assurances provided by DETI and did not follow up on these concerns or check that DETI was delivering what had been promised.**
- 86. The Inquiry finds that the ETI Committee was not provided with sufficient/adequate information to permit the ETI Committee to effectively discharge its scrutiny function.**

