Chapter 17 – Phase 2 of the NI RHI – the intended introduction of the domestic RHI and the expansion of the non-domestic RHI

17.1 Although not the primary focus of the Inquiry's work, it is necessary to examine some aspects of the work relating to the domestic RHI scheme as some of the policy development and related key decisions were to have an important impact on the non-domestic RHI scheme. The following sections do not attempt to replicate the full evidence available on the domestic scheme, only to summarise those elements of particular relevance to the Inquiry's Terms of Reference.

RHPP and the commencement of work on Phase 2 of RHI

17.2 Almost immediately after the launch of the non-domestic scheme in November 2012 work began in earnest within the Renewable Heat Branch on Phase 2 of the NI RHI.

17.3 Phase 2 work included both the development of a domestic RHI scheme and extension of the non-domestic RHI scheme, as well as a number of other changes including the introduction of new technologies and a form of cost control intended to apply to the budget of both domestic and non-domestic NI RHI schemes.

17.4 An interim solution of grant support in the form of the RHPP scheme had been introduced in May 2012 for domestic consumers while DETI developed the non-domestic RHI scheme.[900] The RHPP was administered from within DETI's Renewable Heat Branch.

Developing the Phase 2 regulations

17.5 On 26 February 2013 a work request was sent to Arthur Cox by Mr Hutchinson regarding the development of regulations for the expansion of the non-domestic RHI scheme and the introduction of the domestic scheme.[901] Guidance was sought on developments in GB and the changes that had taken place with regard to the GB RHI regulations, which included the introduction of interim cost controls (which had been introduced in July 2012), and a consultation and Government response on the introduction of degression (the consultation launched in July 2012 and the DECC response was published in February 2013).

17.6 Advice and guidance was sought from Arthur Cox on recent and proposed future legislative changes in GB together with preparation of a first draft of regulations for Phase 2 of Northern Ireland's RHI. DETI commissioned Arthur Cox to write a report reviewing the consultations carried out by DECC in relation to renewable heat, both domestic and non-domestic, and that report was issued at the end of March 2013. Mr Bissett told the Inquiry that it did seem odd to him that his firm was being asked to write a report reviewing the consultations undertaken and the legislation enacted by DECC in GB, but he assumed that the relationship between DETI and DECC was not good. Arthur Cox attempted to speak to DECC but formed the opinion that DECC were not "overly helpful".[902] That appears to have been the only involvement of Arthur Cox in Phase 2 of the NI RHI domestic scheme.[903]

900 TRA-02147 to TRA-02148
901 DFE-20434
902 TRA-02147 to TRA-02148
903 DFE-20434

The June 2013 CEPA report

17.7 The Inquiry set out its examination of the CEPA reports from June 2011 and February 2012 in chapter 5 of this Report. In 2013 CEPA, with the assistance of AEA, was again commissioned to carry out the economic analysis for the introduction of the domestic RHI scheme[904] and the possible expansion of the non-domestic RHI scheme. CEPA was not asked to advise on the introduction of budget cost controls.

17.8 As noted elsewhere in this Report, the resulting CEPA analysis of June 2013 indicated that the 10% renewable heat by 2020 target would no longer be met by any of the options under consideration.[905] However, this significant information was never highlighted to the Minister despite the renewable heat target being contained within the NI Executive Programme for Government 2011-15.

The 2013 cost control/budget control plan

17.9 Separately from the work CEPA was doing, budget control proposals were developed by Mr Hutchinson for both the non-domestic and domestic RHI schemes. Those proposals were set out in detail in the Phase 2 public consultation document, the Executive Summary of which included the following statement:[906]

> "A method of cost control is to be introduced that will ensure budgets are not overspent and will hopefully remove the need for emergency reviews."

17.10 The cost control proposal itself (though the Inquiry considers it may be better understood as a budget control) was found at paragraphs 4.12 to 4.16 of the consultation document:[907]

> "COST CONTROL
>
> 4.12 Given the introduction of tariffs for larger systems and the need to maintain confidence and consistency in the scheme DETI is proposing to introduce cost control measures that would ensure budgetary levels wouldn't be breached and to remove the need for emergency reviews or reductions in tariffs at short notice. DECC are in the process of introducing a system of tariff degression in GB whereby tariffs will automatically reduce when deployment levels reach set trigger points. DETI expect to introduce similar measures in the future but in the interim it is proposed that a simpler system is put in place.
>
> 4.13 The RHI is different in nature to the NIRO in that there is a finite budget for new installations and these budget limits cannot be breached. Whilst tariffs are designed to ensure that the budget is adhered to there is always a risk that renewable heat technologies might be deployed in greater numbers than what is forecast and payments exceed expectations. The risk of this increases as tariffs become available for larger technologies such as biomass over 1MW, biomass/bioliquids CHP and deep geothermal. Therefore DETI must retain the right to suspend the scheme if budget limits could be breached; however this will only happen at a last resort and, at this stage, is not envisioned to happen.

904 DFE-88596 to DFE-88599
905 DFE-91772 to DFE-91773
906 DFE-97577
907 DFE-97607 to DFE-97608

4.14 In order to ensure confidence in the scheme continues DETI proposes to introduce a number of trigger points that will provide forewarning to potential applicants that the committed budget is nearing the set limit. The trigger points are set out in table below.

	BUDGET LEVELS	ACTION	RATIONALE / FURTHER INFORMATION
TRIGGER 1	50% of annual budget is committed	DETI will make a public notification of the committed budget.	So all applicants are aware of budget levels and potential DETI actions.
TRIGGER 2	60% of annual budget is committed	DETI will make a public notification of the committed budget and warn that the domestic RHI may need to close if the next budget trigger point is reached.	If the budget levels could be breached the domestic RHI will close first. The domestic sector contributes less overall renewable heat to the target and in general terms is less cost-effective than the non-domestic scheme.
TRIGGER 3	70% of annual budget is committed	DETI will make a public notification of the committed budget and will begin procedures to close the domestic RHI for the financial year. The domestic scheme will remain open for new applications for 4 weeks after which no further applications will be accepted until the new financial year. Incomplete applications will be rejected. Applications will re-open for the domestic scheme on 1 April.	The closure of the domestic RHI will be only until the new financial year and will not affect accredited applications.
TRIGGER 4	80% of annual budget is committed	DETI will make a public notification of the committed budget levels and warn that the non-domestic RHI may need to close if the next budget trigger is reached. DETI will formally advise the administrator to prepare for closure.	When this level is reached DETI will begin processes to stop the non-domestic RHI however formal closure will not begin until the next trigger point.

	BUDGET LEVELS	ACTION	RATIONALE / FURTHER INFORMATION
TRIGGER 5	90% of annual budget is committed	DETI will make a public notification of the committed budget and will begin procedures to close the domestic RHI for the financial year. The scheme will remain open for 4 weeks, with only schemes receiving full accreditation within this timescale being supported.	All applicants will be given 4 weeks to attain full accreditation with the administrator; this means having the system in place and ensuring the administrator has all relevant information to accredit. Applications that fall outside of the time period will continue to be considered by the administrator however accreditation will not be awarded until 1 April.

4.15 This proposal will provide DETI with the ability to control the uptake of the scheme and ensure that budgets are not overcommitted; however it will also provide potential applicants with adequate information on the progress of the scheme and the potential for closure.

4.16 DETI welcomes views on this proposal and specifically on the proposed trigger points, actions and rationale."

17.11 Of particular significance to the Inquiry's work is the fact that the cost control as designed and set out in the consultation document applied to both the non-domestic RHI and the domestic RHI; the initial triggers acted to close the domestic scheme first, and the later triggers acted to close the non-domestic scheme.

17.12 In his evidence to the Inquiry Mr Hutchinson described this proposal as a "half-way house" between DECC's interim cost control (which, while initially referred to as "interim" in DECC's March 2012 consultation document, was subsequently described as a "stand-by" mechanism in the DECC consultation response of June 2012) and degression. He saw it as something that DETI could deliver itself and a pragmatic step before full degression would be introduced in Northern Ireland.[908] The 2013 proposal is discussed in greater detail in relation to budget control in chapter 51 of this Report.

The 2013 RHI Phase 2 consultation

17.13 On 26 June 2013 a submission was sent to the DETI Minister[909] seeking approval to launch a public consultation on the Phase 2 proposals, to publish CEPA's recent June 2013 report and to write to the Chair of the ETI Committee with an update.

17.14 The submission essentially offered a description of proposals as they were set out in the consultation document, namely for a domestic scheme, for expansion of the non-domestic scheme and for various actions to set standards, improve performance and introduce cost control.

908 TRA-05105 to TRA-05109
909 DFE-97307 to DFE-97359

17.15 The CEPA analysis was referenced in the submission but a copy was not appended. As mentioned earlier, the submission did not mention that CEPA had stated it was unlikely that Northern Ireland would reach its target of 10% renewable heat by 2020. The note to the ETI Committee recorded, as far as the non-domestic scheme was concerned, that there had by that point been 25 applications with eight accredited.[910]

17.16 Minister Foster initially approved, on 2 July 2013,[911] only the communication to the ETI Commmitte.[912] The Minister's SpAd, Dr Crawford, then met with the Energy Division officials on 17 July 2013[913] to discuss some aspects of the consultation proposals to do with bioliquids (which were not material for the Inquiry's purposes). However, Dr Crawford had, on 6 July 2013, already sent his cousin, Richard Crawford, a copy of the draft Phase 2 consultation document[914] despite it not having been approved by the Minister. Dr Crawford acknowledged he should not have sent the draft consultation document to his cousin (this aspect is discussed later in this Report). Following Dr Crawford's meeting with the Energy Division officials the Minister subsequently approved the rest of the submission, including the launch of the Phase 2 consultation, on 18 July 2013.[915]

17.17 The consultation was launched on 22 July 2013[916] and closed on 14 October 2013. The Inquiry notes the following particular points in respect of the consultation exercise:

(i) There were 50[917] responses to the Phase 2 consultation;

(ii) According to Mr Hutchinson's statement to the Inquiry, much of the interest focused on the domestic RHI scheme with some attention to the tariffs for new technologies proposed for the non-domestic scheme; and

(iii) Of the small number of respondents who mentioned cost control, some confusion was noted as to how the proposals would work, but respondents were generally content.[918]

The DETI response to the consultation

17.18 A response to the consultation was eventually published by DETI in June 2014, by which time Ms McCutcheon and Mr Hutchinson had left. The response related only to the domestic scheme.[919]

17.19 On the very first page of the response publication, the following statement was included: "The issues relating to the non-domestic scheme will be dealt with separately and a similar response document will issue in due course."

17.20 The June 2014 response made no reference to the budget control mechanism that had formed part of the 2013 consultation. DETI did not introduce it through the legislation that would be required to introduce the domestic scheme.

910 DFE-97307 to DFE-97359
911 DFE-97366; DFE-97360 to DFE-97361
912 DFE 97362 to DFE-97365
913 DFE 97456
914 WIT-266013
915 DFE-97456
916 DFE 97618 to DFE-97620; DFE-97572 to DFE-97622
917 DFE-399144; DFE-93623
918 WIT-06087
919 DFE-93261 to DFE-93276

17.21 As can be seen from the more detailed account of events in 2015 which appears later in this Report, it was not until 2 October 2015 that DETI eventually published a response that dealt with the cost control aspect of the July 2013 consultation.[920] By that point in October 2015, as will be discussed later in this Report, the RHI was essentially in crisis. Cost control was dealt with at section 2 of the October 2015 response, which referred to the proposed 'trigger' system. It was recorded that several public responses to the 2013 consultation had expressed concern that the trigger method of budget management might be viewed as a disincentive. At paragraph 2.3 DETI recorded that, by that point in October 2015, there had been significant increases in levels of uptake with associated increases in monthly expenditure. The paragraph continued: "Cost controls now need to be introduced to ensure future budgetary levels wouldn't be breached and to ensure the scheme continues to provide value for money."[921]

17.22 The proposed solution put forward was, instead, tiering for the non-domestic medium biomass tariff. Such a proposal had not formed part of the public consultation in 2013 and, although it was not fully understood by those who proposed it, would not actually operate as a budget control.

State Aid for the Phase 2 proposals

17.23 For the new technologies proposed for Phase 2 of the the non-domestic scheme, it was clear in 2013 that a new State Aid approval process would be required and that this would take a number of months.

17.24 Ms Hepper's ministerial submission of 26 November 2013,[922] which was to be her last RHI submission as head of DETI Energy Division, provided a six monthly update to the ETI Committee. The update stated at paragraph 13: "Given that the domestic RHI does not require State Aid approval, it is likely that it can be launched earlier…" DETI Energy Division officials appear initially to have held the mistaken belief that the domestic RHI scheme was different and did not require State Aid approval.[923] That appears to have led to the further belief, during the latter part of 2013, that the domestic scheme could be separated from, and introduced more quickly than, the remainder of the Phase 2 non-domestic proposals which did require a State Aid application.

17.25 However, Mr Hutchinson and Ms McCutcheon were made aware, by February 2014 at the latest, that DECC had applied for and obtained State Aid approval for the GB domestic scheme.[924] Mr Hutchinson was told by email on 19 February that DECC had applied for State Aid for the GB domestic RHI scheme because the scheme would cover commercial usage by landlords and energy service companies.[925]

17.26 Nonetheless it appears to the Inquiry that Ms McCutcheon and Mr Hutchinson did not use the information obtained from DECC to reconsider the need for State Aid approval for the NI domestic RHI scheme or the sequencing of the Phase 2 proposals.

920 DFE-424818 to DFE-424823
921 DFE-424822
922 DFE-33719 to DFE-33725
923 DFE-33724
924 DFE-92096; DFE-92318
925 DFE-54573

The prioritisation of the domestic RHI

17.27 Partly based on the need to prioritise its limited resources, and supported by the mistaken belief that the domestic scheme could be taken forward more quickly as it did not require a State Aid application, it appears the Phase 2 proposals started to be developed on separate time tracks.[926] Mr Hutchinson gave oral evidence that there was no formal decision by Minister Foster or anybody else to decouple the domestic scheme from the rest of the Phase 2 proposals.[927]

17.28 However, by September 2013, Energy Division officials had adopted the path of advancing the domestic RHI ahead of the other proposals. The first available indication of this is found in the Energy Division Corporate and Operating Plan as at 30 September 2013.[928]

17.29 The following entry was to be found in relation to Phase 2 of the RHI:

> "State aid application should be submitted by 31 December 2013, but on current evidence the approval is likely to take some months. As only some elements of Phase 2 require State Aid approval, Phase 2 will launch in two stages – the domestic scheme, which does not require approval, in early Spring 2014, with the non-domestic elements launching as soon as approval is obtained." [929]

17.30 The submission to Minister Foster and Dr Crawford dated 26 November 2013 seeking approval of a draft six monthly update for the ETI Committee, which was referred to above, continued this theme. Ms Hepper told the Minister, at paragraph 13 of the draft document to be sent to the ETI Committee:

> "Given that the domestic RHI does not require State Aid approval, it is likely that it can be launched earlier than the non domestic aspects of phase 2 - probably Spring 2014."[930]

17.31 The Energy Division Corporate and Operating Plan, advocating the different time tracks and prioritisation, was available to John Mills when he took up his appointment as the new head of Energy Division in January 2014. Mr Mills said that his general impression upon taking up his post with DETI in January 2014 was that the non-domestic RHI scheme was not a prominent issue and the only real concern was the perceived slow uptake. He remembered that the question that Energy Division did not want to be asked was "How much money are you giving back to the Treasury?"[931] His answer to that was the introduction of the domestic scheme, which he said had been the "direction of travel" priority since his arrival; a priority that he agreed he then maintained and later mistakenly and repeatedly represented as a decision that had been taken by Minister Foster.[932] Minister Foster had not taken any such decision; she, like the ETI Committee, had been advised of a course that had been adopted by Energy Division in late 2013 based on a mistaken belief about the State Aid position.

17.32 On 15 May 2014 Mr Mills advanced a submission to Minister Foster containing a six monthly update on the RHI and RHPP schemes, which was to be forwarded with her approval to the

926 DFE-33720 to DFE-33725 (see Annex A, paragraph 13); DFE-144531 to DFE-144537; TRA-05110 to TRA-05131; WIT-02436
927 TRA-05126 to TRA-05130
928 DFE-399116 to DFE-399124
929 DFE-399122
930 DFE-33720 to DFE-33725 (see Annex A, paragraph 13)
931 TRA-07089
932 TRA-07090; TRA-07094 to TRA-07095; TRA-07184; TRA-07201 to TRA-07206

ETI Committee.[933] The submission referred to the Phase 2 consultation between July and October 2013 and confirmed that, subsequently, the Department had been primarily focused on finalising policy on the domestic scheme and preparing for implementation. The other elements of Phase 2 "such as new technologies in the non-domestic sector and technical changes to legislation" were now to be addressed once the domestic scheme was agreed.[934]

17.33 The Inquiry notes that Minister Foster annotated a submission that she received on 16 September 2014 from Mr Wightman, who took over as the grade 7 responsible for Renewable Heat in June 2014, seeking her approval of the business case for the domestic scheme, with the words "get this launched ASAP", thus confirming a sense of urgency to get the domestic scheme launched.[935] Though, in fairness to the Minister, she, and the ETI Committee, had previously been told that it was intended to launch Phase 2 of RHI by Autumn 2013,[936] and then December 2013.[937]

933 DFE-230084 to DFE-230090
934 DFE-230089
935 DFE-184099 to DFE-184101
936 DFE-355293 to DFE-355304
937 DFE-33518 to DFE-33519; DFE-399144; DFE-355572

Findings

97. The Minister should have been specifically advised, in June 2013, that CEPA had said in its June 2013 report that the target of 10% of heat from renewable sources by 2020 was, by that point, unlikely to be met.

98. At no point was there a clear, reasoned decision to separate out development of the domestic scheme from other changes proposed for Phase 2 of the RHI. The separation arose from an initial misunderstanding about State Aid. The domestic scheme, was 'de-coupled' from other Phase 2 developments based on a mistaken belief that it could be progressed swiftly in the absence of a requirement for State Aid and then came to be the focus of work in late 2013.

99. The lack of formal record keeping and the weakness of handover procedures also contributed significantly to the later erroneous belief that there had been a decision to de-couple and prioritise the domestic scheme and that this had been made by the Minister.

100. The Inquiry finds that, by February 2014, Ms McCutcheon and Mr Hutchinson were aware that DECC had applied for State Aid in respect of the GB domestic RHI scheme, together with the reason for that application. That information should have initiated a further consideration of the decision to 'de-couple' and prioritise the NI domestic RHI scheme and triggered an appropriate application for State Aid in respect of the NI domestic RHI scheme.

101. The consequence of the focus on the NI domestic RHI scheme was that budgetary cost controls which had been designed to operate across both domestic and non-domestic parts of the scheme, as proposed in the Phase 2 consultation, effectively fell by the wayside.

102. Given that the RHPP was already in place and proving popular, the Inquiry considers that the focus on the domestic RHI scheme was unnecessary, especially once it became known in February 2014 that it would require a State Aid application.

103. A combination of focus on the domestic RHI scheme and the limited resources within the Energy Division meant, in practice, notwithstanding the work of Mr Hutchinson, that insufficient resource was allocated by the Department to managing, monitoring and reviewing of the non-domestic RHI scheme. This work should have been done regardless of whether the scheme was perceived as under-performing.