Chapter 2 – Developments in Northern Ireland (2008 to early 2011): the development of Northern Ireland's renewable heat policy

2.1 Energy (apart from nuclear energy) had been devolved to Northern Ireland in accordance with the provisions of the Northern Ireland Act 1998[75] and the branch of the Government in NI with responsibility for the development of energy policy was, at that time, the Department for Enterprise, Trade and Investment (DETI), later to become the Department for the Economy (DfE).[76]

2.2 DETI was divided into the Policy Group and the Management Services Group, each of which was headed by a deputy secretary who was responsible for a number of divisions. One of the divisions within Policy Group was Energy Division. As Director of the Energy Policy Division at DETI, Ms Jenny Pyper had responsibility from August 2004 to May 2010 for the promotion of the strategic development of the energy industry in Northern Ireland in collaboration with the regulator, the Northern Ireland Authority for Utility Regulation (NIAUR). Her role included management and overall strategic responsibility for a number of branches including the renewables team in Sustainable Energy Branch, which was established in July 2009 to develop departmental policy in relation to the use of renewable energy. In that role she developed energy policy options, provided strategic advice for the DETI Minister and oversaw the development and implementation of The Renewables Obligation Order (Northern Ireland) 2005, including subsequent amendments thereto, which obligated suppliers to source a specified proportion of electricity from renewable energy resources.[77]

2.3 New schemes pursuant to the devolution of energy matters, like the NIRO, required primary legislation to be passed by the Northern Ireland Assembly, or by the UK Parliament in conjunction with a Legislative Consent Motion (LCM). Existing powers already facilitated grant support schemes and had been used for the implementation of 'Reconnect', a programme to encourage renewable energy (mainly heat) in domestic premises which ran between 2006 and 2008.

2.4 DETI was still linked into developments in GB and had the potential to keep abreast of all relevant activities through its permanent seat on the Renewables Advisory Board (RAB). Although NI attendances at meetings of RAB appear to have been limited to four out of 15 between 2006 and 2010, DETI was supplied with copies of papers produced at the meetings. The likelihood of an EU Directive on renewable energy had been appreciated in Northern Ireland during 2007 and 2008 and Ms Pyper's role as Director of Energy Division included the development of Northern Ireland's Strategic Energy Framework (SEF) and consideration of emerging renewables initiatives driven by EU Directives. RAB had also specifically considered DECC proposals for renewable heat and so DETI was kept aware of all relevant developments.

2.5 The Inquiry notes that while Olivia Martin (responsible for the relevant part of Sustainable Energy Branch within Energy Division, and reporting to Jenny Pyper) was leading the renewable heat development work in DETI she was the Department's representative on RAB and attended at least one meeting in person. She and her successor, Alison Clydesdale, would have received

75 LEG-03581 to LEG-03684

76 DETI was renamed DfE in May 2016

77 LEG-03277 to LEG-03326; LEG-03327 to LEG-03477; WIT-09916 to WIT-09918

all relevant documentation. Ms Martin was identified by BERR as the NI contact in the 26 June 2008 BERR 'UK Renewable Energy Strategy' consultation document[78] and she had been the recipient of the 50-page BERR draft policy document[79] setting out the reasons why the Government preferred an RHI to an RHO for GB.[80]

2.6 BERR officials approached DETI about participating in a joint seminar in September 2008 with a view to NI being included in the proposed 2008 Energy Bill amendment, which would have extended to NI the power to make its own regulations relating to renewable energy or, if it chose to do so, the opportunity of being included in the GB scheme. Scotland and Wales were included and benefitted from the expertise and resources available to what, in October 2008, became DECC. Wales had no relevant devolved powers for energy and automatically became part of all GB/UK schemes, while Scotland became part of the GB RHI scheme after negotiating an understanding with Westminster that the Scottish Ministers would have to agree or be consulted upon all scheme policy and development matters necessary for any scheme.

2.7 However, despite the potential benefits of following the other devolved administrations, in Northern Ireland it was considered that renewable heat policy did not have either an adequate evidential or statutory basis, and so Energy Division advised[81] that time and consultation would be needed to understand the specific implications for Northern Ireland in order to develop a policy rationale and strategy tailored to the jurisdiction while, at the same time, maintaining close links with thinking in GB and the Republic of Ireland.

2.8 The tension between these two potential approaches was reflected by the observations of the officials who were directly involved during development of the scheme. In oral evidence, Fiona Hepper, who was later to become head of Energy Division in DETI, described Ms Pyper as emphasising how keen the NI Assembly was, at the time, on making its own legislation, stating that she read that as meaning that proceeding by LCM to become subject to the GB Energy Act in 2008 would have seemed like re-devolving powers back to Westminster.[82]

2.9 Catherine McArthur, a policy development manager at Ofgem who was responsible for Ofgem's Feasibility Study in respect of the NI RHI in December 2011, explained to her colleagues in an internal briefing note that DETI officials regarded it as "imperative to differentiate the NI scheme from Great Britain's."[83]

2.10 Ms Hepper referred in her written evidence to the fact that DETI did "benefit from following in their [DECC's] slip stream" but also told the Inquiry in oral evidence that the feeling was that "we need to plough our own furrow and we need to see what is appropriate for the Northern Ireland-specific conditions."[84]

2.11 It is important to remember that this was taking place in the context of restoration of a devolved administration in NI in May 2007 after a period of three years of Direct Rule from Westminster. Chris Stewart, who later became deputy secretary in DETI from 2014 to 2016, succeeding David Thomson, referred the Inquiry to the:

78 INQ-21157 to INQ-21445 at INQ-21184

79 DFE-25101 to DFE-25158

80 DFE-25146 to DFE-25147

81 DFE-25263 to DFE-25268; DFE-25605 to DFE-25608; DFE-25683 to DFE-25685; DFE-26736 to DFE-26742

82 TRA-01775 to TRA-01776

83 OFG-17384

84 WIT-15028 to WIT-15029; TRA-01777 to TRA-01778

> "...very strong desire on the part of Ministers to make the most of devolution and to show that the value of devolution is that it's locally elected, locally accountable policy – eh, [sic] politicians, who are making the policy decisions that shape society and shape Northern Ireland."[85]

2.12 However when DETI later sought legal advice, with regard to drafting the RHI regulations from both the Departmental Solicitor's Office (DSO) and the Belfast office of the independent firm of solicitors, Arthur Cox, in contrast with the views of Mr Stewart, Nicola Wheeler of DSO explained that the working practice was not to "…deviate from what GB's doing unless there's a very good reason to do so." and Alan Bissett of Arthur Cox, the externally consulted firm of solicitors, also agreed that consistency with GB was "an overarching principle."[86]

2.13 There was also concern as to the practicality of obtaining an LCM from the Assembly in the relatively short time available. In the autumn of 2008 the LCM, which at that time required 25 stages, was not a well-developed nor understood procedure and was felt to be only appropriate for uncontroversial matters with no cross-cutting implications. Understanding was improved by a subsequent Assembly inquiry and report by the Committee on Procedures in September 2009[87] which sought to bring about greater clarity and codification.[88] Nevertheless the Inquiry notes that an LCM had already been passed relating to the Renewables Obligation earlier in 2008 during the passage of the same Energy Bill which passed into legislation in November 2008.

2.14 This issue was brought to Minister Foster's attention in the form of a submission from Ms Pyper on 22 September 2008.[89] There was clearly time pressure on Northern Ireland to decide quickly whether or not to be included in the UK-wide RHI enabling powers being added to the Energy Bill, by then at its later stages in parliament. The balance of the advice was clear and Minister Foster agreed with the recommendation that Northern Ireland "should not seek to be included in these potential amendments to the Energy Bill" and "should not be covered by a UK heat strategy" at least for that round of legislation. Ms Pyper referenced not only the problems with seeking an LCM in such a short time frame but also a range of other cross-cutting policy implications. She wrote:

> "I cannot see how we could develop a credible position in the timeframe so instead I propose that we give BERR a positive form of words for a short section on Northern Ireland which would allow us to be included in general terms but spell out areas of policy difference which will require a tailored NI plan."[90]

Developing a renewable heat strategy and support mechanism for Northern Ireland

2.15 In order to progress the RHI's further development Ms Pyper's team held a series of focus groups in February and March 2009.[91] In April, she and her team reviewed the DECC Heat and Energy Savings Strategy that had been published in February of the same year and which

85 TRA-11536

86 TRA-02845; TRA-02902

87 INQ-101484 to INQ-101540 (Committee on Procedures Inquiry into Legislative Consent Motions, 34/08/09R, 15 September 2009)

88 INQ-101484 to INQ-101540

89 DFE-25263

90 DFE-25267

91 WIT-09925

included a renewable heat incentive proposal as a response to the 2009 Directive.[92] On 30 April she forwarded a submission to Minister Foster seeking agreement for a work programme leading to the development of a renewable heat strategy and support mechanism for Northern Ireland.[93] The submission received ministerial approval in May.[94] In June Minister Foster approved a business case to engage consultants to assist Ms Pyper's team and it was noted that an economic appraisal would be needed in due course.[95] In September Minister Foster was briefed on proposals to form a DETI-led project steering group (later renamed the 'Oversight Group') to guide and manage the work of the consultants.[96] It was suggested that the group include representatives from other NI Departments, academia and key stakeholders including Action Renewables, the Carbon Trust and the Ulster Farmers' Union (UFU). This group was chaired by Ms Pyper from January to May 2010.[97]

2.16 The Energy Division did already have some relevant experience having previously run 'Reconnect', its own renewable energy incentive scheme. Early in 2009 it received a report by KPMG that reviewed the outcome of that grant programme, which had run from 2006 to 2008.[98] The scheme had been very successful in stimulating installation of renewable energy in homes – mainly renewable heat in the form of biomass with some solar applications.

2.17 According to written evidence from DfE, despite high levels of uptake it actually underspent its budget for grants, administration and marketing (which appears to contradict the KPMG finding that the administration and marketing budgets had been overspent).[99] The scheme also successfully stimulated the supply chain with the number of installers increasing from 38 to 673.[100] In that context the Inquiry has taken into account the criticism of Neil Elliott of Future Renewables who told the Inquiry in oral evidence that a number of "pop-up installers" had installed bad technology, taken the grant and then removed the installation if it did not work.[101] In addition, Bernie Brankin, in DETI Finance, would later (in May 2011) remind DETI Energy Division, in the context of her warning relating to RHI funding, that the Reconnect grant scheme, had been "fraught with control problems."[102] However, as would be seen later, relative value for money in Reconnect was considerably better than would be achieved by the RHI scheme – the total capacity supported under the RHI scheme would have cost about £40 million at Reconnect rates, equivalent to about 1p/kWh.

The 2010 AECOM/Pöyry report

2.18 In November 2009, following a tendering process, the consultancy firm AECOM Ltd was awarded a contract to provide an assessment of the potential development of renewable heat in Northern Ireland. The terms of reference prepared by Peter Hutchinson, who joined DETI Energy Division as a deputy principal in 2009, for Ms Pyper, then head of Energy Division, included requirements to:

92 INQ-24742 to INQ-24884
93 DFE-26722 to DFE-26735
94 DFE-26736 to DFE-26742
95 DFE-26798 to DFE-26810
96 DFE-26848 to DFE-26852
97 WIT-09925 to WIT-09926
98 DFE-39373 to DFE-39498
99 WIT-24136 to WIT-24137; DFE-39484
100 DFE-39454 to DFE-39455
101 TRA-04627 to TRA-04628
102 WIT-00840 to WIT-00841

(a) undertake an independent assessment to identify and quantify the current scale, future sustainable growth and optimum size and scale of the renewable heat sector in Northern Ireland;

(b) make recommendations as to the options for encouraging the deployment of renewable heat technologies in Northern Ireland; and

(c) make recommendations for an evidence-based renewable heat target and consider how this target might impact upon existing energy markets in Northern Ireland.[103]

2.19 AECOM worked with the energy economists Pöyry Energy Consulting. As previously mentioned, the work was overseen by an Oversight Group which was chaired by Ms Pyper and comprised representatives from Government Departments and agencies including the then Department of Agriculture and Rural Development (DARD), and Invest NI, as well as Action Renewables, academics with relevant expertise and other interested parties such as the UFU.

2.20 As her last involvement in the development of policy, Ms Pyper briefed Minister Foster on the interim report findings in April 2010.[104]

2.21 The final report, the production of which was overseen by Ms Clydesdale, was provided in July and concluded that the level of renewable heat in Northern Ireland was currently very low at 1.7% of overall demand, a large proportion of which was installed under the Reconnect programme and mostly met by biomass, with a small amount from heat pumps and solar thermal systems.[105]

2.22 The authors concluded that a 10% renewable heat market share was achievable in Northern Ireland but would require significant Government intervention, and that a long-term strategy for renewable and low carbon heat should be developed including options for incentivisation.[106] The report identified two main alternative means of providing financial support, namely capital grants and renewable heat incentives, and, in relation to the latter, it referred to the scheme being pioneered in GB.[107]

2.23 AECOM expressed the view that the GB scheme appeared to be inefficient for Northern Ireland by over-incentivising some technologies and not encouraging the most cost effective options. The advice was that Northern Ireland should develop a specific incentive scheme and also put in place interim measures to help meet the 10% target while the details of an NI-specific scheme were being further assessed.[108]

2.24 AECOM predicted that capital grants would have a very limited impact if the main cost of heat was ongoing maintenance and fuel and not the initial capital expenditure, in which case grants would have been better.[109] They also noted that grants offer an ability to differentiate and target support, helping to avoid overcompensation as well as to avoid overspend.[110]

2.25 AECOM also warned that the costs for an RHI scheme could be up to four times higher than for the most cost-effective approach because it was designed to provide a similar rate of

103 DFE-26804 to DFE-26810

104 DFE-380299 to DFE-380308; DFE-43009 to DFE-43173

105 WIT-00368 to WIT-00541

106 WIT-00376

107 WIT-00462

108 WIT-00508

109 WIT-00507

110 WIT-00462 to WIT-00463

return to all technologies, no matter how expensive or efficient.[111] They pointed out that some applications, including non-domestic solid biomass from 45kW upwards, already appeared to be cost-competitive and may not require any tariff support.[112] AECOM advised that more work was required, including assessment of what should be incentivised, analysis of options for each sector, assessment of finance and consultation with stakeholders.[113]

2.26 With regard to the introduction of incentive schemes the advice was:

> "While it is not possible to state the time for the above actions to take place, it is anticipated that this will require at least 1-2 years to complete, suggesting an incentive could possibly be introduced during 2012, which will also allow DETI to benefit from the outcomes of the DECC RHI experience."[114]

During the Department's consideration of the AECOM report, in June 2010 Ms Hepper replaced Ms Pyper as DETI's Director of Energy Division after being asked to take up the position by the then Permanent Secretary of DETI, David Sterling. Ms Hepper was a grade 5 civil servant in DETI who had been director of the Strategic Planning Directorate, which covered a wide range of policy and operational issues. In her new role she assumed responsibility for all aspects of energy policy, including the development of renewable heat. She had held an economic portfolio but had no experience in the field of energy, nor was any such policy experience specifically required or sought by those making the appointment to the post. Ms Hepper was known to Ms Pyper and two half-day meetings took place between them before Ms Pyper departed during which Ms Pyper took her through the main issues with which she had been dealing.[115] Ms Hepper said that she received a portfolio of papers from the Division but there was no formal handover or brief from Ms Pyper.[116] There does not appear to have been any requirement or expectation of a formal handover at the time.

2.27 Ms Hepper was aware of the AECOM/Pöyry Consultancy work, the report based upon which had been submitted to DETI and adopted by the steering committee when she arrived. Ms Hepper told the Inquiry that her role had been to make sure the report was absolutely finalised and the Minister briefed.[117] It seems likely that it would have been discussed in the context of Ms Pyper's submission to Minister Foster in April 2010[118] and it was the subject of Ms Hepper's ministerial submission in August 2010, discussed below.

The 9 August 2010 ministerial submission

2.28 On 9 August 2010 Ms Hepper briefed Minister Foster and her Special Adviser (SpAd), Dr Crawford, with a submission on the findings of the AECOM/Pöyry study and advised her as to the need for statutory powers and liaison with DECC on the overall funding position.[119] A copy of the Executive Summary of the AECOM/Pöyry report was supplied. Ms Hepper noted that funding was yet to be agreed by Her Majesty's Treasury (HMT) and that any arrangements

111 WIT-00467 to WIT-00468
112 WIT-00463 to WIT-00464
113 WIT-00509 to WIT-00510
114 WIT-00510
115 TRA-01767
116 TRA-01767 to TRA-01769
117 TRA-01770
118 DFE-36797 to DFE-36505
119 DFE 27683 to DFE-27698

would have to be agreed by the Department of Finance and Personnel (DFP).[120] She pointed out that there had been increased interest in renewable energy from a number of NI sources including MLAs, industry representatives and RHI lobbyists.[121] In the course of her submission Ms Hepper stated that the AECOM/ Pöyry study had reached a number of conclusions including the following:

> "Northern Ireland needs to develop a specific RHI scheme and further economic work is required to assess the actual incentivisation levels required. The GB Renewable Heat Incentive scheme appears to be inefficient for Northern Ireland, by over-incentivising some technologies and not encouraging the most cost-effective options."[122]

Consequently, there was a need to engage a consultancy body to undertake an economic appraisal of a Northern Ireland RHI scheme. Included with the submission Ms Hepper provided Minister Foster with two draft letters: the first was a draft letter to Rt Hon Chris Huhne MP, then Secretary of State at DECC, seeking further information as to funding; the second was a draft letter to the ETI Committee Chair, Alban Maginess MLA.[123] The submission also looked ahead to a potential NI scheme, noting the developments in GB, and advised that there could be clear economies of scale to be gained by "piggybacking" on Ofgem's experience and software design developed for its administration of the GB RHI scheme.[124]

2.29 In a related submission on the same date advising Minister Foster on a response to correspondence from Mark Durkan MP MLA, which sought an update in respect of the renewable heat study, Ms Hepper told the Minister that all details relating to the design and implementation of an RHI for Northern Ireland would have to be subject to public consultation but that it could be expected that many elements of an NI scheme, barring tariff levels, would be similar to the GB scheme.[125]

The September 2010 press release

2.30 The Minister subsequently approved the appointment of external consultants, notified the Chairman of the ETI Committee, Mr Alban Maginness, of progress to date[126] and issued a press release referring to the GB RHI scheme on 20 September 2010 stating that:

> "The Department of Enterprise, Trade and Investment study examined the need for a similar scheme and has concluded that a RHI which takes into consideration the specific Northern Ireland heat market should be developed provided that it is economically viable."[127]

2.31 In September 2010 DETI also published a Strategic Energy Framework for Northern Ireland with a foreword by Minister Foster.[128] The Strategy had been in development for some time and was one of the key pieces of work transferred by Ms Pyper to Ms Hepper. It included

120 DFE-27683 to DFE-27684
121 DFE-27689
122 DFE-27685
123 DFE-27692 to DFE-27695
124 DFE-27687
125 DFE-27536 to DFE-27544; DFE-27538
126 DFE-28808 to DFE-28819
127 DFE-29641 to DFE-29642
128 DFE-15192 to DFE-15237

an endorsement of the target of a 10% contribution from renewable heat by 2020 and the Department undertook to consider how best to encourage new entrants into the renewable heat market. DETI also agreed to publish a Renewable Heat Route Map by March 2011.[129]

2.32 The target of 10% of heat from renewable sources was adopted in the NI Executive's 2011-15 Programme for Government.[130] Minister Foster wrote to the Secretary of State at DECC on 16 September 2010 confirming that the lack of time and local evidence had prevented Northern Ireland from being included in the GB RHI scheme.[131] She recorded the completion of the AECOM/Pöyry study and asked to be kept up to date with regard to funding and further developments of the GB scheme.

The 2010 Spending Review – HMT funding for RHI

2.33 In October 2010 the Chancellor of the Exchequer's statement in the Spending Review provided £860 million of funding for the GB RHI scheme over the spending review period 2011-15.[132] In his 2010 Spending Review Settlement letter to the Northern Ireland Executive, the Chief Secretary to the Treasury informed the office of the First Minister and deputy First Minister (OFMDFM) that if the Northern Ireland Executive:

> "…choose to introduce an NI Renewable Heat Incentive Scheme then AME funding of £2/4/7/12 million will be available over the SR period based on a population based share of the GB scheme, NIE officials should inform my officials of their intentions to feed into AME forecasts."[133]

2.34 During the autumn of 2010 significant progress took place in the development of the NI RHI scheme. On 29 October Alison Clydesdale emailed Sam Connolly, a deputy principal economist at DETI within the Analytical Services Unit (ASU), who had been involved in the development of RHI policy and had been providing economic advice to Energy Division for some time, and Carmel McConville (DETI Strategic Planning & Economics Branch) noting that "…we agreed that since the funding was only being made available for an RHI that this essentially meant that our options could not proceed – so we have limited the EA to only looking at the RHI option."[134] It seems clear that, at that time, Ms Clydesdale believed that the HMT funding was "ring fenced" to deliver an RHI scheme rather than a grant support system or other options.[135]

2.35 On 1 November Ms Hepper sent a submission to Minister Foster and Dr Crawford, notifying them that HMT had advised that £2/£4/£7/£12 million (i.e. a total of £25 million) of Annually Managed Expenditure (AME) funding would be available for an RHI scheme and advising that DETI would need to take enabling powers.[136] At paragraph 5 of that submission Ms Hepper confirmed that an economic appraisal would be commissioned shortly and should be complete by the end of February 2011. Her submission continued: "As funding has been offered, the economic appraisal can now focus on determining tariff levels, assessing eligibility requirements and developing a cost-effective RHI for Northern Ireland."[137]

129 DFE-15212
130 DFE-262049 to DFE-262112
131 DFE-28629 to DFE-28630
132 INQ-51210 to INQ-51315
133 DFE-28820 to DFE-28829
134 DFE-186559
135 DFE-186561
136 DFE-195293 to DFE-195300
137 DFE-195295

2.36 On the same date, Minister Foster notified OFMDFM that the offer of funding should be accepted.[138] She explained that Northern Ireland had not been included in the GB RHI scheme because of the different nature of the heat market, namely the dependence on oil, the need to protect the developing gas market, the different energy costs, higher levels of fuel poverty and the rural nature of the NI jurisdiction. These were all factors which made it more appropriate for a separate assessment focussing on the local situation.

The 30 December 2010 ministerial submission to appoint CEPA

2.37 Ms Hepper advanced a further submission to the Permanent Secretary, Minister Foster and Dr Crawford on 30 December 2010 seeking approval of a business case formally to appoint Cambridge Economic Policy Associates (CEPA) as external consultants.[139] Both the submission and the supporting documentation emphasised the urgency of the matter. The submission was timed "Desk Immediate", adding that DFP approval upon completion of the appraisal was required "…to ensure spend in 2011/12 is achievable."[140] Paragraph 14 of the submission again emphasised that it was essential for the project to go ahead as soon as possible and paragraph 7.3 of the business case stated that: "Further to this, HMT has allocated £2M of funding for a Northern Ireland RHI in 2011/2012, to ensure this money is utilised this economic appraisal must proceed with further delay [sic]."[141] The business case document also asserted that there was "no possibility in deferring this assignment" and "delaying this project would also lead to this money being unspent."[142]

2.38 While the Terms of Reference for the consultants specified an open requirement to make recommendations (based on the evidence gathered and the economic analysis carried out) on the most cost-effective structure of a Northern Ireland RHI scheme, to increase the level of renewable heat to 10%, the Inquiry noted that the business case to DFP to engage a consultant defined an RHI scheme in much more restrictive terms in a footnote on page 1:

> "An RHI is an incentive scheme that will reward those who install eligible renewable heat technology with a set tariff to be paid over a number of years, the level of tariff and length of payment is determined by the size and type of technology involved. The tariffs are set in order to cover the capital, operating and other non-financial costs of installing such technologies."[143]

2.39 However, Mr Cockburn of CEPA confirmed in oral evidence to the Inquiry that CEPA had considered a full range of options.[144] The CEPA reports are considered in detail in chapter 5 of this Report.

2.40 It was also realised that for an NI RHI scheme to proceed, a legal basis was required. Section 100 of the 2008 Energy Act had conferred upon the DECC Secretary of State in GB the power to make regulations to establish a Renewable Heat Incentive scheme in GB but, as explained earlier, the legislation did not include an enabling power for a scheme in Northern Ireland.[145]

138 DFE-62001 to DFE-62005
139 DFE-58027 to DFE-58063
140 DFE-58028
141 DFE-58032; DFE-58042
142 DFE-58036
143 DFE-58051 to DFE-58063; DFE-58034
144 TRA-01237 to TRA-01238
145 LEG-00316 to LEG-00318

2.41 By early 2011 however, with the AECOM report in hand, an announcement on the direction of travel from the Minister and a clear offer of funding from HMT, DETI was in a position to seize the opportunity of further energy legislation going through the UK Parliament.

Obtaining enabling powers for an NI RHI

2.42 In February 2011 the NI Executive agreed with the proposal that NI should be included in the 2011 Energy Bill, then being processed through Parliament, with a view to being granted enabling powers to implement regulations analogous to those which had been used to establish the GB scheme. The relevant Legislative Consent Motion (LCM) was passed by the Assembly on 14 March 2011.[146]

2.43 In her letter of 24 March 2011 to DECC Secretary of State Huhne, Minister Foster said:

> "I want to stress that an amendment that would extend the same powers held in section 100 of the 2008 Energy Act to Northern Ireland is vital to allowing my department to introduce a specific RHI for Northern Ireland, using separate secondary regulations, in time to utilise HMT funding and support the achievement of both DETI and UK-wide targets."[147]

The Minister included with her letter a copy of instructions to Parliamentary Counsel in order to assist with the drafting of the proposed amendment.[148] Paragraph 2.9 of those instructions recorded the policy objective as being the implementation in NI of a "scheme that is similar to the scheme in GB" tailored to suit the NI energy market and, at paragraph 3.7, the instructions advised that the "broad scope and purpose" of the RHI scheme in NI was intended to be the same as that proposed for GB save for one point relating to the definition of biofuels.[149]

2.44 In due course, section 113 of the Energy Act 2011 conferred power on DETI to make regulations establishing a scheme to facilitate and encourage renewable generation of heat in NI and provide for the administration and financing of such a scheme.[150]

146 DFE-60157 to DFE-60161
147 DFE-29305 to DFE-29311
148 DFE-29307 to DFE-29311
149 DFE-29308; DFE-29310
150 LEG-00876 to LEG-00878

Findings

5. DETI was made aware of relevant policy developments in renewable energy including renewable heat. It received regular updates from DTI/BERR/DECC and had access to the knowledge base, resources and documentation of the Renewables Advisory Board.

6. DETI had previous experience of running a grant support scheme for renewable energy, Reconnect, and therefore DETI was not starting completely from scratch.

7. In 2008 the amendment to the Westminster Energy Bill was only proposing the grant of enabling powers. The powers were to facilitate the potential introduction of a GB RHI scheme or, potentially a UK-wide RHI in which NI could have participated. The Inquiry has no reason to believe that it would have been impossible to agree wording which allowed NI to be included in the enabling powers but still to opt out and pursue its own approach, if desired. The Inquiry notes that Scotland had already adopted such a pragmatic approach.

8. The Inquiry also notes that the NI Assembly had already passed an LCM relating to renewable electricity earlier in the passage of the same Energy Bill and that the Assembly was ultimately capable in 2011 of passing the LCM for the grant of powers for the NI RHI in eight weeks.

9. However, the Inquiry is aware of the fact that, at this time, the devolved administration had recently been returned to NI after a period of 4.5 years of direct rule from Westminster (from October 2002 to May 2007) and a number of witnesses recalled the desire to make the most of devolution and demonstrate that policy decisions were being made by local politicians. The Inquiry notes the often-conflicting evidence submitted regarding subsequent policy development in general, with regard to whether to copy and/or be part of GB initiatives or to adopt an NI specific approach. This reveals a tension between the two approaches in which it would have been very difficult for officials to decide which of two differing directions to follow.

10. Ms Pyper appreciated that there was no adequate statutory or evidential basis for renewable heat policy in NI where heating was powered principally by oil rather than gas. She understood that a renewable heat policy could have implications for four or more Departments and, therefore, could be potentially cross-cutting, in which case an LCM would have been viewed as inappropriate at the time.[151] She did warn of the need for resources in relation to this policy area.[152] In due course the AECOM/ Pöyry report confirmed that the GB scheme appeared to be inefficient for NI, as it had the potential to over-incentivise some technologies and not encourage the most effective options and advised that a scheme specific to NI was required.[153] In all the circumstances, taking into account the contemporary political climate, on balance, the Inquiry does not criticise Ms Pyper for her decision not to seek RHI enabling powers through inclusion in the 2008 UK Energy Act.

151 WIT-09924

152 WIT-09926

153 WIT-00508