

Chapter 24 – Initial work on Phase 2 of the non-domestic RHI scheme in early 2015

- 24.1 Following the launch of the NI domestic RHI scheme in December 2014, the attention of the relevant officials working on RHI in DETI Energy Division’s Energy Efficiency Branch, primarily Mr Wightman and Mr Hughes, turned again to the non-domestic NI RHI scheme.
- 24.2 According to the Energy Efficiency Branch Team Plan for 2014-15, from as early as July 2014 the team had set themselves the target of introducing Phase 2 of the non-domestic RHI scheme by 31 March 2015.¹³⁵³ The specific tasks, set out in paragraph 4I of the 28 July 2014 version of the plan, indicated that the intention was to review and finalise the policy proposals, including conducting a review of the biomass tariffs for boilers under 100kW and considering tiered tariffs to prevent excessive payments.¹³⁵⁴ The same paragraph in the 17 December 2014 version of the plan contained an identical list of tasks, indicating (in keeping with the evidence received by the Inquiry) that none of the tasks had been progressed to that point.¹³⁵⁵ The evidence the Inquiry received from the relevant officials was to the effect that, before January 2015, there simply had not been the capacity to progress any other elements of the Phase 2 proposals beyond the domestic RHI scheme itself.
- 24.3 During 2014 and into early 2015, uptake of the non-domestic scheme was beginning to accelerate and concerns about the adequacy of the budget to cover commitments initially emerged within Energy Efficiency Branch, and subsequently grew amongst senior managers in DETI, leading to a series of actions and reactions throughout the course of the year.¹³⁵⁶ Summaries of the developments are outlined in the following sections.

Initial development of the response to the non-domestic element of the 2013 Phase 2 consultation

- 24.4 In January 2015 Mr Hughes commenced work on a document entitled “The Northern Ireland Non Domestic Renewable Heat Incentive Response to consultation and final policy”.¹³⁵⁷ It appears to have been intended to be the Government response to DETI’s July 2013 Phase 2 consultation. This response document covered some 18 issues, including the expansion of the non-domestic scheme and cost controls. Ultimately there would be 25 versions of this document by the time work stopped on it on 20 May 2015. Most of the substantive work appears to have been carried out in April 2015.
- 24.5 It is not entirely clear who decided how to proceed. Mr Wightman thought that there might have been some discussion with Mr Mills but, for all practical purposes, it appears that the Energy Efficiency Branch officials were left to their own devices.¹³⁵⁸ Mr Hughes told the Inquiry that they took guidance from the July 2013 consultation document and responses thereto, rather than researching any of the other materials stored in TRIM.¹³⁵⁹ Without proper background

1353 DFE-419557 to DFE-419565

1354 DFE-419562

1355 DFE-419306 to DFE-419318

1356 DFE-117331 to DFE-117347

1357 DFE-117331 to DFE-117347

1358 TRA-09249 to TRA-09261

1359 TRA-05886; TRA-05944 to TRA-05945

knowledge or research this meant that they were ill-equipped to deal with major aspects of the scheme:

- (i) Neither Mr Wightman nor Mr Hughes were aware of the unusual form of AME by which the schemes were funded, despite Mr Wightman having unearthed the April 2011 email from HMT's Jon Parker during exchanges with DFP over the domestic business case in September 2014. Mr Wightman told the Inquiry that he was under the impression that any AME forecast would be met and any increase in applications confirmed that the schemes were "taking off".¹³⁶⁰
- (ii) They were not aware that DFP approval of the non-domestic RHI scheme required to be renewed in March 2015, nor that a scheme review should have been carried out in 2014 and the results thereof implemented by April 2015.¹³⁶¹
- (iii) Mr Hughes explained that his attention was not drawn to the original non-domestic RHI scheme risk register of 2012 and he was not advised to monitor load factors or fuel prices but only uptake in terms of ascertaining how that could be **increased** (the Inquiry's emphasis).¹³⁶²

The 2015 policy templates

- 24.6 As part of his work on developing the policy response, Mr Hughes prepared a number of template documents setting out DETI's proposals for Phase 2 of the NI non-domestic RHI scheme. Each template covered a different policy proposal. The purpose of these template documents was to seek Ofgem's initial comments on each area, which could then be factored into any ultimate recommendation to the Minister as to future developments. Mr Hughes told the Inquiry that Ofgem's views were sought because it was the body charged with administering the scheme.¹³⁶³
- 24.7 Eleven of the templates were forwarded to Ofgem on 26 February 2015, with a further three (including one entitled "Cost Control") being sent on 25 March 2015.¹³⁶⁴ The position was formalised on 1 April 2015 when Mr Hughes emailed a letter from Mr Wightman to Dr Ward of Ofgem inviting Ofgem to commence a short feasibility study on a number of the proposals that they wanted to include in Phase 2 of the non-domestic RHI scheme.¹³⁶⁵
- 24.8 The templates that Mr Hughes sent through in February and March 2015 related to a myriad of different issues, some of which had not been the subject of public consultation and some of which, had they been implemented, would have put further pressure on the available RHI budget. They included, but were not limited to the following:
- (i) a proposal to extend the band of the potentially lucrative medium biomass tariff, then 6.3p/kWh, from 20 to 99kW to 20 to 199kW;
 - (ii) a new tariff for large biomass boilers over 1MW;
 - (iii) introducing a possible uplift tariff for district heating;

1360 TRA-05830 to TRA-05831; TRA-05866 to TRA-05867; TRA-06856 to TRA-06858

1361 TRA-05828 to TRA-05830; TRA-05844 to TRA-05848; TRA-05887 to TRA-05889; TRA-06956 to TRA-06957

1362 TRA-05861 to TRA-05864; TRA-08535

1363 TRA-05941

1364 DFE-118542 to DFE-118559; DFE-118583 to DFE-118589

1365 DFE-118632 to DFE-118651

- (iv) work on some definitions such as “an installation”, and whether a process had to occur within a building; and
 - (v) cost control.
- 24.9 The proposal to extend the band for medium biomass had not been consulted on in 2013. It noted that, by January 2015, over half of the applications to the non-domestic NI RHI scheme related to 99kW installations, each qualifying for the higher tariff of 6.3p/kWh. It is evident from the policy proposal that, as will be discussed elsewhere in this Report when dealing with multiple boilers, Mr Hughes was trying to come up with a means to reduce the extent of multiple boiler RHI applications. He had already expressed the view to Ofgem in January 2015 that what was occurring in this regard was not in line with the policy intent for the scheme.
- 24.10 The re-banding proposal did recognise that the GB RHI scheme had a tiered tariff, but Mr Hughes confirmed that at that time, 26 February 2015, it was not proposed to introduce tiering in Northern Ireland.¹³⁶⁶ As has already been seen in the last chapter, that position was re-stated to Janette O’Hagan in 2015.
- 24.11 The proposal was to extend the medium biomass tariff up to and including 199kW boilers, which, Mr Hughes suggested, “should not increase RHI payments”. It does not seem to have been appreciated that this might simply exchange ‘gaming’ at one level for ‘gaming’ at another.¹³⁶⁷

The 2015 cost control proposal

- 24.12 Mr Hughes sent the cost control policy template to Ofgem on 25 March 2015.¹³⁶⁸ By this point, as will be discussed later in this Report, Mr Wightman and Mr Hughes were starting to realise that there was likely to be insufficient budget for the number of likely applicants to the NI RHI scheme. In his covering email Mr Hughes drew Ofgem’s attention to the cost control template and summarised the approach as “future tariff reductions are being considered for the Regulations as a budgetary control measure.”¹³⁶⁹
- 24.13 The attached March 2015 template detailed the trigger method of cost control that Mr Hutchinson had designed (the Inquiry has already said it considers this would be more accurately referred to as a budget control), which was to operate across both the non-domestic and domestic RHI schemes, and about which the public were consulted in 2013.¹³⁷⁰ The initial text of the template setting out the trigger mechanism appears to have been taken from the July 2013 consultation document itself.
- 24.14 The template then set out what were said to be the consultation responses to that 2013 proposal. It was indicated that the consultation responses suggested that the proposed trigger points could be viewed as a disincentive and could cause further uncertainty in the market.
- 24.15 In the “Discussion” section of the template it was stated that the trigger points were “too proscriptive” and that DETI should have flexibility and control to restrict/close the scheme to new applicants at any given point to help manage the budget. It was recognised in the template that the power to restrict or close membership to the scheme required “to be provided for in

1366 DFE-118542 to DFE-118544; TRA-08612

1367 DFE-118543 to DFE-118544; TRA-05942 to TRA-05944

1368 DFE-118583; DFE-118586 to DFE-118587

1369 DFE-118583

1370 DFE-118584 to DFE-118585

the Regulations”, but no further steps appear to have been taken to advance that issue as part of the initial cost control work.¹³⁷¹ A subsequent version of the cost control template sent to Ofgem in May 2015 simply contained the same statements.¹³⁷²

- 24.16 The discussion section went on to state: “on the wider issue of affordability/future tariff levels there is a lack of clarity over RHI funding beyond March 2015”. It then said that “consideration should be given to plan for reduced tariffs now as part of the phase 2 review” and that “the most popular tariff, (6.3 pence biomass), should be reduced at different intervals.”
- 24.17 The template then set out the DETI recommendation “to include tariff reduction for biomass in April 2017 and April 2018. The level of reduction to be determined, (probably looks like about 33% reduction on each occasion)”.
- 24.18 Evidence of the proposal being developed and refined was available to the Inquiry. The Inquiry was provided with all the versions of the draft entitled: “The Northern Ireland Non Domestic Renewable Heat Incentive Response to consultation and Final Policy” that Mr Hughes worked on between January and May 2015, when, as the extent of the difficulties with RHI started to become apparent to DETI officials, there was a significant change of approach. When Mr Hughes sent a draft of the policy document to Mr Wightman on 12 May 2015¹³⁷³ it said that “provision will be made in the scheme legislation to reduce the most popular tariff, (6.3 pence biomass), in April 2017 and again in April 2018.”¹³⁷⁴ The previous reference to a 33% reduction had been changed to a specific reduction of “2.1p/kWh on each occasion”.¹³⁷⁵
- 24.19 By 12 May 2015 Mr Wightman and Mr Hughes were also discussing adding tiering to their cost control proposal.¹³⁷⁶ Email communication between them on that date indicates that work was ongoing to try to establish what the appropriate Tier 1 threshold might be in terms of the number of hours before which you would move to the lower Tier 2 tariff. It would appear that questions on the issue were being asked of both DECC and Ofgem, and Mr Wightman explained to the Inquiry in oral evidence that he himself had been looking at the question of tiering.¹³⁷⁷
- 24.20 As mentioned previously, it is the case that the Energy Efficiency Branch Team Plan 2014-15, dated 28 July 2014, had originally included, as one of the necessary activities: “consideration of tiered tariffs to prevent excessive payments. Check understanding with Mr Hutchinson.”¹³⁷⁸ However, Mr Hughes was clear in his oral evidence that the only meeting that he had with Mr Hutchinson, in August 2014, was limited to a discussion of the domestic scheme.¹³⁷⁹ That recollection was consistent with that of Mr Hutchinson.¹³⁸⁰ Further, the potential usefulness of tiering appears to have arisen in a discussion with Ofgem on 27 March 2015¹³⁸¹ over the district heating proposal which Ofgem considered could be open to fraud or ‘gaming’.¹³⁸²

1371 DFE-118586 to DFE-118587

1372 DFE-119483 to DFE-119485

1373 DFE-119036 to DFE-119037

1374 DFE-117161 to DFE-117177 at DFE-117175

1375 DFE-117175

1376 DFE-119036

1377 TRA-10338

1378 DFE-419562

1379 TRA-08541

1380 TRA-05169 to TRA-05170

1381 DFE-385814; TRA-10330

1382 OFG-18516

- However, Mr Wightman told the Inquiry that, for him, the vital importance of tiering was not a “eureka moment” until May 2015.¹³⁸³
- 24.21 By 15 May 2015 Mr Hughes had adopted, in his version 23 of the draft policy document, the GB tiering thresholds: that the first 1,314 hours of use would be paid at the Tier 1 (higher tariff), with hours used thereafter being paid at the Tier 2 (lower tariff), which was going to be 1.5p/kWh.¹³⁸⁴
- 24.22 When, on 22 May 2015, Mr Hughes sent Ofgem a revised cost control policy template it included the previous proposal of the annual drop in the medium biomass tariff, now set at 2.1p/kWh on each occasion, but also the introduction of tiering (at that stage the date for it to be introduced was from 1 April 2016).¹³⁸⁵
- 24.23 By then, the final version of the wider 18 issue policy document that Mr Hughes had been working on, version 25 of 20 May 2015, also contained the tiering proposal. As will be discussed later in this Report, it was on that same day, 20 May 2015, that DETI Finance told Mr Wightman that Energy Division would have to stop entering into any further RHI commitments, and the RHI problem started to escalate. The policy that was subsequently brought forward, and ultimately reflected in the November 2015 RHI amendment regulations, dealt with a much more limited number of issues.
- 24.24 The amalgam of stepped annual tariff reductions and tiering remained in a further version of the cost control template sent to Ofgem on 17 June 2015,¹³⁸⁶ though the date for implementation had been brought forward and the document said that a consultation on the proposals would be conducted during the summer of 2015. The final version of the cost control template from 7 July 2015 only had tiering, but with a suggestion for the consideration of depression.¹³⁸⁷
- 24.25 It is important to consider the development of the 2015 cost control proposal in the context of the original trigger system of cost control proposed in the 2013 public consultation.
- 24.26 It is the case that when Mr Wightman and Mr Hughes took up their posts at the end of June 2014 there was no cost control aspect to the domestic scheme that they took forward. Mr Wightman told the Inquiry in oral evidence that before he arrived in DETI a policy decision must have been taken to remove the cost controls proposed in the 2013 consultation, as they were not part of the domestic policy papers he inherited and took forward.¹³⁸⁸ Whilst this may be a reasonable assumption to make, the evidence available to the Inquiry indicates that there was no specific formal decision to do so.
- 24.27 As discussed earlier in this Report, Mr Hutchinson had devised the “trigger” mechanism of budget control during 2013. That “trigger” mechanism was designed to apply to both the domestic and the non-domestic RHI schemes.¹³⁸⁹ The 2013 consultation included the “trigger” mechanism under its section 4 on “Setting Standards, Improving Performance and Cost Control”.¹³⁹⁰

1383 TRA-10334

1384 DFE-117110 to DFE-117124; DFE-424043 to DFE-424053

1385 DFE-119483 to DFE-119485

1386 DFE-120415

1387 DFE-120426 to DFE-120433

1388 TRA-06906 to TRA-06909

1389 DFE-97607

1390 DFE-97604

- 24.28 When the business case for the introduction of the domestic RHI was originally drafted by Mr Hutchinson in the early part of 2014 it did not contain the proposal to introduce the 2013 ‘trigger’ mechanism through the domestic RHI regulations. In his written evidence to the Inquiry.¹³⁹¹ Mr Hutchinson suggested that the reason for this omission was that he “may have felt” that the business case, and the other papers being drafted for the relevant Casework Committee, were designed to secure approval for the domestic scheme rather than addressing other administrative issues, which were for senior management to decide upon and take forward.
- 24.29 Nonetheless, it was the proposal that had gone out to the public by way of consultation, and the alternatives discussed above that were being developed in 2015 had not. Mr Wightman accepted that he was ultimately responsible for the policy development that was reflected in the discussion section of the templates.¹³⁹² He said the templates would not have reached the desk of Mr Mills, though he may have discussed the general approach with him.¹³⁹³
- 24.30 Mr Hughes accepted that he and Mr Wightman had not liked the ‘trigger’ mechanism proposed in the 2013 public consultation and that they came up with what they thought was a better idea. He accepted in the course of questioning by the Inquiry panel that this proposal bore no relation to that which had been the subject of the consultation.¹³⁹⁴ He also agreed that their proposal was not supported by any clear evidence and, at that time, had not been the subject of a ministerial submission.¹³⁹⁵
- 24.31 Mr Wightman confirmed to the Inquiry in his oral evidence that the work was primarily his,¹³⁹⁶ and he thought the ‘trigger’ mechanism set out in the 2013 consultation document, when he came to work on the cost control question in the initial part of 2015, was “effectively a queueing system”. His concern was that:
- “...if you basically stopped and the applications started to pile up on the desk, you still, whenever you opened up the following year, you were just putting off the problem, so you might have already breached the following year’s budget by the time you reopened for applications.”¹³⁹⁷
- 24.32 Although the 2015 proposals were being framed as budget controls, and while they could have had an impact on how much money was paid out to individual scheme members, they could not, of themselves, regulate how many applicants could enter the scheme in the way that would have been possible with the proposed ‘trigger’ mechanism from the public consultation and consequently would not of themselves have been able to keep the scheme within budget.
- 24.33 When giving oral evidence to the Inquiry Mr Mills accepted that the focus had shifted to tiering “...because it could be done quickly”, and he agreed that Energy Division officials “...had abandoned a mechanism for budget control... [and] had rejected degression and the whole focus was on tiering, which is not a means of budget control.”¹³⁹⁸ The Inquiry notes that tiering, which was adopted by DETI officials, had also not been the subject of public consultation.

1391 WIT-09327 to WIT-09328

1392 TRA-09247 to TRA-09249

1393 TRA-10346

1394 TRA-05944 to TRA-05948

1395 TRA-08662 to TRA-08664

1396 TRA-09247

1397 TRA-09248

1398 TRA-11098

Findings

- 135.** The Inquiry has not been presented with any evidence that a formal policy decision had been taken to remove the budget controls prior to Mr Wightman’s arrival in DETI, but notes the ‘trigger’ system of budget control, consulted on in 2013, was not present within the domestic RHI business case proposal that Mr Wightman inherited when he took up post on 30 June 2014.
- 136.** The alternative cost control proposal from Mr Wightman and Mr Hughes to replace the ‘trigger’ system of budget control, which had been devised in 2013 by Mr Hutchinson with the help of his long experience and about which the public had been consulted, was seriously flawed. The Inquiry finds that neither Mr Hughes nor Mr Wightman properly understood the distinction between budget control and tiering.
- 137.** It appears to the Inquiry that neither Mr Wightman nor Mr Hughes properly understood the mechanism of tiering and its potential role in reducing overproduction and protecting value for money until the summer of 2015. That was certainly the case in respect of Mr Mills, who conceded as much in the course of his oral evidence.¹³⁹⁹
- 138.** As noted earlier in this Report, the public consultation of 2013 did not include any proposal to include reduction or tiering of tariffs. Yet, the belief in 2015 that tiering of tariffs was the most appropriate means of budget control led to no further efforts or research and prevented any further consideration (including, for instance, the introduction of the cost control mechanism which had been consulted upon and was actually a budget control measure). Largely because of the perceived speed with which it could be done, this approach persisted throughout 2015, allowing, as will be considered elsewhere in this Report, the volume of applications to continue unchecked and continuing budget overspend.
- 139.** Crucially, the fact that the subsidy was in excess of the biomass fuel cost was never appreciated and, consequently, was not the subject of consideration. That lack of appreciation on the part of officials was unsatisfactory, not least because, in March 2015, Mr Hughes and Mr Wightman had been copied into the earlier email chain between Ms O’Hagan and DETI officials.¹⁴⁰⁰ At least two of those emails, dated 9 June 2014 and 11 March 2015, emphasised that the clients were no longer interested in efficient heat in the context of the absence of tiering but were using heat in Northern Ireland “because it pays them to do so”¹⁴⁰¹ – the so-called ‘perverse incentive’.

1399 TRA-09569 to TRA-09570; TRA-09625; TRA-10991 to TRA-11003

1400 DFE-04530 to DFE-04539

1401 DFE-04531 to DFE-04534

