Chapter 37 – 2015 Spending Review and HMT clarification of funding

37.1 Alongside the realisation within DETI that spending levels on the NI RHI schemes were likely to be much above the budgeted and forecast levels, discussions with HMT were soon going to make the situation even worse.

37.2 During significant, but relatively informal, engagement with HMT officials in November 2015 and early December 2015, in preparation for the Chief Secretary to the Treasury's 2015 settlement letter, there remained a degree of ambiguity among the Northern Ireland officials on the level of, and arrangements for, the funding for RHI in Northern Ireland on the part of HMT.[2000] On 26 November 2015 HMT's devolution spending team informed DFP's CED that the NI RHI spending profile for the period 2016-17 to 2019-20 would be "basically calculated using Barnett on the GB numbers"[2001] (consistent with the principles set out in the original Parker email of April 2011). If this were to be the position, given that DETI's RHI commitments were considerably in excess of the population-based share of DECC's funding for the GB RHI for 2015 to 2020, it was going to cause a serious problem for DETI and the Northern Ireland Executive.

37.3 On 7 December 2015 Mr Cooper formally notified Ms Scott of DFP that some 983 applications had been received in the two and a half months leading up to the legislative amendments on 17 November, resulting in a revised forecast for 2016-17 of £42 million in respect of the non-domestic scheme and £44.2 million for both schemes.[2002]

37.4 By later the same day DFP had informed Mr Cooper of the likely position, as indicated by HMT, as to what the NI RHI AME profile would look like for the years 2016-20. Mr Cooper informed Mr Rooney of the likely position and that Ms Scott was participating in a meeting with HMT to see if the position could be changed, but that as things stood there was a real prospect of an HMT cap on funding at £18.3 million for the year 2016-17, with any excess expenditure coming out of DETI's DEL budget. He stated that the current DETI RHI forecast for that year was £44.2 million, assuming that both the non-domestic and domestic RHI schemes were immediately closed and that there was no further spike in applications.[2003] He confirmed that if the HMT position did not change then there would be a DEL pressure of £25.9 million for 2016-17.

37.5 Arising from the DFP meeting with HMT on 8 December 2015 there was at least some good news for the 2015-16 financial year.[2004] HMT's settlement letter to the Northern Ireland Executive of 8 July 2013,[2005] which dealt with the 2015-16 financial year, had been silent about RHI. Consequently HMT had not placed a specific (or any) limit on NI RHI AME for 2015–16. HMT confirmed to Mr Brennan that it would cover actual NI RHI scheme costs for the 2015-16 year. However, the then forthcoming settlement letter from the Chief Secretary to the Treasury, providing the outworking for Northern Ireland of the Chancellor's 2015 UK Spending Review for the financial years 2015-16 to 2019-20, was still to set out the position beyond 2015-16.

2000 DFE-394964 to DFE-394965
2001 DOF-04640
2002 DFE-152857 to DFE-152859
2003 DFE-152861
2004 WIT-43219; WIT-43244
2005 INQ-53120 to INQ-53126

37.6 In contrast to the good news about the 2015-16 financial year, on 18 December Mr Brennan was informed[2006] by HMT that, for the years beyond 2015-16, no additional monies would be available to the NI RHI scheme over and above the population share of DECC's RHI funding; and that the forthcoming settlement letter would state that the NI DEL allocation would have to "take the hit" on the excess RHI payments beyond the population share. It seems that DECC had never factored into the national renewable heat target the fact that Northern Ireland had been contributing above its approximately 3% population share. Consequently the argument of losing the additional Northern Ireland contribution (beyond 3%) to the national heat target could not be deployed. Mr Brennan made the DFP SpAd, Dr Crawford and DFP Permanent Secretary, Mr Sterling, aware of this information by email, suggesting that a letter should be issued to DETI advising them to take corrective action immediately.[2007]

37.7 As mentioned previously in the course of this Report, on 21 December Ms Morelli of DFP wrote to Mr Cooper refusing retrospective approval for DETI RHI expenditure from 1 April to 28 October 2015 and stating that, while it remained a matter of considerable concern, the level of irregular expenditure for that seven months period was dwarfed by the long-term budgetary implications.[2008] Ms Morelli's letter also pointed out that while HMT was still considering the funding issue, the probable outcome was that the Northern Ireland Executive would have to fund all costs above the anticipated population-based share NI RHI AME profile (£18.3 million) from the Executive's DEL allocation. That profile had already been significantly reduced for the new Spending Review period and, in the circumstances, urgent action was required.[2009]

37.8 The Inquiry received a good deal of evidence, from a variety of witnesses, as to the concern and dismay caused by this outcome – which was soon confirmed formally by HMT – both in DETI and DFP, particularly given the likely impact on other Northern Ireland Executive spending priorities. Formal confirmation of the position was received by DFP in the settlement letter from the Chief Secretary to the Treasury on 13 January 2016,[2010] which David Sterling described as "the final nail in the coffin…when it come [sic] to any thought that there might be any additional funding."[2011]

37.9 In terms of how this news was met in December 2015, although Mr Stewart emphasised the seriousness of the projected overspend even if it was to be met by HMT out of AME funding, he said: "Once it reached the point where it had to be borne entirely from DEL, it's not that it suddenly started to matter, it suddenly became completely unaffordable." His evidence was also that: "the day that that realisation dawned on us was a day of complete dismay, because we realised the net effect of that was a huge opportunity cost to the Northern Ireland Executive."[2012] Mr Stewart further described how, into early January 2016, "we were all a bit shell-shocked just at the situation that we'd found ourselves in"; and that there was a recognition on the part of the officials, the DETI Minister and his SpAd that "… this really was now a very, very serious situation. It was a catastrophe."[2013]

2006 DOF-02272
2007 DOF-02272; WIT-43244 to WIT-43245
2008 DFE-152933 to DFE-152937
2009 DFE-152935 to DFE-152936
2010 DOF-42007 to DOF-42012 at DOF-42009
2011 TRA-16517
2012 TRA-11608 to TRA-11609
2013 TRA-11743

37.10 Mr Mills' evidence was that, when DFP confirmation was provided on 21 December 2015 that HMT had said that monies above the DECC RHI Barnett consequential budget ceiling would need to be met from the Northern Ireland block: "At that point I knew we had to close the scheme as soon as possible."[2014]

37.11 Indeed, on 21 December, Mr Stewart emailed[2015] Mr Mills informing him that Mr Sterling had confirmed to Dr McCormick the HMT stance on RHI, namely that expenditure over and above the Barnett share would have to be found from within NI Resource DEL. He explained that, "DFP is very concerned, and will ask us formally for proposals to close/suspend the schemes as soon as possible", before asking Mr Mills to set out the options and a critical path for suspension or closure of the NI RHI scheme. In his oral evidence, Mr Mills summarised the message in this email as being "the game's up; we have to pay for this."[2016]

37.12 In light of the developments in relation to the RHI funding position, on 31 December 2015 Mr Mills duly forwarded an urgent submission to Minister Bell seeking to deal with the future of the NI RHI scheme.[2017] The actions which followed this submission are addressed in detail in the next chapter. However, in the course of the submission, Mr Mills provided the Minister with information on the funding position as it then stood. The true funding position of the NI RHI scheme was now spelt out.

37.13 The submission noted that the recommended decision it contained (to close the NI RHI schemes) was likely to attract criticism, given the scale of the unapproved expenditure, and that HMT had confirmed that the cost overrun might need to be covered from the Executive's resource DEL budget.

37.14 The Minister was also advised that the matter should be referred to the Executive Committee in accordance with paragraph 2.4 of the Ministerial Code since the proposal had implications for the Programme for Government, would be "significant and controversial" and could be considered cross-cutting,[2018] (this feature of the required decision-making in relation to the proposal to close the RHI scheme is significant in light of what followed, as discussed in greater detail in the following chapters of this Report). The submission also contained a table illustrating the very substantial increase in applications in October/November 2015, together with the associated annual and 20-year costs.[2019]

37.15 The submission, in paragraph 13, stated that the effect of the Chancellor's 2015 Autumn Statement had been to reduce the NI RHI budget. The same paragraph, incorrectly headed 'Change in HMT Policy' indicated that Northern Ireland would have to cover the full costs of any overspend, not just a penalty of 5% as some DETI and DFP officials had mistakenly thought.[2020] The Minister was informed that the position created significant budgetary pressures.

37.16 The figure then forecast commitments to 31 March 2016 of some £42 million (which would then continue on an annual basis for many years) and was clearly in excess of what HMT was now going to cover in each year after 2015-16. The result of the Autumn Statement, therefore, was that it would create significant ongoing budgetary pressure with additional average annual

2014 WIT-14560; and see also TRA-11185 to TRA-11188
2015 WIT-11739
2016 TRA-11185
2017 DFE-294363 to DFE-294369
2018 DFE-294364
2019 DFE-294365
2020 DFE-294367

costs of around £15 million, to be paid out of the Northern Ireland block, even if there were no further applications after the end of the financial year.

37.17 The final recommendation in the submission of 31 December 2015 was as follows:

> "To minimise further overspending and to meet the conditions of DFP approval, we now have no choice but to close both the non-domestic and domestic schemes as soon as possible."[2021]

2021 DFE-294368

Findings

202. As discussed earlier in this Report, DETI ought to have had a fuller appreciation, and corporate memory, of the risks to its DEL budget which arose from the particular funding arrangements for the RHI scheme. Had it done so, the apparent 'change' in policy by HMT in December 2015 which in reality was a limited, if any, change from the position as it was explained in the 2011 email exchanges in relation to funding – would not have come as such a shock to officials.

203. The failure to include effective budget control and/or appropriate powers to suspend the scheme in the 2015 Amended Regulations (as considered in the previous chapter of this Report) meant that DETI was not only particularly exposed to a further spike, but also to the ongoing lack of control in the scheme and to any decrease in the funding to be made available by HMT resulting from DECC's revised forecasts, over which DETI had no control.