Chapter 51 – Budget control – scheme suspension and degression

51.1 The Inquiry considers it to be important to differentiate between the concepts of cost control and budget control – it is possible to manage individual costs (e.g. through tiering of tariffs), but still lose control of the scheme budget because overall spend for an incentive scheme is dependent on both individual costs and the volume of uptake. In this chapter the Inquiry will focus on the issue of budget control, although it notes that in much of the evidence received by it the term "cost control" was used to refer to what are, in fact, budget controls (e.g. in the context of the Phase 2 public consultation). Indeed, upon occasions the terms were used interchangeably.

Background

51.2 Ms Hepper, Mr Hutchinson and Ms McCutcheon all indicated in their interviews with the PwC investigation team that they had recognised the need for budget controls from the inception of the NI RHI scheme. As appears elsewhere in this Report, each of them was aware of the warnings from HMT and DETI Finance contained in the 2011 Parker and Clydesdale email exchanges relating to the need for controls to prevent overspend impacting on the DEL budget. However, each referred to the financial modelling undertaken by CEPA in designing the tariffs as a key cost control.

51.3 Ms Hepper told PwC that the first budget control they put in place in discussions with the consultants was to say: "your model has to be within the framework and ring-fenced to £25 million."[2770] Mr Hutchinson agreed, referring to the CEPA model as the "first cost control", and Ms McCutcheon confirmed that "Whenever I arrived the whole work that CEPA had been given to do was to live within that budget and to maximise the output of renewable heat living within that budget."[2771]

51.4 This misplaced reliance upon the CEPA modelling needs to be contrasted with the following facts, of which all three DETI officials were aware:

(i) CEPA's own clear and repeated warnings as to the uncertainties behind the modelled outcomes and the resultant need to monitor the variables and assumptions upon which the models had been constructed and the tariffs computed in order to see if the scheme performed in line with the assumptions.[2772]

(ii) The clear advice about the significant challenge represented by the capped budget contained in the emails from Alison Clydesdale and Bernie Brankin.[2773]

(iii) DETI's own RHI risk register produced by the same Energy Division officials in 2012 which included the risk of "Insufficient budget secured for the RHI payments or for the administration of the scheme." The impact of the risk was assessed as "high" with a "medium" likelihood of the risk materialising. One potential cause was identified as tariffs being set at too high or generous a level leading to a higher than expected uptake.[2774]

2770 PWC-04531
2771 PWC-04597; PWC-04550
2772 WIT-00678 to WIT-00679
2773 DFE-62072 to DFE-62076
2774 WIT-07068

Warnings about the need for budget control

51.5 The Department received a number of further warnings about the risks of the non-domestic NI RHI scheme and the need for controls.

51.6 For instance, in its October 2011 response to the 2011 DETI public consultation on the NI RHI, Biomass Energy Northern Ireland (BENI) informed DETI of the risk that the then envisaged banding between the small and medium biomass tariffs risked the installation of multiple systems just to "harvest" the higher RHI payment. BENI repeated this point in its October 2013 response to the public consultation on the domestic RHI scheme, and pointed out that the risk of exploitation it had warned about was now materialising in practice.[2775]

51.7 On 16 December 2011 Ofgem informed DETI at paragraph 6.9 of its Feasibility Study for Ofgem's administration of the NI RHI:

> "At present there are no mechanisms in place to control costs of the scheme in the event that uptake is considerably higher than anticipated."[2776]

51.8 In her oral evidence to the Inquiry Catherine McArthur, who carried out the work on the December 2011 Feasibility Study in Ofgem, said that she recalled cost control had been discussed with DETI, although she could not recall the detail. In retrospect, she explained that the main discussion was about the need for regular review and general monitoring of costs with emphasis upon the proposed joint DETI/Ofgem Administration Board as a good way for DETI to remain close to the operation of the scheme and to be able to get regular updates on application volumes and what that would mean for costs.[2777]

51.9 However, while cost control mechanisms could be built in to the NI RHI scheme itself, she said that the officials in DETI were very conscious, both in terms of operational and overall costs, to keep costs to a minimum and that to build in cost control to the scheme might reduce the incentive to invest. Ms McArthur said that her impression had been that cost controls were discussed as something that would be sensible.[2778]

51.10 As discussed in detail elsewhere in this Report, on 26 June 2012 during a teleconference with Ofgem, Ms McCutcheon and Mr Hutchinson were warned in clear terms that in GB it had been considered necessary to amend the GB RHI regulations and Ofgem could see logistical and presentational issues with the NI RHI scheme initially being without these "improvement updates" otherwise DETI would be replicating the issues that it had proven necessary to address in GB. One of the measures being introduced through the GB RHI amendment regulations, in July 2012, was the Stand-by Mechanism (SBM) as a form of interim budget control (involving the automatic temporary suspension of the scheme to new entrants if there was a threat to the budget). Ofgem's advice was that DETI should wait until the GB amendments were introduced, as replicating those amendments in the NI RHI regulations would negate any risk that the draft NI RHI regulations currently posed.[2779]

51.11 The context of the Ofgem warning was apparent to Mr Hutchinson, who told the Inquiry that he was familiar with the March 2012 consultation document published on the DECC website setting

2775 DFE-98994 to DFE-98999
2776 DFE-79801
2777 TRA-03721
2778 TRA-03722 to TRA-03723
2779 OFG-03517 to OFG-03519; WIT-09052 to 09060; TRA-02200 to TRA-02207

out the need for its SBM, which it had referred to as an "interim cost control" when it published its consultation document. He had also received the warning of a need to guard against the "large financial risk" contained in the email from Mr Patel of DECC on 8 June 2011.[2780]

51.12 Nonetheless, Ofgem officials were informed that DETI would not wait for the DECC GB RHI changes because they had a commitment to their Minister to bring the NI RHI regulations into force by the end of September 2012 and there was a risk of putting funding in jeopardy. Ofgem officials were also told that DETI intended to have a Phase 2 update in the summer of 2013 when, rather than adopt interim cost controls, they would reproduce the full degression mechanism about which DECC was to consult in the summer of 2012.[2781] Ms Hepper was informed of the Ofgem warning and gave evidence that she considered that it was important enough to refer to Mr Thomson with a view to referring it to Minister Foster.[2782]

51.13 In April 2013 degression, the reduction in tariffs triggered by certain volumes of uptake and/or budget spend being reached, was introduced in GB by further amendment to the GB RHI regulations. On 31 May 2013 DECC Minister Barker wrote to Minister Foster informing her that the deployment of small and medium sized biomass installations had been so successful that a 5% degression of the relevant tariff would occur.[2783] As discussed previously in this Report, that letter was referred to Ms McCutcheon but, unfortunately, she did not consider that a response was required and it was not referred to Minister Foster.[2784]

51.14 The first automatic tariff reduction took place in July 2013 because of the popularity of the small/medium biomass installations. The more sophisticated degression mechanism had replaced the SBM, the interim system of budget control, involving the automatic temporary suspension of the scheme to new entrants if there was a threat to the budget. As discussed previously in this Report, this interim solution had been consulted upon just four months after the GB RHI scheme launch. This was despite low uptake levels but due to DECC's concerns about the potential risk of runaway demand and uptake levels.

51.15 Mr Hutchinson of DETI clearly felt that the need for budget control was sufficiently important to persuade him to draft the trigger system applicable to both non-domestic and domestic RHI schemes, and which was then set out in the July 2013 Phase 2 RHI public consultation.

51.16 In the course of her oral evidence to the Inquiry Minister Foster agreed that she had read the 2013 RHI public consultation documents and understood that the 'cost control' described was necessary "So that we didn't exceed our budget". She also agreed with the statement in the cost control section of the consultation document that "DETI must retain the right to suspend the scheme if budget limits could be breached."[2785]

51.17 On 10 December 2013 Ms McCutcheon forwarded a submission[2786] to Minister Foster drawing to her attention a letter from Minister Barker dated 29 November[2787] which provided an overview of the GB RHI schemes as they stood then. That overview included details of the degression mechanism applicable to both GB non-domestic and domestic RHI schemes, details of which

2780 TRA-02202; DFE-05426 to DFE-05429
2781 OFG-03517
2782 TRA-02687 to TRA-02692
2783 DFE-53262 to DFE-53264
2784 WIT-02449 to WIT-02454
2785 TRA-08321 to TRA-08324
2786 DFE-33748 to DFE-33750
2787 WIT-18705 to WIT-18712

were annexed to the letter. The letter explained that degression had been implemented by regulations in April 2013 and was:

> "…designed to ensure that the RHI remains financially sustainable and provides value for money to the taxpayer. Under this mechanism we reduce the tariffs paid to new RHI recipients if uptake of the scheme is higher than the trigger levels set out in advance in legislation, based on forecast deployment for each technology. This is designed to protect the budget and ensure value for money for the taxpayer."[2788]

51.18 However, the submission provided to the Minister did not engage with the issues of budget management set out in the letter from the DECC Minister, did not explain what DETI intended to do (if anything) in respect of degression, and did not contrast the DECC approach with the budget control on which DETI had just finished consulting. Minister Foster was asked to, and did, sign a letter in reply to Minister Barker in which she confirmed that:

> "My Department has recently consulted on similar proposals to expand the Northern Ireland non-domestic RHI scheme and to introduce new tariffs for more innovative technologies. In addition, consideration has been given to issues such as enhanced preliminary accreditation, biomass sustainability and ***cost control***."[2789] (the Inquiry's emphasis)

Proposed budget controls for the NI RHI

51.19 As discussed previously in this Report, on 26 June 2013 Ms Hepper sent a submission to the Minister and her SpAd providing details of the proposed consultation document in relation to Phase 2 of the NI RHI scheme.[2790] The submission itself did not highlight the budget control issue, but one of the proposals at paragraphs 4.13 to 4.17 of the consultation document provided details of budget control measures that would be applicable to both non-domestic and domestic RHI schemes with the objective to:

- maintain confidence and consistency in the NI RHI scheme;
- ensure that budgetary levels would not be breached; and
- remove the need for emergency reviews or reductions in tariffs at short notice.

51.20 Although it was noted in the DETI consultation document that DECC was in the process of introducing degression in GB, such a system was in fact already in force, and had been since April 2013. It was stated that DETI expected to introduce similar degression measures in the future but, in the interim, it was proposed that a simpler system was to be put into place.[2791] This was contrary to the reasoning provided by the DETI officials to Ofgem in June 2012 for not introducing DECC's interim measures from the outset of the NI scheme.[2792]

51.21 The proposed budget control system was to be applied to both the NI domestic and non-domestic RHI schemes based upon the percentage of the annual budget that was committed in any one year and the activation of a series of triggers. For example:

- 50% of the annual budget being committed would trigger a public notification.

2788 DFE-152866 to DFE-152873
2789 WIT-18703
2790 DFE-97307 to DFE-97359
2791 DFE-97352
2792 OFG-03517

- 60% would trigger a public notification and warning that the domestic RHI scheme might need to close.
- Where 70% of the annual budget was committed, trigger three would require a further public notification and the commencement of procedures to close the domestic RHI for the financial year.
- Trigger four was reached at 80% budget committal at which point DETI was required to make a public notification and warn that the non-domestic RHI would have to close.
- 90% commitment of the annual budget would then trigger closure.[2793]

51.22 The submission of 26 June 2013 also attached a draft letter for the Minister to send to the Chair of the ETI Committee, Mr McGlone.[2794] In that letter, which was sent on 2 July, Minister Foster confirmed that, *inter alia*, the consultation would gather views on introducing the proposed cost (budget) control system.[2795]

51.23 The Inquiry notes that there were no serious objections to the system of interim budget controls raised in consultation responses.

Loss of budget controls

51.24 Mr Mills told the Inquiry that he assumed that officials had, prior to his taking up post, acquired "some authority" to proceed with prioritisation of the domestic NI RHI scheme without the trigger mechanism for budget controls. He said that there had been a discussion with Mr Hutchinson and Ms McCutcheon in March 2014 when he was told that cost controls were "part of the technical stuff and could be done later".[2796]

51.25 When asked who he thought was responsible for the fact that the budget control proposal in the 2013 public consultation document did not make its way into implementation in 2014 through the domestic RHI regulations Mr Mills replied "I think responsibility is shared, and I, for myself – I didn't know enough to have questioned the course of action that was already set."[2797] He didn't realise that not including the cost control proposal in the domestic proposals involved not including a cost control that had been proposed, not only for the non-domestic but also for the domestic scheme.[2798]

51.26 On 15 May 2014 Mr Mills advanced a submission to Minister Foster containing a six-monthly update on the RHI schemes for the ETI Committee.[2799] The update from Mr Mills did not specifically refer to the removal of budget controls in the context of the impending launch of the domestic RHI although it did note that the non-domestic scheme could experience a higher volume of applications than GB but for smaller installations.[2800]

51.27 Thus, budget controls, which the 2013 RHI consultation document had indicated to the public were to be applicable to both schemes, were now detached from the domestic RHI scheme and effectively delayed along with the other matters from the 2013 consultation. Mr Mills told

2793 DFE-97352 to DFE-97353
2794 DFE-97315 to DFE-97318
2795 DFE-97363 to DFE-97365
2796 TRA-07184
2797 TRA-07194
2798 TRA-07195
2799 DFE-230075 to DFE-230080
2800 DFE-230077

the Inquiry that he had not been made aware of the warning from Ofgem in the 26 June 2012 teleconference with regard to the introduction by DECC of interim cost controls or of any subsequent discussion that had taken place between Ms Hepper and Minister Foster. Mr Mills told the Inquiry in oral evidence that, on reflection, when drafting this submission of 15 May, he should have "stood back and given the Minister options."[2801]

51.28 In a further submission to Minister Foster on 17 June 2014 Mr Mills sought approval of a draft Government response to the domestic scheme element of the 2013 RHI consultation and a draft SL1 to be tabled at the ETI Committee meeting on 3 July for the purpose of seeking subordinate legislation to launch the domestic RHI scheme.[2802] The submission informed the Minister that DECC had launched its domestic scheme and then contained the following statement: "We have decoupled the domestic RHI from other Phase 2 changes in an attempt to speed up its implementation."[2803]

51.29 The 'trigger' scheme of cost control, upon which the public had been consulted, appears to have been designed by Mr Hutchinson, in agreement with Ms McCutcheon, after discussions about budget unpredictability.[2804] The Inquiry was not informed why the GB RHI interim cost control (or SBM), or the subsequent degression provisions were not adopted or even considered. Mr Hutchinson could not recall a conscious decision to decouple the cost controls or being involved in such a decision.[2805] In a written statement to the Inquiry he provided the following explanation:

> "Personally speaking, as someone involved in drafting the Synopsis Paper and Domestic Business Case, I may have felt that the cost control elements (and other administrative/technical issues) fell outside the scope of the papers relating to the Domestic Scheme. Those papers were designed to secure the approval of the Domestic Scheme rather than any other administrative issues. I possibly had considered that the cost control elements (and other technical issues) would not be subject to Casework Committee or Business Case approval – rather it would be for Senior Management to agree the final proposals and oversee the necessary legislative amendments."[2806]

51.30 Mr Hutchinson having left in May 2014, and after Ms McCay had looked after RHI for 6 weeks (including taking the domestic scheme through the casework process on 9 June 2014 along with Mr Mills), Mr Wightman and Mr Hughes arrived at the end of June 2014 and took forward the introduction of the domestic RHI scheme.

51.31 On 16 September 2014 Mr Wightman sent Minister Foster and her SpAd a submission seeking approval of the business case and implementing the domestic NI RHI scheme.[2807] The submission did not draw attention to the absence of the budget control mechanism that had been the subject of public consultation. Neither the Minister, who had read the NI RHI consultation document in July 2013, more than a year earlier, and been a party to the November/December 2013 exchange with Minister Barker, nor her SpAd, appear to have

2801 TRA-07201 to TRA-07205
2802 DFE-144514 to DFE-144567
2803 DFE-144532
2804 WIT-09308
2805 WIT-09327
2806 WIT-09328
2807 DFE-184099; DFE-193697; DFE-192902 to DFE-192904

questioned its absence. Dr Crawford said in written evidence that he assumed that the controls "would be taken forward" and that "There was no advice from officials regarding this issue, and I had no reason to question their approach."[2808] Minister Foster told Inquiry Counsel in her oral evidence that "it wasn't a live issue in my head at that particular time". She said that she had not received, but that she should have received, the public responses relating to the proposal to introduce the mechanism for budget control, adding "All I can say to you; at that time, the issue of cost control was not at the forefront of officials' minds, and, because of everything else that was going on in the Department, it wasn't at the forefront of my mind either."[2809] When asked about the absence of any reference to cost control in the submission of 16 September 2014 Minister Foster said "It wasn't brought to me, so I didn't consider it. Could I have actively considered it myself if I had thought it was an issue? Yes, I could have."[2810] On 29 September 2014 Minister Foster annotated the 16 September submission adding "get this launched ASAP."[2811]

Officials' knowledge of the loss of budget controls

51.32 The Inquiry heard evidence relating to the 'decoupling' process and the ultimate loss of any budget controls.

(i) The submission from Ms Hepper of 26 November 2013 to Minister Foster providing an update on the NI RHI for the ETI Committee simply pointed out that "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" without any reference to or suggestion that such an early launch might result in the proposed system of budget control being detached from both schemes.[2812] In the course of giving oral evidence to the Inquiry Ms Hepper said that when she left the original team dealing with RHI in November 2013, she did not think that anyone could have doubted that the cost control mechanism would be implemented. She said:

> "…regardless of what time frame and in what order the domestic or non-domestic scheme was going to be worked through in 2014, the cost control – the interim measure – would've been needed for both of those schemes, because, when you look at the mechanism, one of the first actions that's taken is to close one of the schemes ahead of the other, so it was going to have to be brought in regardless of how you phased the bringing in of either the domestic or the other non-domestic technologies. So, I don't think, from that point of view there could've been anything else in anybody's mind other than, 'This has to be done'."[2813]

She agreed that, even if the domestic RHI scheme was introduced first, the cost control should have been introduced with the domestic scheme. She was unable to suggest any explanation as to why that fundamental point had been missed by Mr Hutchinson and Ms McCutcheon, who were still in post, and Mr Mills who replaced Ms Hepper in early 2014. She maintained that the cost control mechanism would have to be "nested" into

2808 WIT-21603
2809 TRA-08382 to TRA-08384
2810 TRA-08330
2811 DFE-184099
2812 DFE-33720 to DFE-33724
2813 TRA-05376 to TRA-05377

a set of regulations and that it was a fairly "simple translation from that into 'If you're doing your domestic scheme first' – and that hadn't necessarily been decided as I left – that would be the first set of regulations and you would put this clause into that set of regulations."[2814]

(ii) Mr Hutchinson was unable to recollect any discussions over the issue beyond that which was quoted above.[2815] The Inquiry found it difficult to comprehend how the necessity for controls applicable to the single budget for both schemes could be reduced to 'administrative' or 'technical' matters in the context of the specific warnings from DETI Finance Branch in 2011 and Ofgem in 2012, as well as of the mechanisms devised and already adopted in GB and proposed in paragraphs 4.13 – 4.17 of the 2013 NI RHI consultation document.

(iii) In an interview with PwC, Mr Mills explained that cost control:

"Wasn't consciously done away with, it was consciously deferred...It was consciously deferred, that is, or rather all the other elements of phase 2, as it was called, were consciously deferred to get the Domestic Scheme in."[2816]

(iv) He said that priority of the domestic RHI scheme had been agreed in and around November 2013, before his arrival in DETI in January 2014, and that, in order for that to be achieved, all the departmental RHI resources had to be devoted to that end.[2817] Mr Mills told the Inquiry he assumed that the Minister had set that priority after discussion but conceded that he did not have any evidence to support that assumption.[2818] As discussed earlier in this report, Mr Mills' assumption was wrong.

(v) Mr Thomson, who was the predecessor of Mr Stewart and who was in DETI up to June 2014, said that he had no recollection of a conscious decision to drop cost control, which he would have expected to be the subject of objective recording and communicated both to himself and to the Minister. He believed that the controls should have been brought in and could provide no good reasons as to why that had not been done.[2819]

(vi) Mr Wightman told PwC that the launch of the domestic scheme had been his objective from day one. The domestic business case was just going through the internal DETI casework process when he arrived and the priority was to get the necessary approvals and get the domestic scheme launched.[2820] In answer to a question as to who would have made the decision to defer cost controls, he said: "I would have thought it would have been John [Mills] as director...in consultation with Chris [Stewart]."[2821] Again, this assumption was wrong; Mr Stewart had not arrived in DETI until August 2014, and the 'decoupling' had already occurred before Mr Mills arrived in January 2014.

(vii) When this was raised with Mr Stewart by PwC, he was able to recall a number of conversations with Mr Mills in which Mr Mills emphasised that introducing the domestic

2814 TRA-05378
2815 WIT-09328 to WIT-09329
2816 PWC-04427
2817 PWC-04570
2818 TRA-07202 to TRA-07203
2819 TRA-05746 to TRA-05747
2820 PWC-04660
2821 PWC-04664

RHI scheme was a top priority but that he did not remember being a party to any decision to defer cost controls. When asked by PwC at what level such a decision should have been taken, based on his experience, he confirmed that it should have been the subject of senior advice from officials, which was then referred to the Minister.[2822] As discussed earlier in this Report, that did not happen.

(viii) Mr Sterling told the Inquiry that he was unable to explain why the review of the non-domestic RHI scheme and cost control were deprioritised and maintained that the decision had not been discussed with him.[2823]

(ix) Dr Crawford, who was Minister Foster's SpAd and who had the responsibility of protecting the Minister,[2824] was quite unable to say why the Minister was not effectively warned and advised about the disappearance of the cost control mechanism. He told the Inquiry that he was aware that this should have been a decision for the Minister based on a properly constructed submission. He appreciated that the Phase 2 consultation had discussed a single system of cost controls for both schemes and that 'decoupling' would leave both without any controls but stated that, at the time, they were marketing and promoting the schemes since uptake levels were low.[2825] Dr Crawford referred to the "volume of paperwork" and the number of projects with which the Department was concerned. He emphasised that RHI was a new area in which he had no expertise and that it was not part of his role to "check officials' homework".[2826] He did not expect to be making sure that officials put up in documents to the Minister a true reflection of what had gone before in a consultation document; he was there to give political advice and to advise the Minister on her wide range of portfolios.[2827]

(x) Ms Hepper told the Inquiry that Dr Crawford read the 2013 CEPA economic analysis for Phase 2 of the RHI scheme.[2828] She also stated that he read the associated consultation document containing details of the proposed cost controls, that he had a meeting with the team about the consultation on 17 July 2013 and that "he could link it back to the issue in June 2012."[2829] Dr Crawford was adamant that he had never been aware of the June 2012 Ofgem warning.[2830] There is no doubt that he read the consultation document, given he had a discussion with officials about an unrelated issue contained in it in July 2013, but, having done so, he does not appear to have expressed any curiosity in June 2014 as to what ultimately became of the proposed cost controls, nor does he seem to have drawn their disappearance to the attention of Minister Foster.

(xi) Minister Foster told the Inquiry she had not been given an opportunity to consider in detail the decision to 'decouple' cost control. She said that was a matter that should have come to her in a submission for her to decide.[2831] She was aware that DECC had a system of cost control in place, but she had no reason to think that cost control was a

2822 PWC-04481 to PWC-04484
2823 TRA-06814 to TRA-06815
2824 TRA-09905 to TRA-09911; TRA-07933 to TRA-07934; TRA-07615; TRA-07513 to TRA-07514
2825 TRA-09821 to TRA-09833
2826 TRA-09908 to TRA-09911
2827 TRA-09909
2828 TRA-05370
2829 TRA-05384
2830 TRA-08042 to TRA-08045
2831 TRA-08370 to TRA-08371

significant issue. She told the Inquiry that she had read the 2013 consultation document and understood that the proposal to introduce cost controls was to prevent the budget being exceeded.[2832] Minister Foster said that the submission of 17 June 2014 seemed to her to emphasise that it was a matter of priority to launch the domestic scheme, which had been the subject of consultation some time ago, and that cost control was "downplayed". She said that there was no indication of overspend at that stage and that she had been on a trade mission to the United States at the time of that submission.[2833]

51.33 As discussed earlier in this Report, when the October 2015 Casework Committee met to consider the proposals to introduce tiering and the annual cap in the context of the emergency over RHI, Michelle Scott, the DFP DETI Supply Officer, enquired why the trigger points mechanism referred to in the 2013 public consultation had not been implemented. The minutes record that Mr Mills said that it was a:

> "Ministerial decision to look at the domestic scheme rather than pushing through the trigger points on non-domestic which would have significantly delayed the implementation of the domestic scheme."[2834]

51.34 In his oral evidence to the Inquiry Mr Mills said that this statement of fact had been completely incorrect, and he simply held a belief that the matter had been authorised by a ministerial decision at that time. He accepted that had been an assumption upon his part and that, having considered the relevant documentation, he was now of the view that the assumption was incorrect and that the decision to move ahead with the domestic scheme was more about practicality than the importance of the decision, given the time likely to be required.[2835]

51.35 At this same October 2015 meeting, the minutes record that Mr Wightman confirmed to the Casework Committee that there had been insufficient resources to introduce both the domestic scheme and cost controls and, when asked by Ms Scott what had triggered the cost control measures in GB in 2012, he was unable to answer, leading to an action point being recorded in the minutes: "Energy to identify the trigger of cost controls in England in 2012".[2836] The Inquiry is compelled to conclude that the DETI representatives at this meeting in October 2015 were unaware of all the detailed information published on the DECC website and set out in Minister Barker's correspondence with Minister Foster with regard to the need for and the implementation of cost controls.[2837]

2832 TRA-08321
2833 TRA-08372 to TRA-08374
2834 DOF-04502
2835 TRA-07202 to TRA-07204
2836 DOF-04502
2837 DFE-293680 to DFE-293684

Findings

292. **It is difficult to understand how the DETI officials working with CEPA in 2011 and 2012 were able to reconcile their belief that the consultants' model offered a form of budget control with the clear warnings given to them by the same consultants as to the need to monitor the variables and assumptions upon which the models had been constructed. The Inquiry notes that the RHI risk register certainly incorporated the risk of breaching the budget despite the consultants' modelling.**

293. **Despite the warning from Ofgem in June 2012, none of the successive budget control amendments to the GB RHI regulations were adopted in Northern Ireland, so the NI RHI scheme operated without the type of protective mechanisms GB had put in place to keep control of its budget.[2838]**

294. **A grant-based scheme would have included an inherent and immediate mechanism to suspend spending, namely the power to stop making grants. No such equivalent mechanism to suspend payments to individuals was part of the incentive-based NI RHI scheme. Thus the need to have budget control mechanisms designed and implemented at the scheme level was all the more pressing.**

295. **The proposal, contained in the July 2013 RHI Phase 2 consultation, to introduce a budget control system that would apply to both schemes, and thus protect the total NI RHI budget, was not implemented through the regulations introducing the domestic NI RHI scheme in late 2014, or the amending regulations relating to the non-domestic NI RHI scheme in late 2015. Given the available and detailed information from DECC, from 2012 and early 2013, as to why it had introduced budget control mechanisms to the GB RHI scheme in spite of the fact spending on its scheme was nowhere near its annual limits, any decision or course of action by officials in DETI, which had the effect of not proceeding with the introduction of a budget control for the NI RHI scheme, should have been escalated to DETI senior management for decision with specific reasons given for, and adequate consideration of any risks arising from, the course being proposed. Escalation did not occur in this case, either in late 2013, at the time when the decoupling of the domestic scheme (from the rest of the proposed Phase 2 changes) commenced, or later, when the domestic scheme was introduced. The budget control was instead 'lost' through inadvertence. This was a serious omission, given that it left the NI RHI scheme without any form of budget protection.**

296. **In particular, when the approach of decoupling the introduction of the domestic RHI scheme (from the rest of the Phase 2 proposals) commenced in late 2013, no consideration, or no adequate consideration, appears to have been given to the effect of not treating the introduction of the 'trigger' mechanism of budget control, applying (as it would) to both schemes, as something to be introduced through the first set of regulations to be brought forward (those relating to the domestic scheme).**

2838 OFG-03517 to OFG-03519

297. The Minister was not given any, or any adequate, information about the decoupling decision, insofar as it treated the introduction of the budget control mechanism as part of the Phase 2 amendments to the non-domestic scheme, which were to be progressed after the introduction of the domestic scheme. Further, the Minister was not given any, or any adequate, information about the effect that the decoupling decision would have on the issue of budget control, leaving (as it did) both schemes without any form of budget protection. Having consulted on a budget control mechanism in 2013, and in light of the earlier steps taken by DECC on the subject of budget control in 2012 and 2013, DETI officials should have briefed the Minister in detail about what had occurred in GB in respect of RHI budget control, and why it had occurred (particularly as to the protections being introduced when there was no risk to the GB RHI budget, for the reasons that were given), and it should have been for the Minister to determine whether the NI RHI schemes were to proceed without any budget protection in those circumstances. The continued absence of any form of budget control should have been the subject of a fully informed, properly reasoned and clearly minuted decision at ministerial level.