

**From:** [McCormick, Andrew \(DETI\)](#)  
**To:** [Stewart, Chris \(DETI\)](#)  
**Cc:** [McIlwrath, Linda](#)  
**Subject:** Re: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI  
**Date:** 28 January 2016 15:31:54

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This is very helpful. Please keep DFP in particular fully informed.

Many thanks.

Sent from my BlackBerry 10 smartphone.

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**From:** Stewart, Chris (DETI)  
**Sent:** Thursday, 28 January 2016 15:24  
**To:** McCormick, Andrew (DETI)  
**Cc:** McIlwrath, Linda  
**Subject:** RE: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

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Andrew

Further legal advice is being sought urgently.

We have established that consultation is not an absolute requirement, but the DSO advice is that it would be preferable (in terms of risk) to notification.

The advice being sought now is on the risk stemming from proceeding without notification. It is likely to be that a JR applicant would seek interim relief in the form of an order requiring the scheme to re-open whilst we notify. It might be argued that this is a relatively small risk, and worth taking. However, that may be a moot point. John is preparing comparative timelines (with and without notification) to see whether there is any material advantage – probably not, as the timetable is likely to be driven by Committee and Examiner of Statutory Rules clearance for the SL and SR (assuming that we clear Executive by urgent procedure).

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**From:** McCormick, Andrew (DETI)  
**Sent:** 28 January 2016 14:07  
**To:** Stewart, Chris (DETI)  
**Cc:** Hill, Janice; Rooney, Eugene; Mills, John (DETI); McIlwrath, Linda  
**Subject:** Fw: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Please seek further urgent legal advice on the consultation issue. If we can move more quickly we should.

Similarly the option of using urgent procedure is helpful. We should plan the critical path so that we can get to stage of putting formal proposals to the Executive irrespective of the timing of meetings - so that it can go to urgent procedure if necessary. I think it is now the acute financial issue that means this does require Executive approval and our objective now is to limit the damage to the future DfE budget.

Please come back if there are any queries or updates.

Many thanks

Sent from my BlackBerry 10 smartphone.

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**From:** Sterling, David <David.Sterling@dfpni.gov.uk>

**Sent:** Thursday, 28 January 2016 08:45

**To:** McCormick, Andrew (DETI)

**Cc:** Brennan, Mike; McKibbin, Malcolm; Hill, Janice; Stewart, Chris (DETI); Rooney, Eugene; HOCS

**Subject:** RE: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Andrew

It was helpful to see John Mills' timeline of actions that you concedes necessary to close this scheme. I understand we need to be very careful about how we go about this to avoid challenge. I recall well the problems DECC got themselves into when they sought to reduce the incentives for the PV scheme several years ago. Our circumstances though are different in that DECC was seeking to reduce a benefit being paid to existing claimants whereas we are seeking to deny an opportunity to people who might want to avail of the scheme.

Our imperative is clear, we need to stop the haemorrhaging as quickly as possible. The CST's SR Settlement letter makes it clear that the scheme is no longer affordable given our recent Budget. And I doubt many would consider the RHI a higher priority call on our scarce DEL than the many other pressures facing the Executive.

We have advised ministers that nothing would be gained by seeking to re-open this debate with Treasury, particularly in the post "Fresh Start" context that we find ourselves in with NIO/Treasury. Our stock is low.

In this context there are two things in your time line that I need to understand better. I have not seen your legal advice but can you advise what, in your assessment, is the worst that could happen if we were to set aside a consultation? Surely the CST letter gives us good grounds to suspend the scheme immediately? Could the courts do more than ask us to run a consultation if there was a challenge? Would they be likely to make us reopen a scheme which DETI cannot afford?

Secondly, I'm not sure why this needs to go to the Executive. If it is to advise ministers about the issue surely that could be done (today) by a ministerial colleagues letter? If however some collective decision is required (and I'm not sure what that would be) surely that could/should be done by Urgent Procedure which also could be done immediately?

I ask these questions to be helpful and would be happy to discuss.

David

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**From:** McCormick, Andrew (DETI)

**Sent:** 27 January 2016 18:34

**To:** HOCS

**Cc:** Bullick, Richard; Johnston, Timothy; Wallwin, Judith; Sterling, David; Brennan, Mike; McKibbin, Malcolm; Hill, Janice; Stewart, Chris (DETI); Rooney, Eugene; Cairns, Timothy

**Subject:** Re: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Sorry touched send prematurely.

Malcolm,

I share all the concerns that are expressed in your note.

Dealing with the immediate issue first, the facts are that the DETI Minister approved our proposals for urgent action to close the RHI scheme last Friday afternoon but before we could act on that, the approval was recalled by the Party Officers. There were several discussions yesterday and that position could not be changed, and the information I have is as in my email of yesterday to John Mills.

DETI cannot act to bear down on this cost pressure without Ministerial authority. The steps needed are a formal public notification or consultation on the basis for closure, to be followed by

the progression of legislation to put that into effect. Given the policy and financial issues involved, we have been of the view that the formal steps to closure require Executive approval.

I will respond to the rest of your minute shortly but wanted to come back to you quickly on the main immediate point.

Many thanks,

Andrew

Sent from my BlackBerry 10 smartphone

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**From:** [Andrew.McCormick@detini.gov.uk](mailto:Andrew.McCormick@detini.gov.uk)

**Sent:** Wednesday, 27 January 2016 18:16

**To:** HOCS

**Cc:** Bullick, Richard; Johnston, Timothy; Wallwin, Judith; Sterling, David; Brennan, Mike; McKibbin, Malcolm; Hill, Janice; Stewart, Chris (DETI); Rooney, Eugene; Cairns, Timothy

**Subject:** Re: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Sent from my BlackBerry 10 smartphone.

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**From:** HOCS

**Sent:** Wednesday, 27 January 2016 18:04

**To:** McCormick, Andrew (DETI)

**Cc:** Bullick, Richard; Johnston, Timothy; Wallwin, Judith; Sterling, David; Brennan, Mike; McKibbin, Malcolm

**Subject:** 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Andrew

Please see attached from Malcolm McKibbin.

Kind Regards

Stephen

**Stephen McConnell**

**Executive Assistant to Dr Malcolm McKibbin, Head of the Civil Service.**

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