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Department of Enterprise, Trade and Investment
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From: John Mills

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To: Michael Woods

cc: Stuart Wightman
Seamus Hughes

RHI REPORT FOR REVIEW

Apologies, I'm only getting a chance to look at the draft report now. You've adopted a wide scope and raise several fundamental questions. My view is that this is more helpful in the long run than concentrating on procedural failings but it does take longer to respond to.

1.1 Planning and Design

I can't really answer for the original business case. I have to admit I found these very hard to follow when I arrived.

Elements of the last paragraph may be applying hindsight too far. As regards "proper planning":

- the scheme was demand led;
- it was underspending;
- I am not sure how the figure of £4000 is derived. A casual check suggests nearer double the figure but, with less than 80 installations and many of these only accrediting late in the year, it seems statistically dubious.

The question of whether payments are going up is a good one.

1.2 Options for outsourcing

First, the legal position. The report should recognise that the law takes precedence over administrative decisions, process, guidance or whatever. This is particularly so with respect to paragraph 1.2. Ofgem was not appointed pursuant to a DAC but under the legislation quoted. I appreciate that (unnecessary) steps were taken to treat the "arrangements" in the former manner but this was inappropriate.

It seems to me that what is being questioned is a fundamental element of the policy decision behind introducing RHI at all – that Parliament got it wrong in agreeing to what is now Section 114 of the Energy Act 2011.

There may or may not have been adequate consideration of the policy options around using OFGEM but, to be fair, this would need to involve a reassessment of the position at the time. For example, where there time pressures or resource or skills constraints which ruled out internal administration. I suspect there was little choice. I'm not sure where re-visiting this takes us?

1.3 Inaccurate Assumptions

In hindsight some of the assumptions were low. They were just assumptions and it is difficult to comment.

However, this section raises a fundamental point about the scheme – the importance of the primacy of legislation and the inability to change it without legislation. The scheme was permanent and could not be closed, suspended or restricted without a lengthy legislative process. There was a misalignment between administrative financial control and the legal position. There are points at which various administrative approvals were needed but even had these been met, it wouldn't have mattered if approval had been withheld, the scheme would have continued as a matter of law. This is recognised in the comments on the flat £12m p/a scenario. But the penultimate sentence refers to "effective budgetary management should have been built in the scheme management mechanism."

I'm not sure what the "scheme management mechanism means" but we should be clear that, as a matter of law, DETI has to pay for all properly accreditated applications irrespective of any approvals.

The lack of acknowledgement of the realities of political and legislative control appears again at the end of the first paragraph of 1.11: "it took management over 6 months to have the necessary legislation brought forward". The enactment of legislation is simply not in "management's" control. See also comments under 1.11.

1.4 Benefits and Realisation

The comparison in the last sentence seems invalid. The figure of £1,500 includes domestics (the greater number) and compares with £17k for non-domestics. Basically, nearly a comparison between domestics and non-domestics. Are you sure the facts are not being manipulated (see also comments on 1.1) to fit a theory that average costs of a non-domestic installation were spiralling and nobody took account for this. There may be validity in the point that this should have been monitored but the factual basis may bear further assessment.

1.5 Errors in scheme Business Case

Is this necessary? I am not aware that it had any influence. The point is substantively dealt with at paragraph 2.3.

1.7 Project Management

I share your views on the importance of project management and this raises a good point though I'm not sure it would be feasible to treat RHI as a "project". As you say projects have a definite start and end. But RHI is an ongoing scheme. By all means, its introduction may have been suitable to be handled as a PRINCE2 project. The implementation of Gas to the West and Energywise are handled along those lines. To my knowledge DECC doesn't run RHI as a project and the NIRO, domestic RHI, RHPP and Refit schemes were not managed as "projects".

However, if you're arguing that DETI should have had Programme level structures in place for the "renewables venture" – that may be a valid point. You might say that it was a gigantic undertaking to move NI's energy away from fossil fuels to more sustainable and, with the benefit of hindsight, beyond the capacity of Energy Division to absorb this. Numbers in the Division have grown over the last five years and there was an Interdepartmental Group (but not really focussed on delivery or governance). But if you look at DECC there is a whole UK Departmental focussed on this issue whereas, for DETI, it is a secondary issue to economic development.

So I do think there's a strong point in the issue you raise, though again, its a very fundamental one.

1.8 Absence of appropriate risk at scheme level

As with project management points, I'm not sure the methodological approach is right but the point being made has validity. Evaluation criteria might have been built into the scheme from the outset to be managed at programme level.

However, for the majority of the scheme's life the main risk was underspend/low uptake/failure to meet target. Areas like setting tariff levels too high were considered low risk as, obviously (during 2014), the scheme was not incentivising sufficient applications to use the budget.

1.7 and 1.8 Resources

Both project management and the level of risk management proposed are quite resource intensive and would have required resources beyond our means. I could ask what makes IAS assume that resources would have been made available?

My experience is that, when we introduced the domestic RHI, I sought (and, in my view received confirmation) additional resources to run the scheme only to find that such resources were not available once we had implemented the scheme. Stuart and I had to cobble together various arrangements from within the Division. Resources were eventually provided a year later (by which time we had a significant domestic backlog). My point is that, what evidence does IAS have that the case could have been made successfully for prioritisation of

Departmental resources? The case would have been – “although this scheme has scarcely taken off, one day it may become a problem so allocate more resources now.” With the benefit of hindsight something like this may appear obvious. At the time, alas, less so.

1.9 PPE for RHI – August 2015

On the first sentence, the need for a PPE was removed following extension of the scheme in Autumn 2015. The second sentence conflates this point with not obtaining DFP approval for scheme funding extension in March 2015.

The second paragraph seems to repeat matters covered in paragraphs 1.12 and 2.3.

The subsequent heading “other potentially missed opportunities” seems rather loaded to me. It might, more accurately, be entitled “Changes to Scheme Design”. I think there’s a significant point here in that Objective 1 is Scheme Design and Management but the management is really in OFGEM’s hands. The points in 1.10-1.12 are (correctly) about the evolution (or lack of) of the scheme design for which DETI is responsible.

1.10 DECC actions

In the second sentence of the second paragraph: “DETI did not take this opportunity....” This selective hindsight introduces retrospective clarity which did not exist. What it suggests is, “these people must have been fools not to see this completely obvious point.” So why was degression not introduced earlier?

- First, it was only one of a number of GB changes – the others which would have expanded the scheme or introduced new technologies are now, conveniently, ignored. Yet, given underspends, had we had the resources we were much more likely to have prioritised the “scheme-expanding” measures;

- The 2013 Phase 2 Review included cost control (not digression) but due to low uptake at that time Ministerial priority was on Domestic Scheme introduction and widening non domestic scheme to more technologies.

- There was not a decision to not take forward cost control. There was a decision to prioritise domestic RHI. Cost control and other issues were deferred because Energy Division did not have the resources to do both at once.

In the last sentence of the penultimate paragraph, the assertion that GB tariffs were significantly lower needs to be evidenced. It is a good point to follow up.

The last paragraph seems to be based on the assumption that widespread fraud has taken place within the scheme. IAS’s evidence for this is? It may be premature to reach a guilty verdict on this.

An alternative reading is, the scheme did exactly what it was supposed to do but a coming together of very strong supply and very strong demand in the context of the small scale of the NI market (and, as it turned out, budget) blew the budget. Degression wouldn't have prevented this and we would have ended up suspending anyway as a result of the Treasury approach arising from the CSR of November 2015. This is not to excuse the omissions which could have mitigated the budgetary pressures or, given opportunities for review at earlier points.

There seems some lack of clarity around the difference between degression and tiered tariffs.

1.11 Introduction of NIRHI tiering

(Why "reactive" in title? Seems loaded)

In the second sentence the catalyst for change was a sustained increase in applications from spring 2015.

On the reference to 6 months: What does IAS think is reasonable for policy/legislative change? I suggest you consider whether the implied appallingness of 6 months is reasonable. NIRO closure has taken over a year and is still ongoing; ISEM Regs took as long and I could give numerous other examples.

1.12 Review not carried out in 2014

Last paragraph, yes in hindsight. But the Ministerial priority was the domestic scheme (and a couple of other issues) and we simply did not have the resources to do both at the same time.

Further on resources and in response to the last paragraph of 1.7 "management "fire extinguishing" rather than proactive approach". Of course, IAS has to focus on the one issues of RHI. Unfortunately, neither Stuart nor I have this luxury. Given my other responsibilities I have, maybe, a day a fortnight for RHI. You've probably had more opportunity to consider RHI than I have. So reactive – sure. Quite a number of points in the report depend upon assumptions about resources – as if this wasn't an issue.

2.2 Clarifying Scheme Budget

I would have to disagree with the last paragraph. Funding was AME and treated as such by all concerned until December 2015. As a matter of factual record, we increased our forecast in 2015/16 (above the Barnett 3%) and received the funding. It is wrong to suggest that the Branch or in fact DETI knew funding was capped at 3% of DECC's budget. 3% was used for allocation purposes, but it is AME money. There was no reason why NI shouldn't incentivize more than 3% of what DECC delivers. This, for example, is the case on NIRO.

2.3 Delays in obtaining DFP approval

The approval was missed. The main reasons why it wasn't picked up are:

- wholesale staff changes leading to loss of collective memory;
- the ongoing legal basis of the scheme which meant I (for example) didn't question that approval would expire. As I've pointed out the scheme had to continue anyway;
- the ongoing nature of the scheme meant it wasn't recorded in the Divisional spreadsheet for approvals which only contained time-bound items; and
- the domestic scheme had been approved in 2014 until 2021 ie beyond existing budget availability if you take the view that the budget was limited. Of course, at the time, this was not the view. The assumption was that the budget was demand-led AME and was not going to "run out" – albeit, it still needed to be controlled.

Last paragraph – would there be merit in expanding the detailed chronology of this period?

2.4 Over-commitment

The reference to 20 years in the second paragraph: IAS should spell out its assumptions on funding. We have budgetary clarity for 5 years and in all documentation I have been keen to stick to this. Suggest this is changed to 5 years. There is a similar reference in 2.3 though this may be less susceptible to alteration.

2.5 & 2.6 Business Case for OFGEM

Delete references to DAC as explained earlier. It follows that the points in 2.6 are otiose. On 2.6 my understanding is that DFP said they did not need to undertake such reapproval.

2.7 OFGEM proposed change

I thought this was our proposal. Not sure what the accusation is.

2.8 Lack of challenge

I would just make the point that OFGEM is not some private consultancy with which we have a commercial contract. It is, like DETI, an emanation of government with whom we have a co-operative arrangement pursuant to provisions enacted by the Assembly. The report doesn't seem to recognize this.

Conclusion

Given the issues raised should our predecessors in Energy Division not be given a chance to comment?

J Mills

JOHN MILLS
Head of Energy Division