



**FINAL VERSION - FINAL NUMBERS ADDED BY
RHI TASKFORCE 9/4/17**

Netherleigh
Massey Avenue
Belfast BT4 2JP
Tel: 028
Textphone: 18001-028 9052 9535
Email:..

Mr Hugh Widdis
Departmental Solicitors Office
Victoria Hall
12 May Street
Belfast
BT1 4NL

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Dear Hugh

ATTORNEY GENERAL ADVICE ON POSSIBLE COST CONTROL AND ENFORCEMENT OPTIONS FOR RENEWABLE HEAT INCENTIVE SCHEME (RHI)

Further to our recent discussions and email correspondence regarding the RHI scheme, I am writing to set out the issues on which we require advice from the Attorney General.

Background

The last Programme for Government (PfG) included a target of achieving 4% renewable heat by 2015. This was an interim milestone to achieving 10% renewable heat by 2020 in line with the Strategic Energy Framework (SEF). In pursuit of these targets, the interim Renewable Heat Premium Payment (RHPP) and the Non Domestic Renewable Heat Incentive (RHI) schemes were introduced in May and November 2012 respectively. The full Domestic RHI Scheme was introduced in December 2014 to replace the RHPP.

The proposed tariffs for both RHI schemes were developed on behalf of the Department (DETI) through an external consultancy exercise carried out by CEPA and Ricardo-AEA. The tariffs as adjusted for inflation are payable for twenty years, and the total amount payable to an applicant in any year is based on their metered usage in that year

£860 million was made available from central Government funding to support the introduction of a Renewable Heat Incentive (RHI) in GB over the period 2011-2015. £25 million of AME funding was made available by HMT for a NI RHI over the same period. However, due to the poor levels of uptake with the NI RHI schemes, only £2m of this

funding was spent during the first 3 years. The priority was therefore to try and improve uptake. Demand for the non-domestic scheme picked up in 2014-15 but a sustained increase in application numbers was not achieved until March and April 2015.

In response to this increase in demand, the Department brought forward legislation to reduce biomass incentives for new applicants where the tariff drops after 1314 annual operating hours (like the GB scheme). The changes also included an annual heat cap of 400,000 kWh over which no further tariff is payable. The legislation was approved by the Assembly on 17 November 2015 and came into operation on 18 November 2015

It had been hoped that these changes would bring expenditure back within budget. However, an unprecedented spike of almost 1,000 applications was received in the run up to these changes. This more than doubled scheme applications and exhausted the AME budget allocations. Confirmation from HMT in December 2015 that NI allocations would be capped at 3% meant that the Executive suddenly faced NI Block faced significant pressures for the next 20 years. Given the significance of this, Executive approval to suspend both schemes without consultation was secured through urgent procedures and the legislation approved by the Assembly in February 2016. Both schemes were closed to new applications from 29 February 2016.

Irregularity and Value for Money

and the need to secure the opinion of the Attorney General on possible cost control options the Renewable Heat Incentive (RHI) Scheme formally request the Department's proposed options for the upcoming RHI consultation and advice on taking further action for attached test cases demonstrating various behaviours observed during the PWC inspections.

I am writing to seek your guidance around the Department's proposed options for the upcoming RHI consultation and advice on taking further action for attached test cases demonstrating various behaviours observed during the PWC inspections.

You may recall Andrew asked for consideration of the revocation of the non-domestic RHI scheme at the meeting. The first proposed option for inclusion in the consultation is to close the non-domestic RHI scheme and provide recipients with one off 'buyout' payments to cover their capital outlay plus 12% rate of return.

The second proposed option is to move all those participants who joined the scheme on the flat medium biomass tariff onto the tiered tariff which we introduced in November 2015.

The third option is a variation on the second

We would welcome Senior Counsel opinion on the proposed consultation options as set out above looking at each in turn against legitimate expectation and the strength of a case we would have if there was a Judicial Review.

The Price Waterhouse Coopers (PWC) site visits identified seven main behaviours identified below:

- **Parasitic Wood Drying**
- **Inefficient heating systems (by design)**
- **Inefficient Use of Heat (being wasteful)**
- **Predominant Domestic Usage**
- **Ineligible heat use at application stage**
- **Multiple Boilers**
- **Economic Justifiable Heat Use**

I have attached test cases for each of the behaviours above for your consideration and advice.

As you are aware, the Public Accounts Committee is currently carrying out an Inquiry into the Non Domestic RHI Scheme with hearings scheduled during November and December 2016. I would therefore appreciate if this request could be progressed urgently.

Thank you for your assistance in this matter.

Yours sincerely

Stuart Wightman
Energy Renewables Division