

From: [Private Office DETI](#)
To: [Mills, John \(DETI\)](#)
Cc: [Cooper, Trevor](#); [Robson, Rod](#); [McLaughlin, Christine \(DETI\)](#); [Hegarty, Damien](#); [Wightman, Stuart](#); [Vaughan, Helen](#); [Stevenson, Valerie \(DETI Private Office\)](#); [Dolaghan, Paul](#); [McCormick, Andrew \(DETI\)](#); [Kerr, Sean](#); [Rooney, Eugene](#); [Stewart, Chris \(DETI\)](#); [DG DETI Press Office](#); [DETI Energy Mailbox](#)
Subject: Submission Decision SUB-0050-2016 : NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES
Date: 29 January 2016 17:04:30
Attachments: [Ministerial clearance DESK IMMEDIATE NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES.msg](#)
[SUB 0050.docx](#)

Classification: Official
Timing: Desk Immediate
Reference: SUB-0050-2016

Subject: SUB-0050-2016 : NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

To: JOHN MILLS
Date: 29/01/2016

I refer to your submission of 29/01/2016. The Minister is content.

For further information etc. contact:
Christine McLaughlin
Private Office
29222

Copied To For Information:
Cooper, Trevor; Robson, Rod; McLaughlin, Christine (DETI); Hegarty, Damien; Wightman, Stuart; Vaughan, Helen; PO CC Energy Division

From: [Private Office DETI](#)
To: [McLaughlin, Christine \(DETI\)](#); [Hegarty, Damien](#)
Subject: Ministerial clearance DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES
Date: 29 January 2016 16:42:00
Attachments: [image001.gif](#)

From: Stevenson, Valerie (DETI Private Office)
Sent: 29 January 2016 16:41
To: Private Office DETI
Subject: FW: DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Damien/Christine,

Please see clearance for this SUB.

V

Valerie Stevenson

Private Office
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9316 (ext: 29316)
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Web: www.detini.gov.uk



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Please consider the environment - do you really need to print this e-mail?

From: Kerr, Sean
Sent: 29 January 2016 16:21
To: Stevenson, Valerie (DETI Private Office)
Subject: Re: DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Valerie
Minister has cleared this sub.
Thanks

Sean Kerr
Private Secretary to Minister Bell
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue

Belfast, BT4 2JP

Tel: 028 90529452

Mob:

Personal information redacted by the RHI Inquiry

E-mail: sean.kerr@detini.gov.uk

From: Stevenson, Valerie (DETI Private Office)

Sent: Friday, 29 January 2016 11:16

To: Kerr, Sean

Subject: FW: DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Sean,

John Mills asked for this to be brought to your immediate attention.

V

Valerie Stevenson

Private Office

Department of Enterprise, Trade & Investment

Netherleigh

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From: Private Office DETI

Sent: 29 January 2016 16:15

To: Hegarty, Damien; McLaughlin, Christine (DETI)

Cc: Stevenson, Valerie (DETI Private Office)

Subject: DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Importance: High

From: McCoy, Laura **On Behalf Of** Mills, John (DETI)

Sent: 29 January 2016 16:10

To: Private Office DETI

Cc: McCormick, Andrew (DETI); Stewart, Chris (DETI); Rooney, Eugene; Wightman, Stuart; Cooper, Trevor; Vaughan, Helen; Robson, Rod; McCrea, Ian; Kerr, Sean; DG_DETI Press Office

Subject: DESK IMMEDIATE: NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Importance: High

Private Office

Please see attached **desk immediate** submission from John Mills.

Regards,

Laura McCoy

Personal Secretary

Department of Enterprise, Trade & Investment

Netherleigh

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Please consider the environment - do you really need to print this e-mail?

From: John Mills

Tel No: 29215

Date: 29 January 2016

**To: 1. Timothy Cairns
2. Jonathan Bell MLA**

DETI SUB 0050/2016

NI RENEWABLE HEAT INCENTIVE CLOSURE - TIMELINES

Issue: Decide on option for consultation/announcement of RHI closure

Timing: **DESK IMMEDIATE:** Clearance immediately to enable papers to drafted today.

Executive Committee Referral: **Urgent Procedures are necessary to secure Executive approval for Tuesday 2 February 2016**

PFG Implications: The PfG targets for renewable heat are 4% by 2015 and 10% by 2020.

Presentational Issues: Consultation seems likely to attract less criticism than announcement.

FOI Implications: FOIA exempt under sections 35 (formulation or development of government policy)

Financial Implications: Potential impact on DEL of £95 over 5 years.

Legislation Implications: Legislative changes to the RHI require draft affirmative resolution Regulations.

Statutory Equality Obligations: Screened out.

Recommendation: That you agree option 3

Background

1. My submission of 19 January invited you to agree the way forward on consulting on RHI closure. We understand from Private Office (28 January) that you were content to proceed with consultation. However, concerns expressed by the First and Finance Ministers about the risk of escalating were relayed to us along with requests to assess options for shortening the process. In particular, this suggested setting aside consultation and pursuing urgent procedure through the Executive. We sought further legal advice which is attached at Annex B.

2. In summary the process can be speeded up but only at increased legal risk. A successful legal challenge could prolong closure. The table at Annex A shows three options on timelines:
 - The first option dispenses with consultation substituting announcement of closure. This might allow closure at the end of February. Legal advice is that this carries a significant risk of challenge.
 - The second option retains a two week consultation but depends on securing the ETI Committee's agreement to the SL1 for closure while consultation is ongoing. It would see closure by 7 March. Legally, this approach risks challenge on the grounds that consultation was not genuine – as the legislative process for closure had begun during consultation. It would also rely on the Committee agreeing to pass the SL1 in advance of consultation closure.
 - The third option allows for consultation to be concluded before embarking on the process of enacting the legislation. It takes slightly longer and runs up against the last date for Plenary so, timing wise, it is higher risk than the other two options. Legally the process is easier to defend. This was the approach we previously recommended though it is now based on a two, rather than three, week consultation as time has passed and three weeks would not allow passage of legislation before dissolution.

Executive Referral

3. All the options are predicated on, first, gaining Executive clearance using the urgent procedure. This would have to be achieved by the start of next week for the options to remain valid.

Decision & next steps

4. We need to confirm the option going forward to be able to draft the papers to set the process in motion. Thus, do we seek Executive agreement to consult on closure (option 3), announce closure (option 1) or consult and proceed with legislation on the basis of a preliminary decision to close (option 2).
5. If you agree the approach we will draft papers accordingly. Ideally, this would be today.

Conclusion

6. There's a fine line between these options and a difficult judgment no matter which is selected. First there's the question of financial versus legal risk. Our legal advice stresses the latter; input from DFP stresses the former. Consultation allows those affected to have some say but is open to accusations being a sham on the grounds that decisions have already been taken. On the other hand, just because the case for closure appears overwhelming doesn't

mean we can't listen to and consider responses. You could argue that there's only a couple of weeks between the shortest (no consultation) option and the longest option and question whether this justifies dispensing with consultation. But real issue is that the not consulting gives us a couple of weeks contingency prior to dissolution whereas consecutive consultation leaves no room for slippage.

Recommendation

7. On balance I recommend going with consultation starting with the intention of option 3 (the longest but most defensible legal approach) but having option 2 as a fall back if early delays are encountered. But I acknowledge that this is a matter of judgement and option 1 is feasible.
8. That you agree option 3 (with option 2 as a fall back).



JOHN MILLS
Energy Division
Ext. 29215

cc: Andrew McCormick
Chris Stewart
Eugene Rooney
Stuart Wightman
Trevor Cooper
Helen Vaughan
Rob Robson (DALO)
Ian McCrea MLA APS
Sean Kerr
Press Office