From: **Chris Stewart** **Tel No:** 29203

Date: **3 February 2016**

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

Copy Distribution List below

CLOSURE OF RHI – URGENT PROCEDURES

Issue:	Closure of the Northern Ireland Renewable Heat Incentive schemes (RHI).
Timing:	**DESK IMMEDIATE:** Clearance immediately to enable letter to OFMDFM to issue tomorrow – Thursday 4 February 2016.
Executive Committee Referral:	Urgent Procedures are necessary to secure Executive approval before announcing decision to close RHI Schemes
PFG Implications:	The PfG targets for renewable heat are 4% by 2015 and 10% by 2020.
Presentational Issues:	Not publicly consulting will attract criticism.
FOI Implications:	FOIA exempt under sections 35 (formulation or development of government policy)
Financial Implications:	Potential impact on DEL of £95m over 5 years.
Legislation Implications:	Legislative changes to the RHI require draft affirmative resolution Regulations. Not consulting may provide grounds for subsequent legal challenge on decision to close schemes.
Statutory Equality Obligations:	Screened out.
Recommendation:	That you issue: - the attached letter to OFMDFM seeking urgent Executive approval (**Annex A**); and - <u>subject to OFMDFM approval</u>, issue the attached letter to the Chair of the ETI Committee (**Annex B**) and a press release (**Annex C**).

Background

1. Further to the submissions of 29 January 2016 from John Mills, you had agreed to close the RHI schemes to new applications, subject to public consultation. However, following discussion with DFP and OFMDFM, you have agreed to proceed with legislation to close the schemes without public consultation. This submission invites you to approve the immediate steps needed to obtain Executive approval.

Budget Deficit

2. To meet RHI commitments for existing installations, around £95m of funding will have to be found from Resource DEL (RDEL) for the next 5 years to address the current funding deficit. If both RHI schemes remain open to new applicants, the budget deficit increases to £185m.

Executive Referral

3. The closure/suspension and the budget position could be considered “significant or controversial” and cross cutting. Also any action other than closure would create a significant opportunity cost and, even if this was to be absorbed in the DETI/DfE budget areas, it would have consequences which could only be approved at collective Executive level. To meet the current timetable Executive approval must be secured under urgent procedure. A draft letter to the First Minister and deputy First Minister seeking urgent Executive approval is therefore attached at **Annex A**. This is informed by comments received from the Finance Minister.

ETI Committee

4. I understand that, in view of the risk to the NI block, you wish to propose that the draft regulations are laid and the motion tabled at the earliest possible juncture, without prior consideration and approval by the ETI Committee. Informal advice from OFMdFM officials is that this is feasible, but highly unusual. It is, of course, likely to attract strong criticism from the Committee. I must also point out that, in seeking to reduce one risk (i.e. of increased overspending) by shortening the timescale for legislation, another risk will be increased; i.e. the risk of legal challenge to the shortened period of public notice of closure.

5. Assuming prompt Executive approval, the shortest feasible timescale would involve consideration by the Business Committee next Tuesday (9 February), with a proposal to schedule the debate for Monday 15 February. The scheme would close on 16 February (with less than 2 weeks public notice).

Announcement

6. Subject to Executive approval, the Chair of the ETI Committee should be given advance warning of your proposed announcement. A draft letter is attached (**Annex B**) along with a draft Press Release (**Annex C**).

Recommendation

7. That you issue:
   (a) the attached letter to OFMDFM seeking urgent Executive approval (**Annex A**); and
   (b) subject to Executive approval, the attached letter to the Chair of the ETI Committee (**Annex B**) and Press Release (**Annex C**).

C F Stewart

CHRIS STEWART
Head of Policy Group

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

DFE-153265

ANNEX A

FROM: JONATHAN BELL MLA
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

DATE: FEBRUARY 2016

TO: FIRST MINISTER AND DEPUTY FIRST MINISTER

REQUEST FOR A DECISION BY URGENT PROCEDURE – CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

Introduction

1. In accordance with paragraph 2.14 of the Ministerial Code I am seeking agreement to take an urgent decision on the closure of the Northern Ireland Renewable Heat Incentive Scheme (RHI). The urgent decision is required to minimise significant Resource DEL (RDEL) overspending on the scheme.

Background

2. The Non Domestic RHI scheme was introduced in November 2012 and the Domestic RHI scheme in December 2014. Both schemes provide payments for people to move from conventional heating (mainly oil) to sustainable heating such as wood pellets (biomass). In light of unprecedented numbers of applications for the Non Domestic Scheme and the outcome of the Government's Spending Review, an urgent decision is now needed on the future of the NI RHI schemes.

3. Successful <u>Domestic</u> RHI applicants receive an upfront payment of up to £3,500 (depending on the technology) along with 7 annual tariff payments based on the heat requirements of the property. Annual payments are typically around £1,200 but are capped at a maximum of £2,500. Uptake of the Domestic RHI scheme has increased steadily (c.700 applications since the scheme was introduced).

4. The <u>Non Domestic</u> RHI scheme on the other hand involves 20 years of annual tariff payments based on the metered heat usage of the business. Tariffs are dependent on the type and size of technology. To date, average annual payments have been around £24,000. The Non Domestic scheme therefore involves much larger and longer financial commitments than the domestic scheme.

5. After a slow start during the first two years, non domestic scheme uptake increased steadily during 2015. During the Autumn of 2015 there was an unprecedented surge in applications. This increase relates to one particular technology – biomass.

6. A sustained increase in applications during March and April 2015 was the catalyst for the legislative changes I brought through the Assembly in November to, inter-alia, introduce a tiered tariff (reducing after 1,314 hours) and an annual cap (at 400,000 KWh) on RHI payments for biomass. However, in the run up to these legislative changes, the number of installations on the scheme doubled with over 900 applications received in 6 weeks. An increase in applications had been forecast as businesses tried to beat the deadline for tariff changes, but not at the unprecedented numbers received.

7. The increase in applications means that over 6% of NI's total heating needs are estimated to be provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded and we would be well on track to reach the 10% target set for 2020. However, this success comes at a price. Total expenditure for both RHI schemes in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £45m.

Scheme Approvals

8. When the business case for the non-domestic scheme was approved by DFP in 2012, one of the conditions was for re-approval in March 2015. Unfortunately the need for this approval was overlooked by DETI. DETI had no choice but to keep making the payments because the RHI scheme is set out in Statutory Regulations and there are no grounds for DETI to cease making payments to properly made applications. Prospective approval has now been received from DFP for non domestic scheme expenditure from 29 October 2015 through to 31 March 2016. Retrospective approval from 1 April 2015 to 30 September 2015 has however been declined and the NI Audit Office accordingly notified. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

Affordability

9. The affordability of the NI RHI schemes going forward obviously depends on the budget available. The RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME) which normally would not have an impact on the NI RDEL Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as conventional AME, where the Exchequer takes on all risks. Instead, a risk-sharing arrangement was introduced whereby, should RHI spending in one year exceed the allocated budget, NI would need to repay this in future years. However, it was DETI's understanding that only a very small proportion of any required future savings (likely to be of the order of 5%) would have to be funded direct by NI through RDEL.

10. Also unlike conventional AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of circa 3% of the DECC budget (£838m). HMT confirmed that any 20 year commitments entered into during this period would be honoured. This arrangement was rolled forward in 2015/6 though the AME 2015/16 budget has since been raised to £30m in light of increased demand.

Implications of Chancellor's Autumn Statement

11. If RHI funding was conventional AME there would be no impact on NI DEL. However, the Chancellor's Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. DFP officials, after significant engagement with HMT officials in late November / early December in preparation for the finalisation of the Chief Secretary's Settlement Letter, have also advised that HMT's position will be that NI will have to cover the full costs of any overspend. This means that the Block RDEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB. The Chief Secretary's wording is set out below:

Renewable Heat Incentive (RHI)

13. As in the previous Spending Review period, AME cover based on a population-proportionate share of the budget which has been set for the Renewable Heat Incentive in Great Britain will continue to be made available to the Northern Ireland Executive. The level of cover available is therefore £18.3, £22.3, £25.7 and £28.9 million from 2016-17 to 2019-20. Any spending on RHI above this level will need to be funded from the Executive's DEL budgets or other sources of income.

12. This creates significant budgetary pressures over and above the available AME budget cover for at least the next 5 years and, given the nature of the existing 20 year contracts, could extend far beyond the next budget period even if there are no new applications after the end of this financial year. Forecast costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the forecast costs would remain static but the HMT budget would rise therefore reducing the scheme overspend from around £27m in 2016/17 (latest estimate) to around £11m by 2020/21 (though if there are more applications than currently projected the additional costs could be around £33m in 2016/17). This, of course, all assumes that there are no further application spikes in anticipation of scheme closure.

13. In light of the HMT Settlement Letter I must therefore proceed on the basis that the major overspend that has now arisen will now impact upon the NI Block. DETI does not have the funding to meet this overspend. In the circumstances I have no choice but to propose immediate closure of the scheme to prevent the overspend from increasing further.

14. DFP and DETI have initiated an investigation into the effectiveness of the control and regulation of the Initiative in light of the significant increase in uptake of the scheme.

Consultation

15. I have consulted the Finance Minister on these issues and he concurs with my concerns and desire to minimise the exposure of the NI Block DEL.

Timing

16. Given the urgency of the situation I propose to close both the RHI schemes as soon as possible, subject to Assembly approval of the legislation. Indeed, the financial risk is such that I am seeking your approval on the basis that there is not sufficient time for the established convention of consideration of the draft legislation by the ETI Committee. I propose to lay the regulations in draft and table the motion for debate at the earliest possible juncture, without seeking prior Committee approval. This would mean asking the Business Committee (at its 9 February meeting) to schedule the motion for debate on 15 February.

17. Subject to your agreement, I will write to the Chair of the Committee, explaining the circumstances and the reasons for urgent action.

Recommendation

18. I therefore request your immediate agreement, in accordance with paragraph 2.14 of the Ministerial Code, to take an urgent decision to agree to the closure of the Northern Ireland Renewable Heat Incentive Schemes (RHI), subject to Assembly approval.

19. This letter is copied to all Executive Ministers, the Attorney General, the Departmental Solicitor, Office of Legislative Counsel and Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment

ANNEX B

Mr Patsy McGlone MLA
Chair of ETI Committee
Room 375
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX

February 2016

Dear Patsy

PUBLIC CONSULTATION ON CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

I am writing to inform the Committee that today I will be announcing the closure of both RHI schemes to new applicants. A copy of the Press Release is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2015. At that time I said that further measures might be necessary. A sustained increase in applications during March/April 2015 was the catalyst for these changes. However, in the run up to the November changes, there was an unprecedented surge in new applications with a further 900 applications received in 6 weeks. This doubled the total number of installations under the non-domestic scheme. It is estimated that over 6% of NI's total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded.

However, this success comes at a price. Both RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME) which normally would not have an impact on the NI DEL Block funding. However, the Chancellor's Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. This means that the Block DEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB.

Total expenditure for RHI in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are closed), forecast expenditure is expected to reach £45m. The increased costs associated with the recent surge in applications together with budget cuts arising from the Spending Review means the available budget for new applications has been exceeded. Meeting existing RHI commitments, let alone any new ones, will have a very significant impact on the NI Executive's budget, possibly as much as £19m p.a., for the next 5 years. DETI does not have the funding to meet this overspend.

In the circumstances I have no choice but to propose immediate closure of the scheme to prevent further overspend. I will bring forward legislation to the Assembly to close both schemes to new applications.

The urgent need to manage the financial risk means that I must bring forward the legislation at the earliest possible juncture. I have today laid the draft regulations and tabled the motion for debate, and I will be asking the Business Committee to schedule the debate for 15 February.

Regrettably, this timescale does not allow time to follow the established convention of seeking the Committee's approval of the policy and draft legislation. I must emphasise that this is not a decision that I have taken lightly. I recognise the importance of the Committee's role, and I would not contemplate this course of action if it were not for a very serious and urgent risk to the public finances.

I enclose a copy of the draft regulations. I would be happy to meet you and the Deputy Chair to explain the position more fully if that would be helpful. I have also asked my officials to stand ready to brief the Committee at its convenience.

JONATHAN BELL MLA

Minister of Enterprise, Trade and Investment

Annex C

Enterprise, Trade and Investment Minister, Jonathan Bell announces proposals to close of the Northern Ireland Renewable Heat Incentive (RHI).

Enterprise, Trade and Investment Minister, Jonathan Bell announced his intention to close the domestic and non domestic Renewable Heat Incentive (RHI) schemes. The RHI was launched to the non domestic sector in November 2012 and extended to the domestic sector in December 2014.

Commenting on his decision the Minister said: **'It is with great reluctance today that I have had to announce my intention to close both RHI schemes. Both schemes have been very successful with the non domestic scheme in particular seeing significant uptake during the last 12 months and more so in the run up to the recent scheme changes introduced in November 2015. It is estimated that around 6% of NI's heating needs are now provided through renewable technologies. The Executive's target to achieve 4% renewable heat has been exceeded.**

However, this increased demand means the available budget for new applications has been exhausted. To meet RHI commitments for existing installations, significant levels of additional funding will have to be found from within the NI Executive's budget for the next 5 years to address the current deficit. To prevent further overspend, I must bring forward legislation to the Assembly to close both schemes to new applications.'

Notes to Editors

For press enquiries please contact DETI Press Office on tel 028 9052 9604. Out of hours please contact the Duty Press Officer via pager number Personal information redacted by the RHI Inquiry and your call will be returned.