



Making a positive difference  
for energy consumers

Robin Swann MLA  
Chairperson  
Public Accounts Committee  
Room 371  
Parliament Buildings  
Ballymiscaw  
BELFAST  
BT4 3XX

Direct Dial: 020 3263 9682  
Email: [chris.poulton@ofgem.gov.uk](mailto:chris.poulton@ofgem.gov.uk)

Date: 7 November 2016

Dear Mr Swann

### **Public Accounts Committee Evidence**

Thank you for your letter of 28 October 2016 following our attendance at the Public Accounts Committee meeting on 26 October 2016 in respect of the Inquiry into the Non-Domestic Renewable Heat Incentive (RHI) Scheme.

This letter and its attachments provides further information on each of the areas you requested.

Please note that we have provided information in the annexes on a confidential basis, as these include, in unredacted form, names of individuals and commercial information relating to third parties. Please contact us if you intend to publish these annexes so we can identify appropriate redaction before publication.

**1. The names of Department of Trade, Enterprise and Investment (DETI) staff who instructed OFGEM to operate the RHI scheme on a different level than the scheme in GB;**

We do not administer the scheme on the basis of instructions from any individual members of staff at DETI. We administer the scheme in Northern Ireland in accordance with the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012, which were made by the then DETI, following approval by the Northern Ireland Assembly, in October 2012.

Among other things, these Regulations define the eligibility criteria for installations, the requirements for application and accreditation, the ongoing obligations of scheme participants, the process for making support payments, and the powers in relation to inspection, enforcement and sanctions.

The Energy Act 2011, under which the Regulations were made, also allowed for DETI to enter into 'arrangements' with Ofgem<sup>1</sup> for Ofgem to carry out DETI's functions under the Regulations on its behalf. In December 2012 we entered into such statutory arrangements (signed by Fiona Hepper of DETI), which were updated on 13 October 2014, 12 December 2014 and 1 December 2015 (signed by John Mills). Copies of these arrangements are provided in **Annex 1**.

In essence, the Arrangements provided for Ofgem to carry out all of DETI's functions under the Regulations, except for certain listed functions which were 'retained' by DETI. The Arrangements also made provision for the supply of information between Ofgem and DETI, assistance and contact points, the facilitation of effective operation, payment of costs and periodic support payments, as well as communications regarding audit and suspected financial irregularity.

The functions Ofgem were to carry out under the Arrangements, in general terms, related to receiving applications and assessing eligibility, determining applications, calculating and paying periodic support payments, and inspection and enforcement functions. The functions expressly retained by DfE were:

- calculating and publishing yearly tariff rates (regulation 36(8));
- requiring repayment of periodic support payments (regulation 47(1)(a)); determining reviews of decisions under the Regulations (regulation 50); and
- publishing guidance and information in aggregate form about the scheme (regulation 51) including number of installations; technology types; capacity; heat generated; and payments made.

In changes to the Arrangements in October 2014, determining the applicability of the *de minimis* State Aid rules under European law to funds used or to be used for the purchase or installation of eligible installations (regulation 23(1)) became a retained function for DETI.

Any differences between the scheme in Great Britain and that in Northern Ireland, such as in relation to degression and tiering, are as a result of differences between these Regulations and the Regulations made (and subsequently amended) by the then Department for Energy and Climate Change (DECC) following approval by the UK Parliament for the GB scheme.

## **2. Details of the notes from discussions OFGEM had with the Department of Energy and Climate Change and DETI when concerns were raised;**

Ofgem discussed the GB and NI schemes separately with DECC and DETI. The majority of our discussions focussed on scheme administration. We have included in **Annex 2** details of conversations where concerns were raised by Ofgem with DETI. These include:

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<sup>1</sup> Ofgem is the Office of Gas and Electricity Markets, the executive office through which functions of the Gas and Electricity Markets Authority are performed. The Arrangements and legislation therefore formally refer to the Authority rather than Ofgem.

- Cost control provisions
- The size and operation of boilers, including multiple boilers
- Formal minutes of meetings dated July to August 2012 between DETI and Ofgem (these were located after our appearance at the PAC on 26 October)

**3. A copy of the annual declaration form which applicants are required to complete;**

The text of the annual declaration, which is completed online, is as follows:

*I, [name], declare that, to the best of my knowledge and belief:*

*In relation to the accredited RHI installation in respect of which I am the participant (or nominated officer of the participant), I am (or the participant is) using the installation in accordance with the relevant eligibility criteria under the RHI scheme, and I am (or the participant is) complying with such of the ongoing obligations set out in regulations 28 to 31 and 33 to 35 of the NI RHI Regulations 2012 as are relevant. This includes keeping records of the type of fuel used and fuel purchased for the duration of my participation on the scheme, where applicable.*

*I am aware that it is a criminal offence to knowingly make a false representation. I am aware that a person convicted of this offence is liable to imprisonment or a fine or both.*

The annual declaration is only accessible by participants, however we have included a screenshot (redacted to remove naming participants) in **Annex 3**.

**4. Details of any appeals which were made out of the 12 rejected applications, the stages of appeal and who finally approved them;**

Where an application is rejected the applicant can request an internal review of that decision by Ofgem E-Serve. Where the applicant is not satisfied with the outcome of that review, they can request a review from DETI, who have responsibility for conducting a review in accordance with Regulation 50 (as noted above, DETI retained this responsibility as a retained function under the arrangements). The process for appeals is set out in DETI's published guidance.

Of the 12 applications that have been rejected, 11 have been subject to review. Of these:

- One was **rejected** in 2013 by Ofgem on the grounds of state aid funding, and a review was conducted by DETI. DETI decided that the decision to reject should be revoked. A further application for the same installation was subsequently **approved** by Ofgem, having received confirmation from DETI that the amount of state aid would not present an exception to the duty to accredit.
- Ten applications were **rejected** in 2016 by Ofgem and these are currently subject to internal reviews by Ofgem.

**5. Copies of the weekly communication notes from discussions between OFGEM and DETI from June 2013;**

The weekly data we have sent over since June 2013 has included an extract from our Register. As agreed with the clerk of the committee, we have provided a sample of examples in **Annex 5**.

**6. Any OFGEM internal minutes in which RHI was discussed;**

We have held a formal monthly governance board for the Non-Domestic RHI since December 2011 and this has included discussion of the Northern Ireland Non-Domestic RHI scheme since 19 June 2012. Minutes of these meetings are provided in **Annex 6**. This also includes records of five internal meetings held during the development phase of the NIRHI from May to August 2012 and capture internal discussions which were held during the development phase of the project prior to its launch. These have also been discovered since we appeared at the PAC on 26 October 2016.

**7. Copies of correspondence with DETI which highlight that it was aware of the GB scheme;**

There are a number of documents which we shared with DETI which refer to the GB scheme and these are included in **Annex 7**. Our feasibility study of 16 December 2011 (**Annex 7**), which we shared with DETI, also noted that the scheme was designed to be similar to the GB scheme at the time. The baseline scope document which includes information to changes in the GB scheme including cost control (**Annex 2**), which we shared with DETI on 21 December 2012, also included references to forthcoming changes to the GB scheme, including in relation to cost control.

In addition, DETI published on 22 July 2013 a public consultation in which it included a number of references to, and comparisons with, the GB scheme. Our actions following this consultation included sending to DETI (on 19 August 2013) a draft scoping study proposal (**Annex 2**), which included reference to the GB scheme and forthcoming changes. DETI provided OFGEM with a number of documents summarising planned policy changes to the scheme on 26 February 2015 (**Annex 2**), which included references to cost controls and tariff changes and the Great Britain scheme.

**8. Confirmation that the signed change to arrangements was made on 1 December 2015;**

Yes – see question 1.

**9. Any documentation which shows that OFGEM raised concerns with DETI about the use of multiple boilers;**

On 14 May 2014 we forwarded to DETI a letter (**Annex 9**) we had received that raised concerns about the use of multiple boilers.

On 18 December 2014 we emailed DETI (Annex 9) to explain that the current Regulations meant that unless they are hydraulically linked, multiple boilers heating the same space would be considered separate installations. We also invited DETI to consider amending the Regulations, if this position did not reflect its policy intent.

As set out in the answer to question 7 above, DETI provided Ofgem with a number of documents summarising planned policy changes to the scheme on 26 February 2015 (Annex 2), and these also included reference to the fact that Ofgem had been receiving applications for multiple boilers.

**10. What date was a decision made on de minimis rules?**

DETI took responsibility for de minimis rules on 13 October 2014 when a change to the Arrangements were made.

**11. Confirmation of whether whistleblower(s) came directly to OFGEM or through another avenue and how were these allegations followed up?**

The definition of a whistleblower, as outlined in the Public Interest Disclosure Act 1998, is a person raising concerns about wrongdoing, risk or malpractice that they are aware of through their work. Please note this is different to other external notifiers, e.g. those who may have previously worked for installation companies. We have not received any allegations from any such whistleblowers.

Over the lifetime of the NI scheme we have received nine specific referrals relating to possible fraud. Six of these were notified to us by external parties, such as those who may have previously worked for installation companies.

Of these nine cases, four were closed following an initial examination but before reaching the investigation stage. The remaining five proceeded for further investigation.

Of these five cases, two were subsequently closed. Both of these were opened in 2014. Following investigations, there was insufficient evidence of fraud in both cases; one was closed in 2014 and the other one closed in January 2015.

At the time of the Committee on 26 October 2016, we were investigating three ongoing suspected fraud cases. We have since received a further external referral which we are investigating.

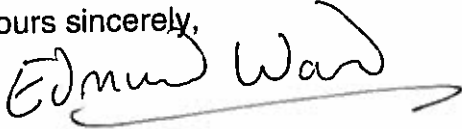
**12. A copy of the email from OFGEM to DETI in which OFGEM indicated it had concerns about the tariffs.**

We wrote to the Department on 14 May 2014 (Annex 9), providing a case study for a 990kW boiler which operated for 153 hours each week and would receive support payments of over £100k per annum, and referenced this might be useful to considerations on tiered tariffs under the NI RHI. We also attached an item of

correspondence we had received from an installer, referencing "multiple boilers" on a single site and describing the "around the clock" operation of boilers.

I hope this letter answers your questions and will be helpful to the committee.

Yours sincerely,

A handwritten signature in black ink that reads "Edmund Ward". The signature is written in a cursive style with a long horizontal flourish extending to the right.

PP

Chris Poulton

Managing Director, Ofgem E-Serve

## Index of Annexes

Question number	Annex number	Date	Document type / description
1	1	28/12/2012	Arrangements signed by Fiona Hepper of DETI
	1	13/10/2014	Revised Arrangements signed by John Mills of DETI
	1	12/12/2014	Revised Arrangements signed by John Mills of DETI
	1	01/12/2015	Revised Arrangements signed by John Mills of DETI
2	2	03/07/2012	Meeting between Ofgem and DETI with references to the GB scheme
	2	21/12/2012	Ofgem baseline scoping document referencing DECC (GB) Regulations
	2	03/07/12 19/07/12 26/07/12 02/08/12 09/08/12	Formal minutes of 5 project meetings in the development phase between Ofgem and DETI colleagues via teleconference
	2	21/04/2014	Internal note of meeting in Belfast between John Mills of DETI (plus officials) and Chris Poulton of Ofgem (plus officials)
	2	26/02/2015	DETI documents setting out proposed policy changes including changes to cost controls and tariffs
	2	14/05/2014	Email from Edmund Ward to DETI referencing scheme examples in practice and a case study for a 990kW boiler running 153hrs per week and considerations on tiered tariffs
	2	18/12/2014	Ofgem email to DETI re multiple boilers
3	3		Screenshot of Annual Declaration
4	No attachments		
5	5	From 02/06/2013	Examples of weekly data extracts email & files
6	6	From 19/06/2012	Ofgem internal minutes of monthly Non Domestic RHI governance board, since NI RHI was included from 19/06/2012
	6	26/05/12 10/07/12 17/07/12 24/07/12 08/08/12	Minutes of 5 internal Ofgem meeting held during the development phase May to August 2012
7	7	16/12/2011	Ofgem Feasibility study referencing that the NI scheme was designed to be similar to the GB scheme
	7	22/07/2013	Consultation published by DETI for Phase 2 of the NI RHI
	7	16/08/2013	Draft scoping study proposal setting out implementation options to support DETI's Consultation on Phase 2 of the NI RHI
8	No attachments		
9	9	14/05/2014	Email from Edmund Ward to DETI referencing scheme examples in practice and a case study for a 990kW boiler running 153hrs per week and considerations on tiered tariffs
	9	18/12/2014	Ofgem email to DETI re multiple boilers
10	No attachments		
11	No attachments		
12	No attachments (evidence provided in Annex 9)		