

RHI Steering Group**DRAFT NOTE OF MEETING IN RELATION TO RHI HELD AT 9.30AM ON
31 MAY 2016 IN CLARENCE COURT**

Present: Andrew McCormick (AM)
Heather Cousins (HC)
Stephen McMurray (SM)
Michael Woods (MW)
Alison Clydesdale (AC) (via telephone)

Secretariat: Rachel Linton

Response to NIAO Report

1. SM provided an update of the meeting with DoF representatives held on Friday 27 May at which it was discussed that a bid of £20m may be required in June monitoring. HC advised that this amount may need to be amended after the legal advice has been received. SM confirmed that DoF will be providing written comments regarding issues raised by NIAO.
2. AC advised that there are two issues on which legal advice has been sought: (i) implementing a cap; and (ii) expectation of the rate of return. AC advised that preliminary calculations show that a cap of 4,000 hours could lead to a saving of £200m over 20 years. MW advised that the preference would be to implement a cap as soon as possible and to carry out a VfM study imminently to assist with the assessment of the rate of return issue. AC advised that the Department can only implement a cap and carry out a VfM study after legal advice has been received.
3. AM asked whether potential State Aid issues have been considered and noted that State Aid Unit need to advise whether there has been a breach of control. AC advised that State Aid Unit has not yet been engaged on specific issues but that there is not usually an issue when notifying to reduce support.
4. MW advised that there is a need to establish what the actual rate of return is compared to the rates which were approved in the business case, as if the actual rate of return is above the amount approved then State Aid is being broken. AC confirmed that the approved rate of return was 12.5% and advised that Energy Renewables does not yet have enough data to calculate the actual rates of return.
5. AM noted the tiered tariff which was implemented in November 2015 and asked if it was possible to apply these revised tariffs to businesses which signed up pre November 2015. AC stated that Energy Renewables is awaiting legal advice on this option but that there is an issue over legitimate expectation based on the calculations carried out at the time and whether it was reasonable to have such a high rate of return.

6. AM stated that a VfM study can be commissioned after legal advice has been received.
7. SM referred to the annual rate of return examples included in the NIAO report and the assumptions used. AM noted that the examples are factually accurate based on the assumptions used. AC confirmed that it is possible to achieve the rates of return as shown in the report as currently there is no method to limit the amount of hours a boiler is run for. AC stated that it would be highly unusual and unlikely that a boiler would run for 24 hours a day, seven days a week, and that if this was the case it would need to be replaced sooner than anticipated. MW confirmed that the cost of replacement would be borne by the user but that even with this additional capital cost the rate of return has the potential to be very high.
8. MW suggested that NIAO should be asked to remove the example which assumes 24 hour use on the basis that this sort of usage does not adhere to the principles of the scheme. AC noted that 24 hour usage should be flagged by Ofgem and it would most likely be challenged if inspected. SM suggested requesting that Moy Park provide the Department with an indication of average/reasonable usage. AC stated that each particular type of user would report very different typical usage therefore it would not be possible to come up with one reference figure of average usage. AM confirmed that a request to NIAO should be made to include only the 60 hour per week example in the report as it is an example which closer reflects actual typical use.

Action 1: AC to press DSO for sight of the legal advice, as soon as possible.

Action 2: AC to request State Aid advice from State Aid Unit

Action 3: SM and AC to meet with NIAO to discuss report and confirm timelines

Secretariat to the Steering Group

9. AC stated that a new Grade 7 is due to start in the Renewable Electricity branch on Monday 6 June and that this individual will act as Project Manager and as such will be responsible for developing, monitoring and managing the project plan, including the action plan. AC advised that Energy Renewables does not currently have adequate resources to provide secretariat services for the Steering Group. MW advised that it would be beneficial if the administrative support had Energy expertise.
10. AM stated that given the scale of difficulty and high risk nature of the project it is important that the existing Renewables Grade 7, Stuart Wightman, remains involved to support the new Grade 7 Project Manager. AC confirmed this will be the case.

Action 4: AC to explore the possibility of requesting administrative support from Energy Co-ordination, and SM to follow up with Departmental HR for a resource if nothing available within Energy division.

Draft Terms of Reference for RHI Steering Group

11. MW referred to the proposed Group membership and confirmed that he will circulate the draft ToR to proposed members for comment. AM confirmed that intends to attend the Steering Group meetings short term. MW proposed that meetings occur more frequently at the start of the project.

Action 5: MW to circulate draft ToR for comment

Phase 2 proposals from Ofgem

12. AM referred attendees to the Ofgem letter dated 26 May 2016 which proposes a sample of 72 site inspections. MW stated that the scope of the site inspections needs to be refined to ensure that, if the allegations made are true, the inspections will identify the alleged misuse. MW also noted that confirmation should be obtained that a stratified sample focussing on the greatest degree of exposure will be taken, and given specific allegations have been made, confirmation that Deloitte will express an opinion on whether or not they found allegations were true or not true.
13. SM referred the proposed timescales for the inspections and suggested that the report writing should take place at the same time as the inspections. MW advised that a discussion with Ofgem to ensure that the inspections are fit for purpose would be beneficial.

Action 6: AC to arrange teleconference with Ofgem to discuss the proposed site inspections. This should happen over next few days.

AOB

14. HC asked when it is expected the Internal Audit Reports will be finalised. MW advised that the report on the Non-Domestic Scheme is with management for response and that final figures in relation to the Domestic Scheme are with Energy Renewables for confirmation before the draft report is issued.

Draft Terms of Reference

1.0 RHI Steering Group - Terms of Reference

1.1 Purpose

The Steering Group is being established to provide a governance structure around the project in order to facilitate the strategic and timely response to the issues surrounding the RHI Scheme (the background of which can be found at Annex A); these include:

- the future funding of DfE's commitments under the scheme for the remainder of its 20 year life, and how any liabilities arising can be minimised;
- the issues raised by NIAO and agreement of report;
- the issues raised in the draft Internal Audit report;
- the commissioning of a Value for Money study of the Scheme; and
- the completion and subsequent handling of the work currently being undertaken by OFGEM in relation to the allegations of Fraud and abuse of the scheme.

The Steering Group meetings will:

- provide a forum for establishment of a formal project plan to address all outstanding issues;
- receive regular updates on the progression of project activity;
- provide a challenge role on the proposed set of actions that are included in the project plan and the progress made;
- supply the Audit Committee with updates; and
- on a monthly basis report to DfE Board with updates, and SMT on a quarterly basis.

1.2 Membership and Chair

The Steering Group will be chaired by Heather Cousins, Deputy Secretary. It is proposed that Membership will comprise of the following staff whose business area directly impacts on the implementation the project plan:

- Chris Stewart – Deputy Secretary
- Stephen McMurray – Director of Finance
- Alison Clydesdale – Renewable Energy
- Stuart Wightman – Renewable Energy
- Michael Woods – Head of Internal Audit

- Ian McFarlane – Governance, Accountability and Casework
- David Conliffe – Financial Governance
- Permanent Secretary will attend meetings as he deems necessary.

1.3 Roles and Responsibilities

The development of a project plan capturing the key actions that must be delivered will be the responsibility of the secretariat to develop, maintain and report on to the group. It is recommended that this secretariat function will be provided by Staff from Renewable Energy.

The first task of the steering group will be to develop an agreed project plan listing the key actions that are required, including those actions such as commissioning a value for money study that fall to Renewable Energy.

1.4 Meetings

Meetings will be convened on a fortnightly basis with frequency to be reviewed as progress on the project plan unfolds.

2.0 Timescales

Timescales for delivery to be agreed as part of the action plan.

Background to RHI Scheme

The Non-Domestic element of Northern Ireland Renewable Heat Incentive (NIRHI) Scheme was introduced from 1 November 2012 in parallel with comparable schemes for the rest of UK led by DECC. The NIRHI initiative was central to meet the Executive target (PfG) of having 4% of Northern Ireland's heating needs met from renewable sources by 2015, and a further target in the Strategic Energy Framework of achieving 10% renewable heat consumption by 2020.

Concerns over rising expenditure on the Scheme became acute in July 2015, and a course of action proposed to:

- legislate to introduce tariff controls as soon as possible; and
- review the underpinning legislation and bring forward proposals for further controls in due course.

The introduction of a tiered tariff for biomass systems (which account for 97% of installations) was agreed by the Minister in early September 2015. This was subsequently followed by a public announcement on 8 September 2015. It was anticipated that these changes would take effect from 4 November 2015. The necessary legislation to introduce cost controls was agreed on 17 November 2015.

During the 10 week period between the Minister's initial announcement on tiered tariffs, and their introduction there was a sudden, significant and unforeseen spike in demand. In the space of six weeks the number of installations doubled from the 900 that had been received in the previous three years. At peak demand in October 2015, NI application numbers were running at twice that of the total for GB.

In January 2016, in light of the significant financial risk faced by the Department, it was agreed that further legislation would be passed to suspend the scheme at the earliest possible juncture. Executive agreement to proceed with the closure of the scheme was secured and the closure of the scheme was announced on 5 February 2016, less than two weeks ahead of the planned closure date of 16 February 2016. Due to the short notice

period, and the significant risk of challenge through judicial review stemming from the lack of consultation, it was subsequently agreed to delay the closure until 29 February 2016.

On 28 January 2016, the Department, through the Office of the First and Deputy First Minister (OFMDFM) received an anonymous letter alleging abuse of the scheme in Northern Ireland. The Department, in conjunction with OFGEM and their auditors Deloitte, have initiated a 2 phase response to these allegations. The objective of Phase 1 is to provide assurance over OFGEM's internal application, validation and verification procedures. Phase 2 will look specifically at the alleged abuse of the scheme and this will involve subcontracting a suitably qualified subcontractor with expertise in renewable energy to carry out a series of site visits on installations across the region.

The NIAO considered the RHI scheme as part of the audit of the 2015/2016 DETI Accounts and have issued a draft report highlighting concerns with the value for money of the scheme and the regularity of the expenditure in 2015/2016 that was not subject to DFP approval. They have advised that this issue is likely to lead to a qualification of the DETI accounts and it is expected that the RHI Scheme will be of interest to the Public Accounts Committee.