

From: [Stewart, Chris \(DFE\)](#)
To: [Wightman, Stuart](#); [McCormick, Andrew \(DFE\)](#)
Cc: [Marten, Lucy](#); [McCann, Brendan](#); [McMurray, Stephen](#); [McCoy, Laura](#); [Coyne, Terence](#); [McFarlane, Iain](#); [McIlwrath, Linda](#)
Subject: Re: RHI
Date: 13 December 2016 07:57:47

Andrew

I agree with Stuart's assessment - tactics, strategy and prioritisation reflected a November target, and it is difficult to speculate on what might have happened in a different scenario.

The other factors mentioned by Stuart were relevant, and he has clarified the financial point.

Faster progress would have required a different order of priority at Ministerial and official level - something that appears essential now, but was certainly not recognised as such in July 2015. It worth noting that work on the legislation began some months before formal approval was received, so there was no lack of urgency on the part of the team. As noted in my previous email, I regret not having asked for the cost control measures to be decoupled, which would have reduced the risk of delay.

Action in February 2016 was of a different order - an emergency response, which involved very high risk of legal challenge.

Interviews commence at 9.30.

C

Sent from my BlackBerry 10 smartphone.

From: Wightman, Stuart
Sent: Monday, 12 December 2016 23:15
To: McCormick, Andrew (DFE); Stewart, Chris (DFE)
Cc: Marten, Lucy; McCann, Brendan; McMurray, Stephen; McCoy, Laura; Coyne, Terence; McFarlane, Iain; McIlwrath, Linda
Subject: Re: RHI

Andrew

Because we were targeting November for the changes (following clearance of the sub), the NIRO was taken forward first in October. If I remember correctly, this was impacted by the rotation of the DETI Ministers. With NIRO going first, DSO had to prioritise this over RHI. I

don't think DSO clearance was secured until late October as a result (I need to check this!)

If we had got the green light to proceed in July, we could have proceeded with the RHI legislation in Sep before the NIRO and before the rotation of Ministers. This would have still have provided sufficient notice period in terms of JR risk.

If I remember correctly, at the time it was decided we should wait for the DoF prospective approval to come through before tabling the motion and laying the Regulations before the Assembly. The DoF approval came through on the 29 October 2015, by which time this was too late to make either the 4 or 11 debate.

This was because the Regulations had to be laid (and cleared by the Examiner) and considered by the ETI Committee before the Motion Debate. We ended up having to brief the ETI Committee and have the Motion Debate on the same morning. If I remember correctly, the ETI Committee Clerk wouldn't accept the Regulations being considered on the 11th November because we not giving enough notice.

Happy to discuss.

Stuart

Sent from my BlackBerry 10 smartphone.

From: McCormick, Andrew (DFE)
Sent: Monday, 12 December 2016 22:45
To: Stewart, Chris (DFE)
Cc: Wightman, Stuart; Marten, Lucy; McCann, Brendan; McMurray, Stephen; McCoy, Laura; Coyne, Terence; McFarlane, Iain; McIlwrath, Linda
Subject: Re: RHI

Many thanks.

Does it follow that 1 October was never deliverable as the deadline, even if the submission of 8 July had been cleared on 9th? Was it possible to move faster in February (only) because there was then extreme political pressure to move fast?

We need to bottom this out asap - when do you go into interview mode in the morning?

Many thanks again.....

Sent from my BlackBerry 10 smartphone.

From: Stewart, Chris (DFE)
Sent: Monday, 12 December 2016 21:06
To: McCormick, Andrew (DFE)

Cc: Wightman, Stuart; Marten, Lucy; McCann, Brendan; McMurray, Stephen; McCoy, Laura; Coyne, Terence; McFarlane, Iain; McIlwrath, Linda
Subject: RE: RHI

Andrew

This reply reflects an examination of the record only – I have not yet had an opportunity to speak to colleagues in the Division.

In essence, the root cause of the delay dates from much earlier than November. Whilst 4 November was the target date (as advised to the Committee in September), it appears that the time required to draft and clear the regulations made this impossible. I do not understand the reference to ‘financial clearance’.

By way of background, in addition to the tariff changes, the draft regulations address Phase 2 of the Non-domestic RHI, adding to their complexity. The first draft of the Regulations was sent to DSO on 22 July 2015 (i.e. even before Ministerial agreement to the policy of introducing cost controls was achieved - proposed in a submission of 8 July, agreed in September). You will see from the email of 24 August from Stuart Wightman to John Mills (attached) that the timescale already appeared very challenging by that point.

It took 5 iterations before DSO clearance of the draft regulations was obtained on 28 October. Strenuous efforts were made to expedite approval by the Examiner of Statutory rules (who helpfully gave prior informal consideration) – this required some further changes, with DSO approval of the final draft on 3 November.

Ministerial approval for the draft regulations was sought in a submission of 6 November and obtained on 10 November. **That is, Minister Bell was never in a position to approve the draft regulations in time for debate on 4 November.**

This timescale meant that the earliest date for Committee consideration was 17 November. The motion in the Assembly was the same day.

In summary, it appears to me that the primary cause of delay was the time taken to draft and clear the regulations. With hindsight, we ought to have de-coupled the tariff changes and pursued them separately, in order to minimise the risk of such delay. The need to do so may not have been as clearly understood in July as it was later. Nevertheless, this was a missed opportunity.

Chris

From: McCormick, Andrew (DFE)
Sent: 12 December 2016 17:59
To: Stewart, Chris (DFE)
Cc: Wightman, Stuart; Marten, Lucy; McCann, Brendan; McMurray, Stephen; McCoy, Laura; Coyne, Terence; McFarlane, Iain
Subject: RHI

On 17 November 2015 in the debate, Patsy McGlone said:

“Officials informed the Committee that the Department originally aimed for the legislation to come into effect on 4 November. However, they said that there was a delay in securing the financial and legal approvals. The Department was concerned to avoid a hiatus in the industry and, therefore, wanted to bring forward the legislation as quickly as possible.”

Can you please check the factual detail as to the delay from 4-17 November.

Many thanks.