

From: [Sullivan, Colin](#)
To: [Neeson, Patrick \(DoF\)](#)
Cc: [Simpson, Tony](#)
Subject: FW: F11/17/57986 : Submission from Mike Brennan to DoF Minister O Muilleoir dated 19 January 2017 - RHI Non Domestic Business Case - Concerns
Date: 19 January 2017 16:25:00
Attachments: [image001.jpg](#)
[Submission from Mike Brennan to DoF Minister O Muilleoir dated 19 January 2017 - RHI Non Domestic Business Case - Concerns.DOCX](#)

Patrick

For your info as to where we are.
Obviously, politically sensitive.

Colin

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From: Downie, Jill
Sent: 19 January 2017 14:19
To: DoF Private Office
Cc: Brennan, Mike; Frazer, Helen; Cairns, Robyn; Denham, Arlene; Kerr, Sean; Sterling, David; Widdis, Hugh; Sullivan, Colin; Morelli, Emer; Scott, Michelle; Rooney, Eoin
Subject: F11/17/57986 : Submission from Mike Brennan to DoF Minister O Muilleoir dated 19 January 2017 - RHI Non Domestic Business Case - Concerns

Please find attached submission from Mike Brennan, Budget Director, DoF.

Many thanks.

Jill

finance-bilingual



JILL DOWNIE

SPS to the Budget Director

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FROM: MIKE BRENNAN

cc: Copy distribution list below

DATE: 19 JANUARY 2017

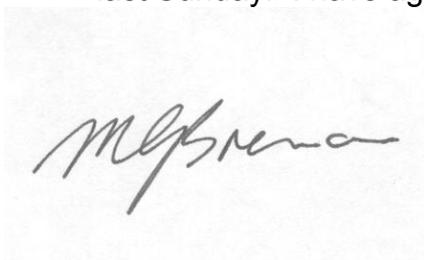
TO: MÁIRTÍN Ó MUILLEOIR, MLA

RHI NON DOMESTIC BUSINESS CASE – CONCERNS

1. Your Special Advisor emailed me on 18 January 2017 setting out your remaining concerns about the business case submitted by the Department of the Economy (DfE) to resolve the financial problems associated with the Non Domestic RHI scheme. You have requested my thoughts on a number of aspects.
2. I would begin by pointing out that the business case presented to us is what I would term '*sub-optimal*' in that it doesn't present a solution that would result in an immediate and permanent cessation to payments that are a call upon the Executive's DEL budget (but not halting continued access to AME funding to allow genuinely eligible projects to continue).
3. However, in light of the legal advice that option 2 is a robust defensible position and the *need to have* some further time to collate more usage data, I must conclude that the proposed way forward is indeed the only practicable action that can be taken immediately to significantly reduce the current irregular expenditure. I take the view that in our current circumstances this is an essential first step in implementing a sustainable and permanent solution. However that solution will only work if DfE delivers on the commitments set out in the business case.

4. The key commitments in the business case that continue to worry me are, as you have identified, the role of OFGEM and the planned inspection programme.
5. OFGEM's engagement to date has been inadequate. There undoubtedly needs to be a more pro-active role taken up. Our concerns have been made to the DfE and in a response (13 January 2017 – extract below). It is important to note that there isn't really any option for DfE but to continue the relationship with OFGEM at this stage as it would take considerable time to procure an alternative client with suitable systems.
 1. *At the current time the Department has no choice but to continue to rely on OFGEM's administration of the scheme, additional actions we have taken include:*
 - 1.1 *Detailed communication and discussions with OFGEM, at Permanent Secretary level, to agree the approach to inspection and enforcement;*
 - 1.2 *The appointment of, within the DfE RHI Taskforce team, an ex CPD Grade 6 (Dave Glover) to assist with the management of the OFGEM contract;*
 - 1.3 *The start of the commissioning process to procure 100% inspections;*
 - 1.4 *The consideration of medium to long term options on enforcement including the 'contracting out' of this function;*
6. However the more critical issue to successfully delivering on the business case objective is to expedite the inspection process of all installations. Quickly rolling out the inspection process will have two immediate benefits – triggering a behavioural change and also identifying ineligible usage. Combined, these two benefits will likely reduce costs significantly.
7. To give you greater comfort on delivering a timely inspection process, we have asked CPD to assist in putting in place a robust contract management regime. We have also informed DfE that we need to have the inspections business case with us before close tomorrow to allow us to conduct an initial assessment before the wider RHI business case is approved.
8. In relation to your wider concern about approving what might be deemed later to be a 'botched' plan, I can only say that this proposed way forward does:
 - Immediately constrain tariff payments through the introduction of a tiered tariff and usage cap
 - Offers a strong legal defence to challenge
 - Puts in place an inspection and audit process that should drive down long term costs
 - Offers best possibility of being State Aid compliant.

9. In conclusion I would endorse our previous advice that the DfE Accounting Officer's request for business case approval should be granted subject to the various conditions outlined in the draft Supply approval letter provided to you last Sunday. I have agreed the terms of this memo with David Sterling.

A handwritten signature in black ink, appearing to read 'Mike Brennan', is centered on a light-colored rectangular background.

MIKE BRENNAN

**cc: David Sterling
Hugh Widdis
Colin Sullivan
Emer Morelli
Michelle Scott
Eoin Rooney**