

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

Supplementary Statement in response to the Department of Finance

DATE: 28 March 2018

Witness Statement of: Stephen McMurray

I, Stephen McMurray, will say as follows:

1. This supplementary Witness Statement by the Department for the Economy (DfE) seeks to provide further assistance to the Inquiry through clarification or expansion on a number of points arising from the Corporate Statements of the Department of Finance (DoF) dated 2 June 2017 and 20 September 2017, as well as addressing some issues which are included in the witness statements of DoF officials. DfE's predecessor department was the Department of Enterprise, Trade and Investment (DETI), while DoF's predecessor department was the Department of Finance and Personnel (DFP). This supplementary statement contains references to these predecessor departments where appropriate.
2. The RHI Taskforce has engaged in discussions with two DfE officials (Trevor Cooper and Jeff Partridge) during the preparation of this supplementary statement and the following paragraphs reflect those discussions. Themes have been grouped under sub-headings and DfE has endeavoured, as far as possible, to follow the order of the issues raised in the DoF supplementary witness statement (WIT-34693 to WIT-34707) under each sub-heading.
3. The purpose of providing this statement is to affirm DfE's corporate understanding of certain processes and to clarify points of accuracy where necessary.

Approval of the Original 2012 Business Case

4. Emer Morelli, in paragraphs 4 and 5 of DoF's supplementary statement to the Public Inquiry of 20 September 2017 (WIT-34693), outlines DoF's role in the approval of business cases where a spending decision exceeds the departmental delegated authority. At paragraph 10 (WIT-34693), Emer Morelli states:

"DETI makes a repeated and general assertion that all the experts including DFP were content with the original Scheme (e.g. WIT-00060). DFP at that time could only rely on the Business Case as presented and approved by DETI. DFP in its Business Case consideration, would not have the resources or expertise to challenge the CEPA report, (prepared by the experts in the field and accepted by DETI and the DETI Casework Committee)."

5. DfE acknowledges DoF's role in scrutinising and approving departmental expenditure that falls outside limits delegated to individual departments. On foot of this clearly understood role, DETI submitted the 2012 Business Case for the non-domestic Renewable Heat Incentive (RHI) scheme to DFP for scrutiny and approval.
6. However, DfE would wish to clarify any potential ambiguity which might arise from the assertion at paragraph 10 of the DoF supplementary statement. It is the view of DfE that the statement that DFP "*could only rely on the Business Case as presented and approved by DETI*", should not be interpreted in such a way as to suggest that DFP did not have an important role to play in assessing the integrity of the proposed scheme, and in forming its own high level independent view on a project. DFP's role was far from being a 'rubber stamping' exercise of the DETI business case, and indeed, there have been a number of instances across the Northern Ireland Civil Service when DFP (or latterly DoF) disagreed with the merits of an expenditure proposal suggested in a Department's business case. DFP's (and latterly DoF's) ability to approve or disapprove a business case rests with its function of carrying out its own analysis of the proposal. This analysis will involve an assessment of advice provided by its own departmental economists. DoF's



economists could also potentially take account of advice provided by experts commissioned by the department from which the business case emanates.

7. This critical function was acknowledged by the DoF economist, Rachel McAfee, who stated in evidence to the Public Inquiry on 29 November 2017 (page 127, lines 19 to 22 of the published transcript):

"I know there are lots of examples of projects that have been — have maybe sat — maybe they eventually would be approved, but they have gone back and forward, back and forward with lots of issues to the Department, and that process can be quite involved."

Rachel McAfee's evidence chimes with DfE's understanding that DFP/DoF have, on numerous occasions, sought further information or clarification from a proposing department if it believed this was necessary to enable it to form a view on value for money of that proposal.

8. In this case DfE remains of the view, as expressed in its 27 November 2017 supplementary witness statement commenting on the Phase 1 and CEPA witness statements (see paragraph 15, **WIT-03276**), that *"the absence of tiering in the initial tariff for small to medium biomass was a fundamental flaw"*. DfE acknowledges in paragraph 18 (**WIT-03276**) that *"this error was not picked up at any time in the Department"* (emphasis in original). While this was DfE's proposal for which it was primarily responsible, DfE also considers that the provision of the Business Case to DFP for scrutiny, afforded a further opportunity for the error to be detected.
9. Paragraphs 6 to 8 of DOF's supplementary statement (**WIT-34693**) refer to issues and concerns communicated to DfE by Ofgem: issues which were not reflected in the Business Case and related papers presented by DETI to DFP. DfE acknowledges that Ofgem's concerns appear to have been material issues which, on the face of it, should have been referenced within the Business Case, though the context within which the communications from Ofgem were handled can only be addressed by the witnesses who were directly involved at the time.



2012 Regulations

10. At paragraph 20 of her statement, Emer Morelli asserts on behalf of DoF (WIT-34695):

“Based on the evidence available to DoF now, WIT-18535, there would appear to be a fundamental lack of understanding within DETI of the differences between the NI Scheme and the GB Scheme.”

11. Emer Morelli’s assertion appears to be based on paragraph 12 of Trevor Cooper’s witness statement (WIT-18535) in which he refers to a discussion with David Thomson, the Head of DETI’s Policy Group, about a proposal to introduce degeneration in Great Britain. Trevor Cooper’s statement refers to his (then) *“understanding that DETI had an absolute power to suspend the Scheme at any time during the year”*.

12. DfE has previously referred to its inability to suspend the scheme at paragraphs 6 to 9 of its 27 November 2017 supplementary witness statement commenting on the Phase 1 and CEPA witness statements (WIT-03273 and WIT-03274). DfE’s assessment is that there was a critical misunderstanding within DETI at the time in relation to the power (or rather the absence of a power) to intervene quickly in the event of a rapid acceleration in expenditure. However, DfE does not believe that the specific comment made by Trevor Cooper, which was based upon assurances he had received at the 9 March 2012 Casework Committee meeting, can be construed as representing a fundamental lack of understanding within DETI of the differences between the NI Scheme and the GB Scheme.

Timeline of DoF Engagement with DETI (June 2015 – January 2016)

13. Emer Morelli refers at paragraph 22 of the DoF supplementary statement (WIT-34696) to DETI being advised by HM Treasury on 20 March 2015 that it *“needed to speak with DFP NI in the first instance”* to clarify the budgetary position. DfE acknowledges that DETI did not contact DFP until June 2015, and accepts that there should not have been this delay in approaching DFP to seek clarification on



the budgetary position. Unfortunately, the delay arose because the issue was not escalated promptly within DETI's Finance Division. However, when the issue was escalated, DETI alerted DFP to the position on 3 June 2015 and sought engagement between DFP and HM Treasury on the matter in DETI's monitoring input on 4 June 2015. Andrew McCormick highlighted his view that a key lesson from the RHI was that contact with HM Treasury should always be through DFP/DoF – this is hinted at in the penultimate paragraph of his minute of 28 January 2016 to Malcolm McKibbin (WIT-10636) and covered more fully at paragraph 29 (iii) of his minute of 13 February 2016 to the same addressee (WIT-10808). Thus the main point made by DoF is fully accepted, and DfE acknowledges that the confusion was exacerbated by the fact that the normal and proper channels of communication were not fully respected.

14. At paragraph 23 of the DoF supplementary statement, Emer Morelli states that:

“Throughout the summer of 2015, DETI Finance officials did not inform DFP officials of their advice to DETI Energy policy colleagues to “Please stop entering into commitments immediately” (WIT-17659) in or around 20 May 2015”.

DfE acknowledges that the e-mail dated 20 May 2015, from Bernie Brankin to Stuart Wightman (WIT-17659) was not provided to DFP. However, Trevor Cooper has advised that his recollection is that DFP colleagues were informed during meetings held in June 2015 that Energy Division had been asked that no further commitments be entered into under the Scheme, but that verbal legal advice had indicated that this was not possible without a lengthy lead-in period. Trevor Cooper's evidence on this point is consistent with the witness statement of Michelle Scott, DFP Supply Officer (WIT-43043), in which she states that the potential to close the Scheme to stop the ongoing irregular spend was discussed in June 2015. The position in relation to legal advice was also set out in paragraph 5 of Trevor Cooper's 1 July 2015 minute to Michelle Scott (DFE-278385) in which he said:



'The basis for the scheme is statutory and it is not possible to cease, suspend or otherwise delay applications'.

15. It is not clear what difference it would have made, had DFP been advised of this point at a slightly earlier stage. DfE does acknowledge that there were unresolved differences of view (or at least of emphasis) with the DETI team at the time, which meant that different signals were being given to DFP: Energy Division had the perception that the rise in uptake of the Scheme was actually an indication of success, in that there was a positive response to the incentive, while Finance Division was more focussed on the major issue of the overspend. It is fully accepted that these differences should have been acknowledged and resolved more quickly and more clearly. In addition, it is not clear to what extent Energy Division was aware or conscious of the signals that, far from progressing successfully, the Scheme was being exploited, bearing in mind the alarm bells sounded by Janette O'Hagan (from August 2013 onwards) and by Solmatix (in July 2015).

16. In relation to budgets, there were meetings and discussions between DETI Finance Directorate and DFP Supply in the first half of June 2015, as referred to in Bernie Brankin's email of 17 June 2015 (WIT-02980): with that email, Bernie Brankin sent to DFP the exchange of correspondence between the DETI and DECC Ministers from December 2013 and January 2014 (see WIT-02980 to WIT-02984), and made the point that *"it would not seem likely that we could approach DECC for additional funding"*. This was followed up in Trevor Cooper's e-mail of 17 June 2015 to Bernie Brankin and Michelle Scott (WIT-02985) in which he stated:

"We will still engage with DECC around where they stand in overall terms ref the scheme and their uptake as regards potential for any funding not taken yup [sic] to be applied here. But we don't believe we can square all of the circles on this without dfp [sic] assistance in terms of possible engagement with treasury as required".



Hence DfE would suggest that there was no particular detriment to DFP (or to the process) from the handling of the communication from DETI to DFP, with the exception that DETI clearly should have told DFP immediately of the contact with HM Treasury on 20 March 2015 (and indeed that contact should not have happened). The reason for the delay in notifying DFP is outlined at paragraph 13 above.

17. Further, at paragraph 7 of Trevor Cooper's minute of 1 July 2015 (**WIT-278385**) he stated:

"As we agreed at our meeting, we are in the process of writing formally to DECC as a means of getting further clarity on the exact nature of the funding arrangement for expenditure on both the Non-Domestic and Domestic RHI."

18. Trevor Cooper refers to DETI's engagement with DECC in his e-mail to Andrew McCormick of 1 July 2015 (**WIT-278390**), which attaches his minute referred to in the preceding paragraph and states *inter alia*: "...and DFP is clear that it wants us to firstly engage with DECC on a number of points and revert".

19. The main focus of DFP's engagement with DETI at this point had been around the operation of potential penalties and technical details on the budget treatment, such as the treatment of overspends, and the apportionment of resources across the UK (though the latter proved to be a red herring, and officials in both departments should have known the way this would be handled from the initial correspondence in 2011 and from the DECC Minister's letter of January 2014). DFP took the view that DECC was best placed to answer questions on these issues in the first instance. Notwithstanding DFP's view that DECC may have been able to resolve these questions, it could also have sought clarification from HMT at this time, particularly as it would have been aware of the potential for overspending to be penalised, as was evident from the e-mail exchange between DETI and HMT in April 2011, which had been copied to DFP (**WIT-00842** and **WIT-00843**). As stated previously (see paragraph 4 of DfE's supplementary witness statement of 21 September 2017, at **WIT-02964** and **WIT-02965**), DfE accepts that had full weight been placed on the implications of the April 2011 emails, more formal

correspondence should have been entered into between DETI, DFP and HM Treasury, in order to obtain clarity on the nature of the funding and the consequences of under or overspends.

20. Indeed, had there been a clearer and sustained understanding of the way the Scheme budget was intended to operate, and in particular that overspends would have material consequences for the Resource DEL, it could be argued that DETI and/or DFP should have concluded that cost controls should have been in place from the outset, and that (belated) action to introduce them was the obvious necessary first step in any process to bring the scheme back under control. However, it is clear that a combination of changes in personnel and some confusion, including in particular the assurance to the Casework Committee in 2012 that if necessary the scheme could be closed to new applicants at any stage if necessary, meant that the need for cost control was not in fact perceived to be obvious, and the necessary steps were not taken.

AME Forecasting

21. Paragraphs 26 to 43 of DoF's 20 September 2017 supplementary statement (**WIT-34700 to WIT-34703**) include references to the interaction between DFP and DETI on AME forecasting exercises.

22. Emer Morelli makes a specific reference at paragraph 31 of the DoF supplementary statement (**WIT-34701**) to there being a lack of clarity in relation to events surrounding the AME forecast of 26 May 2015 and the monitoring return of 4 June 2015. DfE provided a comprehensive explanation for these events at paragraphs 15 to 23 (**WIT-02968 to WIT-02971**) of its supplementary statement of 21 September 2017. DfE assumes that Emer Morelli's statement was made before she had the opportunity to consider the DfE evidence on this point, given that it understands that its supplementary statement crossed with Emer Morelli's supplementary statement.

23. Emer Morelli states at paragraph 28 of the DoF supplementary statement (**WIT-34700**) that DoF has seen no evidence to substantiate a statement by



Jeff Partridge in an e-mail dated 10 January 2014, referred to at **WIT-18730**, that DFP had confirmed *“the AME exercises are used to formulate the Northern Ireland AME budgets.”* Jeff Partridge has advised that the statement in his e-mail was based on a telephone conversation with a DFP official, but with the passage of time he is unable to recall the name of the official to whom he spoke (see also paragraph 2 of Jeff Partridge’s 20 March 2018 Witness Statement at **WIT-18269**).

24. The Department accepts that Emer Morelli’s statement at the conclusion of paragraph 32 of the supplementary statement *“It is not for DFP to confirm levels of AME funding, this is a matter for Treasury”* is correct. However, DETI was not privy to the detail of arrangements in place between DFP and HM Treasury. There is a clear protocol, as affirmed by Mike Brennan in his evidence to the Public Inquiry on 29 November 2017 (page 73, lines 12 to 20 of the published transcript), that DoF is the principal point of contact with HM Treasury in respect of budgetary matters, including current and forecast commitments, and how those commitments may be manageable going forward.

25. This is the context in which DETI took the view (which we now know was not well founded) that the logical response to increased expenditure was to seek to secure additional funding (based on the misconception in Energy Division that the funding was standard AME which could be increased in response to increased demand). As a consequence, DETI notified DFP, in its 4 June 2015 monitoring return, that it currently had an AME budget of £11.6m in 2015-16, but now had an estimated AME requirement of just over £23m for that financial year.

26. Paragraph 36 of Emer Morelli’s supplementary statement (**WIT-34701**) notes that DoF does not accept the claim made in paragraph 281 of DfE’s corporate statement of 19 May 2017 (**WIT-00109**) that the increased AME budget for 2015-16 was confirmed by DFP in August 2015. DfE has also referred to this issue in detail at paragraph 49 of its supplementary statement of 21 September 2017 (**WIT-02978**), and at paragraph 29 of its 27 November 2017 supplementary statement in response to the Opening Statements made by the corporate participants to the Public Inquiry (**WIT-03244**). Given the difference of recollection



that appears to exist between DoF and DfE officials on this issue, it is not proposed to rehearse these arguments further in this supplementary statement.

27. Emer Morelli refers, at paragraphs 37 and 38 of DoF's supplementary statement (**WIT-34702**), to the engagement that took place in the summer and autumn of 2015 between DFP and DETI, and between DETI and DECC, in relation to budgetary issues. DfE has set out its understanding of that engagement and the confusion that arose around the budget at paragraphs 30 to 37 of its 27 November 2017 supplementary statement in response to the Opening Statements made by the corporate participants to the Public Inquiry (**WIT-03244** to **WIT-03246**).

28. Paragraph 41 of Emer Morelli's supplementary statement (**WIT-34702**) refers to a failure on the part of DETI to communicate information to DFP in relation to the engagement on budgetary issues which DETI had had with DECC and HMT prior to 1 July 2015. The first engagement took place in March 2015 and was between Seamus Hughes (DETI Energy Division), DECC and HMT for the purpose of seeking clarity around budgets from 2015-16 onwards. In the course of this engagement DECC advised Seamus Hughes to contact HMT, and HMT, in turn, advised Seamus Hughes to contact DFP (see **DFE-277100**). There was a subsequent engagement with DECC on 28 May 2015 as described in the next paragraph. DfE accepts that it would have been better if these engagements had been drawn to the attention of DFP at an earlier stage.

29. DETI's engagement with DECC on budgetary issues at the meeting on 28 May 2015 is referenced at paragraph 290 of the DfE corporate statement of 19 May 2017 (**WIT-00112**). This took the form of a brief conversation between Andrew McCormick and Jeremy Pocklington (DECC) on the margins of a single meeting rather than "*ongoing engagement*" as stated by DoF in paragraph 41 of its statement (**WIT-34702**). Indeed the conversation was of no great significance, as Jeremy Pocklington had no role in DECC in relation to RHI and neither party were aware that funding for the NI RHI was treated as "non-standard" AME. Jeremy Pocklington suggested that DETI should approach Clive Maxwell, the Director General in DECC responsible for renewable heat. Contact was made on



7 July 2015, by John Mills (DETI) who sent an e-mail to Sarah Redwood (the Head of DECC's Strategy Team for the GB RHI (see **WIT-19009** and **WIT-19010**) to seek clarification on budgetary issues.

30. Paragraph 42 of Emer Morelli's supplementary statement (**WIT-34702** and **WIT-34703**) questions why DETI did not inform DFP of DECC's advice "*that RHI was a devolved funding issue which could only be addressed between DFP and HM Treasury.*" DfE would like to make it clear that the final sentence of paragraph 290 does not refer to contemporaneous advice from DECC, but instead refers to a conclusion reached later by DETI that "*it became clear before long that seeking additional budget cover from DECC was a blind alley because in fact the position taken by DECC and HM Treasury was that this was a devolved funding issue which could only be addressed between DFP and HM Treasury*" (emphasis added) (**WIT-00112**, paragraph 290). There is neither documentary evidence nor recall by the relevant DETI personnel of DECC ever stating the point quoted above in those terms – in fact the nearest and clearest reference to that effect is in the DECC Minister's letter of January 2014 (see paragraph 16 above) which was (albeit belatedly) shared with DFP (in June 2015).

31. At paragraph 43 of Emer Morelli's supplementary statement (**WIT-34703**), she states:

"The DETI Finance Director notes that advice to the DETI Minister was not in his view complete in July 2015. It is not clear from the evidence provided to the Inquiry as to what other information the Finance Director was aware of regarding the funding arrangements in July 2015 and why that information was not shared with DFP."

32. DfE notes the comment in the second sentence of the paragraph quoted above. As noted in paragraph 35 below, DfE confirms that no information was being withheld from DFP in relation to the funding arrangements for the scheme.

33. Trevor Cooper, *inter alia*, states in paragraph 32 (**WIT-18545**) of his 19 July 2017 witness statement that:



“The input provided by Finance Division indicated that the forecast expenditure was almost twice the current AME allocation of £11.6m. It also indicated that officials are [sic] currently working with DFP to try and secure additional funding and scheme approvals from treasury for the NI RHI Schemes otherwise the funding shortfall may have to be met by DETI and taken from other investment programmes. However, this input was removed at the eleventh hour.”

34. Trevor Cooper went on to state (at paragraph 33 (a) (WIT-18545)) that:

“The final Ministerial submission was not accurate. I believe that the previous draft was more accurate.”

At paragraph 33 (b) Trevor Cooper asserts that:

“A more detailed explanation should have been provided to the Minister as was the case in the earlier draft.”

35. The input provided by Finance Division to the draft Ministerial submission in July 2015, related entirely to information that had already been communicated to DFP. The monitoring return submitted by Trevor Cooper to DFP on 4 June 2015, and referenced at paragraph 21 of the DfE supplementary statement of 21 September 2017 (WIT-02970), referred to the projected increase in DETI's 2015-16 AME budget from £11.6m to just over £23m. It was also clear, from (WIT-30046 to WIT-30051) that DETI was working with DFP to secure additional funding and to obtain fresh approval for the scheme, as the original approval had lapsed on 31 March 2015.

36. DfE wishes to make one further point in relation to the confusion that arose over the Scheme's budgetary treatment. Mike Brennan provided oral evidence to the Public Inquiry on 6 December 2017. In response to a line of questioning (*page 80 et seq*) from Joseph Aiken, Junior Counsel to the Inquiry, Mike Brennan acknowledged that £1.8 million of DETI's 2011-12 AME budget for the non-domestic RHI scheme had been carried forward to the 2012-13 financial year. This



ran contrary to the perception (as articulated by Bernie Brankin in her advice to Alison Clydesdale of 3 May 2011 (DFE-62073)) at the outset of the Scheme that there was no flexibility to carry forward underspends. DfE considers that the ability to carry unspent budget forward from 2011-12 to 2012-13 may also have contributed to the confusion over the ability to revise budgets through AME forecasting returns. DfE acknowledges that the Public Inquiry will be exploring this area in greater detail during its evidence sessions.

AME Controls

37. Given the confusion that subsequently arose around the budgetary treatment of the non-domestic RHI scheme, it would have been helpful if both DETI and DFP had been made aware of the interaction between HM Treasury and DECC, in relation to the GB scheme as set out in HM Treasury's supplementary witness statement of 15 November 2017 (WIT-180049 to WIT-180051). It would also have been helpful if DETI had been made aware that the additional AME funding it received in 2015-16 had been as a result of a decision by HM Treasury not to include that year in the multi-year Spending Review process (see WIT-30141, WIT-180052 and WIT-180055).

Approval of Addendum to Business Case in October 2015

38. Emer Morelli's supplementary statement on behalf of DoF states, at paragraphs 49 to 51 (WIT-34704), that DETI did not share some specific information with DFP. DfE accepts that this may be true in respect of some of the items mentioned (market intelligence, the performance of the Scheme etc.) though this could only be confirmed by the individual members of staff who were present at the time, and the RHI Taskforce is not in a position to check this information with those individuals. In relation to whistleblowing concerns, DfE does not have full information on the extent to which Janette O'Hagan's concerns were shared **within DETI**, as this was a key issue of the PwC fact-finding exercise, which had to be suspended at the launch of the Inquiry. Nor has it been possible to establish who saw the letter from Solmatix to which we drew attention in our supplementary Witness Statement on the Opening Statements (see paragraph 13, WIT-03239). It

does appear that these concerns were not passed on to DFP. However, they were also not passed on to the Department's senior management and neither were they passed to Finance Division, and hence DfE accepts the criticism implied in paragraph 50 of the DoF supplemental witness statement.

39. However, at paragraphs 51 and 52 (WIT-34704), DoF appears to have misunderstood the significance of John Mills' comments in the email of 11 August 2015 (DFE-10005). Read in its proper context, this is clearly a *hypothetical* comment on a possible consequence had the alternative proposal, which Timothy Cairns¹ had asked officials to consider, been adopted. Hence it does not necessarily follow from John Mills' email that DETI "*had access to a significant amount of information ...[of concern]*". Certainly no such information was shared at corporate level or with the Department's top management or Finance Division, or the action taken would have been very different. As late as the end of January 2016, John Mills' clear view, as presented to Andrew McCormick, was that money spent on the Scheme was 'good' (see, for example, DFE-10404).

40. DfE recognises that if John Mills could infer hypothetically that empty sheds might be heated in a scenario where tier 1 of a tiered tariff provided 3000 hours of usage, it follows logically that that very same risk existed in the then-status quo, i.e. an untiered tariff. It is not clear from any document that that risk had been identified, though it is very clear that Janette O'Hagan's emails should have prompted questions that would have brought that risk into the spotlight. However, as the PwC fact-finding work was suspended before completion, DfE has not been able to establish who within DETI had access to that information, and hence how this information was neither escalated internally, nor reported to Internal Audit (never mind not reported to DFP) and hence why no corrective action was taken.

41. Emer Morelli states at paragraph 57 of the 20 September 2017 supplementary statement (WIT-34705), that DETI, at all times, was "*certain that the Scheme would function as set out in the original scheme assumptions.*" DfE would take issue with the generality of this assertion, although it is possible that some DETI officials

¹ Prompted as we now know by Andrew Crawford – see WIT-10520.

within Energy Division may have believed it to have been the case, and may have commented to that effect to DFP officials.

Mike Brennan's personal statement

42. Mike Brennan in paragraph 19 of his personal statement (**WIT-43223**) states that he does not believe that the RHI Scheme was inherently risky, flawed or undermined by loopholes. DfE would like to reiterate its view that it **does** believe that the initial Scheme did have flaws (as outlined in paragraphs 119 to 121 of its initial corporate statement of 19 May 2017 at **WIT-00059** to **WIT-00061**, and in paragraph 15 at **WIT-03276** of its supplementary Witness Statement commenting on Phase 1 and CEPA Witness Statements.

43. DfE accepts that the three points in paragraph 19 of Mike Brennan's personal Witness Statement are all very significant. However, had the Scheme been launched without a tariff for small to medium biomass installations that was unintentionally much more generous than was justifiable on the contemporaneous economic and business analysis, these additional points would have been of lesser significance.

44. Also, Mike Brennan asserts at paragraph 21 (**WIT-43224**) that the two key factors which contributed to Scheme overruns were the construct of the initial 2012 business case, and the failure to start the process of review in 2014, as had been a condition of approval of the business case for the non-domestic RHI Scheme. DfE would like to reaffirm its position, set out at paragraphs 119-123 of its first corporate Witness Statement (**WIT-00061**), which is our considered assessment of the reasons why the Scheme ran out of control in 2015.

October 2010 Budget Settlement

45. The Public Inquiry asked that the following issues be addressed in this supplementary statement:

“Would you please describe what documents are held by DfE relating to bidding for money from HMT that led to the October 2010 settlement?”

Also, would you arrange, when DfE are lodging their next supplementary statement, for it to address:

- 1. whether there is any evidence of how it came to be that NI was offered £25m to potentially run an RHI;*
- 2. what knowledge NI departments had that this offer was being formulated and why;*
- 3. whether NI departments played any role in it prior to the arrival of the settlement letter on 20 October 2010; and*
- 4. if the answer is that NI departments played no role, how normal/unusual was it for a NI department to receive funding which had not been sought and in this way?”*

46. DfE has been unable to locate any documentation in relation to bidding for the October 2010 budget settlement. The earliest relevant documentation in DfE's possession is dated 22 October 2010 and relates to a request from OFMDFM (now the Executive Office) for input on those aspects of the 20 October 2010 settlement letter from the HM Treasury which related to the renewable heat incentive (DFE-28830 to DFE-28841).

47. It is possible that there may have been some interaction between the policy officials responsible for renewable energy in DECC and DETI before October 2010, but in the absence, as far as we are aware, of any contemporaneous documents, only the individuals involved at the time could help with questions 2 and 3 above.

