

## NORTHERN IRELAND ASSEMBLY

## Committee for the Economy

Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland)  
2017: Department for the Economy

23 January 2017

**Members present for all or part of the proceedings:**

Mr Steve Aiken (Deputy Chairperson)  
Ms Sinéad Bradley  
Mr Alan Chambers  
Mr Gordon Dunne  
Dr Stephen Farry  
Mr Gordon Lyons  
Mr Mervyn Storey

**Witnesses:**

Dr Andrew McCormick	Department for the Economy
Mr Stephen McMurray	Department for the Economy
Mr Shane Murphy	Department for the Economy

**The Deputy Chairperson (Mr Aiken):** I welcome Andrew — we seem to be seeing an awful lot of each other at present — Shane and Stephen. Just before we start, I will express my disappointment directly to you that the Minister is not here. He should be here because we have some considerable questions to ask. We have asked previously about some significant issues that we would like you to comment on. Would you like to make some opening remarks about some of the issues that we raised, or would you like us to fire on with questions?

**Dr Andrew McCormick (Department for the Economy):** It would probably make sense in the time that we have to go straight to questions so that we address exactly what is most on your minds. Thank you for the opportunity to cover this, and apologies on behalf of the Minister.

**The Deputy Chairperson (Mr Aiken):** You do not have to apologise; I hope that he will apologise himself.

The first issue for us is the business case. We were concerned to hear that it had first been raised on 30 December. I had the opportunity to read the draft PricewaterhouseCoopers (PwC) report in some detail over the weekend, and one of the things that strike me is the lack of data that seems to permeate the process. I was surprised to read some of the key issues at page 61 of the report, in paragraphs 7.4 to 7.9, and to see that concerns were raised about management data going forward. That raises the question of where we are with the business case. What is the business case based on? Bearing in mind the evidence from the Renewable Heat Association NI (RHANI), one of the big concerns we now have or one of the concerns that I have is the economic impact of what happens over the year on significant parts of our economy — we have had no briefings on that.

Secondly, we have heard — bearing in mind that the risk has been made abundantly clear to us — that the legal risk lies with the Minister, which is why I am a bit disappointed that he is not here. Has there been any examination of the idea of some form of compensation regime for companies that are deemed to be operating the scheme legitimately but will face significant financial hardship going forward? I reiterate for the record that, bearing in mind the legal opinion that we have received, the risk lies with the Minister. I also reiterate — you can pass this back to the Minister — that, given that the risk lies with the Minister and that we are likely to face significant legal challenge, if any legal challenge is successful, I will look to him to resign forthwith from any public office because there is considerable concern across Northern Ireland about these issues. I do not expect you to answer that directly; I just wish you to convey that to the Minister. Over to you, Andrew.

**Dr McCormick:** Shane dealt with the business case and how it was constructed as fully as he could on Thursday. It is based on good analysis of the present —

**The Deputy Chairperson (Mr Aiken):** Just for the record, we still have not had a response from the Department of Finance, have we?

**Dr McCormick:** Not a final response, no. We were in further discussions over the weekend with the Department of Finance. The discussion continues, and we still have no reason to believe that there is any valid objection to it from a Department of Finance point of view. I worked there for many years, and I know very well the basis on which Department of Finance approval is considered. The relevant considerations are value for money, regularity and propriety. In the business case, we have demonstrated, in terms of the options available, the value for money of the proposition. Shane drew out the approach that we had taken and the short- and long-term options that were there. We have shown, as best we can, that this is the best value-for-money approach in the short term and as a first stage of change.

Regularity is an urgent issue because, as of now, we have a flow of uncontrolled expenditure. That was the second criterion on which the Comptroller and Auditor General (C&AG) qualified the Department of Enterprise, Trade and Investment (DETI) accounts for 2015-16 in his report in June. I expect him to have to qualify the accounts for 2016-17 because we are still in a situation in which there is an absence of control. The Department of Finance (DOF) is the guardian of regularity. That is fundamental. I was Treasury Officer of Accounts for many years, and that is part of what it is there for.

Those are the criteria, and, in our dialogue with DOF, we have satisfied them on every question in relation to those three issues; indeed, that is the position as of a few days ago. They have made other requests, we sent further papers to them last night and further dialogue will take place this morning. There is no good reason why there should not be Finance approval before the debate at 12.00 noon.

**The Deputy Chairperson (Mr Aiken):** That is an interesting use of the phrase "guardian of regularity". Obviously, we would feel much more confident if the business case had been approved. Will the Minister withdraw the legislation if the business case is not approved?

**Dr McCormick:** I do not see why that should be the case. This is still the only means available to stop a haemorrhage of funds, which is inherently and clearly desirable. Looking at all the issues from an economic, financial control and legal point of view, this is an overwhelmingly strong option. I think that the case for supporting it is there and is clearly demonstrated.

Yes, it has been put together relatively quickly, but it is based on a sound analysis of the options. As Shane explained last time, it is built on plenty of solid information that we have on behaviours, the flow of funds and the pattern of expenditure. We are clear that we are losing money and need to stop losing money. Now would be a good time to stop it.

**The Deputy Chairperson (Mr Aiken):** One of the things that became clear from last week and from looking at the PwC report — I will not refer to the specifics because it is confidential — is that there is a complete paucity of data out there. There is very little data on the scheme. There seems to be a lack of information on what the usage has been, the size of the boilers and so on. It is a question of trust. Trust has to be based on who has the information and who has the correct information. As a Committee, we have heard from the Department, the Minister and RHANI. The one thing that has become abundantly clear to me is that there are very few data sets on which this is built.

**Mr Shane Murphy (Department for the Economy):** The data available to the Department is not available to the Renewable Heat Association. We have the Ofgem database, which holds every

application. It includes names, addresses and all of that, which are the subject of a different debate. Within that, there are details on the size of the boiler being put in, self-reported information on the standard industrial classification (SIC) code and on what size of installation is being replaced. With regard to those who have submitted invoices and so forth for payment, the payments and the usage are in it. All those individual records — all 2,100 or so — fed into the modelling for the business case.

I am not as familiar as other folks with the PwC report, but all the usual data that you would expect to be captured in order to make payments is there and is fed into the database. We used data from three quarters of the way through 2016. Some updates came through later, and, as far as we could, we made tweaks, but the changes were not significant.

**The Deputy Chairperson (Mr Aiken):** You used data from three quarters of the way through 2016: is that the first time that you had the data fully collated?

**Mr S Murphy:** No. Various databases come through to the Department very regularly, but, when we go to build a database, we have to pick a point in time to do that. There could be a benefit in waiting for a couple of weeks to get a few wee updates, but, of course, two weeks would then have disappeared. We started modelling from the database in September or October. That database has had some extra information added since, and, as far as we could retrofit that, we did. Data comes through regularly for accounting, forecasting and all sorts of purposes, but we have to pick a point in time in order to build a model on top of a database. Roughly three quarters of the way through the year is when we made that call.

**The Deputy Chairperson (Mr Aiken):** Let me make sure that there is clarity. As you just explained, you have had a full set of data sets throughout and the Ofgem data throughout. You have had this for the last 18 months and beyond, and you have been fully aware all the way along, as a Department, of what has been going on.

**Dr McCormick:** The information that Shane just talked about started to flow from the inception of the scheme. As soon as people had applied, been accredited and were starting to receive payments, the branch was receiving reports that showed boiler sizes and usage. That flow of information has been there. Page 61 is about a lack of control, not a lack of data. There has always been plenty of data around. That is one of the reasons for the concerns about how this has been handled and why there is the need to investigate conduct and behaviour and get to the facts of what information was available and how it has been understood, interpreted and applied in the Department and more widely. That fact-finding investigation is under way. There has not been a shortage of data; there is no shortage of data to underpin the business case for change. What the report makes clear, in paragraph 7.4, is that there is a problem with the eligibility criteria; in 7.5, a problem with design; in 7.6, a problem with controls; and, in 7.7, a problem with the monitoring and control framework. Those are the issues on that page of the PwC report, not, with respect, a shortage of information.

The purpose of appraising the business case was to answer this question: given that this is an unacceptable situation in all respects — politically, economically and from the point of view of accountability — what is the best available option to intervene? We believe that we have found the best available option to intervene in the context that we are working in.

**Mr Stephen McMurray (Department for the Economy):** The business case is just for next year. Yes, there are more uncertainties as we try to project for the whole 20 years. This is very much about looking at next year and to give us time to put together a second stage solution. The data that we have for next year is actually very good because it is not so far away.

**The Deputy Chairperson (Mr Aiken):** I am glad of that. I do not want to hog the rest of the time. I have just two other points: appraisal of the economic impact and whether any thought was given to compensation.

**Dr McCormick:** Yes. We are conscious of the points made. The main point that I will make in response is that, in making this change, we are deliberately staunching a flow of funds, but that flow of funds is then available for redeployment by Ministers. If we do not act, we will have what we are familiar with now, which is a pattern of overcompensation, waste and abuse. That is certain. If we act now and retrieve the £30 million that would otherwise be spent in that unacceptable way in the financial year 2017-18, the economic benefit of the money will remain to Northern Ireland and it will be spent in other ways and will have the same multiplier effects on the economy. It is still money in the

economy; it is not lost. Looking at the total Northern Ireland economy, the level of expenditure will be the same, and the use, I argue, would be substantially better.

**The Deputy Chairperson (Mr Aiken):** Andrew, I think that we have got that; our specific question is about the economic impact of the scheme on the people from whom we have heard in the poultry business, people in the mushroom business and people in everything from nursing homes and private hospitals to hotels. That is the specific question that I would like an answer to. The other issue is that the legal opinion that we have received is that, if there is no compensatory arrangement included, that will probably significantly increase the likelihood of legal challenge. Could you address those items directly?

**Mr S Murphy:** The overcompensation is, no doubt, having some economic impact, but the point is that, once we overpay for policy objectives, that overcompensation, while it might have economic impacts, it is not delivering any policy impact. Any study of this will almost certainly point out that overcompensation does not have any additionality. That is a concept in DOF economic appraisal that, in effect, says that you should not overpay for public policy objectives so that that money is available to pursue other activities that also have economic impact but, alongside that, have public policy impacts. Any economic impact from this scheme will almost certainly point to the overcompensation having little or zero additionality. Andrew will probably be better able to speak on this, but I think that it is important that the expectations around any such study are understood. Andrew and the Department have accountability requirements, and, whatever the study might say, there are accountability issues with consciously making excessive payments to maintain by-product benefits over and above the core objectives, not least around the likes of propriety —

**The Deputy Chairperson (Mr Aiken):** I hear what you say very clearly, and I understand the wider policy pieces, but we are talking about the specifics of the impact. A concern expressed to us by many people is that they have taken out a bank loan for their business, and the RHI scheme was very much part of that. A key question for them was this: bearing it in mind that Arlene Foster, as the Minister, wrote to the banks in the first place saying that this was a good long-term bet that would not be derogated from, have you specifically looked at requirements for compensation for businesses that may go to the wall because of the impact of this legislation?

**Dr McCormick:** That is one of the reasons why a one-year solution has significant attractions. We have had a period of overcompensation, as Shane explained, so a significantly larger rate of return has been secured by a range of businesses over and above what they should have been expecting on the basis of all the clear statements made at the outset of the scheme. The focus was on a 12% rate of return. If people chose to ignore that signal and took a different view of life, that is the decision that they took as a matter of their judgement. If there is a significant impediment or significant problem on this point, there is time for the permanent solution that will be introduced for April 2018 to take account of that. If it is shown, against my expectations, that we have something that is in some way unfair, it can be put right in the permanent solution. We cannot resolve that in detail and clarify that today. There is time and opportunity for that to be examined and considered further. That is one of the reasons for a staged approach in which this is the first stage of several. That would mean people getting the tariff that they might have had the right to expect for one year as opposed to the tariff that they had no possible right to expect, because the clear position is that the tariff, from the outset, was delivering more than the intended rate of return. There has to be recognition of some responsibility in that domain. We do not propose compensation at this stage. If it turns out to be justified, in due course it can be considered as part of a long-term solution.

**Ms S Bradley:** Thank you for coming back, Andrew. I had questions the last time to which I did not get answers. Obviously, we have not been privy to any monitoring rounds or draft Budgets, and, as we speak, we do not even know the context in which this sits in the Department. I am mindful that, in determining a path forward, we do not even know what our starting place is. I refer to the fact that regulations expired in March 2015. There seems to be a budget hole, and I am not sure where it came out of. Was AME money or the DETI budget used to pay for that? That is just a start to try to get a measure of where we are.

**Dr McCormick:** Unexpectedly, the overspend that arose in 2015-16 was covered by the Treasury without opportunity cost to the Northern Ireland resource departmental expenditure limit (DEL). The Treasury gave us additional AME in that financial year. I discussed that in detail with the Public Accounts Committee at its hearings early in the autumn. It was one of the things that happened. It is beneficial because it means that there was no loss in the 2015-16 financial year, but it is also

confusing in that it left us a bit uncertain about how the control regime and the budgetary management of this worked out.

In the 2016-17 financial year, part of what first put the issue into crisis mode in January or February of last year was when the Department of Finance and Personnel, as it then was, and the Finance Minister at the time became extremely alarmed by a very explicit letter from the Treasury saying, "No more. Every penny of overspend will have to come from the Northern Ireland resource DEL". So, in the 2016-17 financial year, there has been a need to find £30 million. We have contributed some of that through emerging savings in some of our programmes. Because of the way things are, January monitoring will probably not happen, as I understand it, and there will be a problem for us. There is £30 million in total to be covered.

**Mr McMurray:** As part of an overcommitment figure, £20 million was held at the centre, and £12 million was found in the Department. The shortfall last year was £32 million.

**Dr McCormick:** The bottom line on the concern behind your question is that there has not been a need to intervene to cut programmes to compensate for this. Clearly, savings that could have been used for better purposes have had to be set aside to cover this overspend, and, as I understand it, the Department of Finance will stay within the total Budget. There will be no total resource DEL breach; on the contrary, they are within the totals, as I understand it. It is certainly a loss in the sense that the money could have been used in better ways, but it is not that we have had to impose direct budget cuts to cover the £30 million. It is covered and will be covered without a problem of that extent. It is a totally unacceptable opportunity cost, but there are no actual cuts, as I understand it.

**Mr McMurray:** No actual cuts, and the projected shortfall for next year is £28 million, a proportion of which will fall on the Department.

**Dr McCormick:** That is right, unless the regulations are passed.

**Ms S Bradley:** Is it projected that there will be cuts to realise that money?

**Dr McCormick:** It is important to put that in the context of the wider budgetary position, which is by no means favourable. I guess that we have a very difficult set of choices on the full range of the Department's responsibilities, be it universities, FE or Invest Northern Ireland. Those are all the big spending blocks where there is any discretion in the Department for the Economy. If we had to find £28 million or even a substantial proportion of that, it would be on top of the budgetary constraint that is inherent in our budget anyway, given that all Ministers have been looking at giving significant protection to the Department of Health budget in the 2017-18 financial year, so it is bad.

**Ms S Bradley:** Obviously, this has not just arrived overnight. Has work been carried out in the event of that being the case?

**Dr McCormick:** There are some outline contingency plans, yes.

**Ms S Bradley:** I presume that, by the business case, we are referring to the regulation and the explanatory notice that comes with it. That seems to be the most detailed. For clarification, that is what I am speaking about when I refer to the business case. I understand that the Minister of Finance has a significant role to play in saying whether a business case would fit in with the overall finances of the Executive. We refer to communications with the Department. Have the two Ministers had any direct discussions on this in trying to find a solution?

**Dr McCormick:** Yes, the two Ministers had one meeting in the week before Christmas and a further meeting in the first week of January, as I recall.

**Mr S Murphy:** That is my recollection. It was just before and after the holidays.

**Dr McCormick:** There were very full exchanges on the options. Those were constructive discussions.

**Ms S Bradley:** From that, did the Minister of Finance indicate, in any way, that he would support what is in front of us today?

**Dr McCormick:** I am not comfortable talking about confidential discussions among Ministers. That is —

**The Deputy Chairperson (Mr Aiken):** The clarity here is around the question of the business case. You told us that you are confident in the business case. You also said that the guardian of regulation is the Department of Finance. If we do not see, by the time this comes back in front of the Assembly, a report, an agreement, or an agreed business case, what inference are we to make? You told us quite categorically, Andrew, that the Department of Finance was the guardian of the regulations. If it does not agree to this, what inference can we possibly make from that?

**Dr McCormick:** Its responsibility is to assist the Assembly in the management and oversight of public expenditure. That is a read-across from the Treasury role, which you will be very familiar with, in Whitehall.

**The Deputy Chairperson (Mr Aiken):** Exactly.

**Dr McCormick:** I do not think that it flows quite across here in the Treasury sense —

**The Deputy Chairperson (Mr Aiken):** Well, you would imagine that, if we were in —

**Dr McCormick:** It is not quite the same.

**The Deputy Chairperson (Mr Aiken):** — that other place and they told us that the Treasury had not agreed to a particular Bill, it would not come anywhere near the place. That is our concern.

**Dr McCormick:** I understand the point that you make. We have answered all the points that have been put to us by the Department of Finance about the validity of the proposal in itself in relation to its value for money and regularity, which is a major issue for me, as accounting officer. We have answered all its points. It lies for the Department of Finance to consider.

**Ms S Bradley:** Andrew, I appreciate that. However, from our perspective, it is a matter of public record that we have continually repeated our calls for openness and transparency when it came to budgetary issues, but that has never been respected or listened to by either the DUP or Sinn Féin.

We are being asked to comment on a regulation when the Minister of Finance will not say on public record how his thinking may have mirrored it, what his draft Budget or monitoring rounds may have been doing to facilitate it, or whether it is completely outside any thinking that has happened to date in the Department. We have no reading of that. I recognise that it is a difficult position. I am trying to garner from you today whether this piece of work was in any way a united piece that the Executive thought there was merit in bringing forward. We all know that the deputy First Minister, in walking out of the Assembly, made a statement in pulling the Executive down. Have the Ministers who are still in post and are being paid quite handsomely to be there made any attempt to work together on this document to try to put an end to the haemorrhaging and the gaping wound that exists? That will give us an indication as to whether this fits into any Executive going forward or whether it is something that is prone to legal challenge and may cost more to the public purse because it has not been considered or is not part of a bigger think tank.

**Dr McCormick:** What I can say is that both Ministers have said very clearly that they want to see control brought in and made as effective as possible. They are both on record in that regard. I cannot say anything further on the particular position in relation to the response to the business case that we have put to the Department of Finance.

**The Deputy Chairperson (Mr Aiken):** Andrew, I just want to make a point on that. I am struck very much by the "guardian of the regulations" point.

**Dr McCormick:** Guardian of regularity.

**The Deputy Chairperson (Mr Aiken):** If an approved business case does not come from the Department of Finance, would that mean, in your opinion, that there would be more or less opportunity for significant legal challenge, bearing in mind that the risk lies with your Minister?

**Dr McCormick:** Ultimately, this would be a matter for the courts. You have had legal advice and we have had our own legal analysis. If the regulations are passed by the Assembly, that gives them significant force and authority, because the position is that this is not primary legislation. This is the Minister acting subject to affirmative resolution of the Assembly, so it is not as high order — not a full-scale Bill, as you said earlier, Chair. So, the point still stands that it would be clearly demonstrably better if we had Department of Finance approval, and we are still hopeful of that coming through.

**Ms S Bradley:** I would also like to ask about the economic assessment. Has that piece of work started, to try and actually judge what the implications of this would be, in real terms, for job losses, potential job losses or business closures? In anticipating a highly likely judicial review, has there been any projected costing considered on how that could, essentially, add to the cost to the public purse should it go ahead, and its likely outcomes and cost, because this actually could end up costing further. While our intention may be good, there is the potential that this could actually add to the bill on the public purse.

**Mr Murphy:** In the business case and in some other documents, there is a certain high-level assessment of impacts. As regards, for example, overcompensation, the impact is that there would be a transfer of resources from the public purse to fund that. Options involve eroding that and returning that spending power to the public purse for whatever the Executive and the Assembly may choose to do with it.

There is a set of winners and losers. That is set out in the business case. The current situation is one in which the public purse is a loser of circa £25 million, £26 million or £27 million per annum to fund overcompensation. That overcompensation is not delivering any public policy objective. The options, which involve putting the brakes on and bringing the scheme back towards its original intention — reversing it — will create a set of losers. Those losers will be, predominantly, the pre-November 2017 applicants, who will see their previous level of compensation pared back.

That sort of analysis is in the business case. It does not go on to do multiplier impacts; whether spending money on excessive RHI payments is better, economically, than the choices that might be made by the Executive and the Assembly to spend it in other areas, which will deliver economic impacts and public policy objectives. The default is that we clearly have something like £25 million to £28 million which almost certainly has some economic impacts — the money is not disappearing — but does not deliver any public policy impact. Moving it across, with the Assembly and the Executive undertaking positive public policy work with it, will deliver both public policy objectives and some sort of trickle-down economic benefits as well. Has there been a detailed quantification of this? At this stage, no. That would have to follow any impact study as part of the longer run.

**Mr McMurray:** As I said earlier, there will be a £28 million deficit next year. If, as a Department, we had to find that, it would come from Invest NI, universities and further education colleges. Their budgets would be reduced by £28 million, and there would be a big economic impact, if that was to be —

**The Deputy Chairperson (Mr Aiken):** With the Committee's indulgence, have you talked to the Department of Agriculture about the impact on various sectors of the farming community?

**Dr McCormick:** Not directly.

**The Deputy Chairperson (Mr Aiken):** Has there been any communication with the Department of Agriculture?

**Dr McCormick:** There has been some communication, but I do not think that there has been a detailed discussion on that point.

**The Deputy Chairperson (Mr Aiken):** Just for clarification — our major concern now is the agri-business sector — there has been no discussion with the Department of Agriculture about the impact on that sector.

**Dr McCormick:** Let me put it another way: the Department of Agriculture has not raised any concerns on behalf of that sector with us.

**Ms S Bradley:** Chair, I am really conscious of time, and I know that other members want in. I will just run through these. On the business case, we have no objections, but we have no Minister stepping forward from Finance, saying, "This is a good idea; I endorse it". Consultation did not happen: there was not time. We never really touched on the issue of compensation, which has a possible part to play in any judicial review. If time is on your side in a few weeks, would you want to start addressing the issue of compensation in the regulation?

**Dr McCormick:** As I said before, it is certainly worth thinking about for the long-term solution. As a matter of fact, there is not time to do it now; so, we have no choice. Certainly, if there were more time to consider the matter, the answer would be yes. Part of the problem simply is that there is such a significant flow of resources at the moment that the case for stopping it quickly is very strong.

We need to be very clear about the legal risks. I noted the report of the Examiner of Statutory Rules last night. The very last sentence seems to say that there is a way in which the public interest can potentially override both legal arguments that I drew out before. I would like to make an additional point in relation to this. It is clear from the press report on Saturday that a substantial proportion of the applicants were well aware of how lucrative the scheme was. I can understand, to some extent, the argument by Action Renewables that it would have been ethically improper to tell us, but I do wish that someone had done so. The concerned citizen told us. She is the only person who told us.

I made an estimate on Wednesday afternoon that maybe 50 to 100 people were aware how lucrative the scheme was. It is clear from the press report that I was out by at least an order of magnitude — a lot of people were well aware that the scheme is a very good scheme to be in. You can have your hotel, premises, or shed heated and the windows open, and nobody told us. I refer to an article that appeared in the 'Belfast Telegraph' on Boxing Day which shows that there is something seriously wrong with attitude and behaviour. Yes, Action Renewables had a responsibility to its clients, but somebody over and above the concerned citizen had a responsibility to say, "Are you sure that you mean to do this?".

**The Deputy Chairperson (Mr Aiken):** That is clearly in the realm of the public inquiry. Speaking from this side of the table, I must say that the whole process has been so badly managed and put together. The Minister has already used the word "fraud", and I know that you quantified what he was saying, but there is no doubt whatever, in my view, that the PSNI should be involved. Your point is made, and we probably need to move on now.

**Dr McCormick:** Shame on us for not having spotted the problem until too late. However, there is also the significant issue of why people continued to burn and nobody told us. I think that that should affect how this is assessed by the courts.

**Mr Murphy:** Do you mind if I just add something? This is not directly related to that point but is about part of the context behind the tariffs that are being proposed. There are questions, or potential perceptions, of hardship. There are perceptions that these tariffs are very draconian or that they would never be attractive to anyone who would want to invest in renewable technologies. These same tariffs came in on, I think, 18 November 2015. Between then and the time when the shutters were brought down on the scheme, over 300 applicants applied in a three- or four-month period. Around 300 applied for that exact same tariff.

There are anecdotes out there about the draconian nature of this and there are anecdotes that such tariffs are not investible. However, there is real evidence from real applications that says different; a very substantial number of applications. I think that that is important to bear this in mind in all this: these tariffs have not been plucked out of the air. A lot of the 300 applicants are from farming backgrounds. They include poultry farmers and mushroom growers. Let us be clear: these tariffs can work. They have worked on the ground. They are not nearly as draconian or uninvestible as some would make out. At least, I have 300 data points of evidence to refute that claim.

**The Deputy Chairperson (Mr Aiken):** OK. Thanks, Shane. Hearing the information that you now have 300 data points is, in some way, the first time that I am feeling slightly more reassured. We really need to move on, Sinéad.

**Ms S Bradley:** I know that things have moved on, but it is so important to put on record that, yes, nobody told us, but, Andrew, when the Department was informed, and the Executive sat on this, nothing happened. Nothing appears to have happened; in fact, if I am right, this business case started to be drafted on 30 December.



**Dr McCormick:** This particular one, yes.

**Ms S Bradley:** After all that time, a solution started to be drafted — started to be drafted — on 30 December.

**Dr McCormick:** Work began on cost control and, to correct my evidence from last Thursday, there was a record showing substantive addressing of the issue as early as May 2016. The point is that, at that stage, we were working on something that would have required consultation and state-aid approval. The focus was on options. It would have had a lead-in time of maybe a year if you followed all that process, because state-aid approval for substantive long-term change can take a long time. Then, someone had the idea — to their credit, a special adviser had the idea over Christmas. In fact, it was first mentioned before Christmas, and we substantively decided to do this on 30 December. As I said to Stephen last time around, you cannot start working on something until you have thought of it.

**Ms S Bradley:** So, Andrew, nobody in the Department thought that it would be a good idea to stop the haemorrhaging of money.

**Dr McCormick:** We had been working on that since May 2016.

**Ms S Bradley:** But nobody thought that it would be a good idea to take action now to stop it.

**Dr McCormick:** We were of a view to take action as quickly as possible. Then, someone said, "Here is a faster way to do it". That is a good thing. We now have this option available to us.

**The Deputy Chairperson (Mr Aiken):** Who said that?

**Ms S Bradley:** A SpAd.

**Dr McCormick:** I am not going to name names.

**The Deputy Chairperson (Mr Aiken):** But it was a SpAd.

**Dr McCormick:** Yes.

**The Deputy Chairperson (Mr Aiken):** A SpAd said that. OK.

**Ms S Bradley:** Andrew, can I just add to that? You then had the beginnings of a business case that was being scripted up, starting on 30 December, and once that was presented — I presume by Simon Hamilton to the Minister of Finance — basically, there was a very unreportable exchange of comment and, then, as we all know and as is a matter of public record, the Finance Minister left the scene. He was happy to leave this unfinished business. He either did not see it as being worthy of pursuit, or he made the decision, "I am out of here. This is too tough".

**Dr McCormick:** No. Again, in fairness, it is true that the Department of Finance wrote us letters throughout the autumn seeking and urging us to move on with this. Also, in part of December, there was a period when there was clear focus from the Minister of Finance and his team, asking, "Why are you not doing that?". They were pushing us very genuinely and very legitimately. I explained the sequence of consideration in the process last time. We were focusing on a consultation option that would have involved a change of tariff. Then, at the start of November, the idea came to mind. This was another idea that came and, when you get a good idea, you have to investigate it and consider it, and we did. The closure option, which would have involved closing the scheme down completely and paying a compensation payment, needed some detailed work. So there has been a process. All of us have been trying to solve this problem in good faith, urgently —

**The Deputy Chairperson (Mr Aiken):** Andrew, we probably need to move on. Just one thing for the record, Andrew: the business case that we are seeing now was not presented by the Minister; it was the SpAd's idea.

**Dr McCormick:** It was an idea, and then we all work on it. Sorry, this is normal business. This is how — it is totally normal.

**The Deputy Chairperson (Mr Aiken):** This is how Northern Ireland business works: the SpAd decides it.

**Dr McCormick:** No. The Minister decides. Ideas can come from a range of people; that is normal business. It is totally normal practice to have a discussion, and then the Minister considers the options. The Minister decided, "Let us do it this way", having listened to a range of advice, including from us and the special advisers.

**The Deputy Chairperson (Mr Aiken):** Thank you, Andrew.

**Dr Farry:** To pick up on that last point, special advisers can certainly come forward with great ideas at times, which is very welcome. I listened very carefully. The terminology that you used, Andrew — I heard Shane whispering in your ear on that point as well — was "a" SpAd as opposed to "the" SpAd. Are you implying that the special adviser was not necessarily the adviser in the Department?

**Dr McCormick:** Yes.

**Dr Farry:** OK, thanks for that. On that point, the current special adviser has partially stepped aside on this relevant issue. Can I just clarify at what point the potential conflict of interest was actually registered in the Department? Was it only in the aftermath of the media coverage, or was it a proactive decision that was taken as far back as last spring when the adviser took up office?

**Dr McCormick:** I am not sure that this is what I am here for, Chair.

**The Deputy Chairperson (Mr Aiken):** Andrew, we are trying to get to the bottom of the issue around the business case. With what we have heard today, we are beginning to get more and more concerned about what is happening, who is doing it, who raised it, what are the issues behind it and the rest of it. Taking aside what you would consider that, I think that it would be apposite if you were in a position to answer Stephen Farry's question, because it is a fair question.

**Dr McCormick:** The position is that John Robinson was not present at any of the discussions on the idea of this way of doing cost control in the period over Christmas and immediately afterwards when the decision was taken; that is clear.

**Dr Farry:** Thanks for that, Andrew. Apologies for putting you under pressure with some of these questions.

**Dr McCormick:** It is OK.

**Dr Farry:** Part of the frustration that we have today is that we do not have a Minister here in front of us to ask what are questions that ideally require a political-level response. The dilemma facing us goes beyond the fact that we are doing this over an extremely short period. It is a much wider issue about the trust of the Committee and the wider Assembly as regards the transparency, or should I say the lack of transparency, of the Department over the past 12 months in answering questions and FOI requests and giving the Committee even one small kernel of briefing on any Budget items at all. None of that has come forward to us. In essence, we are being asked to take something at face value from a standing start.

Beyond that, I have a problem in that this is mired in politics. We are doing this at short notice in the teeth of an election. The cynical view is that the Minister — and I have to say that he has form for this — is trying to make a big grand announcement to go out to the doors and say, "Under the DUP's watch, we have stemmed the flow of leakage on renewable heat; aren't we great?". Then, after the election, the thing falls apart in a successful legal challenge. We were down this road before when announcements about United Airlines were unpicked. When he was Minister of Health, he made big announcements about air ambulances and all sorts of things in the dying days of the last Assembly, which came to nothing after the election. So there is form in this that we are having to go against. What you are presenting to us from a Civil Service point of view is extremely plausible. I had a brilliant special adviser who came up with wonderful ideas time after time, but when I hear that this mitigation was instigated at a political level by a special adviser, that actually in some ways makes it more difficult to believe that this is a genuine bottom-up Civil Service approach, as opposed to a political fix to get over the hurdle of an election or to take off the heat in the context of a media furore.

**Mr Storey:** You pick and choose when you use special advisers, then, when it suits you.

**Dr Farry:** No, Mervyn —

**Mr Storey:** You are just making political points.

**The Deputy Chairperson (Mr Aiken):** Mervyn, through the Chair, please.

**Mr Storey:** Through the Chair, he is making political points.

**Dr Farry:** Mervyn, you can call it political or non-political, but the point still stands. I think the cynicism and suspicion that I am voicing would be echoed by many other people. I want to give a fair wind to this, but, to be perfectly blunt, it is fundamentally a disgrace that the Minister, for whatever reason, has not bothered himself to come forward —

**The Deputy Chairperson (Mr Aiken):** Hear, hear.

**Dr Farry:** — to address the issues before the Committee. This is not some technical issue that the Minister can leave to his officials. It goes very much to his credibility as a Minister and his ability to sell this. He has deliberately stepped back and arrogantly assumed that people will just take it at face value. If I was the Minister in that situation, I would be falling over myself to get before the Committee and answer all questions as fully as possible. I would not be leaving it to my civil servants to answer both technical and political questions. To be fair, Mervyn, I do not think that you would either, from my recollection of how you conducted yourself as a Minister. The fact still stands that that was the origin of the issue.

I want to ask you, Andrew, to walk through what essentially was happening in the Department between May and December to mitigate this. The difficulty I have, building on what Sinéad said, is that we had a bleeding patient. We had a water leak or an oil leak over the past eight months. I calculate that it will probably cost the public purse, whether at the centre or the Department specifically, potentially £20 million. The difficulty is that you are saying that no one thought of it until November or December. You are saying that the Department was working on all sorts of plans from May, but that begs the question of why nothing was brought forward, even something that had a longer lead-in time due to consultation; why civil servants, the special adviser and the Minister did not get together and come up with a best-guess plan, even to address it on a one-year basis; why we did not see something in June or, indeed more plausibly, September, on how to respond to this; and why we were still waiting until December.

**Dr McCormick:** Draft consultation papers were written within the Department in the period between June and October last year. As I said before, I personally was very attracted to the closure option that was put to me at the start of November. So I said, "Hold that back: this is better. Yes, it will take a little bit longer, but it will get us a better solution." The attraction for me of the option that would have involved closing the scheme down completely was that it turned off the fraud/abuse concern immediately. From the point of view of an accounting officer, that was very attractive. To get there would have involved a consultation process, because we were again looking at that as the orthodox mechanism for bringing in a policy proposal with that degree of radical change. We needed to understand the significance of it in state aid terms. Hence the meeting I mentioned in an earlier session on, I think, 7 December — the Wednesday of that week, whatever date that was — with the European Commission, when there was an informal discussion to explore the options. The message there was that, if we did that, there would be no aid, because a compensation payment would be giving individuals their entitlement in UK law, therefore no state aid process. That was another big attraction for me, because it would have saved us time. We came back, discussed it further and sought further legal advice in the week after that. The week after that, which was the week before Christmas, that idea found its way into the public domain and there was a significant kickback that led Ministers to think again —

**The Deputy Chairperson (Mr Aiken):** Andrew, just so that we can get it absolutely correct, you are saying that your advice, as the permanent secretary and head of your Department, was to go for the closure option with consultation.

**Dr McCormick:** It never turned into formal advice. Those were just evolving discussions — normal, fluid, interactive discussions involving the Minister and the wider team, including some of the special advisers. That is totally normal business in how things work in any mature government. There is nothing untoward about that and nothing strange about where ideas came from. The reaction was that there seemed to be problems, especially a concern in relation to budgetary access with the Treasury. Part of the flow of ideas in the week before Christmas was that we could lose out on the future AME. That is £600 million that the Treasury would pay into the Northern Ireland economy and, if we did it that way, they might say that they would close that down and we would lose out. There was a very strong reason against the closure option, which —

**The Deputy Chairperson (Mr Aiken):** Did that opinion come from HM Treasury or DOF?

**Dr McCormick:** There was dialogue with DOF on that point. DOF was concerned about that point and its initial reaction when we started getting into dialogue on the options was that it preferred something that would involve a change of tariff; that was its instinctive preference. All the options that were in front of us at that stage involved a slow process of consultation, and the tariff reduction options would have involved a fully fledged state aid appraisal process. Someone, whoever that might be, then had an idea of a quicker way to do it. That was put to us and, in totally normal practice, we were tasked to go away and look at that and stress test it. Again, that is normal business and there is nothing untoward or strange about that whatsoever, and we are fully satisfied on the basis of a Civil Service analysis of that option that it was robust. That is not —

**The Deputy Chairperson (Mr Aiken):** We are getting to a critical point, which is the discussion about the consultation time that would help to significantly de-risk any future legal action. Why was that taken out of the mix?

**Dr McCormick:** Because that would have taken us into a protracted time period. If you combine consultation and state aid, we would run the risk of missing the opportunity to move more quickly to reduce the flow of funds. Of course, all of this happened before the election was even being thought about. There was no mention of an election or that context when the decision —

**The Deputy Chairperson (Mr Aiken):** However, looking at 30 December, one could infer that that was very much on the cards.

**Dr Farry:** I want to clarify something, Andrew. There is a problem with the way that you have described this. Are we safe to assume that, at no stage prior to the current situation, you had put forward a ministerial submission?

**The Deputy Chairperson (Mr Aiken):** Excuse me; stop one second. Was that a note that was passed to the front desk? Can we remove that note from the table right now? For the record, will you identify yourself?

**Mr Dan Cartland (Department for the Economy):** Dan Cartland.

**The Deputy Chairperson (Mr Aiken):** OK. The Minister will not grace us with his presence, but you are passing notes.

**Dr McCormick:** I had asked for a point of fact, if it could be established, to be passed to me. I apologise if that was out of order. That was entirely a point that I asked for.

**The Deputy Chairperson (Mr Aiken):** It has to come through here.

**Dr Farry:** I was asking Andrew to clarify that at no stage prior to the current proposal had any ministerial submission been put forward.

**Dr McCormick:** A number of ministerial submissions were made on the process from the autumn, but we have moved. We saw a good thing to do and sought to get on and do it. That is the honest and straightforward position from a departmental point of view.

**Dr Farry:** In essence, to put it in crude terms, you were prepared to take a longer view in terms of taking the financial hit in the anticipation that you would respond with what would essentially be a longer-term, more sustainable solution in one shot, rather than going for an interim patch approach.

**Dr McCormick:** That was being seriously considered, yes. Three different approaches to that were under serious consideration. We had done some economic analysis. The groundwork was all being done, and that was then available for discussion with the Minister of Finance at meetings that we had in December and January.

**Dr Farry:** You have an ongoing leak of resource. If you take the analogy of a patient after an accident, the first response is always to stem the bleeding and then get the patient to hospital, rather than take them to hospital and sort things out there. I am still slightly perplexed why even a short-term solution was not considered straight away, just to stop the money bleeding out of the system, particularly as the Department's accounts have already been qualified.

**Dr McCormick:** Clearly, my efforts to give credit where it is due have backfired on me. We did not think about it; somebody else did. OK?

**Dr Farry:** OK.

**Dr McCormick:** Draw your own conclusions.

**The Deputy Chairperson (Mr Aiken):** Are you happy, Stephen?

**Dr Farry:** I have three very factual questions to which there will be straight yes or no answers. For the business case, does the Department of Finance sign-off have to be at ministerial level, or can it be at official level?

**Dr McCormick:** As you know, everything that Departments do is under the direction and control of their Ministers.

**The Deputy Chairperson (Mr Aiken):** Next?

**Dr Farry:** On the public inquiry issue, can you confirm as a matter of fact that the Minister is no longer pursuing his initiative from last Thursday, when he wrote to party leaders around launching an inquiry himself, and is now deferring to the Department of Finance initiative?

**Dr McCormick:** I understand that that is the truth, yes.

**Dr Farry:** Finally, given that we do not have a Budget process for next year, in the event that the perm sec of the Department of Finance creates a Budget at the end of March, does the liability for the incoming financial year lie solely with the Department, or is the starting position that that pressure lies with the centre to pass across all Departments?

**Dr McCormick:** The starting point is that it will lie with us, as the Department for the Economy. Decisions on budgets will ultimately lie with Ministers. Whatever may transpire, the section 59 power is there as a cash flow mechanism only.

**Mr McMurray:** The baseline rolls forward from this year.

**Mr Dunne:** I thank Andrew and his team for coming. We all recognise the work that has gone into this, and the fact that you have burned the midnight oil to bring forward this scheme is recognised by everyone, as is the pressure that you have been under, at the PAC and through this Committee. We all appreciate the efforts of you and the Department to try to get this moved forward.

We took evidence from the Renewable Heat Association, as has been mentioned. We were all impacted upon by the evidence that was given. Certainly, to me, they seem to be a bunch of genuine people who have benefited from the scheme and moved their businesses forward. One point to mention was that technical and business case audits should be carried out on all installations. Andrew, can you remind us of the process that you are engaging in for a 100% audit through DETI for the scheme?

**Dr McCormick:** The plan is to procure a consortium that will undertake a new approach to audit inspection and enforcement of the regulations that apply. This is the key mechanism to bear down on abuse or gaming of the scheme. As you have seen from the PwC report, part of the weakness is in the design. We need to address that very carefully. The proposition is to secure that consortium. It will take quite a number of months to do this. That is how this process will work. Maybe Stephen can say a little more about this; Stephen's team is working on preparing a spec. That needs a further business case, which will have to go to the Department of Finance and then out to the 'Official Journal of the European Union', because it is well above the threshold for EU-wide procurement of that work.

**Mr Dunne:** So we are some time out yet —

**Dr McCormick:** We are, and in the meantime —

**Mr Dunne:** — which is a bit of a concern, I suppose, and a risk. We who have sat on the PAC and this Committee have been aware of this issue for some time. I am fully aware that you are engaging in that process, but it seems to be moving slowly.

**Mr McMurray:** In fairness, it is definitely one of those cases of measure twice, drill once. If we do not get the spec right, then down the line we cannot use it for the purpose we need it for, so it is important to work very closely with Ofgem on this.

**Mr Dunne:** I think that you pick up on the need for urgency, but obviously you have to follow your procedures.

**Dr McCormick:** That is right. In the meantime, we have assured the Department of Finance that we will operate the existing arrangements for control, which are part of our arrangement with Ofgem, as effectively and strongly as we can. There are limitations, but there are also opportunities in that, both for it to undertake inspections and, certainly, to enforce any referrals or concerns that are expressed. The Committee, the PAC and the Minister — a number of people — are receiving a number of referrals about concerns, which is not surprising, and, where engagement with PSNI is merited, we are doing that as well.

**Mr Dunne:** Andrew, you made a very good point earlier about your disappointment that no one working out in the renewable heat sector or the various industries made the point that they felt there was wastage. That is a very good point. I would add that had you had the proper scheme in place, with regular audit and surveillance — if you had been out in that community, for want of a better word, you would soon have picked that up with intelligence, in the same way as we, as representatives, soon pick up what is going on when we are out on the street. Had the proper audit plan been set up for the scheme, with regular audit and surveillance out in that community, it would have been picked up much earlier.

**Dr McCormick:** Again, one of the lessons that will come out through the work of the PAC is that, because there was a lack of sensitivity to the risks, the risk management was not in place as it should have been, and that would have included the kind of intelligence gathering that you mentioned. I take your point entirely.

**The Deputy Chairperson (Mr Aiken):** One of the things that we need to find out is where the whistleblower's information went to. Setting that aside, the Ulster Farmers' Union was in contact, talking about the scheme, how it was being set up and potential abuses. Why was that information ignored?

**Dr McCormick:** I am not clear on that. I am not sure how clear that signal was at the time. One thing that we have not bottomed out is exactly what was said in the conversations between UFU and departmental officials in summer 2015, partly because we are in an investigative phase. That will definitely be pursued as part of our fact-finding.

**Mr Dunne:** My last point is one that I have gone on about a number of times: the business case submitted to DFP on 9 March 2012. That is still the approved business case —

**Dr McCormick:** The original business case.

**Mr Dunne:** Yes. That is still the approved document.

**Dr McCormick:** No, a further business case was approved in October 2015, which was the business case for the short-term changes. That was done —

**Mr Dunne:** That is the approved document for the foundation of the scheme —

**Dr McCormick:** Indeed, for the initial phase. That is right.

**Mr Dunne:** As I said, it mentions reviews. Just for clarification, it says that:

*"Tiering is not included in the NI scheme because in each instance the subsidy rate is lower than the incremental fuel cost."*

Do you agree —

**Dr McCormick:** That is the fundamental flaw.

**Mr Dunne:** It mentions that degression is not included in the scheme. It reads:

*"At this stage DETI does not propose to include build degression into the NI RHI legislation, however may consider the need to do so in the future. If degression is introduced consideration will need to be given to an appropriate methodology."*

Are you clear that degression was not included in the design of the scheme?

**Dr McCormick:** That is correct.

**Mr Dunne:** For clarity, degression was not in the design of the scheme, and tiering was not included in the design right from the start. No one has removed them. Would that be fair? No one removed them from the scheme, because they were never there initially.

**Dr McCormick:** Yes, we covered this fairly fully on Wednesday afternoon last week. The policy was recommended, and the recommendations were accepted. That has been fairly fully explored before.

**The Deputy Chairperson (Mr Aiken):** Andrew, Shane, Stephen, thank you very much for giving evidence. I am sorry that it has gone on a bit longer than we expected. Please convey our message very clearly to the Minister, but we will try to do that from the Floor of the House today.