Inquiry into the Renewable Heat Incentive Scheme

RHI Ref: Notice 156 of 2017
Date: 7th June 2017

Witness statement of Mr Patsy McGlone MLA

I, Patsy McGlone MLA, will say as follows:

1. I am a Member of the Northern Ireland Assembly for the constituency of Mid-Ulster. I was first elected to the Assembly in 2003, and have been returned for Mid-Ulster in five subsequent Assembly elections. I am currently a deputy Speaker of the Assembly. From 23rd April 2012 – 7th September 2012 I was a member of the Committee for Enterprise Trade and Investment (‘the ETI Committee’). From 10th September 2012 until its dissolution on 29th March 2016 I was the chairperson of the ETI Committee. I provide this statement in the latter capacity.

2. This statement deals with the role of the ETI Committee in the non-domestic renewable heat incentive (RHI) scheme between the introduction of the RHI scheme in November 2012 and its suspension in February 2016. In preparing this statement, I have referred to the records of the ETI Committee held by the Northern Ireland Assembly Commission and provided to the Inquiry by Mr Peter Hall, currently the Clerk to the Economy Committee and the Assembly’s Official Report.

3. The ETI Committee which I chaired was created by resolution of the Assembly on 16th May 2011. The functions of the ETI Committee were, pursuant to section 29(1)(a)(ii) of the Northern Ireland Act 1998 (‘the 1998 Act’), to ‘advise and assist’ the Minister for Enterprise Trade and Investment (‘the Minister’) ‘with respect to matters within his responsibilities as a Minister’. Pursuant to section 29(1)(c) of the 1998 Act, the ETI Committee might ‘exercise the powers described in paragraph 9 of Strand One of the Belfast Agreement’. This paragraph refers, among other things, to a Committee’s ‘scrutiny, policy development and consultation role with respect to the Department with which [it]is associated…”.

4. Statutory rules, such as those which established, altered, and ultimately suspended the RHI scheme must be laid before the relevant statutory committee (this is required by the Assembly’s standing order 43). Statutory rules laid by the Department of Enterprise Trade and Investment (‘DETI’) are therefore referred to and considered by the ETI Committee. In the case of a statutory rule (‘SR’) subject to the affirmative resolution procedure (as was each SR relating to the RHI scheme) the ETI Committee will in most cases provide a recommendation to the Assembly as to whether it should or should not approve that SR by resolution.
that you may be called back to give some further oral evidence in due course about what the Committee was doing at that stage. So, this morning, we’re hoping to address really matters up to the end of 2012.

Mr McGlone: Uh-huh. OK.

Mr Scoffield QC: Now, you referred in paragraph 3 of your first witness statement to the role of the ETI Committee and indeed all of the Statutory Committees which are associated with a Department. You refer to the role that they have in paragraph 9 of strand 1 to the Belfast Agreement, which says that those Committees have a role in relation to scrutiny, policy development and consultation in relation to their associated Department, and I just want you to describe for the panel how that role was undertaken by the ETI Committee when you were involved.

Mr McGlone: Yes, well, the ETI Committee is an 11-member Committee comprising basically, at that stage, all parties within the Assembly; different representation from each. The Committee met once a week. If there were occasions whenever we had an exceptional workload, such we were, say for example, conducting an inquiry, that might’ve been, say, twice a week. Its oversight role was of policy development by the Department. On occasions to, such as, say for example, the cooperative and credit unions Bill, there was a primary legislative role with the Committee and extensive work carried out in that role, where you saw the Department and the Committee collaborating and working very well. And there would be reports from bodies such as Invest NI, Tourism Ireland; all those other bodies that have — are under and within the remit of the Department to the Committee.

Mr Scoffield QC: Now, when it comes to your oversight role in relation to the renewable heat incentive regulations, we’re gonna look at that in some detail and I want to take you through later this morning some of the steps that were involved in that process, but before we get to that, just discussing the Committee’s role generally, can you describe what the
5. The scrutiny function of a committee as regards an SR is discharged in part by its consideration of the SL1 document which should accompany each SR. The SL1 is a document prepared by a Department (in this case DETI) which sets out the policy underlying an SR. Committees will usually receive an SL1 in advance of the text of an SR. A committee is assisted in scrutinising an SR by the Examiner of Statutory Rules, an officer of the Assembly who considers technical issues related to an SR (but not its merits or policy objectives). In deciding whether or not to recommend an SR a committee will also take account of submissions made by interested parties and oral briefings by officials of the relevant Department.

6. In light of this background, I answer the questions put to me in RHI Notice 156 of 2017 as follows:

(1) Explain your involvement (if any) in investigating, assessing, considering, or communicating with other persons or bodies (such as [DETI], the former Department of Finance and Personnel ['DFP'], or Ofgem) regarding the [RHI] Scheme in Northern Ireland or any aspect of it, between its introduction in November 2012 and its suspension in February 2016 (and provide copies of any relevant documents with your Witness Statement).

7. At the first meeting of the ETI Committee which I chaired, on 13th September 2012, the ETI Committee was briefed on the SL1 relating to the Renewable Heat Regulations (Northern Ireland) 2012 (‘the 2012 Regulations’). The chair’s brief with which I was provided¹ indicated that the ETI Committee had considered this SL1 at previous meetings, and had received oral briefings from the Department on 24th May and a written briefing on 5 July 2012. On 13th September 2012, the Committee heard evidence from 2 DETI officials on the SL1. I note from the Minutes of Proceedings² that the officials were present for some 25 minutes. I do not recall this meeting in any detail but the Minutes record that the ETI Committee was content with the policy proposed in the SL1.

8. At this meeting the ETI Committee also considered related correspondence from Action Renewables, which stated as regards the SL1 that:

   ‘the significant drop in biomass support, from 5.9p to 1.5p, at the 100kWth level, will create distortion in the market. It will lead to applicants installing boilers with a smaller capacity than is required, at the 100kW level and supplementing their heat from oil generation, as it will be the most remunerative way of exploiting the scheme.’

9. I do not recall any suggestion at that meeting that multiple small boilers at below 100kW might be utilised in this regard.

¹ Document 20120913 aChairs Brief
² Document 20120913 Minutes
Dear Jim,

SL1 – RENEWABLE HEAT REGULATIONS (NORTHERN IRELAND) 2012

1.1 The Department of Enterprise, Trade and Investment (the Department) proposes to make a Statutory Rule in exercise of the powers conferred by the Energy Act 2011.

1.2 The Department of Energy and Climate Change (DECC) in GB agreed that an amendment could be made to the Energy Act 2011 that would extend powers for renewable heat, similar to those contained within the Energy Act 2008, to Northern Ireland. For this to be achieved a Legislative Consent Motion (LCM) was required. Following Executive approval on 10 February 2011 and ETI Committee support at its meeting on 24 February 2011, a LCM was tabled and passed in the Assembly on 14 March 2011.

1.3 The Energy Act makes special provisions for Northern Ireland in terms of renewable heat.

1.4 DECC obtained Royal Assent on 18 October 2011 and the Bill became the Energy Act 2011. The Act deems that the Statutory Rule will be subject to the draft affirmative resolution procedure before the Assembly.

Purpose of the Statutory Rule

2.1 The Department carried out an economic appraisal of a potential Northern Ireland incentive scheme with the aim to assist in achieving the target of 10% renewable heat by 2020. The appraisal considered various options for incentivising the local renewable heat market, and advised on appropriate tariff levels. It also considered the costs/benefits and the impact of each of the options.

2.2 The Department carefully considered the findings of the economic appraisal to reach a view on the proposed design of an incentive scheme for Northern Ireland (NI) and has obtained Ministerial clearance on the proposed way forward.

2.3 The Statutory Rule has therefore been drafted based upon equivalent Regulations in GB which are entitled the Renewable Heat Incentive Regulations 2011 (the GB

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1 Sections 113 and 114 of Energy Act 2011 -
Regulations\textsuperscript{2}. The GB Regulations were approved by both Houses of Parliament and by Scottish Ministers on 10 November 2011.

2.4 The Statutory Rule will set in place a structured mechanism which will allow a RHI scheme to be introduced which will provide long-term guaranteed financial support for renewable heat installations in Northern Ireland. The Rule will underpin the tariff scheme and will specifically prescribe matters relating to eligibility criteria, obligations for participants of the scheme, methods of payment and accreditation and registration.

Consultation

3.1 The Department went out to consultation on a proposed RHI scheme including the draft Statutory Rule on 20 July 2011, closing on 3 October 2011. A number of consultation seminars were also held over the summer period. In total, 78 formal responses were received, of which two offered no comment. The responses have been analysed and the vast majority of respondents were in favour of the proposals and provided useful comments which the Department considered.

3.2 Following the consultation, further economic analysis was carried out considering issues that were raised by stakeholders. This analysis completed in February 2012 and has informed the final policy decision.

Position in Great Britain

4.1 DECC originally legislated for an incentive scheme in the Energy Act 2008 and, following a consultation process, published final proposals on the RHI in March 2011. DECC obtained parliamentary approval of the GB regulations in November 2011.

4.2 The Office of the Gas and Electricity Markets (Ofgem) is responsible for developing and administering the scheme on behalf of DECC.

Equality Impact

5. In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, a screening exercise has established that the proposed Regulations do not have any implications for equality of opportunity, and are instead engineered to promote equality of opportunity.

Regulatory Impact

6.1 A draft Regulatory Impact Assessment (RIA) has been prepared in respect of these Regulations. The Regulations will support the implementation of the Renewable Energy Directive 2009/28/EC (RED) which requires the UK to ensure that 15\% of its energy consumption comes from renewable sources including electricity, heating and cooling and transport.

\textsuperscript{2} \url{http://www.legislation.gov.uk/ukdsi/2011/9780111512753/contents}
6.2 Five options were considered as part of the RIA –

(a) **Do Nothing**

It was determined that under this option there would be limited deployment of renewable heat, the amount of which would largely be dependent on fossil fuel prices and the understanding of renewable alternatives. It was estimated that by 2020 renewable heat would account for around 7% of heating demand if no financial support was available. This option is not deemed as viable for a number of reasons. Firstly, the target set in the Strategic Energy Framework (SEF) for renewable heat would not be met and the funding provided by Her Majesty’s Treasury (HMT) (discussed under point 7) would not be used. Secondly, the Northern Ireland renewable heat market would be distinctly disadvantaged in comparison to Great Britain and there would be a potential loss of skills and expertise to the Great Britain market.

(b) **50% capital grant**

The option considered would be a 50% grant to cover the capital costs of various renewable heat installations. If a grant scheme is the preferred option then a challenge fund scheme would be the preferred option and would ensure deliver more cost effective renewable heat. Lessons learned from the Reconnect scheme would support the view that a competitively awarded grant can be more cost-effective and targeted than an administratively awarded grant.

(c) **A renewable heat challenge fund**

A ‘Renewable Heat Challenge Fund’ would be a capital grant with the grants being awarded on a competitive basis, rather than ‘first come first served’. In this scenario interested parties would be invited to apply for funding and would provide information on the intended installation, expected heat output and required funding (there would be a maximum allowed grant based on % of total cost). Applications would then be ranked based on the cost-effective renewable heat output and grants awarded according to rank. This process would be repeated on either a bi-annual or annual basis.

There are several issues to consider under the challenge fund option. The first to consider is that the administration costs are likely to be prohibitive. Previous experience of running Reconnect demonstrated administration costs of £1.48m for a grant scheme worth £10.5m (14%). The Reconnect scheme was for domestic customers only, and on a ‘first-come-first-served’ basis. A challenge fund, dealing with commercial applications and involving complex evaluation metrics, could be expected to be at least as, if not more, costly than the Reconnect scheme, equating to potentially £3.5m over the first 4 years. This would not be available within DETI budget.

The scheme could be potentially complicated and would require applicants to have an understanding of their heat demands and most appropriate technology requirements. There would also be a danger that only certain technologies, which ranked highly on the scoring matrix, would be incentivised. This would not support the development of a more diverse market.

The final issue with a ‘challenge fund’ is that of risk. As the Challenge Fund would be contributing to the capital costs of the installation (rather than the whole life costs under the RHI) a risk would develop that, after a short time, installations would stop
generating renewable heat. This could be because the renewable heat fuel is no longer affordable, that a fossil fuel alternative (such as gas) become available or more attractive, that the site is no longer in business etc. In these circumstances clawback arrangements would need to be initiated, which could be costly and complicated, and the target would be hindered.

(d) Joining in with the GB RHI scheme
There are many positives for joining in with the existing GB RHI including the consistency of approach with GB, savings in the cost of administrating an NI scheme, and the potential speed with which a scheme could be implemented.

However, it has been concluded that, given the differences between the GB and Northern Ireland heat markets implementing the GB RHI as it is currently devised and using the proposed GB tariffs in Northern Ireland would not be appropriate. The major issue that would arise would be that customers could be potentially over-incentivised and inefficient technologies supported. The GB tariff levels are largely based on the assumption of a household or business switching from gas to renewables. Whereas, given the prevalence of oil in Northern Ireland, tariff levels for a Northern Ireland scheme would need to be set on the assumption of moving from oil to renewables.

(e) A specifically tailored NI RHI scheme
The NI RHI option offers the highest potential renewable heat output at the best value. It also would incentivise a wide range of technologies and provide investors with long-term support. Whilst it would only be open to non-domestic market, in the first instance, it would eventually be open to all consumers and therefore provide greater accessibility.

The purpose of the RHI (in GB and NI) is to incentivise people to move from carbon-based heating to renewable energy sources. The ‘cost’ of the carbon fuel is therefore important and differs in the GB and NI markets. The tariffs for the Northern Ireland scheme are therefore lower as they are based on moving people from a more expensive fuel source, therefore the required incentive to move is deemed to be lower.

Similar to the GB scheme, the NI RHI would be made available to the non-domestic market first, with the domestic market introduced at a later date. The reason for this is difficulties in assessing and monitoring heat demand in domestic dwellings. DECC is currently considering the incentives for the domestic market. The Department’s consultation also highlighted a commitment to consider this issue and introduce the RHI to the domestic market as soon as possible.

6.3 Preferred option

As mentioned in the consultation exercise in July 2011, the Department’s preferred option is a specifically tailored NI RHI scheme. This has been determined as the most appropriate method of providing long term support for the local industry, with tariffs developed specifically for the Northern Ireland heat market which will utilise available funding most efficiently. The Department also anticipates that there will be secondary benefits to the development of the renewable heat market other than increased renewable uptake. These associated benefits include a reduction in CO₂ emissions as fossil fuels are displaced, an increase in fuel security as Northern
Ireland’s dependence on imported heating fuel diminishes and growth for ‘green jobs’ as companies benefit from opportunities presented by renewable heat.

Financial Implications

7. HMT has advised that £25m of funding will be made available for a Northern Ireland RHI. This funding is spread over the spending period between 2011-2015, with £2million in the first year, followed by £4million and £7million, with £12million available in the final year. DETI has sought and received approval for the funding profiled for year 1 of the scheme to be made available in year 2. The funding will come from direct Government expenditure and therefore will have no impact on Northern Ireland consumers’ energy bills.

EU Implications

8.1 The RED requires the UK to ensure that 15% of its energy consumption comes from renewable sources – for the first time the requirement extends beyond electricity to heating and cooling and transport. This is an important shift in emphasis: almost half of the final energy consumed in the UK is in the form of heat, producing around half of the UK’s CO₂.

8.2 The RED is the key driver for the work undertaken by the Department on renewable heat. The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration (DA) level. However, while energy is a devolved matter for Northern Ireland, each DA is expected to contribute as much as possible to the overall UK target. In light of the obligations within the RED, the Department has undertaken to introduce a renewable heat scheme in Northern Ireland.

Section 24 of the Northern Ireland act 1998

9. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

Section 75 of the Northern Ireland Act 1998

10. The Department had considered section 75 of the Northern Ireland Act 1998 and is satisfied that the proposed Regulations will have no negative implications or possible infractions under Section 75.

Operational Date

11.1 It is proposed that the Regulations will come into operation in June 2012.

11.2 I would be grateful if you would bring this matter to the attention of Enterprise, Trade and Investment Committee.

Yours sincerely

FIONA HEPPER
Head of Energy Division

cc Human Rights Commission
Legislative Programme Secretariat
33. In retrospect, of course, there was information relating to the RHI Scheme which might have been brought to the attention of the ETI Committee at an earlier stage. I would not have expected DETI to bring operational issues to the Committee, but part of the role of a departmental committee is budget scrutiny, and if there were significant problems with the budget of a particular departmental programme (as there was with RHI) I would have expected this to be raised with the Committee.

The ETI Committee’s involvement in the RHI Scheme

3. In paragraph 7 of your earlier statement you note that the ETI Committee had, prior to its meeting on 13 September 2012, considered the SLI relating to the Renewable Heat Regulations (Northern Ireland) 2012 (“the 2012 Regulations”). Please explain from your knowledge and the records available to you:

a. Who the ETI Committee Chair was at the time of those previous meetings

34. Mr Alban Maginness.

b. What consideration the ETI Committee had given to the SLI in relation to the 2012 Regulations

35. The Committee’s consideration of the SL1 was follows:

36. On 19th April 2012, the ETI first considered the SL1 for the 2012 Regulations. I do not recall this meeting, and I am not recorded as being a member of the Committee until 23rd April 2012. However, the ETI Committee records show that the Committee considered the SL1 for the 2012 Regulations, and agreed to request more detail from DETI on incentives for domestic installations, payments to participants, levels of tariffs, and how these were to be calculated, and to receive a timeline for the legislation and a summary of the consultation responses from DETI.

37. The ETI Committee records show that on 17th May 2012, the Committee considered the SL1 for what became the 2012 Regulations for a second time. I do not recall this meeting in any detail, but the records show the Committee considered DETI’s response to the Committee’s request for information of 19th April 2012. The response, it appears, was that as European Commission approval for the RHI Scheme tariffs had not yet been received, exact details of bandings and tariff levels could not be provided. The ETI Committee records show the Committee agreed to await further information being transmitted from the European Commission to DETI, and to request an oral briefing from DETI.

38. The ETI Committee records show that on 24th May 2012 the Committee received an oral briefing from Joanne McCutcheon and Peter Hutchinson of DETI, and that issues discussed at that meeting included Phase 1 and Phase 2 of the RHI Scheme, European Commission approval, and (in general terms) proposed tariff levels for the RHI Scheme.
39. I do not recall the detail of this meeting, but the minutes of the meeting show that the ETI Committee agreed to defer the decision on the subordinate legislation (that is, to defer the decision whether to approve in principle the policy to which the 2012 Regulations would give effect) pending the information required from the European Commission and discussed in the previous paragraph.

40. I have also reviewed a video recording of this meeting held by the Commission’s Communications Office. I note that the ETI Committee was not willing to agree the SL1 without sight of the final tariff figures – at this meeting the SL1 had been presented by DETI to the Committee with ‘indicative’ figures as part of what DETI officials described as a ‘parallel process’ for seeking European Commission and ETI Committee approval before the Assembly’s summer recess.

41. The ETI Committee records show that on 5th July 2012, the Committee again considered the SL1 for the 2012 Regulations, and that the ETI Minister notified the Committee that the European Commission was content to approve the RHI Scheme. It would also appear that on this date the ETI Committee agreed to obtain the views of Action Renewables (who are discussed below) on the policy proposals contained in the SL1 and to receive a further oral briefing from DETI before deciding whether or not to approve in principle the 2012 Regulations.

42. This next meeting of the ETI Committee at which the RHI Scheme was discussed took place on 13th September 2012. The ETI Committee records show that the committee received a further oral briefing from Fiona Hepper, Joanne McCutcheon and Peter Hutchinson, all of DETI. The ETI Committee also considered a response from Action Renewables in support of the RHI Scheme.

43. Having reviewed the video recording of this meeting it is perhaps worth noting that in response to a question from Ms Sandra Overend MLA, DETI officials indicated that the electronic system used to operate the RHI Scheme would produce regular statistics, that DETI anticipated weekly and monthly monitoring of the RHI Scheme, and that figures as to energy use and scheme cost were expected to be published quarterly on the DETI website. DETI officials also indicated that were any issues to emerge with the RHI Scheme, the Department could look at ‘further tweaks’ – it was, DETI officials stated, ‘a living scheme we will keep under active review’.

   c. **What concerns, if any, had been raised, explored or probed?**

44. The issues and concerns considered by the ETI Committee as regards the policy set out in the SL1 are set out in the foregoing paragraphs. I have no recollection of any other issues raised at the ETI Committee.

   d. **What explanation was given to the Committee on behalf of DETI about the type of scheme selected and the design of the tariffs; and**

45. Beyond the details on the scheme selected set out in the foregoing paragraphs, and provided to the ETI Committee in the SL1, I have no recollection of the
48. To my recollection, the ETI Committee understood Action Renewables to be a lobbying group with a particular interest in renewable energy and environmental issues. I recall that the ETI Committee found the evidence given by Action Renewables to be helpful and it seemed straightforward. Action Renewables engaged with the ETI Committee as an interested stakeholder in the renewables field, and I did not see anything unusual in this.

b. **Whether any further information was sought, or any further questions raised, by the Committee (or any of its members) in relation to this representation**

49. No. DETI would obviously have been aware of the issues as this representation was discussed in an open meeting of the ETI Committee and I referred to it in debate. However, beyond the detail set out in my previous statement, where I detailed consideration of the correspondence by the ETI Committee and my speech on the motion to approve the 2012 Regulations, I do not recall this issue being considered again by the ETI Committee.

c. **Whether any further action was taken to explore this issue or to ensure that it was addressed by the Department**

50. To my knowledge, no further action was taken by the ETI Committee to explore the issue, or to ensure that this issue was addressed by DETI. The ETI Committee was assured by departmental officials that the operation of the RHI Scheme would kept under ‘active review’ by DETI. As has been set out above, the ETI Committee is not resourced to carry out ongoing oversight of every aspect of departmental policy, nor would it be aware of operational issues not brought to its attention by DETI.

51. I do not recall that I had particular concerns about the issue of distortion in the renewables market raised by Action Renewables, but to control any such distortion would be an operational issue for DETI. In general, should a provision of any subordinate legislation subject to an Assembly procedure create operational problems for the department which made that legislation, the relevant scrutiny committee would not, unless briefed, be aware of that issue until it became necessary for the department to lay amending legislation (as in fact happened in this case).

6. **Without prejudice to the generality of paragraph 5 above, please give further details in relation to the statement in paragraph 12 of your earlier statement that you “relayed the concern which had been communicated to the ETI Committee from Action Renewables and discussed above, and suggested this was something which might be considered by DETI in what was then termed ‘phase 2’ of the RHI scheme”. In particular:**

a. **Outline when, how, and to whom in DETI, you communicated this concern;**

52. This concern was outlined in my speech in the Assembly, and correspondence tabled in committee is a matter of public record. I would expect a Minister to take
key issues, might that rather suggest that the details of phase 1 — the scheme itself — was not considered in any great detail? Or is it impossible to say that from what we have?

Mr McGlone: I’m just reading the second agreed point there. That was a fairly recurring theme, both at the Committee to establish, by way of promotion, what other Departments were doing on the renewables front.

Mr Scoffield QC: Was that to try to determine what other Departments were doing to encourage the use of renewable heat?

Mr McGlone: Yes, to encourage the uptake. For example, say, the public-sector estates, including this building, and schools and the likes of those to establish just what they were doing to promote the new green agenda.

Mr Scoffield QC: Yes, and I think we’ve seen reference, and the Inquiry has seen reference, in some of the papers to trying to use the public estate, the government buildings, as what’s called a “primer” for the scheme or a primer for the market. I’ve no doubt from the minute that that may well have been discussed, but I’m just wondering if you can shed any light for us on what was discussed about the detail of phase 1; ie what was happening at this stage?

Mr McGlone: No. I’m afraid I can’t, no.

Mr Scoffield QC: You don’t know, OK.

Now, it might be that, therefore, you can’t answer this question as well, but I’ll ask it in any event just so that we have your answer on the record. What we do know from other evidence which is available to the Inquiry, which, again, you might not be completely familiar with unless you’ve picked it up from your reading of the witness statements that have been provided to you, is that, in or around late June 2012, Ofgem have had a telephone conference with the DETI officials and they had said to them the GB scheme was going to have some amendments, and one of the important amendments was that, in GB, they were
going to introduce an interim cost control, which was a power really to suspend the scheme if the expenditure in a scheme year was hitting a level which was beginning to cause concern about breaching the budget. And Ofgem were saying to the Department, “We think that you should wait; you should not introduce your scheme at this stage until you have the detail of the GB regulations, and you should build into your scheme the type of thing that they’re going to be doing in GB shortly”.

Now, the evidence that the Inquiry panel has heard and which it will have to consider and evaluate is that, within DETI, the decision was taken that that wasn’t the way to go, principally because it would set the introduction of the scheme back by a considerable period and that might mean that money which was being made available by the Treasury for that particular year or the next year went unspent and unused, and I think there’s a similar point made in the briefing document to the Minister that we looked at a few moments ago. And the evidence that we’ve received from officials is that this was considered by the Department, it was considered by the Minister and, on balance, the choice was made, “We’ll go ahead with the scheme as it is, we won’t take the extra time to build in this cost control and we can do that in phase 2 at a later stage when we come to amend the scheme”. So I’m explaining that, hopefully accurately, but just as a summary of evidence that the Inquiry has heard that you might not be fully familiar with.

Mr McGlone: Yes. Thank you.

Mr Scoffield QC: The question that I have for you is this issue where Ofgem were saying to the Department, “We think you should pause. We don’t think you should bring the scheme in in its current form. You should amend it to reflect what is happening in GB”. Is that something which was brought to the attention of the Committee? And, again, if your answer is, “I can’t remember”, that’s fine, but, from recollection, is that an issue which was raised with the Committee?
Mr McGlone: I — I can’t remember, but having read through some of the evidence that you referred to and exchanges with Ofgem, I’ve no recollection of that whatsoever being brought before the Committee. If it was shared with the Department, it certainly wasn’t transmitted onwards.

Mr Scoffield QC: I’m just trying to figure out if your answer to the question is you can’t remember one way or the other, or you don’t think it was provided to the Committee.

Mr McGlone: I don’t remember it being shared at any stage with the Committee and, upon looking through some of the evidence that refers to this, that should normally act as a catalyst for —. No, I have no recollection whatsoever of that information being shared, and I’m sure further query of the Department would establish (a) if they shared the information or (b) if they considered it even appropriate to share that information with the Committee.

Mr Scoffield QC: Why wouldn’t they or why do you think they might not have considered it appropriate?

Mr McGlone: That would be a call for the Department and, potentially, if they were on direction, either internally by their own management or further on up the chain by the Minister that this was to be kept in-house, that would be, obviously, how they may or may not handle that issue. As we see, and as I now know, a whole lot of stuff that, potentially, could have been shared with the Committee was not.

Mr Scoffield QC: Now, obviously, this is something that the Inquiry, generally, and the panel will want to consider.

Mr McGlone: Yes.

Mr Scoffield QC: I should, maybe, say that certainly on the review of the evidence that we’ve had to date, there hasn’t been any suggestion that anyone was saying within the Department, “Don’t tell the Committee”, you know, “Keep this quiet”. Again, subject to correction, I don’t think there’s any evidence on paper of it having been shared with the
Committee in terms of any briefing note or any written briefing or update or letter. So, really
what I’m trying to probe with you is whether, through any other means, you were aware of
this warning which has been given by Ofgem?

Mr McGlone: No, I was aware of no other means — by no other means — of that
warning.

Dr MacLean: Mr McGlone, just as a general principle, you were saying there that the
Department might decide that there wasn’t any reason or that they shouldn’t pass
information on to the Committee. Was there a sort of a general principle or is there a
general principle about what information about risks, for instance, that are associated with a
particular policy are or are not passed on to the Committee?

Mr McGlone: Clearly, that’s an issue for the management of the Department, and I would
have to say, as previously being a member of the Public Accounts Committee here, I have
discovered a whole lot of things that otherwise could’ve been done better or shared better
or, if the right person at the right time had taken the appropriate action, outcomes might’ve
been much more positive.

I don’t know why anyone wouldn’t share that level of detail with a scrutiny Committee. I
suppose, back to your issue, Mr Scoffield, the question would have to asked of the
Department: why didn’t anybody — they may not have taken a decision consciously not to
share it, but why didn’t anybody take a decision to share it? These are the things, as I read
through the evidence, that is increasingly coming to my mind and, as I read through it, it’d
make you quite both frustrated and very angry that a lot of information that could’ve been
shared, that could’ve led to a much better outcome for the wider good, just wasn’t shared.

Dr MacLean: What I’m trying to understand is what requirements there are of the
Department to share with the Committee in carrying out its role within the Assembly. Is it
etirely up to the Department to decide what it does or does not pass on?
Mr McGlone: Yes, it would be.

Dr MacLean: There’s no requirement of the Department to make key risk information, for instance, available to a Committee that is there to scrutinise?

Mr McGlone: Not that I am particularly aware, no.

Dr MacLean: So, no requirement?

Dame Una O’Brien: I noted, in this regard, you reference the regulatory impact assessment very early on and, of course, that document contains a summary of the key risks, and I was curious to note that it isn’t routine for the regulatory impact assessment to be shared with a Committee, particularly since there is no published transcript, so presumably it’s possible to share early level documents with a degree of confidentiality with a Committee.

Mr McGlone: To get back to that specific issue about the regulatory impact assessment, I would presume that, had a Committee requested that — and these come in multiples, not just with the RHI but with others — had a Committee requested that, it could’ve had sight of it, but there are so many multiples of these regulatory impact assessments that, for a Committee to get into that level of detail when the presumption is that it has been done — and professionally done — by the people who are charged with it, it would add another tier of administrative work, almost management work, upon a Committee and distract the Committee from its primary role.

Dame Una O’Brien: So, it brings us back to the level of confidence you have in the —

Mr McGlone: Yes.

Dame Una O’Brien: — what you are given and what the people in front of you are saying.

Mr McGlone: Absolutely, and I would have to say that has been severely layered with doses of cynicism since the introduction and the method by which RHI was dealt with by the Department.
12:30 pm

The Chairman: The Committee’s primary role, surely, is to probe and look at and to challenge the policy and the legislation that’s being put to you.

Mr McGlone: Yes.

The Chairman: How could that not be helped by disclosure of risks as seen by the Department putting the material to you?

Mr McGlone: I seriously don’t know. I do not know. Hem —

The Chairman: I thought you said disclosure of that would distract the Committee from its primary role.

Mr McGlone: No. Sorry, distract it from its primary role in terms of volume of or the amount of time that you would have to set aside to do what becomes almost administrative, management-type work which should have been done by the people who are charged with it professionally so. It, a scrut—, as I see it, and I’m the person who’s in charge of the Committee, you would see a Committee becoming absolutely and utterly absorbed in every RIA about every piece of legislation that comes before it. And the time that it would have for oversight of other policy development, for — in this case the Committee which was charged with oversight of economic development, oversight of job creation, oversight of, say, for example, farm safety, and multiples, your time that you should be trying to manage looking at those issues and those priority issues would be absorbed with time reading documents which had, presumably, been read and looked over by the professionals who are charged with those and developed by the professionals who are charged with those.

The Chairman: I just find it difficult to understand how the public would see a decision taken to exclude a document setting out risks that flow from a policy or a piece of legislation from its consideration on the basis that the bureaucratic way in which it is run would add to the amount of its business.
If a Department sees that there a number of risks to the policy that it wants you to approve —

Mr McGlone: Yes.

The Chairman: You say, “We can’t be looking at all of the risks seen by the different Departments that put their policies to us”.

Mr McGlone: Yes. No, sorry —

The Chairman: It’s hard to follow that.

Mr McGlone: No, no, I’ll just explain maybe in detail what I mean by that. We don’t — a Committee does not have time to go through, line by line, every single RIA; however, you would anticipate, if there were serious risks around a policy change, that those would be drawn to the attention of the Committee.

The Chairman: Serious risks in relation to a new policy —

Mr McGlone: Yes.

The Chairman: That had never been tried before, that was volatile, that depended on demand —

Mr McGlone: Yes, as we see now.

The Chairman: You would have thought that —. What you’re saying is that you would be open to specific risks in relation to it.

Mr McGlone: Sorry?

The Chairman: You would be open to considering specific risks in relation to it.

Mr McGlone: Oh yes, absolutely.

The Chairman: That’s all right. We’ve just cleared that up —

Mr McGlone: If there were anticipated risks there, seen at the Department, which would be having major consequences either to the local economy or, in this case, to the public purse.
The Chairman: What you don’t want is a multiplication of, maybe, 20 or 30 risks that are seen as necessary for the Department to record but are not really significant risks.

Mr McGlone: No, no, no.

The Chairman: But if there are significant risks, then you expect, I would have thought, with the candour and openness of the Department, for those to be put before you.

Mr McGlone: Absolutely.

Dr MacLean: But with the structure of things and the approach as it stands at the moment, it sounds to me like you’re entirely reliant on full disclosure to you by the Department of the relevant information.

Mr McGlone: Yes.

Dr MacLean: And that, in this instance, for whatever reason, where that’s not happened, there’s no safety net in your procedures which make sure that something that was missing and should’ve been given to you is actually done.

Mr McGlone: We’re completely reliant upon the professionalism of the officials at the Department.

Dr MacLean: So, one of the things that we need to consider in looking at how to avoid this in the future is what needs to be done to correct anything like that. So, it would be interesting to understand if you have any suggestions as to what you have learnt, as a Committee Chairman, from this, and are still learning from this, and what would need to be done to make sure that, if there were such omissions in future, the Committee had a better chance of picking them up.

Mr McGlone: So much of what I see as I have established the insights I’ve got from the evidence that has been provided to the Inquiry has been basic management.

The Chairman: Well, it takes you back to the professionalism and integrity —

Mr McGlone: Absolutely.
The Chairman: — of those presenting the Department’s case.

Mr McGlone. Yes. Utterly.

Mr Scoffield QC: You’ve obviously been discussing with the panel there the reliance that the Committee places upon the information flow from the Department. Now, the specific issue that we were discussing a few moments ago about what DECC was doing in GB and the introduction of an interim cost control into their scheme, that was something which happened by legislation in London in July 2012. So, that would’ve been a few months before this meeting that we’re discussing of the ETI Committee here. I’m just wondering: was the Committee here keeping an eye on what was happening with the GB scheme or tracking that in any way?

Mr McGlone: It’s hard to tell, but I don’t believe so.

Mr Scoffield QC: So, you think it’s likely that the Committee wouldn’t have aware of the legislative changes which had happened in relation to the GB scheme over the summer.

Mr McGlone: I just don’t know, and I can’t answer with yes or no to that. Just don’t know.

Mr Scoffield QC: OK. Now, as I said to you before, the other evidence which the Inquiry has heard suggests that the view taken within the Department is this was a measure which wasn’t included in the GB scheme at the start. This is the interim cost control that we’ve been discussing. They began their scheme, they ran it for a while and then they introduced it at a later stage. And the evidence to the Inquiry is that it was considered on balance in Northern Ireland that that would be an appropriate way to deal with the matter in Northern Ireland also: to pick up the issue of cost control in phase 2, which was the next step in the development of the scheme.

So, I want to explore with you just for a minute or two what you were told about phase 2 of the RHI scheme. We’ve seen from minutes that was one of the issues that was discussed at this meeting. I want to take you to paragraph 55 of your second witness statement. That’s
WIT-134555. And you’re asked a number of detailed questions here about what happened at the meeting, and one of the questions is: can you:

“Describe what the Committee had been told about ‘Phase 2’ … and what it anticipated would be done at that stage.”?

And you’ve said in your written evidence:

“I have no recollection of what the ETI Committee was told about Phase 2 of the Scheme, but” — you had helpfully in preparing this yourself —

“reviewed a recording of the evidence given by DETI officials … I note the view of DETI officials that it was hoped that Phase 1 would act as a ‘primer’ for the renewables market prior to … Phase 2. … DETI officials also indicated that in Phase 2 of the RHI Scheme it would consider funding emerging technologies” —

and you mention some of those —

“and extending the RHI Scheme to the domestic sector. There was also discussion, prompted by a question from Mr Agnew … of whether the extension of the RHI Scheme to domestic installations was delayed by consideration of the means by which energy use in such installation would be measured”.

So, an issue of metering or deeming.

And, then, I want to take you to paragraph 59. You’ve said something there which is potentially then, I want to take you to paragraph 59. You’ve said something there which is

potentially of interest. You say:

“DETI indicated to the ETI Committee that there would be a continuing ‘active review’ of the implementation of the non-domestic (Phase 1) scheme. The minutes and recordings of ETI Committee proceedings do not suggest that DETI anticipated amendments to Phase 1 of the RHI Scheme; rather that Phase 2 would see an expansion of the Scheme to the domestic sector and the inclusion of additional renewable energy resources.”

Then you say that the issue of updates is considered below. I was interested in what you’ve said, having listened to the recording, that the material you’d considered:
“do not suggest that DETI anticipated amendments to Phase 1 of the RHI Scheme; rather that Phase 2 would”

be about expanding the scheme and including the domestic sector.

It seemed to me that that written evidence might be suggesting that the Committee’s understanding was: phase 2 is about making the scheme bigger, but it won’t be about amending or fixing or tinkering with phase 1. Can you remember, either from your review of the recording — and it might be that the Inquiry panel wants to look at that themselves — or from your recollection of the meeting itself, what you were told about what would happen to the scheme as it was being introduced then in phase 2?

Mr McGlone: No, I don’t have any recollection of that, but I do see that the continuing active review did surface there on that occasion.

Mr Scoffield QC: Yes, and I want to ask you about that as well. In fact, maybe can we go back to paragraph 43, please? We find that on page 134552. You’ve said there again that you’ve reviewed the recording, and at the bottom of that paragraph:

“DETI officials also indicated that were any issues to emerge with the RHI Scheme, the Department could look at ‘further tweaks’ — it was, DETI officials stated, ‘a living scheme we will keep under active review’.”

The questions I have about that are: firstly, what did you understand about that, and was that something that the Committee asked for further details about?

Mr McGlone: Basically, my understanding, then and now, new scheme — you would anticipate that — and this was the way it was, if you like, informed to the Committee [Cough] — excuse me. “New scheme, let’s look at it and see how it develops, how it evolves”, and an integral part of that was this review mechanism.

Mr Scoffield QC: How did you understand the review was going to work?

Mr McGlone: Oh, honestly, that was — there wasn’t any detail given to the Committee as to how this review might work. They gave, as you see there, a commitment to keep it:
“under active review”.

And there is mention again of the review and, indeed, as I read the evidence to the Inquiry, again there was multiple references to a review which should have taken place — I can’t remember the exact date — in 2014.

Mr Scoffield QC: So you were told that a review would happen — there would be active review — but the Committee didn’t seek, nor was it given, any further details about precisely when that would happen or what it would look like.

Mr McGlone: Or the remit of it, no.

Mr Scoffield QC: I wonder if we could go, then, to paragraph 61, and that’s at WIT-134557, and just focus in on paragraph 61 — thank you — yes. And what I want to look at is just the final sentence of this paragraph of your written evidence, because again you’re talking about this issue of review.

Mr McGlone: Uh-huh.

Mr Scoffield QC: You’re referring here to your speech in the Assembly, and you made specific reference to having been informed that there would be a built-in review. But you also make the point, just at the end of that paragraph:

“Clearly, the 2012 Regulations did not impose any statutory obligation to carry out scheduled reviews.”

Was that something that the Committee noticed at the time whenever they looked at the regulations — that they were being told there would be reviews, but that wasn’t included in the regulations itself?

Mr McGlone: But there wouldn’t — you would anticipate that any policy would require review, and you don’t necessarily have to enshrine that in legislation that that take place. That should be basic good management and common sense that that be done, particularly with, as it turned out to be, an innovative scheme such as the RHI. There should — that should be good basic management. It doesn’t need legislation to tell someone, “This is how
you should look at this scheme. This is how you should observe this scheme. This is how you
should anticipate what might happen with this scheme in, say, 12 months’, 24 months’
time”.

Mr Scoffield QC: You’re right, of course, that a legislative obligation is not required to
ensure the review happens or to permit a review to happen, but this is a specific point that
you’ve made in your evidence that the regulations didn’t impose any obligation. The
question I have for you is, obviously, if they had imposed an obligation, we might have seen
that a review did happen. Of course, again, that’s a hypothetical, but what consideration, if
any, did the Committee give at that stage to saying, “You’ve told us that there will be
reviews, but we see that’s not in the regulations. How can we be assured that this will
happen?”?

12:45 pm

Mr McGlone: Well, again, back to — if someone in a professional role assures you that a
review will be conducted, if it’s referred to on a number of occasions and as the evidence
that I’ve seen from within the Department refers to it on multiple occasions, you would —
it’s not beyond the realms of possibility that you would anticipate that that would happen.

Mr Scoffield QC: OK. Thank you.

As I made clear to you earlier on, we’ll come back to look at what the Committee did in
phase 2 at a later stage, and I think one of the things that the panel will be interested in is
obviously what the Department were doing about reviews but what, if any, eye the
Committee was keeping on that issue. But I think that’s probably not for today.

There’s just one other issue I want to address with you in relation —

The Chairman: Mr Scoffield, just before you leave that — and you may be coming to deal
with it, and, if so, stop me please — he referred there to an electronic system under which
the scheme was operated generating weekly, monthly and quarterly updates: is that a
reference to Ofgem, or what is that? [Short pause.] Sorry —

Mr McGlone: Sorry, that’s for me? As I understood that from reading the evidence —

now, the Committee wouldn’t have been privy to this at all — that these reports were

between Ofgem, as the administrative body which had been employed to conduct payments

and that around the RHI, the administration of the scheme, that those were to be reported

and, presumably, were reported back to the Department on a regular basis.

The Chairman: That’s different from your — the start of the sentence refers to “active

review”, then you go on to talk about this electronic system, but that electronic system is

not a review system; it’s a system under which Ofgem, you were led to believe, would

provide weekly, monthly and quarterly updates.

Mr McGlone: Yes, and I don’t know when I say this, but I presume that was done. I don’t

know. To the Department, that is.

The Chairman: Thank you. It was just to clear my own mind on that. Thank you.

Mr McGlone: Thank you.

Mr Scoffield QC: Chair, I had read that as referring to maybe monitoring rather than a

review of the scheme more widely.

The Chairman: It’s just the reference to “electronic system” and so on. We’ll come to

that, I’m sure, in the future.

Mr Scoffield QC: So, just one further issue, then, arising in relation to the consideration

which was given to the policy at this meeting, Mr McGlone, and this really comes back to the

issue of risk that you were discussing with the panel a few moments ago and what

consideration there was about risks. And it arises out of paragraph 45 of your second

witness statement, and that’s at WIT-134553. If we just focus in on paragraph 45, and just,

at the bottom of that paragraph, you say:

“There was no express discussion of the tariffs in the SL1, but in evidence DETI officials recognised the need
to ‘get the tariffs correctly positioned’ and that a tariff set too high would create a ‘long tail ... soaking up money’."  

As we now know, of course, that observation turned out to be somewhat prophetic, but the question I had for you arising out of that is: can you recall if there was any probing of that issue with the officials and how that risk, which is referred to there, could be addressed?

Mr McGlone: No, I can’t recall.

Mr Scoffield QC: OK.

Subject to the panel, then, I wanted to move on to the next meeting, which is a meeting on the 18th of October 2012. Now, we know and we’ve seen from the minute that, in this September meeting that we’ve been discussing in some detail, that the Committee expressed itself as content or having no objection to the SL1 in policy terms. What happened after that was that the rules were then finalised in DETI and they were formally laid in the Assembly, and that then triggers the Committee’s more specific role of scrutinising the draft legislation itself. And that’s what is addressed at the meeting of the 18th of October 2012. So, we know from what we’ve seen previously that the Committee had been provided with earlier drafts of the regulations, with some of the other information, and this is now when the regulations are made and laid.

I wonder if we could turn to LEG-05129. This is an extract from the Standing Orders of the Assembly that I mentioned earlier on. This is Standing Order 43, as it applied at that time. We see that:

"Every statutory rule" —

which would include this rule —

"or draft statutory rule which -

(a) is laid before the Assembly; and

(b) is subject to Assembly proceedings,"
shall stand referred to the appropriate committee for scrutiny."

We see at paragraph (3) that:

“To assist committees in the scrutiny of instruments under this order there shall be an officer of the Assembly known as the Examiner of Statutory Rules who shall carry out any functions delegated to him or her under paragraph (4)(b).”

Then the Committee, at (4):

“may -

(a) scrutinise the instrument itself; or

(b) delegate to the Examiner of Statutory Rules any of its functions in relation to the technical scrutiny of the instrument.”

And then, if we move down the page:

“Where a committee has delegated functions to the Examiner ... under paragraph (4)(b), references to the committee in the following provisions of this order, in relation to functions so delegated, include references to the Examiner.”

and, then, those particular functions are set out in paragraph (6):

“In scrutinising an instrument the appropriate committee shall among other things consider the instrument with a view to determining and reporting on whether it requires to be drawn to the special attention of the Assembly on any of the following grounds”

and they are known, generally, as the technical grounds of scrutiny, and we see at the bottom of that paragraph:

“or on any other ground which does not impinge on its merits or the policy behind it.”

And, as I said before to the panel, we’ll give you just a little bit more information about this process later on today, but what this allows the Committee to do is delegate these technical issues to the Examiner of Statutory Rules. It’s not for him to look at the merits of the legislation or the policy —
Mr McGlone: No.

Mr Scoffield QC: — that's for the Committee. We've seen some evidence from Mr Nabney, who was the Examiner at this time, which suggests that all of these technical issues would, as a matter of course, be delegated by the Committee to him: can you confirm is that your understanding also?

Mr McGlone: That's correct.

Mr Scoffield QC: So, once the Committee has approved the SL1, the regulations in draft are formally laid. The Examiner goes off to do his work. What role, then, is the Committee doing? What's left for it to do, if anything, at that stage?

Mr McGlone: The only thing that might, occasionally, happen is if the Examiner spotted a technicality wrong with the draft legislation. That might then be referred back to the Committee to be shared with the Department, or he could directly refer that back to the Department, but, again, as you correctly point out, it would be on the technical aspects of the legislation.

Mr Scoffield QC: OK. So, he's looking at the technical aspects. Assuming he's content, the Committee's policy consideration really is over at this stage.

Mr McGlone: Yes. That's correct.

Mr Scoffield QC: OK. What we know then happened at the meeting in October — and we see this in paragraph 11 of your first witness statement — is that the Committee considered the information available from the Examiner of Statutory Rules. He didn’t propose to report the regulations for any technical defect. He did notice one or two differences between the Northern Ireland regulations and the GB regulations, but he wasn't raising any concern about those.

And, then, if we go to ETI-06361, this, again, is the Chairman's brief for you for this meeting, and we see there that you should “Remind members” — this at paragraph 39 —
that:

“the Committee discussed this Rule at SL1 stage at its meeting on 13 September”,

which we’ve been discussing:

“and had no comment on the Rule. The Rule will come into operation on 1 November 2012. ... the Examiner of Statutory Rules has considered the draft regulations and has looked at the Regulations and the similar Regulations for Great Britain made under similar powers in the Energy Act ... and noticed one or two differences”.

And those, just for the panel’s note, are chiefly in relation to the fact that installations over 1 megawatt were not eligible for subsidy in the Northern Ireland scheme. And then it suggested that you will:

“Inform members: the Examiner ... has nothing to raise by way of technical scrutiny. He has confirmed that the he [sic] will have no points/issues to raise in his report to the Committee, on this basis he is content for the regulations to proceed as planned with the debate scheduled for the week of 22 October.”

If we just go down the page, and, so:

“Note to Chair: If members are content with the SR please put the following question:

That the Committee ... subject to the report of the Examiner ... recommends that it be affirmed by the Assembly.”

Just two very, hopefully, brief questions arising out of that. If we just go back up the page, what is described about the meeting on the 13th of September is that members had no comment on the rule; that’s in considering the SL1. Is that usually how the Committee’s consent is indicated, or would that be unusual wording?

Mr McGlone: No. That would be standard wording for most SL1s.

Mr Scoffield QC: So, it’s not a case of the Committee saying, “We support you”, or, “We endorse this”, or, “We affirm it”; it’s just, “We’ve no comment. We’ve seen the SL1.”

Mr McGlone: “We’ve no comment”, and then obviously the SR has to be formally put to
the Committee for the Committee’s endorsement.

Mr Scoffield QC: Yes. And that’s provided, and the recommendation here is that:

“If members are content” —

— that is if — sorry, can we just scroll down again — that the Committee will recommend:

“That it be affirmed by the Assembly.”

And we know from the minutes, indeed, that that is what happened here. The caveat to that is that that is subject to the report of the Examiner of Statutory Rules. So, that is just to say to the Assembly, “Unless the Examiner raises a technical issue, we are content.”

Mr McGlone: Yes, unless he flagged up something of a technical nature.

Mr Scoffield QC: And, at this stage, there wouldn’t be any further detailed discussion of the policy or anything of that nature.

Mr McGlone: No, no.

Mr Scoffield QC: So, the next step then in the legislative process is the Committee has indicated its consent, and it then comes to the Assembly debate. And that happened on the 22nd of October 2012. You’ve said in your first witness statement that, in accordance with convention, you, as the Committee Chair which is associated with the Department whose Minister was moving the rule, spoke in the Assembly after the Minister who had moved the resolution. And you were the next called to speak. Maybe we’ll go to paragraph 12 of witness statement 1. Thank you. So you’ve described that then in paragraph 12, and you say, just in the middle of that paragraph:

“I note that on behalf of the ETI Committee I welcomed the 2012 Regulations. I also relayed the concern which had been communicated to the ETI Committee from Action Renewables and discussed above” —

that was the issue about banding —

“and suggested this was something which might be considered by DETI in what was then termed ‘phase 2’”.

I just wanted to ask you why, in particular, did you raise that issue in the Assembly. What
was the point of doing it there?

**Mr McGlone:** Sorry; specifically which issue, Mr Scoffield?

**Mr Scoffield QC:** This is the issue, as I understand it — you’ve referred to the concern which had been raised by Action Renewables. If we just go to the page before, at paragraph 8, you’ll see there that you’re quoting from the Action Renewables response, and you made the point below that — I should maybe just take the panel to this — that, at that stage, you don’t recall anyone suggesting that what people would be doing is installing multiple boilers.

**Mr McGlone:** No.

**Mr Scoffield QC:** But you’ve addressed that, and, then, when we go back to paragraph 12, you say that you had relayed the concern in the course of your speech that had been communicated from Action Renewables and you suggested that this was something that might be considered by DETI in phase 2. I’m not making any criticism of that, but I’m just wondering why you did that in the course of your speech, what purpose that was supposed to serve or what you thought that would —

**Mr McGlone:** When I’m speaking, obviously, in the Assembly, it’s on behalf of the Committee. Now, I’m presuming here, but, in relaying that information onwards, that may well have been as a result of the discussion at the Committee. Procedurally, I wouldn’t be in a position to reflect anything other than the Committee position when I’m speaking in that particular role as Chair of the Committee. Now, in the Assembly — you probably know this anyway — but, in the Assembly, if there’s a Chair of a Committee speaking, first of all, the Chair reflects the views and, if there are actions of that Committee which are being requested of the Department, they do that first. Now, if the Member wishes to move to speak as a constituency MLA, they should, first of all, make the Speaker or the Deputy Speaker aware of that.

1:00 pm
Mr Scoffield QC: So, you’re making the point that your observations here are expressing the Committee views, not your own views as a Member or on behalf of a constituent.

Mr McGlone: Yes.

Mr Scoffield QC: So, you’ve made the point that this issue has been raised: you suggest that it might be addressed in phase 2 and, as I’ve said, maybe in later evidence we’ll look at what, if anything, happened with that phase 2 and what scrutiny, if any, the Committee maintained in relation to that.

Maybe just one final point here before the break for lunch, which just follows from the last point in that paragraph we’ve been looking at. You say you:

“also drew the attention of the Assembly to DETI’s informing the ETI Committee that the RHI scheme would have ‘scheduled reviews built in to ensure that it remains fit for purpose and provides value for money’”

and you say

“Clearly, the [ETI] Committee will pay particular attention to the reviews.”

And, as I’ve said, one of the points that the Inquiry will want to look at in phase 2 of its work is whether the Committee made good on that assurance that it would pay particular attention to the reviews. But the point I wanted to raise with you now was: you’ve been told that there will be reviews and you’re clearly relying on that and you clearly think that’s of some significance. What steps, if any, did the Committee take at that time to make sure that the review would happen and that that wouldn’t fall off either DETI’s radar or the Committee’s radar?

Mr McGlone: I think, maybe, it’s contained in the evidence — the mechanism for whenever an issue such as that, which is basically a management issue, it becomes then a management issue for the Department — well, it’s relayed publicly here, but if it comes up at a Committee and a Committee decides upon that, it’s also relayed through the established channels, which are the Clerk to the DALO, who’s referred to, and that’s the departmental
Assembly liaison officer, who is, if you like, the point person between the Assembly or the Assembly Committee and the Department; they’re a departmental official. They would attend all Committee meetings and report back to the Department on actions that are required. So, that’s, if you like, the established mechanism for making sure that things are picked up upon and actions required by the Committee of the Department are seen through.

Mr Scoffield QC: So, that being the case — and I perfectly understand what you’re saying — the DALO would attend at the Committee and they would be aware of what the Committee is expecting to happen: they would take a record of points to be followed up. What’s the point, then, of making this point in your speech to the Assembly? What does that add? Why was that point which you felt it was important to raise?

Mr McGlone: Well, aside from emphasising the point — and I think we all, maybe, recognised the importance of the scheme and the commitment of public finances to it — so, that would, again, reflect the mood or, indeed, the wish of the Committee. And again, what you’re doing is, OK, it has been referred through the mechanisms of the Clerk to the DALO to the Department, but again, it’s on the public record in the Assembly. And the Minister’s there and departmental officials are there too, so there’s nothing out of the ordinary about that.

Mr Scoffield QC: No, and I’m not suggesting there is, but maybe I can just summarise your evidence, then, in this way. What you’re saying is, you did consider that the issue of review was important enough to emphasise in your speech. You were making the point that you’d been told that reviews would happen. But aside from that, the Committee didn’t do anything itself to ensure that the reviews would happen, but you assumed that in the normal course, the Department would do what it had said it would.

Mr McGlone: The Committee is a scrutiny Committee: it’s not a management body for the Department. Maybe in retrospect now, they should have had a management body, but
we just can’t manage every single conceivable item that the Department is supposed to do for them.

The Chairman: Taking that into account, Mr McGlone, and bearing in mind you’re not carrying out management on behalf of the Department, you clearly felt, as a Committee, that the reviews in relation to this new, difficult project, that reviews were important —

Mr McGlone: Yes.

The Chairman: — and you felt that was important enough to tell the Assembly. You were told that the reviews were built in, and I take the point that you make that that doesn’t necessarily mean they are the subject of legislation. But “built in” is a term which the Committee might have asked the Department about. For example, one way of building in a review would be to say, “Every six months” —

Mr McGlone: Yes.

The Chairman: — “Every year”. You, I think, told us earlier today that you did not question the mechanism, the built-in mechanism, and you were passing on to the Assembly that a built-in mechanism would work, but you didn’t know what the built-in mechanism was.

Mr McGlone: No, I don’t think the Department did, at that stage.

The Chairman: Well, that would’ve been helpful if you’d asked about it.

Mr McGlone: Um, well, in retrospect, now, I wish we had —

The Chairman: No, it’s quite a fine point I’m making. You might have been told, “We will review this”, and I can understand that you might have left that — you might have left that to the Department. More likely, you might have asked them. But you were told the reviews were built in, and if you wanted reassurance that the reviews would be effective, I think the member of the public would think, “Well, what do you mean by ‘built in’? Every five years? Every six months?”. Even though there’s no legislation, was that not a reasonable enquiry for
you, as a Committee, to make: “What do you mean by ‘built in’ here?”?

Mr McGlone: That’s a fair point, and, um, I just — it’s probably easy now to look back at
the occasion and say, when things were peaking, when the Department said that as — I
think — I think I did pick up in the evidence that the Department said it would review this at
phase 2 or in preparation for phase 2. Now, specifically, should we have — as a Committee,
have said, “We want a review in two years’ time, in one year’s time” —

The Chairman: I’m not saying that. I’m saying I’m surprised — a member of the public
might be surprised — that, when you are given the term “built in”, that you didn’t ask, “Well,
in what way are they ‘built in’? What do you mean by ‘built in’?”

Mr McGlone: Yes.

The Chairman: Now, you might say to me, “You’re sitting here as the Chair of an Inquiry
with an absolutely lack of political experience.” Maybe “built in” is a phrase that you hear
every day in this Assembly, but it does seem to me that if you are told, not just that there
will be reviews, that they are built in, that would have been a not unreasonable question for
the Committee to have said, “In what way? How are they ‘built in’?”

Mr McGlone: It’s an absolute fair point. I don’t believe it was explored at the time.

There’s nothing to advise us that it was explored at the time, but it — it’s an absolutely fair
point.

The Chairman: All right, thank you very much.

Mr McGlone: Thank you.

Mr Scoffield QC: Chair, I’d hoped that we might be finished with Mr McGlone’s evidence
this morning, and unfortunately we’re not quite finished yet, so we’ll have to continue after
lunch. But I don’t think the remaining questions should take any more than half an hour, 45
minutes max.

The Chairman: You can probably blame me for that.
The Chairman: Yes.

Mr McGlone: But it’s —. I would have to venture, listening to the RHI inquiry, and there’s a whole lot of things that we could learn from, and that’s probably — that definitely is one of them. How do you keep track of a Department without being in a management or policing role? And we can all do things better.

The Chairman: I fully accept that your point of view, which is a valid one, is that the main responsibility was that of the Department who were putting into effect this scheme. It’s just that, with this particular point, where you have gone out of your way to pick up what Action Renewables have said, to make the point to the Assembly, that would seem to me a matter of some common sense that you would keep that for your future reviews.

Mr McGlone: Absolutely, and I take the point. And it’s probably another one of those issues that we can add to how the learning curve for Committees and how they can function from now onwards on this. It has definitely been a steep learning curve for me, as we — as I see the evidence given to the Inquiry just, um, emerge in some detail before us.

The Chairman: Can I make it clear that I don’t want to be blamed for — by Committee members who have multiple files sitting in front of them and have to read them every night. This is just a particular point. It seems to me to be a —.

Mr McGlone: Yes. It’s a very valid one, and thank you for it.

Dr MacLean: It’s the sort of thing that the Committee Clerk or some part of the structure, I would think, would be able to pick up, without a great burden on all of the members of the Committee having to do it as well.

Mr McGlone: And that’s a good point too. And, um, it’s probably an issue — well, it is an issue of resourcing, where you have four members of staff servicing the needs of a Committee which covers virtually every aspect of the economy — other regulatory aspects, health and safety issues, tourism, you name it. And there are just four members of staff in
the Assembly who are helping you to wade your way through all that stuff.

Dr MacLean: That almost argues for — the complexity and the number of things argues for some sort of written record that helps a limited resource manage with that. Otherwise, you tend to argue that the whole exercise is a waste of time, because you’re not able to follow up and ensure that sensible measures that you’ve highlighted are actually ever picked up.

Mr McGlone: Yes. And I would just like to add that the resource we had – and the Clerk that we had was very good at his job, and, um, if we just had a few more resources and a few more personnel to help us do our job, it would make things a whole lot easier.

Mr Scoffield QC: I think that there’s a number of issues that come out of the exchange you’ve just had with the panel there, Mr McGlone. One of the issues is how the Committee, with such limited resource, can get itself across the detail of all of the Department’s work. I think that’s probably a topic we might return to later.

I think the point that the panel have been asking you about is a slightly different point, and that is, where, through your work, you have already done the hard bit — so you’ve spotted an issue and you’ve said, “This is something that the Department needs to remember, might want to come back to. There’s something here that needs to be probed further”, how you make sure that that then doesn’t drop out of the picture or drop off the agenda or fall from the collective memory. Now, this might well be an issue that we come back to when we talk about the updates that you’re getting at a six-monthly interval. But as I understand the way the procedure works, as you’ve explained it in your evidence, before each meeting you will be provided with a briefing pack for that meeting, but where, for instance, you’re given a briefing by the Department, your Committee’s briefing pack will focus on the recent update, but it wouldn’t generally go back into what the Chairman might call “the file”, to compare that with previous updates or look at your previous work and pick
very, very heavily qualified and tainted with a degree of cynicism. Even if we had asked for more, would that information and evidence have been presented to us in a fulsome, proper and professional way? Because it certainly wasn’t when the scale of the — when the issue was going completely out of control in November ’15, when the Department knew that. When asked about the urgency of the situation, it was a fairly blasé response that I got.

Mr Scoffield QC: Now, that’s an issue that we’ve touched on already a few times this morning.

Mr McGlone: Yes.

Mr Scoffield QC: The Committee is reliant, to a large degree, on what the Department tells it. It expects openness and candour from the Department. Generally, you get that from officials.

Mr McGlone: Yes.

Mr Scoffield QC: If it’s not forthcoming, that’s not something where you would say there’s a failure in the procedures. It’s just that people aren’t doing what they ought to do, in your view. I want to take that as read. Leave that aside.

Mr McGlone: Uh-huh.

Mr Scoffield QC: Was there anything else, in your view, which you think hindered the Committee’s ability to keep as tight a grasp on the RHI scheme, or what the Department was doing with the RHI scheme, as you might now have wanted to be the case? If so, what were those things which were hindering the Committee from getting to grips with this issue and, maybe more importantly from the panel’s perspective, how do you think those processes could be improved for the future?

Mr McGlone: I think fundamental to it all is the free flow of information, and proper comprehensive and open information. To anybody —. Any of us who —. If any of us in our jobs, if we’re not getting that proper information or, indeed, if the information is misleading,
we’re gonna arrive at the wrong situation. There’s no doubt about that.

Now, that’s clearly a management issue. It may well be an ethical issue within the Civil Service too, as to how people outside the statutory oversight Committee are very well briefed as to what’s happening at the Department and yet that same level of detail is not willingly provided to the Committee: the elected representatives. But —.

Mr Scoffield QC: I think I’m probably speaking for the panel when I say they have that point.

Mr McGlone: Yes.

Mr Scoffield QC: The Department should know what’s going on. It’s a question for the panel. Once the Department know what’s going on, they should be open with the Committee about that.

Mr McGlone: Totally.

Mr Scoffield QC: Let’s take that as read.

Mr McGlone: Yes.

Mr Scoffield QC: Is there anything else that you think would provide a Committee, such as the Committee you chaired, with additional tools or resources to ensure that they are better able to keep an eye on things, perhaps, assuming, which you would hope wouldn’t be the case —

Mr McGlone: Yes.

Mr Scoffield QC: — that the Department either isn’t realising that things are going wrong or isn’t telling you?

Mr McGlone: Um, the only other way that you can elicit information is by —. Well, I’ve thought about this. The PAC did a great job, but the PAC is always delving into issues post the event and post things happening. I would venture that the one thing probably, in light of the Chair’s comments too, is resources for a Committee. The ability to have —. We’re sitting
—. The difference between a Committee and a Department is we’re sitting with four good
members of staff versus 400 at the Department: 1% of the resource that they have, and it
appears they still can’t do the job properly.

So, I think that that extra or additional resource provided to Assembly Committees would
be of a benefit.

Mr Scoffield QC: Unless you have any further thoughts, Mr McGlone, on that last
question —

Mr McGlone: No.

Mr Scoffield QC: — I think that concludes the questions that I was hoping to ask you. I
was a little optimistic in thinking we might get finished well before lunch, but I’m pleased I’m
certainly finished by lunch. The panel now might have one or two questions for you as well,

Mr McGlone.

1:00 pm

Dame Una O’Brien: Mr McGlone, I saw on that minute of when Dr McCormick came to
the Committee that one of the things they were also briefing Committee on was the reform
of the Department, DETI, as then was. And commonly, Committees such as yours, in addition
to looking at specific programmes and projects, also look at the functioning of the
Department and its performance, perhaps in common with looking at the annual report and
so on.

Mr McGlone: Yes.

Dame Una O’Brien: Do you feel that you were able to perform that function adequately
so that these broader issues about the capability of the Department and their performance
were issues that you could raise with the top management of the Department on a regular
basis?

Mr McGlone: No, I don’t think we could, given the level of resource that we had and the
appearing before us or the evidence or information or advice that they were giving to us.

Mr Scofffield QC: And, again, we might look at some of this in a bit more detail, but when you say, looking back now, that there might be concerns that you have now that wouldn’t have been apparent at the time, can you explain to the panel what those might be?

Mr McGlone: Well, as I viewed, as I have, the evidence that has been presented to us, I’ve seen multiple occasions where the internal management of the Department was completely askew, where budgetary controls, where handover notes, where, indeed, the annual managed expenditure, the AME —

The Chairman: Mr McGlone, if you’d just stop there for a moment.

Mr McGlone: Sorry, yes.

The Chairman: You did use phrase “when you’ve seen the evidence that had been presented to us”. I’m assuming that your reference is to evidence presented to the Inquiry.

Mr McGlone: Yes, Mr Chair. Yes, indeed. Yes, thank you.

The Chairman: Yes, please continue.

Mr McGlone: So, and as I see the management internally of the Department — information, handover notes, all that type of stuff — now, as I see it revealed by departmental officials, it presents a very poor picture.

Mr Scofffield QC: A number of the things that you’ve mentioned there I think are probably issues that we’ll return to in phase 2, and what I’m interested in exploring with you this morning is whether any of those concerns that you’ve mentioned now, looking back on what happened retrospectively, apply to this phase 1 period that we’re looking at up to 2012, the end of 2012.

Mr McGlone: No, there would’ve been nothing apparent whatsoever.

Mr Scofffield QC: OK. Thank you. Sorry, I assume you mean at the time there was nothing apparent?
explain or to answer questions about that. It’s not a scrutiny of legislation per se; it’s an
informative to scrutiny of primary legislation, as we know, and subordinate legislation.
Officials would attend. We’re utterly reliant, at that stage, on the professionalism of those
officials to describe to us what they’re bringing forward and why they’re bringing forward
that legislation. If the Committee is happy with that, usually the Department then brings it
forward as an SR into the Assembly.

Mr Scoffield QC: And once the SR or the statutory rule — the regulation itself — is laid in
the Assembly, so you’ve actually got the text of the proposed legislation at that stage. Can
you describe, just briefly, what the Committee does at that stage, what kind of scrutiny there
is of the actual text of the —

Mr McGlone: Well, because the Committee has already read and seen the informative, it
would come before the Committee and it’s more or less “Yes, this is what has been
described to us. This is putting the meat on the bones of what has been described to us by
the officials. This will be coming before the Assembly.” And, usually, on most occasions, that
would have been accepted by members because it has already been described to them by
the departmental officials.

Mr Scoffield QC: Are you suggesting that, when the text of the statutory role is provided,
really the Committee’s primary task at that stage is to check that it is broadly in accordance
with the policy which has been described?

Mr McGlone: Yes.

Mr Scoffield QC: Would the Committee go beyond that to look more closely at the
provisions?

Mr McGlone: Well, there is a further opportunity whenever it appears in the Assembly. If,
say, for example, between Committee having looked at it and it coming in the Assembly, all
other — at that stage, all other 107 Members of the Assembly would have opportunities to
raise questions or queries around the SR when it hit the Assembly Floor.

Mr Scoffield QC: Is it not the case that those who are involved in the Committee would likely have a greater interest or perhaps a greater expertise in the legislation that is coming before it?

Mr McGlone: Absolutely. The practice — and this is a practice right across all Committees and within the Assembly itself — the practice or the outworkings of that would normally be that those who were down to speak on a given bit of legislation — this or any other legislation — were normally the people or the members for those respective parties who were fronting from that Committee, who were on that Committee because it was assumed that, within their own parties — I can only speak for my own — that they were across that brief and they would speak on that in the Assembly. Of course, there would be other occasions — and I can speak here wearing my experience or wearing my hat as experience as Deputy Speaker in the Assembly — there would be occasions when other Members who weren’t on the Committees who might have an interest in that would speak as well.

Mr Scoffield QC: OK. I wonder if we could just have a look at WIT-134545. I just want to pick up one of the issues that we’ve been discussing, and that’s really the level of scrutiny which is applied to a measure of this type. This is your second witness statement, and I just want to have a look at what you say in paragraph 6. But you say there, just in the second sentence of paragraph 6:

“The ETI Committee’s scrutiny of subordinate legislation is necessarily less detailed than that engaged in as regards primary legislation.”

And I want to ask you two questions about that. I want to ask you why that is, and the second question is — and this is something that the panel might be considering later on in the course of looking at other evidence — the procedures for the scrutiny of primary legislation involves a great deal of Assembly processes and stages, and there is an
opportunity for Members of the Assembly, in a variety of ways, to scrutinise the provisions of primary legislation. With subordinate legislation the Committee’s scrutiny, apart from the final vote on the resolution, the Committee’s scrutiny really is it.

Mr McGlone: Yes.

Mr Scoffield QC: And the question I have arising out of that is: is it not more important therefore that the Committee really gets into the detail of this type of legislation?

Mr McGlone: Well, just to draw the distinction between primary and secondary legislation, the primary legislation is of course bulky, usually very detailed and long, and that, as of itself, requires a lot more time, a lot more effort and, indeed, a lot more allocation of Committee resource to do that. You could be dealing with very, very, very lengthy documents as part of primary legislation, as I’ve already given you the example of the cooperative and credit unions legislation. On secondary legislation, you are reliant upon — it could be on occasions just a small piece — a page. You are reliant upon the professionalism, the knowledge and experience of those officials who come before you to describe what this is about.

Mr Scoffield QC: I think, actually, the point you’ve just made probably touches upon the point I want to take you to next. I wonder if we could just scroll down to paragraph 10 of Mr McGlone’s statement that we’re looking at, and because you say in the course of paragraph 10 that:

“As regards the Renewable Heat Incentive ... Scheme, the ETI Committee respected the primacy of DETI in making the ... Regulations”.

And I just wanted to ask you if you could give some further detail about what you meant by that phrase that “the Committee respected DETI’s primacy” in this process.

Mr McGlone: Well, that’s a simple statement of fact. It’s for the Department to bring these issues and items of legislation before the Committee, so they were the prime mover in
Mr Scoffield QC: Maybe just following on from that, then, if we can move to another point, which I think you’ve just mentioned in one of your answers a few moments ago. Could we go to paragraph 25, please, of Mr McGlone’s second witness statement? You were asked specifically if you felt that the ETI Committee was an effective means of scrutinising departmental policy and to outline any impediments that you were aware of in the effectiveness of that function.

Mr McGlone: Yes.

Mr Scoffield QC: And we see there that you’ve said: “The ETI Committee was in my view an effective way of scrutinising DETI policy”.

But then there’s this caveat: “provided that the Committee was supplied with all relevant facts and information relating to the exercise of departmental functions by DETI.”

And if we go to the next paragraph, I think you pick up on that theme and — a theme that you’ve already mentioned this morning, because you say in the second sentence there that: “the members of those committees were heavily reliant on the department with which the committee was associated for the provision of briefing sufficient to enable the committee to achieve an informed picture of the work of a department in a particular area.”

And, then, you say something similar. We need to turn to this in paragraph 33, but you say there:

“In retrospect, of course, there was information relating to the RHI Scheme which might have been brought to the attention of the ETI Committee at an earlier stage.”

It might be actually that we’ve covered this in some of our discussion already this morning. In that paragraph, I think you’re referring in particular — it’s just at the top of the page which is on the screen now — I think you’re referring in particular to the budgetary