**Why having debate on same day as Committee approval**

- It is somewhat unusual for a motion to be debated on the same day as scrutiny by the ETI Committee but my intention was to have the changes introduced from 4th November. Unfortunately due to delay in progressing the necessary legal and financial clearances I was unable to bring this to the house earlier but I wanted to ensure I did so as close to the 4th November as possible.

**Why has the medium biomass banding being changed?**

- The current medium banding of 20 – 99Kw with a tariff of 6.4p / Kwh is much more attractive than the higher banding (100 Kw and above) which only attracts a tariff of 1.5p / KWh.

- This has encouraged the installation of:
  - o multiple 99kW boilers to receive the 6.4p tariff instead of larger single installations (at 1.5p tariff); or
  - o 99kW boilers to receive the 6.4p tariff even though a larger sized boiler is required.

- Extending the banding upwards to 199kW will encourage the installation of larger more efficient boilers.

- The banding change also brings us into line with the GB scheme in this regard.
61. I remained in touch with this work, but was not directly involved in the budget discussions, preparation of the business case, or drafting of the legislation on cost controls.

62. The proposed date of implementation of the cost controls legislation was 4 November 2015. However, there was a further delay of some two weeks, with the legislation not passed until 17 November 2015. As the rate of applications had, by that time, risen very sharply, even a two week delay had very significant implications for the cost of the scheme. In view of this, on 12 December 2016 Dr McCormick asked me for an explanation for this additional delay. My reply to him (of the same date) is attached at Annex 6. The fundamental reason for the delay was that the legislation had taken longer to draft than had been expected, due to the inclusion of a range of measures in addition to the powers to change tariffs. This added to the complexity of the task. With hindsight, it would have been preferable to concentrate on the tariff changes alone, leaving other provisions for another day.

63. I was not directly involved in the oversight or drafting of the legislation, and was not aware of delays in the drafting until an advanced stage. Had I been aware of the delay, and of the risk of a spike in demand, I would have asked that the legislation focus solely on the introduction of controls.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: [Signature]

Dated: 6 June 2017
Andrew

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

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

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

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

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

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

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

Chris
Mr Stewart: Yes, that’s my view on the basis of my understanding that it was the non-tariff provisions that were the main cause of delay. John Mills, I think, in his evidence disagreed with that slightly, and I have to accept that John was closer to this work than I was and he may be right in that.

Stuart Wightman had also pointed out something that I had omitted in my explanation to Andrew McCormick of the time, which was that the decision to schedule the RHI regulations in the way that they were scheduled meant that a set of NIRO regulations was going to pass through the Assembly more quickly. And that meant that DSO, in clearing regulations, had to give priority to NIRO over RHI. But I think, those factors notwithstanding, given the outcome, yes, it would’ve been better to fix the immediate problem and leave everything else for another day.

Mr Scoffield QC: You mention there that DSO were, rightly in your view, giving priority to the new NIRO arrangements, given that they were coming before the Assembly first. More generally speaking, would energy division at this stage, in or around September 2015, have been giving priority to NIRO rather than the changes which had been recommended and by now agreed on the RHI scheme?

Mr Stewart: Probably unfair to say “giving priority”. Absolutely trying to do both at once because there was a real imperative to do both at once and probably a very difficult resource-juggling task on a daily basis for John and for Stuart and for others.

Mr Scoffield QC: One of the reasons I ask you that question is because, if we have a look at WIT-18789, we see there’s an email from around this time from you to Mr Mills. You say there:

“NIRO has rightly been our top priority of late”.

Not saying, of course, you know, “We’re not doing anything on RHI”, but you:

“welcome an opportunity to review progress ... to date and next steps in relation to RHI.”
9. Please explain as fully as you can why you consider (see paragraph 149 of your first witness statement) that the introduction of tiering took longer to introduce than imagined. (In the course of your answer please also address, separately, the reasons, in your view, for the additional two weeks delay in the implementation of tiered tariffs, from 4 November 2015 to 18 November 2015.)

42 Tiering took longer than imagined due to the time taken to get 1) Ministerial clearance; 2) financial clearance and 3) legal clearance and because of the constraints of the way the RHI scheme was set up. This was compounded by lack of clarity on scheme funding.

- Context: The scheme was set out in legislation and could not easily be altered. It had been established with no controls. This could only be changed following an Assembly debate. This is a lengthy process. There was a lack of clarity around funding which meant that we did not perceive the funding risk to be as high as in December 2015. The scale of uptake during autumn 2015 was also unanticipated.

- Ministerial clearance – This is set out at question 10 below. It took two months to clear the submission of 8 July. The agreement which was necessary to get approval added an extra month.

- Financial clearance – Approval for future funding of the scheme was only provided in October 2015. The need to secure Ministerial clearance in order to obtain financial clearance is set out in paragraph 162 of my first statement.

- Legal Clearance – DSO cleared the amendment regulations in October 2015 and this had a knock-on effect in terms of Assembly scheduling putting the debate back to mid-November.

The last point is the reason for the two weeks delay in November – though the more
fundamental causes arise from the first 3 points.

10. **Provide as full details as you can of any discussions you had with the Special Adviser (Timothy Cairns) throughout the period of July to September 2015 in relation to the RHI Scheme and/or the 8 July 2015 submission to the Minister (including, where possible, the date of any such discussion, who was present and the nature and content of the discussion, insofar as you can recall it)**

43 See my answer to question 3 for my earlier interaction with Mr Cairns. Once we had submitted the 8 July submission it was his job to clear it (subject to whatever questions, clarifications or comment he wished to contribute) and pass it to the Minister for decision. This did not happen as set out below.

44 On 17th July 2015, Mr Wightman followed up on clearance of the submission of 8th July (see email from Mr Wightman to me included in bundled of papers sent to Inquiry). It may have seemed premature to press for clearance after a week over the July holidays but, as I have explained, this was in the context of having attempted to pave the way for clearance. Mr Wightman’s update advised that the Minister’s PS, Mr Kerr, had said the Special Adviser was consulting party colleagues.

45 On 28th July there was a meeting between Mr Stewart, Mr Cairns and myself on the 8th July submission – in particular its non-clearance (I was on leave for most of the period between the issue of the submission and this meeting). This is recorded on Mr Stewart’s statement (WIT-11538) and reference is made to an Annex 5 (which I could not locate).

46 On 30th July, I provided Mr Cairns with a note of the discussion which he had requested for use by him in discussion with those he was consulting. Whether he did so or not is unknown to me. However, this was some 20 days after receiving the submission and the note was reflected what was already in the submission. Mr Cairns had not suggested that he did not understand any aspect of the submission. I did not
“fundamental causes arise from the first 3 points.”

And I wanted to take you just briefly to Mr Stewart’s evidence. This is WIT-11539, paragraph 62 of his evidence. He’s talking about the additional two weeks, from the 4th to the 18th of November. He says that:

“the rate of applications had, by that time, risen very sharply, even a two week delay had very significant implications for the cost of the scheme.”

Dr McCormick had asked him for an explanation of that in December 2016. But he says:

“The fundamental reason for the delay was that the legislation had taken longer to draft than had been expected, due to the inclusion of a range of measures in addition to the powers to change tariffs. This added to the complexity of the task. With hindsight, it would have been preferable to concentrate on the tariff changes alone, leaving other provisions for another day.”

So, I wanted to ask you do you agree with his assessment that, although the fundamental reason for this additional two weeks, he says, was getting the regulations cleared, an anterior reason was that the division was really trying to do more in these regulations than they should’ve been?

Mr Mills: Yes. I was looking at that, and I think, basically, I do think there’s some justice in that. I’ve been unable to follow the chronology through to see how precisely the two weeks came to be added, but, certainly, when we got the, the financial clearance, which was 29th of October, I am not sure that we got the DSO sign-off until, um, after that. So, I think that was the last thing that happened. We were then stuck in the procedure of how long it just takes to process a piece of legislation with going to the Committee, having to move a motion, and that basically takes, it basically takes about three weeks. To his credit, Stuart managed to knock a week off that by having the debate and the Committee clearance on the same day, which is unusual. So, prior to that, I think there was, there was some —. I think what we got caught up in was putting—. The regulations would go to DSO, and DSO would sign-off. Then
we would go to Ofgem, and then Ofgem would complain or want something changed, and then we went back to DSO. So, that took, um, that took some time to clear. Um, so, it does seem to me that it is the legal clearance that was the, the last issue. Whether, then, it was inclusion — there isn’t much else. There is the 199 — the 99 up to 199 and the CHP are the other two main things in it. Um, there are one or two other technical things in it, but I think, though —. I’m not sure I would agree that the inclusion of those things really caused the problem. I do agree that it might’ve been wise to leave almost everything else out, but when we put them in back in June, I think it was so we could say, “Well, we’re not only doing things that constrict the scheme; we’re also doing things to improve the scheme”.

Um, but I thi —. The central problem is that we, from my point of view, concentrated on the political clearance. The next most difficult thing was the financial clearance, and, from my point of view, the legal clearance was, um, the least threatening to the timetable, um, and it’s unfortunate because I could’ve done something about that. I think what I should’ve done is what eventually happened in January/February 2016, in that we could’ve used other resources in the division to take that burden off the branch and just get somebody else to, um, to progress the, um —. The head of the legislation branch could’ve taken that over and that might’ve been something we could’ve done to, er, speed that up.

Mr Scoffield QC: And that was Ms Vaughan, is that right?

Mr Mills: Mrs Vaughan, yes. Helen Vaughan.

Mr Scoffield QC: And we see there’s quite a significant amount of involvement from her in January ’16 and ’17 — sorry, January and February ’16 — in terms of planning the legislative timetable and the Assembly involvement and so on. Now, that didn’t happen in autumn 2015. Are you saying —?

Mr Mills: No, that’s not, but it could’ve happened.
Mr Stewart: There isn't. I think your summary of it is correct. There are a number of factors. It may well have been that it was unavoidable and that the original timescale was too optimistic. Nevertheless, we shouldn't have, as it were, left that to chance. I think we should've minimised the risk.

Mr Scoffield QC: I wonder if we can have a look at DFE-10252. Now, this is an email from you around this time. It’s the 13th of November 2015 and it illustrates that the Department was aware of just quite how much even a week’s delay was likely to cost. Now, this email is sent by you in the context of an enquiry which is made by Dr McCormick, he having been contacted by Timothy Cairns, who in turn had been contacted by Arlene Foster with an enquiry about the possibility of moving the debate on the regulations back by a week or two. Andrew McCormick, in order to assist him with going back to Tim Cairns, comes to you to look for some advice on the financial implications of that. And you say there:

“As discussed, the current rate of application is around 130 per week; with average payments in the range £20k to £30k per year.

Assuming a similar application rate and the lower end of the payment range, a delay in the tariff order could result in costs of £2.6m per year for 20 years.”

So, putting back the tariff order, which, I think, is the draft regulations, by a week could give rise to the type of figure you’ve mentioned there.

“It is difficult to predict what the cost would be if the tariff order is made as planned, but it is designed to curtail payments (and, as a result, curb demand), so they would be very much less.”

So, the message you’re giving there is: even a week's delay is very serious in financial terms. Is that a fair summary?

Mr Stewart: Yes.

Mr Scoffield QC: I don't want to spend a great deal of time with you on this because I
INV/1151/2015: THE RENEWABLE HEAT INCENTIVE SCHEMES (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015 – MOTION FOR APPROVAL

Issue: Assembly Debate on the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015.

Timing: Debate scheduled for 12.00-12.10 on Tuesday 17 November 2015.

Need for referral to the Executive: There is no requirement for formal approval from the Executive. However you informed Ministerial colleagues of your proposals in a write-round on 9 November 2015.

Presentational Issues: Interest from key stakeholders and the media in relation to the proposed tariff and scheme changes.

Freedom of Information: Some parts of this submission may be exempt under section 35 of the FOI Act.

Financial Implications: Funding for scheme payments is via Annually Managed Expenditure, (AME).

Statutory Equality Obligations: Screened out.

PFG/PSA implications: NI Renewable Heat Incentive supports the PfG interim target of 4% renewable heat by 2015 and the SEF 10% target by 2020.

Legislation Implications: The draft Statutory Rule requires the affirmative resolution of the Assembly.

Recommendation: That you use the attached speaking notes and briefing for the debate (Annexes A-D).
Background

1. The draft Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015 will provide new tariffs for combined heat and power installations and introduce cost control measures. The draft Regulations are subject to clearance by the ETI Committee at its meeting on 17 November 2015. You will be presenting the draft Regulations for affirmative resolution in the Assembly on 17 November 2015. We will update you on progress through the Committee if necessary. You previously issued a Press Release on 8th September 2015 advising of the forthcoming changes.

Assembly Debate

2. You will open the debate and speak for few minutes. Members will then have the opportunity to contribute before you wind up the debate and ask for the Regulations to be approved.

3. The following briefing for the debate is attached for your consideration:

   - **Annex A:** Draft opening and winding up speeches
   - **Annex B:** Q&A on the Domestic Renewables Heat Incentive Scheme
   - **Annex C:** Draft Regulations as laid before the Assembly (attached separately)
   - **Annex D:** Explanatory Memorandum

4. John Mills and I will be in attendance at the Assembly on the day. We are also available for pre-brief if required. I would be grateful if your office could arrange the appropriate box passes.

Coming into operation

5. Subject to the regulations being approved by the Assembly, the scheme amendments will come into operation on 18 November 2015.

Recommendation

6. That you note the attached speaking notes and briefing for the debate (**Annexes A-D**).

STUART WIGHTMAN
ENERGY DIVISION
Tel: 028 9052 9425

Distribution List

cc: Andrew McCormick
    Chris Stewart
    Eugene Rooney
    John Mills
OPENING SPEECH FOR DEBATE ON THE RENEWABLE HEAT INCENTIVE SCHEME REGULATIONS (NORTHERN IRELAND) 2015

• I beg to move.

• [Mr Speaker/Mr Deputy Speaker], this statutory rule is being made under powers contained in the Energy Act 2011, which prescribes that these Regulations must be laid in draft for approval by affirmative resolution of the Assembly.

SUSTAINABLE ENERGY & RENEWABLE HEAT

• In addressing sustainable energy our focus often falls on renewable electricity. Yet a greater proportion of our energy use is for heat. This includes domestic central heating, heating of commercial premises and heating for industrial processes such as poultry production.

• NI’s predominant form of heating fuel is oil – in contrast to GB where it is gas which is a much cleaner fuel.

• The Executive is supporting the extension of the gas network through a grant of £30m for Gas to West and we hope to see this progress over the next few years along with the extension of gas to East Down.
• The Executive’s principal vehicle for promoting renewable heat is the Renewable Heat Incentive. This is designed to deliver the Executive’s PfG renewable heat targets of 4% by 2015 and 10% by 2020.

• This will contribute to the UK’s target of 15% renewable energy by 2020 as required by the EU Renewables Directive.

THE RENEWABLE HEAT SCHEME

• The Non-domestic RHI was introduced in 2012. It incentivises the uptake of renewable heat technologies such as biomass, heat pumps and solar thermal installations. It provides payments for 20 years based on heat energy generated. The level of tariff is dependent on the size and type of technology and is calculated to cover capital costs, operating costs and non-financial ‘hassle’ costs over the lifetime of the technology.

• Following this the Domestic RHI Scheme was introduced in December 2014, replacing the earlier Renewable Heat Premium Payment scheme.

• It was always the intention to introduce changes to the Non-domestic Scheme to make tariff changes and introduce cost control measures. These were consulted on in 2013 but since then implementation of the Domestic scheme was given priority. These regulations begin the process of introducing measures to update the Non-domestic scheme.
CHANGES IN THE LEGISLATION

• First, new tariffs are being introduced for Combined Heat and Power (CHP). This is to allow CHP projects to claim for their renewable heat under the RHI and their renewable electricity under the NI Renewables Obligation.

• Second, the medium biomass tariff is being extended to encompass larger boilers. This will incentivise single larger boilers and brings NI into line with GB.

• Third, a tiered tariff and cap are being introduced for new small and medium biomass installations to ensure value for money.

FUNDING & UPTAKE

• Just under £38m of funding has been provided by Treasury for the Northern Ireland RHI schemes during the 5 year 2011-16 period. However, low levels of uptake generated an under spend of around £15m during the first 4 years.

• My Department’s focus over the past 12 months was on trying to improve the performance of the RHI scheme to achieve the Executive’s PfG target and ensure that the renewable heating sector and the wider NI economy benefitted from this investment. To give one example, extensive advertising campaigns were conducted during 2013/14 and 2014/15.
• This has resulted in increased scheme uptake over the last 12 months. The total number of renewable heating installations under the Non-domestic scheme has increased from just over 250 to over 1600 during the last 14 months. Current estimates suggest around 6% of our total heating needs in Northern Ireland are now met through renewable heating technologies.

• In addition to the reduction in CO2 emissions that this brings, the local NI economy is benefiting from over £23m of annual investment through the RHI schemes. This investment brings benefits in terms of job retention and creation in the energy services sector.

FUTURE CHANGES & COST CONTROLS

• But unfortunately all this success comes at a cost. Total application numbers for the NI non domestic scheme are now exceeding our highest estimates. We therefore need to look at the full range of cost control measures that have been introduced in GB. Of necessity this will include measures to curtail the scheme should Treasury funding be restricted.

• I will take decision in light of any announcements in the spending review. However, these are matters for another day.

CONCLUSION

• At this time I ask members to support the Regulator.
I would like to thank those who have contributed to today’s debate. Energy matters are obviously a major issue for this Assembly and for local households and businesses.

In answer to some of the issues raised today, I want to say….

BRIEFING TO BE PROVIDED BY OFFICIALS AS REQUIRED

I am committed to expanding opportunities to provide greater choice for consumers, promoting more sustainable technologies and supporting those wishing to change from conventional fossil fuel heating. The development of the renewable heat sector promotes a more diverse and competitive heating market in Northern Ireland: it brings new jobs and business and contributes to our targets for cutting carbon emissions.

I commend the motion to the House.
RENEWABLE HEAT INCENTIVE - Q&A

What changes are being introduced?

- Firstly, a new RHI tariff is being introduced for Combined Heat and Power.

- This means new CHP installations will be eligible for both support under the NIRO for electricity and support under the RHI for the heat.

- Secondly, the medium biomass tariff is being extended to encompass larger boilers.

- This means installations from 20Kw up to 199Kw in size will receive the current 6.4p tariff. This is in line with GB and will encourage the installation of larger more efficient boilers.

- Thirdly, a tiered tariff and cap are being introduced for new small and medium biomass installations to ensure value for money.

- This means new biomass installations will receive the standard tariff for the first 1314 peak hours of operation each year. Annual kilowatt hours of heat thereafter will be paid at a reduced rate up to an annual cap of 400,000 KWh after which no further payments will be made.

- The two tier tariff structure is being introduced for small and medium biomass heating plants to ensure the affordability of the RHI going forward.
Why having debate on same day as Committee approval

- It is somewhat unusual for a motion to be debated on the same day as scrutiny by the ETI Committee but my intention was to have the changes introduced from 4\textsuperscript{th} November. Unfortunately due to delay in progressing the necessary legal and financial clearances I was unable to bring this to the house earlier but I wanted to ensure I did so as close to the 4\textsuperscript{th} November as possible.

Why has the medium biomass banding being changed?

- The current medium banding of 20 – 99Kw with a tariff of 6.4p / Kwh is much more attractive than the higher banding (100 Kw and above) which only attracts a tariff of 1.5p / KWh.

- This has encouraged the installation of:
  - multiple 99kW boilers to receive the 6.4p tariff instead of larger single installations (at 1.5p tariff); or
  - 99kW boilers to receive the 6.4p tariff even though a larger sized boiler is required.

- Extending the banding upwards to 199kW will encourage the installation of larger more efficient boilers.

- The banding change also brings us into line with the GB scheme in this regard.
**What is the basis for the annual 400,000kWh cap?**

- The majority of biomass applications are from the poultry sector which has a very high heat requirement for its broiler houses.

- The annual cap is based on the annual heat requirement of a typical poultry house as assessed by DARD in association with key stakeholders.

- It is expected that most installations would not reach the annual cap.

**What is the timescale for the other Non Domestic changes?**

- I hope to bring forward further legislation in the New Year to strengthen existing administrative controls for both schemes.

- I appreciate that these changes could be viewed as reducing incentives but as I have already indicated, it is estimated that over 6% of our heating needs in NI are already being met through renewable technologies. Over 3,250 renewable heating installations have already been incentivised through the RHI schemes. These cost controls are essential to ensuring that RHI spending remains affordable.
Will systems installed before November 2015 be impacted by these changes?

- No, only systems installed after today are affected by these changes.

What has the uptake been on the Non Domestic RHI to date?

- The NI Non-domestic RHI has received over 1600 applications of which 780 have been approved. The majority of these have been for biomass installations. The other technologies are 8 Ground Source Heat Pumps and 2 Solar Thermal.

- The NIRHI has been slow to take off but applications have risen dramatically this year.

- This means that we will now meet our PfG target of 4% renewable heat by 2015.

- On the other hand it means we will have to look at the affordability of the scheme.
What is the main reason for the increase in the uptake of biomass?

- The uptake of biomass in the poultry sector is the main reason for the significant increase in applications.

- Biomass has considerable animal welfare benefits for birds and this is being heavily promoted by Moypark as the main player in the poultry sector having some 800 broiler houses.

- In addition there are the benefits in CO2 savings and wider support for the agri food sector.

- However, whilst the uptake of the RHI must be seen as positive there is a need to ensure that the scheme remains affordable and available for all sectors seeking to install renewable heating. There has been in the order of a 100% increase in applications over the past 6 weeks.
What is the Northern Ireland Renewable Heat Incentive?

- The Northern Ireland Renewable Heat Incentive (RHI) is a DETI scheme that provides financial support to domestic and non-domestic renewable heat generators.

- This is the primary means by which NI contributes to the UK renewable heat targets set under the Renewable Energy Directive. The target for the Northern Ireland RHI is to increase the uptake of renewable heat to 4% by 2015 and 10% by 2020 (baseline position of 1.7% in 2010).

- The 10% target equates to an additional 1600 Giga Watt Hours of renewable heat per year by 2020. To provide some sort of perspective on this. In the domestic sector, 1600 Giga Watt Hours is roughly equivalent to 40,000 domestic boilers (running 3 hrs / day) – quite a challenge!

- The interim target of 4% renewable heat by 2015 has been included in the Programme for Government. Current estimates suggest we have already exceeded this target with as much as 6% of our heat demands coming from renewable.

- In addition to achieving reducing CO2 emissions, the RHI has had wider benefits in terms of fuel security, lower emissions and ‘green jobs’.
How much is this all Costing?

- Just under £38m has been allocated to the NI renewable heat incentive for the 5 year period 2011-15

- A dramatic increase in uptake of the Non Domestic Scheme has seen total application numbers rise from just over 250 to over 1600 in the last 14 months.

- Committed annual RHI expenditure is expected to reach £30m by the end of 2015/16.

- The Non Domestic Scheme provides payments for 20 years and the Domestic Scheme for 7 years. Total RHI Scheme expenditure over the lifetime of both schemes is expected to reach somewhere in the region of £900m.

Where’s the funding coming from?

- Funding for renewable heat is currently provided by the UK Treasury as AME outside of the NI Block Grant.

- Administration and marketing costs for both schemes are funded directly by DETI as part of the block grant.

- Costs for administration are just over £200k pa.
How will the Executive’s budget cuts impact on the RHI?

- The renewable heat funding is currently provided by Treasury outside of the NI Block Grant.

- It is therefore not affected by the Executive’s current budgetary pressures but could be affected by wider cuts made by Westminster and the Government’s current Spending Review which is to be published on 25 November 2015.

- The Treasury funding cannot be used to cover the administration or marketing costs of the NI RHI. I have therefore prioritised funding for RHI administration within my Department’s budget.

How have the tariffs been designed?

- The RHI tariffs are designed to cover the additional costs of renewable heat technologies compared to traditional fossil fuel systems and provide a rate of return of investment of 12% - the capital costs should be recouped within 8 years.
What is the comparison with GB on take up

- Current levels of uptake for the Non-domestic RHI Scheme in Northern Ireland are higher than the rest of the UK. NI Non-domestic applications currently account for a significantly greater percentage of UK total renewable heat than our population percentage. This demonstrates that the NI RHI tariffs are providing effective incentives for switching to renewable heat.

Why are the tariffs different to those available in GB?

- The Northern Ireland tariffs have historically been lower than those offered in the GB scheme as they are designed to incentivise businesses and households in the main to switch from oil to renewable technologies rather than natural gas, as in GB.

- This reflects the heat markets in the two areas with oil the dominant heating fuel in NI at 75%+ and natural gas the dominant heating fuel in GB 70%+. As oil is normally a more expensive fossil fuel, less of an incentive is required to switch to renewable heat. Although oil prices are currently low it may be optimistic to assume they will remain so.
Will tariffs have to be reduced in the future like the ROCs?

- Cost control measures including a two tiered tariff system and annual payment cap are now being introduced for small and medium biomass under the non domestic RHI. This is to ensure affordability of the scheme going forward.

- The budgetary situation will be kept under review and consideration will be given to tariff digression measures along with measures to curtail the scheme should this be necessary.
Draft Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015

(Separate attachment)
EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEMES (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015

SR 2015 NO.

1 INTRODUCTION

1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Statutory Rule. It does not form part of the Statutory Rule.

1.2 The Statutory Rule is made under Assembly under Section 113 of the Energy Act 2011 and is subject to the draft affirmative resolution procedure.

2 PURPOSE

2.1 The Northern Ireland Renewable Heat Incentive (RHI) was introduced in 1 November 2012, following the passage of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012. This scheme provides long term incentive payments for new generators of eligible renewable heating in the non domestic sector. The RHI was further extended to the domestic sector through the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014 on 9 December 2014.

2.2 A number of further changes are now being introduced to the RHI. New tariffs are being introduced for Combined Heat and Power, (CHP), to coincide with changes to the NIRO and ROC’s. Cost control measures are also being introduced for small and medium biomass which will see a two tier tariff structure put in place, change in medium biomass banding and an annual payment cap.

2.3 The Statutory Rule prescribes matters relating to eligibility criteria, requirements and obligations of participants of the RHI scheme as impacted by the scheme changes.

3 BACKGROUND AND POLICY OBJECTIVES

3.1 Heating energy accounts for around half of all total energy consumed within Northern Ireland. Over 95% of our heating fuels come from imported fossil fuels. Increasing the level of renewable heat to 10% by 2020 is a Programme for Government target and is in line with Northern Ireland’s expected contribution to the United Kingdom’s obligations.
under the EU Renewable Energy Directive\(^1\). It also supports the Department’s wider energy policy goals of increased diversity of energy supply, reduced emissions and potential for ‘green jobs’ and skills.

3.2 The regulations put in place new tariffs for CHP, (new renewable installations and those converting from fossil fuels) and also cost control measures for small and medium biomass through a two tier tariff structure and change in the medium biomass banding upwards to 199kW as with GB to encourage larger more efficient boilers. An annual payment cap of 400,000 kWh is also being introduced for new installations. These control measures are required to bring RHI spend back within budget and to ensure affordability of the scheme going forward.

4 CONSULTATION

4.1 DETI consulted on phase 2 of the RHI scheme from 22 July 2013 to 14 October 2013. Consultation seminars were held in Armagh, Belfast and Coleraine. A total of 50 responses were received and the vast majority of respondents were supportive of the proposals. These Regulations and changes are the further outworking from consultation that by way of new tariffs and cost control measures.

4.2 The final policy paper in relation to these scheme changes can be accessed at :-
https://www.detini.gov.uk/publications/final-policies-phase-2-rhi

5 EQUALITY IMPACT

5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has established that the proposed Regulations do not have any significant equality impact.

6 REGULATORY IMPACT

6.1 The policies on the Renewable Heat Incentive (RHI) have been the subject of a Regulatory Impact Assessment (RIA).

7 FINANCIAL IMPLICATIONS

7.1 Funding for scheme payments is via Annually Managed Expenditure, (AME). Administration costs are met by DETI.

8 SECTION 24 OF THE NORTHERN IRELAND ACT 1998

8.1 This Statutory Rule does not contravene Section 24 of the Northern Ireland Act 1998.

9 EU IMPLICATIONS

9.1 The Renewable Energy Directive requires the UK to ensure that 15% of its energy consumption comes from renewable sources. The requirement extends beyond electricity to heating and cooling and transport. Almost half of the final energy consumed in the UK is in the form of heat, producing around half of the UK’s CO₂.

9.2 The requirement to meet the very challenging 15% renewable energy target falls at Member State level, not at Devolved Administration level. However, while energy is a devolved matter for Northern Ireland, each devolved administration is expected to contribute as much as possible to the overall UK target.

10 PARITY OR REPLICAORY MEASURE

10.1 Similar legislation has been introduced in Great Britain in respect of the RHI scheme in operation there. Ofgem is responsible for developing and administering the scheme on behalf of DECC. However, whilst Ofgem also delivers the non domestic RHI scheme on behalf of DETI the specifically tailored Northern Ireland domestic RHI scheme is administered in-house by DETI.

11 ADDITIONAL INFORMATION

Commencement

11.1 The Statutory Rule comes into operation on the day after it is made.
Mr Bell: That’s right.

Mr Scoffield QC: My point is a slightly different one. Albeit there might not have been anything you could do about that, were you not angry that this position had been allowed to arise, and did you not want to take steps to either find out how it had happened or to make sure that something like that didn’t happen again under your watch?

Mr Bell: Well, the difficulty was I’d now been told a figure of an increase in applications. I hadn’t been told the financial costs, even with the AME and the arrangements that were there. So the information that should’ve informed my anger — I am angry now that I know, but I wasn’t at the time because I hadn’t got the detailed information. I’d got an overview or a summary.

11:00 am

Mr Scoffield QC: OK. Just —.

Mr Bell: Which —. Maybe I should’ve pressed. I accept that. I should have pressed.

The Chairman: Well, let’s just look at what had happened. You had in the end of August agreed to a four-week postponement of the cost controls that were to be brought into effect. And you’ve told us that that was just something that was a — if you like, a throwaway line in the — you didn’t see the submission, you were told, “We need cost controls”, “We need another four weeks”, and it was — shouldn’t have been any, any difficulty about that. You now knew, at this time, that taking those four weeks and the further two weeks, which I can understand were procedurally driven, the amount paid out had doubled and that there had been a very significant and substantial spike in applications. Why? Forget about what you were saying to the Assembly for the moment, why did you not go back to Mr McCormick or Mr Stewart and say, “Look, what were you doing during the four weeks you told me would have no effect here? It was just a matter of getting the thing done. And now I know this is what happened. There were 600 applications”? Why did that not happen? Why did
delay.

Mr Scoffield QC: I mean, I think that gives rise to a further question, which is, um, this: although what you’ve just said is entirely consistent with your evidence from yesterday, once you realised that there had been a significant effect in the delay, did you not say to Timothy Cairns, for instance, “You need to go back to whoever it was in the party and tell them that what they’ve done has actually had a much more significant effect than you may have appreciated or they may have”?

Mr Bell: Yes, I should’ve. I didn’t do it. Um —.

The Chairman: This is a delay in which Mr McCormick said you’d no interest.

Mr Bell: Yes, that’s correct.

The Chairman: Yes. And now you find out, six weeks later, that there’s been a 100% —.

Mr Bell: Yes.

The Chairman: All right. Thank you.

Mr Scoffield QC: I want to move on from, um, what we call phase 3, which is the period up to the 2015 regulations, into phase 4, which is about closing the scheme to new applicants. So, just before I do that, Chair, if there’s any further questions the panel has about phase 3, I think probably now would be an appropriate time to raise them.

Dame Una O’Brien (Statutory Inquiry Panel Member): I do just have one question, Mr Bell. I want to —. I’m still mulling over yesterday’s evidence, and thank you for all the time you spent answering our questions yesterday. But on one particular point I’m still unclear, and that is. — So I wanted to give you another opportunity to help us. And that relates to: what did you understand prior to the 24th of August? And it’s very important for the Inquiry’s terms of reference that we’re clear on this. And my recollection from yesterday is that, apart from the issues meeting in June, you had no other conversations that you can recollect about the RHI at all — until there is the conversation at the issues meeting on the 24th of
19. In particular, provide an account of how you dealt with any disclosures raising concerns about the Scheme made to you, or your Civil Service officials or party staff, at any time. In relation to each such instance, identify precisely how the concerns were communicated to you (or, as the case may be, your officials or staff).

See above at 18.

20. Specify when you first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel used to produce heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how you so became aware.

I first became aware of this in or around July 2016 when the problem was identified by the NIAO.

General

21. Considering the RHI Inquiry’s Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.

See reply to 22, below.

22. Considering the RHI Inquiry’s Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.

Following a telephone conversation on 13th November 2015, with a constituent, Stephen Harron, I telephoned Timothy Cairns and enquired about the possibility of moving back by a week or so the introduction of the tiered tariffs. However, on being briefed on costing dimensions around such a possibility I accepted matters should proceed as planned.
Mr Scoffield QC: I wanted to deal with just one further exchange before we move on from phase 3 and move into what we call phase 4, and that is an exchange that you had with Mr Cairns in November —

Mrs Foster: Oh, yes.

Mr Scoffield QC: — 2015 on behalf of a constituent, Mr Harron. And you’ve dealt with this in some detail in your written evidence. So, I think we can probably deal with it fairly quickly. But if we go, first of all, to WIT-20522. And this is your first witness statement. And, at paragraph 22 of that witness statement, you’ve said there that:

“Following a telephone conversation on 13th November 2015, with a constituent” —

Mr Harron, you —

“telephoned Timothy Cairns and enquired about the possibility of moving back by a week or so the introduction of the tiered tariffs. However, on being briefed on costing dimensions around such a possibility I accepted matters should proceed as planned.”

12:30 pm

Then you come back to that in your second witness statement. If we have a look at WIT-20621. And you mention that in your answer at paragraph 64; you say that you:

“considered this” —

exchange —

“to have been a form of lobbying”

because

“he was a constituent who was keen for business reasons that the introduction of cost controls be delayed.”

And then you go on later in this statement — paragraph 65 and following — to give some further details. I won’t take the panel through all of those, but you say that you knew that Mr Harron worked for a boiler installer, although you didn’t know which one, and he was
calling because he had clients who’d ordered boilers which hadn’t arrived, and therefore he
was concerned about trying to get the boilers installed and accredited before the new tiered
tariffs came in.

And just another couple of evidential references to complete the picture for the panel
here. If we have a look at IND-12572. This is the email that you’ve provided to us, where
you’re told that he was due to see you, but he’s asked if you’d give him a call. You do that on
the 13th of November, and then we know that you ring Mr Cairns on that date. Now, I
wanted to ask you: did you speak to Mr Crawford about this at any stage —

Mrs Foster: No.

Mr Scoffield QC: — can you recall?

Mrs Foster: No.

Mr Scoffield QC: So, you dealt with this directly between yourself and Mr Cairns.

Mrs Foster: Yes.

Mr Scoffield QC: And you’ve said —. If we go to WIT-20627. This is your second witness
statement; paragraph 80. And just at the bottom of that page, we’ll see that you’ve
indicated that you —. That might be a wrong reference. Yes, there we have it. You say that
you weren’t aware of either the funding position in relation to the scheme or the extent of
the overspend in relation to the scheme. So, at this stage, you were still in the dark, it seems,
about —

Mrs Foster: Yes.

Mr Scoffield QC: — both of those concerns. And you’ve said that, if you had’ve been
aware of those issues, you wouldn’t’ve asked the question on Mr Harron’s behalf.

Now, I want to take you, then, to what Dr McCormick says about this, and he deals with it
principally in his first witness statement, and we’ll find that at WIT-10524. And he describes
it — the exchange on this page. Because what happens is you speak to Mr Cairns. Mr Cairns
texts Dr McCormick. Dr McCormick goes to Mr Stewart to get some details about how much it would cost to put the tiered tariffs back, and that comes back to him, he sends it to Mr Cairns, Mr Cairns speaks to you, and then he goes back to Dr McCormick, so there’s quite a complicated exchange of information. But what I’m really interested in is just the basis on which the enquiry was made in the first place because you’ll see in paragraph 2.50 there in Dr McCormick’s first witness statement, he says he:

“took a phone call from Timothy Cairns in which he” —

that’s Mr Cairns —

“asked if it would be possible for the debate on the reduction in the tariff to be delayed by a week or so. My recollection of the conversation is that he referred to a concern that not enough businesses in Fermanagh had been able to apply — there was certainly a reference to Fermanagh. It was clear that the call was on behalf of Arlene Foster. I said I thought that any extension would be impossible but undertook to check and get back with detail.”

And, in due course, he did that, and we’ve seen the documentary evidence of it.

Now, you have said in your most recent witness statement, paragraph 8 — that’s WIT-20698 — that you:

“do not recognise this language” of

“not enough businesses in Fermanagh” being —

“able to apply”.

You say that wasn’t the basis on which the enquiry was made. Just again, for your note, Chair, Mr Stewart, in his oral evidence to the panel, at TRA-11717, said that he did recall Dr McCormick mentioning to him this notion about not enough businesses in Fermanagh being able to apply. That’s something which seems to have stuck out in his head. Although Mr
Cairns says he doesn’t think that that phrase was used, so —.

Mrs Foster: I think sometimes when people see Foster they see Fermanagh, Mr Scoffield, but that wasn’t the case on this occasion. I do represent south Tyrone as well, so it’s not —. I mean, Mr Harron is from County Fermanagh — that’s correct — he phoned me, he said he was working for a company, but the company was from south Tyrone; it wasn’t from Fe—.

That’s why I say I don’t recognise the language about Fermanagh.

Mr Scoffield QC: So, the suggestion that you may have said on the call to Mr Cairns, “Not enough businesses have been able to apply” —.

Mrs Foster: No, definitely not.

Mr Scoffield QC: That didn’t happen?

Mrs Foster: No.

Mr Scoffield QC: Is that something that Mr Cairns might’ve mentioned, perhaps even flippantly?

Mrs Foster: Well, I don’t know whether Mr Cairns assumed that because it was me ringing up it was about a Fermanagh issue. I’m not sure.

Mr Scoffield QC: What did you know at that stage about how many businesses had or hadn’t applied in Fermanagh?

Mrs Foster: Well, I didn’t know anything about it, because there was no information available or had come to me. So, when Stephen Harron telephoned me as a constituent who lives in Fermanagh and South Tyrone, I made the query to the appropriate special adviser. I didn’t bother the Minister with it, I went straight to the special adviser, expecting him to get a quick yes or no. And that’s what he did: he came back and said, “It’s gonna cost x”, and I said, “Well, that’s nonsense then”, and I went back and told Stephen Harron, “No”, and that was the end of it.

Mr Scoffield QC: Now, at —.
Mrs Foster: So it was really an information-gathering exercise as an MLA as opposed to a Minister asking a question, because this was a constituency appointment that’d been made in the constituency. He couldn’t come in, he asked me to ring him, I then rang him.

Mr Scoffield QC: At this particular stage, the spike was in full flow.

Mrs Foster: Yes, so I now understand, yes.

Mr Scoffield QC: Was that something you were aware of at that time?

Mrs Foster: No.

Mr Scoffield QC: Did Mr Harron discuss any of that with you?

Mrs Foster: No, he didn’t. He just said that there were a number of people who had ordered boilers, they weren’t going to be able to get them through, they would only need another week to get them through, was there anything I could do. So that’s why I made the query.

Mr Scoffield QC: I wanted to ask you as well, was there any particular reason why you spoke to Mr Cairns rather than going to the Minister?

Mrs Foster: No, insofar as I thought it was the fastest way to get an answer. That’s the reason why I went to the spad.

Mr Scoffield QC: And would that have been usual for constituency enquiries like that to have been made informally with the special adviser rather than formally by correspondence?

Mrs Foster: Well insofar as I wanted to get a quick answer. I knew that Timothy would be able to get it off the officials quickly.

Mr Scoffield QC: And the answer came back, “It’s not going to be possible because of the” —.

Mrs Foster: The huge cost — 2.6 million or whatever the amount was. And I said, “Well, absolutely not”, then that’s what I told to Stephen.

Mr Scoffield QC: And can you remember, did Mr Cairns outline to you in his call back to
you the cost which had been given to him?

Mrs Foster: I think so, yes. Yes.

Mr Scoffield QC: Is there anything else that you want to say about this particular episode before we move on?

Mrs Foster: No, no. I think it’s been explained in the witness statement.

Mr Scoffield QC: Chair, unless there’s anything further that the panel have in relation to phase 3, I was going to move into phase 4.

The Chairman: Yes. Do you have any other questions about phase 3?

Dr MacLean: I just had the one just to confirm if there was any involvement that you had with the business case that was put to DFP for — well, the application was for retrospective approval of the irregular spend and prospective approval of the spend going forward?

Mrs Foster: No, I don’t believe that that was brought to me, no.

Dr MacLean: Would that in your experience have been the sort of issue that should’ve been put in a submission to the Minister?

Mrs Foster: Yes, I would’ve expected to have seen that in a submission looking back now, yes. But I wasn’t at the time made aware of it. I think it was October that happened, wasn’t it?

Mr Scoffield QC: Yes. That was late October, but the basis on which you’re saying that that ought to have been brought to you, is that because an issue with irregular spend had been raised?

Mrs Foster: Yes.

Mr Scoffield QC: You’re not suggesting that you would’ve been provided with the details of every business case that was provided to date?

Mrs Foster: No, no, no. It’s because of the irregular spend and the knowledge that there was now going to be an overspend as well, although I’m not clear whether that was very
that at IND-00005. And you passed that figure on, and he comes back to say:

“we are back from the brink!”

And you say:

“Well done and many thanks.”

And you’ve covered this —

Dr McCormick: Yes.

Mr Scoffield QC: — in your written evidence fairly fully. I think it’s a summary of your position to say that the request was made, it was answered, ultimately it went nowhere, but, for that weekend period between the 13th and the 16th, you were, as you say in your third witness statement:

“faced with a material uncertainty, which was a genuine and serious concern.”

So, you were concerned about what might happen.

Dr McCormick: Yes.

Mr Scoffield QC: It came to nothing in the end.

Dr McCormick: Yes. I don’t think this amounts to anything at all in the great scheme of things. I saw Tim Cairns’ view of this. Maybe I didn’t pick up on his intonation or demeanour on this. Maybe that’s more difficult in text message. Maybe the first phone call —. I think the first phone call; it was pretty clear that this wasn’t going anywhere. That I was saying to him, “We won’t be able to live with this, but let me get back to you with chapter and verse”. I suspect that’s what I said to him. Maybe that should have sufficed, actually, and we didn’t need this, and maybe I took it more seriously than I should’ve done. This is —. There’s nothing here, and I don’t see any material difficulty or any tension between the various statements that have been made about it. It seems —. It just —. It causes a bit of anxiety. Maybe it shouldn’t have.

Mr Scoffield QC: Was it unusual for the request to come through a special adviser in this
Andrew

As discussed, the current rate of application is around 130 per week; with average payments in the range £20k to £30k per year.

Assuming a similar application rate and the lower end of the payment range, a delay in the tariff order could result in costs of £2.6m per year for 20 years.

It is difficult to predict what the cost would be if the tariff order is made as planned, but it is designed to curtail payments (and, as a result, curb demand), so they would be very much less.

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<td>Well done and many thanks.</td>
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The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011(1).

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015 and come into operation on the day after the day on which they are made.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(2) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

3. The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012(3) are amended in accordance with regulations 4 to 16.

Amendment of regulation 3 (renewable heat incentive scheme)

4. In regulation 3 in paragraph (2) for the words from “used in a building for any of the following purposes” to the end substitute—

“(a) used in a building for any of the following purposes—
(i) heating a space,

(1) 2011 c. 16
(2) 1954 c.33 (N.I.)
(3) SR. 2012 No. 396
(ii) heating liquid,
(iii) carrying out a process; or
(b) used otherwise than in a building for either of the following purposes carried out on a commercial basis—
(i) cleaning,
(ii) drying.”.

Amendment of regulation 5 (eligible installations generating heat from solid biomass)
5. In regulation 5(b) after “1,000kWth” add “except for CHP installations”.

Amendment of regulation 8 (eligible installations generating heat using heat pumps)
6. In regulation 8 (a)(ii) after “liquid” insert “or ground liquid”.

Amendment of regulation 9 (eligible installations which are CHP systems)
7. In regulation 9—
   (a) omit paragraph (2)(a);
   (b) in paragraph (2)(b)
      (i) for “is” substitute “was”;
      (ii) after “NIRO” insert “prior to 1st October 2015”.

Amendment of regulation 16 (metering of plants in simple systems)
8. In regulation 16(1) for the “; and” at the end of sub-paragraph (b) substitute a full stop and omit sub-paragraph (c).

Changes in location of accredited RHI installations
9. After regulation 24 insert—

“Changes in location of accredited RHI installations
24A.—(1) This regulation applies where an accredited RHI installation is moved to a new location during its tariff lifetime.
(2) No periodic support payment may be made in respect of the RHI installation after the date on which it is moved to the new location until—
   (a) the owner has notified the Department of the change in location; and
   (b) the Department has concluded that the accredited RHI installation should continue to be accredited.
(3) On receipt of a notification under paragraph (2) the Department—
   (a) may require the owner to provide such of the information specified in Schedule 1 as the Department considers necessary for the proper administration of the scheme; and
   (b) must review the accreditation of the RHI installation to determine whether it continues to meet the eligibility criteria in the new location (except the requirement in regulation 12(1)(b)) and accordingly whether it should continue to be accredited.
(4) Where the Department concludes that the RHI installation should continue to be accredited it must update the central register referred to in regulation 22(6)(c) if appropriate.

(5) Where the Department concludes that the accredited RHI installation should continue to be accredited, periodic support payments calculated from the date of that decision and for the remainder of the tariff lifetime of that accredited RHI installation shall be payable.”.

Amendment of regulation 36 (payment of periodic support payments to participants)

10.—(1) Regulation 36 is amended as follows.

(2) In paragraph (7) after “The tariffs” insert “for installations accredited before 18th November 2015”.

(3) After paragraph 7 insert—

“(7A) The tariffs for installations accredited on or after 18th November 2015—

(a) for the period beginning with 18th November 2015 and ending with 31st March 2016, are the tariffs set out in Schedule 4; and

(b) for each subsequent year commencing with 1st April and ending with the next 31st March, are the tariffs applicable on the immediately preceding 31st March adjusted by the percentage increase or decrease in the retail prices index for the previous calendar year (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards).”.

(4) After paragraph (8) insert—

“(9) Where an accredited RHI installation falls within the small or medium biomass tariffs as set out in Schedule 4—

(a) the tariff for the initial heat generated by the installation in any 12 month period commencing with, or with the anniversary of, the date of accreditation is the relevant tier 1 tariff specified in Schedule 4;

(b) the tariff for further heat generated in that same 12 month period up to a maximum of 400,000 kWhth is the relevant tier 2 tariff; and

(c) any further heat generated over 400,000 kWhth in the same 12 month period shall not be eligible for RHI payments.

(10) For the purposes of paragraph (9), “the initial heat” means the heat in kWh generated by an accredited RHI installation running at its installation capacity for 1,314 hours.”.

Amendment of regulation 37 (periodic support payments for accredited RHI installations in simple systems)

11. In regulation 37(1) for the “; and” at the end of sub-paragraph (b) substitute a full stop and omit sub-paragraph (c).

CHP systems accredited in relation to the Renewables Obligation.

12. After regulation 38 insert—

“38A.—(1) No periodic support payments may be made in relation to any heat generated by any capacity of a CHP system to which paragraph (2) or (3) applies.

(2) This paragraph applies to capacity which generated heat and electricity before 1st May 2013 and which—

(a) uses solid biomass or solid biomass contained in municipal waste to generate heat and electricity, and
(b) forms part of a generating station which—
   (i) is accredited under the NIRO, and
   (ii) is or at any time since it was so accredited, has been a qualifying combined
       heat and power generating station within the meaning of article 2 of the
       Renewables Obligation Order.

(3) This paragraph applies to capacity which first generates heat and electricity on or
    after 1st October 2015 and—
    (a) which—
        (i) uses solid biomass to generate heat and electricity;
        (ii) forms part of a generating station which is accredited under the NIRO, and
        (iii) is capacity in respect of which a declaration made in accordance with article
            26(8) of the Renewables Obligation Order; has been made; or
    (b) which—
        (i) uses solid biomass contained in municipal waste to generate heat and
            electricity;
        (ii) forms part of a generating station which is accredited under the NIRO; and
        (iii) forms part of a generating station which is or at any time since it was
            so accredited, has been a qualifying combined heat and power generating
            station within the meaning of article 2 of the Renewables Obligation Order.

(4) For the purpose of this regulation, “the Renewables Obligation Order” means the
    Renewables Obligation Order (Northern Ireland) 2009(4).”

Amendment of regulation 42 (treatment of additional RHI capacity)

13. In regulation 42 in paragraph (5)(e) for “paragraph (7)” substitute “paragraphs (7) and (7A)”.

Amendment of Schedule 1 (information required for accreditation and registration)

14. In Schedule 1 replace paragraph 1(1) with the following—
   “(1) This Schedule specifies the information that may be required of
   (a) a prospective participant in the scheme; or
   (b) a participant who moves an accredited RHI installation to a new location during
       its tariff lifetime.”.

Amendment of Schedule 3

15.—(1) In the heading to Schedule 3 after “Tariffs” insert “for installations accredited on or
    before 18th November 2015”.
    (2) After Schedule 3 insert Schedule 4 as set out in the Schedule to these Regulations.

Amendment of the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014

16. The Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014(5)
    are amended in accordance with regulation 18 and 19.

(4) SR 2009 No. 154 as amended by SR 2013 No. 174
(5) SR 2014 No. 301
Amendment of regulation 2 (Interpretation)

17. In regulation 2 in the definition of “Seasonal Performance Factor” for “and will be fixed at 2.5;” substitute “and will be determined by the Department from the certification certificate for the installation but fixed at a minimum of 2.5”.

Amendment of regulation 13 (Plants where heat generation must be metered)

18. In regulation 13—
   (a) paragraph (9) omit “or a public tenancy.”;
   (b) paragraph (10) omit the definition of “public tenancy”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 17th November 2015

John Mills
A senior officer of the Department of Enterprise, Trade and Investment
## Tariffs For Installations Accredited after 18th November 2015

### Table 1

<table>
<thead>
<tr>
<th>Tariff name</th>
<th>Sources of energy or Technology</th>
<th>Installation capacity</th>
<th>Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Small Biomass</strong></td>
<td>Solid biomass including solid biomass contained in municipal solid waste.</td>
<td>Less than 20kWth</td>
<td>Tier 1: 6.7 Tier 2: 1.5</td>
</tr>
<tr>
<td><strong>Medium Biomass</strong></td>
<td>As above</td>
<td>20kWth and above up to but not including 200kWth</td>
<td>Tier 1: 6.4 Tier 2: 1.5</td>
</tr>
<tr>
<td><strong>Large Biomass</strong></td>
<td>As above</td>
<td>200kWth and above up to but not including 1000kWth</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Combined Heat and Power</strong></td>
<td>Biomass combined heat and power</td>
<td>New systems all sizes</td>
<td>3.5</td>
</tr>
<tr>
<td><strong>Small heat pumps</strong></td>
<td>Ground source heat pump, water source heat pump, deep geothermal</td>
<td>Less than 20kWth</td>
<td>9.0</td>
</tr>
<tr>
<td><strong>Medium heat pumps</strong></td>
<td>As above</td>
<td>20kWth and above up to but not including 100kWth</td>
<td>4.6</td>
</tr>
<tr>
<td><strong>Large heat pumps</strong></td>
<td>As above</td>
<td>100kWth and above</td>
<td>1.3</td>
</tr>
<tr>
<td><strong>All Solar collectors</strong></td>
<td>Solar collectors</td>
<td>Below 200kWth</td>
<td>9.1</td>
</tr>
<tr>
<td><strong>Biomethane injection and biogas combustion</strong></td>
<td>Biomethane injection and biogas combustion</td>
<td>All biomethane injection and biogas combustion below 200kWth</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Received from DFE on 02.05.2017
Annotated by RHI Inquiry
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Northern Ireland, amend the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (the “2012 Regulations”) and the Domestic Renewable Heat Incentive Scheme (Northern Ireland) 2014 (the “2014 Regulations”). The 2012 Regulations established a renewable heat incentive scheme for non-domestic and the 2014 Regulations a renewable heat incentive scheme for domestic, under which owners of plants which generate heat from specified renewable sources and meet specified criteria may receive payments at prescribed tariffs for the heat used for eligible purposes. The 2012 Regulations and 2014 Regulations confer functions on the Department in connection with matters relating to the general administration of the schemes.

Regulation 4 amends regulation 3 in the principal Regulations to extend the scheme to cleaning and drying carried on otherwise than in a building.

Under regulation 4 of the 2012 Regulations a plant meets the eligibility criteria for inclusion in the scheme under these regulations if;

(a) it is a heat pump which complies with the requirements of regulation 8;

(b) it is a CHP system which complies with the requirements of regulation 9.

Regulations 6 and 7 amend these requirements.

Regulation 8 amends regulation 16 to extend metering of plants in simple systems to CHP systems.

Regulation 9 inserts a new regulation 24A allowing accredited RHI installations to be moved to a new location.

Regulation 10 amends regulation 36 of the 2012 Regulations to introduce a tiered tariff for small and medium commercial biomass tariff, and also introduces an annual cap of 400,000kWhth for eligible heat payments.

Regulation 11 amends regulation 37 of the 2012 Regulations to expand periodic support payments for accredited RHI installations in simple systems to CHP.

Regulation 12 inserts a new regulation 38A restricting periodic support payments for CHP systems accredited in relation to the Renewables Obligation.

Regulation 13 amends regulation 42 (which makes provision for the treatment of additional RHI capacity) so that it refers to the new tariffs in Schedule 4.

Regulation 14 updates reference in Schedule 1 in the 2012 Regulations to reflect insertion of 24A.

Regulation 15 inserts Schedule 4 in the 2012 Regulations introducing a tiered tariff structure for medium biomass and a new CHP tariff from 5 October 2015.

Regulation 17 amends the definition of “Seasonal Performance Factor” used for calculating the annual heat generation of heat pumps in the 2014 Regulations.

Regulation 18 amends regulation 13 to remove the reference to “public tenancy” and its definition. Thus excludes plants on land forming part of such a tenancy from the requirements for meetings.
Dear Seamus

RENEWABLE HEAT INCENTIVE (AMENDMENT) REGULATIONS 2015

I refer to your minute of 12th October in relation to this matter.

Thank you for sending me a revised draft of the Regulations. I now return a copy of same with a number of drafting changes. The only comments I would offer are as follows.

1. I still prefer a shorter, more succinct title. Something along the lines of “Renewable Heat Incentive Schemes (Amendment) Regulations (NI) 2015”.
2. I understand the uncertainty about the date that these Regulations will come into operation but I think the wording suggested for new Regulation 36(7) and (7A) of the Renewable Heat Incentive Scheme Regulations (NI) 2012 (“the 2012 Regulations”) would be confusing. I think that it would be better simply to insert the appropriate date when it is known.
3. I have redrafted the amendment to the definition of “seasonal performance factor” in Regulation 2 of the 2012 Regulations. I think that it is necessary to state who determines the ratio.
4. Finally, I have made some changes to the Explanatory Note.

This then brings me to the major issue raised by your minute, namely provision for the suspension of the RHIP Scheme. As I have previously indicated, I think that the powers contained in Section 113 of the Energy Act 2011 are very wide and would
allow for the exercise of the sort of administrative discretion that you would like. However, the decisions in question must be taken by the Department rather than DFP. My understanding of the Department's intentions is that, once an installation is accredited, then periodic payments should continue to be made. Suspension in this context would mean no new installations may be accredited after 30th September 2016 unless funding was available and would not, therefore, be eligible for periodic payments. Is this correct? This is a different situation to one involving the suspension of payments for already accredited installations where those payments fall due after 30th September 2016. For the reasons given in my earlier advice that would be much more problematic.

On the assumption that that is correct, it should be possible to amend the 2012 Regulations by inserting after Regulation 23 a provision along the following lines

"23A – (1) This Regulation applies where it appears to the Department that it does not have or is not likely to have sufficient funds available to it for the purpose of meeting the full cost of periodic support payments for all RHI installations accredited in pursuance of Regulation 22 and all installations that would be likely to be accredited in pursuance of that regulation.

(2) Where this Regulation applies, the Department may by notice published in such manner as the Department may think appropriate suspend the operation of the Scheme in relation to any installation not accredited before a date specified in the Notice, whether or not an application for accreditation has been made before that date for that installation under Regulation 22(1).

(3) Where the Department publishes a Notice under paragraph (2), the Department must not, on or after that date, accredit any more eligible installations.

(4) The Department may by notice published in the same manner as a Notice published under paragraph (2) revoke any such notice and where it does so, the prohibition in paragraph (3) shall not continue to have effect".

Regulation 22(6) would have to me made subject to this new provision. I do not think that it would be appropriate to amend Regulation 12 because that regulation defines eligibility requirements and this is not a matter of eligibility.

The final question you ask concerns whether or not the Department could apply the new 400,000 kwh annual limit on heat payments to installations accredited before 4th November 2015. Here, I can only refer you to the advice that I gave on 25th June in relation to legitimate expectation. As I pointed out there, there are two forms of legitimate expectation. One is substantive legitimate expectation and the other procedural. Procedural legitimate expectation means that, in certain circumstances, anyone affected by a change in policy has the right to be heard before that change takes place. I think that almost inevitably anyone whose installation has been accredited and who is presently, under the Regulations, receiving periodic support
Seamus

I have spoken to John.

We will not try to include the new provision (to enable suspension of new applications) now. We will have to secure Ministerial and ETI Committee (SL1) clearance to this and simply wouldn’t have time. We will therefore proceed with the tariff changes now. And following DECC or HMT clarification over future RHI funding, we can then try to secure Ministerial and Committee approval to progress this new provision through another set of Regulations probably early in the new year.

We can therefore confirm with Ofgem that we are not including this provision in our November changes but will be looking to take forward in due course.

Thx, Stuart

From: Wightman, Stuart
Sent: 16 October 2015 14:36
To: Mills, John (DETI)
Cc: Hughes, Seamus; Willis, Adele
Subject: FW: RHI Casework
Importance: High

John

Further to Trevor’s comments below and the legal advice from Paul (attached), I would be inclined to include Paul’s proposed new provision now in the changes that we’re making. The only concern is Ofgem. We’ve spoken to them this morning about this proposal and their initial reaction was that they’ll need some time to review the proposal before they could agree to it. Unfortunately, time is something that we don’t have. That said, I think it would be worthwhile delaying the debate by a week if it meant we could incorporate a provision to suspend or stop the scheme given the uncertainty around funding for new commitments beyond March 2016.

What are your thoughts?

Stuart

From: Cooper, Trevor
Sent: 16 October 2015 12:45
To: Wightman, Stuart
Cc: Mills, John (DETI); Rooney, Eugene; Murphy, Shane
Subject: RHI Casework

Stuart

One of the questions that will be asked next week is what would require to be done to stop
additional commitments under RHI (potentially both non-domestic and domestic).

i.e. what would be the process and what timescales would be involved?

Trevor
From: Wightman, Stuart
To: Stewart, Chris (DETI)
Cc: McCormick, Andrew (DETI); Mills, John (DETI); Rooney, Eugene; Cooper, Trevor; McIlwrath, Linda; Johnston, Iris; Hughes, Seamus
Subject: RHI Expenditure - Need for Further Legislation
Date: 13 November 2015 09:44:04

Chris

As you are already aware the uptake of the non domestic Renewable Heat Incentive, (RHI), has exceeded all expectations and we are currently in the process of introducing amendment regulations to provide for cost control measures to try to bring the budget back into line.

The target was to have the required changes introduced from 4 November 2015 but this was delayed by the progressing of legal and financial approvals. We did try to recoup some lost time by seeking to get the SR to the ETI Committee this week but the Clerk refused to allow this and it is now to be considered at the Tuesday 17th meeting to be followed by the motion debate in the afternoon. The scheme changes will come into effect on Wednesday 18th assuming Assembly approval.

The surge of applications over the last 6 weeks, (some 800 received), is unprecedented. Our forecast for October had been 150 applications, (a 300% increase) but this is clearly well below the 800 actually received. This could see RHI expenditure increase to over £30m in 2015/16 and to over £40m from 2016/17, even with both schemes closed from April 2016. We are currently running at over 10% of the GB application numbers against the expected 3%.

I feel that in light of this situation regardless of what impact the amendment regulations might bring there is no choice now but to move to close both RHI schemes from 31 March 2016.

I am presenting this for your urgent consideration. It will be important for the Minister to be aware that further ‘unpopular’ legislative changes are needed early in the New Year.

Thanks

Stuart Wightman
Head of Energy Efficiency Branch
Energy Division
Department of Enterprise, Trade & Investment
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Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9425 (ext: 29425)
Mob: Personal information redacted by the RHI Inquiry
TextRelay: 18001 028 9052 9425
Web: www.detini.gov.uk
Action: Michael Woods to write to the Head of Energy Division regarding the change of audit plan and to copy his note to the Committee.

NON DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) SCHEME

25. Stuart Wightman joined the meeting presented a paper outlining the history and current position in regard to the Non-Domestic RHI Scheme, including actions being taken to seek to secure appropriate approvals for expenditure in 2015-16 and beyond.

26. Stuart confirmed that officials in Energy Division have been working in conjunction with officials in DETI Finance Division and DFP to regularise matters. Approval for the Scheme has now been received covering the period from 29 October 2015 to 31 March 2016. Retrospective approval is currently being sought from DFP to cover the period from 1 April 2015 to 28 October 2015. Stuart confirmed that amendments to the Scheme involving tariff changes and the introduction of a cap on annual payments had been brought into effect in November 2015.

27. Trevor Cooper commented that there were lessons to be learnt in terms of the initial design of the scheme and the ongoing control of the scheme through regular reviews of tariffs. The Chairman asked if DETI’s equivalent department in Great Britain, the Department of Energy and Climate Change, had more flexibility in terms of its ability to quickly change tariffs. Stuart confirmed that GB has more flexibility through automatic digression, with tariffs being adjusted in response to changing costs. In response to a question from Claire Hughes, Stuart confirmed that the Scheme had been successful in terms of the achievement of targets for its uptake.

28. The Committee went on to discuss the operation of the Scheme. In response to a question from Claire Hughes, Stuart confirmed that OFGEM (which administers the GB Scheme) reviewed and checked applications on behalf of DETI. Anthony Harbinson considered it important to ensure that lessons are learnt from the issues which had arisen in the operation of the Scheme. He also underlined the importance of ensuring that if a similar issue were to arise in the future, it would be identified at an early stage and remedial action taken. Anthony reiterated the Committee’s view that the Scheme should be audited by Internal Audit Service at the earliest possible juncture.

29. The Chairman commented that he expected the internal audit process to identify any further issues with the Scheme. He considered that the Department is exposed until DFP approval for the period from 1 April 2015 to 28 October 2015 is received, and through entering into commitments over a 20 year period. Trevor Cooper informed the Committee that, following the Chancellor’s Autumn Statement, DFP has now confirmed that
expenditure under the Scheme may be subject to an absolute cap in terms of AME available in any given year. DFP is engaging with HM Treasury to seek clarification on the effect of the Autumn Statement in terms of funding. A response is awaited. Eugene stressed the importance of settling the budget position.

30. Stuart confirmed that an options paper would be put to the Minister in terms of the future operation of the Scheme.

31. The Chairman requested that a substantive paper outlining the latest position be provided to the next meeting of DAC.

Action: Energy Division to provide a paper regarding the current position on the Non-Domestic RHI scheme.

32. Stuart Wightman left the meeting at this stage.

33. Iain McFarlane outlined the current position in relation to the repayment of the loan provided to the . He informed the Committee that the 18 month business plan covering the period up to March 2017 has been received and is being reviewed by the Department in conjunction with its specialist insolvency advisers. Iain confirmed that a capital repayment of £14M was received in respect of the repayment due at the end of November which exceeded the scheduled £9m repayment by £5M.

34. Iain informed the Committee that work is ongoing regarding the year end accounts and that the Department has negotiated a reduction in supervisors’ fees, with a discount of 5% being achieved for February and March 2015 and a 10% discount being achieved from April 2015 onwards.

35. In response to a query from the Chairman in relation to the prospects of recovery of the loan in light of the state of the property market, Iain confirmed that the carrying value of the property assets in the accounts had been reviewed and this had resulted in their value being increased by £12M in the Accounts.

DETI REPORT TO THOSE CHARGED WITH GOVERNANCE (RTTCWG) 2014-15

36. Iain provided an update on the RTTCWG and confirmed that it contained four “priority two” issues. Two of the issues related to the Presbyterian Mutual Society, one related to Harland and Wolff, and one related to a CFER balance with Invest NI (this was also referred to in Invest NI’s
Mr Lunny: — the First Minister for a period. So, he didn’t resign. But we know that, on the 7th of October, he emailed Mr Mills asking whether DETI were on track for changing the RHI in early November. So, he was keeping track of the implementation of those proposed changes. Were you aware at the time that he was doing that?

Mr Cairns: Completely unaware. At this point in time, I’d no contact with anybody senior within the party, Dr Crawford, or anybody else. The only, the only person, um, who I’d have contact with who was in the party would have been Gavin Robinson, and he would be, obviously, quite far away from the thinking on this.

Mr Lunny: The reference for that email is DOF-2271. Were you keeping any tabs on the progress of RHI during the six weeks when you were not working as a special adviser?

Mr Cairns: No, none whatsoever. I did bump into Mr Mills, for full transparency. Both of us were out for a walk. It was quite a sunny September and we bumped into each other in Belmont park. But, um, it was more just a, just an exchange of pleasantries and, “What are you doing now that you’re out of —?”. At that point in time I was doing nothing. Um, and, but I don’t recall —. It was nothing —.

Mr Lunny: Didn’t ask him any questions about RHI?

Mr Cairns: No, no, no. It was very much a, “How are you doing?”", “How are you doing?”, and off we went. I went home and he went back to work. But it was just a completely impromptu meeting, you know.

Mr Lunny: Right. And we know you did then eventually come back to work when the in-out period came to an end.

Mr Cairns: That’s correct.

Mr Lunny: You get reappointed as Mr Bell’s special adviser. You’ve told us about the commitments that Mr Johnston made at that point; and you came back. There was then an incident just very shortly before the 2015 amendment regulations were passed where you
contacted Dr McCormick following a contact that you had with Mrs Foster. I want to take
you just briefly to Dr McCormick’s witness statement on this at WIT-10524, if I may. And if
we could maximise the top half of the page, please. You’ll see there, he says that:

“The only contact relating to the timing of the tariff reduction between 3 September 2015 and January 2016
that I recall took place on 13 November 2015, the Friday before the planned Assembly debate. I took a
phone call from Timothy Cairns in which he asked if it would be possible for the debate on the reduction in
the tariff to be delayed by a week or so. My recollection of the conversation is that he referred to a concern
that not enough businesses in Fermanagh had been able to apply — there was certainly a reference to
Fermanagh. It was clear that the call was on behalf of Arlene Foster. I said I thought that any extension
would be impossible but undertook to check and get back with detail.”

Then in the next paragraph, he says:

“I obtained some data from Energy Division — this was set out in an email from Chris Stewart of 13
November 2015 … I sent Timothy Cairns text message, to the effect that: a one week delay would cost £2.6m
a year for 20 years; DFP approval was conditional on an early clampdown; and that a Ministerial Direction
would be required. Timothy replied by text late that day to confirm that he had passed my information back
to the Minister and awaited her instructions. I checked with him early on the morning of Monday 16
December (again by exchange of texts) and he confirmed the debate could go ahead and we were ‘back
from the brink’“.

Now, you have given a similar account in your witness statement. I think you disagree about
whether or not County Fermanagh was mentioned.

**Mr Cairns:** I think, actually, this is a great example of where the festering sore of suspicion
— if you come back to that — I think this is a great example of where it would have been
useful, in the summer, for officials to have mentioned that. I think Dr McCormick —. This
adds to that great suspicion that they had, where, for myself, it was really as a courtesy call.

MLAs, MPs call you all the time and say, “Look, would it be possible to do x, y and z? I’ve a
constituent”. And you’d go — you’d say, “Look, OK”, and you’d speak to the relevant official and you get a yea or a nay and you pass that back. I didn’t seriously believe, at this point in time, that there would be any extension. I didn’t seriously believe that Mrs Foster was asking that. I didn’t seriously believe that Andrew McCormick was thinking that I was. But, clearly, he was apprehending something differently than what I was communicating.

Mr Lunny: But, to be clear, I mean, he’s says you didn’t mention Mrs Foster. He took the reference to Fermanagh to be a reference to Mrs Foster.

Mr Cairns: I believe I did reference Mrs Foster, because I think I say, you know, in the text, you know — how more clear can I be? — “I await her instructions”. It was hardly M—. You know —. It could have been Michelle McIlveen, I suppose, at that point in time. But, I think, my recollection of the telephone call, such as it is —. I mean, it was early evening on a Friday night. I was trying to get the kids out to kids’ club when this was all happening. So, my recollection of the conversation is that it was very much, from my end, like, “This isn’t happening. This is a courtesy call, Andrew. You know, you know the way these things go. Just tell me no, and I’ll get back to Arlene”.

Mr Lunny: And then, in your witness statement, you make it clear you’d been asked by Mrs Foster, who’d been contacted by a constituent who wasn’t going to make the deadline —

Mr Cairns: That’s correct.

Mr Lunny: — of the 18th of November. And you then, on her behalf, were raising this question with —

Mr Cairns: That’s correct.

Mr Lunny: — with Dr McCormick. And I suppose there are a number of specific questions I want to ask you about it. I mean, you’re — you’ve given quite a detailed account of it there, but did you let Minister Bell know that you were making this request?
Mr Cairns: I did not.

Mr Lunny: And was it appropriate for you to be passing on the request of another Minister to your departmental officials without letting your Minister know?

Mr Cairns: You know, I don’t know if there’s the letter of the law or the spirit of the law. The letter of the law, I don’t know. I mean, that’s for others to decide.

Dame Una O’Brien: I think — I think there are both.

Mr Cairns: Yes. But what I’m saying is, like, this happened not infrequently, where perhaps an MP or an MLA would raise a constituency matter. And I think if you — if you went to the Minister every time and said, “Look, MP x wants to know y. Do I have your permission to go to the official in charge and ask them about that?”, it would be a somewhat cumbersome process. I suppose you take implied authority that these constituency matters — you’re passing them on, and, you know, each and every occasion, you’re not going to reference that back.

The Chairman: When you went out to — when you went out to get the kids out to kids’ club, were you aware of the spotlight of media sensationalism hanging over your head?

Mr Cairns: In terms of?

The Chairman: In terms of this.

Mr Cairns: No, absolutely not. Yes, I mean —.

The Chairman: No. It’s a fairly straightforward event.

Mr Cairns: Because I just thought it was fairly straightforward, you know, constituency query; yes, Mr Chairman.

Mr Lunny: But in terms of telling your own Minister, there obviously are trivial things that are raised by constituency MLAs or MPs, but you passed this request on. If Mr — Dr McCormick had come back and said, “Yes, at a stretch we’re able to put it back for 10 days”, that then has a consequence in terms of cost, ultimately. And — and your Minister hasn’t
been told about it, in a scheme where he has agreed —

Mr Cairns: Well, I —

Mr Lunny: — with the original implementation date of —.

Mr Cairns: If Dr McCormick had’ve come back and said that, (a) I would have been shocked and (b) of course you would’ve been immediately on to the — on the phone to the Minister. But, in my opinion of the telephone call — and obviously Dr McCormick took it a different way, and I think because of the suspicion that was resting there in relation to RHI, he took what I thought was a request that he would just flatly turn down then perhaps a little more seriously than what otherwise it would’ve been. I did not expect in any way, shape or form that Dr McCormick would come back and say, “Oh, yes, yes, we can do that. We’ll knock it back 10 days”.

Mr Lunny: But if he had, you would’ve told your Minister then?

Mr Cairns: Oh, you’d be straight to the Minister. Yes, of course.

The Chairman: Why do — why do you think she didn’t go to the Minister?

Mr Cairns: Well, again, this isn’t unusual. You know, Mrs Foster’s not expecting the request to be acceded to. She’s spoken to a constituent. She says to the constituent, “Well, look, I’ll ask. Unlikely, I would imagine”. And so, I mean, you’ve gotta follow through the process of physically asking, getting the no, going back and saying, “I asked. I got the no”.

You know, it’s just a —.

The Chairman: If you get — if you’re a Minister and you get an enquiry from a constituent, so it’s not necess— it’s not your speciality, it’s a constituent who has this particular interest.

Mr Cairns: That’s correct.

The Chairman: And you get a request for something to be done — or not done, for that matter — why would that Minister not go to the appropriate Minister and say, “Look, I’ve
had this request. It’s not my field. What’s the situation here?”?

Mr Cairns: I think you’ve have to ask Mrs Foster why she didn’t go to Mr Bell, but I — but I would say that it wasn’t unusual for MLAs and MPs to bring constituency matters to you, albeit this was obviously a Minister acting in their constituency role as an MLA.

Mr Lunny: Well, was it another example of you potentially being influenced by others within the DUP in respect of DETI business, but trying to keep that hidden from Minister Bell?

Mr Cairns: No, definitely not. I mean, it was — it wasn’t infrequent that MPs or MLAs would contact you and, on each and every occasion, it would just seem impractical to tell the Minister.

Mr Lunny: Well, you’ve been clear in your witness statement and today that you didn’t believe there was any realistic prospect of the request being acceded to —

Mr Cairns: That’s correct.

Mr Lunny: — but if we look briefly at the actual text exchange with Dr McCormick. If we could close that bundle down and open IND-5, please.

The Chairman: IND?

Mr Lunny: IND-5.

The Chairman: Five?

Mr Lunny: Yes.

The Chairman: Thank you.

Mr Lunny: Nice small number, for once.

The Chairman: Yes. [Laughs.]

3:00 pm

Mr Lunny: If we could rotate that, thank you. We can see there at the top, on the 13th of November, his text to you, setting out it would £2.6 million a year for 20 years if they were
to keep it open for a week longer in its unamended state. You say:

“I’ve informed the minister I await her instructions!”

As you’ve said, that narrows down the field of who it could be.

He then sends you a chaser on the 16th of November:

“Any word re RHI?”

And then you respond that day, saying:

“I think we are back from the brink! I think all will be well and let’s get this through tomorrow”.

And then he responds with:

“Well done and many thanks.”

**The Chairman:** The one thing’s clear about that is that Mr McCormick didn’t think, “Oh my goodness, you should be going — she should be going to Mr Bell”.

**Mr Cairns:** Yes. And I think the other thing’s clear is, you know, I’m putting exclamation marks in. I was hoping to show to Mr McCormick — cos I thought this was light-hearted and, you know, the “back from the brink”, you know, Dr McCormick, as I think I said in my witness statement, has a bit of a military style, and it’s just a sort of a comedic joke, I thought, exclamation mark. You know, and I took this as light-hearted. It wasn’t going to happen; these are the light-hearted responses. Dr McCormick clearly had a different apprehension, and that’s unfortunate.

**Mr Lunny:** So, you say, you weren’t really “at the brink” of something serious?

**Mr Cairns:** Oh good gracious no. It was just, you know, Dr McCormick’s very formal style — it was just a little bit of a joke in that, I think.

**Mr Lunny:** He may have missed the humour and thought there was a realistic prospect here of —.

**Mr Cairns:** As my wife always says, not everybody gets my humour, so.

**Mr Lunny:** Well, leaving that document aside, if we close it down, were you aware then in
Medium Solid Biomass

**Table 1 Comparison of load factors in 2016-17 and 2017-18**

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<tr>
<th></th>
<th>Pre 31/03/2017 Regulations</th>
<th>Post 31/03/2017 Regulations</th>
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<tbody>
<tr>
<td></td>
<td>2016-17</td>
<td>2017-18</td>
</tr>
<tr>
<td>Average Load Factor</td>
<td>Average Load Factor</td>
<td>Average Load Factor</td>
</tr>
<tr>
<td>Hours</td>
<td>%</td>
<td>Hours</td>
</tr>
<tr>
<td>Accredited pre 18</td>
<td>3,885</td>
<td>44.3%</td>
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<tr>
<td>November 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accredited post 18</td>
<td>1,285</td>
<td>14.7%</td>
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<td>November 2015</td>
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**Table 2 Comparison of absolute payments and unit costs in 2016-17 and 2017-18**

<table>
<thead>
<tr>
<th></th>
<th>Pre 31/03/2017 Regulations</th>
<th>Post 31/03/2017 Regulations</th>
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<tbody>
<tr>
<td></td>
<td>2016-17</td>
<td>2017-18</td>
</tr>
<tr>
<td>Total Payments made</td>
<td>Total Payments made</td>
<td></td>
</tr>
<tr>
<td>£'000</td>
<td>£'000</td>
<td></td>
</tr>
<tr>
<td>Accredited pre 18</td>
<td>39,029</td>
<td>15,422</td>
</tr>
<tr>
<td>November 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accredited post 18</td>
<td>3,170</td>
<td>3,220</td>
</tr>
<tr>
<td>November 2015</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* approximately 92% of readings for 2017-18 have been received as at 30/07/2018*