From: John Mills
Date: 31 December 2015
To: 1. Timothy Cairns
2. Jonathan Bell MLA

FUTURE OF RENEWABLE HEAT INCENTIVE

Issue: Future of Northern Ireland Renewable Heat Incentive (RHI)

Timing: A decision is needed immediately to pursue the necessary legislative changes to minimise overspending on the existing scheme.

Executive Committee Referral: Yes. Paragraph 2.4 of the Ministerial Code requires referral of matters that have implications for the PfG (10% target not being reached if scheme closed) or are "significant or controversial" which this would be. It might also be considered cross cutting.

PFG Implications: The PfG targets for renewable heat are 4% by 2015 and 10% by 2020.

Presentational Issues: Likely to attract criticism given the scale of the unapproved expenditure

FOI Implications: Not discloseable on grounds of policy development.

Financial Implications: Treasury has indicated that the cost overrun may need to be covered from the Executive’s Resource DEL which, if confirmed, would imply a substantial opportunity cost to DETI or other NI Block services.

Legislation Implications: Any changes to the scheme require, at least, affirmative resolution regulations.

Statutory Equality Obligations: Equality screening suggests the proposed Regulations do not have a significant impact.

Recommendation:

- agree to close (or suspend) both RHI schemes as soon as possible;
- agree to procure additional audit checks for the Non Domestic RHI scheme.
BACKGROUND

1. The Non-domestic RHI scheme was introduced in November 2012. The Domestic RHI scheme in December 2014. Both schemes provide payments for people to move from conventional heating (mainly oil) to sustainable heating such as wood pellets (biomass). In light of unprecedented applications over the last 2 months for the Non Domestic Scheme, the outcome of the Government's Spending Review, and consideration by DFP and HMT of developments in respect of the non-domestic scheme here, an urgent decision is now needed on the future of the NI RHI schemes.

SCHEME PERFORMANCE

2. Successful domestic RHI applicants receive an upfront payment of up to £3,500 (depending on the technology) along with 7 annual tariff payments based on the heat requirements of the property. Annual payments are typically around £1,200 but are capped at a maximum of £2,500. Uptake of the Domestic RHI scheme has increased steadily (c.700 applications since the scheme was introduced).

3. The Non Domestic RHI scheme on the other hand involves 20 years of annual tariff payments based on the metered heat usage of the business. Tariffs are dependent on the type and size of technology. To date, average annual payments of been around £24,000. The Non Domestic scheme therefore involves larger and longer financial commitments than the domestic scheme.

4. After a slow start during the first two years, non-domestic scheme uptake increased steadily during 2015. During the Autumn of 2015 there was a surge in applications. This increase relates to one particular technology – biomass and has been attributed to one particular industry’s wholesale uptake of the scheme. This is the poultry industry’s use of RHI for chicken sheds. Uptake of the non domestic scheme and an estimate of indicative expenditure is summarised in the table below.

<table>
<thead>
<tr>
<th>Period</th>
<th>Application Numbers</th>
<th>Annual Cost</th>
<th>20 Year Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov 2012 – March 2015 (Previous Commitments)</td>
<td>522</td>
<td>£12.3m</td>
<td>£246m</td>
</tr>
<tr>
<td>April 2015</td>
<td>85</td>
<td>£1.1m</td>
<td>£22m</td>
</tr>
<tr>
<td>May 2015</td>
<td>66</td>
<td>£1.4m</td>
<td>£28m</td>
</tr>
<tr>
<td>June 2015</td>
<td>49</td>
<td>£1.3m</td>
<td>£26m</td>
</tr>
<tr>
<td>July 2015</td>
<td>42</td>
<td>£0.9m</td>
<td>£18m</td>
</tr>
<tr>
<td>August 2015</td>
<td>55</td>
<td>£1.1m</td>
<td>£22m</td>
</tr>
<tr>
<td>September 2015</td>
<td>90</td>
<td>£2.14m</td>
<td>£42.8m</td>
</tr>
<tr>
<td>October 2015 (up to 28/10/15)</td>
<td>441</td>
<td>£9.8m</td>
<td>£196m</td>
</tr>
<tr>
<td>Total for Retrospective Period (1/4/15 – 28/10/15)</td>
<td>828</td>
<td>£17.74m</td>
<td>£335m</td>
</tr>
<tr>
<td>November 2015 (29/10/15 – 29/11/15)</td>
<td>452</td>
<td>£9.95m</td>
<td>£199m</td>
</tr>
<tr>
<td>December 2015 – March 2016 (forecast)</td>
<td>80</td>
<td>£1.92m</td>
<td>£38.4m</td>
</tr>
<tr>
<td>Total for Prospective Period (29/10/15 – 31/3/16)</td>
<td>532</td>
<td>£11.9m</td>
<td>£238m</td>
</tr>
<tr>
<td>Total Forecast Commitments to 31 March 2016</td>
<td>1882</td>
<td>£41.94m</td>
<td>£839m</td>
</tr>
</tbody>
</table>
5. The sustained increase in applications during March and April was the catalyst for the legislative changes you recently took through the Assembly to, inter-alia, introduce a tiered tariff (reducing after 1,314 hours) and an annual cap (at 400,000 KWh) on RHI payments for biomass. However, in the run up to these legislative changes, scheme uptake has rocketed with a further 900 applications received in 6 weeks. An increase in applications had been forecast as businesses try to beat the deadline, but not at the numbers we received.

6. The increase in applications means that over 167MW of renewable heating capacity has now been installed under the non domestic scheme. This equates to between 6.7% - 8.3% of total installed capacity under the GB non domestic scheme. It is estimated that over 6% of NI’s total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded and we’re well on our way to achieving the Executive’s 2020 target of 10%. However, this success comes at a price. Total expenditure for both RHI schemes in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed on 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £42m.

DFP APPROVAL

7. When the non-domestic scheme was established in 2012, DETI sought and obtained approval of a business case from DFP and one of the conditions was for re-approval in March 2015. Unfortunately the need for this approval was overlooked. DETI had no choice but to keep making the payments because the RHI scheme is set out in statutory Regulations and there are no grounds for DETI to cease making payments to properly made applications.

8. DFP approval was subsequently sought for retrospective and future operation. Prospective approval has now been received from DFP for scheme expenditure from 29 October 2015 through to 31 March 2016 on certain conditions which include, tariff changes (done), a review and a further approval from March 2016. Retrospective approval from 1 April 2015 to 30 September 2015 has, as of 21 December, been declined, because we cannot meet the test that had we sought approval at the time it was required, DFP would have been able to approve.

AFFORDABILITY

9. The affordability of RHI going forward obviously depends on the budget available. The RHI schemes (non-domestic and domestic) are paid out of AME. To quote the HMT Autumn Statement of 2015, “the UK government provides funding for certain programmes which are devolved....if they are not only demand-led but also may be volatile in a way that could not adequately be controlled by the devolved administration”. It goes on to give assurance that devolved administrations do not have to find off setting savings for increases but warns that they may have to fund schemes that are more generous than elsewhere in the UK.

\[1\] The NI Renewable Heat Incentive is listed as a NI Executive AME Programme at Table E3 of the HMT Statement of Funding Policy – funding the Scottish Parliament, National Assembly for Wales and NI Assembly – November 2015.
10. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard AME, where the Exchequer takes on all risks. Instead, there is a risk-sharing arrangement whereby, should RHI spending in one year exceed the allocated budget, NI would need to repay this in future years. This could be achieved through scheme changes. However, the rules provided that a small proportion of any required future savings (likely to be of the order of 5%) would have to be funded directed by NI through DEL.

11. Also, unlike traditional AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of c.3% of the DECC budget (£838m). HMT confirmed that any 20 year commitments entered into during this period would be honoured. This arrangement was rolled forward in 2015/6 though the AME 2015/16 budget has since been raised to £23m in light of increased demand.

12. If RHI funding was “pure” AME there would be no impact on NI DEL (of course, we would still need to take action due to the sharp increase in costs). If the Barnett formula + 5% penalties approach was carried forward the effect on NI DEL would be relatively small – generally less than £1m p.a. over the 2016/17–20/21 period (this assumes scheme closure in March 2016).

**CHANGE IN HMT POLICY**

13. However, the effect of the Chancellor’s Autumn Statement was to reduce the NI RHI budget and, on 21 December, DFP advised that HMT’s likely position will be that NI will have to cover the full costs (not 5%) of any overspends. This creates significant budgetary pressures for the next 5 years with additional average\(^2\) annual costs of around £15m even if there are no new applications after the end of this financial year.

14. Discussions between DFP and HMT are ongoing but we must proceed on the basis that the major overspend that has now arisen will not be covered by HMT.

**OPTIONS**

15. The combination of lack of HMT funding and DFP approval together with DETI’s ongoing, legal obligation to keep making RHI payments means there is very little scope for action other than to close/suspend the scheme as quickly as possible. However, the options are:

- **Do nothing (i.e. keep the RHI scheme open).** This would help reach the Executive target of 10% renewable heat by 2020, help reduce greenhouse gas emissions, contribute to the UK’s renewables obligations and support the local renewables industry (at a time when other support, in the form of NIRO, is being withdrawn). It is assumed that anything above the HMT proposals would have to be funded from DEL. The shortfall from 2016/17 - 2020/21 is estimated to be around £165m (roughly £30m pa). However, experience has taught us that the scheme is extremely difficult to predict and there would be a

\(^2\) Costs in the first year (i.e. 2016/17) would be higher and gradually diminish as time went on. This is because, if the scheme was closed to new applications, its costs would remain static while the allowed HMT budget would rise thus reducing the estimated NI scheme overspend from around £23m in 2016/17 to around £7m by 2020/21.)
risk that actual expenditure could be higher. Finally, we simply do not have funding for existing commitments over the HMT figures, let alone any extra. Following this course would require Executive agreement – which is unlikely given existing overspend and the DEL impact.

- **Continue domestic scheme only.** The funding problems have arisen in respect of the non-domestic RHI, principally as a result of the increase in installation under one tariff (biomass) for one industry (poultry). The domestic scheme is much more evenly distributed in terms of technologies and has been steadier in terms of growth. It could be asked why the domestic scheme should suffer as a result of events on the non-domestic side. Separating out the two schemes to close the non-domestic and leave open the domestic might cost a total of £105m over the five years 2016/17-2020/21 (something like £20m pa). Keeping open the domestic scheme may help mitigate an adverse industry reaction. However, HMT do not distinguish between the two schemes so keeping open the domestic scheme adds costs to existing non-domestic overspend. In addition, there is a risk that the domestic scheme would prove unpredictable. If non-domestic markets were no longer available, supplier efforts could be targeted on the domestic market resulting in a spike in applications.

- **Close (or suspend) both schemes as soon as possible.** Given the funding situation arising from HMT’s proposals (and DFP conditions for approval of the non-domestic scheme to March 2016) there seems little choice but to bring potential increases in scheme costs to as swift an end as possible. If both schemes are closed to new applications by April 2016 the costs might be around £75m over the five years (around £15m p.a.). However, opposition from the industry (including legal action) can be anticipated. There is also the risk of increasing costs in the short term by setting a deadline which suppliers then attempt to achieve. The latter risk could be avoided by giving no notice of scheme closure. On the other hand such action would increase risk of legal challenge – particularly from those who have invested in installation only to find they cannot get the anticipated RHI payments (RHI installations have shorter lead times than NIRO projects – typically 6 weeks). It may be possible to keep some options open by suspending rather than finally closing the schemes, though we would not recommend doing so if that would lead to any delay. We are seeking legal advice on the issues around closure and will advise further on this and the suspension option as soon as possible. Inevitably there would be some public warning, even if there was no notice, as the policy and legislation would have to be progressed through the Committee and Assembly (and the Executive prior to that).

**CONCLUSION**

16. To minimise further overspending and to meet the conditions of DFP’s approval, we now have no choice but to close both the non-domestic and domestic schemes as soon as possible. This may seem drastic but, as the RHI payments are for 20 years, the funding risk is very serious indeed. Separate advice on handling will be submitted once you agree the policy approach.
NEED FOR ADDITIONAL AUDITING OF NON DOMESTIC RHI SCHEME

17. There have been recent anecdotal claims that applicants are abusing the NI Non Domestic RHI Scheme. This issue was recently raised at the DETI Audit Committee. Although we currently have no evidence to support these claims, it is recommended that additional audits are completed for the NI Non Domestic RHI scheme.

18. The Non Domestic RHI scheme administered on DETI’s behalf by Ofgem (the GB gas and electricity regulator) which also administers the GB domestic and non domestic schemes. Ofgem’s administration costs for the NI scheme are based on 3% of the GB scheme costs. Ofgem complete an annual programme of audits for the GB and NI schemes which includes desk based analysis and on-site checks. In 2015/16, Ofgem will be competing 200 detailed site audits for the GB Scheme. This translates into 6 site audits for the NI scheme.

19. In light of the increased number of applicants and recent claims of scheme abuse, we are arranging for additional audits to be completed by Ofgem this year. However each audit will cost around £1,000. This is because Ofgem have to procure an external assurance provider to travel to NI to conduct the audits. In the longer term, it would be more cost effective to procure a separate local assurance provider. A Business Case will therefore be prepared for an additional audit programme from 2016/17 to complement Ofgem’s current systems of assurance and control. This might cost in the region of £100K.

Recommendation

20. That you:

- Agree to close (or suspend) both RHI schemes as soon as possible; and
- Agree to procure additional audit checks for the Non Domestic RHI scheme.

JOHN MILLS
Energy Division
Ext. 29215

cc: Andrew McCormick
    Chris Stewart
    Eugene Rooney
    Stuart Wightman
    Trevor Cooper
    Rob Robson
    Ian McCrea MLA APS
    Sean Kerr
    Press Office
c. None

d. No

e. No

*Delay in suspension/closure of the RHI schemes*

33. The document bearing Inquiry reference DFE-294364 to DFE-294369 is a submission from John Mills to you dated 31 December 2015 recommending closure of the RHI schemes “as soon as possible”. On the face of the submission it appears Timothy Cairns has written “Can we 1) Consult or inform UFU and industry this is happening now 2) Set out timescales” (see the copy of the document at IND-25141). As to this:

a. I do not recall seeing the Submission with a handwritten note upon it. If I approve a Submission I would normally sign at the top of it. This Submission does not have my signature at the top.

b. I was aware that Chris Stewart was having a meeting with the UFU as part of what I believed to be the Dept liaison with UFU. I regarded the decision to suspend/close to be taken by the Minister and Department.

34. The document bearing Inquiry reference DFE-294370 is an email from John Mills in response to Timothy Cairns’ queries on the submission. In respect of possible timescale for closure of the RHI schemes he said, “March might be feasible”. As to this:

a. No

b. The Permanent Secretary was aware that my view as Minister was to close as soon as could be practically done within the Department.
statement, at paragraph 33a, which we find at WIT-22635, you say that you don’t recall seeing those comments from Mr Cairns. You say you:

“do not recall seeing the Submission with a handwritten note upon it”

and then you make the point that you would normally sign the submission at the top —

Mr Bell: Yes.

Mr Scoffield QC: — and the submission doesn’t have your signature on it. And I think you’re right to suggest that the Inquiry hasn’t been able to find a version of this submission with your approval noted by means of your signature at the top. A couple of questions just arising out of that: do you think this submission was ever given to you by Mr Cairns, or are you saying that you don’t think it was ever given to you by him?

Mr Bell: Every submission that I had and read I signed. It wasn’t as if it was something I did occasionally; it was something I did in every occasion, and, on that basis, I can’t recall it.

Mr Scoffield QC: Even if you didn’t see the submission with his handwritten comments on it, were you aware that he was raising the issue of consulting or informing the UFU and industry? Was that something he discussed with you?

Mr Bell: I wasn’t aware that he was doing it. I was aware, at one stage, that the Ulster Farmers’ Union had wanted to meet with me, and the agreement was that one of the officials — Chris Stewart, as I’ve said there — would meet with them. So, that was — it was —. Look, there was, I mean, there were dozens of invitations to meet with people that couldn’t all be possibly complied with, and I remember, in that particular one, the agreement was — and I didn’t object to it — was that Chris Stewart would meet with him.

Mr Scoffield QC: Now, one of the things that you mentioned just before the break was that, obviously, there were some good reasons, as you saw it, for being concerned about a closure of the scheme, because it might harm legitimate commercial interests. Were you pressing at this stage for industry to be informed at an early stage about the proposal to
Chris

That’s as well, as the branch got a call saying Moy Park had instructed suppliers that RHI would close end March and

to act quickly to get applications in.

On NIRO the answers in Orals (what’s happening on NIRO) shouldn’t change till we’re ready to issue a response to

consultation – that’s assuming the remarkable prescience of industry interests doesn’t kick in before then.

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From: Stewart, Chris (DETI)
Sent: 12 January 2016 08:22
To: Mills, John (DETI); McCormick, Andrew (DETI)
Subject: RHI & NIRO

John

At yesterday’s meeting, the Minister accepted the advice on RHI and NIRO. On the former, Tim and the

Minister were satisfied with the early/ pre-notification that we discussed (subject to DSO confirmation of

vires), if it follows promptly after Executive approval to suspend or close.

On NIRO, the proposed further decoupling was agreed.

C

Sent from my BlackBerry 10 smartphone.
Seamus,

See you not on cc, apologies

-----Original Message-----
From: Mills, John (DETI)
Sent: 07 January 2016 18:18
To: Private Office DETI
Cc: Cooper, Trevor; Robson, Rod; McLaughlin, Christine (DETI); Hegarty, Damien; Wightman, Stuart; Stevenson, Valerie (DETI Private Office); Dolaghan, Paul; McCormick, Andrew (DETI); Kerr, Sean; Rooney, Eugene; Stewart, Chris (DETI)
Subject: RE: SUB-0001-2016 : Future of Renewable Heat Incentive

Damien,

Thanks, don't think the submission needs to be altered but grateful if you would pass on the answers to SPAD's questions.

1. Can we consult or inform industry now? We will provide reasonable notice of any action but it is certainly not appropriate yet as a) we do not have Ministerial policy agreement; b) we do not have DSO final clearance on how suspension can be effected - should the Minister agree (while we can suspend, how we do it can affect the timescale) and c) we have not gone to the Executive to check willingness to provide funding.

2. Just to clarify, there is no statutory requirement for consultation and it would not appropriate (if the decision was to suspend) given the circumstances (what is there to consult on)?

3. Timescale. Apologies for the vague answer but, as noted earlier, legislative issues need to be resolved before this can be tied down. If the decision is to suspend the scheme, our intention is to do so as quickly as possible but including reasonable notice. March might be feasible.

-----Original Message-----
From: private.office@detini.gov.uk [mailto:private.office@detini.gov.uk]
Sent: 06 January 2016 13:07
To: Mills, John (DETI)
Cc: Cooper, Trevor; Robson, Rod; McLaughlin, Christine (DETI); Hegarty, Damien; Wightman, Stuart; Stevenson, Valerie (DETI Private Office); Dolaghan, Paul; McCormick, Andrew (DETI); Kerr, Sean; Rooney, Eugene; Stewart, Chris (DETI); DG_DETI Press Office; DETI Energy Mailbox
Subject: SUB-0001-2016 : Future of Renewable Heat Incentive
Importance: High
Reference: SUB-0001-2016

Timothy has seen your submission dated 31/12/2015 and has made the following comments:

"Can you 1) Consult or inform UFU & industry that this is happening NOW, 2) Set out time scale"

On foot of these comments I would be grateful if you can provide revised submission as soon as possible.
You know well how pressing this is, and the Accounting Officer issues can only be managed well. (not eliminated as it's too far gone) on the timetable in the attached.

Many thanks.

Sent from my BlackBerry 10 smartphone.

Private Office

Please find attached submission seeking urgent approval to launch public consultation on the RHI schemes. Public consultation must be launched on 20 January 2016 (by cop tomorrow) to enable policies to be finalised, approved and legislation progressed before Assembly rises in March.

A copy of the Consultation paper (Annex A) should accompany the letter to the Chair of the ETI Committee (Annex B).
From: John Mills
Date: 19 January 2016
To: 1. Timothy Cairns
2. Jonathan Bell MLA

Copy Distribution List below

OPTIONS ON THE FUTURE OF RENEWABLE HEAT INCENTIVE SCHEMES

Issue: The future of the Northern Ireland Renewable Heat Incentive schemes (RHI).

Timing: DESK IMMEDIATE: Clearance by 20 January 2016 to enable public and Executive consultation to begin.

Executive Committee Referral: Executive Paper needs to be agreed at Executive Meeting on 25 February 2016.

PFG Implications: The PFG targets for renewable heat are 4% by 2015 and 10% by 2020. The 4% target has been met.

Presentational Issues: The closure/suspension of the scheme will be unwelcome for the RHI industry. The expenditure situation will attract criticism.

FOI Implications: FOIA exempt under sections 35 (formulation or development of government policy)

Financial Implications: Potential impact on DEL of £75 over 5 years.

Legislation Implications: Legislative changes to the RHI require draft affirmative resolution Regulations.

Statutory Equality Obligations: Screened out.

Recommendation: That you approve the issue, on 20 January 2016 of the attached:

(a) a consultation on closure of the RHI scheme (Annex A) for a 3 week period;
(b) letter to the Chair of the ETI Committee (Annex B); and
(c) version1 of the draft Executive paper (Annex C).
BACKGROUND

1. Further to my submission of 31 December 2015 (SUB 1/2016 refers) you have agreed that it appears necessary to close the RHI schemes to new applications (we await written confirmation). The final decision is subject to consultation. This submission invites you to approve the immediate steps needed to move towards final decisions on this issue, which requires Executive approval and public consultation.

BUDGET DEFICIT

2. To meet RHI commitments for existing installations, around £75m of funding will have to be found from DEL for the next 5 years to address the current funding deficit. If both RHI schemes remain open to new applicants, the budget deficit increases to £165m.

PUBLIC CONSULTATION

3. To give stakeholders advance notice of closure while moving to prevent further overspend as swiftly as possible. Given that the consultation is on a single issue (the steps for budgetary control of RHI) and there was a more substantial consultation in 2013, the reduced 3 week period is not considered unreasonable and is the maximum possible, given the timescales. A copy of the draft Consultation Document is attached at Annex A. A draft letter to the ETI Committee Chair is also attached at Annex B.

EXECUTIVE REFERRAL

4. In the absence of additional funding being allocated to the RHI by the Executive it must close or be suspended. There are implications for the PfG (10% target not being reached if RHI closes). The closure/suspension and the budget position could be considered “significant or controversial” and cross cutting. Also any action other than closure would create a significant opportunity cost, and even if this was to be absorbed in the DETI/DfE budget areas, it would have consequences which could only be approved at collective Executive level. A Draft Executive Paper is therefore attached at Annex C.

NEXT STEPS

5. Closure of the RHI requires subordinate legislation subject to the draft affirmative process. Bearing in mind the fact that the Assembly rises at the end of March, the suggested process and timings for progressing this issue is set out below:

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject to your clearance of this submission:</td>
<td></td>
</tr>
<tr>
<td>a) publication of consultation paper (Annex A) for a reduced period of</td>
<td>Wed 20 Jan</td>
</tr>
<tr>
<td>3 weeks;</td>
<td></td>
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<tr>
<td>b) issue of draft letter to ETI Committee (Annex B); and</td>
<td></td>
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<tr>
<td>c) issue of version 1 of an Executive paper (Annex C)</td>
<td></td>
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<tr>
<td>Consultation closes/comments back on version 1 of Executive paper</td>
<td>Wed 10 Feb</td>
</tr>
</tbody>
</table>
Further submission to you on outcome of consultation with:
   a) Final version of Executive paper for clearance;
   b) SL1 to ETI Committee for closure/suspension - legislation subject to Executive consideration; and
   c) Motion to be signed for Assembly Debate.

<table>
<thead>
<tr>
<th>Event Description</th>
<th>Date</th>
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<tbody>
<tr>
<td>Monday 15 Feb - requires clearance by Wed 17 Feb</td>
<td>Wednesday</td>
</tr>
<tr>
<td>ETI Committee meeting (SL1 clearance, subject to Executive clearance)</td>
<td>Tuesday</td>
</tr>
<tr>
<td>Executive clearance of Final Paper either at a meeting or by urgent procedure.</td>
<td>Not later</td>
</tr>
<tr>
<td>Lay Regulations/ ETI Committee meeting (clear draft Regs)</td>
<td>End Feb/early Mar</td>
</tr>
<tr>
<td>Debate on Regulations/ Regulations come into operation</td>
<td>Early/mid Mar</td>
</tr>
</tbody>
</table>

6. Your urgent clearance will be required at 2 key stages under the process –
   (i) to agree consultation, 1st version of Executive paper and correspondence to ETI Committee by 20 January; and
   (ii) following consultation, by 17 February clear SL1 (final policy) to ETI Committee; clear final Executive paper and sign motion for Assembly Debate.

RECOMMENDATION

7. That you approve the issue, on 20 January 2016, of:
   (a) a consultation on the closure of the RHI (Annex A) for a 3 week period;
   (b) the attached letter to the Chair of the ETI Committee, (along with a copy of the consultation document), which advises of the launch of the consultation (Annex B); and
   (c) version1 of the attached Executive paper which notifies Executive Colleagues of the launch of the consultation (Annex C).

JOHN MILLS
Energy Division
Ext. 29215

cc: Andrew McCormick
    Chris Stewart
    Eugene Rooney
    Stuart Wightman
    Trevor Cooper
    Helen Vaughan
    Rob Robson (DALO)
    Ian McCrea MLA APS
    Sean Kerr
    Press Office
Annex B - Letter to the ETI Committee

Mr Patsy McGlone MLA
Chair of ETI Committee
Room 375
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX

XX January 2016

Dear Patsy

CONSULTATION ON CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

I am writing to inform the Committee of a consultation on the closure of the RHI. A copy of the consultation document is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2013. At that time I said that further measures might be necessary. A sustained increase in applications during March/April 2015 was the catalyst for these changes. However, in the run up to these legislative changes, there was an unprecedented surge in new applications with a further 900 applications received in 6 weeks. This doubled the total number of installations under the non-domestic scheme.

The increase in demand equates to around 7% of total installed heat capacity under the GB non domestic scheme. It is estimated that over 6% of NI’s total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded. However, this success comes at a price. Total expenditure for RHI in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed), forecast RHI expenditure in 2016/17 is expected to be around £42m.

The affordability of the NI RHI going forward obviously depends on the budget available. The RHI is paid out of Annual Managed Expenditure (AME), which normally wouldn’t have an impact on the NI Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard AME, where the Exchequer takes on all risks. Instead, a budget of 3% of GB spending was applied to NI with 5% of any overspend to be funded by NI through DEL.

The effect of the Chancellor’s Autumn Statement has been to reduce the NI RHI budget further. The NI allocation will continue to be based on 3% of a reduced DECC budget. This is despite the NI non domestic scheme delivering 7% of the installed capacity under the GB scheme. DFP officials have also advised that HMT’s position will be that NI will have to cover the full costs (not 5%) of any overspend. This creates significant budgetary pressures with additional costs of up to £75m over the next 5 years even if no new applications are received after the end of this financial year.
Discussions between DFP and HMT are ongoing but I must proceed on the basis that the overspend which has now arisen will not be covered by HMT. I will seek the views my Executive colleagues and will write to the Committee again following consultation and Executive consideration.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
Consultation Paper

Proposed closure of the Northern Ireland Renewable Heat Incentive.

January 2016
Contents

1 Purpose of Consultation and how to Respond
   Page 3

2 Proposed RHI Closure
   Page 6
Purpose of Consultation and how to Respond

1

Purpose of consultation

1.1 The purpose of this consultation is to seek views on the proposal to close the domestic and non domestic Renewable Heat Incentive schemes (‘the RHI’) to new applications.

1.2 Following an extensive consultation in July 2013, cost control measures were recently introduced to the non domestic RHI in November 2015. These included tiered tariffs for biomass, a change in biomass banding, and an annual cap on heat payments. However, an unprecedented increase in applications in the run up to these changes together with budget cuts arising from the Chancellor’s November Spending Review Statement now means the RHI budget has been exhausted.

1.3 It is therefore, proposed to close the RHI to new applicants to prevent further overspend until such time as additional funding might be secured. We pointed to the need for such measures in the 2013 consultation, although at that time neither the significant increase in applications nor the budget changes were anticipated.

1.4 Further details and information on the proposal is set out in Chapter 2. A further public consultation will be carried out to inform long term policy for renewable heating in Northern Ireland after both schemes have been closed.
In the absence of additional funding being allocated to the scheme, DETI is seeking views on:

1) Whether there are feasible options other than closure of the RHI schemes with immediate effect; and
2) Whether there are factors which should be taken account in the closing the scheme.

How to respond

1.5 Responses should be sent, preferably by email, to arrive by 5pm on 10 February 2016 to:

[enter email address]
or by post to:

Energy Efficiency Branch
Energy Division
Department of Enterprise, Trade and Investment
Netherleigh, Massey Avenue
BELFAST
BT4 2JP

1.6 All responses should include the name and postal address of the respondent.

Confidentiality & Data Protection

1.7 Your response may be made public by DETI and placed on the DETI website. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as ‘CONFIDENTIAL’. Any confidentiality disclaimer that may be generated by your organisation’s IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.8 Information provided in responses, including personal information, may be subject to publication or disclosure in accordance with the access to
information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.9 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Impact Assessment

1.10 The Department has screened the proposals for Equality Impact, Regulatory Impact and Rural Proofing. Copies of these documents can be provided on request.

Copies of the document

1.11 This document is being produced in electronic form and may be accessed on the DETI Energy website or may be obtained from the address above or by telephoning 028 9052 9581.

1.12 If you require access to this consultation paper in a different format – e.g. Braille, disk, audio cassette, larger font – or in a minority ethnic language please contact the Department on 028 9052 9581 and appropriate arrangements will be made as soon as possible.
Background

2.1 The RHI, introduced in November 2012 to the non-domestic sector and in December 2014 to the domestic sector has been very successful. Over 3,500 renewable heating installations have been incentivised to date under the NI RHI schemes and we have met and exceeded the Executive’s 2015 target of 4% renewable heat. It is currently estimated that around 6% of Northern Ireland’s heating needs are provided through renewable heating technologies.

2.2 Over the last 18 months the number of non-domestic RHI applications has grown from around 200 to over 1,800. Over 900 of these applications were received in the run up to the cost control measures introduced on 18 November 2015. This success has placed significant pressures on the available budget.

2.3 Funding for the NI RHI is provided by Treasury, and up to this point has been additional to the NI Block Grant, meaning that it does not affect funding for other NI public services. However, the increase in committed RHI payments associated with the recent influx in non domestic applications means that the NI funding allocations from 2016/17 onwards will be exceeded even if both schemes were closed to new applications now. This situation is exacerbated by the UK Government’s November Spending Review which included a significant cut in future RHI funding.
2.4 Despite total renewable heating capacity installed through the NI Non Domestic RHI Scheme currently equating to around 7% of total installed capacity in the GB scheme, NI receives below 3% of the GB RHI allocation.

2.5 To meet RHI commitments for existing installations, around £75m may have to be found from within the NI Executive’s budget for the next 5 years to address the current deficit. This could take much needed funding away from other public services although the DETI Minister will continue to make the case for RHI at Executive level. To prevent further overspend action is required now to close both schemes to new applications until such times as additional funding might be secured.

**Options and recommendation**

2.6 The Department must act now to address the budget issue. Keeping the RHI open is not possible as the available budget from 2016/17 onwards has already been exceeded by existing RHI commitments. A reduction in tariffs for new applicants will not be sufficient to address the issue. Although it would reduce the costs associated with new applications, the available budget from 2016/17 onwards is already exceeded by existing RHI commitments. The scheme must be closed unless further funding is allocated to cover, not only the current deficit, but any new commitments.

2.7 The Minister has considered the possibility of reallocating funds from elsewhere within DETI but with pressure on budgets in other areas this is not possible.

2.8 Given the budget position, and subject to further consideration by the Executive, immediate scheme closures is the only viable option at this stage. Subject to the outcome of this consultation (including identification of any further options), Executive consideration of the budget issue, and the legislative process, the Department will move to close the scheme as soon as possible during this Assembly.
FROM: JONATHAN BELL MLA

DATE: xx JANUARY 2016

TO: EXECUTIVE MINISTERS

FUTURE OF THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE

I attach a draft Executive paper (Version 1) and should be grateful for any comments you may have on the recommendations in the paper by close of play on 29 January 2016. Given the issues that I arisen in relation to this issue I have today issued a paper for public consultation.

I am also copying this to the Attorney General, the Departmental Solicitor, and the First Legislative Counsel and to the Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
MEMORANDUM E ( )

FROM: JONATHAN BELL MLA
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

DATE: XX JANUARY 2016

TO: EXECUTIVE

VERSION 1

DRAFT EXECUTIVE PAPER – FUTURE OF THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE

Introduction

1. The purpose of this paper is to advise the Executive of difficulties with funding for the Northern Ireland Renewable Heat Incentive, (RHI), and the need to take action to minimise overspending on the scheme.

2. This matter is deemed to fall within the remit of paragraph 2.4 of the Ministerial code in that it concerns a significant and indeed a controversial matter. It could also be considered as cross cutting.

Background

3. The Non Domestic RHI scheme was introduced in November 2012 and the Domestic RHI scheme in December 2014. Both schemes provide payments for people to move from conventional heating (mainly oil) to
sustainable heating such as wood pellets (biomass). In light of unprecedented applications over the last 3 months for the Non Domestic Scheme and the outcome of the Government’s Spending Review, an urgent decision is now needed on the future of the NI RHI schemes.

4. Successful Domestic RHI applicants receive an upfront payment of up to £3,500 (depending on the technology) along with 7 annual tariff payments based on the heat requirements of the property. Annual payments are typically around £1,200 but are capped at a maximum of £2,500. Uptake of the Domestic RHI scheme has increased steadily (c.700 applications since the scheme was introduced).

5. The Non Domestic RHI scheme on the other hand involves 20 years of annual tariff payments based on the metered heat usage of the business. Tariffs are dependent on the type and size of technology. To date, average annual payments have been around £24,000. The Non Domestic scheme therefore involves much larger and longer financial commitments than the domestic scheme.

6. After a slow start during the first two years, non domestic scheme uptake increased steadily during 2015. During the Autumn of 2015 there was an unprecedented surge in applications. This increase relates to one particular technology – biomass and has been attributed to one particular industry’s wholesale uptake of the scheme. This is the poultry industry’s use of RHI for broiler houses.

7. A sustained increase in applications during March and April 2015 was the catalyst for the legislative changes I brought through the Assembly in November to, inter-alia, introduce a tiered tariff (reducing after 1,314 hours) and an annual cap (at 400,000 KWh) on RHI payments for biomass. However, in the run up to these legislative changes, the number of installations on the scheme doubled with over 900 applications received in 6 weeks. An increase in applications had been
forecast as businesses tried to beat the deadline for tariff changes, but not at the unprecedented numbers received.

8. The increase in applications means that over 167MW of renewable heating capacity has now been installed under the non domestic scheme. This currently equates to around 7% of total installed capacity under the GB non domestic scheme. It is estimated that over 6% of NI’s total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded and we would be well on track to reach the 10% target set for 2020. However, this success comes at a price. Total expenditure for both RHI schemes in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £42m.

**Scheme Approvals**

9. When the business case for the non-domestic scheme was approved by DFP in 2012, one of the conditions was for re-approval in March 2015. Unfortunately the need for this approval was overlooked. DETI had no choice but to keep making the payments because the RHI scheme is set out in statutory Regulations and there are no grounds for DETI to cease making payments to properly made applications. Prospective approval has now been received from DFP for non domestic scheme expenditure from 29 October 2015 through to 31 March 2016. Retrospective approval from 1 April 2015 to 30 September 2015 has however been declined. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

**Affordability**

10. The affordability of the NI RHI schemes going forward obviously depends on the budget available. The RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME)
which normally would not have an impact on the NI Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard, AME, where the Exchequer takes on all risks. Instead, a risk-sharing arrangement was introduced whereby, should RHI spending in one year exceed the allocated budget; NI would need to repay this in future years. This could be achieved through scheme changes. However, the rules provided that a small proportion of any required future savings (likely to be of the order of 5%) would have to be funded directed by NI through DEL.

11. Also, unlike traditional, AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of c.3% of the DECC budget (£838m). HMT confirmed that any 20 year commitments entered into during this period would be honored. This arrangement was rolled forward in 2015/6 though the AME 2015/16 budget has since been raised to £23m in light of increased demand.

Change in HMT policy

12. If RHI funding was “pure” AME there would be no impact on NI DEL. If the Barnett formula + 5% penalties approach was carried forward the effect on NI DEL would be relatively small – generally less than £1m p.a. over the 2016/17–20/21 period (this assumes scheme closure in March 2016). However, the effect of the Chancellor’s Autumn Statement was to reduce the NI RHI budget. DFP officials have also advised that HMT’s likely position will be that NI will have to cover the full costs (not 5%) of any overspends.

13. This creates significant budgetary pressures for the next 5 years with additional average annual costs of around £15m even if there are no new applications after the end of this financial year. Costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the costs would remain static but the HMT
budget would rise therefore reducing the scheme overspend from around £23m in 2016/17 to around £7m by 2020/21.

14. Discussions between DFP and HMT are ongoing but I must proceed on the basis that the major overspend that has now arisen will not be covered by HMT. DETI does not have the funding to meet this overspend so I have no choice but to propose immediate closure of the scheme unless extra funding becomes available.

15. The option of keeping open the RHI would help reach the Executive target of 10% renewable heat by 2020, help reduce greenhouse gas emissions, contribute to the UK’s renewables obligations and support the local renewables industry. However, this could involve DEL costs of £165m over the 2016/17 – 2020/21 period. This would represent an unacceptable opportunity cost either to the budgets of the new DfE, or to some other NI Block public services. This is roughly double (at £30/yr) the average annual cost of closing the scheme as soon as possible (at £15m/yr).

Consultation

16. I have commenced a short 3 week consultation on the issue but negative responses can be expected as proposals to suspend or close the RHI will not be well received. The consultation outcome will be reflected in the next draft version of this Executive paper.

Renewable Heat Target

17. Although the PfG 2015 target to achieve 4% renewable heat by 2015 has been exceeded, if both RHI schemes are suspended, there is a risk that the Executive’s Strategic Energy Framework target to achieve 10% renewable heat by 2020 will not be achieved.
Timing

18. Given the urgency of the situation I propose to close both the RHI schemes in March 2016, subject to Assembly approval of the legislation.

Executive Colleagues comments

19. [To be inserted once received in version 2 of this paper].

Recommendation

20. The Executive is asked to:
   i) confirm whether the RHI scheme should remain open beyond March 2016 (which would almost certainly involve either the allocation of material additional funds to the new DfE for that purpose, or unacceptable consequences for DfE services); and if not
   ii) agree that the scheme will be closed as soon as possible.
Fwd: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

Tim

We need to discuss this

Andrew

Sent from my iPad

Begin forwarded message:

From: “Crawford, Andrew” <Andrew.Crawford@dfon.gov.uk>
Date: 21 January 2016 at 11:25:25 GMT
To: Andrew Crawford
Subject: Fw: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

Sent from my BlackBerry 10 smartphone.

From: Cairns, Timothy <Timothy.Cairns@detini.gov.uk>
Sent: Wednesday, 20 January 2016 12:36
To: Crawford, Andrew; Brimstone, Stephen
Subject: Fw: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

Closure of RHI draft exec paper for info

Sent from my iPhone managed by BlackBerry Enterprise Service

---- Original Message ----

From: McCormick, Andrew (DETI) <Andrew.McCormick@detini.gov.uk>
Date: 19 January 2016, 14:46 GMT
To: Cairns, Timothy <Timothy.Cairns@detini.gov.uk>
Subject: Fw: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI
You know well how pressing this is, and the Accounting Officer issues can only be managed well. (not eliminated as it's too far gone) on the timetable in the attached.

Many thanks.
Sent from my BlackBerry 10 smartphone.

From: Mills, John (DETI) <John.Mills@detini.gov.uk>
Sent: Tuesday, 19 January 2016 14:09
To: Private Office DETI
Cc: McCormick, Andrew (DETI); Stewart, Chris (DETI); Rooney, Eugene; Cooper, Trevor; Wightman, Stuart; Vaughan, Helen; Robson, Rod; McCrea, Ian; Kerr, Sean; DG_DETI Press Office; DETI Energy Mailbox
Subject: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

Private Office

Please find attached submission seeking urgent approval to launch public consultation on the RHI schemes. Public consultation must be launched on 20 January 2016 (by cop tomorrow) to enable policies to be finalised, approved and legislation progressed before Assembly rises in March.

A copy of the Consultation paper (Annex A) should accompany the letter to the Chair of the ETI Committee (Annex B).
From: John Mills
Date: 19 January 2016
To: 1. Timothy Cairns
   2. Jonathan Bell MLA

Copy Distribution List below

OPTIONS ON THE FUTURE OF RENEWABLE HEAT INCENTIVE SCHEMES

Issue: The future of the Northern Ireland Renewable Heat Incentive schemes (RHI).

Timing: DESK IMMEDIATE: Clearance by 20 January 2016 to enable public and Executive consultation to begin.

Executive Committee Referral: Executive Paper needs to be agreed at Executive Meeting on 25 February 2016.

PFG Implications: The PFG targets for renewable heat are 4% by 2015 and 10% by 2020. The 4% target has been met.

Presentational Issues: The closure/suspension of the scheme will be unwelcome for the RHI industry. The expenditure situation will attract criticism.

FOI Implications: FOIA exempt under sections 35 (formulation or development of government policy)

Financial Implications: Potential impact on DEL of £75 over 5 years.

Legislation Implications: Legislative changes to the RHI require draft affirmative resolution Regulations.

Statutory Equality Obligations: Screened out.

Recommendation: That you approve the issue, on 20 January 2016 of the attached:
   (a) a consultation on closure of the RHI scheme (Annex A) for a 3 week period;
   (b) letter to the Chair of the ETI Committee (Annex B); and
   (c) version1 of the draft Executive paper (Annex C).
BACKGROUND

1. Further to my submission of 31 December 2015 (SUB 1/2016 refers) you have agreed that it appears necessary to close the RHI schemes to new applications (we await written confirmation). The final decision is subject to consultation. This submission invites you to approve the immediate steps needed to move towards final decisions on this issue, which requires Executive approval and public consultation.

BUDGET DEFICIT

2. To meet RHI commitments for existing installations, around £75m of funding will have to be found from DEL for the next 5 years to address the current funding deficit. If both RHI schemes remain open to new applicants, the budget deficit increases to £165m.

PUBLIC CONSULTATION

3. To give stakeholders advance notice of closure while moving to prevent further overspend as swiftly as possible. Given that the consultation is on a single issue (the steps for budgetary control of RHI) and there was a more substantial consultation in 2013, the reduced 3 week period is not considered unreasonable and is the maximum possible, given the timescales. A copy of the draft Consultation Document is attached at Annex A. A draft letter to the ETI Committee Chair is also attached at Annex B.

EXECUTIVE REFERRAL

4. In the absence of additional funding being allocated to the RHI by the Executive it must close or be suspended. There are implications for the PfG (10% target not being reached if RHI closes). The closure/suspension and the budget position could be considered “significant or controversial” and cross cutting. Also any action other than closure would create a significant opportunity cost, and even if this was to be absorbed in the DETIDfE budget areas, it would have consequences which could only be approved at collective Executive level. A Draft Executive Paper is therefore attached at Annex C.

NEXT STEPS

5. Closure of the RHI requires subordinate legislation subject to the draft affirmative process. Bearing in mind the fact that the Assembly rises at the end of March, the suggested process and timings for progressing this issue is set out below:

<table>
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<tr>
<td>Subject to your clearance of this submission:</td>
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<td>a) publication of consultation paper (Annex A) for a reduced period of 3 weeks;</td>
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Further submission to you on outcome of consultation with:

a) Final version of Executive paper for clearance;
b) SL1 to ETI Committee for closure/suspension - legislation subject to Executive consideration; and
c) Motion to be signed for Assembly Debate.

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<tr>
<td>ETI Committee meeting (SL1 clearance, subject to Executive clearance)</td>
<td>Tues 23 Feb</td>
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<tr>
<td>Executive clearance of Final Paper either at a meeting or by urgent procedure.</td>
<td>Not later than 25 Feb</td>
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<tr>
<td>Lay Regulations/ ETI Committee meeting (clear draft Regs)</td>
<td>End Feb/early Mar</td>
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<tr>
<td>Debate on Regulations/ Regulations come into operation</td>
<td>Early/mid Mar</td>
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6. Your urgent clearance will be required at 2 key stages under the process –
   (i) to agree consultation, 1st version of Executive paper and correspondence to ETI Committee by 20 January; and
   (ii) following consultation, by 17 February clear SL1 (final policy) to ETI Committee; clear final Executive paper and sign motion for Assembly Debate.

RECOMMENDATION

7. That you approve the issue, on 20 January 2016, of:
   (a) a consultation on the closure of the RHI (Annex A) for a 3 week period;
   (b) the attached letter to the Chair of the ETI Committee, (along with a copy of the consultation document), which advises of the launch of the consultation (Annex B); and
   (c) version 1 of the attached Executive paper which notifies Executive Colleagues of the launch of the consultation (Annex C).

JOHN MILLS
Energy Division
Ext. 29215

cc: Andrew McCormick
    Chris Stewart
    Eugene Rooney
    Stuart Wightman
    Trevor Cooper
    Helen Vaughan
    Rob Robson (DALO)
    Ian McCrea MLA APS
    Sean Kerr
    Press Office
Annex B - Letter to the ETI Committee

Mr Patsy McGlone MLA
Chair of ETI Committee
Room 375
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX

XX January 2016

Dear Patsy

CONSULTATION ON CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

I am writing to inform the Committee of a consultation on the closure of the RHI. A copy of the consultation document is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2013. At that time I said that further measures might be necessary. A sustained increase in applications during March/April 2015 was the catalyst for these changes. However, in the run up to these legislative changes, there was an unprecedented surge in new applications with a further 900 applications received in 6 weeks. This doubled the total number of installations under the non-domestic scheme.

The increase in demand equates to around 7% of total installed heat capacity under the GB non domestic scheme. It is estimated that over 6% of NI's total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded. However, this success comes at a price. Total expenditure for RHI in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed), forecast RHI expenditure in 2016/17 is expected to be around £42m.

The affordability of the NI RHI going forward obviously depends on the budget available. The RHI is paid out of Annual Managed Expenditure (AME), which normally wouldn't have an impact on the NI Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard AME, where the Exchequer takes all risks. Instead, a budget of 3% of GB spending was applied to NI with 5% of any overspend to be funded by NI through DEL.

The effect of the Chancellor’s Autumn Statement has been to reduce the NI RHI budget further. The NI allocation will continue to be based on 3% of a reduced DECC budget. This is despite the NI non domestic scheme delivering 7% of the installed capacity under the GB scheme. DFP officials have also advised that HMT's position will be that NI will have to cover the full costs (not 5%) of any overspend. This creates significant budgetary pressures with additional costs of up to £75m over the next 5 years even if no new applications are received after the end of this financial year.
Discussions between DFP and HMT are ongoing but I must proceed on the basis that the overspend which has now arisen will not be covered by HMT. I will seek the views my Executive colleagues and will write to the Committee again following consultation and Executive consideration.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
OPTIONS ON THE FUTURE OF RENEWABLE HEAT INCENTIVE SCHEMES

Issue: The future of the Northern Ireland Renewable Heat Incentive schemes (RHI).

Timing: DESK IMMEDIATE: Clearance by 20 January 2016 to enable public and Executive consultation to begin.

Executive Committee Referral: Executive Paper needs to be agreed at Executive Meeting on 25 February 2016.

PFG Implications: The PfG targets for renewable heat are 4% by 2015 and 10% by 2020. The 4% target has been met.

Presentational Issues: The closure/suspension of the scheme will be unwelcome for the RHI industry. The expenditure situation will attract criticism.

FOI Implications: FOIA exempt under sections 35 (formulation or development of government policy)

Financial Implications: Potential impact on DEL of £75 over 5 years.

Legislation Implications: Legislative changes to the RHI require draft affirmative resolution Regulations.

Statutory Equality Obligations: Screened out.

Recommendation: That you approve the issue, on 20 January 2016 of the attached:
(a) a consultation on closure of the RHI scheme (Annex A) for a 3 week period;
(b) letter to the Chair of the ETI Committee (Annex B); and
(c) version1 of the draft Executive paper (Annex C).
BACKGROUND

1. Further to my submission of 31 December 2015 (SUB 1/2016 refers) you have agreed that it appears necessary to close the RHI schemes to new applications (we await written confirmation). The final decision is subject to consultation. This submission invites you to approve the immediate steps needed to move towards final decisions on this issue, which requires Executive approval and public consultation.

BUDGET DEFICIT

2. To meet RHI commitments for existing installations, around £75m of funding will have to be found from DEL for the next 5 years to address the current funding deficit. If both RHI schemes remain open to new applicants, the budget deficit increases to £165m.

PUBLIC CONSULTATION

3. To give stakeholders advance notice of closure while moving to prevent further overspend as swiftly as possible. Given that the consultation is on a single issue (the steps for budgetary control of RHI) and there was a more substantial consultation in 2013, the reduced 3 week period is not considered unreasonable and is the maximum possible, given the timescales. A copy of the draft Consultation Document is attached at Annex A. A draft letter to the ETI Committee Chair is also attached at Annex B.

EXECUTIVE REFERRAL

4. In the absence of additional funding being allocated to the RHI by the Executive it must close or be suspended. There are implications for the PfG (10% target not being reached if RHI closes). The closure/suspension and the budget position could be considered “significant or controversial” and cross cutting. Also any action other than closure would create a significant opportunity cost, and even if this was to be absorbed in the DET/DIE budget areas, it would have consequences which could only be approved at collective Executive level. A Draft Executive Paper is therefore attached at Annex C.

NEXT STEPS

5. Closure of the RHI requires subordinate legislation subject to the draft affirmative process. Bearing in mind the fact that the Assembly rises at the end of March, the suggested process and timings for progressing this issue is set out below:

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| Event Description                                                                 | Date
|-----------------------------------------------------------------------------------|------
| ETI Committee meeting (SL1 clearance, subject to Executive clearance)              | Tues 23 Feb
| Executive clearance of Final Paper either at a meeting or by urgent procedure.    | Not later than 25 Feb
| Lay Regulations/ ETI Committee meeting (clear draft Regs)                          | End Feb/early Mar
| Debate on Regulations/ Regulations come into operation                             | Early/mid Mar

6. Your urgent clearance will be required at 2 key stages under the process –
   (i) to agree consultation, 1st version of Executive paper and correspondence to ETI Committee by 20 January; and
   (ii) following consultation, by 17 February clear SL1 (final policy) to ETI Committee; clear final Executive paper and sign motion for Assembly Debate.

RECOMMENDATION

7. That you approve the issue, on 20 January 2016, of:
   (a) a consultation on the closure of the RHI (Annex A) for a 3 week period;
   (b) the attached letter to the Chair of the ETI Committee, (along with a copy of the consultation document ), which advises of the launch of the consultation (Annex B); and
   (c) version1 of the attached Executive paper which notifies Executive Colleagues of the launch of the consultation (Annex C).

JOHN MILLS
Energy Division
Ext. 29215

cc: Andrew McCormick
    Chris Stewart
    Eugene Rooney
    Stuart Wightman
    Trevor Cooper
    Helen Vaughan
    Rob Robson (DALO)
    Ian McCrea MLA APS
    Sean Kerr
    Press Office
Annex B - Letter to the ETI Committee

Mr Patsy McGlone MLA
Chair of ETI Committee
Room 375
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX

XX January 2016

Dear Patsy

CONSULTATION ON CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

I am writing to inform the Committee of a consultation on the closure of the RHI. A copy of the consultation document is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2013. At that time I said that further measures might be necessary. A sustained increase in applications during March/April 2015 was the catalyst for these changes. However, in the run up to these legislative changes, there was an unprecedented surge in new applications with a further 900 applications received in 6 weeks. This doubled the total number of installations under the non-domestic scheme.

The increase in demand equates to around 7% of total installed heat capacity under the GB non domestic scheme. It is estimated that over 6% of NI's total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded. However, this success comes at a price. Total expenditure for RHI in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed), forecast RHI expenditure in 2016/17 is expected to be around £42m.

The affordability of the NI RHI going forward obviously depends on the budget available. The RHI is paid out of Annual Managed Expenditure (AME), which normally wouldn't have an impact on the NI Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard AME, where the Exchequer takes on all risks. Instead, a budget of 3% of GB spending was applied to NI with 5% of any overspend to be funded by NI through DEL.

The effect of the Chancellor's Autumn Statement has been to reduce the NI RHI budget further. The NI allocation will continue to be based on 3% of a reduced DECC budget. This is despite the NI non domestic scheme delivering 7% of the installed capacity under the GB scheme. DFP officials have also advised that HMT's position will be that NI will have to cover the full costs (not 5%) of any overspend. This creates significant budgetary pressures with additional costs of up to £75m over the next 5 years even if no new applications are received after the end of this financial year.
Discussions between DFP and HMT are ongoing but I must proceed on the basis that the overspend which has now arisen will not be covered by HMT. I will seek the views of my Executive colleagues and will write to the Committee again following consultation and Executive consideration.

JONATHAN BELL MLA

Minister of Enterprise, Trade and Investment
Consultation Paper

Proposed closure of the Northern Ireland Renewable Heat Incentive.

January 2016
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   Page 3

2 Proposed RHI Closure
   Page 6
Purpose of Consultation and how to Respond

1

Purpose of consultation

1.1 The purpose of this consultation is to seek views on the proposal to close the domestic and non domestic Renewable Heat Incentive schemes (‘the RHI’) to new applications.

1.2 Following an extensive consultation in July 2013, cost control measures were recently introduced to the non domestic RHI in November 2015. These included tiered tariffs for biomass, a change in biomass banding, and an annual cap on heat payments. However, an unprecedented increase in applications in the run up to these changes together with budget cuts arising from the Chancellor’s November Spending Review Statement now means the RHI budget has been exhausted.

1.3 It is therefore, proposed to close the RHI to new applicants to prevent further overspend until such time as additional funding might be secured. We pointed to the need for such measures in the 2013 consultation, although at that time neither the significant increase in applications nor the budget changes were anticipated.

1.4 Further details and information on the proposal is set out in Chapter 2. A further public consultation will be carried out to inform long term policy for renewable heating in Northern Ireland after both schemes have been closed.
In the absence of additional funding being allocated to the scheme, DETI is seeking views on:

1) Whether there are feasible options other than closure of the RHI schemes with immediate effect; and
2) Whether there are factors which should be taken account in the closing the scheme.

How to respond

1.5 Responses should be sent, preferably by email, **to arrive by 5pm on 10 February 2016** to:

[enter email address]

or by post to:

Energy Efficiency Branch  
Energy Division  
Department of Enterprise, Trade and Investment  
Netherleigh, Massey Avenue  
BELFAST  
BT4 2JP

1.6 All responses should include the name and postal address of the respondent.

Confidentiality & Data Protection

1.7 Your response may be made public by DETI and placed on the DETI website. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as 'CONFIDENTIAL'. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.8 Information provided in responses, including personal information, may be subject to publication or disclosure in accordance with the access to
information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.9 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Impact Assessment

1.10 The Department has screened the proposals for Equality Impact, Regulatory Impact and Rural Proofing. Copies of these documents can be provided on request.

Copies of the document

1.11 This document is being produced in electronic form and may be accessed on the DETI Energy website or may be obtained from the address above or by telephoning 028 9052 9581.

1.12 If you require access to this consultation paper in a different format – e.g. Braille, disk, audio cassette, larger font – or in a minority ethnic language please contact the Department on 028 9052 9581 and appropriate arrangements will be made as soon as possible.
PROPOSED RHI CLOSURE

Background

2.1 The RHI, introduced in November 2012 to the non-domestic sector and in December 2014 to the domestic sector has been very successful. Over 3,500 renewable heating installations have been incentivised to date under the NI RHI schemes and we have met and exceeded the Executive’s 2015 target of 4% renewable heat. It is currently estimated that around 6% of Northern Ireland’s heating needs are provided through renewable heating technologies.

2.2 Over the last 18 months the number of non-domestic RHI applications has grown from around 200 to over 1,800. Over 900 of these applications were received in the run up to the cost control measures introduced on 18 November 2015. This success has placed significant pressures on the available budget.

2.3 Funding for the NI RHI is provided by Treasury, and up to this point has been additional to the NI Block Grant, meaning that it does not affect funding for other NI public services. However, the increase in committed RHI payments associated with the recent influx in non domestic applications means that the NI funding allocations from 2016/17 onwards will be exceeded even if both schemes were closed to new applications now. This situation is exacerbated by the UK Government’s November Spending Review which included a significant cut in future RHI funding.
2.4 Despite total renewable heating capacity installed through the NI Non Domestic RHI Scheme currently equating to around 7% of total installed capacity in the GB scheme, NI receives below 3% of the GB RHI allocation.

2.5 To meet RHI commitments for existing installations, around £75m may have to be found from within the NI Executive’s budget for the next 5 years to address the current deficit. This could take much needed funding away from other public services although the DETI Minister will continue to make the case for RHI at Executive level. To prevent further overspend action is required now to close both schemes to new applications until such times as additional funding might be secured.

Options and recommendation

2.6 The Department must act now to address the budget issue. Keeping the RHI open is not possible as the available budget from 2016/17 onwards has already been exceeded by existing RHI commitments. A reduction in tariffs for new applicants will not be sufficient to address the issue. Although it would reduce the costs associated with new applications, the available budget from 2016/17 onwards is already exceeded by existing RHI commitments. The scheme must be closed unless further funding is allocated to cover, not only the current deficit, but any new commitments.

2.7 The Minister has considered the possibility of reallocating funds from elsewhere within DETI but with pressure on budgets in other areas this is not possible.

2.8 Given the budget position, and subject to further consideration by the Executive, immediate scheme closures is the only viable option at this stage. Subject to the outcome of this consultation (including identification of any further options), Executive consideration of the budget issue, and the legislative process, the Department will move to close the scheme as soon as possible during this Assembly.
ANNEX C

FROM:  JONATHAN BELL MLA

DATE:  xx JANUARY 2016

TO:    EXECUTIVE MINISTERS

FUTURE OF THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE

I attach a draft Executive paper (Version 1) and should be grateful for any comments you may have on the recommendations in the paper by close of play on 29 January 2016. Given the issues that I arisen in relation to this issue I have today issued a paper for public consultation.

I am also copying this to the Attorney General, the Departmental Solicitor, and the First Legislative Counsel and to the Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
MEMORANDUM E ( )

FROM: JONATHAN BELL MLA

MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

DATE: xx JANUARY 2016

TO: EXECUTIVE

VERSION 1

DRAFT EXECUTIVE PAPER – FUTURE OF THE NORTHERN IRELAND RENEWABLE HEAT INCENTIVE

Introduction

1. The purpose of this paper is to advise the Executive of difficulties with funding for the Northern Ireland Renewable Heat Incentive, (RHI), and the need to take action to minimise overspending on the scheme.

2. This matter is deemed to fall within the remit of paragraph 2.4 of the Ministerial code in that it concerns a significant and indeed a controversial matter. It could also be considered as cross cutting.

Background

3. The Non Domestic RHI scheme was introduced in November 2012 and the Domestic RHI scheme in December 2014. Both schemes provide payments for people to move from conventional heating (mainly oil) to
sustainable heating such as wood pellets (biomass). In light of unprecedented applications over the last 3 months for the Non Domestic Scheme and the outcome of the Government’s Spending Review, an urgent decision is now needed on the future of the NI RHI schemes.

4. Successful Domestic RHI applicants receive an upfront payment of up to £3,500 (depending on the technology) along with 7 annual tariff payments based on the heat requirements of the property. Annual payments are typically around £1,200 but are capped at a maximum of £2,500. Uptake of the Domestic RHI scheme has increased steadily (c.700 applications since the scheme was introduced).

5. The Non Domestic RHI scheme on the other hand involves 20 years of annual tariff payments based on the metered heat usage of the business. Tariffs are dependent on the type and size of technology. To date, average annual payments have been around £24,000. The Non Domestic scheme therefore involves much larger and longer financial commitments than the domestic scheme.

6. After a slow start during the first two years, non domestic scheme uptake increased steadily during 2015. During the Autumn of 2015 there was an unprecedented surge in applications. This increase relates to one particular technology – biomass and has been attributed to one particular industry’s wholesale uptake of the scheme. This is the poultry industry’s use of RHI for broiler houses.

7. A sustained increase in applications during March and April 2015 was the catalyst for the legislative changes I brought through the Assembly in November to, inter-alia, introduce a tiered tariff (reducing after 1,314 hours) and an annual cap (at 400,000 KWh) on RHI payments for biomass. However, in the run up to these legislative changes, the number of installations on the scheme doubled with over 900 applications received in 6 weeks. An increase in applications had been
forecast as businesses tried to beat the deadline for tariff changes, but not at the unprecedented numbers received.

8. The increase in applications means that over 167MW of renewable heating capacity has now been installed under the non domestic scheme. This currently equates to around 7% of total installed capacity under the GB non domestic scheme. It is estimated that over 6% of NI's total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded and we would be well on track to reach the 10% target set for 2020. However, this success comes at a price. Total expenditure for both RHI schemes in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are suspended/closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £42m.

Scheme Approvals

9. When the business case for the non-domestic scheme was approved by DFP in 2012, one of the conditions was for re-approval in March 2015. Unfortunately the need for this approval was overlooked. DETI had no choice but to keep making the payments because the RHI scheme is set out in statutory Regulations and there are no grounds for DETI to cease making payments to properly made applications. Prospective approval has now been received from DFP for non domestic scheme expenditure from 29 October 2015 through to 31 March 2016. Retrospective approval from 1 April 2015 to 30 September 2015 has however been declined. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

Affordability

10. The affordability of the NI RHI schemes going forward obviously depends on the budget available. The RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME)
which normally would not have an impact on the NI Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as standard, AME, where the Exchequer takes on all risks. Instead, a risk-sharing arrangement was introduced whereby, should RHI spending in one year exceed the allocated budget; NI would need to repay this in future years. This could be achieved through scheme changes. However, the rules provided that a small proportion of any required future savings (likely to be of the order of 5%) would have to be funded directed by NI through DEL.

11. Also, unlike traditional, AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of c.3% of the DECC budget (£838m). HMT confirmed that any 20 year commitments entered into during this period would be honored. This arrangement was rolled forward in 2015/6 though the AME 2015/16 budget has since been raised to £23m in light of increased demand.

**Change in HMT policy**

12. If RHI funding was "pure" AME there would be no impact on NI DEL. If the Barnett formula + 5% penalties approach was carried forward the effect on NI DEL would be relatively small – generally less than £1m p.a. over the 2016/17-20/21 period (this assumes scheme closure in March 2016). However, the effect of the Chancellor's Autumn Statement was to reduce the NI RHI budget. DFP officials have also advised that HMT's likely position will be that NI will have to cover the full costs (not 5%) of any overspends.

13. This creates significant budgetary pressures for the next 5 years with additional average annual costs of around £15m even if there are no new applications after the end of this financial year. Costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the costs would remain static but the HMT
budget would rise therefore reducing the scheme overspend from around £23m in 2016/17 to around £7m by 2020/21.

14. Discussions between DFP and HMT are ongoing but I must proceed on the basis that the major overspend that has now arisen will not be covered by HMT. DETI does not have the funding to meet this overspend so I have no choice but to propose immediate closure of the scheme unless extra funding becomes available.

15. The option of keeping open the RHI would help reach the Executive target of 10% renewable heat by 2020, help reduce greenhouse gas emissions, contribute to the UK’s renewables obligations and support the local renewables industry. However, this could involve DEL costs of £165m over the 2016/17 – 2020/21 period. This would represent an unacceptable opportunity cost either to the budgets of the new DIE, or to some other NI Block public services. This is roughly double (at £30/yr) the average annual cost of closing the scheme as soon as possible (at £15m/yr).

Consultation

16. I have commenced a short 3 week consultation on the issue but negative responses can be expected as proposals to suspend or close the RHI will not be well received. The consultation outcome will be reflected in the next draft version of this Executive paper.

Renewable Heat Target

17. Although the PfG 2015 target to achieve 4% renewable heat by 2015 has been exceeded, if both RHI schemes are suspended, there is a risk that the Executive’s Strategic Energy Framework target to achieve 10% renewable heat by 2020 will not be achieved.
Timing

18. Given the urgency of the situation I propose to close both the RHI schemes in March 2016, subject to Assembly approval of the legislation.

Executive Colleagues comments

19. [To be inserted once received in version 2 of this paper].

Recommendation

20. The Executive is asked to:
   i) confirm whether the RHI scheme should remain open beyond March 2016 (which would almost certainly involve either the allocation of material additional funds to the new DfE for that purpose, or unacceptable consequences for DfE services); and if not
   ii) agree that the scheme will be closed as soon as possible.
Paragraph 37 a.

And then you’re also —. If we just move on to the next page at paragraph 37 g — although you don’t have the question there, which we find on WIT-22590 — you’re also saying there that you weren’t aware of Mr Cairns asking Mr Kerr to “hold” the submissions. Although I’m bound to say that seems a little unlikely in light of the fact that we looked at something which looked to be an email from Mr Cairns passing that on to you.

And then you also indicate — paragraph 39 b at WIT-22638, and, again, you have to put together the questions here, but you’re indicating that you weren’t aware of the submission being “pulled”.

So, I am conscious that I’ve gone through a range of different things. The picture which seems to emerge from the documentary evidence is: you’ve cleared the submission on the Friday afternoon. A message has come from Mr Cairns to the private office to say, “Hold those submissions”, which is interpreted by the private office as the special adviser saying, “Hold the clearance” or, “Put a stop on the approval”, and energy division duly does that, which results in an enquiry about what’s happening. And the explanation which is given by Mr Cairns is: after the communication he’s had with Mr Johnston, that the issue is now being dealt with by party officers, he says, which I think he later explains was really a shorthand way of referring to a number of the other special advisers, particularly in OFMDFM. So, that somewhat convoluted introduction: are you able to explain what you think happened on that Friday afternoon?

Mr Bell: I think I cleared the submission, which would be consistent with what the direction I’d given to get it cleared as soon as possible within the proper, appropriate legal frameworks. Um, I can’t recall any — why I would’ve wanted to speak to Timothy Johnston about it. I didn’t speak to Timothy Johnston, I don’t recall, on other matters or — so I don’t even know why I was — if I was — trying to contact him that day. I think I’d cleared the
submission, and you’re saying to me there was then an email sent. Now, I was trying to look at it there.

I’d sort of three email addresses: I’d an Assembly — four, probably — I’d an Assembly email address; I had a ministerial email address; there was a ministerial email address put onto my business card, which was also — which didn’t actually come to me, it actually went to the private office directly, and they would’ve printed those out and given them to me.

Um, so I’m not sure —. I don’t recall reading an email to say it was there.

But it’s not a question, in my view, of, “Look, I’m stopping a decision you’ve made. I’m just gonna send you an email to say I’ve done it”. I’ve never known a submission — once signed by the Minister, it’s signed by the Minister, and if you’re changing that, you have to — my understanding would be you’d set up an alternative submission, you know, so once I’d given the ministerial authority, the ministerial authority was given. I mean, the fact that somebody said, “I’ve told Sean to hold the subs” or whatever by email, I can’t recall that email at all. I haven’t, um, but the, uh, it doesn’t change the fact that, as Minister, I’d signed that submission, as I went off on Friday afternoon, I presume in preparation to fly to the US.

Mr Scoffield QC: I think you were flying either that evening or, perhaps, the next day.

Mr Bell: Yes. I presume —. I’d gone off Friday afternoon. All business had been cleared. I’d probably gone back and checked with my constituency office. All business had been cleared, and then I was going to America the next day, so I don’t know if I even had access to —. I would’ve had access to emails but I don’t know if I was looking at them.

Mr Scoffield QC: Now, I’ll maybe just take you to Mr Cairns’s account of what is happening on this afternoon, which we see at WIT-20237. Now he says — let’s just look at the middle of that page first of all under para 38 a. — he says:

“\textit{I believe I was informed by Mr Johnston that despite the Minister agreeing with the submission, the Minister should not clear the submission until approval was received from the party leader through Mr}
Tim

This is another one that needs to be out the door today. Again its a consultation on closing RHI. Keeping it open before Christmas has caused potentially a £27 million overspend in this area. We need to consult and probably close the non domestic RHI.

T

From: McCormick, Andrew (DETI)
Sent: 19 January 2016 14:46
To: Cairns, Timothy
Subject: Fw: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

You know well how pressing this is, and the Accounting Officer issues can only be managed well. (not eliminated as it's too far gone) on the timetable in the attached.

Many thanks.
Sent from my BlackBerry 10 smartphone.

From: Mills, John (DETI) <John.Mills@detini.gov.uk>
Sent: Tuesday, 19 January 2016 14:09
To: Private Office DETI
Cc: McCormick, Andrew (DETI); Stewart, Chris (DETI); Rooney, Eugene; Cooper, Trevor; Wightman, Stuart; Vaughan, Helen; Robson, Rod; McCrea, Ian; Kerr, Sean; DG_DETI Press Office; DETI Energy Mailbox
Subject: DESK IMMEDIATE: Submission - Consultation on Closure of the RHI

Private Office

Please find attached submission seeking urgent approval to launch public consultation on the RHI schemes. Public consultation must be launched on 20 January 2016 (by cop tomorrow) to enable policies to be finalised, approved and legislation progressed before Assembly rises in March.

A copy of the Consultation paper (Annex A) should accompany the letter to the Chair of the ETI Committee (Annex B).
No problem.
Ive had a lengthy conversation with Andrew Crawford about them. Not sure we have much alternative but to go with officials advice – its more the handling of interested parties that needs to be managed now
T

From: Timothy Johnston [mailto:timothyjohnston@dup.org.uk]
Sent: 22 January 2016 14:07
To: Cairns, Timothy
Cc: andrewdcrawford@
Subject: RE: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Tim
There will be no chance of getting these cleared today. realistically subs like this that need to be discussed with a wider group would need to be pushed up by mid week if they are to be turned round. I will take a look this afternoon but won't be in a position to get Arlene and party view until monday
T

From: Cairns, Timothy [Timothy.Cairns@detini.gov.uk]
Sent: 22 January 2016 12:26
To: Timothy Johnston
Subject: FW: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Tim
JB tried to contact you earlier I think. We need to get this one cleared. I think this is by far the best option – get large scale wind closed (which is what they want) and consult on small scale wind to see if we can do a NI scheme (which we wont be able to do).
He needs to get this out the door today
T

From: Clydesdale, Alison
Sent: 21 January 2016 12:37
To: Private Office DETI; Cairns, Timothy
Cc: McCormick, Andrew (DETI); Stewart, Chris (DETI); Mills, John (DETI); Harris, Michael; McBriar, Trevor; Blower, Michael; DG DETI Press Office; Kerr, Sean; McCrea, Ian; Robson, Rod
Subject: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Private Office
Please find attached a DESK IMMEDIATE submission for the Minister on NIRO closure, cleared by John Mills. This includes a response to COR 0016.
Please note that Annexes D & E are attached separately.

** PLEASE NOTE ** - please contact Michael Harris/Michael Blower for a pdf version of the consultation response before issue to the ETI committee.
Best Regards
Alison
was to be cleared [sic] If Mr Johnston got in contact and said the submission should not be cleared I was to hold the submission for further consideration.”

You then say:

“Mr Johnston emailed me after the deadline. The submission had been issued.”

Mr Cairns: I think it’s probably more accurate that I read the email after the deadline; perhaps that would be more accurate.

Mr Lunny: Yes, well, that’s something I wanted to clarify with you because —.

Mr Cairns: Yes. I mean, I note that the email in the bundle is sent at, like, 2:37, and then I probably don’t pick it up because we’ve meetings that afternoon until after four.

Mr Lunny: Mr Johnston’s email, which causes you to hold the submission, is actually dated just after two o’clock. You don’t send the submission off until four or after four.

Mr Cairns: I didn’t see the email. So, I imagine, you know, trying to piece it together — is I — waiting on the email, going to meetings, email isn’t there, say, “Right, it’s 4 pm, clear that submission, find Mr Johnston’s email”. Then, when I get down to my desk and go, “Goodness, we shouldn’t have issued clearance”.

Mr Lunny: Right. And we’ll come on to look at some of those emails, maybe, after a short break. But I just wanted to clarify, before the break — let you know Mr Bell’s account is, insofar as I understand it. He seemed to agree that he might have issued an instruction along the lines of, “Absent an objection from the First Minister’s office, by a certain time, the submission should be cleared”. But he denied any knowledge of being aware of the recall of that submission by you, and he acknowledged that everybody else who went to the United States on that trip appears to have been aware of it but says he wasn’t aware. So, that’s his —.

Mr Cairns: I heard his evidence, yes.

Mr Lunny: And do you agree with that evidence or do you disagree?
From TJ

Ive told sean to hold the subs

From: Timothy Johnston [mailto:timothyjohnston@dup.org.uk]
Sent: 22 January 2016 14:07
To: Cairns, Timothy
Cc: andrewdcrawford@dup.org.uk
Subject: RE: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Tim

There will be no chance of getting these cleared today. realistically subs like this that need to be discussed with a wider group would need to be pushed up by mid week if they are to be turned round. I will take a look this afternoon but won't be in a position to get Arlene and party view until monday

Tim

From Cairns, Timothy [Timothy.Cairns@detini.gov.uk]
Sent: 22 January 2016 12:26
To: Timothy Johnston
Subject: FW: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Tim

JB tried to contact you earlier I think. We need to get this one cleared. I think this is by far the best option – get large scale wind closed (which is what they want) and consult on small scale wind to see if we can do a NI scheme (which we wont be able to do).

He needs to get this out the door today

T

From: Clydesdale, Alison
Sent: 21 January 2016 12:37
To: Private Office DETI; Cairns, Timothy
Cc: McCormick, Andrew (DETI); Stewart, Chris (DETI); Mills, John (DETI); Harris, Michael; McBriar, Trevor; Blower, Michael; DG DETI Press Office; Kerr, Sean; McCreanor, Ian; Robson, Rod
Subject: DESK IMMEDIATE SUBMISSION - NIRO CLOSURE CONSULTATION RESPONSE

Private Office

Please find attached a DESK IMMEDIATE submission for the Minister on NIRO closure, cleared by John Mills. This includes a response to COR 0016 . Please note that Annexes D & E are attached separately.

** PLEASE NOTE ** - please contact Michael Harris/Michael Blower for a pdf version of the consultation response before issue to the ETI committee.

Best Regards

Alison
things to be rescinded is just not —.

The Chairman: Just look at the conversation, if you don’t mind, Mr Bell.

Mr Bell: Yes.

The Chairman: Did that conversation take place or not?

Mr Bell: No.

The Chairman: Can you give us, at this stage, any reason why Mr Cairns would make up that consultation — that conversation?

Mr Bell: No.

The Chairman: No. Thank you.

Dr MacLean: You went through quite a lot of stuff there. There are contemporaneous emails which document some of those steps. There was an email from Mr Cairns to Mr Johnston, to which Mr Johnston replied, and there was action taken on the back of that. There was an email from Mr Cairns to Mr Bell relating that that is dated the day it happened.

Mr Scoffield QC: Yes. Now my understanding —. Let’s maybe just have a look at that email again, and we find that at INQ-60166. Now, I think your evidence was that you certainly don’t recall seeing this email. It’s just at the top of the page. After Mr Johnston has emailed Mr Cairns to say there’s no chance of getting these cleared today, he forwards that to you, and he says:

“Ive [sic] told sean [sic] to hold the subs”.

And that email, we know, has gone to your Hotmail account. Now, I wanted to ask you just a couple of questions about that, because I had understood from what you said in your evidence yesterday that any communications you had about departmental business would have always been to one of the government email accounts.

Mr Bell: Yes. Absolutely, yes.

Mr Scoffield QC: Well, if that’s right, why is Mr Cairns sending this to a different email
account?

Mr Bell: I’ve no idea, and I don’t even —. I mean, “I have said, ‘Hold the subs’ “: a sub, once signed by a Minister, is not a sub; it’s a direction, you know? I’m just trying to clarify in my own mind when I actually approved the submission, and I can’t recall what the urgent constituency business — but it was a Friday, and I would’ve been dealing with that in advance of going off with the IT companies — but I can’t recall what the urgent business was. But I had a submission. We knew, for all the reasons we’ve mentioned earlier on this morning, that this had to be closed at the earliest possible time. It’s entirely reasonable that I would’ve said to Tim, “Any objections or whatever have with me by a certain period of time”, but then I cleared it. And then it’s not a sub; it’s a ministerial direc— I don’t mean a ministerial direction — it’s a ministerial — it’s an instruction. It becomes the direction of the Minister, and I don’t think anybody had the legal authority to overturn it whatsoever.

Mr Scoffield QC: I appreciate your point on that, which you’ve made clear in your evidence. I just want to try and see if we can break this down to achieve a little more clarity. But your point is: once the submission is approved by you, it’s done, the Minister has given his imprimatur, and the officials’ job is then to give effect to that.

Mr Bell: Yes.

Mr Scoffield QC: Now, let’s look at the position before you approve it, so before it’s cleared late on the Friday afternoon. Were you aware that Mr Johnston was interested in what was happening with the submission, or were you aware that there was any consultation with him about the issue?

Mr Bell: I mean, Timothy Johnston was involved with all of the special advisers at times, so to say I wasn’t aware, I wasn’t aware. I wasn’t aware of the specific rowing back and forward. I certainly wasn’t aware that Timothy Johnston would issue me with an instruction as to what I could do [Inaudible.]
Mr Scoffield QC: The description given in Mr Cairns’ witness evidence is that you had given a deadline or an ultimatum, as it were, effectively to say, “I want this sorted out before we head off tomorrow. Mr Johnston might have an interest, but, if he does, he needs to get back to me quickly, and, if he doesn’t, then the submission’s getting cleared”. Does that —

Mr Bell: Yes, I would’ve said —

Mr Scoffield QC: — ring a bell?

Mr Bell: “Is there any —?”, not just with Timothy Johnston, but, “Is there any valid reason —? Is there any superior information coming in that wouldn’t allow me to do this?”. And it’s consistent with what I’ve told the Inquiry throughout: that I tried to clear this at the first point of being able to do it. And we’d all the difficulties of before. Now we were in a more difficult, or certainly a greater awareness of the difficulties that we were in, and we’d got the submission. So this is not a question of, you know, “Here’s a draft and see what you think about it”: this had been through the Department; everybody was aware of it; and we had decided that, for the purposes of what we were doing, we were going to close at the earliest possible advice consistent with the legal testimony and everything else that we’d received.

So, we’d now got it, and it was to be dealt with urgently. And I would’ve said, you know, “Is there any superior or other evidence that, you know, is telling me I can’t overturn it?”, and, when there wasn’t — and I don’t know who he went off to see or talk to or whatever, but, I mean, that was part of his job to do that, and I don’t take anything away from him for doing that — but, at the point where it came for decision-making on an urgent matter, I addressed it. I signed it.

Mr Scoffield QC: Now, I can quite appreciate —

Mr Bell: I presume I signed it. [Inaudible.]

Mr Scoffield QC: — your position on that. Whether it was signed or cleared in another way —
Mr Bell: Yes, but I cleared it [inaudible.]

Mr Scoffield QC: — is something that we can look at — and, as I’ve said, I mean, the panel will have to take a view on how relevant this is ultimately — but what appears extremely curious is that, after that has happened, the departmental officials are told that the submission is to be held. Mr Mills says, in effect, “The ministerial approval has been withdrawn”. There’s a period then when all of the officials are saying, “What are we gonna do? How do we get this sorted out?”. Mr Cairns is saying, quite openly, “Well, it’s now with others in the party for their input, and we need to wait to hear what they have to say”. And you, Dr McCormick and Mr Cairns are all in America together. What is curious is that everyone else seems to know what’s happened apart from you. And, I mean, it might be it’s not terribly significant at the end of the day, but is your evidence that you were totally unaware that this had happened?

Mr Bell: Yes. Yes, it is. And, while it might seem curious, you know, there’s a simple factual basis that, after all of the evidence comes through, there’s a period of time when a Minister makes a decision, OK? And I had made the decision and took responsibility and accountability for making that decision. I never withdrew my consent to that decision or asked for my ministerial consent to be withdrawn. I don’t care, frankly, what emails were sent to me or anything else: I did not withdraw my approval of the submission. I’d given an instruction for what was to happen, OK?

I mean, people can talk about what they thought and who they talked to and what those conversations in planes and everything else were: nobody came to me and said to me, “Can you tell us to withdraw your decision?”. And that’s the most difficult thing about this whole process, because it appears that I, as Minister, and I know, made the decision and then, through some powers that I wasn’t aware of, wasn’t briefed on or are not in the ministerial code or anything else, procedures, powers were brought to bear that could withdraw the
Minister’s decision without his knowledge. And I don’t accept sending him an email to that effect afterwards worked at it. And I don’t even know if I checked my Hotmail account. And it’s entirely unusual that it would have been sent to that account. That was just a private account I had, not a ministerial account, and all my ministerial business went through the ministerial account.

Mr Scoffield QC: Now, you’re off in the United States. There’s then a series of further exchanges the next week. The 22nd is a Friday —

Mr Bell: Yes.

Mr Scoffield QC: — and 26th, 27th, 28th, there’s some further exchanges back and forward between Belfast and the US. I just want to have a look at some of those and then ask you what your understanding was as to precisely what was happening at that stage.

We go back to IND-01880. You’ve been asked to clear the submission. On your evidence, you’ve cleared it, you don’t see that there’s any issue with that, and things are moving on. Now, if we look at the text here of the 26th of January at 16:57 — sorry 16:56. So, that’s about six or seven texts down. It’s coming from Chris Stewart to Andrew McCormick.

Mr Bell: Uh-huh.

Mr Scoffield QC: Now what’s happening back in Belfast at this stage is DFP, in particular, are becoming increasingly concerned that the scheme is not being closed down with the speed that they would like, it seems. So, Mr Stewart texts Dr McCormick, and he says: “On RHI, David Sterling rang, expressing great concern within DFP (including Mervyn),” who, I think, is the DFP Minister, “over the delay in closing RHI.”

Mr Stewart, who’s been in contact with Mr Cairns, says: “I explained it was with DUP party officers.”

Now, Andrew McCormick gets the message that DFP is unhappy, and, if we have a look at
submission, using his private email account (johnathanbell620@hotmail.com).  
As to this, please address the following issues:

a. Insofar as not addressed above, set out each and every email address you used to communicate with Minister Bell for the purpose of transacting departmental business, including who gave you each of those email addresses, when was each given to you and whether any limitation was placed on the circumstances under which departmental business should be sent to that email address;

The only transactional e-mail address I had for communicating directly with the Minister was his Hotmail address. This was the address he used in OFMDFM, prior to taking up post in DETI, use of which is borne out by INQ-66001. I was given this address by Mr Bell in February 2013 when I worked as his Private Secretary in OFMDFM, and used it as had his previous Private Secretary. No limitation was ever given to me on the use of this address. To my recollection, I had no other way to contact him by e-mail.

a. Why did you send emails containing departmental business to Minister Bell’s private email account rather than an NICS account?

I used this e-mail address to contact the Minister as he had instructed me to use it. I do not recall whether the Minister had his own NICS account and he had no access to the accounts described in 2 above.

b. How often would you have sent emails containing departmental business to Minister Bell’s private email account?

I cannot be exact on this. I used this account frequently but probably not on a daily basis. The vast majority of Departmental business was conducted via hardcopy papers.
properly briefed on in his evidence — also suggests that he wasn’t advised — just, sorry, at b
there — of:

“The comprehensive details of a whistle blower [sic] having advised that the scheme was being abused.”

Now, I think that’s a reference to the January letter rather than Janette O’Hagan previously. But, do you have any views on that? It doesn’t seem to us, from the material that we’ve seen — subject to correction — that there was ever any submission that went to the Minister to tell him that this was something which had come into the DETI system and was being looked at.

Dr McCormick: Um, but do I not recall supplying to you the email where I forwarded Malcolm’s paper to him, to his own account? This happened during the — obviously, it came to me when I was in the US. I thought I’d sent that.

Mr Scoffield QC: Let me just check.

Dr McCormick: Maybe my memory’s faulty.

Mr Scoffield QC: Your recollection is that when the HOCS memo arrived, you sent that on directly —.

Dr McCormick: Not immediately. Not immediately, but at some point. Because I think I copied — this is partly how the row with Tim Cairns broke, was because I forwarded some of the exchanges to both Timothy and Jonathan, I think separately. I think I didn’t send the same email to both of them, if I recall.

Dr MacLean: Cos this was his Hotmail account that he didn’t use.

Dr McCormick: Yes. Yes.

Dr MacLean: Was that a common occurrence, to use that account?

Dr McCormick: It was the only email that I ever used if I was sending things to him.

Dr MacLean: The only email you ever used —

Dr McCormick: To send to him, yes.
Fwd: IMMEDIATE: LETTER TO AMBER RUDD

Peter Robinson
Sent: 19 June 2015 16:32
To: Timothy Johnston
Attachments:Reply to letter from Ambe~1.DOCX (76 KB) ; ATT00001.htm (398 B)

Sent from my iPhone

Begin forwarded message:

From: Jonathan Bell <jonathanbell620@hotmail.com>
Date: 16 June 2015 20:29:48 BST
To: Peter Robinson <peterrobinson@dup.org.uk>
Subject: Fwd: IMMEDIATE: LETTER TO AMBER RUDD

Jonathan F Bell MLA
DUP Assembly Member for Strangford
12 North Street
Newtownards
BT23 4DY
Tel 028 91 827701

Twitter - @jonathanfbell

Begin forwarded message:

From: "Kerr, Sean" <Sean.Kerr@detini.gov.uk>
Date: 16 June 2015 19:57:50 BST
To: "Jonathan Bell (jonathanbell620@hotmail.com)"
<j jonathanbell620@hotmail.com>
Subject: IMMEDIATE: LETTER TO AMBER RUDD

Minister

Please see attached draft letter to Amber Rudd following today's discussions. Andrew
has added a line to the response following your conversation with him today. Let me
know if you are content and will add an electronic signature and e-mail to DECC first
thing in the morning.

Sean Kerr
Private Secretary to Minister Bell
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 90529452
believed what had happened was embarrassing and unprofessional. Mr Bell indicated no dissatisfaction with what I had done."

As I say, on the one hand, your evidence tends to suggest this is happening without you knowing it’s going on. Mr Cairns is saying, no, Mr Bell was aware of what was going on, although had indicated if Mr Johnston doesn’t come back in time, just clear the submission, but that what ultimately happened was discussed with you the next day.

12:45 pm

Mr Bell: No. I mean, I can’t accept that analysis at all. I don’t know what was building up to that day, but I was clearing it that day before I was going on a ministerial trip with a number of businesses. I presume — I take it, from memory, that was the trip to both San Francisco and to New York —

Mr Scoffield QC: Yes.

Mr Bell: — we were going on, and I was doing an information technology —. There was 13 businesses coming with me, which I wanted to brief myself up on that Friday evening. We were going to take these 13 businesses through Silicon Valley, and then we were going off to do some big, major tourism initiative and some other events in New York then following. So, I can’t recall the exact process of the day, but, certainly, when I cleared the submission, that was the submission cleared; there is no other route of, er —. I’d cleared the submission, so I wasn’t aware it had been rescinded, if that’s the correct word.

I was aware, in conversations over initial part of that period, that Tim had said there were difficulties with this or that the party wasn’t happy with this, but the party was never going to be happy with whatever decision was taken in relation to it, because, no matter what way you close, you were going to hurt somebody — or when you closed. So, to be clear, when I signed the submission, I regarded it as the ministerial agreement, and nobody formally informed me that my information had been rescinded.
Mr Scoffield QC: One of the things that we’ll come on to talk about in a few moments’
time is whether there was some process to reapprove the submission about a week later,
but — . I mean, it might be that the panel ultimately feels not a huge amount turns on this,
but Mr Cairns is seemingly recalling a conversation or an exchange that he, from his
evidence, would appear to recall with some precision. He says, “We talked about Mr
Johnston”. Neither of you were happy. This was obviously, on the basis of what you’ve said,
a very unusual occurrence, but is it not strange that, if you’re right, this has happened, Mr
Cairns knows, all of the officials know and you don’t know?

Mr Bell: It’s certainly stra— absolutely, it’s strange, but the reality is — and I’ve seen
some of the other evidence Mr Cairns has given, which is completely factually incorrect;
totally factually incorrect —.

The Chairman: For the record, if we look at this statement, starting from the top of the
screen:

“Mr Bell had urgent constituency business,”

recording the emails and recording the conversation between Mr Cairns and Mr Bell as to Mr
Johnston’s behaviour, critical or otherwise, do you say none of that occurred?

Mr Bell: Yes.

The Chairman: So, even just to take:

“Myself and Mr Bell discussed this the next day during our travels to the USA. Both of us expressed
annoyance at the unprofessionalism of Mr Johnston who did not seem to prioritise a call from a DUP
Minister ... Myself and Mr Bell both really believed what had happened was embarrassing and
unprofessional.”

That is purely made up?

Mr Bell: [Short pause.] I — . I — . The only part that I can recall was them saying they were
unhappy with the decision that I’d taken, but not — . This business of — that I had agreed to
things to be rescinded is just not —.

The Chairman: Just look at the conversation, if you don’t mind, Mr Bell.

Mr Bell: Yes.

The Chairman: Did that conversation take place or not?

Mr Bell: No.

The Chairman: Can you give us, at this stage, any reason why Mr Cairns would make up that consultation — that conversation?

Mr Bell: No.

The Chairman: No. Thank you.

Dr MacLean: You went through quite a lot of stuff there. There are contemporaneous emails which document some of those steps. There was an email from Mr Cairns to Mr Johnston, to which Mr Johnston replied, and there was action taken on the back of that. There was an email from Mr Cairns to Mr Bell relating that that is dated the day it happened.

Mr Scoffield QC: Yes. Now my understanding —. Let’s maybe just have a look at that email again, and we find that at INQ-60166. Now, I think your evidence was that you certainly don’t recall seeing this email. It’s just at the top of the page. After Mr Johnston has emailed Mr Cairns to say there’s no chance of getting these cleared today, he forwards that to you, and he says:

“Ive [sic] told sean [sic] to hold the subs”.

And that email, we know, has gone to your Hotmail account. Now, I wanted to ask you just a couple of questions about that, because I had understood from what you said in your evidence yesterday that any communications you had about departmental business would have always been to one of the government email accounts.

Mr Bell: Yes. Absolutely, yes.

Mr Scoffield QC: Well, if that’s right, why is Mr Cairns sending this to a different email
From: Mills, John (DETI)
To: McCormick, Andrew (DETI); Stewart, Chris (DETI)
Subject: NIRO and RHI
Date: 22 January 2016 17:32:04

To keep you up to date. Have had a slightly bizarre afternoon with efforts focused on clearance of the two submissions. The green light was given for issue of both around half four and then rescinded around 20 or so minutes later – so neither sub has issued with serious repercussions for the timetables of both. Fortunately (or perhaps not) we had not set anything in train which could not be halted.

We will work on contingencies but I have just taken a call from the new NIRIG chair and they are none too happy at the lack of me being able to tell them what’s happening.
call — possibly an email, but I think it was a phone call — to say, “No, that approval has been rescinded”.

Mr Scoffield QC: By whom?

Mr Stewart: I don’t think it was clear by whom, but clearly not by the Minister.

Mr Scoffield QC: Did you understand the clearance to have been rescinded with the Minister’s agreement or consent or knowledge, or was that simply an unknown factor at this time?

Mr Stewart: That was an unknown at that time.

Mr Scoffield QC: Now, Mr Mills says that this was a slightly bizarre afternoon. Would you agree that that is a bizarre turn of events or is that something which, from previous experience in your post in DETI or elsewhere, even if not commonplace, was not unknown?

Mr Stewart: I don’t think I’ve ever experienced a submission being “uncleared”.

Mr Scoffield QC: And what was the reaction within the DETI team to what had happened or what you thought was happening?

Mr Stewart: Puzzlement on my part. I think John was a bit more concerned than I was and more suspicious of it than I was, and felt that it might be some sort of delaying tactic. I was just utterly puzzled by it.

Mr Scoffield QC: Now, what happens after that is you — just on the next page — then contact Mr Cairns for some clarification. You say:

“I trust that all is going well on the US trip.

I understand from John that the latest NIRO and RHI submissions have not been cleared. We stand ready, of course, to revise them if they do not meet the Minister’s requirements.

Any delay may give rise to two sets of significant problems. Firstly, as you know, there is an acute timetabling challenge."

And then, secondly, a slightly more presentational issue:
Tim

I trust that all is going well on the US trip.

I understand from John that the latest NIRO and RHI submissions have not been cleared. We stand ready, of course, to revise them if they do not meet the Minister’s requirements.

Any delay may give rise to two sets of significant problems. Firstly, as you know, there is an acute timetabling challenge. Secondly, we are due to give evidence to an already restive ETI Committee on Tuesday, and I am due to address the NIRIG conference on the same day. If we are not able to announce the way forward I think we risk extensive negative media coverage from several sources.

May I also ask whether you were able to contact Conal Heatley yesterday, and for confirmation that the Minister would be happy for me to send the draft letter that I shared (happy to send it up formally if helpful.

Happy to discuss, time differences permitting.

C

Sent from my BlackBerry 10 smartphone.
The Niro and rhi subs are in the hands of DUP party officers and will be dealt with by them. I have recommended officials advice but party officers have requested time to deal with them. I have no idea if they will approve or not.

Minister cleared and the subs were then pulled to DUP party officers on Friday afternoon.

I spoke with conal from youth games. He understands. Send letter and minister will be there for games being given to Belfast next Monday. And he knows that business case needs huge revamp and is prepared to work with tourism NI to make that happen and is happy with offer of outside consultancy if needs be

Tim

Sent from my iPhone managed by BlackBerry Enterprise Service

----- Original Message -----

From: Stewart, Chris (DETI)
Date: 23 January 2016, 02:56 GMT-8
To: Cairns, Timothy
CC: Fullerton, Karen, Kerr, Sean, McCormick, Andrew (DETI), Mills, John (DETI)
Subject: NIRO, RHI, Commonwealth Youth Games

Tim

I trust that all is going well on the US trip.

I understand from John that the latest NIRO and RHI submissions have not been cleared. We stand ready, of course, to revise them if they do not meet the Minister's requirements.

Any delay may give rise to two sets of significant problems. Firstly, as you know, there is an acute timetabling challenge. Secondly, we are due to give evidence to an already restive ETI Committee on Tuesday, and I am due to address the NIRIG conference on the same day. If we are not able to announce the way forward I think we risk extensive negative media coverage from several sources.

May I also ask whether you were able to contact Conal Heatley yesterday, and for confirmation that the Minister would be happy for me to send the draft letter that I shared (happy to send it up formally if helpful.)
Mr Scoffield QC: Now, you mentioned that Mr Mills might’ve been more concerned than you were at this turn of events. Maybe that’s an unfair characterisation of what you said a few moments ago —.

Mr Stewart: Perhaps differently concerned. I think we were both worried by the fact that a decision had not been taken. We had emphasised the need for an early decision. John, I think, was perhaps more thinking about the motivation for that having happened than I was.

I was greatly concerned by the last sentence in the first paragraph there, which says:

“I have no idea if they will approve or not.”

Mr Scoffield QC: Just for your note, Chair, I don’t intend to take you to this, but Mr Mills did say that he did have different concerns from others at that stage, and he — in his mind were “very disturbing reasons”, I think was the phrase that he used. You find that at TRA-11195 to 96.

And you’ve said in your written evidence — your second witness statement, paragraph 68, sub-paragraph e — that your assumption at the time was that this was for the DUP to engage with Sinn Féin or with Sinn Féin special advisers. So, that —. Is that what you thought was happening at this time?

Mr Stewart: That’s what I thought was happening. Again, not, not an unusual thing to happen, particularly where something requires consideration by the Executive. [Inaudible] from any party in the Executive that there would be some sort of process to see whether or not it’s likely to be agreed. Again, what’s unusual is where this is happening in the sequence of events.

Mr Scoffield QC: One view might be that the — if the submission is not cleared at this stage, that could be intended, or would have the effect of stopping the communication being sent to the Executive and to other Ministers, so the Executive paper that the Minister’s
<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>NUMBER</th>
<th>DATE / TIME</th>
<th>MESSAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew McCormick</td>
<td>Richard Bullick</td>
<td></td>
<td>2015.06.15 09:38</td>
<td>Sorry to hear of the issue between JB and TC. Not sure I can help but do call if you wish. A one week delay would cost £2.6 million a year for 20 years at current application rates. DFP approval was conditional on early clamp down. So looks like Ministerial Direction would be needed.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2015.11.13 17:27</td>
<td>I've informed the minister I await her instructions!</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2015.11.13 17:38</td>
<td>Many thanks</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2015.11.16 09:21</td>
<td>Any word re RHI? Important that regulations go through tomorrow. Many thanks.</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2015.11.16 10:54</td>
<td>I think we are back from the brink! I think all will be well and let's get this through tomorrow.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2015.11.16 11:21</td>
<td>Well done and many thanks.</td>
</tr>
<tr>
<td>David Sterling</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.12 18:46</td>
<td>Thanks Andrew, my mistake. I dialled your # in error earlier. Happy to talk about RHI when it suits. DS Many thanks. Maybe 11ish tomorrow?</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>David Sterling</td>
<td></td>
<td>2016.01.12 18:47</td>
<td>Many thanks.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2016.01.12 18:48</td>
<td>I'm in Derry in the morning. I’ll try calling on my way back around lunchtime.</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.23 11:00</td>
<td>Karen, recent email refers. I fear a perfect storm of bad media coverage on Tuesday with NIRO and CYG.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.23 11:04</td>
<td>Which email to Karen?</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.23 11:05</td>
<td>5 mins ago, to you also and to Tim</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.23 11:07</td>
<td>Hasn’t appeared yet will keep looking</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.23 11:10</td>
<td>Resent just in case. You can imagine the PRs from the Chair and NIIRIG, while JB is abroad...</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.23 11:50</td>
<td>Did you get him?</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2016.01.25 02:37</td>
<td>Chris was trying reach you. I am also concerned re the same issues. Is there anything I can pass back to base before morning there?</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.25 02:50</td>
<td>About what? I've not received anything</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2016.01.25 02:54</td>
<td>Sorry he emailed details yesterday am. I have just resent to both your addresses. Many thanks!</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.25 02:57</td>
<td>I've sent my reply. Rhi and Niro in hands of party officers. Minister cleared but dup party officers on Friday afternoon called papers in. I have no role but recommended officials advice</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2016.01.25 03:00</td>
<td>Great many thanks. Time very short if difficulties are to be minimised. Enjoy evening and see you at early briefing.</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.25 03:05</td>
<td>I'm doing my best to get it through!</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Tim Cairns</td>
<td></td>
<td>2016.01.25 03:06</td>
<td>Understand. Sorry for pressing.</td>
</tr>
<tr>
<td>Tim Cairns</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.25 03:10</td>
<td>I fully understand!</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.26 16:56</td>
<td>On RHI, David Sterling rang, expressing great concern within DFP (including Mervyn) over the delay in closing RHI. I explained it was with DUP party officers.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Malcolm McKibbin</td>
<td></td>
<td>2016.01.27 21:03</td>
<td>Landed at JFK if you want to talk before 11.30 your time tomorrow.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Malcolm McKibbin</td>
<td></td>
<td>2016.01.27 23:50</td>
<td>Sorry missed you as I was getting into hotel room. Will call in am. Many thanks.</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.28 16:45</td>
<td>Call from Malcolm emphasising affordability concern on CYG in light of RHI.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.28 21:00</td>
<td>Have relayed that point to the Minister. Please see queries re Tim’s email.</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.28 21:11</td>
<td>In meeting but needed to ask you to look at Tim’s email.</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.28 21:12</td>
<td>Saw it. We will produce the timeline in the morning.</td>
</tr>
<tr>
<td>Chris Stewart</td>
<td>Andrew McCormick</td>
<td></td>
<td>2016.01.28 21:17</td>
<td>Yes but for the next 5 hours with Tim here my view is that my minute was accurate and understated the reluctance to act. Okay?</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.28 21:xx</td>
<td><strong>Missing</strong></td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.28 21:24</td>
<td>Many thanks</td>
</tr>
<tr>
<td>Andrew McCormick</td>
<td>Chris Stewart</td>
<td></td>
<td>2016.01.28 22:19</td>
<td>Spoke with Tim. Need to close down comms and take great care. Will call you early tomorrow NY time.</td>
</tr>
</tbody>
</table>
From: Johnston, Timothy  
Sent: Monday, 1 February 2016 15:27  
To: McCormick, Andrew (DETI); HOCS  
Cc: Bullick, Richard; Wallwin, Judith; Sterling, David; Brennan, Mike; McKibbin, Malcolm; Hill, Janice; Stewart, Chris (DETI); Rooney, Eugene; Cairns, Timothy  
Subject: RE: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Andrew etc

Apologies I am only replying now. There appears to be some confusion in that you state in your email of 27th January “...the approval was recalled by the party officers.” I assume from this that you are referring to the officers of the Democratic Unionist Party. For absolute clarity and the avoidance of any doubt no such discussions took place at any time regarding RHI or any associated matters with the party officers. Therefore the POs did not recall approval. As a matter of course these types of issues are not brought to the attention of officers.

I also indicated the above to HOCS.

I trust this clarifies any confusion.

Regards

Tim

From: McCormick, Andrew (DETI)  
Sent: 27 January 2016 18:34  
To: HOCS  
Cc: Bullick, Richard; Johnston, Timothy; Wallwin, Judith; Sterling, David; Brennan, Mike; McKibbin, Malcolm; Hill, Janice; Stewart, Chris (DETI); Rooney, Eugene; Cairns, Timothy  
Subject: Re: 27-01-16 HCS-018-16 HOCS Memo to Andrew McCormick re RHI

Sorry touched send prematurely.

Malcolm,

I share all the concerns that are expressed in your note.

Dealing with the immediate issue first, the facts are that the DETI Minister approved our proposals for urgent action to close the RHI scheme last Friday afternoon bit before we could act on that, the approval was recalled by the Party Officers. There were several discussions yesterday and that position could not be changed, and the information I have is as in my email of yesterday to John Mills.

DETI cannot act to bear down on this cost pressure without Ministerial authority. The steps needed are a formal public notification or consultation on the basis for closure, to be followed by the progression of legislation to put that into effect. Given the policy and financial issues involved, we have been of the view that the formal steps to closure require Executive approval.
happening: was that more NIRO, or was it equally NIRO and RHI?

Mr Stewart: No, that was entirely NIRO at that point.

Mr Scoffield QC: Entirely NIRO. Was it envisaged at this stage, though, that once the Minister had cleared the submission of the 19th of January, that there would be early notification of the industry to say, “We are now closing” and the date, or would that function simply have been served by the consultation which you were proposing to undertake?

Mr Stewart: No, I think — I think we envisaged an announcement on a date.

Mr Scoffield QC: Now, you get a response to this on the 25th — so, I think this is the Monday — and we find that on the next page, WIT-11770. And Mr Cairns says:

“The Niro and rhi subs are in the hands of DUP party officers and will be dealt with by them. I have recommended officials [sic] advice but party officers have requested time to deal with them. I have no idea if they will approve or not.

Minister cleared and the subs were then pulled to DUP party officers on Friday afternoon”.

And then he goes on to talk about the other issue that you’d raised.

Now, you’ve indicated in your first witness statement, paragraph 73, that whenever Mr Cairns said that the submissions were:

“in the hands of DUP party officers”.

You didn’t understand that to mean, for instance, the secretary and treasurer of the party —

Mr Stewart: No.

Mr Scoffield QC: — you took that to mean DUP special advisers.

Mr Stewart: Yes.

Mr Scoffield QC: Why did you have that understanding, and who did you think was dealing with it at this stage?

Mr Stewart: Simply because a literal interpretation of “party officers” didn’t seem to me
weeks) and, in line with convention, an opportunity for the ETI Committee of the Assembly to consider the proposed amending regulations in draft (Standing Order 43(1) provides: “Every statutory rule or draft statutory rule which: is laid before the Assembly; and is subject to Assembly proceedings, shall stand referred to the appropriate Committee for scrutiny.”) The submission of 19 January 2016 explicitly shows that the issues were now matters for decision by the Executive, and not solely DETI. At that time, Minister Bell had not formally approved the submission of 31 December 2015. It is also worth noting that, because the tariff regime had been altered in November 2015, the Department had unwittingly removed the incentive to “burn to earn” and hence the effect of delay in the suspension of the Scheme was materially less significant in financial terms than the November changes.

342. Minister Bell approved the submission of 19 January 2016 on the afternoon of 22 January 2016. He was leaving for the US the following day. Energy Division were told by DETI Private Office that within half an hour of the Minister having approved the submission of 19 January the approval had been recalled. The First Minister’s SpAds had intervened, and given that this issue had escalated so significantly, and was now explicitly for Executive consideration, that is not surprising, nor inherently untoward. In a fast developing situation, where OFMdFM had not had detailed involvement up to that point, it was not unreasonable for them to seek to create an opportunity for further consideration.

343. The conclusion of the sequence of emails and conversations in the week commencing 25 January 2016 was that DETI was asked to review the procedural options to effect suspension of the Scheme and provide Ministers with a fuller assessment of those options. A submission was provided on 29 January (Annex 125), and in line with fresh legal advice that was attached to the submission, it recommended against cutting out orthodox stages of procedure namely consultation and an ETI Committee stage consideration of the
Mr Johnston had issued an instruction that nothing was to be done until he confirmed the party position. I believe that on the afternoon of the 22\textsuperscript{nd} January Mr Bell had tried to contact Mr Johnston without success. Mr Bell had urgent constituency business. He instructed me to email Mr Johnston, which I did, if Mr Johnston did not get back to me (or the Minister) by a certain time (I believe 4pm). The submission was to be cleared. If Mr Johnston got in contact and said the submission should not be cleared I was to hold the submission for further consideration.

Mr Johnston emailed me after the deadline. The submission had been issued. I attempted to call the Minister but he did not answer. I believe I emailed or texted him and informed him that Mr Johnston had contacted me late in the day and that I had recalled the submission.

Myself and Mr Bell discussed this the next day during our travels to the USA. Both of us expressed annoyance at the unprofessionalism of Mr Johnston who did not seem to prioritise a call from a DUP Minister, especially when Mr Johnston had expressly asked that he be consulted. Myself and Mr Bell both believed what had happened was embarrassing and unprofessional. Mr Bell indicated no dissatisfaction with what I had done.

iii. Had this ever happened on any previous occasion during your tenure as a Special Adviser and, if it had, provide a summary of this?

No.

c. During the period between 19 January 2016 and the Minister giving final approval on 28 January 2016, did you or the Minister speak to, or otherwise communicate with, Timothy Johnston in relation to the RHI issue and, if so, when did the discussion(s) or communication(s) occur and what was the content of same?

Communication between Northern Ireland and the USA was bizarre to say the least. On a visit to Stanford University I was on one side of the quad talking to Mr Johnston who said the submission would not be cleared. On the other side of the quad Dr
McCormick was speaking to Mr Stewart who had been informed by HOCs that the First Minister wanted the submission cleared. Mr Bell was obviously frustrated by this conflicting advice.

A short time later, Mr Johnston called me and in a lengthy call said the advice had changed.

**d.** During the period between 19 and 28 January 2016, did you speak to, or otherwise communicate with, any other member or official of the DUP (or any other third party) in relation to the RHI issue and, if so, when did the discussion(s) or communication(s) occur and what was the content of same?

I only recall speaking to Timothy Johnston who was directing matters.

**e.** Did you make the Minister aware that you were seeking views, advice, guidance or approval from Timothy Johnston in respect of the 19 January 2016 submission?

The Minister was fully aware and shared my frustration at the unprofessional manner in which things were being conducted.

**f.** What is your view on Timothy Johnston seeking the views of “Arlene and party” in respect of the 19 January 2016 submission (with the reasons for that view)? (In the course of this answer please address whether the fact that the RHI issue was now considered to be cross-cutting and/or significant or controversial, so that it fell for consideration by the Executive, is relevant).

I understood that he was seeking Mrs Foster’s view and the view of any other member (including party officers). I was surprised that the next week he sent out a memo stating the DUP party officers were never to be consulted on this matter.

**g.** What did you mean when you instructed Sean Kerr to “hold” the
Just spoke to Malcolm. Issue is where it is, and nothing more Chris or I can do to shift it. Unthinkable this is delayed any further.

Many thanks.

Sent from my BlackBerry 10 smartphone.

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From: Sterling, David
Sent: Tuesday, 26 January 2016 17:14
To: Stewart, Chris (DETI)
Cc: Brennan, Mike; McCormick, Andrew (DETI); Cooper, Trevor
Subject: FW: Supply - DETI - RHI follow-up letter (2)

Chris
As discussed, you should note the attached letter from Supply to Trevor Cooper. I would urge you to do all that is possible to close the existing scheme as a matter of extreme urgency and to address the other questions which Emer has asked.

David

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From: Brennan, Mike
Sent: 26 January 2016 16:41
To: Sterling, David
Subject: FW: Supply - DETI - RHI follow-up letter (2)

---

From: Dynes, Fiona
Sent: 26 January 2016 16:19
To: Cooper, Trevor
Cc: Brennan, Mike; Rooney, Eugene; Scott, Michelle; McNally, Noel; Morelli, Emer; Downie, Jill
Subject: Supply - DETI - RHI follow-up letter (2)

Please see attached response from Emer Morelli.

Thank you.

FIONA DYNES
PS/EMER MORELLI
HEAD OF SUPPLY
PUBLIC SPENDING DIRECTORATE
ROOM P4, 3RD FLOOR, NEW BUILDING
RATHGAEL HOUSE
BALLOO ROAD
BANGOR
BT19 7NA
TEL: 02891858128 NETWORK: EXT 68128
Email: emer.morelli@dfpni.gov.uk