From: Chris Stewart
Date: 4 February 2016
To: 1. Timothy Cairns  
2. Jonathan Bell MLA

Copy Distribution List below

CLOSURE OF RHI – URGENT PROCEDURES

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


Executive Committee Referral: Urgent Procedures are necessary to secure Executive approval before announcing decision to close RHI Schemes

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

Presentational Issues: Not publicly consulting will attract criticism.

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

Financial Implications: Potential impact on DEL of £95m over 5 years.

Legislation Implications: Legislative changes to the RHI require draft affirmative resolution Regulations. Not consulting may provide grounds for subsequent legal challenge on decision to close schemes.

Statutory Equality Obligations: Screened out.

Recommendation:

That you issue:
- the attached letter to OFMDFM seeking urgent Executive approval (Annex A); and
- subject to OFMDFM approval, issue the attached letter to the Chair of the ETI Committee (Annex B) and a press release (Annex C).
Background

1. Further to the submissions of 29 January 2016 from John Mills, you had agreed to close the RHI schemes to new applications, subject to public consultation. Following further consideration, you have decided to proceed with legislation to close the schemes without public consultation. You have consulted the Finance Minister on these issues and he concurs with your concerns and desire to minimise the exposure of the NI Block DEL. This submission invites you to approve the immediate steps needed to obtain Executive approval.

Budget Deficit

2. To meet RHI commitments for existing installations, around £95m of funding will have to be found from Resource DEL (RDEL) 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 £185m.

Executive Referral

3. 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. To meet the current timetable Executive approval must be secured under urgent procedure. A draft letter to the First Minister and deputy First Minister seeking urgent Executive approval is therefore attached at Annex A.

ETI Committee

4. I understand that, in view of the risk to the NI block, you wish to propose that the draft regulations are laid and the motion tabled at the earliest possible juncture, without prior consideration and approval by the ETI Committee. This action is, of course, likely to attract strong criticism from the Committee. I must also point out that, in seeking to reduce one risk (i.e. of increased overspending) by shortening the timescale for legislation, another risk will be increased; i.e. the risk of legal challenge to the shortened period of public notice of closure.

5. Assuming prompt Executive approval, the shortest feasible timescale would involve consideration by the Business Committee next Tuesday (9 February), with a proposal to schedule the debate for Monday 15 February. The scheme would close on 16 February (with less than 2 weeks public notice).

Announcement

6. Subject to Executive approval, the Chair of the ETI Committee should be given advance warning of your proposed announcement. A draft letter is attached (Annex B) along with a draft Press Release (Annex C).
Recommendation

7. That you issue:

(a) the attached letter to OFMDFM seeking urgent Executive approval (Annex A); and

(b) subject to Executive approval, the attached letter to the Chair of the ETI Committee (Annex B) and Press Release (Annex C).

CHRIS STEWART
Head of Policy Group

c: Andrew McCormick
Eugene Rooney
John Mills
Trevor Cooper
Stuart Wightman
Helen Vaughan
Rod Robson (DALO)
Ian McCrea MLA APS
Sean Kerr
Press Office, DETI
FROM: JONATHAN BELL MLA
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

DATE: FEBRUARY 2016

TO: FIRST MINISTER AND DEPUTY FIRST MINISTER

REQUEST FOR A DECISION BY URGENT PROCEDURE – CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

Introduction

1. In accordance with paragraph 2.14 of the Ministerial Code I am seeking agreement to take an urgent decision on the closure of the Northern Ireland Renewable Heat Incentive Scheme (RHI). The urgent decision is required to minimise significant Resource DEL (RDEL) overspending on the scheme.

Background

2. 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 numbers of applications 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.

3. 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).
4. 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.

5. 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.

6. 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.

7. The increase in applications means that over 6% of NI’s total heating needs are estimated to be 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 closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £45m.

Scheme Approvals

8. 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 by DETI. 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 and the NI Audit Office accordingly notified. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

Affordability

9. 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 RDEL Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as conventional 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. However, it was DETI's understanding that only a very small proportion of any required future savings (likely to be of the order of 5%) would have to be funded direct by NI through RDEL.

10. Also unlike conventional AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of circa 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 £30m in light of increased demand.

Implications of Chancellor’s Autumn Statement

11. If RHI funding was conventional AME there would be no impact on NI DEL. However, the Chancellor’s Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. DFP officials, after significant engagement with HMT officials in late November / early
December in preparation for the finalisation of the Chief Secretary’s Settlement Letter, have also advised that HMT’s position will be that NI will have to cover the full costs of any overspend. This means that the Block RDEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB. The Chief Secretary’s wording is set out below:

Renewable Heat Incentive (RHI)

13. As in the previous Spending Review period, AME cover based on a population-proportionate share of the budget which has been set for the Renewable Heat Incentive in Great Britain will continue to be made available to the Northern Ireland Executive. The level of cover available is therefore £18.3, £22.3, £25.7 and £28.9 million from 2016-17 to 2019-20. Any spending on RHI above this level will need to be funded from the Executive’s DEL budgets or other sources of income.

12. This creates significant budgetary pressures over and above the available AME budget cover for at least the next 5 years and, given the nature of the existing 20 year contracts, could extend far beyond the next budget period even if there are no new applications after the end of this financial year. Forecast costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the forecast costs would remain static but the HMT budget would rise therefore reducing the scheme overspend from around £27m in 2016/17 (latest estimate) to around £11m by 2020/21 (though if there are more applications than currently projected the additional costs could be around £33m in 2016/17). This, of course, all assumes that there are no further application spikes in anticipation of scheme closure.

13. In light of the HMT Settlement Letter I must therefore proceed on the basis that the major overspend that has now arisen will now impact upon the NI Block. DETI does not have the funding to meet this overspend. In the circumstances I have no choice but to propose immediate closure of the scheme to prevent the overspend from increasing further.

14. DFP and DETI have initiated an investigation into the effectiveness of the control and regulation of the Initiative in light of the significant increase in uptake of the scheme.
Consultation

15. I have consulted the Finance Minister on these issues and he concurs with my concerns and desire to minimise the exposure of the NI Block DEL.

Timing

16. Given the urgency of the situation I propose to close both the RHI schemes as soon as possible, subject to Assembly approval of the legislation. Indeed, the financial risk is such that I am seeking your approval on the basis that there is not sufficient time for the established convention of consideration of the draft legislation by the ETI Committee. I propose to lay the regulations in draft and table the motion for debate at the earliest possible juncture, without seeking prior Committee approval. This would mean asking the Business Committee (at its 9 February meeting) to schedule the motion for debate on 15 February.

17. Subject to your agreement, I will write to the Chair of the Committee, explaining the circumstances and the reasons for urgent action.

Recommendation

18. I therefore request your immediate agreement, in accordance with paragraph 2.14 of the Ministerial Code, to take an urgent decision to agree to the closure of the Northern Ireland Renewable Heat Incentive Schemes (RHI), subject to Assembly approval.

19. This letter is copied to all Executive Ministers, the Attorney General, the Departmental Solicitor, Office of Legislative Counsel and Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
ANNEX B

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

February 2016

Dear Patsy

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

I am writing to inform the Committee that today I will be announcing the closure of both RHI schemes to new applicants. A copy of the Press Release is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2015. 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 the November 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. It is estimated that over 6% of NI’s total heating needs are now provided through renewable technologies. The PIF target of 4% renewable heat by 2015 has been exceeded.

However, this success comes at a price. Both RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME) which normally would not have an impact on the NI DEL Block funding. However, the Chancellor’s Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. This means that the Block DEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB.

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 closed), forecast expenditure is expected to reach £45m. The increased costs associated with the recent surge in applications together with budget cuts arising from the Spending Review means the available budget for new applications has been exceeded. Meeting existing RHI commitments, let alone any new ones, will have a very significant impact on the NI Executive’s budget, possibly as much as £19m p.a., for the next 5 years. DETI does not have the funding to meet this overspend.
In the circumstances I have no choice but to propose immediate closure of the scheme to prevent further overspend. I will bring forward legislation to the Assembly to close both schemes to new applications.

The urgent need to manage the financial risk means that I must bring forward the legislation at the earliest possible juncture. I have today laid the draft regulations and tabled the motion for debate, and I will be asking the Business Committee to schedule the debate for 15 February.

Regrettably, this timescale does not allow time to follow the established convention of seeking the Committee's approval of the policy and draft legislation. I must emphasise that this is not a decision that I have taken lightly. I recognise the importance of the Committee's role, and I would not contemplate this course of action if it were not for a very serious and urgent risk to the public finances.

My Department will also be carrying out a comprehensive review and audit, to ensure that the operation of the schemes is strictly in compliance with the scheme requirements and the underpinning legislation.

I enclose a copy of the draft regulations. I would be happy to meet you and the Deputy Chair to explain the position more fully if that would be helpful. I have also asked my officials to stand ready to brief the Committee at its convenience.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
Enterprise, Trade and Investment Minister, Jonathan Bell announces proposals to close of the Northern Ireland Renewable Heat Incentive (RHI).

Enterprise, Trade and Investment Minister, Jonathan Bell announced his intention to close the domestic and non domestic Renewable Heat Incentive (RHI) schemes. The RHI was launched to the non domestic sector in November 2012 and extended to the domestic sector in December 2014.

Commenting on his decision the Minister said: 'It is with great reluctance today that I have had to announce my intention to close both RHI schemes. Both schemes have been very successful with the non domestic scheme in particular seeing significant uptake during the last 12 months and more so in the run up to the recent scheme changes introduced in November 2015. It is estimated that around 6% of NI’s heating needs are now provided through renewable technologies. The Executive’s target to achieve 4% renewable heat has been exceeded.

However, this increased demand means the available budget for new applications has been exhausted. To meet RHI commitments for existing installations, significant levels of additional funding will have to be found from within the NI Executive’s budget for the next 5 years to address the current deficit. To prevent further overspend, I must bring forward legislation to the Assembly to close both schemes to new applications.

My Department will also be carrying out a comprehensive review and audit, to ensure that the operation of the schemes is strictly in compliance with the scheme requirements and the underpinning legislation.'

Notes to Editors

For press enquiries please contact DETI Press Office on tel 028 9052 9604. Out of hours please contact the Duty Press Officer via pager number 07734668992 and your call will be returned.
From: Hegarty, Damien [Damien.Hegarty@detini.gov.uk]
Sent: 05 February 2016 11:52
Subject: Request for a Decision by Urgent Procedure - Closure of the Renewable Heat Incentive (RHI) Scheme
Attachments: SUB 057 Min Signed.pdf

Please find attached a request for a decision by Urgent Procedure from Jonathan Bell MLA, Minister of Enterprise Trade and Investment.

Regards

Damien

Damien Hegarty
Correspondence Secretary to Jonathan Bell MLA
Private Office
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9209 (ext: 29209)
TextRelay: 18001 028 9052 9209
Web: www.detini.gov.uk

Please consider the environment - do you really need to print this e-mail?
From the Office of the Minister

FROM: JONATHAN BELL MLA

DATE: 5 FEBRUARY 2016

TO: FIRST MINISTER AND DEPUTY FIRST MINISTER

REQUEST FOR A DECISION BY URGENT PROCEDURE – CLOSURE OF THE RENEWABLE HEAT INCENTIVE (RHI) SCHEME

Introduction

1. In accordance with paragraph 2.14 of the Ministerial Code I am seeking agreement to take an urgent decision on the closure of the Northern Ireland Renewable Heat Incentive (RHI) Scheme. The urgent decision is required to minimise significant Resource DEL (RDEL) overspending on the scheme.

Background

2. 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 numbers of applications 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.

3. 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).

4. 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.
5. 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.

6. 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.

7. The increase in applications means that over 6% of NI’s total heating needs are estimated to be 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 closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £45m.

Scheme Approvals

8. 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 by DETI. 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 and the NI Audit Office accordingly notified. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

Affordability

9. 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 RDEL Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as conventional 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. However, it was DETI’s understanding that only a very small proportion of any required future
savings (likely to be of the order of 5%) would have to be funded direct by NI through RDEL.

10. Also unlike conventional AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of circa 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 £30m in light of increased demand.

Implications of Chancellor’s Autumn Statement

11. If RHI funding was conventional AME there would be no impact on NI DEL. However, the Chancellor’s Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. DFP officials, after significant engagement with HMT officials in late November/early December in preparation for the finalisation of the Chief Secretary’s Settlement Letter, have also advised that HMT’s position will be that NI will have to cover the full costs of any overspend. This means that the Block RDEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB. The Chief Secretary’s wording is set out below:

Renewable Heat Incentive (RHI)

As in the previous Spending Review period, AME cover based on a population-proportionate share of the budget which has been set for the Renewable Heat Incentive in Great Britain will continue to be made available to the Northern Ireland Executive. The level of cover available is therefore £18.3, £22.3, £25.7 and £28.9 million from 2016-17 to 2019-20. Any spending on RHI above this level will need to be funded from the Executive’s DEL budgets or other sources of income.

12. This creates significant budgetary pressures over and above the available AME budget cover for at least the next 5 years and, given the nature of the existing 20 year contracts, could extend far beyond the next budget period even if there are no new applications after the end of this financial year. Forecast costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the forecast costs would remain static but the HMT budget would rise therefore reducing the scheme overspend from around £27m in 2016/17 (latest estimate) to around £11m by 2020/21 (though if there are more applications than currently projected the additional costs could be around £33m in 2016/17). This, of course, all assumes that there are no further application spikes in anticipation of scheme closure.
13. In light of the HMT Settlement Letter I must therefore proceed on the basis that the major overspend that has now arisen will now impact upon the NI Block. DETI does not have the funding to meet this overspend. In the circumstances I have no choice but to propose immediate closure of the scheme to prevent the overspend from increasing further.

14. DFP and DETI have initiated an investigation into the effectiveness of the control and regulation of the Initiative in light of the significant increase in uptake of the scheme.

Consultation

15. I have consulted the Finance Minister on these issues and he concurs with my concerns and desire to minimise the exposure of the NI Block DEL.

Timing

16. Given the urgency of the situation I propose to close both the RHI schemes as soon as possible, subject to Assembly approval of the legislation. Indeed, the financial risk is such that I am seeking your approval on the basis that there is not sufficient time for the established convention of consideration of the draft legislation by the ETI Committee. I propose to lay the regulations in draft and table the motion for debate at the earliest possible juncture, without seeking prior Committee approval. This would mean asking the Business Committee (at its 9 February meeting) to schedule the motion for debate on 15 February.

17. Subject to your agreement, I will write to the Chair of the Committee, explaining the circumstances and the reasons for urgent action.

Recommendation

18. I therefore request your immediate agreement, in accordance with paragraph 2.14 of the Ministerial Code, to take an urgent decision to agree to the closure of the Northern Ireland Renewable Heat Incentive Schemes (RHI), subject to Assembly approval.

19. This letter is copied to all Executive Ministers, the Attorney General, the Departmental Solicitor, Office of Legislative Counsel and Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment
FROM: FIRST MINISTER & DEPUTY FIRST MINISTER E (UP)(16) 06
DATE: FEBRUARY 2016 OUR REF: EXEC 0021-16
TO: MR JONATHAN BELL MLA MINISTER OF ENTERPRISE, TRADE AND INVESTMENT

DETI URGENT DECISION REQUEST: CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

You wrote to us on 5 February 2016, to request agreement, in accordance with paragraph 2.14 of the Ministerial Code, that you take an urgent decision in relation to closure of the Renewable Heat Incentive Scheme (RHI), subject to Assembly approval of the required legislation, in order to minimise significant Resource DEL overspending on the scheme.

We have considered your request, and in the circumstances you describe, we are content to agree that you take this urgent decision.

A copy of this memo has been sent to all Executive Ministers, to the Attorney General, the Departmental Solicitor, First Legislative Counsel and Executive Secretariat for information.

[Signatures]
ARLENE FOSTER MLA First Minister

MARTIN McGUINNESS MLA deputy First Minister
issued the action. I, as Minister, issued the determination to close the scheme on the Friday.

So, whoever then interfered — party officers, spads, whatever — they’ll have to clear up that confusion as to what happened. But I don’t think there should be confusion, because I think when I, as Minister, made the decision, if the decision had’ve been implemented, there wouldn’t have been any issues.

Mr Scoffield QC: Well, I think that might be one point on which both you and Mr Cairns agree, possibly. One of the things that he says in his witness evidence that what’s happening at this stage, when you’re in the States and these communications are going back and forward, is that the situation was chaotic, confused and far from ideal. Do you —? Would you agree with that?

Mr Bell: But there shouldn’t have been any changes. The decision had been made on the Friday, so any chaos that subsequently ensued, those people, with whatever authority they had to be able to rescind my decision, um, are gonna have to explain how and with what authority they did. I don’t believe they have it, and I don’t believe it was possible to do it, but, clearly, they did. But, yes, it is confused and chaotic.

Dr MacLean: Mr Bell, despite the confusion, despite the apparent delay in the paper that you had approved on the Friday, the net result is very much in the direction that you wanted it to be: that the closure was actually brought forward by a month. So we can discuss how chaotic or otherwise it was, but the net result of all those interventions was a situation where the scheme was going to be closed a month earlier and, therefore, very much more in line with your “as soon as possible” edict to the Department.

Mr Bell: Yes. That’s a good summary.

Dr MacLean: A clear summary. Thank you.

Mr Scoffield QC: I want to move on to the next stage, as it were. Your paper is provided to FM and DFM, it’s cleared by them, that message comes back to the Department on the 5th
of February. There is then a press release issued by the Department advising people that the
schemes are going to close. I think that goes out late on the 5th but seems to be picked up in
particular on the 8th; we’re dealing with the weekend there. And there is, fairly immediately,
significant negative reaction to that announcement.

At that stage, you’re on a ministerial trip to Canada. And the next major development, I
think, in the story, from your perspective, is what happens on the 9th of February. So this is, I
think, what you’ve referred to earlier on as the final stage where the decision having been
taken to expedite closure, there’s then a request — an order, you would say — to delay that
by a further two weeks. So I want to talk about that aspect for a moment or two.

Now, when you were giving your interview with Mr Nolan, you said that you had been
ordered or instructed by the First Minister to keep the scheme open. That’s at DFE-228979,
just for your note, Chair; I don’t think we should turn it up. But it seems clear from the
evidence that this is talking about exchanges which occur on the 9th of February when you
get back from your trip to Canada.

Mr Bell: That’s correct.

Mr Scoffield QC: And it seems to me that there are six events or six incidents on that day
which are relevant to this discussion, some of which you’re involved in, some of which you
aren’t. So I just want you to tell me if you agree with the summary.

The first thing is you come back from Canada, you come in to this building because you’re
due to answer DETI questions in the Assembly. But, before that, you have a meeting with the
First Minister. And it seems to me that that is the meeting which is, I think, on both your
case and what she said, a fairly heated meeting. That’s number one.

Number two, you then go to the question time and you, in the course of that, have to say
something about what’s happening about the RHI issue. And you avoid, to some degree,
giving a clear answer on precisely what the closure date will be. You say that you’re
Tim

Updated letter with press release attached.

From: Mills, John (DETI)
Sent: 11 February 2016 10:33
To: Cairns, Timothy
Cc: McCoy, Laura; McCormick, Andrew (DETI); Stewart, Chris (DETI); Wightman, Stuart; McIlwrath, Linda; Hill, Janice
Subject: Draft letter from Minister to Mervyn Storey Finance Minister - Closure of Renewable Heat Scheme

Tim,

Draft letter form Minister to Finance Minister
11 February, 2016

Bell announces extension to RHI closure date

Enterprise, Trade and Investment Minister, Jonathan Bell has announced that the domestic and non domestic Renewable Heat Incentive (RHI) schemes will remain open until February 29.

If legislation is approved by the Assembly on Monday, the earliest possible date for closure would have been midnight on Tuesday, February 16.

Jonathan Bell said: “I have listened carefully to the concerns expressed in relation to both the non domestic and domestic RHI schemes and I fully appreciate that closure presents considerable difficulties for those who have invested in new technology and are in the midst of preparing for application.

“Having taken those concerns on board, rather than close the schemes to new applications on the earliest possible date, I am proposing that, pending Assembly approval, both schemes remain open for a further two weeks until February 29.”

The Minister added: “My Department will be carrying out a comprehensive review and audit, to ensure that the operation of the schemes is in compliance with the scheme requirements and the underpinning legislation.”
Dear Mervyn

CLOSURE OF RENEWABLE HEAT SCHEME

I am writing to confirm that the Assembly Debate on the RHI closure legislation has been scheduled for Monday 15 February which is the earliest possible opportunity. Subject to Assembly approval of the legislation I will subsequently issue a notice which will actually close the RHI to new applications (the legislation does not do this directly).

In line with the authorisation given by the First and Deputy Ministers and with their agreement I propose that the scheme will close on 29 February. This will effect closure as soon as practicable taking into account the need to address industry concerns about the practicalities around the ending of the scheme.

I attach a press notice which will announce this to give certainty to the industry.

Yours

Jonathan Bell MLA
Minister of Enterprise, Trade and Investment
HOCS MEETINGS WITH THE FIRST MINISTER AND DEPUTY FIRST MINISTER
IN PARLIAMENT BUILDINGS, 9 FEBRUARY 2016

Present:

First Minister 
Stephen Brimstone 
Richard Bullick 
Timothy Johnston 
Jeremy Gardner

deputy First Minister 
Mark Mullan 
Gail McKibbin 
Malcolm McKibbin 
Neill Jackson

Renewable Heat Incentive Scheme

1. HOCS outlined the negative reaction which had emerged from some investors and suppliers to the proposal to close the scheme and the consequent risk of legal challenge.

1.1 Following discussion, it was felt that the scheme should be left open until a date to be determined to allow for the completion of applications already in progress (to be further defined).

1.2 Richard Bullick to speak to Timothy Cairns, DETI Special Adviser, and Aidan McAteer to progress this. HOCS to advise DETI Permanent Secretary of FM/dFM views.

[Action: Richard Bullick and HOCS]

China Office/Civil Contingencies

2. HOCS advised Ministers that the funding for the Executive’s China Office was not in the OFMDFM baseline and that this needs to be addressed with DFP through the normal budgetary processes.

2.1 On civil contingencies, DOE had withdrawn its Emergency Preparedness and Response funding for Councils in 15/16, although it subsequently provided £500k. Councils had responded well to recent events but to ensure future co-
Present: Mr Patsy McGlone (Chairperson)  
Mr Conor Murphy (Deputy Chairperson)  
Mr Steven Agnew  
Mr Adrian Cochrane-Watson  
Mr Gordon Dunne  
Ms Megan Fearon  
Mr Paul Givan  
Mr William Humphrey  
Mr David McIlveen  
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)  
Ms Angela McParland (Assistant Assembly Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Ms Briege Mullan (Clerical Officer)

Apologies: None

The meeting began at 10:27am

1. Apologies

Apologies as noted above.
2. **Draft Minutes of Meeting 2\textsuperscript{nd} February 2016**

   *Agreed:* the Committee agreed the draft minutes of 2\textsuperscript{nd} February 2016.

3. **Chairperson’s Business**

   The Committee considered a draft revised Agenda which included an oral briefing from the Permanent Secretary and officials on the closure of the Renewable Heat Incentive Scheme.

   *Agreed:* to include the oral briefing on the Agenda.

   The Committee considered correspondence in relation to broadband issues experienced regarding TalkTalk.

   *Agreed:* to write to Ofcom to establish if it is aware of an ongoing pattern of issues.

   The Committee considered a request by the Permanent Secretary for a meeting on 22\textsuperscript{nd} February with the Chairperson and Deputy Chairperson to provide an update in regards to the restructuring of the Department.

   *Agreed:* that the Chairperson and Deputy Chairperson attend.

   The Committee considered a request from Tourism Ireland to provide a revised copy of a written briefing to the Committee for consideration at next week’s meeting rather than the original paper which has already been received by the Committee Office.

   *Agreed:* to receive the updated version next week.

   The Chairperson informed members that representatives from NIPSA were consulting outside of the meeting with HSENI officials in an attempt to resolve outstanding issues regarding proposals for the Replacement of the Construction (Design and Management) Regulations (Northern Ireland) 2007.

   *Agreed:* to deal with other business first to provide time for the two parties to consult.

6. **Matters Arising**

   No matters arising were discussed.

7. **Written Briefing from Cerberus: Issues raised by Bell & Company**
Members noted correspondence from Cerberus in response to the Committee’s request for a briefing to address issues raised by Bell and Company.

Agreed: to consider the correspondence again at next week’s meeting, when the Committee will decide on its approach to dealing with the matter.

Agreed: to forward a copy of the correspondence to the Committee for Finance and Personnel.

Adrian Cochrane-Watson joined the meeting at 10:34am

8. Consultation: Early Closure of the Northern Ireland Renewables Obligation to Onshore Wind

Members considered correspondence regarding the Early Closure of the Northern Ireland Renewables Obligation to Onshore Wind.

Paul Givan joined the meeting at 10:37am

Agreed: to raise the issue with the Permanent Secretary at the later briefing.

9. The Prince’s Trust Manifesto

Members agreed to discuss the matter later in the meeting.

10. Correspondence

Members noted correspondence from the Committee for Culture, Arts and Leisure regarding the Commonwealth Youth Games 2021 bid.

Members noted correspondence from the Committee for Finance and Personnel regarding the Budget Bill 2016 and Spring Supplementary Estimates 2015-16.

11. Any Other Business

There were no additional items of business.

12. Date, Time and Place of Next Meeting

The next meeting of the Committee will take place on Tuesday 16th February 2016 at 10.00am, Room 29.
4. Oral Briefing from Northern Ireland Public Service Alliance (NIPSA) and the Irish Congress of Trade Unions (ICTU): Proposals for the Replacement of the Construction (Design and Management) Regulations (Northern Ireland) 2007

The representatives joined the meeting at 10:41am

Members were informed by Ms Geraldine Alexander, Assistant Secretary, NIPSA and Ms Clare Moore, Union Services Officer, Northern Ireland Committee, ICTU, that following consultation with HSENI officials they were content they had agreed a way forward and therefore did not wish to proceed with the oral briefing.

Agreed: not to hear further from NIPSA on this issue.

The representatives left the meeting at 10:42am

5. Oral Briefing from the Health and Safety Executive Northern Ireland: Proposals for the Replacement of the Construction (Design and Management) Regulations (Northern Ireland) 2007

The representatives joined the meeting at 10:42am

Members were informed by Mr Keith Morrison, Chief Executive, HSENI that, following consultation with NIPSA and ICTU representatives, he was content for the Committee not to proceed with the oral briefing.

Agreed: the Committee remains content with the policy proposals of the SL1 at this time.

The representatives left the meeting at 10:43am

The Chairperson suspended the meeting at 10:43am

The meeting resumed at 11:21am with the following Members present:

Patsy McGlone
Conor Murphy
Steven Agnew
Gordon Dunne
William Humphrey
David McIlveen
Máirtín Ó Muilleoir

Received by Patsy McGlone MLA on 09.06.2017
Annotated by RHI Inquiry
13. Oral Briefing from DETI: Closure of the Domestic and Non Domestic Renewables Heat Incentive (RHI) Schemes

The officials joined the meeting at 11:21am

Members received a briefing from Dr Andrew McCormick, Permanent Secretary, DETI, Mr Chris Stewart, Head of Policy Group, DETI, Mr John Mills, Head of Energy Division, DETI, and Mr Stuart Wightman, Principal, Energy Efficiency Branch, DETI.

Key issues discussed included the Closure of the Renewable Heat Incentive (RHI) Scheme and the impact the closure will have on individuals and companies that have already invested in the technology.

Adrian Cochrane-Watson returned to the meeting at 11:38am
Megan Fearon returned to the meeting at 11:47am
Paul Givan returned to the meeting at 12:16pm
Megan Fearon left the meeting at 13:06pm

Agreed: to receive a written briefing from the Department outlining how the current scenario came about and detailing the issues that led to it. To also provide details of the internal audit and review of how the scheme has been handled.

Agreed: to note the SR 2016 The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016.

The representatives left the meeting at 13:15pm

Steven Agnew left the meeting at 13:16pm
William Humphrey left the meeting at 13:17pm

9. The Prince’s Trust Manifesto

Members considered the Prince’s Trust Manifesto.

Agreed: to write to the Chairman acknowledging their good work.

The Chairperson adjourned the meeting at 13:19pm

Mr Patsy McGlone
Chairperson
Committee for Enterprise, Trade and Investment

16th February 2016
2015, a further target from Strategic Energy Framework of achieving 10% renewable heat by 2020 and that’s all linked into UK wide targets. The schemes are, both started off, in parallel with schemes operated by DECC for the rest of the UK. The non-domestic scheme was introduced here in November 2012 with the domestic scheme in December 2013.

They provide incentives to move from conventional heating to sustainable heating and the most common form of that has been through wood pellets and biomass. The domestic scheme operates on the basis of an upfront payment of up to £3,500 along with 7 annual tariff bands, so that’s a 7 year entitlement, typically around £1,200 per installation. The maximum available for that under the domestic scheme is £2,500.

The non-domestic scheme is substantially larger and that’s the issue we face relating to the non-domestic scheme. It involves 20 years of tariff payments, the average per installation is £24,000 a year, so if you have got a lot of installations that mounts up. It’s a longer financial commitment and that’s where it’s then achieved significant success, actually is one way to look at it, and we are now a victim of that success.

So it was a slow start. The non-domestic scheme was under performing initially, it began to increase early in the last calendar year in the first few months of 2015, but during the autumn of 2015 there was an unprecedented surge in applications all based on the biomass technology.

So as you are well aware, the Minister brought forward some demand management measures for the non-domestic scheme, which were to take effect from November 2015 but in the run up to that period there were 900 applications in 6 weeks, which doubled the number of installations under the non-domestic scheme looking at it in total. So we had several years of applications running to 900 and then in the space of 6 weeks another 900 and that has, we don’t yet fully know the full financial consequences because until they are all processed and operating. So all the figures we are using have a degree of projection and estimation about them, but they are sufficiently strong and sufficiently concerning to justify the Minister’s decision to act in the way he has decided.

So, we have – it’s gone very well in the sense that we have exceeded the 4% target for 2015 but that success comes at a price. (Nose blowing, difficult to hear) This is, the way it was designed it includes an element which is demand led. So demand is leading the expenditure and that is always more difficult to control than expenditure which is inherently discretionary and which can be increased or decreased by a budget maker’s or budget controllers decision. This was a scheme where an entitlement was created and eligible applicants got, and will continue to get, the money to which they are entitled under the provisions of the scheme.

So it is normally funded through Annually Managed Expenditure. (nose blowing makes it difficult to hear) It’s Annually Managed Expenditure
with a twist with an element built in of indicative budgets and elements of cost control so the cap initially provided for us was to work on the basis of a formulative share of what DECC had been spending on this budget and that was the approach taken and that was the way it was being handled.

In the spending review which was concluded at the end of November last, and this has been confirmed in formal correspondence from Chief Secretary of the Treasury in December, the Treasury has made it clear that any expenditure over and above our Barnett share will now have to be funded from the Northern Ireland block. That changes the issue materially from something where it was seen as demand led, with some but perhaps only a limited opportunity cost to other services, which now creates a very material and very difficult opportunity cost, given the wider budgeting situation that we are all facing.

So, what this means is that we have to meet all the expenditure above the 3% allocation and, in fact because of the surge in applications, renewable heat is now running at about 6% of the GB position. So that just gives a scaling factor as to the nature of the way this has worked out. The further development to mention was that because of the pattern of spending across the water, the way the scheme works is that because you apply and as more people who apply you are entitled to 20 years of expenditure, the budget is ratcheting up, but in November the Treasury reduced that rate of increase, so that they took some money out of the plans and reduced the planned increase expenditure by about a third. That puts us into difficulties because the spending to which we are contractually committed is running at that higher level.

So the situation is now that for 2015/16, the expenditure is forecast to exceed £30m and based on applications received to 31st January just passed, we now estimate that spend in 2016/17 will be £45m but the amount provided by the Treasury is not as large as that. So we now have it exceeding, which now has to be covered from mainstream Northern Ireland funds at the expense of other services. The gap is we think at £27m based on a reasonable set of assumptions.

It possibly could be higher, it could be say £33m but that depends on what actually happens in the real world because it’s a demand led scheme and it depends on the extent to which the heat is used. So the gap in 2016/17 financial year is, in broad terms, £30m resource problem. It will fall as the Treasury budget rises so the gap, based on, assuming we close the scheme now, or suspend the scheme now the, the gap between our expenditure and our budget will gradually converge and go down to something like £11m by 2021 financial year. But we have a very serious financial issue and in those circumstances, the Minister’s judgement was that it was necessary to suspend the schemes immediately to prevent that overspend becoming even worse.

So hence the decision to lay the Draft Regulation and proposed that they be debated next week and that’s always subject to what the Business Committee will schedule in their deliberations today. So, again, because
of the acceleration of expenditure, the need to act in a way that turned that tap off as quickly as possible, that was the reason for the decision not to follow the established convention of seeking the Committee’s approval of the policy in the Draft Legislation in advance. That’s not normal procedure, we apologise that it’s been necessary to do it in this way this time, but the circumstances are such, that the alternative would have been more difficult because it would have been risking continued increase in the budget constraint, and hence the problem we have been facing in financial year 16/17 and onwards. Because once an application is accepted, once an eligible installation is made, then the applicant is entitled to the spend over the 20 years, and that’s the way it is and the difficulty that has arisen.

So, very unfortunate, and one thing we’re obviously having to look at, is exactly what happened, how do we find ourselves in this set of circumstances. It should not have happened in this way so we have to look at hard questions about whether the scheme was adequately designed to cope with an unprecedented increase in demand. Whether there were any administrative errors? We’re aware that there was an issue of DfP approval, which was missed, a deadline to seek re-approval in relation to the non-domestic scheme. What difference might that have made had that been worded more correctly? Whether the budget situation could have been clarified at an earlier stage? So I have commissioned, through DETI internal audit an investigation into those circumstances, to see are there lessons to be learnt in this, are there things that should not have happened in the way they did happen.

So, over and above that, as I mentioned at the beginning, we would have to be wary in case there was any risk of abuse, the scheme is administered by OFGEM across the whole of the UK. They are the managing agents, so to speak, of the both the domestic and the non-domestic scheme. So we are seeking to make sure that there is adequate, appropriate and proportionate investigations to make sure that they are doing what they say they are doing, that there isn’t a breach of the obligations on the scheme, so that it’s in line with the legislative intent and the administrative procedures that provide for that. So we are arranging for additional auditing checks through our own team, through OFGEM and we need to use a contracted independent body to undertake some additional audits.

So we are looking at around 200 audits over both schemes. That’s trying to get to one in ten so getting to a proportionate check on the way this is going. We have received some whistle-blowing allegations through the Office of the First Minister and we have drawn those to the attention of OFGEM and we are commissioning a formal investigation of that process. So, that needs to be kept as clear as we possibly can - make it in terms of the operation of the scheme.

So, the immediate issue is to proceed with suspension of the scheme to prevent further financial pressure. The Minister is very sympathetic to those who had hoped to avail of the scheme and appreciates that it’s very unfortunate that the convention seeking facilities approval of the
Draft Regulations - it’s not possible to follow that convention in this case and the reason for that is the over-riding issue of preventing a further increase in the financial pressure we face, because obviously with the budget having been settled it’s not good to be going to anybody and saying ‘actually we’ve got another £30m to find’ at this notice going into a financial year. It’s not a place anybody ever wants to be, but we have found ourselves in that place and it’s now necessary to move on and the first necessary action is to suspend the schemes. So that’s some explanation of the factual position.

Chair

I don’t know whether the Department’s aware of it but since this announcement came I’ve had a flood of emails from companies, and it is the suddenness of it. People have bought equipment for installation, hundreds of thousands of pounds worth of equipment. One representation we have received here said it could cost a million quid to his firm and lose 25 jobs. We have other representation, we have just heard from the UFU this morning where 50 poultry projects could now be in jeopardy, which ties in with the whole Agri-food strategy. The suddenness of this project, it has just hit people a wallop.

Now, there seems to be out there some sort of anticipated date that people were working to of the 31st March. That had got out there, and people were working their businesses and making their projections, buying in stock and working to that. It appears that the thing has gone completely off the rails by the suddenness of this decision by the Minister, and I have to say, released late on a Friday evening tells me that it was wanting to be buried as a news item. But it has already hit, now, there are a number of issues just of clarity around that I require please. What is the anticipated date of the closure?

Andrew McCormick

It’ll be as soon as possible after the debate next week. So that’ll be Wednesday?

John Mills

Yes something like that.

Unclear

Chair

And the Minister is anticipating that this legislation will go through the Assembly?

Andrew McCormick

The alternative is the Assembly proceeding with uncovered expenditure over and above what is available. That would mean, going on the worst case, that means actually cutting other things, because Northern Ireland’s budget is the overriding consideration here.

Chair

Can I just, just to clarify this, where would people have got the notion of the 31st March from?

Andrew McCormick

48:40

That would have been in, there was previous papers around at the time of the changes that were made through the Autumn when we had clarified that (unclear) of people had been received for the scheme up to
31st March that became known as I understand it and that's not unreasonable.

John Mills

It was also the case that the UK position was that the scheme was being funded up until 15/16, so people were waiting for the spending review in November when the Chancellor announced that there would be further funding. There was speculation across the UK that the scheme might be just closed by Treasury in March 16. But that speculation proved to be groundless but that maybe -

Chair

So that, we’ll take it that fact of 31st March wouldn’t have been unreasonable for people who had made investments, made business projections, to buy in stock?

John Mills

That would have been a matter for themselves.

Chair

So, that date 31st March was a date that would have been put out there and given to people.

John Mills

No. That is speculation. There was no announcement that the scheme would be closed by the 31st March. That as I say was speculation.

Chair

Okay. Was there any consideration given to the economic implications of this its consequential effects on - , we’ve heard on Agri-food sector - on the overall loss of jobs. Indeed was there any consultation at all done around this issue? You are aware that consultation around other stuff has become a shared focus or a short consultation? It doesn’t appear there’s any consultation at all on this.

Andrew McCormick

Again, the options were considered and the possibility of a consultative process. The judgement was that the need to stem the flow of uncovered expenditure was the over-riding consideration. That’s the judgement that was taken.

Chair

I’m flipping this back, what about the other liabilities then the uncovered expenditure for those who have made the projections, have bought up stock, even those who are mid-way through projects? What about them? Are they left high and dry as a consequence of this? And no notification.

Andrew McCormick

The responsibility of the Minister was to manage the budget as provided for him and the potential consequences were part of the analysis that was presented to him, but there will be issues here expectations are there. All the factors were considered and the implications..... and that’s what led to an informed judgement.

Chair

What if for example you have a scheme which is part-way through installation and isn’t fully installed by the time say if, and that’s a bit if, the legislation is enacted next week? What happens to them? Is there a compensatory amount available to those people? Or mechanism? I mean it’s not their fault that they started on the basis of more than good faith that the scheme was up and running and no notification whatsoever
<table>
<thead>
<tr>
<th><strong>John Mills</strong></th>
<th>There is no provision for compensation in those circumstances, in the legislation, in the current legislation.</th>
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<tr>
<td><strong>Chair</strong></td>
<td>Right well I want to, there’s other members who want, I mean Gordon wants to come in there but, he’s gone out and we’ll come back to him. Mr McIlveen? David?</td>
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<tr>
<td><strong>David McIlveen</strong></td>
<td>Thanks very much Chair, and thank-you for some information this morning. Obviously my concern, and I think the concern of business owners, is that whenever a scheme like this is introduced of course business is built up around it and bearing in mind that one of the primary rolls of the Department is to support business is to create jobs, not to be the either direct or indirect cause of loss of jobs. Can you give some indication as to what consideration the Department might have given to the actual impact on businesses that have been created as a result of these incentives being available?</td>
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<tr>
<td><strong>Chris Stewart</strong></td>
<td>Sorry can I answer that one. We don’t have a detailed analysis of that but we are absolutely aware of the reality and the seriousness of the issues that you reported this morning. It won’t surprise you to learn that we are getting very similar representations from the businesses involved. But as Andrew said the Minister is very aware of those issues and is aware of the risks involved in this, but took the clear view that the biggest risk was the pressing issue was the very serious risk to Northern Ireland block expenditure that would arise if we were not to take immediate steps to make the suspension of the schemes. So it’s not that the Minister was unaware or not cognisant of these factors but there was a larger, overwhelmingly so, factor that he had to base his decision on.</td>
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<td><strong>John Mills</strong></td>
<td>If I may just add to that for the purpose of clarity, those who are currently on the scheme and have applied for the scheme before the cut-off date will continue to receive payments for 20 years in the non-domestic case and 7 years in the domestic case.</td>
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<td><strong>David McIlveen</strong></td>
<td>Eh Chair maybe just picking up on that point, because that is helpful, my understanding is that some applications that have been made to the Department have been preliminary accredited, and it may also be, I mean I know Andrew made mention of OFGEM, I mean I don’t know if it will surprise you or not surprise you, but actually some officials within DETI have been advising people in the run-up to the change in the legislation that they can go through the preliminary accreditation process with OFGEM. Would you like to comment on that as to where a client or an individual who has had an application accredited, where they will stand whenever this legislation is enacted? If it’s enacted.</td>
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<td><strong>Stuart Wightman</strong></td>
<td>The preliminary accreditation only applies to plants, very large plants over 200kW. So even for the majority of applicants that might be affected they wouldn’t be eligible for the preliminary accreditations for those</td>
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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.

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.
“aware of any... reluctance”

to close the scheme on the part of Ministers and special advisers. In fact, they were pressing:

“harder than officials for early closure.”

But that’s subject to —.

Mr Stewart: Up until this point, yes.

Mr Scoffield QC: Up until this point.

I wanted to take you to IND-05881. This might be one of the emails that you mentioned a short while ago about industry knowledge. But we see here — this is in response to your indication in mid-January that the Minister had accepted the advice on the 31st of December submission — John Mills says:

“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.”

Any observations on that?

Mr Stewart: John and I were both surprised and dismayed by that at the time. As I say, we had —. We’ve seen no evidence since that that resulted from disclosure by officials, and we were dismayed that it was happening in that way.

Mr Scoffield QC: Now, also around this time, towards the start of February, you are putting together a fuller response along with Andrew McCormick to the HOCS minute of the 27th of January, providing a fuller explanation of what had happened. And I wanted to take you to WIT-11914. This is a draft of that response, which you’re working on with Andrew McCormick. And if we have a look at paragraph 5.i, you refer to the:

“inherent vulnerability of the legislation”

as one of the main factors that:

“contributed to the exponential growth of [the] spend”.

—
| Steven Agnew | Given, you know sometimes to a fault we generally follow what’s going on in GB where there are schemes like this. Take Welfare Reform as an example and the controversy, you know, the amount of focus there was on that to deviate from GB what consideration was given to this in 2012 and why did we not choose to follow the same one? |
| John Mills | A number of changes as I said were introduced to the GB regulations including expanding the scheme. There was a consultation undertaken here in 2013 about a range of these measures, including the introduction of a domestic RHI scheme. At that point - |
| Steven Agnew? | Did we consult on this thing of degression? |
| John Mills | It was, it was included Degression was not..... I’m not sure how much detail was in the consultation on Degression |
| Stuart Wightman | It was a variation of it |
| John Mills | On demand management was one of the factors in the consultation document that went out. At that point the Northern Ireland scheme was under performing and therefore we were not using up what you might say was free money in terms of AME. |
| Steven Agnew | But just, just to be clear |
| John Mills | Sorry, can I just finish the point. So the Minister decided that the priority should be on the introduction of the Domestic RHI scheme, so resources were devoted to that. It’s not a case that we said ‘Well we’re not going do x, y and z’ we chose to do z. |
| Steven Agnew | But degression only kicks in if the demand effectively starts to outstrip the supply |
| John Mills | That’s the intention |
| Steven Agnew | There is nothing contradictory about introducing domestic RHI and introducing Degression. There would have been nothing contradictory. It would not have damaged - |
| John Mills | No, none of the changes would have been contradictory but resources being what they were the, these are complex regulations that’s all set out in legislation and of necessity one had to be done after the other. |
| Steven Agnew | OK |
| Andrew McCormick 1:51:40 | And that's reported back to the Department as a separate issue. Whether someone comes as an employee of OFGEM, or a representative of OFGEM, to check that the terms of the applicant’s funding are being fulfilled properly, I think that's immaterial. I think if the right of someone on behalf of OFGEM, be it an employee or a contractor, to say ‘Is this going right? Are you meeting the terms? Is this proportionate, appropriate use of the scheme?’ Those questions can be asked. They carry that authority, empowered to act obviously if they catch someone out in abuse, then all the powers of enforcement kick in, so I think that there is no difference in effect there between an employee and a contractor. I think the further important point then is that there is a proper reporting mechanism, and up to this point, we have been satisfied. Now, in light of some further information received, allegations received, we’re stepping that up and we’re wanting to make sure that |
| William Humphrey | The fact that you’re stepping it up, in your words, actually I think strengthens my point, that if OFGEM had had inspectors coming across here periodically to Northern Ireland, perhaps we may have been looking at a different situation. Can I just say finally going forward, in the piece of work that you are saying will now be done by the Department, I think with respect that visits by OFGEM, or their inspectors, to this region in the Kingdom would have been a sensible way to go forward and I think it should be part of your review. |
| Andrew McCormick | Thanks, we’ll take that into account. |
| Chair | Taking up on your theme there William, at any point did OFGEM suggest that there should be some sort of demand led management or control applied in regard to the scheme? |
| Andrew McCormick | That wouldn’t have been part of their remit or role and also as a matter of fact I don’t think that ever happened. |
| Chair | Right, did they ever suggest it? |
| Stuart Wightman | No, to be fair I have had discussions with them and they don’t really enjoy the Degression system in the UK because it actually triggers spikes every sort of 3 or 4 months. There’s a review of tariffs and they’re constantly having to deal with spikes, they would actually, in discussions I have had with them they have actually said that they’re having to deal with a lot of peaks and troughs in the GB scheme since Degression came in. It makes sense, because the tariffs are constantly changing. |
| Chair | So, the answer is they wouldn’t think it would be a good idea here |
Further to Chris’ suggestion I think a letter to DFP referencing decision of FM and dFM to agree to proposal of 29th closure (given legislation has no closure date) and attaching statement before release for info purposes and saying we will be releasing at 12 today

Ties all lose ends I think

Tim

Sent from my iPhone

On 11 Feb 2016, at 09:33, McCormick, Andrew (DETI) <Andrew.McCormick@detini.gov.uk> wrote:

The Urgent Procedure paper proposes “immediate” closure, but the most important point remains the collective agreement as to how that is now interpreted – ie 29 February.

Eugene
The Minister’s request did not specify a date; nor did the Executive decision. In fact the Minister’s recommendation was not qualified by ‘as soon a possible’ or any similar formulation (although that was clearly envisaged). I suggest that Mike’s concern would be best addressed by a letter to Ministerial colleagues, advising them of how the Minister proposes to take forward the Executive’s decision.

C

Eugene
He has raised whether this announcement is consistent with what the Executive has agreed – he feels it may not be. Mike is also concerned that there will be an additional budget implication above the Executive’s agreed position on immediate closure of the scheme, and
and so on, there were others not connected to you and Moy Park who were claiming victory
for having elongated the scheme for two further weeks between the 15th and 29th of
February. And, in fairness, I think, there’s a press statement from Conor Murphy MLA on the
11th, heralding —.

The Chairman: We heard the other day about the price of getting it through the Assembly
was — Sinn Féin, two more weeks.

Mr Aiken: Yes, that he’d persuaded Minister Bell to keep the scheme open for a further
two weeks, and we should be able to get you the —.

The Chairman: I don’t think it was a question of persuading Mr Bell: Mr Bell said he
couldn’t — “We couldn’t’ve done it without that, without Sinn Féin support”.

Mr Aiken: Yes. So —

Dr MacLean: Mr Aiken, in the chronology that you’ve got from Moy Park, is there an entry
regarding this meeting?

Mr Aiken: I think the answer to that is no.

The Chairman: Was it the Tuesday meeting, yes?

Dr MacLean: Yes.

Mr Aiken: If we go back to WIT-263849.

Dr Crawford: Just in response to Dr MacLean, I’m not sure of the context of this meeting:
one, if it was set up or whether it was a wider meeting — for example, the CBI dinner or
something like that, that I may have been at. So I don’t know —

The Chairman: This was a confidential meeting.

Dr Crawford: Well, you speak —. The way it was referred to — “meeting Andrew
Crawford” — I can’t recall whether it took place or add any more information to it.

The Chairman: You saw what it said: “Tuesday, confidential” meeting.

Dr Crawford: I see that, yes. I take your point, Chair.
evidence to the Inquiry, you said that you had asked him to delay the closure by several
weeks. Now, can you recall if there was a timescale discussed in this meeting —?

Mrs Foster: I think there was a timescale discussed. I don’t know whether we were
definitive around the two-week period at that stage. I don’t think it would’ve been — and I
accept what you say about my statement — I don’t think it would’ve been several weeks,
because, of course, that would’ve taken it beyond the end of March, but we certainly felt
that it needed to be kept open for a limited period of time at that stage.

Mr Scoffield QC: And was this coming from your own consideration of the matter, or was
this coming from a further discussion you’d had with the Sinn Féin side of OFMDFM at that
stage?

Mrs Foster: Both. Sinn Féin were unhappy with the reaction that they had received as
well. I think Conor Murphy was the Deputy Chair of the Committee at that time and had
expressed through the Sinn Féin system that there was a lot of unhappiness with the
announcement.

Mr Scoffield QC: And when you say “through the Sinn Féin system”, that’s through the —

Mrs Foster: Through DFM.

Mr Scoffield QC: — DFM side.

Mrs Foster: Yes.

Mr Scoffield QC: And how had that come to your attention?

Mrs Foster: Well, the special advisers would have been speaking to each other and would
have said, “This is not good. There’s been a very bad reaction to this. We need to react to
this and not look as if we’re tone deaf to the reaction”, and that was why we had the
meeting on the 9th. Well, we had other issues to discuss as well on the 9th of February with
the DFM side, but that was one of the issues that we discussed.

Mr Scoffield QC: So, in terms of what happens on that morning, you’re asking Mr Bell not
to commit to a definitive course of action when he’s speaking in the Assembly.

Mrs Foster: Yes.

Mr Scoffield QC: You’re asking him to extend the closure of the scheme for a period of some weeks. You can’t recall whether a precise timescale was specified or not.

Mrs Foster: I don’t think the two weeks was specified until later on in the day. I think, probably, that came later on in the day after discussions with Sinn Féin, although they would’ve liked it to have been longer than two weeks, and you can see that from some of the commentary from Máirtín Ó Muilleoir and from Conor Murphy at that time, you know, “Two weeks is all we’ve got, but it’s the best we can do. We’ll have to go with the two weeks and support it”. So I think the two weeks probably manifested itself later on in the day. And, certainly, when I’d spoken to Andrew McCormick, he didn’t have a huge issue with two weeks of an extension. I think if it had’ve been longer than that, he would’ve probably had an issue with it.

Mr Scoffield QC: And you spoke to Andrew McCormick that day. Was it in the canteen in this building?

Mrs Foster: The canteen, I think, yes. As formal as that, yes, exactly.

Mr Scoffield QC: Was that before or after the meeting with Minister Bell?

Mrs Foster: I think it was before, because Jonny didn’t come to see me until before Question Time, and I would’ve been probably in the canteen about half past 12, one o’clock.

Mr Scoffield QC: So, when that meeting concluded, you were urging Minister Bell not to commit to a definitive position.

Mrs Foster: Not — just not to commit himself to the 15th of February, I think.

Mr Scoffield QC: And when he left, you weren’t sure what —

Mrs Foster: Yes.

Mr Scoffield QC: — his position was likely to be.
Assembly on that date, he would lose. Therefore, you need to bring somebody with you.

Sinn Féin are saying, “We’ll come with you, but you have to extend it out to the 29th”, and they saw that as a concession to get their support. So, “Our support comes at a price”. The price is an extra two weeks, and then —.

**The Chairman:** So, they wanted it to be kept open for —

**Mr Cairns:** For another two weeks.

**The Chairman:** — a further two weeks?

**Mr Cairns:** For a further two weeks. But the Democratic Unionist Party position was 15th of February. But to get the support in the Assembly, which was required to pass it, that would require a further two weeks. That was the price that Sinn Féin extracted for that concession for that support.

**The Chairman:** The only reason I raise it is we have heard nothing about —. All of this has been about the DUP. We have heard nothing about the other views that Sinn Féin may have had. But your answer is that Sinn Féin wanted to extend this delay by two weeks?

**Mr Cairns:** Absolutely. That is my understanding. They wanted to extend it by two weeks.

**Mr Lunny:** And —.

**Dr MacLean:** Just for completeness, my understanding was that the original position, whether it was — and it seemed to be quite a mutual position, was between FM and DFM — was to bring it forward from March, because Sinn Féin at that time were as strongly, if not more strongly, suggesting it needed to be done quickly. That —. The real world outside, then, upon hearing that, started lobbying, and the stories of people making investments that might be lost came out, which built up a sympathy for the need to give a slightly longer grace period. So, bringing it back four weeks had been a joint —

**Mr Cairns:** That’s correct.

**Dr MacLean:** — position, and the slackening off of that in order to try and ease the pain
the sudden closure of the scheme?

**Mr Johnston:** There was a big backlash. Um, I have to say it emanated more —. I mean, the pressure point to start this, I think, was a conversation between FM and DFM. At this point, to get this scheme closed required votes in the Assembly and the realpolitik was it was only going to be the DUP and Sinn Féin’s votes who could close the scheme, because the likelihood was the other parties were not gonna vote for that, and I think, at that point, it was very much looked upon as a short further period, particularly on a fairness point, because, effectively, this was the final guillotine, and there was a concern on the fairness point that there were some people who had already expended large amounts of capital money, had had the assumption that this scheme would close at a slightly later point than was now being the case, and I think Ministers particularly were mindful of that: that, you know, something needed to happen to help them, recognising that it wouldn’t help everybody.

**Mr Lunny:** Right. Mr Cairns, when he gave his evidence, right at the very end of the second day of his evidence — although it wasn’t, I think, stated in his witness statement — he said that that two-week extension was a price that had to be paid, essentially, to Sinn Féin to get their support. He said, and I’m quoting from TRA-12967, that Sinn Féin were saying:

“We’ll come with you, but you have to extend it out to the 29th, and they saw that as a concession to get their support. So, ‘Our support comes at a price’. The price is an extra two weeks”.

Now, does that accord with your recollection?

**Mr Johnston:** Well, let me put it this way: I’m clear that the origin of the extra period came from Sinn Féin, and I think it was Conor Murphy, actually.

**Mr Lunny:** You refer to it in your witness statement as an “idea” that came from Sinn Féin —
Mr Johnston: Yes.

Mr Lunny: — not a demand or a price.

Mr Johnston: No, I don’t think — I don’t think anything starts off as a demand, but, ultimately, I think, in the process of discussion to get an agreement, you recognise that, you know, people will only agree in circumstances where they’re satisfied.

So, I think the reality was there was a sense that the two weeks was a two-week period needed to get both sides agreed in the castle or FM Office, as it here as it was. There was a sense that it was a price worth paying to get the political deal done, and it still was within the envelope of the fact that the scheme was gonna close earlier than what had first been proposed with the consultation period, and it did allow people to say, “Look, we’ve listened to some of the criticism of the way the announcement has been made; the very short time; the fact that there were a lot of people in the scheme who had spent a lot of money and who weren’t” — whatever the term was — “weren’t on the scheme at that stage”.

Mr Lunny: Well, when you say it allowed people to say that, it allowed MLAs to say that.

Mr Johnston: Yes. Yes.

Mr Lunny: But was it more than that? Was it that you were actually — both DUP and Sinn Féin — taking those concerns on board? Those political realities.

Mr Johnston: Well, I think you were taking on board the reality that you needed to get an agreement, and the price of getting that agreement was, effectively, that extra couple of weeks. I think my sense is that, on our side — on the First Minister’s side — we were prepared to go with that. We would’ve been prepared to go with the earlier closure date, but there was a recognition that people had got very anxious about the public reaction that there had been to the previous — whatever it was — Friday night announcement.

Mr Lunny: Well, I want to take you just to your witness statement, then, on this at —. If we could take you to WIT-74167. And while we’re doing that — while we’re bringing that up
2:45 pm

We know, then, the next issue is getting the scheme suspended, and I want to ask you just a couple of questions about your involvement, and the Office of First and deputy First Minister’s involvement, in that process. Now, we know OFMDFM agreed in early February to the matter being progressed under the urgent procedure mechanism. Isn’t that correct?

Sir Malcolm McKibbin: That’s correct.

Mr Lunny: And we know that the original plan appears to have been to suspend the scheme around the 15th of February.

Sir Malcolm McKibbin: Correct.

Mr Lunny: But we know that was then delayed or extended for a fortnight to the 29th of February. And what I want to explore with you in particular this afternoon is your knowledge of how that came about. And I want to set it into the context of some of the evidence that’s been given by other people about that two-week extension.

Sir Malcolm McKibbin: OK.

Mr Lunny: Now, I don’t know how much of this evidence you were able to watch or read, but I’ll try my best to summarise it fairly briefly to you. Timothy Cairns, the DETI spad at that point in time, said, in terms, that the Sinn Féin position in February 2016 was that their support for suspension of the scheme came:

“at a price”,

and that “price” was an extra two weeks. And, just for the panel, the reference there is TRA-12967. Mrs Foster gave evidence about how Sinn Féin had wanted more than two weeks, and the reference for that’s TRA-13722. Timothy Johnston, who’s one of Mrs Foster’s special advisers, said very clearly that:

“the origin of the extra period”

was Sinn Féin, and I think he specified that it was Conor Murphy, and that’s at TRA-14808,
but he never, in his witness statement where he deals with this, at any point characterised it as a “price” that was extracted by Sinn Féin in return for something else. He referred to it as a:

“wish”,
or

“desire”
of both First Minister and deputy First Minister, and the relevant part of the transcript there is TRA-14812, and he agreed that the two-week delay would not have occurred:

“unless both the DUP and Sinn Féin were content with”

that. And the reference for that’s TRA-14816.

And the final witness whose evidence in this I want to summarise for you is Máirtín Ó Muilleoir, and he has indicated in his evidence this week that Sinn Féin were keen for a — what he termed a “grace period” to apply to allow at least some of those who had invested money a chance to get their installations complete and their applications in in time, and he says, additionally, to lessen the risk of a legal challenge to the suspension of the scheme.

Sir Malcolm McKibbin: Yes.

Mr Lunny: So, that’s some of the evidence that’s been given about that. When were you first aware of any suggestion of delaying the suspension of the scheme?

Sir Malcolm McKibbin: I think I had a meeting with the First Minister and deputy First Minister on the 9th of February, and, the evening before that, Andrew McCormick had phoned me and told me that there had been a fairly significant — in fact, very significant — reaction from the industry about the closure of the scheme on the 15th, and he felt that I should make the First Minister and deputy First Minister aware of that whenever I met them on the 9th of February in our sort of normal formal meeting that I had with them.

Mr Lunny: You had a normal fortnightly meeting, was it?
Sir Malcolm McKibbin: Yes. It didn’t always happen every fortnight, but it was just myself
and the First Minister and deputy First Minister and usually six special advisers.

Mr Lunny: Right. So, that was a fairly frequent —

Sir Malcolm McKibbin: Yes.

Mr Lunny: — meeting. It wasn’t being convened to address this issue; it was a fixture.

Sir Malcolm McKibbin: No. That’s correct.

Mr Lunny: OK. And he knew that was happening on the 9th of February. He fills you in on
the 8th of February about this adverse reaction to the idea of a closure on the 15th and
suggests that you make the First and deputy First Minister aware the next day. You then
have that meeting the next day, and we can see a very short note in relation to it — a
minute in relation to it at TEO-191. If we could bring that up, please. So, is this a set of
minutes from that meeting?

Sir Malcolm McKibbin: Yes, a note of the meeting. Yes.

Mr Lunny: OK; a note of the meeting. And we can see there you’re in attendance with
one of your officials, Mr Jackson.

Sir Malcolm McKibbin: He’s the note-taker.

Mr Lunny: So, he made this note. And we can see RHI is the first heading on the note. And
it’s recorded:

“HOCS outlined the negative reaction which had emerged from some investors and suppliers to the proposal
to close the scheme and the consequent risk of legal challenge.”

So that’s recording you conveying what Dr McCormick had told you the night before.

Sir Malcolm McKibbin: Correct.

Mr Lunny: And, then, it’s recorded that:

“Following discussion, it was felt that the scheme should be left open until a date to be determined to allow
for the completion of applications already in progress”—
and then in brackets —

“(to be further defined).”

And the next paragraph that:

“Richard Bullick to speak to Timothy Cairns ... and Aidan McAteer to progress this.”

And that you were:

“to advise DETI Permanent Secretary of FM/dFM views.”

**Sir Malcolm McKibbin:** Correct.

**Mr Lunny:** Now, I think, yesterday, maybe, in his evidence, Dr McCormick said that the wording of this is quite important, that it’s recording that the deputy First Minister and First Minister felt that they weren’t necessarily deciding it should be extended.

**Sir Malcolm McKibbin:** That’s correct.

**Mr Lunny:** But they were — were they clearly saying they —?

**Sir Malcolm McKibbin:** Well, whenever I raised it, others in the room said that they’d also heard. And it wasn’t just one side: it was both Sinn Féin and the DUP.

**Dame Una O’Brien:** [Inaudible] —

**Sir Malcolm McKibbin:** They obviously got feedback —.

**Dame Una O’Brien:** — special advisers?

**Sir Malcolm McKibbin:** Yes, and I think the deputy First Minister might have said something as well because they would hear about these things from their constituency office, because that’s where a lot of the complaints will — or the concern would’ve been expressed to.

**Mr Lunny:** So when you were conveying what’s recorded in paragraph 1 there — the negative reaction — that wasn’t news to them.

**Sir Malcolm McKibbin:** No.

**Mr Lunny:** OK. And you got the impression it wasn’t news to any of them: both the DUP
and Sinn Féin were aware of that?

**Sir Malcolm McKibbin:** As far as both parties are concerned, yes, that’s correct.

**Mr Lunny:** And in terms of who it was that felt that the scheme should be left open for a little — for a further period, was that both sides?

**Sir Malcolm McKibbin:** I can’t remember who raised the prospect that it should be kept open, but I think both sides or both parties were concerned that this significantly increased the chances of a legal challenge. And —.

**Mr Lunny:** If it was only —. Sorry to cut across you, go on.

**Sir Malcolm McKibbin:** So they wanted to consider whether or not they should be keeping it open for a short period. All I remember was the term “short period”. The term “two weeks” was certainly not used.

**Mr Lunny:** OK. So a “short period”. If it was only the First Minister who felt the scheme should be left open for a short period, would that paragraph 1.1 have recorded, “It was the First Minister that felt it should be left open”? The fact it doesn’t say either First or deputy First, does that mean it was a consensus it was felt it should be left open?

**Sir Malcolm McKibbin:** I, well I —. I didn’t write the note, but if you’re asking me was there — did I believe there was a consensus from both parties that the scheme should be kept open, the answer is yes.

**Mr Lunny:** OK.

**Sir Malcolm McKibbin:** That was the impression that I got.

**Mr Lunny:** Uh-huh. And when, then, was that short period converted into two weeks, to the best of your knowledge?

**Sir Malcolm McKibbin:** I don’t know the date because the way it was tasked was that it was the special advisers who would go and engage with — or advisers, I should say, were asked to go and engage with DETI.
Mr Lunny: OK. And do you recall when you became aware, then, that two weeks had been agreed?

Sir Malcolm McKibbin: Not exactly, but whenever I did, I did speak to Andrew McCormick, because he was the accounting officer, and Andrew was relaxed about the extension because he believed that the scheme was now being closed quicker than DETI had originally stated was their intention. So he felt it was a move, absolutely, in the right direction.

Mr Lunny: And he didn’t have any concern in relation to it?

Sir Malcolm McKibbin: Not that he expressed to me.

Mr Lunny: One question that’s been asked of a number of people when this issue has been aired is whether anybody did anything about attempting to assess what the financial implications of keeping it open for two more weeks would be. Is that something you would’ve raised explicitly with Dr McCormick, or not?

Sir Malcolm McKibbin: No, I’d ask him the more general question was he content. But if you’re a —. I do believe that some attempt should’ve been made to quantify the likely impact, particularly, after the 2015 spike —

Mr Lunny: Yes.

Sir Malcolm McKibbin: — just so that you knew what you were — what decision you were actually coming to. Now, it may have been incredibly difficult to do that. I just don’t know enough about the detail of the scheme to know that forecasting would’ve been worthwhile, but it certainly should’ve been thought about.

Mr Lunny: Well, to take up a point that, I think emerged in Dr McCormick’s evidence yesterday, if that had been done, and somebody had said, “Well, we think there could conceivably be a couple of hundred applications in that fortnight, and if they have an average cost of this much, in terms of tariff payments every year, then, we multiply that.
Here’s the total annual additional cost”.

Sir Malcolm McKibbin: Yes.

Mr Lunny: If that had been done, do you think it would still have been legitimate to weigh that in the scales against the fact that the scheme might end up being kept open for a lot longer if there was a successful legal challenge to an immediate closure or a too-abrupt closure?

Sir Malcolm McKibbin: This is about risk appetite. You know, you’ve got to decide one way or the other which you believe is going to be the worst outcome. It would’ve been better informed, as I say, if there had been some financial forecasting done, but this was a risk call, and the balance of risk obviously fell that it was worth holding the scheme open for another two weeks, and that was a decision obviously made between OFMDFM and DETI at the political level.

Mr Lunny: Can you shed any more light on what went on? I mean, can you shed any more light on this issue from Mr Cairns’s oral evidence — the very end of his oral evidence — where he said the two weeks was a price extracted by Sinn Féin?

Sir Malcolm McKibbin: No. I mean, I wasn’t involved in the discussions and I never heard that until the Inquiry heard it in the evidence.

Mr Lunny: You never heard any suggestion of that at the time, even indirectly?

Sir Malcolm McKibbin: No, I didn’t, but then I wasn’t involved in the detailed discussions.

Mr Lunny: OK. And that balancing exercise that they engaged in at the time, OFMDFM and DETI, weighing up of risks, had you any involvement in that at the time or any detailed awareness of it?

Sir Malcolm McKibbin: No. It went on between effectively the special advisers and the appropriate Ministers, I imagine.

Mr Lunny: And are you content that it was appropriate for you not to have any
effect which an additional two weeks would have. And you’ve said in paragraph 23.e., which I think we just find on the next page, I imagine, from what we’re on —. Yes, you say that you weren’t aware of any economic analysis being conducted around the time of the meeting with FM and DFM. I think you’ve said the same thing in relation to your discussion with Minister Bell. We find that at WIT-20715, and you say there, paragraph 5.c.vii., that you can’t recall any evaluation of the additional costs.

Now, I wanted to take you then just back to TEO-03445. So, this is back to the paper that’s sent to you and Mr McGuinness on the 5th of February. And if we look at paragraph 12, we’ll see that there’s reference to the significant budget pressures at the bottom of that paragraph — or, sorry, in the middle of that paragraph. It’s explained that:

“Forecast costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the forecast costs would remain static but the HMT budget would rise therefore reducing the scheme overspend from around £27m in 2016/17 … to around £11m … This, of course, all assumes that there are no further application spikes in anticipation of scheme closure.”

So, you’re being told that there’s significant budgetary pressure, which is unfunded, assuming no further spike.

Now, obviously, the purpose of the additional two weeks was to allow more people to apply. It might well be that no one quite anticipated the number of applications there would be in that period. But whenever the decision was taken to extend the period of time without really any clear analysis on how much that would cost, would you agree that that is not generally the way in which decisions of this type should be taken?

Mrs Foster: I do. I also took comfort from the fact that the permanent secretary seemed to be content with a further two weeks. I mean, if Andrew had have said, as he did say to Tim Cairns when I enquired back in November of 2015, “That’s going to cost x number of pounds”, then we would, of course, have had to have taken that into consideration, but
there was no figures, as I can remember — I stand to be corrected — put to us as to what
this would mean in terms of the budget.

Mr Scoffield QC: Now, one of the things that we’ve asked DFE to look at recently is just so
they can give us some idea of what it did mean in terms of the budget. And if we have a look
at DFE-467510 — I should say this might be something that you might not have seen before
now because it’s only arrived in from DFE quite recently. But you’ll see there that there were
298 applications accredited between the 15th and the 29th of February, so there’s a big rush
to get in in the final two weeks. They’re broken down. 280 of those applications are for the
medium biomass boilers. So, again, there’s a large bias towards that particular tariff.

But what we see in the headlines there is that that gave rise to an additional 7.8 million
spend to March 2018, and it’s anticipated that, unless there’s some further intervention —
and we know that DFE is considering some further legislation — but unless there’s some
further intervention, the people who were accredited within this two-week period would
give rise to additional expenditure of around 91.5 million over the next 20 years of their
accreditation.

Now, if you’d known that at the time — no one’s suggesting that you did know it at the
time — but if you’d known the extent of how many people were likely to apply and what
that might mean in terms of figures, do you think that would’ve led to a different result?

Mrs Foster: I think it probably would have, yes, and I think we would’ve been able to
present the figures in a way to the public to say, “Look, if we leave this open for a further
two weeks, then it’s going to cost £91 million over 20 years”. We didn’t have that
information, and we took the decision on the basis of what was before us at the time.

Mr Scoffield QC: You didn’t have that information, but there had been a huge spike in
November —

Mrs Foster: Yes.
14) In respect of the period (a) 1 October 2015 to 17 November 2015 and (b) 15 February 2016 to 29 February 2016, please summarise, in each case:

(i) The number of applications received and accredited in the Scheme in each period

Note that the costs for each period are reconciled overall costs of £1,015m for 2019-36 (2012 regulations) & £477m under 2017 regulations for all small and medium biomass.

<table>
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<tr>
<th>Period of Accreditation</th>
<th>Number of Installations</th>
<th>Estimated Cost Pre-2017 Amendments</th>
<th>Estimated Cost After 2017 Amendments</th>
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<tr>
<td>October 2015</td>
<td>505</td>
<td>£343m</td>
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<td>1-17 November 2015</td>
<td>378</td>
<td>£209m</td>
<td>£97m</td>
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<td>15-29 February 2016</td>
<td>298</td>
<td>£92m*</td>
<td>£92m</td>
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*assuming that those accredited post 17 November 2015 would always receive a tiered tariff

883 applications were received and accredited in the period 1st October - 17th November 2015. 301 applications were made to the scheme in the period 15th-29th February 2016 of which 298 were accredited in the same period.

(ii) The estimated cost of those particular accreditations to the public purse (both at the time and after the 2017 amendments), setting out in particular how much of that estimated cost is, and is not, expected to be met from the Northern Ireland Block.

The overall budget position can be summarised as follows:

<table>
<thead>
<tr>
<th></th>
<th>2013-14 £m</th>
<th>2014-15 £m</th>
<th>2015-16 £m</th>
<th>2016-17 £m</th>
<th>2017-18 £m</th>
<th>Total £m</th>
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<tr>
<td>Expenditure</td>
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<td>30.5</td>
<td>42.3</td>
<td>21.7</td>
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<td>NI Domestic Scheme Expenditure</td>
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<td>1.4</td>
<td>4.6</td>
<td>2.9</td>
<td>2.8</td>
<td>12.6</td>
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<tr>
<td>Total Spend</td>
<td>1.7</td>
<td>7.9</td>
<td>35.1</td>
<td>45.2</td>
<td>24.5</td>
<td>114.4</td>
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<td>5.3</td>
<td>4.1</td>
<td>(4.7)</td>
<td>(26.9)</td>
<td>(2.2)</td>
<td>(24.4)</td>
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</table>

1. AME Budget refers to Annually Managed Expenditure. AME is allocated for the total NI RHI Scheme and does not apportion between the Domestic & Non-Domestic Schemes.

2. Renewable heat expenditure commenced in 2012-13 with £0.5 million in relation to Domestic Renewable Heat Premium Payments, payments on the Non-Domestic Scheme commenced in 2013-14.

3. Totals may have slight rounding differences across individual years.

4. All overspends were met from the Northern Ireland Block grant.
The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011.

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on the day after the day on which they are made.

Interpretation

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

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

3. The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 are amended in accordance with regulations 4 to 6.

4. After regulation 23 insert—

“Suspension of the operation of the scheme

23A.—(1) This paragraph applies where it appears to the Department that it does not have or is not likely to have sufficient funds available to it for the purposes of meeting the total costs of—

(a) periodic support payments for all eligible installations accredited under regulation 22 and all installations likely to be so accredited; and

(b) RHI payments for all plants accredited under regulation 21 of the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014 and all plants likely to be so accredited.

(a) 2011 c. 16
(b) 1954 c.33 (N.I.)
(c) SR. 2012 No. 396
(2) Where paragraph (1) applies, the Department may, by notice published in such a manner as it may think appropriate, suspend the operation of the scheme in relation to the making of—

(a) applications for accreditation under regulation 22;
(b) applications for registration under regulation 25; and
(c) applications for preliminary accreditation under regulation 26

made after a date specified in the notice (“the date of suspension”) and accordingly after that date and while the notice remains in force no such applications may be made or granted.

(3) Paragraph (2) does not apply to an application for accreditation for an eligible installation under regulation 22 where—

(a) an application for preliminary accreditation was made under regulation 26 in respect of the eligible installation before the date of suspension;
(b) that application has been granted (whether that grant was before or after the date of suspension); and
(c) the preliminary accreditation has not been withdrawn.

(4) In paragraph (3), the reference to an ‘application for accreditation’ does not include any application for the accreditation of additional RHI capacity under regulation 42.

(5) The Department may revoke any notice under paragraph (2) by a further notice in writing and that revocation shall have effect from such date as may be specified in that further notice.”

5. In regulation 22(6) for the words “subject to regulation 23 and regulation 46(3)” substitute “subject to regulation 23, regulation 23A and regulation 46(3)”.

6. In regulation 25(4) for the words “subject to paragraphs (5) to (8)” substitute “subject to paragraphs (5) to (8) and regulation 23A”.

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

7. The Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014(a) are amended in accordance with regulations 8 and 9.

8. After regulation 22 insert—

“Suspension of the operation of the domestic RHI scheme

22A.—(1) Where regulation 23A(1) of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 applies, the Department may, by notice published in such a manner as it thinks appropriate suspend the operation of the scheme in relation to applications for accreditation under regulation 17 made after the date specified in the notice and accordingly, after that date and while the notice remains in force no such applications may be made or granted under regulation 21.

(2) The Department may revoke any notice under paragraph (1) by a further notice in writing and the revocation shall have effect from such date as may be specified in that further notice.”

(a) SR 2014 No. 301
9. In regulation 21(1) for the words “subject to regulation 22” substitute “subject to regulation 22 and regulation 22A”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 16th February, 2016.

Chris Stewart
A senior officer of the
Department of Enterprise, Trade and Investment
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations amend the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (“the 2012 Regulations”) and the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014 (“the 2014 Regulations”). The 2012 Regulations established a renewable heat incentive scheme for the non-domestic sector and the 2014 Regulations a renewable heat incentive scheme for the domestic sector, under which owners of plants which generate heat from specified renewable sources and meet specified criteria may receive payments at prescribed tariffs for the heat used for eligible purposes.

Regulations 3 to 6 amend the 2012 Regulations and regulations 7 to 9 amend the 2014 Regulations.

Regulation 4 introduces a new regulation 23A in the 2012 Regulations which gives the Department the power to issue a notice suspending the non-domestic RHI scheme in relation to new applications where it appears to the Department that it does not have or is not likely to have sufficient funds available to it for the purpose of meeting the full cost of periodic support payments for all eligible RHI installations accredited under the 2012 Regulations and RHI payments for all plants accredited under the 2014 Regulations. It also gives the Department the power to revoke any such notice and resume the operation of the non-domestic scheme.

Regulations 5 and 6 make consequential amendments to the 2012 Regulations.

Regulation 8 amends the 2014 Regulations by introducing a new regulation 22A which gives the Department the power to issue a notice suspending the domestic RHI scheme where regulation 23A(1) of the 2012 Regulations applies. It also gives the Department the power to revoke any such notice and resume the operation of the domestic scheme.

Regulation 9 makes consequential amendments to the 2014 Regulations.

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ANNEX A

NORTHERN IRELAND RENEWABLE HEAT INCENTIVE SCHEMES

NOTICE OF SUSPENSION

It appears to the Department of Enterprise, Trade and Investment ("the Department") in accordance with regulation 23A(1) of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ("the 2012 Regulations") that it does not have or is not likely to have sufficient funds available to it for the purpose of meeting the total costs of:-

(a) periodic support payments for all eligible installations accredited under regulation 22 of the 2012 Regulations and all installations likely to be so accredited; and

(b) RHI payments for all plants accredited under regulation 21 of the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014 ("the 2014 Regulations") and all plants likely to be so accredited.

Accordingly, the Department under regulation 23A(2) of the 2012 Regulations and regulation 22A(1) of the 2014 Regulations hereby:-

1. suspends the operation of the Non-Domestic Renewable Heat Incentive Scheme under the 2012 Regulations insofar as that scheme relates to:-

   (a) applications for accreditation under regulation 22;

   (b) applications for registration under regulation 25; and

   (c) applications for preliminary accreditation under regulation 26.

with effect from 29 February 2016 (the date of suspension). Accordingly no such applications may be made or granted after 11:59 pm on that date.
2. suspends the operation of the Domestic Renewable Heat Incentive Scheme under the 2014 Regulations in relation to applications for accreditation under regulation 17 made after 11:59 pm on the date of suspension and accordingly, no such applications may be made or granted.

However, in accordance with regulation 23A(3) of the 2012 Regulations, an application for accreditation for an eligible installation under Regulation 22 of those Regulations may still be made and granted where an application for preliminary accreditation had been made and granted before the date of suspension and that preliminary accreditation had not been withdrawn.