Renewable Heat Incentive - Meeting between DoF Supply and DfE

Note of meeting

In attendance:
DoF: Mike Brennan, Emer Morelli, Michelle Scott, Giulia ní Dhulchaointigh.
DfE: Heather Cousins, Stephen McMurray, Stuart Wightman, Lucy Marten.

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<tr>
<th>Item</th>
<th>Description</th>
<th>Action</th>
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<tr>
<td>1</td>
<td>Update since last meeting</td>
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<td>DoF asked for an update since the last meeting on this issue. DfE said that the situation remained the same –with an in-year pressure of £32 million for this scheme.</td>
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<td>The departmental officials stated that the £32 million pressure is a realistic scenario, the actions that they are taking to address deficiencies in the scheme will not have a major impact on the funding required for this year.</td>
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<td>In respect of the in-year pressure, DfE confirmed that approx £5 million of the £12 million has been found from within the departmental baseline.</td>
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<td>DfE asked whether there was any way that the necessary AME funding could be found from AME underspend elsewhere in the NI Block. DoF advised that this has been explored with Treasury and is not an option.</td>
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<td>2</td>
<td>DSO advice</td>
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<td>DoF asked for an update on the legal advice which DfE has sought from DSO. DfE said that there were two separate issues on which they were taking advice:</td>
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<td>• Taking any necessary enforcement action</td>
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<td>• Revising the scheme to bring the rates of return in line with the original policy intent</td>
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<td>DfE advised that they are waiting for a response from the EU on notifying changes from the assumptions DfE had made about the operation of the scheme at its beginning. In the meantime, advice from DSO has confirmed that concerns regarding continued State Aid compliance are a solid rationale for consulting on the introduction of cost controls.</td>
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<td>In response to a query from DoF, DfE confirmed that DECC are aware of the engagement on State Aid issues.</td>
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<td>3</td>
<td><strong>Enforcement</strong></td>
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<td>DfE advised that payments to a small number of installations are on hold following the PWC report. These were in category 4. However these payments are not significant in terms of the scale of the overall cost of the scheme.</td>
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<td>DoF asked, in light the views expressed regarding Ofgem’s administration of the scheme, if DfE were considering terminating their contract with Ofgem. DfE said that they were considering taking inspection and decision-making responsibility following inspections for this scheme from Ofgem. DoF highlighted concerns previously raised by the department in relation to the in-house capacity to administer the domestic scheme. DfE confirmed that if elements of the administration were taken in-house the department would have to buy in appropriate expertise.</td>
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<td>DoF asked whether, there will be an attempt to claw back administration fees paid to Ofgem. DfE said that they have been advised that legally this will not be possible. DoF asked if DSO advice had also been sought on a prospective clawback through a reduction in future administration fees rather than a retrospective clawback mechanism.</td>
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<th>4</th>
<th><strong>Regulations</strong></th>
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<td>DoF asked whether any changes to primary legislation would be required should DfE decide to amend any component of the scheme. DfE advised that none were necessary and that the necessary changes could be made through subordinate legislation. DOF queried whether DECC approval was required at any stage given that the primary legislation was UK wide, albeit with specific NI clauses. DoF also queried whether there was any concern at a UK level as to potential EU infraction fines.</td>
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<td>DoF asked whether there was scope to adjust the time period over which payments would be made. DoF asked whether the regulations were drafted in such a way that the tariffs could be changed again if market conditions changed to ensure that there was no possibility of over-incentivisation. DfE agreed to seek DSO advice on this.</td>
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<th>5</th>
<th><strong>Consultation</strong></th>
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<td>DfE said that they aim to have a paper with the Minister by the end of October seeking his approval to consult on new draft regulations that would amend the tariffs for the scheme. DfE will conduct pre-consultation with major stakeholders prior to consultation. DoF queried whether the consultation would only consider amendments to tariffs or if any other cost control</td>
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Received from DoF on 24.03.17
Annotated by RHI Inquiry
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<th>Measures would also be included including the definition of eligible usage etc.</th>
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<td>DoF asked whether there was a statutory duty to consult on these regulations. DfE said that although there was no statutory duty they have received strong advice from DSO that they will need to consult those involved.</td>
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<td>DoF asked DfE consider all options on speeding up consultation if consultation has to be undertaken, by reducing the number of weeks of consultation or carrying out a focused consultation with those affected rather than a full public consultation. DfE agreed to seek DSO advice on these points.</td>
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<td>DfE</td>
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<th>Legal challenges</th>
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<td>DfE advised that a legal challenge could lead to delays. The risk of any challenge was more likely when the regulations had been implemented. The regulations would remain in place while any challenge proceeds.</td>
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<th>New Combined Heat and Power (CHP) installations</th>
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<td>DoF asked about the large installations that are coming into the scheme. DfE said that there was no legal way to stop these from proceeding. However, they will be adding a time limit to the new regulations and reducing the tariff. DoF asked whether there was any danger of the same problem arising with these installations as with others. DfE advised that there was not as it was different technology. DoF asked whether this was State-Aid complaint. DfE confirmed that it was.</td>
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<th>Documentation</th>
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<td>DoF asked DfE to document the actions that have been taken and will be taken to address the failure of this scheme, including all engagement with DSO, from when problems with this scheme first became evident.</td>
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<th>Finance Minister statement</th>
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<td>DoF said that the Finance Minister will have to make a statement to the Assembly around October Monitoring. He will need to include some detail on RHI as this accounts for such a large percentage of the Resource DEL over-commitment. DfE agreed to put together lines for this including the remedial actions that have been taken.</td>
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<td>DoF said that due to the challenging nature of the cuts that will be announced, RHI will come under renewed scrutiny and DfE will</td>
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<td>DfE to provide lines</td>
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want to explore every option available to reduce the overall cost of this scheme and take all actions as necessary moving forward.

DfE asked if it was possible to go back to Treasury for additional funding in light of high take up of scheme in NI. DoF commented that discussions had taken place with Treasury on this point following the Autumn statement in 2015, however HMT set out their final position in the January 2016 letter from the CST.
From: Stuart Wightman  
Energy Renewables  
Tel No: 29425

Date: 28 October 2016  
cc: Copy distribution list below

To: 1. John Robinson  
2. Simon Hamilton MLA

NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI): PRE-CONSULTATION BILATERAL MEETINGS

Issue: Approach to the possible introduction of new controls in relation to the Non-Domestic RHI scheme which would ensure RHI recipients receive a rate of return in line with State Aid approval.

Timing: Urgent – it is essential to bear down on future costs as soon as possible, and hence we aim to launch the consultation in mid November.

Executive Committee Referral: Not applicable

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

Presentational Issues: There continues to be political and media interest in this issue with the ongoing Public Accounts Committee Inquiry.

FOI Implications: FOI exempt under S35 (formulation or development of government policy) and S36 (prejudice the effective conduct of public affairs

Financial Implications: Potential impact on DEL of £144m over 5 years

Legislation Implications: Additional cost control measures will require changes to legislation.

Statutory Equality Obligations: The proposed policy proposals will be screened for EQIA purposes.

Recommendation: That you:
   a. Note background and proposed actions  
   b. Agree to officials undertaking pre-consultation bilateral meetings with key stakeholders; and  
   c. Note the final draft of the consultation document will be submitted for your approval in mid November.
Background

1. You are aware of the background to the scheme and of the irregular spend that gave rise to the qualification of the DETI accounts in 2015-16. The potential impact of the spike in demand on the Department’s budget is in the region of £144m over the next five years, with continued uncovered costs in the following 15 years.

2. The Department is now examining the potential for cost controls to decrease future budgetary impact, improve value for money for the NI taxpayer and, possibly, regularise expenditure.

Rate of Return

3. The tariffs under the RHI scheme were subject to the ‘grandfathering principle’ meaning scheme participants would be guaranteed the tariff for the lifetime of the scheme. This was to encourage investment by ensuring scheme participants would receive an average rate of return of 12% on the initial capital outlay (based on assumptions underpinning the tariff calculation). The Scheme’s EU State Aid approval was also predicated on participants receiving an average rate of return of 12% over the 20 year lifetime of the technology.

4. However, many RHI participants who joined the scheme on the medium biomass tariff before 18 November 2015 are set to receive much higher rates of return for their investments than 12%. In reality, if payments continue at the current levels, the average rate of return for 99 KW biomass boiler installations on the pre-November tariff is likely to be between 49% and 109% depending on the initial capital outlay. This compares with a maximum rate of return of 18% for 199 KW biomass installations on the tiered tariff which came into effect on the 18 November 2015.

5. Failure to implement controls to bring the average rate of return back into line with the original EU State Aid approval and avoid over compensation could lead to the Department having to recover some, or all, of the payments received.

Behaviours

6. On 29 July, the Department commissioned an independent review of whistleblowing allegations relating to the non-domestic RHI Scheme.
7. The review conducted 80 site visits comprising 295 installations over 78 businesses. This represents £185.6m of estimated RHI payments (20% of payments for the entire RHI Scheme). The results of the site inspections were allocated to one of four categories.

<table>
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<tr>
<th>Categories</th>
<th>% of installations visited</th>
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<tr>
<td>1. Participants generating heat for an eligible purpose within the intentions of the scheme</td>
<td>46.8%</td>
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<tr>
<td>2. Participants generating heat for an eligible purpose, which does not meet the intentions of the scheme</td>
<td>37.3%</td>
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<tr>
<td>3. Participants generating heat for an eligible purpose, but using heat in a way that is not energy efficient</td>
<td>9.5%</td>
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<td>4. Generating heat which may be for an ineligible purpose and therefore may be in breach of the scheme</td>
<td>6.4%</td>
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8. Further detail on the steps taken to address the behaviours identified by the review will be provided in a later submission however, it is clear that the Department must take steps to try and change the behaviours displayed. For example, the introduction of a tiered tariff would remove the incentive for scheme participants to generate heat solely for the purposes of increasing RHI payments.

**Public Expenditure Costs**

9. If the current rates of return continue, it will place considerable strain on the public purse and on public services in Northern Ireland with around £144m having to be diverted away from other public services over the next five years and, all other things being equal, similar annual amounts will arise in the subsequent 15 years. The Department of Finance (DoF) has advised that the RHI accounts for £27m of the Executive’s anticipated £37m Resource DEL pressure in 2016/17.

**European Commission Opinion**

10. The initial view from the European Commission is that any amendments to the RHI tariff for the Northern Ireland RHI scheme are ‘notifiable’ even if they involve a tightening of the criteria for granting the aid. Discussions are however still ongoing to clarify the situation.
Next steps

11. It is clear that the Department must balance its budgetary obligation to the RHI scheme participants against its wider obligation to safeguard against unnecessary cost to the public purse. The Department is developing cost control proposals aimed at bringing rates of return for RHI participants back within reasonable levels in line with the EU State Aid approval and eliminate the behaviours that have been highlighted through the independent review.

12. Subject to your approval, the Department plans to consult on these proposals in mid November. The consultation will also consider a number of other policy measures to improve future budget management.

13. It is recognised that changing tariffs will be contentious given the ‘grandfathering principle’ and is likely to be subject to legal challenge(s). However Departmental Solicitors Office (DSO) has advised that the issues of overcompensation in terms of State Aid (and potential recovery of payments) and the protection of public funds are particularly strong arguments to deploy against any legitimate expectation challenge.

14. When the consultation has been completed, and after any cost control measures are implemented, we would hope that the Department will be in a position to submit a case to DoF to consider regularising expenditure.

Pre-consultation

15. This submission seeks your agreement to Departmental officials meeting with key stakeholders prior to the forthcoming consultation on proposed tariff changes to the non-domestic RHI Scheme.

16. The preferred approach is to engage with the two key industry players, the Ulster Farmers’ Union (UFU) and Moypark. Officials further propose to meet with Biomass Energy Northern Ireland, (BENI), as a body involved in the production, marketing and use of biomass and with CAFRE, which is heavily involved in the use of biomass in the agri-food sector. Officials also consider that it would be beneficial to speak with ‘Heatboss’, an energy efficiency company that has previously met the Department and raised concerns over the tariffs.

17. The purpose of the meetings is to advise stakeholders about the forthcoming consultation and seek high-level views on the main issues. The views of these stakeholders may well affect the approach we take to this process.
Proposed timetable

18. The proposed draft timetable is as follows:

<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>w/c 7 November 2016</td>
<td>Pre consultation meetings</td>
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<tr>
<td>w/c 14 November 2016</td>
<td>Consultation document issues</td>
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<tr>
<td>January 2017</td>
<td>Publish proposals and bring forward the necessary legislation to the Assembly for approval.</td>
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<tr>
<td>March 2017</td>
<td>Legislation for cost control measures comes into effect.</td>
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Recommendation

19. That you:

a. Note background and proposed actions

b. Agree to officials undertaking pre-consultation bi-lateral meetings with key stakeholders; and

c. Note the final draft of the consultation will be submitted for your approval in mid November.

Stuart Wightman
Energy Renewables

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Press Office
c. **Who made the remark or remarks to you?**

18. Andrew Crawford.

d. **What was the content of the remark or remarks and any associated discussion?**

19. I have no additional memory of this beyond what is recorded at WIT-10528.

e. **Who else was present?**

20. No-one.

f. **What steps, if any, were taken on foot of this exchange?**

21. As indicated at WIT-10529, I did no more than pass the point on within the Department: I thought that my communication had probably been to Chris Stewart, but as John Mills has described the conversation, it is clearly possible that I spoke to him directly (or Chris Stewart may have passed the point on). As explained at WIT-10529, as this was an isolated comment out of any wider context of discussion about the Scheme, I took no further action. I have acknowledged that I should have pressed Andrew Crawford for more details (WIT-26264), but I may not have done so because of the "jokey" tone of his approach, as in John Mills’ recollection of what I passed on to him.

*Submission to Minister Hamilton of 28 October 2016*

6. A submission to Minister Hamilton of 28 October 2016 (DFE-137929 to DFE-137933) was the subject of criticism by him in his written and oral evidence (see TRA-16153) and was subsequently withdrawn by you by way of email on 16 November 2016 (DFE-302263/4). As to this submission:

a. **Set out what involvement you (and, to your knowledge, other officials other than Mr Wightman) had in the preparation or approval of this submission.**

22. I mentioned my involvement in this issue in oral evidence on 26 October 2018 (see from TRA-16690, line 16 to TRA-16691, line 8). I saw the draft submission on 26 October 2016, checked out the Trim file for 20 minutes and checked it back in with a series of comments and DNs (asking some questions for clarification) (see DFE-137697-702). As is clear from my comments:

a. I did not identify any difficulty with the main proposal to engage with some key stakeholders in pre-consultation, indeed by approving the submission I approved that approach;
b. I was focussed on the potential significance of engagement with the European Commission in the hope and expectation that State Aid would be a strong argument to use in relation to action to bear down on the flow of payments to pre-November 2015 Scheme participants; and

c. I was very clear on the urgency of taking action – one of my drafting changes in the summary on page 1 of the submission was intended to emphasise the urgency.

b. Explain why it took from 28 October 2016 until 18 November 2016 for the submission to be withdrawn and provide such further details as you can about the reasons for its withdrawal.

23. To the best of my recollection, Simon Hamilton made no response to the submission of 28 October 2016 until his phone call to me on 18 (or just possibly 17) November 2016. We were by then well used to the pattern that business would be dealt with when and only when Simon Hamilton was ready to deal with it. I cannot recall if it was before or after October 2016 when Simon Hamilton made it clear to us that we should not be using Issues meetings to nag him about submissions that had not been cleared – I say this because we had generally been trying to move business along, including by engagement with John Robinson, who was invariably receptive, and directly with Simon Hamilton, but found no option in many cases (including, I think, this one) but to await the Minister’s timing.

24. It may also be relevant that between the completion of the submission and Simon Hamilton’s conversation with me on 18 November 2016, I had changed my view of the best way ahead, as a result of my conversation with Emma Little Pengelly on 3 November 2016 (see paragraph 2.83 of my first personal Witness Statement, \textit{WIT-10531} and the email at \textit{WIT-10820}), such that I no longer believed that the recommended approach in the October submission was the best way ahead – I thought that moving directly to closure with compensation was a better approach. Hence from 3 November 2016 onwards, I was not so motivated to pursue urgent clearance of the submission.

c. Please also provide any response you wish to make to the evidence of Mr Wightman (see paragraph 60 of his most recent witness statement at \textit{WIT-17824/5}) to the effect that you “sanctioned and approved" this submission, including its recommendation of pre-consultation with key stakeholders (including Moy Park and the Ulster Farmers’ Union). In particular, please address whether you consider this is consistent with, or at odds with, your evidence as to the provision of information by departmental officials to industry in the summer 2015 period.
hence I pressed for definitive legal advice on the issue. We identified a proposal that would have reduced the level of payments to recipients down to amounts that we could expect to be able to defend as fulfilling their reasonable expectations.

2.83 Work on this was well advanced when I happened to have a conversation (at a lunch event in Titanic Belfast) with Emma Little Pengelly MLA, who put to me the point of view that the Scheme was so riddled with difficulty, it might be better to withdraw it entirely and pay all recipients a one-off compensation payment, to discharge all liability. I found this to be a very attractive idea, and following discussion with the team, the economists developed an initial costing and a discounted cash flow comparison with our previous options. We developed a non-paper for consideration with the European Commission’s Competition Directorate (DG COMP) whose approval on State Aid issues would have been required.

2.84 I had a very helpful meeting with DG COMP on this issue on 7 December 2016. The Commission preferred the closure option as the cleanest solution to the problem we faced. They told me that if a compensation payment was calculated on a basis which would in effect be the equivalent of the applicant’s entitlement under UK law, there would be no State Aid, and no State Aid notification would be required.

2.85 We then sought formal advice from the Attorney General, who provided helpful advice (at a consultation on 15 December and then in writing), which supported the selection of the closure option in preference the others changes that we had been considering. DoF had been pressing very hard for access to our work on this issue and the key documents were sent to DoF officials on the morning of 16 December 2016. That afternoon, I had a long phone call with DoF – I was on my own but at the Clare House end of the call were three officials, Minister O’Muilleoir and his SpAd. DoF’s preference was for an option that would continue to make use of the AME Budget available from HM Treasury.

2.86 I sent a number of emails on this issue in the course of the following weekend (see Annexes 2.44 and 2.45). The debate continued through more formal processes as described in the DfE Corporate Witness Statement. Following critical comments by the Minister of Finance about the delay in our processes, I sent two further emails, explaining the sequence of events (Annex 2.46).
and not the need to keep pressing in the way that I was. I suppose I —. If I’m reflecting back on my behaviour and what I perhaps regret, I could’ve invoked those sorts of — my authority or laid down my authority and said, “I want something”.

**Dame Una O’Brien:** Set a date or required a fortnightly meeting with the officials working on it. Those are examples of things that are open to a Minister to do.

**Mr Hamilton:** Yes, although I would point out: this wasn’t a matter of me raising, let’s say in June, as we were talking about earlier when I came in and I got my first-day brief and then not raising it until October. I mean, this is a regular occurrence. We’re meeting —. As I said before, I had — in my three Ministries that I was in, I probably dealt with Dr McCormick directly more than any other permanent secretary that I worked with, and that’s, I suppose, a function maybe of the la—. A majority of that was probably in the last two months in post as opposed to the rest of it, but there was a —. I’ve always operated on the basis that permanent secretaries just come in and come out and we discuss issues when we need to.

**Dame Una O’Brien:** So, you were funnelling this very much through him. Would that be —?

**Mr Hamilton:** I think I was and —. Absolutely. That’s not to say that I wasn’t talking to other officials and we weren’t having meetings. We did and we talked about the discussion about the internal audit review. So this was something that —. We would’ve had weekly issues meetings where I would’ve asked for an update, received an update and it’s in those sort of issues meetings and perhaps just in other casual meetings in and around the late August/September period where I’m ratcheting up that, “Let’s get this paper”. But I didn’t — I accept I didn’t say, “Right, I want a paper by” —. I’m sure I did say something like that, you know, “I want something very, very soon”, or, “I want it quickly”. And in some ways, when you look at the submission with the benefit of hindsight, it has the hallmarks of something which is — almost like just, “Let’s get something to the Minister because he’s asking about it,
he enquiring, he’s looking for this. Just get something up to him”, because it is, whilst it looks like a complete submission, it is an incomplete submission.

Mr Scoffield QC: I’ll just take you through the submission very briefly and then give Mr Hamilton an opportunity to make what points about it he wishes. You’ll see it’s a submission dated the 28th of October 2016. The:

“Issue:”

is an:

“Approach to the possible introduction of new controls in relation to the … scheme”.

The:

“Timing:”

is noted as:

“Urgent”

because it’s said to be:

“essential to bear down on future costs as soon as possible ... hence we aim to launch the consultation in mid November.”

The financial implication is set out, I think, reasonably accurately there, and, then, the recommendation at the bottom of the page is that the Minister:

“Note background and proposed actions

... Agree to officials undertaking pre-consultation bilateral meetings with key stakeholders; and

...Note the final draft of the consultation document will be submitted for your approval in mid November”,

so, that’s in a few weeks’ time.

Now, I won’t run you through all of this. I think, Mr Hamilton, in his evidence, has been critical, in particular of paragraph 11 — we’ll maybe have a look at that — and paragraphs 15 to 16.

So, there’s a lot of background set out. Maybe, if we just go back up one page, we’ll see
there that, in the table on the page which is now on the screen, there’s a summary of what PwC have found in the Heat 1 process. The interim report from that was provided in mid-September. And if we go down to paragraph 11:

“Next steps

…It is clear that the Department must balance its budgetary obligation to the RHI scheme participants against its wider obligation to safeguard against unnecessary cost to the public purse. The Department is developing cost control proposals aimed at bringing rates of return for RHI participants back within reasonable levels in line with the EU State Aid approval and eliminate the behaviours that have been highlighted through the independent review

… Subject to your approval, the Department plans to consult on these proposals in mid November. The consultation will also consider a number of other policy measures to improve future budget management.”

Then it’s noted that this is likely to be contentious because the tariffs were grandfathered.

Paragraph 14:

“When the consultation has been completed”

then the Department will have to

“submit a case to DoF”.

Then, there’s the suggestion that there will be:

“Pre-consultation”

meeting

“key stakeholders”.

The two who are identified are the:

“UFU … and Moypark [sic],

and, then, also, some others:

“BENI”

about whom you’ve heard previously in the Inquiry and, also, Miss O’Hagan’s company has
now come on to the radar.

And I think the criticisms that you make of this, Mr Hamilton, are twofold. Firstly, after all of the time, what has been brought to you is not actually concrete options for solving the problem, but a proposal to consult on something without, at this stage, a consultation paper. And, also, pre-consultation, which you’ve said, I think, fairly trenchantly in your evidence, you viewed as being unwise or unsatisfactory given how things had developed. And we’ve seen from the written evidence — perhaps give you the references to this later — that the Minister’s response is to say, “I’m not happy with this”. Then Mr — or Dr McCormick withdraws the submission and the process gets fed into the RHI steering group to take it forward.

So, firstly, is there anything with that brief summary that you disagree with, Mr Hamilton?

**Mr Hamilton:** No. No, I think that’s a very fair summary. I mean, I suppose, firstly, on such an important issue as this, it wasn’t — it wasn’t the way I preferred to do business. I would’ve preferred — and this is actually what I would’ve been pressing for — almost like an iterative process. So, before it had got to submission stage, that there would’ve been the sort of meetings that Dame Una was talking about, where we would’ve been developing policy together. So, officials would come in, “Here are the two or three preferred options that we’ve slimmed it down to. Here’s the pros. Here’s the cons. What’s your feeling?” So that, what was coming before — when the submission was prepared — and that’s to help officials as much as anything; to get a steer from the Minister — that whenever the submission lands, it is a simple matter of, “Well, I’m happy with that. We’ve discussed that. I understand that. I’ve looked at that inside out”, and sign off and move as quickly as possible. So, in that sense, it was — it wasn’t the way I would’ve liked to’ve done business and generally had done beforehand.

10:45 am
Mr Hamilton: — would’ve been sufficient.

It is —. What struck me about it — there were two aspects of this that caused me concern at the time and led to it being withdrawn. As you have mentioned, paragraph 11 —. So, I had been led to believe and I had fully expected, particularly given the time that it had taken to produce this, that this was a paper that, when it came, regardless of whether I liked the process that had produced the paper or not, but it was going to be a paper which was going to spell out one or a couple of options to solve the overspend problem. Paragraph 11 makes it clear that they’re still developing — the Department is still developing solutions at that stage. It is still developing cost-control proposals. So I knew at that point, once I got to paragraph 11, “This is not doing what I had expected it to do”. So that causes me some dismay at that point.

It also is a slightly contradictory submission as well, because, at paragraph 13, it talks about changing tariffs, whenever it hasn’t preferred — it hasn’t talked about a preferred solution; it doesn’t offer a tariff-control solution. And, indeed, at that time, the favoured option — the preferred option — that we were discussing was the buyout, the compensation model. And then the straw that broke the camel’s back, I suppose, on it, for me was, I think it is, paragraph, is it, 16, where, even though there is no recommendation to me of any solutions here, officials want my approval to go out and start to pre-consult with organisations — the Ulster Farmers’ Union and Moy Park in particular — who, if not themselves, would have within their orbit, would’ve had people who would not, as Dame Una said, been best pleased with whatever proposals we brought forward, no matter what they were.

So not having —. So, I’m sitting as Minister, I don’t have any recommended cost controls or cost-limiting proposals in front of me, but my officials want to go out and talk to people — about what? Nothing, as I saw it, in terms of — but maybe just the generality of options
which haven’t actually been spelled out in the submission to me. So I saw that immediately
as, well, just a bit wrong-headed — significantly wrong-headed — but also dangerous,
because, if you go out and — this is where, I suppose, it maybe goes into the sort of the
political realm; again, there’s not the frenzied atmosphere that there was in December and
January, when it was still difficult to get things through — but I felt that it was dangerous to
go out and start to alert people who may then begin to alert others, and then you would get
a sort of a groundswell of opposition that would make it difficult to get whatever your
prop— whatever your preferred option was through this place and into law.

So it was at that point, I think, I asked my private secretary to contact — I was in
Netherleigh, departmental headquarters. I asked my private secretary to contact Dr
McCormick. He wasn’t in, but he rang me later in the day, and we talked it through. And he
agreed that it was — cos, ordinarily, what I would’ve done with a submission like this would
have been I would’ve sent it back and forward — you know, I would’ve made a “I don’t like
paragraph 11, don’t like paragraph 16”, and then we’d’ve gone into that sort of iterative
process — but I just thought this was so fundamentally flawed that this was one that just
needed to go and be started again and a new paper brought forward forthwith.

Dr MacLean: Mr Hamilton, was there no discussion at any point about the suitability of
the people working on this? These were the very people who had not seen any of the
problems that both the internal audit and the C&AG had highlighted — very serious issues.
This issue about pre-consultation and going out and talking to a few favourite organisations
had been part and parcel of the problem in the first place, not only the fact that information
got out but the fact that it was selective — very, very selective — which was, which was
wrong. So it’s easy looking back now, saying, “My — you know, how on earth do you just let
the same people, who’d been accused of naivety and lack of commercial awareness and so
on, to be running this recovery process?”. They hadn’t had the insight to understand the
This submission is hereby withdrawn.

Many thanks.

From: Marten, Lucy  
Sent: 28 October 2016 09:01  
To: DfE SpAd; DfE Private Office  
Cc: McCormick, Andrew (DFE); Stewart, Chris (DFE); Cousins, Heather; Wightman, Stuart; McCann, Brendan; Millen, Patrick; Adair, Joanne; Hughes, Seamus; Willis, Adele; Briggs, Peter; Smith, Alan; Tweedie, Siobhan; All DFE Branches Press Office  
Subject: Submission - Pre Consultation bi-laterals and RHI Consultation  

Please see attached submission from Stuart Wightman.

Kind regards

Lucy

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NI Year of Food & Drink 2016

Please consider the environment - do you really need to print this e-mail?
On the face of it, it sounds like just another government scheme with a suitably dull name, the Renewable Heat Incentive Scheme; in reality it has become one of the biggest financial scandals ever to hit NI politics. More than £400m of your money committed over the next 20 years to subsidise the uptake of renewable energy. The problem is there was no cap, the more you burn, the more you earn; cash for ash to put it simply. For every £1 a company uses they are paid £1.60, hundreds of millions of pounds of public money set to go up in smoke. Here is another question, why wasn’t it closed down after the alarm bells rang? Instead it was kept open and when news came last autumn that the subsidy was to be reduced there was a huge rush to get in, massive spike in applications, accounting for almost half of the total projected spend. The claim is that that autumn deadline was extended despite warnings and because of political pressure, how was it all allowed to get so far?

Tonight the DUP MLA and former minister, Jonathan Bell, goes on the record to, in his own words, tell the truth about what he believes actually happened. We will hear that interview with me in just a second and then we will get the response of the First Minister Arlene Foster who spoke to me shortly before we came on air tonight.

Let’s hear what Jonathan Bell had to say, before his interview he prayed.

JONATHAN BELL

I have undertaken before God that I will tell you the truth and yes hundreds of millions of pounds has been committed and significant amounts of money has been spent. I am authorising every detail, every document, every civil service document that I signed, every submission that I signed to be made publicly available and to be examined exactly as the truth I now give you.
STEPHEN NOLAN

And you are saying you believe this scandal was avoidable? Is that your position?

JONATHAN BELL

Yes.

STEPHEN NOLAN

Let’s start then when you became minister, that is May 2015, day one, were you aware of this?

JONATHAN BELL

No, there was nothing mentioned there that was urgent.

STEPHEN NOLAN

So how do you feel about that?

JONATHAN BELL

It should have been closed on day one.

STEPHEN NOLAN

Why?

JONATHAN BELL

Hundreds of millions of pounds have now been overspent which is going to have to be clawed back out of schools and hospitals and roads.
So you believe there was an awareness in May that this was a problem?

There should have been an awareness of the cost of the scheme, that should have been brought to my attention as minister with an urgency heading on it and to be immediately addressed.

So that is May, let’s move now to June because there was a significant event in June 2015 involving the Permanent Secretary, Andrew McCormick, what happened?

The Permanent Secretary, who let me say, is a person, of all the times I have worked with him, is a man of the utmost integrity and one of the finest servants of the civil service that the public could ask for. He came to me and raised with me concerns over the scheme.

What did he say?

That the scheme would overspend, they weren’t sure of by how much, it was difficult to calculate.
But was he expressing low level concern, or was he very concerned or what was his demeanour?

JONATHAN BELL

Significant concern with the scheme and the advice that I was being given was that we could manage this if we reduced the tariff.

STEPHEN NOLAN

And just to be clear, when we are talking about closing this scheme there are two parts of the scheme and for this section that we are talking about, we are talking about closing the lucrative part of the scheme. The part of the scheme where there was only one tariff being paid out to the public and the more you burn, the more you earn. So why didn’t you close it?

JONATHAN BELL

Because his explanation was that now these concerns were raised it takes a month period to process a submission for me to address and that we would do that immediately, we would take action on that immediately.

STEPHEN NOLAN

And did you?

JONATHAN BELL

And we did, and there is a submission…

STEPHEN NOLAN

So when was this put on record?
JONATHAN BELL

…on record which they have allowed me to see but they won’t allow me to photocopy and that submission will show a date in the very early part of September signed Jonathan F Bell where I sought to reduce the tariff.

STEPHEN NOLAN

So you sought to close that part of the lucrative scheme?

JONATHAN BELL

Yes.

STEPHEN NOLAN

…and you are the minister in charge.

JONATHAN BELL

And my signature at the earliest possible date I believe is on a document currently with the Department of Economy signed by me at the most immediate practical point…

STEPHEN NOLAN

When, what date?

JONATHAN BELL

In September 2015.

STEPHEN NOLAN
So why didn’t it?

JONATHAN BELL

Other DUP SpAds involved themselves in the process.

STEPHEN NOLAN

If you hear us talking about SpAds, these are Special Advisers, these are the key advisors within government, they are senior people, they are senior political advisors.

JONATHAN BELL

I was then informed by my special advisor in the Department that other DUP SpAds were not allowing this scheme to be closed.

STEPHEN NOLAN

Now that is a big allegation.

JONATHAN BELL

It is a fact.

STEPHEN NOLAN

Not allowing it to be closed.

JONATHAN BELL

This is a fact…
How had they the power?

JONATHAN BELL

This is a fact that will not only be borne out by me, but I have had discussions with my Permanent Secretary at the time and the explanation was that these other Special Advisers, I had to act by what they term ‘collective responsibility’. In the words of my Permanent Secretary, this is the way government works. If the other Special Advisers are saying the scheme has to be delayed then you cannot, you have to work in collective responsibility with them.

STEPHEN NOLAN

Which department are you talking about had the power to overrule you?

JONATHAN BELL

The Office of First Minister’s Special Advisers and the Department of Finance and Personnel Special Advisers.

STEPHEN NOLAN

Do you know for a fact that they influenced this scheme staying open?

JONATHAN BELL

Here is the fact that I do know which reveals it. The Deputy Permanent Secretary of my department, Chris Stewart, asked for something that was highly unusual and only done once in the five years that I sat in the Executive, he asked to meet the minister, as he is entitled to do, to whistle-blow on a one to one basis. One to one basis.

STEPHEN NOLAN

What did he say?
JONATHAN BELL

He said the purpose of me being here today and for you not having even your own Special Adviser with you is, minister we have to advise you that without your knowledge the Special Adviser in your department has been asked by the other Special Advisers to remove references to Arlene Foster, the First Minister, and to the Department of Finance and Personnel. I have spoken about this subsequently to the Permanent Secretary who has verified all of this and is prepared if asked to put it formally on the record in an inquiry. I have asked for the changes that were sought to be made, when I said to him how can I see the evidence of what your deputy Permanent Secretary was telling me, he said there is an email trail, I cannot show you the email trail because you are only entitled to see the final email but he said you will see the changes that there were to take out the references to the Office of First Minister the Department of Finance and Personnel. Fact.

STEPHEN NOLAN

Now why would they want to do that?

JONATHAN BELL

That is for them to answer.

STEPHEN NOLAN

Why do you think? You have told me you are going to tell me the truth from your heart today. Why?

JONATHAN BELL

I can tell you the truth from my heart.

STEPHEN NOLAN
Why would they want to do that?

JONATHAN BELL

I cannot tell you what their thinking or motivation was. Personally I was deeply; deeply hurt that as a minister, the supposed number one in that department, the person who the buck stops with that without my knowledge and without my consent this attempt was made. It took a whistle-blower, a person of considerable integrity to brief me as minister that this was happening.

STEPHEN NOLAN

So why was this scheme kept open?

JONATHAN BELL

I have asked questions, can I say…

STEPHEN NOLAN

What is your belief? Now let’s not come off this point, what is your belief of why this scheme was kept open, because we are now going to be getting into the period where hundreds of millions of pounds of the money of the people watching this programme right now was committed to, I want you to tell me why do you believe this was kept open?

JONATHAN BELL

I believe the scheme was kept open wrongly, inappropriately and when I commit to telling the truth I am not prepared to speculate why other people did what they did. Factually it is on the record I wanted to close the scheme on 1st October, the outside interference of the Special Advisers ensured the scheme was kept open for another four weeks.
STEPHEN NOLAN

Who?

JONATHAN BELL

They are going to have to detail that, my understanding from both my own Special Adviser at the time and also from the belief of the Permanent Secretary was it was the Special Advisers in the First Minister’s Office and it was also the Special Adviser…

STEPHEN NOLAN

Who

JONATHAN BELL

The name that was given to me in the First Minister’s Office was Timothy Johnston, the name that was given to me from the Department of Finance and Personnel of which Arlene Foster was the First Minister (sic) was Dr Andrew Crawford.

STEPHEN NOLAN

These are astonishing allegations that you are making, and I want to go over this again, you are telling me that the Special Adviser to the First Minister, the now First Minister, when she was the minister in the Department of Finance and Personnel, you are telling me that Special Adviser attempted to keep this scheme open against your will?

JONATHAN BELL

Yes.
STEPHEN NOLAN

Timothy Johnston is one of the most senior people in the DUP. He is at the heart of your party, he is one of, Timothy Johnston is the most senior adviser in the DUP and has been for a long time. What are you saying about him?

JONATHAN BELL

I am saying factually and as the record will bear out I sought to close the scheme on the 1st October to a lower tariff which would have left us in a manageable situation, I was informed by my Special Adviser I wouldn’t be allowed to do it.

STEPHEN NOLAN

Here is the implication of this, October, 429 more applications, your money, a projected £250m, November, the scheme continued until November 2017, this is the lucrative part of the scheme, the tier then changed after November, but November those first two and a half weeks, 452 applications, another £235m of your money committed over a 20 year period. £485m of your money and you are telling me that is because Special Advisers against your will kept this open?

JONATHAN BELL

Yes and I can tell you more, the Permanent Secretary has confirmed to me in recent days, I said look why could my instruction as minister not be followed and he said it is the way that government works in NI that when the other Special Advisers interfere you must work by collective responsibility, you wouldn’t have been able to do it on your own.

STEPHEN NOLAN

Have you evidence that the Department of Finance and Personnel when Arlene Foster was the minister knew about the soaring numbers in this scheme and the financial problems that this would cause?
JONATHAN BELL

My understanding is when my Permanent Secretary was telling me this, that it is inconceivable that the Permanent Secretary in my view, David Sterling, would not have been telling the Department of Finance and Personnel of the nature of this.

STEPHEN NOLAN

And do you believe that the Special Adviser in Arlene Foster’s department at the time, he was her Special Adviser, do you believe he was acting with her knowledge?

JONATHAN BELL

As I say I will only speak factually and I wasn’t there for any of those meetings so I can’t comment on that. But what I can comment on is factually my Permanent Secretary informs me that when a Special Adviser of a minister informs the Department the rules are that they are taking it as the instructions of the minister.

STEPHEN NOLAN

What about the Office of First Minister?

JONATHAN BELL

Same applies. That is what my Permanent Secretary is telling me, he is clear that the reason the scheme was delayed on the record was because of the outside influences and interferences of the DUP Special Advisers.

STEPHEN NOLAN

Why didn’t you fight on behalf of the people in this country in October and November when you knew this was out of control, because you were seeing the numbers by then right?
JONATHAN BELL

And I was not getting daily updates.

STEPHEN NOLAN

So you had no notion in October or November that anything was wrong, that can’t be true because Andrew McCormick told you in June he had concerns and he wanted it closed by September. Why didn’t you fight for us Jonathan?

JONATHAN BELL

Please don’t say things can’t be true, what Andrew McCormick told me in June is true, what I have told you is true. I was not given, and there is a record of this, I was not given a daily update or a weekly update, and the reason…

STEPHEN NOLAN

My point is you knew something was wrong…

JONATHAN BELL

That is true…but there is a difference…

STEPHEN NOLAN

And you should have had concern, why didn’t you?

JONATHAN BELL

I had major concerns.

STEPHEN NOLAN
So why didn’t you shout about it?

JONATHAN BELL

Because the Permanent Secretary told me at that time you are under collective responsibility as a minister in this government, and as part of the ministerial collective responsibility you cannot breach those codes. What I did do at the time was I did raise my concerns, those concerns were on the record and I was also told that I was overruled. The minister of the department was overruled by the outside Special Advisers.

STEPHEN NOLAN

Arlene Foster might be watching this right now saying this is a revisionist history.

JONATHAN BELL

The history will show, the documents and the facts because I will make them all available, because I am given to understand that if I make a referral to the Commissioner for Standards every document, every email, everything that is currently being withheld from me is available to them. I don’t want a revisionist history. I want a public inquiry, judge led, to examine every single document I am giving them completely permission, my complete permission everything to do with me and my department, every document, every submission to be laid out. You will see factually that every document will stack up the truth that I am telling you today.

STEPHEN NOLAN

Arlene Foster has been saying in recent days that she has nothing to hide and she is very much putting the spotlight on the officials, those officials she says she passed the whistle-blowers concerns onto those officials and she says she has nothing to hide. Do you believe she is hiding something?
JONATHAN BELL

I believe my officials when they tell me there is a documented email trail which shows an attempt behind my back without the knowledge of the minister of the department to cleanse the record, my officials are telling me at the time. By the way when they told me at the time I did inform my party leader, Arlene Foster, my deputy leader, Nigel Dodds MP and Lord Morrow, the chairman of the party, in writing of my concerns because it was so serious.

STEPHEN NOLAN

You have known her a long time.

JONATHAN BELL

Arlene and I go way back to 1989 when we were at Queens University as students together, I think I was one of if not the first people to sign her nominations to be leader. When she became leader I told her she had my full support, she had 100% loyalty and service from me.

STEPHEN NOLAN

Does she have it now?

JONATHAN BELL

I’m at a position of major and massive pain. The truth overrides anything else. Dr Paisley once taught us that you must tell the truth until the heavens fall. This is not easy for me in any way.

STEPHEN NOLAN

Okay so we are now at January 2016 and the reason why this period is critical is because the Treasury in this month had sent notice to the government in NI that they
were not picking up the bill for this Renewable Heating Scheme overspend. What happened in January?

JONATHAN BELL

I went to close it immediately.

STEPHEN NOLAN

Why?

JONATHAN BELL

For the reasons you have just said the Treasury are telling us.

STEPHEN NOLAN

What advice were you given?

JONATHAN BELL

The advice from the Treasury or the advice from my Permanent Secretary?

STEPHEN NOLAN

What did he say?

JONATHAN BELL

It was to the effect that this is so significant it is unsustainable and needs to be closed immediately. I fully agreed with him on the basis of the evidence that I analysed and reviewed. In fact what he said to me was you have to close the scheme and I am no longer prepared to deal with these outside influences. I am putting this on the record to you and what Andrew said to me was if you want me to
continue the scheme as your principle civil servant you must issue me with a ministerial directive to keep the scheme open. I said to him Andrew I will guarantee you I will not issue and never issued him ever with a ministerial directive to keep the scheme open, I refused.

STEPHEN NOLAN

And yet the scheme didn’t close Jonathan Bell.

JONATHAN BELL

What happened was I went away and was informed on a confidential business trip where I was trying to secure jobs in my recollection for NI, the First Minister of NI was ordering me to keep the scheme open.

STEPHEN NOLAN

So by this stage, because this is January 2016, by this stage Arlene Foster is First Minister of our country, you fly back from your trip abroad, what happens the next day?

JONATHAN BELL

So I leave Canada from my recollection, January, February, just towards the end, I’ll need to give you the precise dates, they’re on the record, and I refused Arlene’s instruction to keep it open because I’m refusing to give a Ministerial directive because I’m not going to ask the Permanent Secretary to do something that’s wrong in the face of all the evidence. I then got told, I flew back, I think, from 8 o’clock from Canada, Montreal to London, got in the early hours of the morning, about 5 o’clock, 6 o’clock, I was on the 9.20 flight back to Belfast. I went straight home because I’d literally flown all night, I changed my suit and had a shower and I was to answer questions at 2 o’clock, I was ordered to appear in front of the First Minister before my Question Time. In the strongest terms, both in volume and force, Arlene Foster as First Minister overruled me and told me to keep the scheme open.
STEPHEN NOLAN

What do you mean by that? Describe the scene when you’re in her office, describe it to me?

JONATHAN BELL

I went in and sitting in front of her desk, at that stage I think there were two special advisers, Stephen Brimstone and Richard Bullick, in the room…

STEPHEN NOLAN

Was she controlled, was she…

JONATHAN BELL

She was highly agitated and angry because I’d been refusing the whole way for the last period and telling them I wasn’t going to do this.

STEPHEN NOLAN

So I want you to give me more of a sense of what the atmosphere was like in that room?

JONATHAN BELL

Hostile, fear, it was abusive.

STEPHEN NOLAN

Abusive in what way, she’s sitting down just talking…

JONATHAN BELL
She walked in and shouted at me that I was keeping the scheme open. In fact she shouted…

STEPHEN NOLAN

She’s shouting?

JONATHAN BELL

Yes, and she shouted so much that Timothy Johnson then came into the room…

STEPHEN NOLAN

That’s her special adviser?

JONATHAN BELL

Yes and who was already there and Stephen Brimstone and Richard Bullick were already there and she said you will keep it open and to be fair I was fairly strongly telling her back no I wasn’t because I will never break the law and I’m not, if I’m not prepared to do it I’m certainly not prepared to instruct somebody else to do it.

STEPHEN NOLAN

But the image that you are portraying on this programme is that our First Minister in her room was shouting at you?

JONATHAN BELL

Voices raised ordering me to reopen the scheme and it caused me a lot of problems because, people know I closed it and I turned to the special advisers and I said, you knew I was closing this, what on earth are you thinking of now reopening it for two weeks and they sat and dropped their heads, they had no answer to me.
STEPHEN NOLAN

Well you must have asked the First Minister, Arlene Foster, why, you must have said why?

JONATHAN BELL

We are now at about 1.15, 1.20, I hadn’t been to bed in 24 hours and at 2 o’clock I’m to appear at the despatch box for 45 minutes to answer questions and the determination to ensure that I wouldn’t confirm the scheme as closed and I was determined to tell her also that I would not and never have, and I doubt I ever will, issue a Ministerial directive to tell a civil servant to do something which in my heart of hearts I believe to be wrong.

STEPHEN NOLAN

There is of course a counter narrative to this which is as many other political parties were doing at that time, demanding, calling for the scheme to be kept open and Arlene Foster may very well of been of this view, to be fair to her, that people throughout Northern Ireland had invested in these boilers or had orders in place or had legitimate businesses, many legitimate businesses, to use this environmentally friendly product and that might be why she was insistent to you I want this kept open?

JONATHAN BELL

This was a luxury that was not only not affordable but to fulfil what was legally contracted; you were going to have to take that money from the future budget and generations of Northern Ireland…

STEPHEN NOLAN

You’ve got a problem, no, you’ve got a problem with my next question…
JONATHAN BELL

Any question I'll answer.

STEPHEN NOLAN

You walked out of that room and you told the Assembly, you told the public of Northern Ireland that the right thing to do was to extend that scheme, keep it open, that was out of your mouth that was Jonathan Bell saying it, you've a problem?

JONATHAN BELL

The way the government works is you have all your arguments and all your difficulties behind closed doors, but the way collective responsibility works is that no matter how fierce the row, no matter how much the bullying or no matter whatever it is that the final decision is then defended by all of the Ministers, that's collective responsibility.

STEPHEN NOLAN

You said, I have decided to defer closure for another two weeks, you said it, I...

JONATHAN BELL

Under the orders of the First Minister...

STEPHEN NOLAN

You can’t stand up to Arlene Foster, you’re standing up to her now.

JONATHAN BELL

I can’t overrule it, I can’t overrule it...
STEPHEN NOLAN

But you can walk into that Assembly and…

JONATHAN BELL

The regret that I ultimately have now when we are seeing terminally ill children being sent home from hospital is that I didn’t resign and I’m sorry I didn’t resign. I’m sorry now that hundreds of millions of pounds, yes I was overruled, yes I can claim collective responsibility, yes the truth will back up everything I say, but I’m sorry I didn’t resign.

STEPHEN NOLAN

Do you apologise to the people of Northern Ireland for the money which was committed to be spent over a 20 year period?

JONATHAN BELL

I apologise for that for which I was responsible, I am deeply, most profoundly sorry for what has occurred.

STEPHEN NOLAN

Do you think Arlene Foster, your party leader, owes the people of this country an apology?

JONATHAN BELL

I think we all should hang our heads in shame for what has occurred.
Should she?

JONATHAN BELL

All of us.

STEPHEN NOLAN

I’m asking you a direct question about Arlene Foster, she’s the First Minister, Jonathan, she was the Minister in charge of the department when this process was designed, you’ve gone over the processes, it’s a direct question about Arlene, do you think she owes the people of this country an apology?

JONATHAN BELL

Yes.

STEPHEN NOLAN

For what?

JONATHAN BELL

For the fact that a scheme was allowed to run, for the fact that special advisers were allowed to overrule me and when I apologise I’m apologising for what I wanted to do which was to close it on the 1st October. I’m not apologising for those who overruled me and here’s the rub, we are hurting the most vulnerable people in Northern Ireland and that doesn’t make me sorry it makes me sick. I’ve come into this studio because my obligations to God to tell the truth are greater than my obligations to anybody else. Dr Paisley was right, tell the truth should the heavens fall on you. You have no idea how difficult this is for me, I’ve been told I’ll be ostracised, I’ll be demonised, my political career is finished…

STEPHEN NOLAN
Are you involved in a coup to try to take Arlene Foster down as the First Minister and leader of your party?

JONATHAN BELL

Nothing, as God is my judge, could be further from the truth. I’m the boy that signed her papers, I believe I was one of the first to sign her papers, I campaigned for her, I’ve been involved in nothing other than telling the truth of what has occurred.

STEPHEN NOLAN

What’s your message to Arlene Foster now?

JONATHAN BELL

I think the situation is so significant that you first of all have to deal with the major problem, you can’t stick a plaster over a gaping wound and you deal with it by means of a public inquiry…

STEPHEN NOLAN

And during that time when that investigation that you are asking for is happening, if indeed it does happen, do you believe Arlene Foster should step aside as the First Minister of our country while that investigation is being conducted?

JONATHAN BELL

I believe that people have to act according to their conscience before God.

STEPHEN NOLAN

What do you believe will now happen to you within the DUP when this interview is broadcast?
JONATHAN BELL

I have no idea, my only aim is that the truth is told and I’ve now told it.

STEPHEN NOLAN

You are a family man, you have children, you must have thought of the implications of doing this interview?

JONATHAN BELL

I talked with my wife, I do talk with my children and given the level of exposure and all the criticism that comes with that, it will not be easy, but my wife told me this morning, Jonathan tell the truth please, tell the truth. I’ve now done it.

STEPHEN NOLAN

You prayed, Jonathan, before this interview, your faith and God is clearly very important to you?

JONATHAN BELL

I’m a very poor Christian, but I’ve got a great God.

STEPHEN NOLAN

Why are there tears in your eyes?

JONATHAN BELL

Because it’s difficult, because hospitals in Northern Ireland will not be built, because terminally ill children are being sent home, children that are dying, they’re coming into our hospitals and we’re sending them home or telling them just to die 40 miles...
away from their house. There’s a ward in the Ulster Hospital, the Maynard Ward is closed. Do you think I could sit back and not tell the truth? My God told me to tell the truth and Dr Paisley was right, tell the truth should the heavens fall on you. So do with me as they will.
Pauley, Christine

From: McCann, Brendan
Sent: 16 December 2016 11:19
To: Sterling, David
Cc: McCormick, Andrew (DFE); McMurray, Stephen; Coyne, Terence
Subject: RHI CBA and options report
Attachments: RHI CBA and options report.docx

Follow Up Flag: Follow up
Flag Status: Completed

David,
Andrew asked me to sent you the attached paper setting out some of the cost control options. This is very much a 'work in progress'.

A further short paper will follow later.

Thanks

Brendan

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Renewable Heat Incentive – High level value for money and options assessment

The purpose of this paper is to inform, at a high level, the merits of amending the RHI to achieve greater value for money by examining possible options to achieve this.

A cost benefit analysis of the renewable heat incentive was undertaken in the original business case for the scheme by the consultants CEPA and AEA. They developed an economic model which assessed the expected uptake of renewable heat together with the displacement of oil and gas that this implied.

The analysis found that the NPC for the scheme was £405m (2010 prices) assessed against a do nothing approach based on certain funding assumptions.

(CEPA and Ricardo AEA also undertook an assessment of the development of Phase II of the Renewable Heat Incentive. The consultants’ conclusion was that none of the options had a positive NPV purely on a quantitative basis. They concluded that the net effect of renewable heat on employment would be positive but did not attempt to quantify this).

1. Updated modelling of the RHI

An initial new VFM analysis has been undertaken within the Department on the RHI scheme given the evidence to date of the running of the scheme. This VFM model also allows the impact of different tariff changes to be modelled against the existing scheme. Analysis has also been undertaken to show the rate of return being achieved by investors in renewable heat technologies and the impact on returns when tariff changes are applied. The modelling also allows for an assessment of the costs of paying off the capital outlay with an associated return – a ‘buy out’ option.

To assess the Non Domestic RHI scheme’s provision of value for money in achieving the Executive’s sustainable energy objectives, the costs of installations accredited onto the scheme since its inception have been calculated. As was the case in the Consultants’ analysis, the costs of the scheme relate to the actual payments made or anticipated to be made for the projects assisted. Benefits from the RHI relate to the carbon savings and employment benefits related to job creation in the supply chain for wood pellet fuel. This high level analysis does not examine the benefits from the scheme at this stage as the assumptions that would be applied will require further scrutiny and testing. In time these could be monetised using, for example, metrics published by DECC. Rather, this analysis seeks to identify the level of costs associated with running the RHI and under different options or closing the scheme early. Costs and benefits will both be functions of the level of heat produced.

Methodology

In order to assess costs these must be estimated over the lifetime of the scheme. The costs of funding the RHI are directly proportional to the renewable heat metered and invoiced by participants based on a pence per kWh tariff applied to metered heat produced. (Metered heat is net of heat produced in ramping up to required temperatures. i.e. payments are only made to boiler output and therefore boiler efficiency is built into the tariff).
This analysis is complicated by the fact that different participants entered the scheme at different times over a four year period and therefore metered heat is not available for all participants for the same duration. For around 800 participants only one quarterly invoice has been received/paid to date. Of the approximately 2200 registered meters, approximately 200 are still at the application stage and we have therefore no indication of the likely heat production for a significant proportion of the scheme.

It is therefore difficult to assess what the ‘normal’ or expected annual heat load supported by the scheme will be in a typical year and therefore the costs of subsidising the heat in any year. Forecasting costs over the twenty years will necessarily require an assessment of what the load will be in each year.

Many participants have only submitted few, one or no meter readings at all. To estimate the likely average annual heat load it has been necessary to infer an annual heat load by factoring up actual data where only one, two or three quarters of data are available in any of the four years over which the scheme has been running.

The following graph shows the estimated load rates of the boilers, following adjustment, based on invoices received. On the vertical axis 1=100% of time. (Some boilers appear to be operating above 100% but this is likely to be a result of uplifting quarterly data to annual).

Because it is impossible to know how heat demand / running hours might change over time, the second major assumption of this analysis is to take this average or annualised load and assume that it remains constant for each boiler over the 20 years. (There is some evidence of seasonal heat load as would be expected, but also some evidence of load growth over time which is more difficult to explain, however this growth does appear to be tailing off).
The costs of running the scheme have been estimated by taking the assumed average heat load and multiplying by the appropriate tariff. Running hours and tiering have been applied where appropriate. Costs from the sample of 1800 have been uplifted for the whole 2200 installations on a pro-rata basis.

The total committed annual expenditure for the accredited installations is estimated to be £46m per annum. These annual costs are forecast to be paid for 20 years. The total payment under the scheme is estimated at £920m or £450m in NPC terms. Administration costs of the scheme would need to be added to these estimated subsidy payments.

**Impact on costs of different options**

Three options with regard to changing the tariffs have been selected as potential solutions to the budgetary issues associated with the RHI. These are outlined below.

- **Option A:** Place all the medium biomass installations onto the post November 2015 tariff (6.5 p/kWh reducing to 1.5p/kWh after 1,314 hours and capped at 400,000kWh).
- **Option B:** Place all medium biomass installations onto a flat 1.5p tariff (capped at 400,000 kWh) and provide a single annual capital payment.
- **Option C:** A buy-out of the capital expenditure by participants plus an uplift for a return on their investment.

The following table shows the impact on the costs of adopting these options. Reducing the tariff in both tariff options reduces the NPC. However there is likely to be a further reduction in heat produced because of behavioural changes by those participating in the scheme. If there is no incentive to produce unnecessary heat then the tariff reduction will result in an overall reduction in heat produced. The will further impact on the costs of the scheme but will also have an impact on the associated benefits.

<table>
<thead>
<tr>
<th></th>
<th>RHI with current tariffs</th>
<th>Option A</th>
<th>Option B</th>
<th>Option C</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital payments (£m)</strong></td>
<td></td>
<td></td>
<td></td>
<td>55-63</td>
</tr>
<tr>
<td><strong>Annual payments (£m)</strong></td>
<td>46</td>
<td>17</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td><strong>NPC of subsidy payments (£m)</strong></td>
<td>450</td>
<td>196</td>
<td>188</td>
<td>55-63</td>
</tr>
</tbody>
</table>

Reducing tariffs will reduce the overall cost of the scheme. It is likely that it will also lead to a reduction in heat produced which runs the risk of not meeting the Executive’s target for renewable heat. A reduction in heat produced will also reduce the benefits associated with CO₂ and employment effects. Without knowing the likely reduction in heat produced it is not possible to estimate the reduction in benefits associated with options above.
2. Rate of return under current RHI tariffs

The NIAO report highlighted the potential for the scheme to reward participants with returns much higher than those anticipated or expected when the scheme was devised. Because of this, in additional modelling has been undertaken to estimate the potential returns that participants could potentially earn over the lifetime of the scheme and to model the impact of the tariff options outlined above. (Many other variations of tariff rates and coverage and caps have also been tested in addition to the two options highlighted in this paper).

This analysis has again been based on average heat requirements remaining at their current level over twenty years. Note that it does not take into account any ‘super profits’ already made. The sample of boilers for which running times is available has been used to identify the range of possible returns which could potentially be earned over the twenty years of the scheme.

The following graph illustrates the potential level of return that participants could earn from the RHI if running times remain as they are currently estimated.

![Internal rate of return graph]

While this return analysis is based on assumed capital costs of £75,000 for large scale boilers (>100kW), £45,000 for medium scale boilers (>20kW, <100kW) and £20,000 for small scale boilers (<20kW), evidence from the applications to Ofgem for accreditation onto the scheme appear to show much less consistency in boiler prices. A more accurate analysis of potential returns would need analysis of every individual boiler invoice which is beyond the scope of this high level analysis.
Note also that the returns achieved are highly sensitive to the assumptions in the modelling. The most sensitive assumptions include capex, discount rate and tariff levels, relative boiler efficiencies and tiering pivot point.

3. Impact on return of tariff changes

The two tariff options developed for this analysis have the ability to bring the potential returns to participants’ investments back within the levels anticipated and approved under state aid considerations.

The following chart shows potential returns under Option A, assuming running times remain as they are currently estimated:

Even with this option the majority of participants will earn more than 12% but none will earn more than the upper limit of 22% approved by the European Commission. However, this analysis assumes that the running levels will stay the same after the tariff changes which is unlikely and therefore the range of returns outlined in this chart could be scaled down.
Option B involves a single tariff at 1.5p and a capital payment annuitised over 20 years. The following chart shows potential returns under option B, assuming running times remain as they are currently estimated:

The majority of participants would not earn more than 12% with this option and none would earn more than 15% even with no behavioural reduction in heat production.

4. Option C: The buy-out option

The option which is designed to combat excessive returns to participants’ investments has been modelled. This option does not involve paying for future renewable heat though tariff payments but involves a one-off payment to buy-out the investment and allow a suitable return. In this illustration the costs to the Department of allowing a return on the capital outlay of 12% and 22% have been modelled. Note that a number of participants have already earned more than this. (There may be state aid implications associated with clawing back money from those who have been over-compensated).

Based on the sample of actual payments to individual RHI installations to date and using the assumed costs of boilers highlighted above, the analysis shows that allowing a 12% return on expenditure would cost the department a total of £55m, while allowing a 22% return would cost £63m. These costs would drop by around 6.44% if the PwC category 4 participants were excluded from payment.
A risk under this option is that the level of renewable heat produced may not be enough to meet the Department's targets. However the risk of any more over-compensation is eliminated once the option has been invoked.

This would be the least cost of the options considered.

Conclusion

This has necessarily been a high level analysis of the costs of the RHI scheme and of the potential options to bring the levels of return to participant's investments within reasonable levels.

It should be noted that these results are very dependent on a small number of high impact assumptions regarding actual and projected heat demand. Any small variation in the assumed demand will have a major impact on the projected costs of the scheme.

Indeed, it has become evident that the problems with the scheme's budget appear to be related to an assumption in the original modelling relating to the assumed heat demand – the 17% load factor assumption. This assumption fed through to the tariffs offered under the scheme and the resulting budgetary difficulties.

Given the difficulty with forecasting costs and to reduce onerous task of examining individual boiler characteristics at this stage, the modelling has relied on various assumptions, which if changed could have a material effect on the results.

While recognising the dependence on these assumptions it is clear that Option C is best in terms of NPC and by some margin. As a next step it would be helpful to conduct sensitivity analysis on the key assumptions used and the impact that has on option ranking.

So while not discounting the other options at this stage, the analysis here suggests that where other parallel work is being undertaken into the legal viability of options for example, that time might best be focused initially by looking particularly at the buy-out option.
might have pressed harder, but not having done so, I accepted responsibility for defending the value for money, regularity and propriety of the expenditure on the unamended scheme – at the time, knowing what we knew then, that was reasonable but of course does not look reasonable based on what we now know, with hindsight. To the best of my knowledge, no-one who was present at this meeting recalls any question being raised that the Minister had to accept the pressure to delay the tariff reduction because of “collective responsibility”. The decision to change the date for the introduction of the tariff reduction is clearly shown in the tracked changes which were retained on the copy of the submission which constitutes the formal record. That submission was placed in the Assembly Library by Minister Hamilton at the time of First Minister Foster’s Statement to the Assembly on 19 December.

27. On Friday 16 December 2016, Chris Stewart and I had a phone call with Timothy Cairns when he confirmed clearly and explicitly that Andrew Crawford had been the source of the influence. Around the same time, Timothy Johnston said to me that he had seen emails from Andrew Crawford to Timothy Cairns that he thought would probably match the questions which Timothy Cairns had been asking officials in July 2015.

28. On the evening of Wednesday 18 January 2017, after I had named Andrew Crawford as the possible source of the influence in my evidence to the PAC, I had a phone conversation with Timothy Cairns in which he told me that:

a. Andrew Crawford had not been the only influence – others including William Irwin MLA had also wanted to keep the high tariffs available; and

b. There was some substance to Jonathan Bell’s allegation that Timothy Johnston had said that there would be resistance to the reduction in the RHI tariff in that he (Timothy Cairns) did recall some such conversation.

29. On or around the following day, 19 January 2017, following Andrew Crawford’s resignation, I was told (I think by Richard Bullick) that Andrew Crawford had produced an email to Timothy Cairns to the effect that it would be necessary to accept that the tariff reduction would be applied from 1 October. Timothy Cairns told me subsequently (either later that day or on 20 January) that he had taken the approach he had in August 2015 in fulfilment of a previous conversation with Andrew Crawford who had suggested that he (Timothy Cairns) should seek to keep the high tariff open as long as possible as long as officials did not insist on a Ministerial Direction.

30. On 24 February 2017, I saw an email of 12 August 2015 from Timothy Cairns to Andrew Crawford (Annex 9) referring to the need to accept 1 October 2015 date for the change: Andrew Crawford had sent this to another of his own accounts on 30 November 2016.
Dr McCormick: — I can’t remember it, and —

Dame Una O’Brien: You can’t remember.

Dr McCormick: — I can’t remember any detailed discussion, I’m afraid, on it.

The Chairman: Well, there’s an absolutely stark difference between you and Cairns, isn’t there —

Dr McCormick: Yes.

The Chairman: — about this? Cairns says that he simply asked as a throwaway line, and he was amazed that Mills agreed to it. And that comes in terms of him explaining why it was not right that he had got Crawford involved in asking for the delay. He said that, at that stage, he had no further reason to need the delay or ask for it; it was just he thought he would throw it away. So, there’s a clear and stark division between what you say he said or did or how he represented it and how he does.

Dr McCormick: So, I’m also very clear that, in the conversations I had with Timothy Cairns in December ’16 and January ’17, that he did not in any way say this was only a throwaway line. He —. The context of those discussions — these were conversations at the most acute stage of the adverse publicity in relation to the scheme, when he told me that, on the 16th of December, that Andrew Crawford had been the instigator of the delay.

The Chairman: Yes, there’s a clear distinction between you here.

Dr McCormick: Well, he — but he said it in that context.

The Chairman: Well, that’s what you say, but he has a completely different view of it.

Dr McCormick: Well, what he said to me at that stage — he didn’t say, in that conversation, “But I was only joking”, nor, in January ’17, “I was only trying it on”. He did not say that.

Dr MacLean: But were you —?

Dr McCormick: He accepted the seriousness of it in that context.
Dr MacLean: Were you talking about the general process or the specific meeting?

Dr McCormick: This is on the specific meeting and the nature of the reason for the delay.

So, I mean, this was on the point where this was a point of the most acute, sensitive publicity, and Chris Stewart had said to him, in a text message before the conversation took place, “This conversation is on the record”. So, my clear —. I would not have done what I did in relation to what happened in — especially in terms of naming Andrew Crawford —

The Chairman: Yes.

Dr McCormick: — if Andrew — if Timothy Cairns hadn’t been saying to me he was behind the request for an extension of the high tariff and in —

Dr MacLean: At the meeting?

Dr McCormick: — very stark —. No —.

The Chairman: No, this is later on —

Dr McCormick: At the time —.

The Chairman: — in ’16, but —.

Dr McCormick: At the time —.

The Chairman: Just go back for a moment, if you don’t mind —

Dr McCormick: Yes.

The Chairman: — to this meeting, in which, you say, there was a clear expression of desire by Cairns that there should be delay.

Dr McCormick: Yes.

The Chairman: And you had come to that meeting with a submission that indicated the 1st of October.

Dr McCormick: Yes.

The Chairman: And so this was a clear expression of desire by Cairns for a further month.

Dr McCormick: Well —.
1. The Chairman: For delay, for delay.

2. Dr McCormick: He may have asked, “What’s the longest you can live with?”, and John Mills may have said at that point — may have said, “A month”. So, that’s one way in which the resolution comes about, if their question was “What’s the most you can live with?” And that’s also consistent with what Timothy Cairns has been saying.

5:30 pm

3. The Chairman: What are you saying? Are you saying that now —? Now you’re saying he asked, “What’s the most you can live with?”.

4. Dr McCormick: That’s —. That’s what he keeps saying in his previous witness statements: that was the — the considered position of himself and his —

5. The Chairman: Yes.

6. Dr McCormick: — colleagues was to seek the longest possible extension. So —

7. The Chairman: But he says —.

8. Dr McCormick: — is it not reasonable to infer that that’s what he asked? I don’t recall precisely, but that does rationalise the interaction between himself and John Mills, and why it might’ve been John Mills who first suggested a particular timing. If the question was, “How long?”, and the answer was, “This long”, that seems not unreasonable. I’m not saying this is hard evidence, but that seems a reasonable reconciliation of what was said, except for Timothy Cairns’ attempt now to say, “This was a softball point”, which it didn’t feel at the time. There’s no way it felt at the time.

9. The Chairman: Now, I’m quite clear, from what I’ve just quoted from your own evidence, as to what you say he represented it — his attitude — as. That is quite different from what he says.

10. Dr McCormick: Yes.

11. The Chairman: But you came there with a submission, based on the 1st of October, and if
you were right, he said, with a:

“clear expression of desire”

that there should be delay. And you can’t remember a single reason as to why he said that?

Dr McCormick: That’s true.

The Chairman: Yes.

Dr McCormick: I can’t, I’m afraid.

The Chairman: All right. Thank you.

Dr MacLean: You’re also saying that his question was, “What’s the latest you could live with?”.

Dr McCormick: Possibly, yes. Again, that’s not a recollection. That’s — that’s —.

Dr MacLean: This is where it’s hard to —

Dr McCormick: — inference and extrapolation.

Dr MacLean: — be clear what you do recollect —

Dr McCormick: Yes.

Dr MacLean: — and what you don’t recollect with it. Because Mr Cairns was clear, and very open, that, at the beginning of the process, they had been discussing timing issues together — him with Dr Crawford — and that Dr Crawford was behind the request —

Dr McCormick: Yes.

Dr MacLean: — for the 3,000 hours and various other things that had gone on. But it appears from the evidence of the time that they had then got to the point where they recognised that the 1st of October, and that Dr Crawford was no longer pressing for that —.

And therefore it seems inconsistent for Mr Cairns to have told you, then, that, at the time of that meeting, on the 24th of August, that Mr — Dr Crawford was still behind pushing for a delay.

Dr McCormick: Well, that is precisely what he told me in the conversation in January
2017. So, the sequence of events is quite clear at that point. May I just draw that out? Cos I think this is quite an important sequence of events. So, I name Andrew Crawford at the PAC —.

The Chairman: Yes. Well, you’ve told us why, and you’ve told us what he said — told you in 2016. We have the email from Andrew Crawford saying, “Well, I suppose we’ll have to stick with the 1st of October”.

Dr McCormick: Yes. So, I wasn’t aware of that email until —

The Chairman: I know you weren’t, but —

Dr McCormick: — at that point.

The Chairman: — that’s what we have that indicates his attitude.

Dr McCormick: But —. So, Timothy Cairns — Timothy Cairns was then in a slightly awkward position with me, as of the evening of the 18th of January 2017, because, at that stage, Andrew Crawford’s email was released to say, “No, I said 1st of October”.

The Chairman: Yes.

Dr McCormick: So, the next day, Timothy Cairns said to me very directly, “Yes. I know about that email, but Andrew Crawford had not withdrawn his request to seek the latest possible date”. So, therefore, he was still holding to the view and confirming to me that Andrew Crawford had been the instigator of the delay. That was what Timothy Cairns said to me.

Now, again, this is all down to who you believe, but that’s what Timothy Cairns said to me. He had to find a way to rationalise why he had told me, on the 16th of December, that Andrew Crawford was the instigator of the delay. That contradicted —.

Dr MacLean: That is consistent with the original instigator —

Dr McCormick: Yes.

Dr MacLean: — of a process of looking at the timing and various things that were going
backwards and forwards.

Dr McCormick: Yes.

Dr MacLean: It does not mean exactly that he was then the instigator of the request on the 24th of August for a delay.

Dr McCormick: But my point is that Timothy Cairns told me precisely that in the second conversation in January 2017. Again, that’s hearsay. That’s only what he said to me. But that is —

Dr MacLean: Have we got —

Dr McCormick: — what he said to me.

Dr MacLean: — any of that in your written evidence?

The Chairman: Yes.

Dr McCormick: Yes, it is. That’s fully drawn out in my written evidence, yes.

The Chairman: So, there we are. We can make our own minds up about that.

Mr Scofffield QC: I see the time, Chairman.

The Chairman: It’s now twenty-five to, Mr Scofffield. We’ll sit again tomorrow at quarter to 10.

Mr Scofffield QC: Yes, Chair. Thank you.

The Chairman: How are we progressing, in terms of Mr McCormick?

Mr Scofffield QC: We’re heading in the right direction, Chair. [Laughter.] Good.

The Chairman: That’s bearing in mind that tomorrow, while it may seem to be Thursday, it’s really a Friday, in terms of time.

Mr Scofffield QC: Yes, Chair.

[The hearing was adjourned at 5:35 pm]
Sorry, in my tiredness and confusion I had forgotten why I liked Option C so much when it was first suggested by Emma Pengelly on 3 November.

**Option C and only option C kills all the abuse of the scheme instantly.** In the other options, the reduced tariff would be delayed and abuse would only be picked up when inspections happen, which will take time.

I could not finalise my view on this as Accounting Officer before confirmation that (a) the EU Commission would agree; and (b) that the idea stood up based on legal advice. Now that these confirmations are in place, as Accounting Officer my formal advice is that it is essential that we proceed to close the scheme as soon as we possibly can, using Option C – which means as soon as we have a viable compensation scheme settled and have secured HMT agreement to the budgetary consequences. We should be able to have these in place for 16 January 2017.

Hope this helps.
David,

The NIAO Report of June 2016 says the following:

“My report below reviews the results of my audit of the Department’s 2015-16 financial statements and sets out why I have decided to qualify my regularity audit opinion in relation to two issues:

• expenditure amounting to £11.9 million which was incurred without the necessary approvals in place for the non-domestic Renewal Heat Incentive (RHI) scheme (paragraphs 4 to 16) and is therefore irregular; and

• because I was unable to obtain enough evidence to be assured that expenditure on the non-domestic RHI scheme amounting to £30.5 million had been incurred for the purposes intended (paragraphs 17 to 27). This was due to the fact that I did not consider that the systems in place to prevent or detect abuse of the scheme were adequate.”

The PwC Report (Project Heat) will almost certainly lead C&AG to treat the expenditure in 2016-17 on the RHI as irregular irrespective of DFP/DoF’s position, on the basis of the second bullet point above – the qualification re 2015-16 was based on absence of evidence of control systems – PwC provides clear evidence of the absence of adequate control systems.

Hence I think that any course of action other than option C – even if the full cost was to fall on the NIE DEL – would require a Ministerial Direction on the grounds of irregularity. In fact, of course, there is good reason to hope that the Treasury would agree to help in the circumstances.

Many thanks.

Andrew
Further point of fact: the PwC work has nothing to do with the options for cost control, so the Minister of Finance’s reference to a report in October was not correct.

Many thanks.

Just by way of background to the comments on this issue this morning:

- The proposals were discussed briefly at a meeting between the FM and dFM, also attended by Richard, Aidan, Timothy Johnston and Mark Mullan on 14 December at which I was asked to ensure that a firm proposal would be available for announcement by 16 January.
- I said there were still considerable doubts and I was unsure of my ground – and a consultation was planned for 15 December;
- I also stressed that it was essential that there was no public hint of the idea of closure, as we simply are not and cannot be ready to answer the specific questions about a compensation scheme. This was accepted at the meeting;
- , and we then sent all the key papers to you the following day;
- We then had the 50 minute phone call on 16th involving your Minister, two SpAds, you and two colleagues at one end and me at the other, when I did all I could to provide the background to the work.

Going back one stage further, DfE had been working up proposals from September onwards and we had intended to share them with DoF colleagues earlier, so I acknowledge that that expectation existed. But the radical option that emerged early in November needed some detailed work, but time well spent because the closure option has many points in its favour. I can see the point of view expressed both by DoF colleagues in correspondence with us and in your Minister’s comments but frankly I think they are a bit unfair on all we in DfE are trying to do, with all the urgency we can give, to develop and test the optimum solution to this issue. As you know, while the forward look is top priority, there have been other essential tasks for all those involved. The awkwardness is compounded by the fact that several key players here are subject to the current fact-finding exercise by PwC and I have had to do an internal re-organisation to ensure fair divisions of labour among the team.

Happy to discuss but I hope this is helpful to get some points into perspective.

Many thanks.
Then we have this rather strange response:

“I had a good chat with”

the Attorney General:

“Looking at a hybrid option.

Agreed an important word.”

which is not very clear. Where is the evidence of this detailed discussion between the two Ministries looking at the different high-level options? Is there some evidence of that, Mr Lunny?

Mr Lunny: There may be. I don’t have it to hand if there is. There is evidence of Mr Ó Muilleoir and Mr Hamilton meeting a number of days —.

The Chairman: At this time? On the 17th —.

Mr Lunny: On the 18th.

The Chairman: On the 18th.

Mr Lunny: On the 18th, so —.

The Chairman: That’s a Sunday, is it?

Mr Lunny: Yes. There’s an email on the 21st — if we could maybe bring it up — at POL-10305, and we know you had a meeting with Mr Hamilton on the 18th of December, so the day after that email exchange. I think the 18th was a Sunday.

Mr Ó Muilleoir: Yes, indeed.

Mr Lunny: The 17th maybe was the Saturday. It’s an email from you to another Sinn Féin official — is that correct? — Mr Padraic Wilson.

Mr Ó Muilleoir: Yes.

Mr Lunny: And this is on the 21st of December, but you’re referring back to your meeting with Simon Hamilton on the 18th, and you say:

“Options re closing down RHI were discussed. Being favoured is a solution which would enable Dept of
Economy to buy out users or have them continue with lower tariff, under which there would be cost to London and none to Executive."

And then you set out some issues with that:

“It is unlikely [it could be] completely delivered until the end of 2017. ... every boiler will have to be inspected.

Compensation could be adjusted down to reflect those who’ve already made excess profits.”

And then you say:

“It is up to the Dept of Economy to come up with a solution, it is my job to assess its financial robustness and to ensure it stacks up. That gives us a certain distance from the DUP attempts to say we are all in this together.”

I mean, that maybe doesn’t suggest a collaborative approach. It maybe suggests it’s an approach where you’re saying, “Look, this is really your problem. You come up with a solution, and we’ll critique it or test it”.

Mr Ó Muilleoir: Well, I stand over that. Our position and our responsibility and our duty as the Department of Finance and mine as Minister was to encourage — press the Department of the Economy to come forward with a solution and us to test it, to test that it would work. So, would it be value for money — that is, would it work? Would it include clawback of money that had been, um, that had been taken in abu — outside the spirit or had been abused and people weren’t entitled to? Was it legally robust? Would it stand a legal challenge? Was it compliant with European state rules?

So, with respect, my job was to protect the public purse. It wasn’t my job to say, “This is the solution that you have come forward — “. Until he produces the solution, and it was clear, almost immediately, that the high options paper, which is not a solution, the high options paper and their preference in that — the buyout — was not tenable. So, we’re working —. We’re working —. I think you used the word “critique”: I think it’s constructive,
it’s forceful. We’re up against it, but they have to come forward with the solution, Mr Lunny:

I have to test it. That’s the — those are the two tasks. And, in all the meetings, I’m happy we discussed the stuff, but, ultimately, they had to come forward with the solution and say, “This meets your criteria”.

Mr Lunny: At this point, this is a solution that’s being put forward by Minister Hamilton to you at a meeting officials aren’t at. This seems to be the only record of that meeting. There aren’t minutes of the 18th of December. This is your —.

Mr Ó Muilleoir: No, it was a private meeting between myself, Minister Hamilton and Eoin Rooney in the Sinn Féin rooms in the City Hall.

Mr Lunny: In the last paragraph of that, you say:

“The Dept of Economy leaked details of the solution options to the media which were carried today to give the impression that they are working towards a swift solution.”

So, that was your view at that point: that this buyout option — the leak of that to the media had been the Department for the Economy, and, I think, Minister Hamilton — or Mr Hamilton wasn’t sure whether that was a reference to him and the DUP or to the officials or both.

Mr Ó Muilleoir: Well, I don’t know who leaked the document, but I know it wasn’t me, as Minister, or anyone acting for me or with my knowledge. But I think it’s also relevant in that email that I start to point out the shortcomings of the proposals being put forward by Minister Hamilton. For example, if it wasn’t legally compliant or it didn’t observe state rules, it could’ve left the scheme open until the end of the year. So there were all sorts of shortcomings, but we set our five criteria against which we were judging the solution that they would bring forward.

Now, I think the fact that we met in City Hall showed that we were, certainly on my part, that I was keen to find a solution. I think Minister Hamilton realised that he needed to come
Subject: Meeting
Date: Dé Céadaoin 21 Nollaig 2016 12:39:50 Meán-Am Greenwich
From: Máirtín Ó Muilleoir
To: padraig

Mairtin meeting with Simon Hamilton, Economy Minister

Options re closing down RHI were discussed. Being favoured is a solution which would enable Dept of Economy to buy out users or have them continue at lower tariff, under which there would be cost to London and none to Executive.
It is unlikely any option would be completely delivered until the end of 2017 as every boiler will have to be inspected.
Compensation could be adjusted down to reflect those who have already made excess profits.

It is up to the Dept of Economy to come up with a solution, it is my job to assess its financial robustness and to ensure it stacks up. That gives us a certain distance from the DUP attempts to say we are all in this together.

The Dept of Economy will come forward with a request for @ £2m for me to sign off to green light an inspection of every boiler. This inspection is needed no matter what solution is brought forward. It makes sense therefore to permit this inspection if it is requested. However, I am seeking more information about criteria etc to ensure that it represents value for money and that it will deliver.

The Dept of Economy leaked details of the solution options to the media which were carried today to give the impression that they are working towards a swift solution.

Mairtin O Muilleoir
and the DoF Supply team for the Department. There was therefore close engagement over this period at all staff levels.

d. please set out your view of whether the relationships referred to in the sub-paragraphs above at a. to c. helped or hindered the process of making provision for the future of the RHI Scheme;

There were close working relationships at official level which in my view helped the process of making provision for the future of the RHI Scheme during this period. However tension was increasingly evident at ministerial level within the Executive from around 16 December 2016 until the collapse of the institutions in late January 2017. This tension was a factor which played in to the work which was being done by the two departments at that time to address the cost overrun.

e. did the relationship between the Ministers and/or SpAds require to be managed by civil servants including you and if so please provide details;

In my role as a permanent secretary I operate under the direction and control of my minister. I do not see (and never have seen) this role as requiring me to “manage” the relationship between my minister and special adviser and other ministers and their special advisers.

f. please set out to the extent of your knowledge any instances of anyone in the political parties briefing the media about either Minister or department during the period from May 2016 to January 2017;

In answering the above you may wish to bear in mind the text messages you provided to the Inquiry (see IND-06504-6; IND-06516/7; IND-06519-28; IND-06530/1; and POL-10060/1).
Subject: Attempts to get an action plan
Date: Dé hAoine 16 Nollaig 2016 14:11:19 Meán-Am Greenwich
From: Eoin Rooney
To: David Kennedy, Sinnfein Press
CC: Aidan, Máirtín Ó Muilleoir

As requested, DoF attempts to get Economy to take action on RHI costs attached (since Mairtin took up post).

Simon Hamilton is culpable for his inaction since the costs became clear and it is surely only a matter of time before that line of questioning is pursued.

The next question will then be what has Mairtin done? So we need to have lines prepared - also need to consider going public and pre-empting that (which I am minded to do).

Eoin
Subject: Re: Attempts to get an action plan
Date: Dé hAoine 16 Nollaig 2016 15:11:09 Meán-Am Greenwich
From: Eoin Rooney
To: Máirtín Ó Muilleoir
CC: David Kennedy, Aidan, Conor Heaney Nua

Yes would need legislation. EU approval was granted on basis of a 12% return. Surely the fact that beneficiaries are receiving well beyond that removes the basis upon which state aid was granted.

Organising a meeting now not sure who will attend from Economy.

On 16 December 2016 at 14:58, Máirtín Ó Muilleoir <mairtin@newbelfast.com> wrote: Need to know if legislation is needed. Will Simon join?
Sent from my iPhone

On 16 Dec 2016, at 14:55, Eoin Rooney wrote:

No.

On 16 December 2016 at 14:53, Máirtín Ó Muilleoir <mairtin@newbelfast.com> wrote: Have they given you that option?
Sent from my iPhone

On 16 Dec 2016, at 14:40, Eoin Rooney wrote:

Option d - put everyone on November 2015 tariffs. Executive pays nothing. Scheme continues on the basis of useful heat. Only question is whether it is legal.

On 16 December 2016 at 14:35, Máirtín Ó Muilleoir <mairtin@newbelfast.com> wrote:
Amazing that they would worry about not hitting renewable targets if we close down. What planet are they on. We need to move on one of these options today. They say best to buy people out but they could take money and turn off boilers. 2,000 into £63m is @ £31k each. Is that sellable to public? I am on way back to Clare House.
Mairtin
Sent from my iPhone

> On 16 Dec 2016, at 14:11, Eoin Rooney wrote:
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>
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>
> Eoin
> <Doc1 (8) (2).docx>
Subject: RHI
Date: Dé Sathairn 17 Nollaig 2016 10:18:26 Meán-Am Greenwich
From: Aidan mcateer
To: Máirtín Ó Muilleoir, Eoin Rooney, Conor Heaney

If we are on right track we can agree words for Monday - Finance and Economy Ministers working together and will bring agreed measures to reduce costs to first meeting of Assembly in January. Given weekend, the Sabbath and our own meetings I think that is the best and safest option for us today. Key is to get "agreed" into statement and to keep Finance Minister in there. We also have to get them across line in parallel negotiations on investigation plus the fall out from yesterday,
Aidan
Subject: Re: RHI  
Date: Dé Sathairn 17 Nollaig 2016 20:35:24 Meán-Am Greenwich  
From: Eoin Rooney  
To: Aidan  
CC: Conor Heaney, Máirtín Ó Muilleoir  

A meeting with mairtin and Simon has been arranged for 10 am tomorrow  

On 17 Dec 2016 20:30, "Aidan mcateer" wrote:  
After today’s meeting we should not agree any approach with DUP on RHI without reference back and should probably hold back on further contact before Monday,  
Aidan
Begin forwarded message:

From: Alison Grundle
Date: 16 December 2016 17:04
To: Richard Bullock
Cc:

Richard – I take it you are aware of the attached?

key paragraph Section 2.5 paragraph 25, as below.

The beneficiaries will receive payments on a quarterly basis based on the multiplication of the installation's metered output by the relevant tariff level. Only "useful heat" is eligible for payment under the RHI scheme, that is, heat which would otherwise have to be met by fossil fuels.

This eliminates any incentive for deliberately wasting heat to receive payments.
can you call me

From: Eoin Rooney
Sent: 16 December 2016 13:27
To: Aidan mcateer
Cc: Máirtín O Muilleoir <mairtin@newbelfast.com>

Subject: Re: RHI Paper

Paper is poorly thought through and doesn't present the option of introducing legislation to retrospectively put all scheme beneficiaries under the tariff system introduced in November 2015. This option would mean a zero cost to the block grant.

On 16 December 2016 at 11:33, Eoin Rooney wrote:
Got it!

On 16 December 2016 at 11:21, Aidan mcateer wrote:
Papers should now be available to you

On 16 Dec 2016, at 10:34, Aidan mcateer wrote:

Eoin, Let it sit with me. Don't push this any further, If you are in C House I'll try to get to you by

On 16 Dec 2016, at 09:52, Eoin Rooney wrote:
Yes his understanding is that it is ready and is being held up at political level.

On 16 December 2016 at 09:45, Aidan mcateer < has Sterling talked to McCormick about this

> On 16 Dec 2016, at 09:38, Eoin Rooney wrote:
> Aidan still no sign of this. If they get something to us soon we've got a chance of giving Ariene something substantial to say on Monday.
> If this lack of cooperation continues I think we should consider going public on the lack of action. Attached is a record of the refusal of Economy to respond to our requests for action over the last 6 months.
> Eoin
> <Doc1 (8) (2).docx>
Attempts to get an action plan

Máirtín Ó Muilleoir <mairtin@newbelfast.com>

To: Eoin Rooney

Cc: David Kennedy, Aidan McAteer

Sinnfein Press <sinnfeinpress@gmail.com>, Aidan

I also met Simon on 14 Nov & asked for update on RHI closure.

Sent from my iPhone

> On 16 Dec 2016, at 14:11, Eoin Rooney wrote:

> As requested, DoF attempts to get Economy to take action on RHI costs attached (since Mairtin took up post).

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> Eoin

> <Doc1 (8) (2).docx>
Attempts to get an action plan

Máirtín Ó Muilleoir <maitin@newbelfast.com> 16 December 2016 at 15:22
To: Eoin Rooney  
Cc: David Kennedy Aidan McAteer Conor Heaney

Timeline on legislation. M

Sent from my iPhone

On 16 Dec 2016, at 15:11, Eoin Rooney wrote:

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> Eoin

> <Doc1 (8) (2).docx>
ministerial statement or are we not? That goes to the heart of the matter.

Mr Speaker: Mr Allister, having taken the legal and procedural advice this morning, it is clear that my role is in relation to the procedures of the Assembly, not the procedures of the Executive, and that I have discharged my responsibilities under Standing Orders to recall the Assembly.

Mr Allister: Further to that point of order —

Mr Attwood: Further to that point of order —

Mr Speaker: I call the First Minister.

Mrs Foster (The First Minister): Mr Speaker, I am grateful to you for agreeing to recall the Assembly today and permitting me to make — [Interruption.] — a statement about my role in the renewable heat incentive (RHI) scheme. [Interruption.] Unlike normal practice on these occasions, which, by the way, you endorsed, I want to make it clear that the statement has not been cleared or approved by the deputy First Minister. I felt that it was important that I come before the House at the earliest opportunity. For almost two weeks there has been a barrage of media coverage on this matter, including wild claims and allegations, many of which have been based on spin rather than reality. This morning, I want to set out the actual facts to the Assembly. To repeat what I said in media interviews, I want to make it clear that, in order to get to the bottom of the entire issue, I am prepared to waive the normal convention and give evidence to the Public Accounts Committee.

The one issue on which we can all agree is that there were shocking errors and failures in the RHI scheme and a catalogue of mistakes, all of which coincided to create the perfect storm, resulting in the position in which we now find ourselves. In all of this, it is critical that lessons are learned and that the costs of the scheme are brought under control. As First Minister, I am determined that that will be done.

Today, I want to cover in some detail the establishment, operation and eventual closure of the scheme. I want to set out the policy objectives behind the scheme and the flaws in its operation. I also want to address some of the more common questions that have arisen over the past two weeks and, most importantly, to put to rest some of the myths that have grown up around the scheme. However, I want to make it clear that the statement will not set out every failing and flaw in the scheme and process, every missed opportunity and every mistaken assumption. That work has been and will continue to be carried out by the Public Accounts Committee.

Before I move to the chronology of what occurred, I want to say a few words about ministerial accountability. By convention, Ministers are answerable to the Assembly not only for their actions and decisions but for those of civil servants in their Department, regardless of any personal responsibility for actions or omissions by officials. In practice, Ministers determine departmental policies and delegate their implementation to officials. It is the departmental accounting officer — normally the permanent secretary — who is responsible for the stewardship of resources within the Department’s control.

While it may have been lost amidst the media hype, I am on record as saying that I entirely accept that I am accountable to the Assembly for the actions of the Department during my tenure as Minister. I am sorry that the initial scheme did not contain cost control measures and that there were fundamental flaws in its design. This is the deepest political regret of my time in the House. As Minister, I accept responsibility for the work of the Department during my time at the Department of Enterprise, Trade and Investment (DETI). Once again, for the avoidance of doubt, I believe that it is right and proper that I answer to the Assembly for my role in the RHI scheme, and not for one moment do I seek to shirk or avoid that responsibility. But, if we are to learn lessons from the entire experience, it is essential that we know exactly where things went wrong.

The non-domestic RHI scheme was introduced in November 2012. It supports the UK objective of contributing to the EU-wide target that, by 2020, 20% of energy consumption should be from renewable sources. The UK’s share of the target is 15%, and the plan is to achieve that through a combination of 12% renewable heat and 30% renewable electricity by 2020. In Northern Ireland, the renewable heat target is 10% by 2020. The non-domestic scheme incentivises the uptake of renewable heat technologies such as biomass, heat pumps and solar thermal installations. It provides payments for 20 years based on the heat energy generated. The level of tariff is dependent on the size and type of technology, and the calculation of the tariff was intended to cover capital costs, operating costs and non-financial hassle costs over the lifetime of the technology.
A domestic RHI scheme was introduced in December 2014. There was an increase in application numbers during 2015 that escalated quite rapidly to produce the crisis we now face. Focusing on the incentive for small to medium-sized biomass boilers, the scheme provided a tariff of just over 6p a unit.

11.30 am

Just under £38 million of funding was provided by the Treasury for the Northern Ireland RHI schemes during the five-year period from 2011 to 2016. However, scheme uptake was initially low in the first few years, with only 409 applications received by the end of 2014, leading to an underspend of around £15 million during the first four years. The total number of renewable heating installations under the non-domestic scheme had increased to over 2,000 by the time that the scheme was suspended in February 2016. Current estimates suggest that around 6% of our total heating needs in Northern Ireland are now met through renewable heating technologies. In addition to the resultant reduction in CO2 emissions, the local Northern Ireland economy is benefiting from the ongoing investment through the RHI schemes. That investment brings benefits: job retention and creation in the energy services sector. I make those points simply to underline the point that, however bad the execution has turned out to be, the aims of the scheme were good and necessary.

One question that has been asked by many people is this: why did we not simply replicate the Great Britain arrangements in Northern Ireland? The answer is quite simple: in Great Britain, the main obstacle to the growth of renewable heat was and is the wide availability of affordable natural gas. Here, the main heating fuel is oil, and the gas market is relatively immature. It was even more so in 2012, hence it is clear that simply to import the GB arrangement to the Northern Ireland market at that time would not have been appropriate.

While this statement is not the place to rehearse every failing or flaw in the process, there is one matter that I believe it is important for me to address. It is the error that goes to the very heart of why the costs of the scheme ran out of control. The crucial mistake in the scheme was that the tariff for the most commonly used boilers — small to medium biomass — was set at a level higher than the market price of the relevant fuel, which is mainly wood pellets. In essence, that created an incentive to continue to burn fuel over and above the levels required for the relevant function, whether a commercial business operation or a community facility such as a nursing home or a church. Of course, the regulations do not provide for payment for wasted heat or heat that has no functional benefit. However, as the PAC has exposed, a further major failing of the scheme here has been that the necessary aspects of the regulations have not been rigorously enforced. There clearly should have been more and better inspections of businesses long before the summer of 2016.

At the heart of the RHI story is that the tariff subsidy was higher than the cost of the wood pellets, yet DETI's 2012 business case on the RHI wrongly stated that the tariff was lower. That crucial misunderstanding informed DETI's attitude to the RHI in subsequent years. It helps explain why concerns were not taken seriously enough and why action was not taken quickly enough when problems emerged. With the greatest of respect to those who criticise me for that, I remind them that I did not simply impose the scheme on the people of Northern Ireland. The tariff was set out in schedule 3 to the legislation, which was scrutinised by the Enterprise, Trade and Investment Committee and passed after debate by the Northern Ireland Assembly. Indeed, the Chair of the Committee at the time, Mr Patsy McGlone MLA, said:

"The Committee scrutiny of the development of the renewable heat incentive has been considerable and reflects the importance and long-term nature of the proposals. Before supporting the RHI, the Committee sought and received assurances on incentive and tariff levels, handling levels, incentives for domestic consumers, payments to participants and support levels for the renewable heat premium payment scheme." — [Official Report (Hansard), Bound Volume 78, p298, col 2].

The unfortunate reality is that no one in government or in the Assembly in their work in creating and passing the legislation picked up on that crucial failing. Contrary to some accounts, in the early years of the scheme, that was not widely picked up by the industry either. In fact, as has been stated, when I was the Minister responsible, Northern Ireland was underperforming in that area. In my years as Minister, there was an underspend on the RHI up to and including my final year at DETI, which was 2014-15. That is detailed in the Northern Ireland Audit Office report. Take-up in the scheme's early years was low. Indeed, as hard as it is to believe now, there was even a publicity campaign in 2014 to encourage more applicants.
The BBC 'Spotlight' programme and subsequent comment has made significant play of a concerned citizen. I would ask the entire Assembly, if it were here, to join me in thanking that person for all that she did to try to prevent the calamity that we have fallen into.

She deserves our highest respect and a sincere apology on behalf of my former Department, which should not have dismissed her claims with disbelief but examined them with diligence. It is no exaggeration to say that, had she been listened to on any of the three occasions on which she approached DETI, the crisis would have been avoided.

Unfortunately, it has been difficult to establish the exact facts around contact between the concerned citizen and me and the Department. When asked by 'Spotlight' about correspondence from the concerned citizen, I replied:

"I passed these concerns on to departmental officials to investigate. It is now obvious that these investigations should have highlighted the failings of the scheme and ameliorative actions should have been taken."

I made that statement from memory and on advice that appeared to indicate that she had raised her concerns directly with me. It is my normal practice — indeed, it is the appropriate practice — to pass any concerns received from members of the public to the relevant departmental officials. However, my response was made without the benefit of having reviewed the concerned citizen's original letter. It is now clear that the initial communication to me did not raise concerns about the RHI scheme. I understood from the Department for the Economy officials who have spoken to the person in question that this was the only correspondence sent directly to me. However, a subsequent email to my private account the following week has now come to light in which there is a reference to concerns about the scheme.

It has also been alleged that I contributed to the problem by putting the introduction of the domestic RHI ahead of cost controls on the non-domestic scheme. It is quite wrong of anyone to describe this as a smoking gun. I make no apology at all for having pushed to see the domestic scheme introduced, as it was a totally legitimate and rational decision based on the information available to me at that time. I did not receive any indication that cost control of the non-domestic scheme was an urgent priority at that time. The Department for the Economy is seeking to establish the facts as to why the warning signals that had been given, not least those from the concerned citizen, were not escalated in the Department. It is important that this work progresses to a conclusion as soon as possible.

To sum up, at no time during my period as Minister were any recommendations made to me to introduce cost controls, nor were there any warning signs that spending on the scheme was spiralling out of control. In fact, during my time in the Department, there was an underspend of the money available to us.

I will now turn to the period after I left the Department of Enterprise, Trade and Investment. In May 2015, I became Finance Minister and had no role whatsoever in the ETI Minister's decision to amend the RHI scheme. The then First Minister, Peter Robinson, has also made it clear that he was unaware of the issues around RHI as they had not been brought to him as party leader or as First Minister. Therefore, at no time did he seek to intervene either.

Let there be no doubt that the decision to amend the RHI scheme was a matter for the ETI Minister. The timing of the introduction of cost controls was entirely a matter for him. It has been suggested that my party sought to influence the decision on the timing of the introduction of cost controls. It has been only in recent days that I have been aware of this allegation, and I have now taken the opportunity to investigate it. The only person who would have been in a position to instruct the ETI Minister would have been the First Minister at the time. This has been checked with the then First Minister, who has made it clear that the problems surrounding RHI were never brought to him either as First Minister or as party leader. He made it clear, therefore, that he could not and did not intervene in any way.

No other Minister took any role in this matter, nor did they make any representations in relation to it. I can confirm that the DUP party officers took no interest or role in the question of the RHI. Therefore, regardless of what, if anything, was said in relation to the party's role, no one had any authority to instruct the ETI Minister to do anything. There is no evidence whatsoever of Mr Bell raising any concerns with the First Minister if he felt that he was being pressurised. Let me make it absolutely clear: any suggestion that the Enterprise Minister was instructed to delay the changes to the RHI scheme is totally without foundation.
By way of a submission from John Mills, the then director of DETI’s energy division, on 31 December 2015, a recommendation was made to the then Minister to close the RHI scheme because of concerns about an overspend, and the Minister agreed to that proposal. A subsequent submission from John Mills on 19 January 2016 recommended steps to close the scheme by early to mid-March 2016.

These submissions were based on the assumption that conventional processes of consultation and Committee clearance were required. The Minister signed off on this submission on Friday 22 January, agreeing to the early to mid-March closure. However, as a result of concerns, a hold was put on this decision within half an hour.

In late January 2016, complaints about the operation of the RHI scheme were made to me. I informed the deputy First Minister and I passed them on to the head of the Civil Service. I was deeply concerned about the proposed mid-March closure date in light of the growing financial pressures, and the Executive agreed on 5 February to a closure around 15 February. Immediately after the announcement of the early closure of the scheme, concerns were raised about those who had already installed boilers but had not yet applied and would be disadvantaged.

On the basis that cost control measures were now in place, there was a danger of legal challenges to those who had installed boilers but had not yet received authorisation and, with the agreement of senior civil servants, it was decided that the scheme should remain open for a further two weeks.

As the Enterprise Minister at the time highlighted in the Assembly, he took the decision with the agreement of the First Minister and the deputy First Minister. The extension of the amended scheme was an entirely proper and proportionate step to take in all the circumstances. Once again, for the record, the scheme was closed earlier than initially approved by the Minister of Enterprise, Trade and Investment.

Since the announcement of my decision to make this statement, the former Minister of Enterprise, Trade and Investment has given an interview to the BBC. In that, he makes a number of allegations about the decision to amend and then subsequently to close the scheme. I think it is important that I also take this opportunity to put on record the factual position about a number of those allegations.

Mr Bell alleged on several occasions that he took action immediately to introduce cost control measures into the scheme and signed off the submission at the most immediate point he could. This is untrue.

Today my colleague the Minister for the Economy is placing in the Assembly Library a copy of the submission that was agreed by the former Minister. It will show that the Minister received a submission on 8 July 2015 recommending the introduction of cost control measures. It will also indicate that the original proposal from officials was to introduce cost controls from October 1 2015 but was amended to 4 November 2015 and signed off by the Minister on 3 September 2015. It is apparent from this document that action was not taken immediately but after considerable delay.

Mr Bell further claims that other SpAds became involved in the process who were, and I quote:

"Not allowing the scheme to close".

The fact remains that the Minister signed off a proposal that was to take effect from 4 November 2015. The only further delay in the introduction of cost control measures was as a result of legal and financial issues being resolved by departmental officials. This was unconnected to any ministerial decision. The decision was solely for the Minister of Enterprise, Trade and Investment to take.

The former Enterprise Minister claims that he made a decision to amend the RHI scheme but was overruled by special advisers. Since last week, I have specifically investigated this claim. The evidence is clear. The only decision taken by the Minister was in early September to amend the scheme in November. The Minister was not subsequently overruled by special advisers, and I am clear that whatever representations may have been made by anyone on this issue, it was not being done with the authority of the party.

I understand from Minister Hamilton that the permanent secretary recalls being told at the time that some in the party wanted the scheme to be kept open. He was unaware of the source of this suggestion, but believes it may have been based on the erroneous but widespread view at the time that because the scheme was funded through annually managed expenditure (AME), it was possible to maximise take-up without creating a problem.

I have checked and confirmed that no Minister made any such request or took any interest in the decision taken in September 2015. The
DUP party officers took no interest in this issue and gave no instructions. It is, therefore, clear that, whatever the belief, the DUP did not ask the Minister of Enterprise, Trade and Investment to extend the scheme. I also understand that, when the suggestion of a four-week extension was mentioned in the DETI issues meeting on 24 August, the Minister did not voice any objections. In fact, he endorsed the decision.

The bottom line is that this decision was taken by the Minister of Enterprise, Trade and Investment. No attempt was made to overrule him and no such allegation was made at the time. In fairness to the Minister, I should say that I understand from Minister Hamilton that departmental officials did not object to a four-week extension.

11.45 am

Mr Bell also claimed that he acted in the way that he did because of what he referred to as “collective responsibility”. This demonstrates a total and fundamental misunderstanding of the convention of collective responsibility. The doctrine of collective responsibility refers to a convention whereby, once Cabinet takes a decision, all Ministers are expecting to abide by it or resign. In this case, there was no decision of the Northern Ireland Executive, nor had there ever been any conversation between DUP Ministers, much less a decision, on the matter. There has been no allegation from Mr Bell that the First Minister Peter Robinson sought to delay the change to the scheme. Collective responsibility has no bearing whatsoever on this issue. Indeed, it is clear from Mr Bell’s statement on the two-week delay in February that he could robustly defend his role as Minister and would not change his course on the basis of SpAds acting without any ministerial authority or cover.

In discussing the decisions around the autumn of 2015, Mr Bell also claimed that he has a fact that reveals the role of special advisers in the scheme staying open. He then referred to a conversation he had with the deputy secretary of the Department, claiming his own special adviser had been asked by other special advisers to “remove references to "Arlene Foster" and "the Department of Finance and Personnel". This is the key allegation — that documents were amended — and it is a crucial point.

The truth is very different from that suggested by Mr Bell. I can set out the simple facts, based on the official records of the Department for the Economy. First, the only conversation approximating to this version of events took place in February 2016, not in 2015. Secondly, it relates to paperwork concerning the closure of the scheme in 2015, not the introduction of cost controls in 2015. Thirdly, the DETI adviser accepts that any changes he made were made of his volition and not at the request of others.

Fourthly, the amendment that was made relates to one draft submission before it was finalised for the Minister to consider, not to any attempt to delete emails or Government records.

Fifthly, the reference that was removed was one that highlighted the role of OFMDFM in wishing to see the scheme close more quickly and without consultation. The removal of that reference had the effect of avoiding any impression that the Enterprise, Trade and Investment Minister had been told that he had agreed to a process of closing the scheme that was too slow.

Sixthly, this was a submission for the Enterprise, Trade and Investment Minister only and did not impact on the document that was being forwarded to the First Minister and deputy First Minister. Seventy, and most importantly, the change to the submission had absolutely no effect on anything in the real world; the timing and process for the suspension of the scheme had already been agreed.

Minister Hamilton asked for urgent clarification on that issue from officials, who provided a note setting out the factual position. That was released to the media last evening, and the Minister has also placed in the Assembly Library copies of the draft submission with the tracked changes marked. The final version was then approved by the then Minister.

In relation to the closure of the scheme in 2016, Mr Bell has alleged that he wanted to close the scheme immediately. Once again, let us return to the documentary evidence. First, let me refer to a submission dated 19 January 2016. That proposed a closure date of early to mid-March 2016 and was signed off by the then Minister, Mr Bell. The deputy First Minister and I believed that we should act more quickly, and a further submission was prepared by DETI officials which provided three options. Minister Hamilton has also left a copy of that submission in the Assembly Library. In it, officials recommended a longer process to close the scheme over a longer period of time, but it was agreed that it should be closed as quickly as possible. So even taking into account the issue of the two-week delay that was agreed after the announcement, after all the complex processes the simple truth is that the scheme closed earlier than had initially been proposed by the...
Enterprise, Trade and Investment Minister. The reality is that it was the intervention of OFMDFM that ensured an earlier closure of the scheme than would otherwise have been the case.

To deal briefly with that subsequent two-week delay in the RHI closure, let us remember that it was decided, after cross-party concerns, that the scheme should not close within a fortnight of the announcement. Members across this House voiced concerns that businesses that had just bought boilers would be left in the lurch. The two-week extension that Mr Bell then agreed to as Minister was supported by me and the deputy First Minister. Other parties in this House, of course, wanted it to be longer. Cost controls were in place for the RHI at that stage, and civil servants were content with the two-week period.

This is not an exhaustive rebuttal of the allegations made by Mr Bell, but I hope it will convey, with documentary evidence, what actually happened.

I also want to make it clear that I support the need for an independent investigation, free from partisan political interference, to establish the facts around the renewable heat incentive scheme. I believe that the conclusions of any investigation must be made public and that any investigation must be conducted speedily to assist in the process of building public confidence. I have been working to reach an agreement with officials and others on the precise details of such an investigation over the last number of days, and I hope that it can be resolved in the next few days.

While there will be significant interest in how we came to the present position, the most important issue for us now is to mitigate the costs of the scheme. Minister Hamilton plans to make a statement to the Assembly as soon as possible in the new year. The hope and intent is to reduce significantly the cost of the scheme to the Executive’s Budget, but the details are still subject to considerable further work. This matters as we want to be fair to all those who responded to the incentive as it was intended to operate and to ensure that our process completely resolves the widespread abuse of the scheme.

In conclusion, unlike others, my priority in this is not headline grabbing or grandstanding. My priority, just as it was when I pressed for the earlier closure of the scheme rather than let it run to March, is to ensure that lessons are learned and to reduce the projected cost.

When I became First Minister, I said that I could think of no greater honour than to serve my country and the people of Northern Ireland. It is not a responsibility that I take lightly. I am not immune to the considerable anger and frustration that this issue has caused; not only do I understand it, I feel it too. I share those emotions because I am proud of this place and I want the best for it, and that is why I entered politics. I did not enter politics to shirk or shy away from difficult decisions.

The record shows that I have always put Northern Ireland first. The record shows that I have worked hard, throughout my political and ministerial career, to bring more investment and more jobs to Northern Ireland. The record shows that I have worked hard to keep Northern Ireland moving forward, and I will continue to do so as First Minister. That is why, rather than whipping up a media storm, I have actually been dealing with the problem along with my ministerial colleague Simon Hamilton and the Finance Minister, working on a practical solution, because that is what responsible politicians do. That is what government is about.

On a personal note, I want very much to thank each and every member of the public who has called my office at Stormont and, indeed, DUP offices across the length and breadth of Northern Ireland to offer words of support and encouragement. It really is appreciated. I will continue to work hard, as I have done throughout my political career, on everyone’s behalf, to ensure a better and more stable future for Northern Ireland.

Some Members: Hear, hear.

Mr Humphrey: I thank the First Minister for the lengthy and comprehensive statement that she has just given to the House. I ask the First Minister this: what is her view of those who say that they want facts and clarity around the situation but, when they have the opportunity to listen to those facts, walk out of the Chamber in an irresponsible way and in a media stunt to draw attention and grab headlines for themselves and are more interested in spin and propaganda than getting the truth for the people of Northern Ireland?

Mrs Foster: I just do not know what to say on this matter. For weeks now, people have been calling for me to come forward and calling on me to go to the PAC. I said I would go to the PAC; that was not good enough. I said I would come to the House, set out the facts and take questions from Members of the House, and
where are they? Where are they? The people of Northern Ireland deserve better than this. The people of Northern Ireland will look at this today and say, "What is all that about — what is all that about?".

I have listened to people from across Northern Ireland — I have not been hiding away, I have been out and about. I have been in Upper Bann, South Belfast and my own constituency. I have been listening very carefully to what people have to say. They are angry, but they want a plan as to how to deal with this.

I am setting out a plan for how to deal with the matter whilst others seek party political advantage. I regret that. I regret that deeply. Others have to answer for themselves.

Mr Anderson: I thank the First Minister for her detailed statement to the House. Will she explain why the cost controls in the Great Britain scheme were not replicated in the Northern Ireland scheme?

Mrs Foster: I took the opportunity over the weekend to speak to officials to establish why that is the case, and there are three reasons. I have to say that none of them is good or very acceptable, because cost controls, as we know now with the benefit of hindsight, should have been in place right from the beginning of the scheme.

First, there was an understanding from the specialist report — the Cambridge Economic Policy Associates (CEPA) report — that the tariff set was lower than the cost of the fuel. That was the fundamental mistake, as I said in my statement. The suggested rate for biomass boilers below 100 kW was set initially at 4.5p per kilowatt-hour. At that rate, the consultants noted, there was no need for tiering, as, at the time, the proposed rate was less than the cost of wood pellets and therefore there was no incentive to use the boiler excessively just to claim the subsidy.

Secondly, there was not the level of demand for the Northern Ireland RHI in the first few years. In fact, the first application for the scheme was received in January 2013. Remember that the scheme opened in November 2012. Over the first four years, there was an underspend of approximately £15 million. Therefore, it was thought — incorrectly, as it turns out — that the need to introduce cost controls did not arise.

The third issue is around governance. The governance processes in the Department did not enforce compliance with commitments given when the scheme was approved, including careful review of tariffs and risks. Cost control was proposed back in the 2013 consultation paper but not acted on. There was no submission to me saying, "We think that you need to look at cost controls" or, "This has been raised as an issue". Nothing came to me on that matter.

The cost controls in Great Britain should of course have been replicated in the Northern Ireland scheme. I am giving you the reasons that were given to me as to why they were not replicated. They are not good enough, but they are the reasons that were given to me.

Lord Morrow: I, too, thank the First Minister for her very comprehensive statement. It is most regrettable that those who have barked and shouted the most about the issue, when there was an opportunity for them to learn some facts around it, said, "We are not interested in the facts", and just walked out. They ran away. The First Minister is to be congratulated on her comprehensive report.

There has been much speculation as to why cost controls were not introduced when the scheme was established. Was any advice given to the Minister in 2012 about cost controls? Indeed, will the First Minister tell us what proposals for cost controls were considered and then rejected by the Minister?

Mrs Foster: Back in 2012, there were no submissions to me on cost controls. As I indicated in my last answer, cost controls of a sort were set out for comment in the 2013 consultation paper. It is not unreasonable for a Minister to expect that this document would have been acted on and that I would have been given a submission after the consultation closed. In fact, there was never a formal submission responding to that part of the consultation. I then went on to look at the introduction of the domestic scheme, but that is not a good enough reason for not bringing me a proposal or recommendation on the non-domestic scheme. One should have been brought, especially given that, by that stage, the concerned citizen had been in. She had spoken to officials on a number of occasions, yet they still did not think that it was the right thing to do to send me a submission on the issues. I deeply regret that that was the case.

Mr Stafford: I thank the First Minister for the statement that she made. In the precursor to it, several Members raised points of order and the issue of undermining the credibility of the House. Does the First Minister agree with me?
that what undermines the credibility of the House is when its elected Members run away from fulfilling their function of answering questions in this place and instead choosing to do so in TV studios?

12.00 noon

Mrs Foster: Of course it undermines this place when Members do not stay here to ask the appropriate questions but instead go outside and indulge in media spin. Unfortunately, this is not the first time that some Members have done that: we all remember the Ulster Unionist Party’s stunt when I was appointed after the election. They said that they were going out of the Executive, and it was “Bring it on” and all that stuff. What was it? “Let battle begin”, was that it? That was when they decided not to go into the Executive. They ran away then, and, of course, they ran away before that over the Fresh Start talks when they decided not to engage in that either. This is not new; it is a pattern. I do not think that they serve their constituents well: they do not. If they want to challenge me, the place to challenge me is in the House, but instead they will stay out. They will come this afternoon and put down an exclusion motion even though they have not been here to question me on the issues. They will come here with an exclusion motion even before the PAC has finished its investigation. They have made up their mind about the First Minister of Northern Ireland, but, thankfully, the electorate has also made up its mind about the First Minister of Northern Ireland.

Mrs Cameron: I thank the First Minister for a comprehensive statement to the House this morning. It is obvious from this morning’s events that there are many Members who should be in the Chamber who do not want this devolved Government to be in any way successful or to do their job in the rightful way, and that has been shown.

The ‘News Letter’ published a story this morning about the regulatory impact assessment. On what basis did the Minister sign off on the regulatory impact assessment, and should it not have been apparent that there was a fatal flaw at the heart of the scheme?

Mrs Foster: I thank the Member for her question. It is an important question, and I am glad that she has asked it. First, let me say that our opponents told us that today was an important day but then could not be bothered to show up. They cannot be bothered to show up and ask me questions about the sorts of things that the Member has asked me about.

In the regulatory impact assessment, the Department recognised that setting incorrect support payment levels to the RHI tariff posed the most obvious risk to the Northern Ireland scheme. If the level was set too high, those installing renewable heat would be oversubsidised and less heat would be delivered per pound than would be under more optimal subsidy levels; alternatively, if the rate was set too low, renewable heat would not be deployed to the extent expected. In that document, it was made clear that there were to be regular planned reviews of subsidy levels after a number of years of experience with the subsidy. That would, of course, have provided the opportunity to amend tariffs if needed and ensure that they remained appropriate, given the potential changing market conditions. Of course, the market changes, and we saw that in the prices of wood pellets, oil and gas.

In that RIA, it was proposed that the first review would begin in January 2014, with any changes needed to be made by 1 April 2015. The review did not happen. Departmental officials did not carry out that review. As Minister, I have the right to expect that risks identified in an RIA would be managed by officials. As the accounting officer has explained at length to the Public Accounts Committee, several important commitments were made at the time when the RHI was approved, not least on risk management, that were not followed through. Those omissions by officials contributed materially to the very serious problem we now face. That is already under investigation in the fact-finding work that has been discussed with the PAC, and I look forward to the outworkings of the PAC. As I have already said on the record, I am more than happy to go to the PAC, even though that is not the convention. The reason I am happy to go to the PAC is that I have nothing to hide in the matter—absolutely nothing. I am putting everything out there and am calling for an inquiry if we can get it arranged with colleagues. I have nothing to hide, so why would other Members table a motion to exclude me? It is all party politics, and this party will not be part of it.

Mr McCausland: I thank the First Minister for her statement and the answers to the questions. They bring a great deal of clarity and dispel a lot of the confusion that folk have generated from other quarters on the matter.

Has the First Minister been able to ascertain or establish who was responsible for the assumption that cost controls were not necessary as they thought that the market price of wood pellets was higher than the tariff?
Mrs Foster: I thank the Member for his question. It appears to have been a mistake that was made by DETI officials. The initial report from the consultants, CEPA, suggested that the rate for biomass boilers below 100 kW was set at 4.5p per kilowatt-hour based on a 20 kW biomass boiler reference case. At that rate, the consultants noted that there was no need for tiering because, at that time, the proposed rate was less than the cost of wood pellets, and, therefore, there would be no incentive to use the boilers excessively just to claim the subsidy.

The consultants were then asked to reconsider the rates following feedback from the industry after the consultation process, and, in February 2012, the consultants produced a new paper that increased the rates to account for a larger reference case boiler of 50 kW rather than the original 20 kW reference case. The rate proposed for biomass boilers of less than 100 kW was increased in this paper to 5.9p per kilowatt-hour, but there was no mention — no mention — of the need for tiering or that this was not in excess of the cost of wood pellets. So, the final business case approved by DFP in mid-2012 included a 5.9p tariff, which has subsequently been increased with inflation to 6.4p per kilowatt-hour.

The Department's business case to DFP stated that there was no need to consider tiering because the rate proposed was lower than the cost of fuel, and, therefore, there would be no incentive to abuse the system by generating heat just to claim the subsidy. However, in the case of biomass boilers, this was simply not true. In fact, the cost of wood pellets was shown in the same business case as being 4.39p per kilowatt-hour compared with the proposed tariff. It was there in black and white that the proposed tariff for the wood pellets was 6.4p per kilowatt. Nobody in DETI, CEPA or DFP spotted that that was the case, and, therein, lies the fundamental problem.

Mr Speaker: That concludes questions on the statement. The Business Committee has agreed to suspend the sitting for one hour following the conclusion of questions on the statement. I propose, therefore, by leave of the Assembly, to suspend the sitting until 1.00 pm. The next item of business when we return will be the motion under section 30 of the Northern Ireland Act.

The sitting was suspended at 12.07 pm.

1.00 pm

On resuming —

Assembly Business

Exclusion of Minister from Office under Section 30 of the Northern Ireland Act 1998

Mr Speaker: The next item of business is a motion signed by 30 Members under section 30 of the Northern Ireland Act 1998 in relation to the exclusion of the First Minister from office. The motion for exclusion of a Minister under section 30 of the Northern Ireland Act 1998 must relate to the specific terms of that section. Any amendments that take the motion outside of those terms will be inadmissible. I have received legal advice from officials that the amendment proposed by Sinn Féin was incompatible with the requirements of section 30 of the 1998 Act and, as such, was inadmissible.

The Business Committee has agreed to allow up to three hours for the debate. The proposer of the motion will have 10 minutes to propose and 10 minutes in which to make a winding-up speech. The First Minister will have 30 minutes, and all other Members who wish to speak will have five minutes. At the start of the debate, I want to note that the motion has attracted the signatures of a wide range of parties. Whilst there is a three-hour time limit to the debate, I want to make Members aware that I intend to use my discretion to ensure that as many Members as is possible are heard from each party represented in the House. I advise Members that the vote on the motion will be on a cross-community basis.

Mr Eastwood: I beg to move

That this Assembly, in accordance with section 30 of the Northern Ireland Act 1998, resolves that the First Minister no longer enjoys the confidence of the Assembly and that she be excluded from holding office as a Minister or junior Minister for a period of six months because of her failure to observe the terms of paragraph (g) of the Pledge of Office and the first paragraph of the ministerial code of conduct, in that she failed to observe the highest standards of propriety and regularity in relation to the stewardship of public funds surrounding the renewable heat incentive scheme.
19/12/2016, 12:28 from Mairtin O Muilleoir

Arlene says she has been working with me on solution. Has she had any contact with the Dept. She had none with me. M

19/12/2016, 12:31 to Mairtin O Muilleoir

Not to my knowledge. I’ve had no personal contact. The only ministerial contact I’m aware of has been your meetings with Simon H. DS

09/01/2017, 11:10 to Mairtin O Muilleoir

Mairtin, Hugh will call you. DfE are planning to have the business case with us later today (with legal advice). DS

09/01/2017, 11:12 from Mairtin O Muilleoir

Thanks.

16/01/2017, 13:36 to Mairtin O Muilleoir

Hi Mairtin, Andrew McCormick’s asking when we will convey our decision on the RHI business case. They’re expecting this will be one of the first questions asked when SH moves the regs. DS

16/01/2017, 13:44 from Mairtin O Muilleoir

Work in progress

16/01/2017, 13:46 to Mairtin O Muilleoir

Thanks!
forward with a solution as well, but, you know, at this stage —.

**Mr Lunny:** This wasn’t a solution that, you thought, was tenable, in terms.

**Mr Ó Muilleoir:** My officials blew this out of the water. This wasn’t going to work.

**The Chairman:** What you would —.

**Mr Ó Muilleoir:** At this stage, none of the solutions would work. Excuse me.

**The Chairman:** What you would like to see here, given the fact that there is a clear threat to public funds and public money, is a degree of positive cooperation; what you get is the two alley cats, if you like, fighting and walking around each other:

> “[This] gives us a certain distance from the DUP ... to say we are all in this together” —

don’t, for goodness’ sake, say, “We’re cooperating or together” —

> “The Dept of Economy leaked details of the solution ... to the media which were carried today to give the impression that they are working towards a swift solution.”

If the ordinary member of the public whose tax money is being lost here stood back and looked at this and did so with the hope that there was cooperation to try to solve his loss of money, I doubt if he would have any great confidence in what was going on.

**Dr MacLean:** Can I ask, in regard to the officials from your Department blowing the solution out of the water, had they talked to HMT about whether that would be the HMT position?

**Mr Ó Muilleoir:** I believe it was their —. Yes, I believe they —. I don’t know if they’d spoken to HMT, but I believe they were of the opinion the buyout would not work, and I believe that was then accepted by the Department of the Economy. Whether they had spoken at that stage I’m not sure, but I do think they were correct, and it was —.

**The Chairman:** Where is it in this email about either talking to HMT or believing that would be the situation?

**Mr Ó Muilleoir:** No, I’m not suggesting it’s in that email. This is actually a different
solution he’s now bringing forward.

The Chairman: This the buyout one he’s talking about, isn’t it?

Mr Lunny: Yes. This is the buyout solution at the top:

“Options re closing down RHI were discussed. Being favoured is a solution which would enable Department of Economy to buy out users or have them continue at lower tariff”.

Mr Ó Muilleoir: So, that’s two solutions. That’s two options.

Mr Lunny: Yes.

Mr Ó Muilleoir: So it’s a couple of options. I can only say that we were keen to see the Department of Economy bring forward a robust, cogent solution, and we hadn’t seen it.

Now, at this —.

Mr Lunny: But you weren’t all in it together. You were —.

Mr Ó Muilleoir: No. At this stage, you know, and with respect, at this stage, the DUP has become a byword for less-than-appropriate behaviour in relation to RHI. The DUP is clearly managing its own internal problems around revelations, which are almost on a daily basis, around their advisers, so, with respect, I was making sure that we made them do their work, but I didn’t want them saying that, “Listen, it’s Sinn Féin holding this up”. So, if I’m being too robust in that —.

The Chairman: It’s all about what the impression is. It’s all about who sees who at fault. If you are a man in the street or a woman in the street, it really is disappointing not to see more cooperation. It’s looking for blame, to who to blame, how to blame. [Long pause.] Yes.

Mr Lunny: Regardless of the DUP’s own issues and what was aired on Nolan and everything else, what is clear is that there’s a threat to the Northern Ireland block —

Mr Ó Muilleoir: Yes.

Mr Lunny: — and you earlier mentioned, in the context of the monitoring round in June, hospitals, schools, things like that, where extra money could be used. A threat to the block
“Well, look, you’re just robbing Peter to pay Paul here. It is another part of the public purse that is going to lose out”.

Dr MacLean: Mr Hamilton, can I just question you on that point, because, right at the very beginning, we had clarification from HMT that, if Northern Ireland decided to use capital grants rather than revenue payments, that was fine, as long as it was within the Budget? So, if your concern is the absolute sum of money, on that basis, it wouldn’t have seemed that HMT would’ve had a problem with that coming out of capital rather than resource AME.

Mr Hamilton: No, and our experience, in different scenarios down through the years, had been that, with the conversation, those things would be — there would be that flexibility. That wasn’t, I suppose, my concern; it was that we were taking money from —. So, rather than it dealing with the problem and having no cost to the budget, it was, whilst, in the longer term — and, obviously, the tables show that it was much less of a cost than certainly continuing with where we were, and that was no option — it was more that you were taking money from a capital budget, and I suppose I was, from a political aspect, kind of mindful that, even at the sort of 50-million level, you know, people would mount an argument, “Well, that’s five new schools that could’ve been built that is paying for the compensation on this”. I know that there was a greater problem, but I was just, I suppose, it was just something that was in my head at the time, and you see that is sort of part of the working out that I was doing.

So this was the preferred approach, and probably unfair to say Dr McCormick was “fixated” with it, but it was very much his preferred approach, I think. And there’s good, reasoned arguments for that, and it really was the only show in town for quite a considerable period of time.

In terms of what officials were working at: in terms of where my thinking around it was was it certainly had attractions to it. it was doing awa — it ended the scheme. The sort of
tarnished RHI brand was gone; it wouldn’t be there any more. It did have other weaknesses as well, which were, where you would — even though you were closing it down, there was a risk of — and I think it talks about this in that submission — you weren’t dealing necessarily with overcompensation. People who had had their installation, got on early in the scheme, had their installation, perhaps, paid off in the first couple of years, you were paying them for that installation again, for the capital cost. And then, I think, there was talk at times about still having a 12% rate of return, which was the —.

Dr MacLean: Are you talking about the buyout option?

Mr Hamilton: Yes. Uh-huh.

Dr MacLean: Because, if you look at the top bullet point there, it was saying that, for those who’d already got enough compensation, they wouldn’t get any more.

Mr Hamilton: Well it was —. Yes. I know, and I picked that up from what Mr Scoffield said, and there was a, you know, there was discussions on this, and I certainly remember seeing a paper at the time where it talked about overcompensation — still was a risk of overcompensation within it.

Dr MacLean: Absolutely, but it applies to the other options, not to this one.

Mr Hamilton: But —.

Dr MacLean: The advantage of this one is that it gives you the ability to stop. It doesn’t claw back — you’re not asking people to give money back — but it stops in its tracks the rate of return as it is today. All the other options that were on that list increased by some degree the rate of return in coming years.

Mr Hamilton: I think that, in some ways, this — whilst I understand why the panel will want to — the Inquiry wants to look at this, the factor which is, away from the sort of the papers that I was getting, even some of the arguments that I was thinking about, a critical factor here which is not really seen in this paper — whenever this paper is authored, those
who are writing it are doing it in a context where they don’t realise about the political crisis
that is happening, so timing is an issue — a significant issue — here.

So we’re starting to hone in and focus on what a solution might be and what we want to
take forward in a context where it becomes increasingly clear that the Executive is probably
not — it starts in a position where there’s a risk and a danger, and then it becomes an
absolute, you know, a reality. It becomes a reality and goes up the levels as we proceed. So,
at that stage, there was a — I think my view was that this was quite a complex option. I
thought that we hadn’t, whilst a lot of work had been done on it, we hadn’t consulted. There
was not going to be an opportunity to consult on it. I did feel that it was one that there
would be politically a lot of opposition to. I mean, I didn’t think — I thought generally
anything was gonna elicit political opposition.

Where I saw the attractiveness to what is option A there in the notes that I talk about is
that it would — there was a cleanness to it. And there was — in the tight time frame that we
were faced, at that time, with, where there was no certainty at that point that we would get
any regulations through at all — and that’s a problem that persists for weeks thereafter —
that, in making the point that there was a cleanness to making the point. We were saying,
“Look, we’re sending everybody back onto the other tariffs that we brought everybody down
to and the tiered tariffs”, and that, operationally, I thought at that — and this was a key
factor in my thinking at the time of the discussions that we had — was that, operationally, it
seemed much easier to implement in what was actually then, by that stage, quite a tight
time frame. So this is tail end of December into January, pressure —.

Mr Scoffield QC: So, when you say “operationally”, you’re meaning that it’s something
that could be passed through the Assembly quickly, rather than something that Ofgem could
deal with easily?

Mr Hamilton: No, I mean in both points. I mean, there is a conversation — a parallel
that, a little like what happened at the start of the scheme, the option which has the lowest net present cost is rejected in favour of something which maximises the availability of an ongoing payment stream from HMT. What would you say about that?

Mr Hamilton: I understand — get that. Um, I think they’re very, very different sets of circumstances. And, you know, the option that went — the option that became the 2017 regulations may’ve had issues; every option that was coming forward had issues. But far — in my view, in the situation that we found ourselves in, far more preferable that we brought something forward than we were able to bring nothing forward. And, as I’ve said, it did its — it did the job in terms of that tourniquet, which, I think, was a phrase that Dr McCormick introduced, and it stopped a lot of the haemorrhaging — not all of it but a considerable reduction from where we were.

And, you know, had we had greater time — and you’re right: I mean, it depends when you start on that — had we had greater time, we would’ve looked at our whole range. And I know that the Department in its, um, its consultation paper looked at, I think, it was about eight options in total — I can’t remember all of them in detail — but there were —. That was something, as well, that we wanted, I think: are there — we’re looking at a couple of options here, but there might be several others as well. So, I think, far more preferable in the circumstances that we found ourselves in the tail end of 2016 and beginning of 2017 to have something that actually did, I suppose, that fundamental job of turning off the tap.

Dr MacLean: Is that, though, because of the point that Mr Scoffield just made to you that, in general, for the Assembly, it was easier to accept a solution that maintained ongoing drawing down of money from HMT? Is that — that was the point that was made in the earlier paper —

Mr Hamilton: Yes.

Dr MacLean: — that it was maximising the ongoing payments from Treasury, which
represent a business and an economic benefit to Northern Ireland.

Mr Hamilton: It was a point that was being considered. How much weight that had over — I mean, it didn’t have more weight applied to it, in my mind and my thought process, than turning off the tap and stopping the flow.

Dr MacLean: Was it your decision alone, then? That, that, um — you’re sort of describing it as your reasons for the decision. Were those reasons that then led you alone to make that decision, or did it become one that was referred back to other members of your party or, indeed, to the wider Executive?

12:15 pm

Mr Hamilton: We —. No, it is taken —. It is taken within the Department. It is, I mean, I’ve, absolutely, you know —. The idea was shared with others within the party. It would’ve been shared with the Department of Finance and obviously formed the basis of the business case that went forward to them. It was —. I know from Dr McCormick’s evidence that, you know, he says, in terms, that he wasn’t as persuaded by it, which I think is consistent with other evidence as well, but he becomes persuaded of it, and I think what persuades him, if I could be bold enough to speak it, is that time pressure that is developing at that stage.

Mr Scoffield QC: That might be right. One of the other issues I wanted to explore with you just before we move on from this topic, though, is that in Dr McCormick’s evidence, particularly at paragraphs 261 to 267 of his third statement — that’s WIT-26295 to 6. I know you’ll be familiar with this, Mr Hamilton, but he’s concerned because, he said, this was an option which was particularly sensitive, it was radical, the Department hadn’t yet worked up exactly how much it would pay people if it pursued this option and, therefore, it was necessary to do some further work on it before it entered the public domain. It’s then leaked to the press in mid-December. There is a media focus on it, a negative reaction which Dr McCormick says effectively killed it as an option at that stage, and he —
258. I observed that the relationship between DfE and DoF in the summer and autumn of 2016 was affected by the very high degree of distrust between Simon Hamilton and Máirtín Ó'Mulleoir. On topics ranging from relationships with the Universities to the UK’s exit from the EU, Simon Hamilton was very reluctant to share any information with DoF because he stated that he believed that Máirtín Ó'Mulleoir would pre-empt proper consideration of the issues and release anything he wanted to via social media. This complicated the normal interchanges between officials, because we had to follow the instructions from Ministerial level, but still progress issues as best we could (in some cases, advice to Simon Hamilton could have been improved had we been able to engage more openly with DoF officials on emerging issues.)

259. Specifically on the RHI, DfE considered a number of possible interventions to reduce the cost overrun in the RHI Scheme from the spring of 2016 onwards. Legal advice had indicated that it would be possible to adjust the tariffs payable in relation to the applicants accredited before the tariff reduction was approved on 17 November 2015.

260. As explained in paragraphs 2.82-2.86 of my personal Witness Statement and paragraphs 359-361 of the DfE Corporate Statement, we gave serious consideration to an option involving revoking the RHI Scheme in its entirety and paying the beneficiaries a one-off compensation payment. I had explained at a meeting with the then First Minister, deputy First Minister and their SpAds on 14 December 2016 that this option was favoured by the European Commission, but that I was awaiting legal advice on its viability, and that it was essential that there was no premature disclosure of the idea: any early coverage would provoke the obvious question as to how, precisely, any compensation payments would be calculated and we in DfE were not ready to respond to such questions. I had a very helpful consultation with the Attorney General on this issue on 15 December 2016, ahead of the phone call with DoF described in my personal Witness Statement. I advocated the idea very strongly in my emails on 18 and 19 December 2016 (Annexes 2.44 and 2.45 to my first personal Witness Statement).

261. This option was leaked to the press and covered by the BBC on 21 December 2016 (see link at http://www.bbc.co.uk/news/uk-northern-ireland-38386564).

262. After the disclosure, I was told that some believed that the leak of the story had come from Sinn Féin: at this remove I cannot recall who precisely communicated this, but I believe it may have either been Simon Hamilton or John Robinson.

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32 Legal professional privilege is not waived in relation to this advice.
33 See paragraph 2.85
263. The BBC story led to some adverse reaction to the idea, and soon afterwards, I was told (again by either Simon Hamilton or John Robinson) that the DUP had decided to drop the idea.

264. I had a conversation and an exchange of text messages with David Sterling on 21 December 2016 (see the sequence of texts from 10.03 to 10.45 at IND-01899), in which I told him that my Minister (Simon Hamilton) believed that his Minister (Máirtín Ó’Mulleoir) had leaked the ‘one-off compensation’ option to the press. David Sterling advised me that Máirtín Ó’Mulleoir was of the contrary opinion, and believed that Simon Hamilton had been responsible for the leak to the press.

265. I have now seen Eoin Rooney’s email of 23 December 2016 (POL-10244) commenting on my email of the same date (mostly on POL-10245) which reflected on the genesis of the closure option and reminded recipients that I had urged strongly at the meeting on 14 December 2016 and subsequently that the idea should be guarded carefully. I cannot remember precisely which comments I was responding to, but there was understandable frustration around that time that DfE had not yet been able to resolve the main problems in the RHI Scheme, and my email was an attempt to explain what had happened in a fair and balanced way.

266. Eoin Rooney’s email says:

   a. “Ask for no public hint of closure….” (as in my email);
   
   b. “and then they leak the closure option as soon as we walk out of the room.”

267. The email implies that I was party to the leak (“they” seems to refer to DfE, embracing the Minister, Simon Hamilton, the SpAd and officials). I would like to clarify that I was, of course, not party to any leak, and I have no evidence as to where the leak came from. I was actually very frustrated with the fact that the idea had been leaked as that had had the effect of killing off the closure option.

268. Máirtín Ó’Mulleoir’s email of 21 December 2016 (POL-10305) also says that DfE leaked details of the solutions options. I would like to emphasise that I do not know where the leak came from but it was certainly not from me.

In the course of your answer please address:

a. The DoF view on your preferred option for resolving the budget problems with the Scheme (see paragraph 2.85 of your first witness statement [WIT-10531] and WIT-10820); and

269. Before the conversation on 16 December 2016 as recorded at paragraph 2.85 of my first personal Witness Statement, David Sterling had told me that the thinking within DFP had focussed primarily on an option which would allow Northern Ireland to continue to draw on the AME budget that would be available from HM Treasury for the duration of the GB RHI Scheme. That was
Dr MacLean: This is the buy-out option?

Mr Scoffield QC: Yes. He’s not sure who leaked it. We’ve seen from a range of evidence that the Sinn Féin side in DOF were highly suspicious that the DUP had leaked it, or DFE had leaked it because they wanted to kill the option; it wasn’t a favoured option. I know, in your evidence, you’ve indicated that you were suspicious in the opposite direction and thought that — and I think there’s some evidence that, again, in DOF there was some thinking that there was a benefit to maximising the ongoing HMT funding stream. But, can you enlighten the panel as to whether you know anything about who leaked it and what the effect of that was?

Mr Hamilton: Yes. It is —. In terms of what I know, absolutely, about the leaking of the information was I didn’t leak it. I spoke at the time to my special adviser; he didn’t leak it. I can’t conceive why Dr McCormick or anyone close to him at that level of the Department would have leaked it either, because —. And the reason—. I mean, I remember being — and I don’t want to, sort of, play into the stereotype of a redhead being angry all the time, but I was pretty furious that it had been. Now, that then produces my response of blaming Sinn Féin, and I’ll come back to that in a second or two. But I was raging that it had happened because, at that stage, this was still the preferred option. We were not really thinking about other stuff; this was —. And I knew that it was hazardous to a successful outcome if this was out in the public domain. And as you’ve pointed out, Mr Scoffield, it didn’t get a good response. You know, I think I —.

Mr Scoffield QC: Would you agree with Dr McCormick’s view that —

Mr Hamilton: I suspect any —

Mr Scoffield QC: — the negative response did kill this off as an option, in the short term?

Mr Hamilton: I think it becomes —. I wouldn’t say that some — you know, we’ve come in, like a pathologist, at that stage to write it dead at that point. I think it becomes — it falls out
of favour. There is still an absence at that point of anything else really serious which is being worked on. So, it’s still there, but it becomes —.

I suspect that, almost regardless, if there had’ve been another option that had’ve been leaked by whomever at that point, it probably would have met in the atmosphere that we were dealing with probably very similar responses in terms of just the general negativity. So, in that sense, for it to be leaked was always about, in my view, was somebody either being far too casual or whatever and — but, I suspected and I feared that it was about undermining attempts to get a resolution.

My thought around why it was Sinn Féin at the time was that, whilst Sinn Féin wanted to, at that point, work with us — or that was certainly the public expression by Sinn Féin; that they wanted to work with us to find a solution — things are starting to fall apart at that stage. That’s whenever, you know, we are starting to head towards the rocks much more quicker than we were before, because this is post Nolan interviews and so forth. You know, there was a fear or suspicion on my part that what Sinn Féin were doing —. I believe that they leaked it. There was other examples of briefings to media where a flavour of a meeting was given which wasn’t actually what happened in the meeting. So, I had a bit of a fear and a bit of a concern, and I thought that they were trying to undermine any solution, even though they were saying something different publicly. And the reason I thought that was because this was clearly an issue where the pressure was on the DUP — we were under immense pressure at that time — and that, if a solution was to come forward, Sinn Féin wanted to be in the middle of finding that solution and to be seen as the, sort of, saviours of the whole scenario, but, if it didn’t, well then the DUP were to blame.

Now, I’ve seen the evidence from Sinn Féin where they say they’re blaming the Department for the Economy, which, I think, you know, may or may not be an important distinction between the Department for the Economy and the DUP. They’re blaming the
Mr Scoffield QC: — option, which at that stage was the preferred option, was leaked.

There was a very negative reaction which, if it didn’t kill the option off, certainly resulted in it falling out of favour. You didn’t leak the option. You don’t know who did — is that right?

Mr Hamilton: I don’t know.

Mr Scoffield QC: But, however it happened, the fact that it was leaked altered the course of departmental decision-making.

Mr Hamilton: I think that’s not an entirely unfair summary of it. I mean, in general terms around this option, the buyout option, I don’t want the — because I go somewhere else and I think about it in a very different atmosphere doesn’t mean that I was, sort of, death on this option or anything like that. It was one that we were aware of, and I knew that there was some issues with it but, then again, there were issues with everything. We were working through with it. It was the preferred option at that stage, perhaps even, arguably, the only option at that stage.

Why I was angry at the time was because, if it met with the furore that it did, and it didn’t — that would not have helped its passage through this place, then, at that stage, there’s nothing in the cupboard. You know, we don’t have at that — in terms of the level of work that had been done — that you’d shown in those papers — there hadn’t been that work. And I felt that after having made progress on this front, we were almost back to square one again. And hence my anger. I mean, at that stage, my only focus — sole focus, main focus — is on getting something that works; that solves the problem; applies the tourniquet; gives us some time to look at something. So, I was angry because it didn’t help.

Mr Scoffield QC: We’re around the middle of December 2016 in this discussion. The regulations, obviously, are taken forward in early January 2017. I want to come back to those later.

I’ll maybe just branch off for a moment or two to talk about some of the political
Fwd: Response

Ted Howell <ted.howell@sinnfein.ie> 4 January 2017 at 20:14
To: Conor Heaney <ted.howell@sinnfein.ie>, Eoin Rooney <eoin.rooney@sinnfein.ie>, Máirtín Ó Muilleoir <mairtin@newbelfast.com>

To be sure to be sure.
On Wed, 4 Jan 2017 at 20:13, Ted Howell <ted.howell@sinnfein.ie> wrote:
GRMA. Always Ned certainty/political-Publicity blanket in times like this!!!

On Wed, 4 Jan 2017 at 20:08, Eoin Rooney <eoin.rooney@sinnfein.ie> wrote:
Ted to be clear - the only paper seen by Máirtín, DoF and I is the high level options paper presented in December. We haven't seen the solution being touted by the DUP to the media. I don't think we can comment on its merits with authority until we see the detail but I suspect it will be a work in progress that leaves a lot of questions unanswered - so there should be plenty of scope to critique it.

On 4 January 2017 at 19:35, Ted Howell <ted.howell@sinnfein.ie> wrote:

---------- Forwarded message ----------
From: Ted Howell <ted.howell@sinnfein.ie>
Date: Wed, 4 Jan 2017 at 19:32
Subject: Re: Response
To: Conor Heaney

Agree on caution about every FACT. The FACT and I interrogate it again: MOM AND DOF OFFICIALS DO NOT HAVE A WRITTEN PROPOSAL FROM DUP??????
If, Conor, the answer is again no? r u ok?????

On Wed, 4 Jan 2017 at 19:27, Conor Heaney <ted.howell@sinnfein.ie> wrote:
I would be cautious about this, until we discuss it tomorrow but I realise things are moving fast. The key question will be whether this is a viable plan or not but we do need Máirtín to be closely involved in any solution and seen to be involved quickly.

Conor

On Wednesday, 4 January 2017, Ted Howell <ted.howell@sinnfein.ie> wrote:

---------- Forwarded message ----------
From: Ted Howell <ted.howell@sinnfein.ie>
Date: Wed, 4 Jan 2017 at 18:46
Subject: Re: Response
To: Máirtín Ó Muilleoir <mairtin@newbelfast.com>

Last sentence a briefing point about SHamiltons motivation. Otherwise will be interpreted as a SF objective

On Wed, 4 Jan 2017 at 18:39, Máirtín Ó Muilleoir <mairtin@newbelfast.com> wrote:
Tweet:

Bemused at DUP ‘solution’ to RHI being trailed on media before any plan is shared with @dptfinance DUP need to stop digging & share ‘plans’
Statement

I am bemused at the trailing on the media of a DUP "plan" to resolve the RHI debacle when not one scrap of paper detailing this 'plan' has been received by the Department of Finance.
I am alert to the dangers of allowing the person who was the architect of the RHI scheme — the DUP leader — to come up with a solution to this debacle.
That is why I will ensure my officials rigorously test any plan which comes from the DUP.
I will be guided solely by what is in the interest of the public purse.
The DUP are in a hole and should stop digging.
They should share any 'solution' they have now with the Department of Finance. In particular, the Dept of the Economy should reflect on the fact that my department has flagged up concerns about the post-November 2015 tariff which they are suggesting will shortly apply to all businesses using the RHI scheme.
Every plan produced by the Department of the Economy on this issue has been flawed. I will not be bounced into signing off on any new plan simply to save Arlene Foster's skin.
Mr Ó Muilleoir: Yes. Well, I think it’s —. The context is that, that morning, Arlene Foster, the First Minister — still the First Minister — had come out with a solution, so-called, and I felt that was a betrayal of trust absolutely that a solution that I hadn’t been told about was being presented by the DUP as they now had a silver bullet to resolve RHI, so I’m reacting to that. In fact, I think it’ll be shown that I’m wrong; that they do build up — they do come forward eventually with a solution which is similar to that.

Mr Lunny: Right, but that —. Well, the solution they come forward with is putting people on to that tariff.

Mr Ó Muilleoir: Yes.

Mr Lunny: You obviously had some concern about that because of something your officials had told them, which was that the scheme — the amended November 2015 scheme might still be paying out more than was intended to applicants. That seems to be the concern you’re recording there.

Mr Ó Muilleoir: Yes.

Mr Lunny: And you are recording that concern with three Sinn Féin officials: there’s your special adviser, Mr Rooney; Seán Maguire [sic] and Ted Howell. Who are Seán Maguire [sic] and Ted Howell?

Mr Ó Muilleoir: Seán Mag Uidhir —

Mr Lunny: Mag Uidhir.

Mr Ó Muilleoir: — is the Sinn Féin press — lead press officer here at Stormont.

Mr Lunny: OK. And who’s Ted Howell?

Mr Ó Muilleoir: Ted Howell is the former chair and chair of every negotiation Sinn Féin’s been involved in around these institutions and political process since 1997 until — actually, his last post was the chair of the negotiations here in February of this year. He is a member of the ard comhairle of Sinn Féin, and he was in retirement but was brought back from
Mr Lunny: Cos we will see that, with many of your communications internally, they’re not just between you and your special adviser. You’re copying in people like Mr Howell as the solution to the scheme progresses.

Mr Ó Muilleoir: Yes, Mr Lunny, and we’re now at a situation where the peace process and the political process is imploding. In my view, when you’re as old as I am, you know, that’s a matter of life or death. It was — . There was a number of parallel things now starting to unravel — Martin McGuinness calling time on the institutions, the issue of a public investigation, the need to resolve RHI — so this is now a national crisis for Sinn Féin as well, and they had indicated how serious they’re taking it by asking Ted Howell to come back from retirement and to chair this crisis committee. So I’m being cognisant of the fact that what may at some stage have started out as a scheme in the Economy Department to help the environment is now an issue about to put the entire political process at peril.

Mr Lunny: Well, within two days of that communication, you send a letter to Simon Hamilton — a letter that he was taken to this morning and I think described as:

“an entirely political document”.

It’s a letter that you, as Department of Finance Minister, wrote to him, as DETI Minister, or DFE Minister, which you also released to the press. And it’s a document, I think, the records show it’s a document that was in draft form circulated amongst some of these people by your special adviser before you finalised it and sent it, and it’s a letter of the 6th of January and it can be found at DOF-44762. It’s a letter in which, if we could maximise the bottom half of it, you can see you make the point that you’ve:

“repeatedly pressed”

his Department for:
From: Ted Howell
Date: Dé Céadaoin 4 Eanáir 2017 19:05
To: Mairtín Ó Muilleoir
Subject: Re: Politics

Needss reduced to high stool/work place speak and vehicle for delivery into the public debate.

On Wed, 4 Jan 2017 at 18:57, Mairtín Ó Muilleoir <mairtin@newbelfast.com> wrote:

In November 15 new applicants for RHI were moved to reduced 12 per cent tariff.

My officials now believe this is coming in at 19 per cent not at 12 per cent as Dept of Economy stated in business case to support move to reduced rate.

The additional spending is ‘irregular’ unless Dept of Economy can convince my officials that they are reading things wrong and that they are sticking to 12 per cent rate of return in the business plan.

If funding is deemed irregular, as was original spending under RHI, then it is referenced up to Comptroller and starts another round of investigations and reports.
Suggested changes – I will call up

Can you add any important points by 4pm please?

DfE Proposal

- As an interim measure, move all scheme participants onto November 2015 tariffs as of April 2017 DN – stage 1 measure?

- Notify EU of change next week with a view to getting approval in March

- Do not carry out a public consultation on interim arrangement

- **Include a clause to review the policy by March 2018** include a sunset clause which would revert the tariff back to the un-tiered un-capped rate at 31 March unless alternative arrangements are agreed

- Use the year to develop a ‘final’ solution

- This ‘turns off the tap’ quickly and should mean zero cost to Executive in 2018/19

- The proposal is due in a paper** business case to be approved by the DfE Accounting Officer and submitted to DoF next week**

- In addition proceed with 100% inspections

Comments

- Have not yet seen an assessment of the legal risk but approach suggests that DFE’s focus is on budgetary control, which is more open to legal challenge than an approach that seeks to ensure state aid compliance

- Possibility of an injunction, which would mean reverting to original tariffs until conclusion of case – DN not clear this would be the impact of an injection – would need legal advice on this point

- DFE paper will only consider interim solution, to exclusion of a comprehensive solution with the stage 2 solution being considered as a longer term solution
From: Gepp, Brian  
Sent: 06 January 2017 15:20  
To: Sterling, David; Brennan, Mike; Armstrong, Anne  
Subject: FW: Memo from the Finance Minister

Please see for information

Thanks

From: Gepp, Brian  
Sent: 06 January 2017 15:05  
To: DfE Private Office  
Subject: Memo from the Finance Minister

Please find attached a memo from Máirtín Ó Muilleoir MLA for the attention of Simon Hamilton MLA

Thanks

Brian

Brian Gepp  
Assistant Private Secretary to Máirtín Ó Muilleoir MLA  
Minister of Finance  
Ministers Office  
2nd Floor|Clare House|303 Airport Road West|Belfast|BT3 9ED

✉️ email: brian.gepp@finance-ni.gov.uk  
📞 telephone: 02890 816710  
🌐 network: Ext: 76710
FROM: MÁIRTÍN Ó MUILEOIR MLA

DATE: 6 JANUARY 2017

TO: SIMON HAMILTON MLA

Since taking up office my officials and I have repeatedly pressed the Department for the Economy to produce a concrete plan to address the devastating financial impact of the RHI scheme. It is extremely disappointing that seven months on I am yet to receive such a plan.

Although you expect to provide me with a business case proposal in the coming days you indicated that this will only propose an 'interim' measure. Let me be clear: a piecemeal approach is not sufficient.

The handling of this scheme – from the stripping out of the cost controls contained in the equivalent British legislation, through to the failure to close the scheme promptly when the threat posed by the absence of cost controls materialised – has been characterised at least by incompetence and possibly by corruption.

In this context the only solution that is acceptable to me and to the wider public is a comprehensive one that deals with all elements of this disastrous scheme. It must be a robust solution that stacks up financially and protects the public purse. It must be legally sound, and it must be future-proofed from further abuse.
As Finance Minister I will not allow the botched management of this scheme to be exacerbated by a botched solution. A stop-gap approach is a grave mistake. I urge you to bring forward a comprehensive plan.

Máirtín Ó Muilleoir

MÁIRTÍN Ó MUilleoir MLA
Minister of Finance
DUP will come back soon to defend their plan and accuse us of sabotaging it for political grounds. It's essential therefore that we ask Mike Brennan to update the one-pager he did highlighting potential shortcomings of Hamilton approach. Even though he doesn't have the new paper, he should be able after yesterday's meeting to provide a stronger paper highlighting the areas which are likely to be of concern including legal challenge and costs and benefits. Eoin can you ask for that from Mike.

M

From: Seán Mag Uidhir
Date: Dé hAoine 6 Eanáir 2017 12:31
To: Eoin Rooney, Ciaran Quinn
Cc: Ted Howell, Máirtín O Muilleoir
Subject: Re: Draft letter to Simon Hamilton - to be made public

Ted,

I'm ok with this and there is the basis of a statement here as well.

But will await your counsel.

Thanks,
Seán

On Fri, Jan 6, 2017 at 12:21 PM, Eoin Rooney <eoin.rooney@sinnfein.ie> wrote:

Thoughts?

Dear Simon

Since taking up office my officials and I have repeatedly pressed the Department for the Economy to produce a concrete plan to address the devastating financial impact of the RHI scheme. It is extremely disappointing that seven months on I am yet to receive such a plan.

Although you expect to provide me with a paper next week you indicated that this will only propose an 'interim' measure. Let me be clear. A piecemeal approach is not sufficient.

The handling of this scheme – from the stripping out of the costs controls contained in the British legislation, through to the failure to close the scheme promptly when the threat...
The Minister accepted the recommendation in that submission, that is, that DoF approval should be granted.

14. Please set out whether, at the time, you believed the 2017 Regulations were the best way to mitigate the expense of the RHI Scheme. Please give reasons for your answer. If you did not consider the 2017 Regulations to be the best way to mitigate the expense of the RHI Scheme, please set out the action you took in relation to this and the reasons for such action.

In my view, based on legal advice and the options presented by DfE to DoF for approval, the 2017 Regulations were the best way to mitigate the expense of the RHI Scheme at that time. In this regard it is important to recognise the context at that time. It was becoming increasingly clear following the resignation of the deputy First Minister on 9 January 2017 that the devolved institutions were unlikely to be in operation until well after the Assembly elections on 2 March 2017. We were therefore, working on the basis that there was a limited window of opportunity to legislate to reduce the cost overrun with considerable uncertainty about what options might be open to us to effect change if the Assembly was not in place for some time.

This was not an optimal context in which to be addressing such a complex issue.

15. On 13 December 2016 you wrote to Mike Brennan discussing various lessons learned and suggestions for guidance that could be provided in the future to departments (DOF-09278). The Inquiry invites your comment on the contents on this email and any other lessons learned/future recommendations arising from this period in which the 2017 Regulations were developed.
Need for Action

2.1 Many of the issues around the existing Non Domestic RHI scheme, introduced in 2012, are well documented following the NIAO report\(^2\) which highlighted spending on the scheme over and above its AME allocation. Some of the key issues are as follows.

Over Compensation

2.2 For individual installations the potential for material over compensation is linked to their boiler size and load factor compared to what was assumed when the tariff was initially set. Back at the outset the specialist consultations that had been appointed to advise the Department (CEPA) assumed a typical boiler size of 50kW running 17% of the time and this drove the setting of the Medium Bio Mass Tariff. However, while CEPA work assumed a 50kW boiler for the Medium Biomass Tariff, the bulk of boilers that came through the scheme were nearly double this size (most often 99kW boilers) with less than 10% of installations being in an around the assumed typical size (ranging between 40kW to 60kW in size). In addition the actual load factor (circa 42%) of those installations claiming RHI payment is nearly 2.5 times that assumed within the CEPA work. Taken together this means that the assumed heat load for the Medium Biomass Tariff is around five times what was envisaged to be typical initially and so the initial Medium Biomass tariff, without any action, will continue to significantly over-reward installations on the pre November 2015 Medium Biomass Tariff – at rates of return that are multiples of the projected typical rate anticipated at the outset.

2.3 In addition the Medium Biomass part of the scheme was (and will continue to in the absence of action) delivering compensation and rates of returns well outside the confines of the State Aid notification for this scheme.

Unaffordable Commitments

2.4 Weaknesses within the original tariff for the Medium Biomass installations, which went unaddressed until tariff changes came into effect in November 2015, have given rise to a number of financial problems. For this tariff band the level of payments was much too high and, as set out above, many Medium Biomass installations are being over-compensated for the additional capital and operating costs (compared to the equivalent oil installation) associated with such an installation. This is further compounded by the number of installations which have acquired rights to the pre November 2015 Medium Biomass Tariff, in no small part linked to the surge in applications prior to the introduction of that revised tariff structure. In effect the current position is that there are too many installations on too high a tariff and the level of commitments are already well beyond the AME allocation for the NI RHI schemes.

2.5 This has lead to a situation where the annual, combined, cost of the Domestic and Non Domestic RHI schemes are running at Circa £50m per annum, far in excess of the current and expected AME Budgets which are as follows;

AME 16/17 £18.3m
AME 17/18 £22.3m

AME 18/19 £25.7m
AME 19/20 £28.9m
AME 20/21 £30.0m

2.6 Based on a forecasted 3% Barnett share of the allocation for the GB scheme, the projected available budget is £660m over the lifespan of the scheme. Based on those published figures, the Department has estimated that the maximum burden on the Northern Ireland budget could be £490m more than this budget. Clearly, without action, the RHI scheme will continue to exert considerable strain on the DfE Budget and the resources available to the NI Executive.

**Undesirable Behaviours**

2.7 While the unaddressed weaknesses within the original tariff for the Medium Biomass installations have given rise to a number of financial problems, they have also been associated within a poor incentives and questionable behaviours on the part of some participants within the Non Domestic Scheme. In response to this the Department commissioned PWC to provide an opinion on the design of the Scheme, the robustness of the controls in place to ensure that applicants met the scheme eligibility criteria and participants continue to operate within the scheme guidelines and to provide an opinion on whether there is evidence to support or refute the allegations received.

2.8 PWC found that in most respects the NI Scheme mirrors the provisions and criteria of the GB Scheme, with two fundamental differences, namely the absence of tiered tariffs to discourage heat waste and a suspension or degression mechanism to act as a cost control measure. PWC concluded that “the omission of these provisions in the initial design and in particular, the fact that they were not introduced early in the course of the Scheme life, was a critical omission, even when balanced against the need to facilitate and encourage a change of behaviour from non-renewable to renewable heat”. They also concluded that with the eligibility criteria in the NI Scheme are essentially those in the GB Scheme they noted that “the general lack of clarity available to participants and administrators as to what constitutes an eligible use of heat is of particular pertinence in Northern Ireland given the clear incentive which existed, due to the absence of tiered tariffs, under the NI Scheme to generate heat over and above that which is ‘useful or usable’.

2.9 PWC also concluded that there was evidence to support a number of the allegations received by the Department in relation to the NI Scheme. In their work PWC completed site inspections covering circa 14% of installations within the NI Scheme, or circa 20% by value of estimated RHI support payment. Less than half (46.77%) of the total installations inspected were assessed as Category 1 and so generating heat for an eligible purpose within the intentions of the NI Scheme. This raised significant questions around the incentives and prevalence of behaviours that can lead to the production of unnecessary heat or the production of heat for purposes not intended by the scheme.
2.10 Clearly, without action, the RHI scheme will continue to provide incentives associated with undesirable behaviours. The required action is likely to involve both enforcement activity and a dilution or, if feasible, an eradication of some of the financial incentives that may have promoted such behaviours.

**Poor VFM**

2.11 With the pre November 2015 Medium Biomass Tariff Installations being on a path towards over-compensated to a significant degree, with the prevalence of such installations and the incentives for undesirable and or abusive behaviours there are clearly significant VFM concerns with the continuance of scheme, and its Grandfathered Tariffs, without any amendment to bring it back much more in line with the originally intended outcome of the scheme.

**Public Concern**

2.12 There is very clearly significant public concern around what has arisen with the Non Domestic RHI scheme, the potential windfall for participants, the association with undesirable behaviours and the potential, if unaddressed, for the excessive cost of the scheme to act as a drain on public funding for the foreseeable future. In addition Ministers have expressed publically their intentions to bring forward a plan of action to redress many of these concerns and bring the scheme back within its original financial parameters.
Objectives & Constraints

3.1 The key objective for the Non Domestic Scheme is to undertake a legally defensible course of action that, starting in FY2017-18, can return the overall Domestic and Non Domestic RHI Schemes to a position where they no longer are spending in excess of their combined AME allocations.

3.2 Over and above the primary objective to bring the scheme, using legally defensible means, back within its budgetary envelope, there are a range of other objectives, often interlinked, that it will be important to achieve or significantly improve upon within any revised approach.

- **Operational**: A revised approach that targets and endeavours to deal with, insofar as practical, abuse or weaknesses within the original scheme.

- **Financial Parameters**: A revised approach that brings, insofar as is practical, the returns to beneficiaries back within the broad original intent of the scheme.

- **Legal**: A revised approach that is sustainable in legal and state aid terms.

- **Policy**: A revised approach that, insofar as is practical, retains the ability of the scheme to contribute towards environmental policy objectives.

- **Timing**: An approach which can be implemented in a timely fashion and so best protect public money and the achievement of environmental goals.

3.3 For the avoidance of doubt, the key objective of this business case is to undertake a legally defensible course of action that, starting in FY2017-18, can remove the perverse incentive to produce excessive heat. The options below would also have the benefit of returning the Domestic and Non Domestic RHI Schemes to a spending position where they are broadly within 10% of their combined AME budget allocations.
Options for Action, and their Costs & Benefits

Approach

4.1 Several options have been examined, and continue to be examined, to address the weaknesses within the original tariff for the Medium Biomass installations, which have given rise to the financial problems associated with the scheme. While modelling and other work has been undertaken on a number of these options none of the approaches are at a stage where they could be immediately implemented and thus address the financial objectives of this business case. Many of these options will take more time than is available to develop into fully blown, workable, solutions and a range of factors will need to be examined with regard to legal, financial, operational and budgetary considerations before they can be put forward as sound, defensible, enduring and workable ways forward. Not least amongst these factors will be the need to have further evidence on scheme usage.

4.2 At a high level the key solutions tend to revolve around one of two broad approaches:

- An approach which reduces the tariff to Medium Biomass installations thereby reducing over-payments and bring them back in line with the returns originally envisaged in the design of the incentive scheme; or

- An approach which stops future RHI payments but provides compensatory or one-off payments to buy-out the participants’ investment and allow them a suitable return on their additional expenditure to install renewable technology.

4.3 Within the two high-level options there are a number of variants that have been examined and will continue to be examined to ensure the best value and deliverable approach continues to be taken over the longer term. This business case focuses at this stage on those options that have the capacity to quickly manage the exposure of the Block Grant to payments over and above the AME envelope. However as stated previously, whatever preferred option is recommended for action now, that should be shaped in a manner that, following further review and the capture of improved information on usage, it does not limit achievement of further improvements in VFM should that be identified as possible as part of the ongoing work.

4.4 In order to develop these options into concrete, workable proposals, further work will need to be undertaken to determine, inter alia, the impact on individual participants, the appropriate tariff levels to set, whether tariff banding or tiering is required and whether or not the solutions unfairly reward some participants to the detriment of others. Other consideration will need to be examined include the viability of operating the solution (administration and IT requirements), financial/budgetary implications. Legal and state aid issues will also need to be considered in depth. For a robust solution it is likely that individual boilers will need to be inspected to ensure that the chosen option prevents any ongoing malpractice or gaming of the scheme, and that there is a sound linkage between the inspections regimes and the policy solutions.
4.5 At this stage, only a limited number of the options could be confidently and immediately enacted as enduring solutions for a scheme that could last for the best part of 20 years. Without immediate action Northern Ireland will continue to haemorrhage over £0.5m a week until such time corrective action of some form or another is in place.

4.6 As a result this business case is focuses on reasonable courses of action for the 2017-18 financial year that delivers on our key immediate financial objectives for the scheme, while at the same time providing the scope for taking forward alternative/ further refined solutions should they present the opportunities to secure improved value in a way that is fully consistent with good policy making and the appropriate, affordable incentivisation of renewable heat production.

4.7 Whichever option is adopted for action, DfE will in any case be developing and implementing new steps to address the risks of fraud and abuse of the scheme, by more rigorous enforcement of the requirements in the regulations that: heat must not be generated simply to secure financial gain; installations should be efficient in their use of heat; and the heat produced should be for a legitimate business purpose (with only secondary eligibility for domestic premises within the non-domestic scheme).

4.8 This is being taken forward in two ways:
   - Liaison with Ofgem to secure the best possible application of the existing arrangements for audit, inspection and enforcement; and
   - The procurement of a new contract for the functions of audit, inspection and enforcement, so that 100% of non-domestic RHI installations are inspected and subject to rigorous challenge in relation to eligibility and compliance with the Regulations and the intent of the scheme.

4.9 It is likely that this programme of audit, inspection and enforcement will eliminate significant illegitimate expenditure and more than pay for the cost of the work over the lifetime of the scheme. It should have the effect of reducing expenditure in 2017-18, though it is difficult to project the scale of such savings: a rough estimate of savings in 2017-18 is perhaps around £1-2 million, given that much of the excess cost will be eliminated by a tariff change depending on which option is chosen.

*Financial Year 2017-18*

4.10 It is clear that without immediate action the scheme has the ability to potentially continue to haemorrhage money in an unintended manner from the Northern Ireland budget. In that regard several options have been identified and examined in respect of the 2017-18 financial year to quickly stem the financial outflow and bring budgets back in line with original policy intentions.

4.11 Put simply an immediate move to an enduring solution runs the very real risk that a best value solution is not achieved. For example the approaches involving Compensation and Closure would need more development in a number or ways, including the ability to access AME for the compensation payments and the ability to use or access the ongoing AME streams for the
benefit of Northern Ireland. Also, the options involving imposing a lower or tiered tariff would also require further information to assess them fully, including that which will flow from planned comprehensive boiler inspections, so that the scheme can be returned, as far as possible, to the policy objectives. A comprehensive consultation approach will also be a hallmark of the longer term outcome – ensuring that whatever actions are taken are ones that command clear public confidence and are as legally defensible as possible. Ultimately this sort of policy consideration will need time to properly come together and in the circumstances currently being faced, delays only perpetuate the current unsustainable financial position unless a solution is put in place for 2017-18 while that thinking takes place. Available options for that solution, in line with the core objective of this case, are set out below.

Option 1:
No Action: The Base Case or Status Quo Option where no changes are made to the existing tariffs for Medium Biomass boilers. Pre November 2015 tariffs remain at 6.5p per kWh for all heat output for the durations of the scheme (adjusted for inflation).

Option 2:
Move all the Pre-November 2015 tariff Medium Biomass\(^3\) boilers (and also the small numbers on the Small Biomass Tariff) to the tariffs introduced in November 2015. These tariffs are 6.5p for the first 1,314 metered hours per annum then falling to 1.5p. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated. These tariffs were designed to deliver a rate of return (IRR) of Circa 12% to the typical or benchmark new entrant to the scheme based upon the information and assumptions pertaining at that time.

Option 3:
All biomass boilers receive a payment of 1.5p/kWh. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated.

Option 4:
Cease or suspend the scheme and its payments to Medium Biomass boilers until a lasting solution is developed.

Option 5:
This is based upon an arbitrary reduction in tariffs in order to increase the prospects of living within the projected AME Budget in full during 2017-18. These tariffs are 5.1p for the first 1,314 metered hours per annum then falling to 1.5p. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated. These tariffs do not have any origins in a rate of return analysis – rather they are simply budget driven.

4.12 All of the proactive options involve a significant reduction in financial commitments via an introduction of “off the shelf” (in the case of Option 2) or arbitrary (in the case of 3, 4 and 5) solutions. Under Option 1 none of the problems with the scheme are addressed at all and the
cost of policy inaction is very high. Policy inaction and doing nothing is not considered to be a
financially affordable and viable option.

4.13 Both options 2 and 3 have the potential to produce winners and losers (to different degrees).
Under Option 2 those participants who have already benefitted over and above the
remuneration levels envisaged in the initial scheme principles may be able to continue to earn
‘super’ returns for the 6.5p element of the tariff albeit the extent of those returns could be
significantly curtailed. Option 3 may mean that those participants who have not earned enough
from the scheme to date to cover their capital outlay may have genuine concern that any long-
term solution will not compensate them sufficiently. It also could be considered to be more
punitive in that regard and increase associated legal risks. Option 5 has a number of these
characteristics also, albeit to a lesser degree given that it is less draconian that Option 3.

4.14 Option 4 clearly is unsatisfactory to those participants who entered the scheme in good will and
will have invested large sums of money only for anticipated repayments to be suspended. This
will evidently lead to cash-flow problems for legitimate participants and the legality of it may be
challenged.

Cost of FY2017-18 Options

4.15 A high level analysis of the likely costs of funding the options for 2017-18 has been undertaken.
In order to make this assessment, actual data on past usage and payments to participants of the
scheme have been used. The analysis is somewhat complicated by the fact that different
participants entered the scheme at different times over a four year period and therefore
metered heat is not available for all participants for the same duration. However, while payment
and usage information is available for a large number of installations the database information is
not complete and some installations are not yet accredited while others have yet to submit
invoices for payment. For example, for around 800 participants only one quarterly invoice has
been received/paid to date which only gives one data point on usage. In addition, of the
approximately 2100 registered meters, approximately 200 are still at the application stage and
we have therefore no actual data on heat production for this group of users.

4.16 It is therefore difficult to assess precisely, in all cases, what the ‘normal’ or expected annual heat
load supported by the scheme will be in a typical year and therefore the costs of subsidising the
heat generated. As a result some adjustments and assumptions relating to the data have had to
be made to gross up the estimates to the full population of installations for the full year. In the
case of those who have only submitted a few, one or no meter readings at all, in order to
estimate the likely average annual heat load it has been necessary to infer an annual heat load
by factoring up actual data where only one, two or three quarters of data are available in any of
the four years over which the scheme has been running. In addition costs from the sample of
C1800 have been uplifted for the whole C2100 installations on a “pro-rata” type basis, taking
account of relative differences in installed capacity etc. Costs have also been uplifted for the
likely incoming inflation uplift due in April 2017 and associated with the indexation of RHI
payments.
The analysis below has not made any allowance for a behavioural correction effect associated with tariff changes or the effect of the renewed drive for inspections. Assuming that boilers continue to run at their estimated current annual load factor (as inferred by historic trends and estimation), the following table sets out the estimated cost of running the Non Domestic scheme for FY2017-18 under the current unchanged tariffs, and the alternative courses of action. The projections also exclude two major CHP plants which, although they are in the application system, they are expected to be some time away from commissioning and are not yet being accrued for within AME.

**Estimated Cost for FY17-18 Domestic & Non Domestic**

<table>
<thead>
<tr>
<th>Option</th>
<th>Cost of running scheme for 2017 / 18 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1: Do Nothing</td>
<td>49.7</td>
</tr>
<tr>
<td>Option 2: Introduce November 2015 tariffs</td>
<td>25.3</td>
</tr>
<tr>
<td>Option 3: All Medium Biomass 1.5p</td>
<td>14.4</td>
</tr>
<tr>
<td>Option 4: Suspend/close/zero medium biomass tariff</td>
<td>5.3</td>
</tr>
<tr>
<td>Option 5: Bespoke Tariff to keep within budget (5.1p &amp; 1.5p)</td>
<td>22.3</td>
</tr>
</tbody>
</table>

For the avoidance of doubt this includes the projected cost of the Domestic Scheme (£3.2m) and, as noted above, no allowance has been made for a behavioural correction effect in reducing usage and payments. In addition, there are significant numbers of applications with the database and system that are not yet live – while the modelling work commenced using a version of the OFGEM data base which has since been updated in the last number of weeks in relation to the number of live and pending accreditations. The modelling to date is grossing up for these (from C1,800 on the database to the C2,100 full population, but some of these application could be rejected – particularly those in the system for quite some time). This factor could have quite a material big influence on the overall estimation if a large number of the remaining applications were rejected. Finally, given the one year approach adopted in this business case an NPV / NPC analysis does not add any value in assessing the difference between options.

All of the options above which involve moving away from the pre November 2015 Medium Biomass Tariffs have the potential to deliver an interim financial outcome for 2017-18 which is much lower than current commitments and much more in keeping with expected budget ceilings.

Option 2 is considered to be the best value, practical, approach for 2017-18 and the indications are that this approach would substantially, manage costs back towards the £22.3m AME allocation in that year. Policy inaction and doing nothing (i.e. Option 1) is not considered to be a financially affordable and viable option.

**Impact on Benefits**

These calculations are contained with a suite of detailed modelled and spreadsheets.
4.21 Options which involve reducing tariffs will reduce the overall cost of the scheme. It is plausible that it will also lead to a reduction in heat produced which runs the risk of not meeting the Executive’s target for renewable heat (albeit some of that heat reduction plausibly will be the eradication of non useful heat production). A reduction in heat produced will also reduce the benefits associated with CO₂ and employment effects. Without knowing the projected reduction in heat produced (and also potentially the proportion between useful and non-useful heat production avoided) it is not possible to estimate the reduction in benefits associated with options above. That being said, of the do something options, Option 2 is likely to have the lowest impact on heat reduction and the associated foregone CO₂ and employment benefits.

Note on Estimation
4.22 This has necessarily been a high level analysis of the costs of the RHI scheme and of the potential options to bring the levels of return to participants’ investments within reasonable levels. It should be noted that these results are very dependent on a small number of high impact assumptions regarding actual and projected heat demand. Any small variation in the assumed demand will have a major impact on the projected costs of the scheme.
Non Monetary & Distributional Assessment

Carbon Reductions

5.1 Except for the first option, each of the others will result in reduction in the amount of heat produced – a potential non-monetary impact. For heat that was being produced for useful purposes and offsetting heat produced by oil boilers this could result in losses in CO₂ savings if some participants revert to fossil fuels to meet their heating requirements. That said, for the first option, the non-monetary value of some of the heat currently being produced is highly questionable at best.

Maximising Northern Ireland Spending Power

5.2 Access to national resources and regional fairness within nationally controlled expenditures is a reasonable expectation and motivation of public representatives within the devolved areas. The options in this regard deliver very different outcomes. In addition outcomes are not symmetrical but instead pivot around the projected AME allocation – so there is a loss to the NI DEL in options which exceed the AME Budget, but there is also a loss to NI plc of options which fail to utilise the AME allocation in full.

<table>
<thead>
<tr>
<th>Option</th>
<th>FY17-18 Cost (€m)</th>
<th>AME All’n (€m)</th>
<th>Loss to NI Budget (€m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1</td>
<td>49.7</td>
<td>22.3</td>
<td>27.4</td>
</tr>
<tr>
<td>Option 2</td>
<td>25.3</td>
<td>22.3</td>
<td>3.0</td>
</tr>
<tr>
<td>Option 3</td>
<td>14.4</td>
<td>22.3</td>
<td>(7.9)</td>
</tr>
<tr>
<td>Option 4</td>
<td>5.3</td>
<td>22.3</td>
<td>(17.0)</td>
</tr>
<tr>
<td>Option 5</td>
<td>22.3</td>
<td>22.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>

5.3 Options which deliver a cost closest to the AME budget limit objective will tend to do best against this objective. Outside of the budget driven Option 5, the favoured Option 2 gets closest to this objective where as some of the approaches which be considered more draconian diverge to a greater extent.

Distributional Effects

5.4 Each of the options has the potential to have different impacts on different participants in the scheme. Different participants will be better or worse off monetarily depending on the option adopted – and some will be more impacted than others by the move.

5.5 Under Option 1, the status quo, all of the participants who are being over-compensated will remain so; indeed others may recognise the possibility of gaming the system and could potentially adopt malpractice with regard to excess heating. The significant impact on the public purse would remain and, within the distributional impact, the key loser within this option is ultimately the public purse and those public services that would otherwise have utilised the funding over and above the AME allocation. In effect this involves a continued transfer of resources from the DEL (the block) towards scheme participants.
5.6 Options 3 and 4 are likely to result in across the board losers with many or all participants in the scheme being affected. However, the degree of loss will vary. Perversely, a scheme abuser who has artificially inflated their heat output will have built up a much greater financial cushion for these changes compared, for example, to a “genuine” low load factor participant who has not sought to produce beyond the heat required by their commercial need. This is also a distributional aspect which is also displayed, albeit to a much reduced extent, in Option 5. These options do, however, discontinue the transfer of resources from the DEL (the block) towards scheme participants.

5.7 Option 2 will result in significant (but not total) curtailment of the winners (i.e. those being over compensated) – projected ongoing returns will be reduced for all those at risk of over-compensation but some (perhaps Circa 200 installations) will remain on track to earn beyond the original parameters of the scheme unless and until the longer term approach introduced a correction. Broadly speaking the majority of the participants should see returns approach those initially envisaged when the scheme was established. Those operating at or below 1314 hours should not be impacted at all. This option may still result in over-rewarding (albeit to a much reduced degree) those producing heat for both appropriate and unfit purposes during the first tier. Option 2, however, is projected to (largely) discontinue the transfer of resources from the DEL (the block) towards scheme participants. It should be noted that differences in rates of return for installation owners, depending on load factors, is also a feature of the GB scheme.

5.8 Under all the interim options the action is forward orientated and the arrangements do not involve a retrospective or correction element for previous over-compensation (this might be more capable of being introduced via more sophisticated long-term solutions). This may bring up questions of fairness among the participants who have been acting in good faith and have not been rewarded for malpractice. However a longer-term solution may look to issues of clawback or alternatives that bring about a similar outcome.
Risk Assessment

6.1 There are a number of risks associated with the potential courses of action in this business case. At its heart the choices involve a trade off between the budgetary risks of the current position and the legal risks of moving to an approach which, depending on the option, is ultimately less generous to some or all scheme participants within the Medium Biomass Tariff.

Budgetary

6.2 As Option 1 is characterised by policy inaction it carries with it the inevitability that the 2017-18 AME budget will again be breached – and the block again will carry a multi million pound adjustment or penalty.

6.3 Those options which involve the most dramatic reduction in payments clearly carry the least risk around breaching the AME Budget – albeit they might be considered to carry greater legal risk.

6.4 The preferred interim approach would appear to bring the scheme broadly back on track to its AME allocation – however, there are risks both ways. The estimate for 2017-18 is around £25m against an allocation of £22.3. There are some estimation risks, described earlier, which might mean that the actual could be beyond the £25m estimate depending on the actual invoiced heat loads compared to that projected. However, there are also material risks (again described earlier) on the other side around whether or not an appreciable behavioural correction effect occurs with the move to the November 2015 tariffs, and whether there might be a marked reduction in heat and a marked reduction in payments compared to that estimated and budgeted for. Either way, the usage information which will be gleaned from in the coming year will be of significant benefit in terms of developing and assessing any further changes and refinements to the approach.

6.5 In addition all options face budgetary uncertainty around the remaining applications that have yet to gain accreditation status. Many of these applications appear to be awaiting accreditation for well in excess of a year now and so it is difficult to gauge precisely how many might now, in the end, gain that accreditation – particularly those there from pre November 2015 cut off point.

6.6 Close monitoring will be required during 2017-18 to gauge these various budgetary risks.

Financial Return Risks

6.7 As Option 1 is characterised by policy inaction there would be no impact on the Rate of Return for those in the pre November 2015 Tariff for Medium Biomass. Many of those rates of return are on a pathway to be hugely excessive, with three figure IRRs for projected some.

6.8 Reducing tariffs to the November 2015 level will substantially reduce the costs of the scheme and may bring it within AME limits, however, there are risks associated with it and the other options. While this Option 2 is preferential to the do nothing option it should be recognised that it makes great inroads into the problem of over compensation, it will not eliminate it in all cases.
The issue of past over-compensation, before 2017-18, will be considered as part of the review considering the approach for 2018-19 and beyond.

6.9 By maintaining the 6.5p tariff, even if only for a limited number of hours, the preferred option retains the possibility that some participants (perhaps Circa 200) might still be over-compensated to an extent where both retrospective action (such as clawback) as well as prospective action (such as reducing future payments) might be needed.

6.10 For those participants who may not have a valid use for heat, and with investment already committed into a boiler, they may well still be incentivised to produce wasteful heat for 1314 hours per year and still receive payment under this option albeit the commitment to inspect all installations and to tackle abuse of the scheme may itself act to address this issue to some extent.

6.11 Option 3 may mean that those participants who have not earned enough from the scheme to date to cover their capital outlay may have genuine concern that any long-term solution will not compensate them sufficiently in line with the original intent of the scheme. This may lead to cash-flow problems for legitimate participants and the legality of it may be challenged. Indeed this approach (as could Option 5 to a lesser extent) could be more financially painful for those who have not displayed abuse or undesirable behaviours through artificially inflating their heat production to maximise their return in the past. In a nutshell this option is likely to involve an overshoot in the Rate of Return correction for a significant number of existing installations – placing them at a material disadvantage compared to the original stated intent of the scheme (again as could Option 5 to a lesser extent).

6.12 Option 4 clearly is unsatisfactory to those participants who entered the scheme in good faith and will have invested large sums of money only for anticipated repayments to be suspended. This will evidently lead to cash-flow problems for legitimate participants and the legality of it may be challenged. In a nutshell this option is likely to involve an even greater overshoot in the Rate of Return correction for a significant number of existing installations – placing them at a very material disadvantaged position compared to the original stated intent of the scheme.

Policy Risks

6.13 As Option 1 is characterised by policy inaction there would be many policy risks – in particular, setting aside the financial risk there are clear policy risks associated with the continued tacit acceptance of maintain incentives to produce unnecessary heat.

6.14 The overcompensation in the current scheme was a result of incorrect tariffs which were based on assumptions relating to typical boiler sizes and running hours. The favoured solution also relies on a tariff based approach albeit significantly less than the original tariff. While lessened there still remains the risk that the tariff levels set will not achieve the policy objective.

6.15 As was always the case with a tariff based approach there is a risk that other assumptions underlying the analysis may also change once the tariffs are set. For example the cost of fuel and
of wood pellets can vary over time. If the differential in the cost of oil and wood pellets were to fall below the 1.5p tariff there is the potential that even this tariff would add a little further to any over-compensating. To avert this possibility regular tariff reviews will need to be established going forward.

6.16 There are deficiencies (see above) in the data available to undertake accurate assessment of RHI costs. This presents a risk in the reliability of the projected costs of the options. However, given that tariff reductions are likely to lead to a reduction in any unnecessary heat production it is likely that overall heat production will fall under all of the options. The cost of the options may therefore be overstated (see section 7).

6.17 The original policy objective was to encourage the uptake of renewable heat to meet the Northern Ireland Executive’s renewable energy targets. A reduction in tariffs may result in a decline in the percentage of heat produced from renewable sources inhibiting the ability of the Executive to meet the policy objective of the scheme.

Legal Risks

6.18 Each of the proactive options has the ability to create winners and losers. Some are also more draconian and painful for participants than others. If the solution is seen to be discriminatory between participants, for example based on dates of installation of boilers, then some participants may seek legal action. Clearly the status quo option involves no legal risk as it is characterised by inaction on the financial problems associated with the RHI scheme.

6.19 The incentive scheme was designed such that tariffs would be ‘grandfathered’. The reduction in the tariff to the November 2015 levels for all Medium Biomass boilers effectively removes this grandfathering precedent. Some participants, particularly those with low load factors may argue that they cannot achieve the return they were ‘promised’ in entering the scheme in good faith and may seek legal redress. However, part of the response to this type of challenge will be to argue that the initial tariffs were well beyond the publicly state intentions of the scheme and the imposition of the Post November Tariffs is a reasonable interim approach as those tariffs were in line with the intent of the scheme on return to applicants (based upon the information available at that time).

6.20 The more draconian options (options 3 to 5) involve much greater reductions in compensation and returns to applicants. Those options are not grounded in any logic associated with the publicly stated original intent of the scheme and there would be concern that this source of legal defence would not be available to defend any such courses of action. Formal, written, legal advice is currently awaited on these matters and will be incorporated or appended to this business case in due course.

6.21 The main legal risks in relation to the interim solution are of challenge on one of two main possible grounds:
6.22 The key legal arguments that support the proposed intervention include that:

- the expected rates of return were repeatedly and prominently set out at the launch of the scheme, and no one can reasonably argue that the excessive rates of return that are now in place could have been legitimately expected;
- in particular, the rates of return are far in excess of the amounts underlying the approved position under State Aid;
- the payments affected by the change are expected future income – a type of “property” that the Courts are less protective of than current existing assets;
- the reduction in the tariff is clearly and demonstrably in the public interest because otherwise there will be loss of other public benefits from much better use of public expenditure and it cannot conceivably be in the public interest for applicants to be incentivised to generate excessive heat;
- the proposed approach provides a sustained reasonable level of return on the investments made; and
- it is planned that there will be full consultation with all applicants in the course of the next few months to develop a permanent and fair solution – which could if necessary correct any “rough edges” in the approach commenced for 2017-18.

6.23 The favoured approach also involves changing the tariff for a scheme that was notified to the European Commission. The new tariffs also involve aid, albeit much reduced, but this will require a fresh notification to the European Commission. This is currently being taken forward urgently and within the timescale planned for the commencement of the new regulations. However, navigation of the EU process cannot and should not be taken for granted.

Operational Risks

6.24 The scheme is administered by Ofgem on behalf of the Department. Any change in tariff must be able to be implemented on their IT and operational systems and, as a result, there are operational risks in taking forward what is essentially an emergency change to tariff structures. Ofgem has provided the Department with verbal high-level assurances that the existing IT
systems can accommodate calculating the proposed tariff changes to pre November 2015 installations given that it is the same approach already applied to post November medium biomass installations.

6.25 However, a significant challenge will be to determine the precise heat usage of each pre November installation immediately prior to the introduction of the tariff changes. Claimants may be reluctant to provide meter readings as this will be used to determine when they drop to the second tier (after 1314 hours) and cap (after 400k hours). Subject to legal advice, it is proposed to write to claimants requiring them to provide photographic evidence of their meter readings on a specified date (potentially 31 March) within a specified period (1 April – 30 April). This will have resource implications in terms of time and staffing for Ofgem who will be responsible for issuing the letters to claimants, processing responses from claimants and responding to on any queries from claimants. Ofgem will also be responsible for pursuing claimants who do not respond within the required time limit and for imposing any sanctions or penalties. Ofgem’s capacity to receive photographic evidence of this nature has yet to be determined.
Affordability & Budgetary Sensitivity

7.1. The preferred approach Option 2 involves the application of the November 2015 Tariffs for those on the Medium Biomass Tariff prior to that. The budget or spend estimate of that in the earlier analysis is based upon:

- Actual Data on Heat Usage for a large number of installations,
- Adjust, projected or pro rata estimated of Heat Usage for those with incomplete or no data.
- Uplift for Indexation (inflation).
- No allowance for a behavioural correction effect associated with the tariff changes or the effect of drive for inspections.
- No allowance for the new inspection leading to claims being disallowed etc.
- No allowance has been made for a drop off in accreditation for the pending applications within the system.

7.2. As a result, that estimate might be characterised as a central to high estimate because it assumes no behavioural correction or any financial impact from the inspection process being brought forward. A second estimate has also been produced, it is more speculative but it does attempt to make some sort of allowance for a behavioural correction effect associated with the tariff changes. In effect it assumes that the distribution of load factors makes a shift toward the two steps being introduced into the tariff – i.e. there are gravitations in the distribution towards loads around the tier at 1314 hours and the cap at 400,000kWh. The diagram below gives a graphical illustration of this.

![Diagram: Illustration of Higher and Lower Load Assumptions](image-url)
7.3. While the new tariffs might have a material behavioural effect and gravitate loads towards the Cap and the Tier, this might not necessarily generate major savings. The downward gravitation towards the cap reduces unsubsidised heat under the new tariffs, while the downward gravitation towards the tier reduces heat subsidised at a rate of only 1.5p.

<table>
<thead>
<tr>
<th>Option</th>
<th>W/O Behavioural change</th>
<th>With Behavioural change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1</td>
<td>49.7</td>
<td>-</td>
</tr>
<tr>
<td>Option 2</td>
<td>25.3</td>
<td>24.6</td>
</tr>
<tr>
<td>Option 3</td>
<td>14.4</td>
<td>12.3</td>
</tr>
<tr>
<td>Option 4</td>
<td>5.3</td>
<td>5.2</td>
</tr>
<tr>
<td>Option 5</td>
<td>22.3</td>
<td>21.8</td>
</tr>
</tbody>
</table>

**Pending Applications**

7.4. The most material budgetary uncertainty revolves around pending applications. Spending is accrued on applications from receipt, and payments only become payable upon the first invoice received after accreditation (covering usage back to the date of application). The remaining pending applications have been in the system for quite some time (well over a year) and appear to have a greater concentration of the “more difficult to deal with” accreditation cases. This does lead to a question as to what proportion of the pending cases will actually get through the accreditation process – particularly those from the pre November 2015 era.

7.5. With Cica 100 pre November 2015 applications still within the system, involving RHI payments of about £1m a year (on a changed 6.5/1.5p basis), there still will be significant expenditure being accrued on these applications, with some doubt whether they will all gain accreditation.

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5 Please note that the behavioural change modelled here is not a projection of it. The scope for behavioural change is not well known at this stage and the outcome could vary significantly from that modelled.
Monitoring, Management & Next Steps

**Monitoring**

8.1. Monitoring of the proposed 2017-18 tariff changes will be of particular importance for a number of reasons. There are budgetary risks (upside and downside risks) to consider and there is also expectations that the distribution of the typical loads will alter following the introduction of tiering and the cap. This could help provide valuable information on load changes, potential abuse, malpractice and unnecessary heat production in the past. It is also likely to provide a better insight into the “true” typical heat load that should be used which will assist to any refinements or changes that are required to the approach to ensure it delivers best value beyond 2017-18.

8.2. The monitoring will be undertaken by the RHI Team and DfE Finance Division.

**Management**

8.3. A new RHI Taskforce has been established to take forward all aspects of RHI development and an, an outline of the structure is as follows;

**RHI Taskforce Organisation Chart**

8.4. This new team have taken on responsibility for all RHI development and will be in place for a minimum of 6 months after which it will be reviewed. Following that the Policy & Scheme Management Section will take on responsibility for future operations after a full assessment of the resources required to deliver requirements.
8.5. Two key areas of work will involve bringing forward new Regulations for both the initial and final stages. In respect of the initial stage DSO have taken on responsibility for this and they are already progressing in line with business plan options. These draft regulations are at an advanced stage and can be processed quickly following Executive decision on the way forward. In parallel notification to EU to change the scheme is also in process under the management of Stephen Moore in DfE. The timing of notification for a change in state aid conditions will be in line with the commencement date for the start of the new scheme i.e.; two months following notification.

8.6. Ofgem have been contacted regarding the operational changes required and as they are in line with the post November 2015 terms that are already on their system, they do not foresee any implementation difficulties within the two month window.

8.7. Other activities being completed by the RHI Taskforce include the development of a full business plan for the next stage following consultation. The further development of the Financial Model. The procurement of a regime of 100% inspections and enforcement and a review of the Contract Management arrangements with Ofgem to be undertaken by an ex CPD Grade 6, Dave Glover.

Next Steps

8.8. In light of the critical need to take immediate action to reduce the financial cost to the NI Executive from the RHI scheme, the options assessed in this Business Case have included only those that were deliverable by the start of the 2017-18 financial year. In addition, whilst the assessment has been based on the best information available at short notice, there may also be scope for further refinement. It is for these reasons that whilst this Business Case sets out the approach for the 2017-18 financial year, further work will now be taken forward to refine the approach for the 2018-19 year and beyond.

8.9. In the first instance this will involve a comprehensive review of the assumptions and calculations in respect of the estimated future costs of the scheme. This will inform the assessment of refined options to reduce the ongoing cost of the scheme to within the expected budget, consistent with the original objectives of the scheme including the delivery of a fair return for investors, value for money, and adherence to State Aid conditions. The intention is that a policy options paper will be produced by early summer for consultation with RHI scheme participants over the summer period.

8.10. Whilst every effort will be made to implement the revised approach from April 2018, previous experience would suggest that external factors may prevent the achievement of this target. In this context, a decision will be taken in November 2017 as to whether the refined approach can be implemented by the start of 2018-19 or whether the approach for 2017-18 will need to be implemented again for a further year.
8.11. In order to ensure that the scheme remains fit for purpose, and dependent on a distinct NI scheme continuing to operate, there should subsequently be ongoing monitoring of the market by department officials with a formal review (at least annually) to reflect changing circumstances. This would include any changes in respect of the cost of fuel inputs or the policy approach in Westminster, to ensure that installation owners in NI receive a fair return and not excess profits.
Rate of Return Analysis

Challenges

9.1 Typically a rate of return analysis would be undertaken at the outset of a project, gauging the potential return on offer from a projected set of cash flows over the full term of an investment life. These are not the circumstances with this case as this involves first stage action to redefine the terms of existing investments, put in place in the past and with many years still to run. In this case, past investments have been made, have been operating for about 1 to 3 years, with perhaps a further 17 to 19 years still to go. This business case is also only looking at the terms for those investments for this incoming year, but the financial terms on offer for those investments for all the subsequent years have yet to be determined. All this makes it extremely challenging to analyse rate of return, and in the circumstances an annuitized approached is being used to overcome these hurdles and provide a reasonable assessment of the returns inherent in the incoming financial year as a result of this first stage action.

Approach

9.2 The action proposed involves imposing tariff changes on investments made from 2013 to autumn 2015. The approach is one which endeavours to look at the capital and operating environment during that period, and seeing what the imposition of the proposed interim tariff changes will have on returns during the 2017-18 financial year – and then compares those with the broad objective of the scheme. It will also focus on the 99kW biomass boiler scenario as this was, by far and away, the most popular boiler size during the investment period in question.

9.3 The action involves the restructuring of the tariff in a way that will radically alter the incentives at different loads. The introduction of the tier will mean that the financial incentive inherent in RHI payments to produce heat, in any one year, beyond the first 1314 hours (setting aside other legitimate reasons to produce heat) will plummet with the tariff drop off from 6.5p to 1.5p. The use of the tier in tariff design is also a means to reduce the variability in rates of return by load factor as the tier, in many ways, is the means to deliver that rate of return. Finally, given some of the issues raised by PWC, there is some level of expectation that behavioural changes associated within imposing this tariff design might well include some installations’ loads gravitating toward the tier. As a result the rate of return analysis in the business case will examine returns inherent in loads around the tier at 1314 hours.

9.4 As set out above the approach is one which endeavours to look at the capital and operating environment during the period in question, and seeing what the imposition of the proposed interim tariff changes will have on returns during the 2017-18 financial year. To do that the Department has looked at the information it has on the investment and operating environment at the outset of that period (using cost information within the CEPA Report) and then again at the end of that period (using cost information from the DETI Business Case in autumn 2015).

9.5 The results of that work, set out in detail at Annex B, indicate that the imposition of the proposed tariff design changes are, on an annualised basis, a reasonable approach to reinstating the original rate of returns parameter for the 2017-18 year at loads around the tier.
Summary & Conclusions

10.1 The key objective of this business case is to undertake a legally defensible course of action that, starting in FY2017-18, can return the overall Domestic and Non Domestic RHI Schemes to a position where they no longer are spending significantly in excess of their combined AME allocations.

10.2 In effect the current position is that there are too many installations on too high a tariff and the level of commitments are already well beyond the AME allocation for the NI RHI schemes. This has lead to a situation where the annual, combined, cost of the Domestic and Non Domestic RHI schemes are running at Circa £50m per annum. Clearly the continuation of the current approach is unaffordable, unsustainable and unacceptable.

10.3 The favoured approach for 2017-18, Option 2, aims to substantially reduce or eliminate the excessive impact on the block of the cost of the RHI scheme, whilst at the same time is deliverable and reduced risk of legal challenge than the alternative “do something” options. As further information becomes available the approach will be refined to ensure that best value options are maintained for the longer term. That will include, in parallel to option 2 being implemented a comprehensive inspection programme, compliance measures, enforcement, annual reviews, capture of more comprehensive information (including on usage) and consultation on the way forward. That work, on enforcement, could have a material effect on the cost of the scheme over and above the cost reductions modelled in this business case.
Annex A:

The Detailed Figures Contained with a suite of Spreadsheet Models.
## Annex B

### CEPA 2012: Capex & Opex Environment (Dec 2010 Prices)

#### 50kW Biomass Boiler

<table>
<thead>
<tr>
<th></th>
<th>Capex £/kw</th>
<th>Opex £/kW/PA</th>
<th>Size kW</th>
<th>Life yrs</th>
<th>Up Front Barrier</th>
<th>Ongoing Barrier</th>
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</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>608.00</td>
<td>4.60</td>
<td>50</td>
<td>20</td>
<td>3951</td>
<td>828</td>
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<tr>
<td>Oil</td>
<td>97.00</td>
<td>3.45</td>
<td>50</td>
<td>15</td>
<td>0</td>
<td>0</td>
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</table>

#### 200 kW Biomass Boiler

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<thead>
<tr>
<th></th>
<th>Capex £/kw</th>
<th>Opex £/kW/PA</th>
<th>Size kW</th>
<th>Life yrs</th>
<th>Up Front Barrier</th>
<th>Ongoing Barrier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>486.00</td>
<td>4.60</td>
<td>200</td>
<td>20</td>
<td>5364</td>
<td>878</td>
</tr>
<tr>
<td>Oil</td>
<td>68.00</td>
<td>1.47</td>
<td>360</td>
<td>15</td>
<td>0</td>
<td>0</td>
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</table>

**Estimated for 99kW Biomass Boiler Using Average of 50kW and 200kW**

<table>
<thead>
<tr>
<th></th>
<th>Capex £/kw</th>
<th>Opex £/kW/PA</th>
<th>Size kW</th>
<th>Life yrs</th>
<th>Up Front Barrier</th>
<th>Ongoing Barrier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>547.00</td>
<td>4.60</td>
<td>99</td>
<td>20</td>
<td>4658</td>
<td>853</td>
</tr>
<tr>
<td>Oil</td>
<td>82.50</td>
<td>2.46</td>
<td>99</td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Rate of Return (Annualised)**: 12.00%

**Frequency (No. Payments p.a.)**: 4

#### Annuated

- Biomass Capex: £6,945 (Quarterly as per CEPA)
- Oil Capex: £1,149 (Quarterly as per CEPA)
- Additional Annualized Cost: £5,796
- Annuitised Initial Barrier Costs: £59
- Ongoing Barrier: £853
- Annual Opex Difference: £212

#### Annual / Annualised Cost

- £7,458 (A + B + C + D)

**Heat Output @ Tier**: 130,086 (99kW x 1314)

**Cost per kW**: 5.73p

**CEPA Fuel Differential**: -0.10p (See CEPA 2012 Report)

**Overall Cost (Dec 2010 Prices)**: 5.63p

**Cost Indexed to Nov 2016**: 16.2% (CEPA only uprated to Dec 2011)

**Cost Indexed to Nov 2016**: 6.55p (As per latest available RPI figure)

**Implied RoR @ Tier for 99kW**: 11.86% (Implied RoR with a 6.5p Traff)
**Mid 2015: Capex & Opex Environment (Sources incl DETI Business Case)**

**Aim of Tariff Design**
- Up to the Tier (1314hr)  6.40p  With excess over 1.5p to reward capital
- From Tier to Cap  1.50p  For the then fuel / opex cost differential

**Capital Cost**
- 99kW Biomass Boiler  £50,000 As per DETI Business Case
- Implied Cost per kW  £505  Case notes Capital Costs had fallen
- 99kW Oil Boiler  £3,000
- Implied Cost per kW  £30

**Rate of Return (Annualised)**  12.00%
**Frequency (No. Payments p.a.)**  4

**Annuitised**
- Biomass Boiler  £6,412
- Oil Boiler  £422

**Annualised Capital Cost**  £5,990

**Heat Output @ Tier**  823878 (99kW x 1314)
**Cost per kWh for Capital**  0.73p
**Cost total (Sept 2015 Prices)**  2.23p  4.6p plus the 1.5p for Fuel / Opex

**Cost Indexed to Nov 2016**  2.28p  As per latest available RPI figure

**Implied RoR @ Tier for 99kW**  12.90%  Implied RoR with a 6.5p Traiff
### Profile of the Unmodelled Data (Excluding Rejected, Cancelled & Terminated)

<table>
<thead>
<tr>
<th>Status</th>
<th>Total No</th>
<th>Pre Nov</th>
<th>Post Nov</th>
<th>Biomass</th>
<th>Non-Bio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Boilers</strong></td>
<td>291</td>
<td>147</td>
<td>144</td>
<td>274</td>
<td>17</td>
</tr>
<tr>
<td>&quot;Live&quot; Status</td>
<td>149</td>
<td>78</td>
<td>71</td>
<td>145</td>
<td>4</td>
</tr>
<tr>
<td>&quot;Pending&quot; Status</td>
<td>142</td>
<td>69</td>
<td>73</td>
<td>129</td>
<td>13</td>
</tr>
<tr>
<td>&quot;Biomass&quot;</td>
<td>274</td>
<td>144</td>
<td>130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;Non-Biomass&quot;</td>
<td>17</td>
<td>3</td>
<td>14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Pre November Applications

<table>
<thead>
<tr>
<th>Status</th>
<th>No.</th>
<th>Avg Cap</th>
<th>1st Lap</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Live Status</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biomass</td>
<td>78</td>
<td>90kW</td>
<td>7045kW</td>
</tr>
<tr>
<td>Non-Biomass</td>
<td>0</td>
<td>0kW</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pending Status</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biomass</td>
<td>66</td>
<td>92kW</td>
<td>6100kW</td>
</tr>
<tr>
<td>Non-Biomass</td>
<td>3</td>
<td>19kW</td>
<td>56</td>
</tr>
</tbody>
</table>

#### Post November Applications

<table>
<thead>
<tr>
<th>Status</th>
<th>No.</th>
<th>Avg Cap</th>
<th>1st Lap</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Live Status</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biomass</td>
<td>67</td>
<td>190kW</td>
<td>12729kW</td>
</tr>
<tr>
<td>Non-Biomass</td>
<td>4</td>
<td>23kW</td>
<td>91</td>
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<tr>
<td><strong>Pending Status</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biomass</td>
<td>63</td>
<td>143kW</td>
<td>8999kW</td>
</tr>
<tr>
<td>Non-Biomass</td>
<td>10</td>
<td>17kW</td>
<td>168</td>
</tr>
</tbody>
</table>

#### Grand Totals

- No of Boilers: 291
- Capacity (kW): 35188

### Implications for Modelling of the Grossing Up

- **Live**: For Option 2 this should be uplifted by typical cost per kW for all Biomass using Option 2 Modelling
- **Pending**: For Option 2 should be uplifted by typical cost per kW for all Biomass using Option 2 Modelling
- **Live**: For Bascase the pre Nov applications should be uplifted by typical cost per kW for all Biomass using Option 1 Modelling
- **Live**: For Bascase the post Nov applications should be uplifted by typical cost per kW for all Biomass using Option 2 Modelling
- **Pending**: The same approach as per above in the base case.
- All adjusted by 284/291 (to cover the 7 Database Modelled cases that have since been cancelled / terminated)
Options for Action, and their Costs & Benefits

Approach

4.1 Several options have been examined, and continue to be examined, to address the weaknesses within the original tariff for the Medium Biomass installations, which have given rise to the financial problems associated with the scheme. While modelling and other work has been undertaken on a number of these options none of the approaches are at a stage where they could be immediately implemented and thus address the financial objectives of this business case. Many of these options will take more time than is available to develop into fully blown, workable, solutions and a range of factors will need to be examined with regard to legal, financial, operational and budgetary considerations before they can be put forward as sound, defensible, enduring and workable ways forward. Not least amongst these factors will be the need to have further evidence on scheme usage.

4.2 At a high level the key solutions tend to revolve around one of two broad approaches:

- An approach which reduces the tariff to Medium Biomass installations thereby reducing over-payments and bring them back in line with the returns originally envisaged in the design of the incentive scheme; or

- An approach which stops future RHI payments but provides compensatory or one-off payments to buy-out the participants’ investment and allow them a suitable return on their additional expenditure to install renewable technology.

4.3 Within the two high-level options there are a number of variants that have been examined and will continue to be examined to ensure the best value and deliverable approach continues to be taken over the longer term. This business case focuses at this stage on those options that have the capacity to quickly manage the exposure of the Block Grant to payments over and above the AME envelope. However as stated previously, whatever preferred option is recommended for action now, that should be shaped in a manner that, following further review and the capture of improved information on usage, it does not limit achievement of further improvements in VFM should that be identified as possible as part of the ongoing work.

4.4 In order to develop these options into concrete, workable proposals, further work will need to be undertaken to determine, inter alia, the impact on individual participants, the appropriate tariff levels to set, whether tariff banding or tiering is required and whether or not the solutions unfairly reward some participants to the detriment of others. Other consideration will need to be examined include the viability of operating the solution (administration and IT requirements), financial/budgetary implications. Legal and state aid issues will also need to be considered in depth. For a robust solution it is likely that individual boilers will need to be inspected to ensure that the chosen option prevents any ongoing malpractice or gaming of the scheme, and that there is a sound linkage between the inspections regimes and the policy solutions.
4.17 The analysis below has not made any allowance for a behavioural correction effect associated with tariff changes or the effect of the renewed drive for inspections. Assuming that boilers continue to run at their estimated current annual load factor (as inferred by historic trends and estimation), the following table sets out the estimated cost of running the Non Domestic scheme for FY2017-18 under the current unchanged tariffs, and the alternative courses of action. The projections also exclude two major CHP plants which, although they are in the application system, they are expected to be some time away from commissioning and are not yet being accrued for within AME.

Estimated Cost for FY17-18 Domestic & Non Domestic

<table>
<thead>
<tr>
<th>Option</th>
<th>Cost of running scheme for 2017 / 18 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1: Do Nothing</td>
<td>49.7</td>
</tr>
<tr>
<td>Option 2: Introduce November 2015 tariffs</td>
<td>25.3</td>
</tr>
<tr>
<td>Option 3: All Medium Biomass 1.5p</td>
<td>14.4</td>
</tr>
<tr>
<td>Option 4: Suspend/close/zero medium biomass tariff</td>
<td>5.3</td>
</tr>
<tr>
<td>Option 5: Bespoke Tariff to keep within budget (5.1p &amp; 1.5p)</td>
<td>22.3</td>
</tr>
</tbody>
</table>

4.18 For the avoidance of doubt this includes the projected cost of the Domestic Scheme (£3.2m) and, as noted above, no allowance has been made for a behavioural correction effect in reducing usage and payments. In addition, there are significant numbers of applications with the database and system that are not yet live – while the modelling work commenced using a version of the OFGEM data base which has since been updated in the last number of weeks in relation to the number of live and pending accreditations. The modelling to date is grossing up for these (from C1,800 on the database to the C2,100 full population, but some of these application could be rejected – particularly those in the system for quite some time). This factor could have quite a material big influence on the overall estimation if a large number of the remaining applications were rejected. Finally, given the one year approach adopted in this business case an NPV / NPC analysis does not add any value in assessing the difference between options.

4.19 All of the options above which involve moving away from the pre November 2015 Medium Biomass Tariffs have the potential to deliver an interim financial outcome for 2017-18 which is much lower than current commitments and much more in keeping with expected budget ceilings.

4.20 Option 2 is considered to be the best value, practical, approach for 2017-18 and the indications are that this approach would substantially, manage costs back towards the £22.3m AME allocation in that year. Policy inaction and doing nothing (i.e. Option 1) is not considered to be a financially affordable and viable option.

Impact on Benefits

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4 These calculations are contained with a suite of detailed modelled and spreadsheets.
benefit of Northern Ireland. Also, the options involving imposing a lower or tiered tariff would also require further information to assess them fully, including that which will flow from planned comprehensive boiler inspections, so that the scheme can be returned, as far as possible, to the policy objectives. A comprehensive consultation approach will also be a hallmark of the longer term outcome – ensuring that whatever actions are taken are ones that command clear public confidence and are as legally defensible as possible. Ultimately this sort of policy consideration will need time to properly come together and in the circumstances currently being faced, delays only perpetuate the current unsustainable financial position unless a solution is put in place for 2017-18 while that thinking takes place. Available options for that solution, in line with the core objective of this case, are set out below.

**Option 1:**
No Action: The Base Case or Status Quo Option where no changes are made to the existing tariffs for Medium Biomass boilers. Pre November 2015 tariffs remain at 6.5p per kWh for all heat output for the durations of the scheme (adjusted for inflation).

**Option 2:**
Move all the Pre-November 2015 tariff Medium Biomass\(^3\) boilers (and also the small numbers on the Small Biomass Tariff) to the tariffs introduced in November 2015. These tariffs are 6.5p for the first 1,314 metered hours per annum then falling to 1.5p. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated. These tariffs were designed to deliver a rate of return (IRR) of Circa 12% to the typical or benchmark new entrant to the scheme based upon the information and assumptions pertaining at that time.

**Option 3:**
All biomass boilers receive a payment of 1.5p/kWh. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated.

**Option 4:**
Cease or suspend the scheme and its payments to Medium Biomass boilers until a lasting solution is developed.

**Option 5:**
This is based upon an arbitrary reduction in tariffs in order to increase the prospects of living within the projected AME Budget in full during 2017-18. These tariffs are 5.1p for the first 1,314 metered hours per annum then falling to 1.5p. Payments are capped at 4,032 hours per annum after which no payment is made for heat generated. These tariffs do not have any origins in a rate of return analysis – rather they are simply budget driven.

4.12 All of the proactive options involve a significant reduction in financial commitments via an introduction of “off the shelf” (in the case of Option 2) or arbitrary (in the case of 3, 4 and 5) solutions. Under Option 1 none of the problems with the scheme are addressed at all and the

\(^3\) References to Medium Boilers should be taken to mean Medium and Small Non-Domestic Biomass Boilers.
cost of policy inaction is very high. Policy inaction and doing nothing is not considered to be a financially affordable and viable option.

4.13 Both options 2 and 3 have the potential to produce winners and losers (to different degrees). Under Option 2 those participants who have already benefitted over and above the remuneration levels envisaged in the initial scheme principles may be able to continue to earn ‘super’ returns for the 6.5p element of the tariff albeit the extent of those returns could be significantly curtailed. Option 3 may mean that those participants who have not earned enough from the scheme to date to cover their capital outlay may have genuine concern that any long-term solution will not compensate them sufficiently. It also could be considered to be more punitive in that regard and increase associated legal risks. Option 5 has a number of these characteristics also, albeit to a lesser degree given that it is less draconian than Option 3.

4.14 Option 4 clearly is unsatisfactory to those participants who entered the scheme in good will and will have invested large sums of money only for anticipated repayments to be suspended. This will evidently lead to cash-flow problems for legitimate participants and the legality of it may be challenged.

Cost of FY2017-18 Options

4.15 A high level analysis of the likely costs of funding the options for 2017-18 has been undertaken. In order to make this assessment, actual data on past usage and payments to participants of the scheme have been used. The analysis is somewhat complicated by the fact that different participants entered the scheme at different times over a four year period and therefore metered heat is not available for all participants for the same duration. However, while payment and usage information is available for a large number of installations the database information is not complete and some installations are not yet accredited while others have yet to submit invoices for payment. For example, for around 800 participants only one quarterly invoice has been received/paid to date which only gives one data point on usage. In addition, of the approximately 2100 registered meters, approximately 200 are still at the application stage and we have therefore no actual data on heat production for this group of users.

4.16 It is therefore difficult to assess precisely, in all cases, what the ‘normal’ or expected annual heat load supported by the scheme will be in a typical year and therefore the costs of subsidising the heat generated. As a result some adjustments and assumptions relating to the data have had to be made to gross up the estimates to the full population of installations for the full year. In the case of those who have only submitted a few, one or no meter readings at all, in order to estimate the likely average annual heat load it has been necessary to infer an annual heat load by factoring up actual data where only one, two or three quarters of data are available in any of the four years over which the scheme has been running. In addition costs from the sample of C1800 have been uplifted for the whole C2100 installations on a “pro-rata” type basis, taking account of relative differences in installed capacity etc. Costs have also been uplifted for the likely incoming inflation uplift due in April 2017 and associated with the indexation of RHI payments.
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# Glossary of terms and abbreviations

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<td>Scheme brought into Great Britain a year earlier in November 2011 by the Department for Energy and Climate Change</td>
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<td>Office of Gas and Electricity Markets</td>
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<td>Gas and Electricity Markets Authority</td>
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<tr>
<td>kW</td>
<td>KiloWatt</td>
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<td>kWh</td>
<td>KiloWatt Hour</td>
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<td>kWth</td>
<td>Kilowatt Thermal</td>
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1. **Introduction**

1.1. PricewaterhouseCoopers LLP (“PwC”) was appointed on behalf of the Department for the Economy (“the Department”) on 29 July 2016 under Lot number 5.2 of the consultancyONE Framework Agreement (RM 1502) dated 18 February 2013 to undertake an independent review of allegations of abuse received by the Department (“the Review”) pertaining to the Renewable Heat Incentive Scheme in Northern Ireland (“the NI Scheme”).

1.2. The scope of the Review is set out in the Specification of Requirements document prepared by the Department (“the Specification Document”) and is summarised as follows:

   a) To express an “explicit opinion” on whether or not there is evidence to substantiate the allegations of the NI Scheme having been ‘abused’, with participants not operating within the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (“NI Regulations”) (see paragraph 2.14 for further details of the allegations);

   b) A review of the processes and controls in place to administer the NI Scheme;

   c) A programme of onsite inspections to identify potential instances of non-compliance with the NI Scheme;

   d) To consider if the NI Regulations and related guidelines, are, by design, sufficient to ensure that only heat generated for a valid and necessary purpose is eligible for support under the NI Scheme; and

   e) To make recommendations to the Department on the way forward to improve the governance and administration of the scheme.

1.3. The remainder of the report is set out under the following headings:

   Table 1: Report headings

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1.4. This report has been prepared only for the Department for the Economy (“the Department”/ “you”) and solely for the purpose and on the terms agreed with you. We accept no liability (including for negligence) to anyone else in connection with this document.

1.5. We have not carried out anything in the nature of an audit nor, except where otherwise stated, have we subjected the financial or other information contained in this report to checking or verification procedures. We cannot guarantee that we have had sight of all relevant documentation or information that may be in existence and therefore cannot comment on the completeness of the documentation or information made available to us. Any documentation or information brought to our attention subsequent to the date of this report may require us to adjust and qualify our report accordingly.

1.6. This report supersedes our Final Report dated 18 November 2016; this report has been updated to reflect recent comments made to the Department by Cambridge Economic Policy Associates.
2. Background

2.1 Responsibility for Northern Ireland’s energy policy rests with the Department.

2.2 In 2010, the Department published ‘A Strategic Framework for Northern Ireland’, committing to achieve 10% of its heat from renewable sources by 2020, subject to an economic appraisal. The Framework stressed the need for Northern Ireland to move away from its dependence on fossil fuels and instead encourage a move towards increased levels of renewable energy.

2.3 To help meet this Departmental commitment, the NI Scheme was introduced in November 2012 by the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (“NI Regulations”). The Department also published procedural guidance for participants and applicants in connection with the NI Scheme (“the Guidance”)

2.4 The objective of the NI Scheme is to facilitate and encourage the renewable generation of heat by giving support payments to eligible generators of renewable heat and producers of biomethane. The NI Scheme is open to the non-domestic sector and provides financial support, including retrospective support, for eligible installations commissioned after 1 September 2010.

2.5 For each kilowatt (kW) hour of heat energy produced by an eligible installation, participants receive periodic support payments based on a tariff rate for a period of 20 years following accreditation.

2.6 The NI Scheme was similar to that brought into Great Britain a year earlier in November 2011 by the Department for Energy and Climate Change (“DECC”) (“the GB Scheme”), but according to the Explanatory Memorandum which was published alongside the NI Regulations, the NI Scheme was specifically designed and tailored for the Northern Ireland heat market.

2.7 The NI Scheme is administered on behalf of the Department by the Office of Gas and Electricity Markets (“Ofgem”) which has responsibility for assessing applications, accrediting installations, making support payments and monitoring/enforcing compliance. The Department has responsibility for the policy framework and for setting payment tariffs. We note that Ofgem also administers the GB Scheme on behalf of what is now the Department of Business, Energy & Industrial Strategy (formerly DECC).

---

1 The principal guidance published by the Department is the Non-Domestic Northern Ireland Renewable Heat Incentive Guidance. For the purposes of our Review we have considered the current Guidance, namely Volumes 1 & 2 (version 2.1) which was last issued by the Department in March 2016. Participants are expected to familiarise themselves with the content of the Guidance as “it gives further elaboration on the obligations on participants under the [NI] Regulations.”

2 Explanatory Memorandum to the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 SR 2012 No. 396
2.8. Biomass\(^3\) technologies account for 98.8% of all applications submitted under the NI Scheme; the total population of which is 2,128. Further, 1,876 applications relate to small biomass technologies with an installation capacity up to and including 99 kW\(^4\), approximately 88% of the total population (1,334 applications have a capacity of 99kW; 542 applications are less than 99kW).

2.9. Since its introduction in November 2012, two amendments have been made to the NI Regulations.

2.10. The first was in November 2015 to introduce, among other things, a tiered tariff for small and medium biomass technologies, along with an annual cap for eligible heat payments.

2.11. The second amendment was in February 2016, the primary purpose of which was to give power to the Department to suspend the NI Scheme where it does not, or is likely not to have sufficient budget to meet the cost of support payments.

2.12. The NI Scheme was suspended by the Department to new applicants on 29 February 2016.

2.13. We understand that in January 2016, the Department received allegations relating to the abuse of the NI Scheme. In summary, these allegations suggested a lack of adequate monitoring of the NI Scheme and further, the use of heat technologies contrary to the intention of the NI Scheme.

2.14. In particular the following six allegations were received:

- The NI Scheme is being “seriously abused by many who are not working within the intended guidelines”;

- The NI Scheme “is not being monitored”;

- It is being “left to the installer to vet whether you are a suitable business” to be accredited under the NI Scheme;

- Many people are availing of the NI Scheme who had no previous means of heating, or if they did, no comparison is made between the cost of the previous heating system and that of the new system;

- Large factories, with no previous heating, have installed multiple biomass boilers with the intention of running the boilers “24/7 all year round” to collect approx. £1.5m over the next 20 years; and

---

\(^3\) Organic matter used as fuel

\(^4\) 99kW capacity installations are the optimal choice to maximise the return on capital investment for applicants; larger capacity boilers attract a much lower tariff
A local farmer, with no business need for biomass boilers, is aiming to collect £1m over the next 20 years for heating an empty shed.

2.15. As discussed at paragraph 2.4, the objective of the NI Scheme is to facilitate and encourage the renewable generation of heat by giving support payments to eligible generators of renewable heat and producers of biomethane. Alongside this stated objective we consider that the ‘intention’ or ‘spirit’ of the NI Scheme – though not expressly stated – is to encourage the generation of heat, by renewable means, that would still be generated without the incentive of the NI Scheme; or the corollary, not to encourage the generation of heat that without the incentive of the NI Scheme would not be met by an alternative form of heating.
3. Review of NI Scheme legislation and guidance

Introduction
3.1. By design the NI Scheme is a demand-led incentive scheme to facilitate and encourage the renewable generation of heat in Northern Ireland - moving away from dependence on fossil fuels – by giving support payments to eligible generators of renewable heat and producers of biomethane.

3.2. As a demand led scheme, the NI Scheme is subject to uncertainty, in particular in relation to demand projections and costs. Effective legislation and guidance is critical in seeking to mitigate the inherent risk of support payments being made for an ineligible purpose and/or in circumstances where the heat generated is being used in a way that is not energy efficient.

Eligibility criteria
3.3. The eligibility criteria of the NI Scheme covers, inter alia, the type of technology installed and the purpose for which the heat generated will be used.

3.4. The NI Regulations and Guidance set out detailed eligibility criteria for each technology from maximum installation capacity to requirements around Microgeneration Certification Scheme (“MCS”) certification. Information around fuel requirements is also provided, including obligations around the use of fossil fuels in accredited installations.

3.5. The eligibility criteria with respect to the use of heat is that the heat generated must be used for an “eligible purpose” which is described in Section 3(2) of the NI Regulations as heat generated by a plant to heat a space, a liquid or to carry out a process (where the heat is used in a building), or for cleaning and drying carried out on a commercial basis (used otherwise than in a building).

3.6. The NI Regulations provide guidance on heat uses that are considered ineligible and limits on heat generation capacity, including:
   a. heat generated solely for use of one domestic premises;
   b. heat generated solely for an ineligible purpose;
   c. is considered additional capacity;
   d. generates heat from biogas or using a solar collector; and
   e. has an installation capacity, together with the installation capacity of all related plants, greater than 200kWth.

3.7. At section 33(p) of the NI Regulations an ongoing obligation of participants is that they must not generate heat for the “predominant purpose” of increasing their periodic support payments.
3.8. In addition, the Guidance sets out three principles underlying the Department’s policy on heat uses that are eligible for support, namely:

a. The heat generated is “useful and useable”;

b. The heat load it is being used to meet must be an economically justifiable heating requirement, i.e. a heat load that would otherwise be met by an alternative form of heating; and

c. The heat load should be an “existing or new requirement” i.e. not created artificially purely to claim the support payments.

3.9. The technology criteria of the NI Scheme are, in general, well defined, mitigating the risk to the Department of supporting ineligible renewable heat technologies and sources.

3.10. In contrast the criteria designed to regulate both the purpose of the heat generated and also how the heat is generated, including how it is used, are, in general, loosely defined and ambiguous and as such, open to a degree of interpretation by both participants and administrators of the NI Scheme alike.

3.11. For example, in relation to those criteria that seek to regulate the use of heat, the terms ‘useful and useable’ and ‘predominant purpose’ are not defined and the term ‘eligible purpose’ is only defined as ‘a purpose which is not an ineligible purpose’. Such ambiguity makes any assessment of eligibility inherently subjective and as a result more difficult to monitor and enforce.

3.12. In relation to how the NI Regulations and Guidance seek to regulate how heat is generated efficiently, avoiding excessive heat waste, the eligibility criteria fail to adequately address the inefficient use of heat.

3.13. The relevant principle appears to be that set out in the Guidance: “the heat load it is being used to meet must be an economically justifiable heating requirement, i.e. a heat load that would otherwise be met by an alternative form of heating”. There is no definition, or explanation, given in the Guidance, however, of either the term ‘economically justifiable’, or of what a relevant commercial test may be for the NI Scheme, a scheme which by its very nature is incentive, rather than commercially driven. To monitor and enforce this principle requires a very subjective assessment of eligibility. During our site inspections we identified many examples of participants who appear to be legitimately claiming support payments for eligible heat use, but arguably in an inefficient manner and for a purpose which may not meet the ‘economically justifiable’ requirement.

**Cost criteria**

3.14. The introduction of the NI Regulations in November 2012 was accompanied by a Regulatory Impact Assessment (“NI RIA”) published by the Department which is required by the Northern Ireland Executive to inform and support its policy development.
3.15. In the NI RIA the Department recognised that setting incorrect support payment levels “posed the most obvious risk” to the NI Scheme. If the level was set too high, “those installing renewable heat will be over-subsidised and less heat will be delivered per pound than under more optimal subsidy levels.” Alternatively if the rate was set too low “renewable heat will not be deployed to the extent expected.”

3.16. The NI RIA further states that “It is planned to have regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions. It is currently proposed that the first review will begin in January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market.”

3.17. When first considering support payment levels for the NI Scheme in June 2011, consultants recommended tariff rates for a number of different technologies and installation capacities. The recommended tariff for small biomass boilers (< than 45kWth) was 4.5 pence per kWh and for medium biomass boilers (≥ 45kWth) was 1.3 pence per kWh; no tariff was recommended for large biomass boilers (biomass technologies are the most common installed in Northern Ireland).

3.18. Tiered tariffs were considered by the consultants at this time. The intention of a two tier system of tariffs is that the higher rate provides a return on the cost of heat production\(^5\) while the lower second tier rate minimises any incentive to unnecessarily generate heat, e.g. running a boiler 24 hours, seven days a week, just to claim support payments. The reduced tier 2 rate is set significantly lower than the cost of fuel required to generate the eligible heat load.

3.19. In June 2011 the consultants concluded that tiered rates were not necessary because the “incremental fuel cost was higher than the subsidy rates in all cases.”

3.20. In the addendum report prepared by the same consultants in February 2012 (“addendum report”), the tariff bandings for a small biomass boiler were adjusted to 20 – 100kWth and the recommended tariff for a small biomass boiler increased to 5.9 pence per kWh.

3.21. The addendum report did not revisit the matter of tiered tariffs. It did however, reiterate the recommendation that there should be a review of tariffs after two to three years, and specifically that the Department “reassess biomass prices at review points to determine whether the overall tariff levels are still appropriate”.

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\(^5\) Both on capital and variable costs
3.22. Details of the original and amended tariff rates in the NI Regulations are provided in the table below:

<table>
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<tr>
<th>Tariff name</th>
<th>NI Regulations November 2012</th>
<th>NI Regulations November 2015</th>
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<tr>
<td></td>
<td>Installation capacity</td>
<td>Tariff Pence/kWh</td>
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<tr>
<td>Small biomass</td>
<td>Less than 20kWth</td>
<td>6.2</td>
</tr>
<tr>
<td>Medium biomass</td>
<td>20 – 100kWth*</td>
<td>5.9</td>
</tr>
<tr>
<td>Large biomass</td>
<td>100 – 1,000kWth*</td>
<td>1.5</td>
</tr>
<tr>
<td>Combined Heat and Power</td>
<td>N/A</td>
<td>New systems all sizes</td>
</tr>
<tr>
<td>Small heat pumps</td>
<td>Less than 20kWth</td>
<td>8.4</td>
</tr>
<tr>
<td>Medium heat pumps</td>
<td>20 – 100kWth*</td>
<td>4.3</td>
</tr>
<tr>
<td>Large heat pumps</td>
<td>100kWth and above</td>
<td>1.3</td>
</tr>
<tr>
<td>All solar collectors</td>
<td>Below 200kWth</td>
<td>8.5</td>
</tr>
<tr>
<td>Biomethane and biogas combustion</td>
<td>Below 200kWth</td>
<td>3.0</td>
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* up to but not including the upper limit

**Tier 1 applies to heat generated by an accredited installation running at its installation capacity for 1,314 hours

3.23. Based on analysis performed in May 2016 on behalf of the Northern Ireland Audit Office the cost at that date per kWh of energy produced by a small biomass boiler was estimated to be 4.01 pence⁶, significantly less than the current equivalent tariff rate of 6.4 pence.

3.24. Due to the fact that the NI Scheme has no upper limit on the amount of heat generated that would attract support payment or a tiered tariff system (prior to November 2015), there is clear incentive under the NI Scheme for successful applicants, whose applications pre date the revisions made in November 2015, to generate heat over and above that which was ‘useful or usable’.

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⁶ We note that this figure may not take account of boiler efficiency
3.25. Tiered Tariffs and/or a cap on the amount of heat generated qualifying for support payments, are key cost controls and their absence from the introduction of the NI Regulations significantly increased the risk associated within the NI Scheme, leaving it vulnerable. Based on the documentation made available it is not clear why such a control was not implemented by the Department.

3.26. It is also not clear why the Department failed to review such a significant and inherently risky scheme despite many recommendations and indeed commitments to do so, in particular relating to tariff rates. As a result of this it appears that the tariff rates have, in fact, over-subsidised participants during the lifetime of the NI Scheme.

3.27. There was also no provision made in the NI Scheme for ‘suspension’ or ‘degression’ until February 2016 despite it being considered by the Department almost three years earlier. Degression is a mechanism by which tariff levels reduce on a pre-determined basis when scheme uptake is higher than expected. Such a provision would have acted as a significant budgetary control for the Department. The absence of a mechanism to suspend or amend the NI Scheme in circumstances where demand was higher than expected or the Department was likely to exceed its available budget, is a failure of the original design of the NI Scheme, further compounded by the lack of timely subsequent NI Scheme reviews and of ineffective learnings from the experience of the GB Scheme.

3.28. The approach taken in Northern Ireland stands in contrast to the approach taken in Great Britain. Since its inception, the GB Scheme has been amended 11 times, to address a wide range of issues including sustainability, power efficiency, revised tariff levels, eligibility and supported technologies. We note that the majority of the amendments made followed consultations with industry and stakeholders, taking account of the latest available information.

**Summary findings**

3.29. In most respects the NI Scheme mirrors the provisions and criteria of the GB Scheme, with two fundamental differences, namely the absence of tiered tariffs to discourage heat waste and a suspension or degression mechanism to act as a cost control measure.

3.30. Given the inherent financial uncertainty that attaches to a demand led scheme the omission of these provisions in the initial design and, in particular, the fact that they were not introduced early in the course of the NI Scheme life was a critical omission, even when balanced against the need to facilitate and encourage a change of behaviour from non-renewable to renewable heat.

3.31. The eligibility criteria in the NI Scheme are essentially those in the GB Scheme, however, the general lack of clarity available to participants and administrators as to what constitutes an eligible use of heat is of particular pertinence in Northern Ireland given the clear incentive which existed, due to the absence of tiered tariffs, under the NI Scheme to generate heat over and above that which is ‘useful or usable’.
3.32. We do not therefore consider the design of the NI Scheme to be sufficient to ensure that only heat generated for a valid and necessary purpose (as referenced in the Specification Document) is eligible for support.

3.33. Indeed, prior to November 2015, based on the findings from our site inspections, it appears that the eligibility criteria in place was not sufficiently robust to prevent behaviours by participants that, whilst arguably legitimate under the NI Regulations and Guidance, would reasonably be perceived as contrary to the intention of the NI Scheme and therefore not best use of public funds.
4. Review of NI Scheme processes and controls

Introduction

4.1. The Non-Domestic Northern Ireland Renewable Heat Incentive Guidance defines the responsibility of both the Department and Ofgem under the NI Scheme. The Guidance states that the Department is responsible for:

- Developing the overarching policy framework and supporting legislation;
- Setting tariffs for different technologies; and
- Specifying detailed eligibility criteria and NI Scheme rules in the NI Regulations.

and that Ofgem is responsible for:

- Formally administering the NI Scheme on behalf of the Department and in line with the NI Regulations and the administrative arrangements;
- Accrediting installations and registering biomethane producers as eligible, checking identity, bank details and ownership as part of this process; and
- Making payments to NI Scheme participants.

4.2. There is an administrative arrangement in place between the Department and the Gas and Electricity Markets Authority (GEMA), Ofgem’s governing body.

4.3. The terms of reference agreed with the Department include a review of the processes and controls in place and operated by Ofgem, specifically those covering:

- Eligibility of applications;
- Ongoing compliance;
- Payment processes;
- Monitoring; and
- Onsite inspections.

in particular, to provide an opinion on “the robustness of the controls in place to ensure that applicants met the [NI Scheme] eligibility criteria and participants continue to operate within the [Guidance]”.

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4.4. As part of this review, meetings have been held with key members of staff from the Department and Ofgem to discuss the processes and controls in operation and perform walkthroughs of the application of these processes. Testing has been performed where necessary and key documentation reviewed including the Audit Strategy, pertinent Standard Operating Procedures in addition to the Guidance.

4.5. Each of the five key processes outlined in 4.3 has been discussed in more detail below.

**Eligibility of applications**

4.6. Work on the controls relating to the eligibility of applications has focused on the application and accreditation process undertaken by Ofgem. This work has raised some concerns in relation to the challenge and scrutiny of applications to the NI Scheme.

4.7. Applications are reviewed by the Operations Team within Ofgem for the purpose of assessing whether they meet the eligibility criteria as defined within the NI Regulations. Applicants are required to complete an application form answering questions in respect of, inter alia, technology installed, purpose for which heat will be used, previous heating utilised and estimated heat generation. Supporting documentation is required to be submitted with the completed application form including schematics showing the installation arrangements, photographs of the meter, commissioning certificates and evidence of non-domestic use of the heat. For complex metering arrangements, an independent metering report is also typically sought. The review of the evidence provided on initial application encompasses a number of checks and controls which typically results in further information being sought and considered by Ofgem before it concludes on eligibility. In some cases, changes are required to be made to the application, affecting eligibility for the scheme and/or the date from which payments may become due to an applicant. During this process, some applications may be withdrawn or not continued by the applicant.

4.8. Once the application and all required supporting documentation has been received, the Ofgem reviewer will either recommend the application for accreditation or if the reviewer is not content that the application meets the eligibility requirements of the NI Scheme, it will be recommended for rejection. (Three applications have been rejected (0.1% of applications received) in 2015/16). Thereafter the application is subject to quality assurance. For those applications that are to proceed, once it has been subject to this quality assurance process, it will move (on a sample basis) onto delegated authority approval. This delegated authority approval checks that the application process has been followed. If the delegated authority is content to approve the application, the installation is accredited and a letter is sent to the applicant informing them that their application has been successful.
4.9. Applicants are required to submit schematics with the application form showing details of the installation for which they are seeking payment. These schematics act as one of the pieces of evidence by which to assess eligibility. There is no requirement within the design of the NI Scheme for professional input to these schematics. (This is consistent with the GB Scheme). While photographs will be requested for certain elements of the schematics, this does not always encompass the whole system. Obtaining photographic evidence of the whole installation would enable a further assessment to be made as to the reliability of the schematic provided.

4.10. As part of the site inspections, 35 instances were identified (out of a total population of 256 installations that were successfully inspected with schematics available, i.e. 13.7%) where the schematics submitted to Ofgem contained material deviations from the actual installation, highlighting potential issues with respect to the reliability of these schematics when assessing eligibility. Many other minor deviations between the schematics and the actual installation were also noted. It is worth noting that many of the material deviations that were identified may not have changed the eligibility status attributed to the installations, given the current drafting of the regulations. Nonetheless, the existence of inaccurate schematics highlights a potential control weakness insofar as inaccuracies in the schematics are not necessarily being identified and rectified during the accreditation process.

4.11. For many of the installations where issues were identified with the schematics, independent metering reports (that are typically used for complex metering arrangements) were in place. Independent Metering Reports are considered by Ofgem to significantly mitigate the risks arising from incorrect schematics insofar as they provide independent, detailed information as to what has been installed. An independent metering report can be completed by the meter installer. Where this is the case, this may bring into question the independence of such reports, although it is noted that this is allowable under the Scheme Guidelines.

4.12. If an applicant submits multiple applications for multiple boilers these are looked at in isolation, on an application (installation) by application (installation) basis. A holistic view may not be taken across all of the applications received. Notwithstanding the issues with the current drafting of the legislation as discussed in paragraph 3.10, this could lead to a failed opportunity to identify inefficient heat generation (i.e. using multiple smaller boiler installations when fewer larger installations would generate heat more efficiently).
4.13. In several instances concerns had been raised within Ofgem (as recorded in the Site Suggestion Log from which sites may be selected for audit) in respect of applications received. The concerns recorded on the Log related to poor quality information being supplied. Several of the concerns raised within the log state that “evidence is of a low quality but not enough to reject application”. Prima facie, it is concerning that applications have been approved despite there being concerns about poor quality information. The Ofgem Operations Team have stated that applications would not have been accredited unless sufficient evidence had been provided to demonstrate that the requirements of the NI Regulations had been met. Ofgem consider that the wording of the concern as recorded in its log is misleading and that this is simply a point of poor documentation.

4.14. Before an application is approved, the Operations Team has the facility to request a pre-accreditation audit if considered necessary. In these instances a site inspection would be conducted prior to the application being accredited to confirm the eligibility of the application. We note that there has been limited use of pre-accreditation site inspections with only one being undertaken in 2014/2015 and none being undertaken in 2015/2016. This contrasts with the current position where ten of the 26 inspections undertaken to date in 2016/17 have been pre-accreditation inspections.

4.15. Not subjecting applications and their supporting evidence to an appropriate level of independent validation of the data could result in applications being accredited which would not otherwise have been accredited.

**Ongoing compliance**

4.16. Work on the ongoing compliance controls considered the process by which periodic data submissions (meter readings, taken once a quarter) are submitted and reviewed to ensure the accuracy of the submission made and the management and escalation of deviations from expected usage (this is considered by Ofgem to be its monitoring process, as opposed to its compliance process). Work in this area also considered the process by which the payments due for heat generated are calculated and considered how other ongoing obligations are monitored, including annual declarations. In addition, the amendments process was considered, whereby the applicant has an ongoing obligation to notify Ofgem of any amendments to the installation.
4.17. An issue has been raised in relation to the independent validation of meter reading data. NI Scheme participants are required to take their meter reading each quarter and submit this reading to Ofgem. This is then used to calculate the heat generated which is used to determine the payment due. While reasonability checks are performed on the data submitted by the participant, unless an exception is raised as a result of those checks, there is no evidence obtained (other than the participant’s self-certification) to confirm the accuracy and timing of the data provided e.g. a timestamped photograph showing the actual meter reading and the date that it was taken. As long as the triggers (used in the reasonability calculations) are not activated, fraudulent or erroneous meter readings could go undetected. Though the use of these reasonability checks are cited as being a key control, as discussed in the paragraphs immediately below some concern exists in respect of the adequacy of these checks. Site visits can also act as a key control in assessing the accuracy of data, however as discussed under ‘Onsite inspections’ below, concerns exist regarding the approach to and number of site inspections.

4.18. Examples of the reasonability checks performed by Ofgem include if the heat generated in the period was too high or low or exactly the same as the previous period. In three of the reasonability checks where an exception is triggered if a certain threshold is exceeded, the applicant is informed of the trigger point, i.e. if a certain [specified] percentage increase in heat is generated as compared to the previous period. In theory therefore the NI Scheme participant will be aware that if they stay below this specified threshold, an exception will not be generated.

4.19. If a trigger has been activated, NI Scheme participants are required to enter an explanation regarding the heat generated in the period to explain the unusual/unexpected pattern. The Periodic Data Team will consider whether the explanation is adequate. If the explanation is deemed to be adequate, it will be subject to mandatory review by another individual within the Periodic Data team; however there is no further evidence sought to verify the heat generation or explanation, e.g. photographs of the meters to support the meter reading provided, fuel records, increased sales of product etc. (Further evidence may however be sought if the Periodic Data Team is not initially satisfied with the explanation). It is also worth noting that the majority are based on comparisons against the participant’s previous meter readings. Given that periodic data analysis can be an effective, cost efficient way of identifying anomalies, it may be worth expanding the data analysis undertaken to enable participants’ data to be compared within the context of similar groupings i.e. data is compared against other participants’ data, where similar characteristics would be expected, with a view to identifying outliers and anomalies. This richer data analysis could enhance the robustness of this control.

4.20. It is worth noting that the site inspections performed, as discussed in detail in Section 5 did not identify any significant issues with respect to meter readings being inconsistent with the data that had been supplied to Ofgem; nonetheless, given the potential fraud risks inherent in self-certified data, this is an area that merits further consideration.
**Payment process**

4.21. With respect to payment process controls we considered the process by which payments are made following submission of meter readings and calculation of heat generated in the period.

4.22. No findings were identified in relation to this scope area, however it should be noted that the findings regarding submission of periodic data will impact on the payments being made, i.e. while the payment may be calculated and paid correctly based on the meter reading data, there could be underlying issues with the meter reading data itself which may lead to erroneous payments.

**Monitoring**

4.23. The overall monitoring arrangements between the Department and Ofgem including the governance and risk management arrangements in place over the NI Scheme have been considered.

4.24. Significant weaknesses have been identified in the governance arrangements between the Department and Ofgem. While there are Administrative Arrangements in place between the Department and the Gas and Electricity Markets Authority, Ofgem’s governing body, the Administrative Arrangements do not define responsibility for key elements of service delivery by Ofgem, including the provision of management information.

4.25. We understand from Ofgem that from the commencement of the NI Scheme meetings with the Department have been held on at least a monthly basis and that the Department has been kept aware of Ofgem’s performance (in terms of, for example, processing of applications) and issues (for example if an application were to be rejected, or issues identified through the audit process); however there is a lack of documentation to enable us to independently corroborate that this has been the case and/or to confirm the nature of the discussions held.

4.26. Furthermore key performance indicators (for example in respect of processing time for various elements of the process such as accreditations and amendments), between the Department and Ofgem have not been agreed (albeit Ofgem had set internal targets for some of the key processes against which it internally monitors compliance). We understand from Ofgem that standard information on its performance of its management and monitoring responsibilities (for example service levels) is now being shared with the Department. This had not historically been the position.

4.27. A further significant finding has been identified in respect to risk management. Ofgem developed a Fraud Prevention Strategy for the GB Non Domestic Renewable Heat Incentive Scheme. This Fraud Prevention Strategy was updated in August 2012 to include the Northern Ireland Scheme. However, we have seen no evidence of consideration being given to additional controls which should be implemented within the NI Scheme to address the increased risk profile of the NI Scheme relative to the GB Scheme; namely as a result of the lack of a two tiered tariff system (until November 2015) and degression. Both the two tiered tariff system and degression are referenced within the Fraud Prevention Strategy as being key preventative controls, despite these characteristics not being in place for the NI Scheme (prior to November 2015).
4.28. While a risk register for the NI Scheme has been produced, there are several instances where existing controls identified on the risk register have either not been implemented or are not working effectively. For example, several of the risks highlight the programme of site inspections as a key control. However as discussed below, significant weaknesses have been identified in respect of this control area. Reference is made to “on-going planned programme of site audits with targeting based on degression” however as previously discussed provision for degression had not been made within the NI Scheme at that time.

4.29. Notwithstanding the lack of evidence regarding consideration being given to additional controls to address the increased risk profile of the NI Scheme, there is evidence that in May 2014, Ofgem raised the issue of the NI Scheme experiencing higher payments than had been anticipated with the Department; however there is no evidence of the Department having adequately addressed this concern.

4.30. There has been a lack of periodic communication between the Department and Ofgem in respect of the audit process, specifically with regard to the results of site inspections undertaken and the impact of Ofgem resource constraints. Ofgem has indicated that the Department was provided, in November 2015, with a summary of the audit activity and output for the period April 2013 to March 2015. There is also some evidence to support that Ofgem was in discussion with the Department in respect of the 2015/16 audits at that time. No evidence has been provided of requests for (by the Department) or provision of (by Ofgem) information in respect of the audit process prior to November 2015. From the outset of the operation of the NI Scheme, the Department would have been expected to have been routinely and periodically requesting and receiving information in respect of the audit programme, including the number of site inspections undertaken, split by pre and post accreditation site inspection, results of site inspections and associated levels of assurance or key themes arising from the inspections.

**Onsite inspections**

4.31. The Audit Strategy in place to govern the site inspections process, the operation of the site inspection programme (customer notification and reporting processes) and the subsequent process used to resolve non-compliance issues identified have all been reviewed. A number of issues exist in relation to this scope area.

4.32. Given the reliance placed on the accuracy of information provided by NI Scheme participants at the accreditation stage and thereafter, site inspections are a key control that can be employed to detect potential abuse of the NI Scheme. The Audit Strategy which establishes the approach to the audit and site inspection process contained weaknesses in terms of the sample size for site inspections and the sample selection methodology itself.
4.33. The sample size applied was simply 3% of the sample for the GB Scheme (to be consistent with the percentage of funding for the NI Scheme, relative to the GB Scheme). It was not adjusted to take account of the increased risk profile of the NI Scheme. The sample size chosen for site inspections therefore accounted for 3% of the NI Scheme population in 2014/2015 and 1% of the population in 2015/2016. We understand from Ofgem that this approach to sample size and selection has been modified going forward to be risk based using statistical and targeted sampling. Accordingly, there has been an increased number of audits planned and undertaken from early 2016 onwards reflecting the significant increase in applications from the second half of the 2015. We understand that the Department and Ofgem intend to further review the Audit Strategy in light of the findings of this review.

4.34. It appears that Department’s approval was not sought or provided in respect of the Audit Strategy.

4.35. Concerns also exist regarding the design and content of the site inspections undertaken. While acknowledging that the template site inspection reports prepared by Ofgem address the specific requirements of the NI Regulations, it might be reasonable to expect, given the results of our site inspections as outlined in Section 5, that inspections would have identified concerns with respect to the practices of applicants (for example in respect of heat efficiency) and whether the design and use of installations were in keeping with the intention of the NI Scheme. Some sort of concern has been identified in almost 50% of the installations inspected as part of this review and include, inter alia, issues with regards to significant inefficient and/or wastage of heat produced, including the capacity size of installations, insulation of buildings and the application of zoning within buildings, domestic use, etc.

4.36. It would appear that applicant practices linked to weaknesses in the design of the NI scheme were not being identified from site inspections (and indeed through the accreditation process).

4.37. Issues have also been identified with regards to the follow-up of concerns raised by Ofgem staff members on a Site Suggestion Log in respect of installations. It would appear that not all of the concerns raised have been subject to follow-up by the Ofgem’s Audit Team. In 2015/2016, concerns were raised in the site suggestion log in relation to 19 installations. Of these 19 installations, seven installations (37%) were subject to audit in 2015/2016, one installation (5%) has been scheduled for audit in 2016/2017 and for the remaining 11 installations (58%), at the time of this fieldwork, no audits had either been undertaken or scheduled. Ofgem is of the view that an audit would not always be an appropriate/proportionate response to a concern being raised.

4.38. In addition, for sites with multiple Installations where concerns/non-compliances have been raised in respect of one (or more) installations, there is no documented process in place to routinely follow up on all installations on a site where potential non-compliance is identified. We understand that there is the ability to perform a post code check on installations; however again, we have been unable to obtain evidence to confirm that there is a robust process in place (which has been applied in practice) which ensures that all such installations are actively considered.
4.39. Inspections have not been spread evenly throughout the period and visits are conducted with prior notification given to participants. (i.e. there have been no unannounced visits, which, if employed, could act as a significant abuse and/or fraud detection technique. Ofgem has confirmed that it has the right to conduct unannounced visits where it deems appropriate. Significant periods of lapsed time have also been identified between the completion of physical site inspections and the closing out of subsequent audit/site inspection reports and follow-up of observations raised within these reports.

4.40. Issues have also been identified as to the adequacy of follow up activity relating to issues identified during site inspections.

**Number and priority of issues raised**

4.41. We have been asked by the Department to apply priority ratings to the findings of the Process and Controls review. Though this is not an Internal Audit, at the request of the Department, the priority ratings normally assigned to Internal Audit findings, as prescribed by the Department of Finance and Personnel, reference HIA (DFP) 01/12 (outlined below), have been adopted.

4.42. *Table 3: Definition of priority ratings*

<table>
<thead>
<tr>
<th>RAG</th>
<th>Rating</th>
<th>Definition of priority rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Red</td>
<td>An issue which requires urgent management decision and action without which there is a substantial risk to the achievement of key business/system objectives, to the reputation of the organisation, or to the regularity and propriety of public funds.</td>
</tr>
<tr>
<td>2</td>
<td>Yellow</td>
<td>An issue which requires prompt attention, as failure to do so could lead to a more serious risk exposure.</td>
</tr>
<tr>
<td>3</td>
<td>Green</td>
<td>Improvements that will enhance the existing control framework and/or represent best practice.</td>
</tr>
</tbody>
</table>
4.43. The table below provides a summary of the five process areas that we have considered together with details of the findings raised in respect of that area and the priority rating assigned:

<table>
<thead>
<tr>
<th>Process area</th>
<th>Finding identified</th>
<th>Priority rating</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Eligibility</td>
<td>Challenge and scrutiny of applications</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Installer records</td>
<td>-</td>
</tr>
<tr>
<td>Ongoing compliance</td>
<td>Validation of meter reading data</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Exceptions raised in respect of periodic data</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Estimated data</td>
<td>1</td>
</tr>
<tr>
<td>Payments</td>
<td>N/a</td>
<td>-</td>
</tr>
<tr>
<td>Monitoring</td>
<td>Oversight arrangements</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Risk Management</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Standard Operating Procedures</td>
<td>-</td>
</tr>
<tr>
<td>Onsite inspections</td>
<td>Audit Strategy</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Site Inspections</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Addressing concerns</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Site inspections and audit process</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Timeliness of addressing audit findings</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Fuel records</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Waived payments</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>5</td>
</tr>
</tbody>
</table>

**Summary findings**

4.44. As discussed at paragraph 3.32 significant weaknesses exist in the design of the NI Scheme. Some of these design weaknesses created unintended commercial incentives for participants to generate heat.

4.45. Designing and operating an effective control framework was always going to be a challenge given the design weaknesses in the NI Scheme. However it was these very design weaknesses that significantly increased the risk profile of the NI Scheme and necessitated a robust control framework.
4.46. The controls being applied within the NI Scheme have not adequately taken account of the increased risk profile of the NI Scheme, relative to the GB Scheme. As discussed at paragraph 3.29, there are two significant differences between the two schemes, namely that the NI Scheme lacked a two tiered tariff system (until November 2015) and also a mechanism for degression. Both of these measures, present in the GB Scheme, were designed to be safeguards to disincentivise excess heat generation and ensure the continued financial viability of the GB Scheme.

4.47. The two tiered tariff system and degression are referenced as being key preventative controls within Ofgem’s Fraud Prevention Strategy (which pertains to be relevant to the NI Scheme as well as the GB Scheme), despite there being no provision for degression and/or a two tiered tariff system within the NI Scheme until November 2015.

4.48. There is no evidence of a robust assessment of the risks specifically associated with the NI Scheme having been undertaken at the outset of the operation of the NI Scheme. This is despite the Ofgem Project/Programme risk log identifying (at the feasibility stage) the risk of “fraud risk in [NI Scheme] significantly different to [GB Scheme]”.

4.49. A robust fraud risk assessment performed earlier in the life of the NI Scheme should have identified the key risks associated with the NI Scheme which would in turn have facilitated the identification and implementation of the required preventative and detective controls to mitigate these risks or alternatively the need to revise the NI Regulations at a much earlier juncture.

4.50. The limited number of site inspections do not appear to have identified practices consistent with the findings outlined in Section 5, which, though subject to uncertainty as to whether technically non-compliant, are indicative of the NI Scheme being used for purposes that are not consistent with the intended spirit of the scheme or representative of value for money.

4.51. Weaknesses have also been identified across a number of operational controls, for example in relation to the challenge and scrutiny of applications and the robustness of processes for independently validating other information provided by NI Scheme participants (for example meter readings and explanations for unusual heat generation).

4.52. Fundamental weaknesses existed in the communication between the Department and Ofgem. There has been a lack of regular and detailed information both being sought by the Department and being provided by Ofgem to provide assurance that:

- the NI Scheme was being appropriately administered; and

- issues with respect to the compliance with the NI Scheme were being identified and addressed on a timely basis.
4.53. Responsibility for the processes and controls was ultimately that of the Department, a responsibility which cannot be delegated under the NI Regulations. The Department exercised insufficient governance and oversight both in respect of the design and operation of the control framework and appear not to have sought assurance regarding the administration of the NI Scheme from Ofgem.

4.54. In summary, given the context of the specific risk profile of the NI Scheme, the design, operation and governance of the control framework was not sufficiently robust to ensure that applicants meet the eligibility criteria of the NI Scheme and that participants continued to operate within the Guidance. The control framework, in our opinion, fell short of that required to manage the risks to the NI Scheme effectively.

**Recommendations**

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Priority</th>
<th>Target implementation date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 1: Independent validation of applications</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Ofgem should consider what additional/different information it could obtain from applicants to enable a higher degree of independent validation to be performed such that the issues in respect of inaccurate schematics (which were identified through the site inspections part of this review) would be prevented. This might include for example photographs showing the complete system.</td>
<td>2</td>
<td>Person to progress: a) Head of Operations b) Head of Audit &amp; Compliance c) Head of Operations</td>
</tr>
<tr>
<td>b) Though we understand that the use of pre-accreditation inspections has increased in 2016/17, consideration should be given, within the overall Audit Strategy, as to whether further use could be made of risk based pre-accreditation visits during the assessment of the outstanding applications. (NB the scheme is now closed to new applicants).</td>
<td></td>
<td>Target implementation date: a) 31 December 2016 b) and c) 31 December 2016</td>
</tr>
<tr>
<td>c) Ofgem should consider whether outstanding applications received in respect of installations at the same location / with a common owner could be reviewed by the same individual within the Operations Team in Ofgem. In any event, a process should be implemented whereby applications are considered in the context of previous applications / installations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recommendation 2: Installer records</strong></td>
<td>3</td>
<td>Person to progress: Senior Manager, Applications</td>
</tr>
<tr>
<td>Ofgem should consider, for the remaining applications that are still to be accredited, the feasibility of recording the same of the installer</td>
<td></td>
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</tbody>
</table>
for each applicant, to enable the easy identification of sites which have used the same installer.

**Recommendation 3: Independent validation of meter reading data**

DfE and Ofgem should discuss and agree additional action to be taken to provide additional and independent validation of meter readings on a periodic basis. This could include arranging for meter readings to be independently obtained, obtaining a date stamped photograph from the applicant (which could provide evidence to confirm not only the meter read data, but also the date the evidence was obtained). Ofgem may also want to consider the appropriateness and efficacy of the latest advancements in the industry such as Smart metering.

Person to progress: Head of Policy and Comms in discussion with the Head of Energy Renewables (DfE)

Target implementation date: 31 December 2016

**Recommendation 4: Exceptions raised in respect of periodic data**

(a) The system should be modified such that participants of the NI Scheme are not made aware of the logic behind triggers which will invoke further scrutiny.

(b) Evidence should be sought where appropriate to support explanations provided where trigger points have been activated, not just those where Ofgem is not (initially) satisfied with the explanation. Standard Operating Procedures should be updated to reflect the need to obtain, document and review appropriate evidence.

(c) Ofgem to consider, in discussion with DfE, what steps could be taken to develop data analytics to identify exceptions based on other applicants' heat use in similar circumstances.

Person to progress:

- a) Senior Manager, Periodic Data (and DfE)
- b) Senior Manager, Periodic Data
- c) Head of Operations in discussion with DfE

Target implementation date:

- a) 30 June 2017
- b) 31 March 2017
- c) 31 March 2017

**Recommendation 5: Estimated data**

(a) When a participant submits estimated data on the basis that their meter/s is/are broken, Ofgem should seek additional evidence, where appropriate, to support this.

(b) Ofgem to consider setting clear timescales for meters to be repaired.

Person to progress: Senior Manager, Periodic Data

Target implementation date: 31 March 2017
(c) Consideration should be given to introducing seasonality into late data estimations.

**Recommendation 6: Oversight arrangements**

(a) DfE should develop and agree with Ofgem revised governance arrangements. These should include inter alia:
- Outline of key operational roles and responsibilities;
- Key decisions in respect of which Departmental approval should be sought;
- Details of management information to be provided;
- Form and regularity of assurance to be provided to the Department by Ofgem.

(b) Key performance indicators should be agreed between the Department and Ofgem for the delivery of services. These should include at a minimum:
- Timeliness of turnaround of applications (for the installations that have yet to be accredited);
- Timeframes for processing of information received from applicants and NI Scheme participants.

The reporting frequency against these key performance indicators should be agreed and performance reported at the agreed frequency.

(c) The Department and Ofgem should agree the format of information to be communicated in respect of the audit process. At a minimum the following should be provided:
- Number of site inspections undertaken split by pre and post accreditation inspection;
- Results of the site inspections;
- Key themes arising from site inspections; and
- Highlight areas or practice where DfE might wish to consider further action, e.g. update to NI Regulations / guidance for applicants.

(d) Where resource limitations constrain the work that can be undertaken in respect of the audit process, this should be communicated to the Department in a timely manner.

(e) It should be made explicit that any concerns regarding ambiguity in respect of eligibility arising from the wording of the legislation
or guidance should be raised with the Department.

### Recommendation 7: Risk Management

(a) A Fraud Prevention Strategy should be produced and agreed with the Department which is NI Scheme specific and which takes account of the risks associated with the NI Regulations.

(b) The risk register for the NI Scheme should be reviewed regularly to ensure that it is accurate and that the stated controls are working as intended. The Department and Ofgem should agree on the information which is required to be provided to the Department such that the Department has sufficient assurances that controls identified are working as intended.

<table>
<thead>
<tr>
<th>Person to progress:</th>
<th>Head of Operations and Head of Energy Renewables (DfE)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Target implementation</strong></td>
<td>date: 31 December 2016</td>
</tr>
</tbody>
</table>

### Recommendation 8: Standard Operating procedures

(a) All Standard Operating Procedures should be reviewed regularly to ensure that they accurately reflect the key controls of the process to which they relate. Where applicable the SOPs should be updated.

(b) Any SOPs which are no longer relevant should be marked as such.

(c) All SOPs should be updated to include details of when the SOP will be subject to review.

<table>
<thead>
<tr>
<th>Person to progress:</th>
<th>Senior Manager, Assurance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Target implementation</strong></td>
<td>date: 31 December 2016</td>
</tr>
</tbody>
</table>

### Recommendation 9: Audit Strategy

(a) The Department should ensure Ofgem continue to adopt a risk based approach for the audit/site inspection programme. A revised Audit Strategy for Northern Ireland should be drawn up and presented to the Department for approval. As part of this revision process, the following should be considered (inter alia), and noting that these already form part of the current approach taken in 2016/17:

- Risk profile in Northern Ireland, not being restricted by the requirements of the GB Regulations;
- Requirements of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (as amended);
- Internal systems in place to support effective delivery of audit/site inspection programme;
- Number of applications received and participants accredited within Northern Ireland; and

<table>
<thead>
<tr>
<th>Person to progress:</th>
<th>Head of Energy Renewables (DfE) and Senior Manager, Audit &amp; Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Target implementation</strong></td>
<td>date: 31 December 2016 (for updates to 2016/17 audit strategy); 31 March 2017 (for 2017/18 audit strategy)</td>
</tr>
</tbody>
</table>
• Sampling technique to be employed, for example, targeted inspection based on Site Suggestion Log, target inspections based on risk based sampling and statistical sampling (i.e. random sampling).

(b) References to activities which are no longer undertaken or which are not undertaken within Northern Ireland should be removed from the Audit Strategy.

(c) Clarity should be provided as to where a site re-inspection is likely to be necessary, following the identification of a non-compliance.

**Recommendation 10: Site inspections**

(a) The site inspection audit approach should be reviewed to assess whether there are any other elements which should be taken into account during future site inspections undertaken by Ofgem which would enable the current regulations to be effectively monitored and enforced, with particular reference to the four high risk application types identified:

i. Whether the heat is useful;

ii. Whether the heat use is economically justifiable based on the amount of heat used per unit of output;

iii. Whether there is an observed or potential waste of heat; and

iv. Poor energy management practices.

(b) The revised audit approach should be subject to DfE agreement.

**Recommendation 11: Addressing concerns**

The purpose and use of the site suggestion log should be reviewed to ensure that it is working as intended. In particular the following should be considered:

- Frequency of review of the site selection log;
- Action to take if concerns are identified via the site selection log;
- Criteria to be applied to determine whether a referred site should be subject to inspection and further information to be obtained in respect of each of the referred sites; and
- Ofgem and the Department to agree the process by which sites which are not subject to audit will be decided. This decision-making process should be clearly documented to provide an audit trail of the decision making process and outcome; and

1. **Person to progress:** Head of Technical and Compliance and Head of Energy Renewables (DfE)

   **Target**

   **implementation date:** 31 March 2017

2. **Person to progress:** Senior Manager, Audit and Compliance

   **Target**

   **implementation date:** 31 December 2016
- Where relevant, follow-up of other installations at same location / with same owner where concerns or non-compliances have been raised / identified in relation to one installation. Where an installation has been included in the site suggestion log, but Ofgem is otherwise able to satisfy itself that the eligibility criteria has been met without the need for an inspection, comprehensive documentation should be retained to record how Ofgem has discharged its initial concerns.

**Recommendation 12: Site inspections and audit process**

(a) Going forward, the site suggestion log should be reviewed on at least a quarterly basis to identify any significant concerns. Site inspections should be scheduled throughout the year.

(b) Consideration should be given to carrying out unannounced site inspections. If it is decided to undertake unannounced site inspections, this approach should be agreed with the Department.

(c) The defined key performance indicators outlined for the submission and review of audit reports and the subsequent closure email to the NI Scheme participant should be reviewed to ensure these remain appropriate. Once reviewed, staff should be reminded of the importance of adhering to these key performance indicators.

(d) The process for tracking observations should be reviewed, and the approach to obtaining evidence should be considered. The SOP should be updated accordingly.

**Recommendation 13: Timeliness of addressing audit findings**

Documented timescales should be set for requesting and dealing with information received from NI Scheme participants. Performance against these targets should be monitored.

**Recommendation 14: Fuel records**

The Department should consider whether any further action is necessary regarding its expectations in respect of the verification of fuel records.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Person to progress:</th>
<th>Target implementation date:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 12</strong></td>
<td>Senior Manager, Audit and Compliance</td>
<td>31 December 2016</td>
</tr>
<tr>
<td><strong>Recommendation 13</strong></td>
<td>Senior Manager, Audit and Compliance</td>
<td>31 December 2016</td>
</tr>
<tr>
<td><strong>Recommendation 14</strong></td>
<td>DfE Head of Energy Renewables, working together with Ofgem's Head of Technical and Compliance</td>
<td>31 December 2016</td>
</tr>
</tbody>
</table>
**Recommendation 15: Waived repayments**

The situations in which repayments can be waived should be documented and formal agreement sought from the Department. This should include guidance on thresholds beyond which overpayment should not be waived.

<table>
<thead>
<tr>
<th><strong>Person to progress:</strong></th>
<th><strong>Target implementation date:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of Policy and Communications</td>
<td>31 December 2016</td>
</tr>
</tbody>
</table>
5. Site inspections

Introduction

5.1. A programme of site inspections was undertaken across a sample of installations for the purpose of identifying “if there is evidence to support or refute the allegations received by the Department.”

5.2. The Department asked that site inspections be undertaken by inspectors with “sufficient technical knowledge and experience to express a professional opinion on the installation and its compliance with [the Guidance].” To that end PwC engaged the services of Ramboll Environ UK Limited (“Ramboll”), a specialist renewable energy consultancy with significant technical knowledge and experience in biomass technologies. Ramboll supported the design of the site inspection methodology used as well as accompanying PwC personnel to each site, performing the majority of the site inspection work.

5.3. Based on a review of the NI Scheme data it was agreed with the Department that a risk based sample selection size of 80 sites would provide an informed view of ‘on the ground’ behaviours and activities. It was further agreed that both the site sampling and inspections would be conducted over two distinct phases; enabling the knowledge from phase 1 to be applied in the selection, planning and conduct of phase 2.

Scope and approach

5.4. The key elements of planning the site inspection approach were agreed with the Department, this included:

- The methodology in respect of our sample selection for site inspections;

- Our approach to the site inspection process. This included, inter alia:
  
  o agreement on the nature of the inspection itself (i.e. an unannounced visit);
  o the approach for failed visits (where we were unable to get access to the selected site);
  o interaction with Scheme participants; data collection and evidence gathering.

  It was agreed that the inspections would not be a systematic compliance check such as that carried out on behalf of Ofgem, nor that a systematic load assessment be undertaken as part of the inspection; and

- Our approach to the categorisation of results. i.e. inspection scoring.
Sample selection

5.5. It was agreed with the Department to undertake a two phased approach to site inspections, with an objective of completing 50 successful phase 1 inspections by the end of August 2016.

5.6. The first phase sample was to be selected using a risk based approach, while also ensuring the sample was representative of the NI Scheme population as a whole; the second phase sample was to be selected using a targeted approach informed both by key learnings from Phase 1 inspections and augmented where required to ensure the ability to properly address the specific whistleblowing allegations relating to potential abuse of the NI Scheme.

Phase 1 sample methodology

5.7. In order to inform the sample selection, three datasets were provided by the Department which covered application, payment and meter reading data.

5.8. From these datasets key risk factors were identified which would allow businesses and sites to be ranked in order of risk for inspection. These risk factors included the value of projected support payments, applications submitted before introduction of tiered tariffs\(^7\), the use of multiple small boilers, significant increases in heat output generation, usage over and beyond expected usage and boilers with a high utilisation (i.e. running close to 24/7). These key risk factors were discussed and agreed with the Department at a workshop held on 8 August 2016.

5.9. Furthermore, in order to ensure that the proposed sample was representative of the NI Scheme population as a whole the following criteria were also considered; the number of boilers installed by each business, the industry type, boiler capacity and the status of the application (ensuring that the sample included installations that were currently in the process of accreditation as opposed to having been accredited).

5.10. In total, 51 successful site visits were completed as part of Phase 1 by the end of August 2016.

Phase 2 sample methodology

5.11. The Phase 2 sample was chosen based upon the application of learnings and experience gained from completing the Phase 1 inspection process, in particular, concentrating further on sites displaying the key themes and characteristics of those identified to be of concern and also to ensure that we had enough evidence to address the specific whistle blowing allegations raised about the NI Scheme.

\(^7\) Applications submitted post the public announcement of changes to tariff levels, including the introduction of tiered tariffs (8 September 2015), but before these were effected in the NI Regulations (18 November 2015)
5.12. On that basis, it was agreed with the Department that the Phase 2 sample should target the top 20 sites by projected payments, non-poultry farms with projected payments of over £1M and three sites that were chosen for particular observations drawn from a review of application data.

5.13. The Phase 2 sample concluded with an additional 29 successful site inspections completed at the beginning of September 2016.

**Approach to site inspections**

5.14. In order to inform the site inspections, site packs were prepared on an installation level detailing key information. This information included, inter alia: the installation capacity; the last meter available reading data (as obtained from Ofgem); and the key risk factors that had resulted in the site’s selection for inspection.

5.15. The site inspection teams, of which there was two, each consisting of one PwC and staff member and one Ramboll specialist renewable energy consultant, undertook the following tasks at each site:

- Carried out a visual check of installed plant against the relevant information provided in the application form;

- Where a schematic drawing of the installation was provided, this was checked, within the confines of the accessed areas;

- Checked the metering location and associated sensor locations;

- Checked the load supplied by the biomass boilers, within the confines of the accessible areas. Note that at some sites it was not possible to trace distribution pipes fully along their length to categorically confirm the connected load. However this was done to the level of what could be reasonably inferred;

- Looked for any evidence of heat wastage and/or poor energy management practice; and

- Looked for evidence of ineligible heat use.

5.16. The site inspection teams captured a large volume of data, which included:

- Accuracy checks of application data against observed information;

- Accuracy checks of schematics against physical installation;

- Meter readings;

- Efficiency information including building/pipework insulation levels and operating procedures such as boiler on but no heat load; and
- Observed use of heat (domestic, space, water etc.).

This was all input into a structured dataset which was designed specifically for ease of analysing and reporting.

**Inspection scoring**

5.17. Though we were initially asked by the Department to categorise our findings under three categories, we reached agreement with the Department that the results of our site inspections should instead be categorised under four categories as follows:

**Category 1:** Participants generating heat for an eligible purpose within the intentions of the scheme. (This category was not in the original Department’s brief but was added to create a baseline for compliance)

**Category 2:** Participants generating heat for an eligible purpose, which does not meet the intentions of the scheme.

**Category 3:** Participants generating heat for an eligible purpose, but using heat in a way that’s not energy efficient.

**Category 4:** Generating heat which *may* be for an ineligible purpose and therefore *may* be in breach of the scheme.

5.18. The evidence requirements for each of the four agreed inspection scoring categories were developed in consultation between PwC and Ramboll to reflect the variations of installation types and degree of compliance or non-compliance. A copy of the populated risk matrix is attached at Appendix 1.
Site Inspection Findings

Overview of completed site inspections

5.19. As discussed at paragraph 5.5, our sample select was undertaken in two phases.

Site inspection success rate

5.20. A breakdown of the site inspections undertaken is provided below. Please note that the number of sites and businesses are different due to the fact that a number of businesses selected had multiple sites and there were also a number of instances where there was more than one business on the same site. In instances where a business had several sites, all sites were reviewed.

Table 5: Breakdown of site visit success rate

<table>
<thead>
<tr>
<th>Industry Type</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Success</td>
<td>Failure</td>
<td>Total</td>
</tr>
<tr>
<td>Business</td>
<td>46</td>
<td>5</td>
<td>51</td>
</tr>
<tr>
<td>Site</td>
<td>51</td>
<td>7</td>
<td>58</td>
</tr>
<tr>
<td>Boiler</td>
<td>126</td>
<td>16</td>
<td>142</td>
</tr>
</tbody>
</table>

5.21. Of the sites inspections that were not successful, the breakdown of these were as follows:

Table 6: Breakdown of failed site inspections

<table>
<thead>
<tr>
<th>Industry Type</th>
<th>Unsuccessful inspections (site level)</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unavailability of personnel to grant access</td>
<td></td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Bio-security concerns expressed by the owner</td>
<td></td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>7</td>
<td>4</td>
<td>11</td>
</tr>
</tbody>
</table>

Site inspection sample size

5.22. Successfully completed site inspections, as a proportion of the total population size (as extracted from the data provided by the Department) is as follows:
Table 7: Analysis of sample size

<table>
<thead>
<tr>
<th>Industry type</th>
<th>Successfully completed inspections</th>
<th>Total NI Scheme Population</th>
<th>Inspection representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>78</td>
<td>1,114</td>
<td>7.0%</td>
</tr>
<tr>
<td>Site</td>
<td>80</td>
<td>1,204</td>
<td>6.6%</td>
</tr>
<tr>
<td>Boiler (installations)</td>
<td>295</td>
<td>2,128</td>
<td>13.9%</td>
</tr>
</tbody>
</table>

5.23. In terms of the estimated value of RHI support payments (for the remaining life of the NI Scheme), the sample of successfully completed site inspections accounted for 295 installations representing £185.6m of estimated RHI support payments. This is c. 20% of the estimated value of RHI support payments for the whole NI Scheme.

Overall Site Inspection outcomes

5.24. Of the successful visits completed, the breakdown of these, categorised as per the inspection scoring discussed at paragraph 5.18 and as per Appendix 1 is as follows:

Table 8: Summary of site inspection outcomes

<table>
<thead>
<tr>
<th>Category</th>
<th>Successful inspections results (installation level)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Phase 1</td>
</tr>
<tr>
<td></td>
<td>Number</td>
</tr>
<tr>
<td>Category 1</td>
<td>70</td>
</tr>
<tr>
<td>Category 2</td>
<td>29</td>
</tr>
<tr>
<td>Category 3</td>
<td>17</td>
</tr>
<tr>
<td>Category 4</td>
<td>10</td>
</tr>
<tr>
<td>Grand Total</td>
<td>126</td>
</tr>
</tbody>
</table>

These are discussed in more detail under the relevant phases.
Phase 1 site inspection findings

5.25. At a business level, the 46 successful inspections are broken down by industry type as follows:

Table 9: Breakdown of successful Phase 1 site inspections by industry type

<table>
<thead>
<tr>
<th>Industry Type</th>
<th>Business</th>
<th>Site</th>
<th>Installation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>26</td>
<td>29</td>
<td>68</td>
</tr>
<tr>
<td>Agricultural – Poultry</td>
<td>14</td>
<td>15</td>
<td>48</td>
</tr>
<tr>
<td>Agricultural – Farm</td>
<td>6</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>46</strong></td>
<td><strong>51</strong></td>
<td><strong>126</strong></td>
</tr>
</tbody>
</table>

5.26. The Commercial category includes drying facilities, which is a very common use for the installations. The Agricultural – Farm category mainly represented farmers within the dairy sector as well as mushroom farms.

5.27. Typically, many of the larger commercial businesses within the sample had multiple boilers. The breakdown of successful inspections by the number of boilers per business is as follows:

Table 10: Breakdown of boiler numbers per business (Phase 1 Site Inspection)

<table>
<thead>
<tr>
<th>Boilers per Business</th>
<th>Inspections</th>
<th>Boilers per Business</th>
<th>Inspections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>27</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>7</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>2</strong></td>
<td><strong>Grand Total</strong></td>
<td><strong>46</strong></td>
</tr>
</tbody>
</table>

5.28. The graph below provides an overview of the inspection scoring categories assigned to each installation inspected. Over 55.56% of installations inspected were considered to be generating heat for an eligible purpose within the intentions of the NI Scheme; 7.94% of installations inspected, representing 10 in number, were considered to be generating heat for a purpose which may be ineligible and therefore may be a breach of the NI Scheme. Further details of the Category 4 installations are provided at paragraphs 5.83 et seq. Some 46 installations, representing 36.5% of those inspected in phase 1 were categorised as either a category 2 or 3.
5.29. Installations classified as a category 2 appeared to have an eligible purpose, however that purpose while potentially compliant, seemed contrary to the intentions or spirit of the scheme and therefore may take advantage of its design weaknesses. Installations classified as a category 3 also appeared to have an eligible purpose but were considered to be using the heat they generated inefficiently.

5.30. In general, installations serving the poultry, farm (predominantly mushroom farms) and general commercial sectors were scored in Category 1.

5.31. Commercial sites with installations that operated process drying, drying of woodchip for their own boilers and sites with connected domestic use were mainly categorised from Category 2 to 4 inclusive.

5.32. A significant number of drying operations were observed, that were considered to be wasteful and therefore inefficient, whether they were drying woodchip, manure or other material. Some of these operations are likely to be economically unviable in the absence of support payments under the NI Scheme, with the associated heat requirement unlikely to be met by an alternative form of heating. Most of the installations inspected relating to drying operations were classified as category 2, 3 or 4.
5.33. A reasonably large number of sites were also inspected, where it was apparent that the majority or all of the heat output in respect to one or more boilers was serving a domestic residential property. It is possible that these installations may not be adhering to the Guidance relating to the treatment of domestic dwellings under the NI Scheme. Please refer to paragraph 5.66 for details of this evidence. These installations have all been classified as category 4.

5.34. The use of multiple boiler installations was found to be relatively common in the sites inspected (see table immediately below). The existence of the higher tariff level for 99kW rated boilers, relative to a significantly lower tariff level for larger rated boilers (>100kW), appears to have led to the artificial proliferation of this size of boiler. Installations on sites where multiple small boilers were being used, rather than a fewer number of larger boilers, without any supporting rational, other than to possibly take advantage of the higher tariff payable on heat generated by smaller boilers, were mainly classified at category 3’s.

Figure 2: Inspection categories by multiple and single installations (Phase 1)

![Bar chart showing inspection score distribution for Phase 1 split per multiple and single installations]

5.35. The analysis above highlights that sites with multiple installations generated significantly more installations classified as category 2 to 4. As such the phase 2 sample selection sought to focus on large, multi-installation sites, through concentrating on sites with the highest RHI payments, which by virtue were also those with largest numbers of multiple boilers.
5.36. There were four main issues identified from the phase 1 inspections:

- drying wood chip;
- domestic use;
- heat wastage; and
- the use of multiple small boilers.

These are discussed in more detail at paragraph 5.51 et seq. The table below summarises the prevalence of each of these issues from the installations inspected:

Figure 3: Main issues identified and their associated category (Phase 1)

Please note that some of the installations exhibited more than one issue (for example an installation involved in drying may also have had issues regarding heat waste). In those instances, those installations would be counted within both columns. The totals within this graph will therefore not reconcile to Figure 1.
5.37. As can be seen from the graph above, the majority of issues identified in the Phase 1 sample related to drying and the use of multiple boilers. In the main, these were categorised as either category 2 or category 3. Some of the installations that had issues with drying also exhibited issues with heat waste. Drying is generally very wasteful; however a distinction has been made between those who are selling their output commercially to the public (which have been scored as category 2) and those who are using the output for own boilers (which have been scored as category 3) All of those issue relating to domestic use were categorised as category 4.

5.38. The breakdown of the outcome from the Phase 1 site inspections, by category, has been analysed between those that have already been accredited and those that have yet to be accredited, as follows:

Figure 4: Phase 2 sample accreditation status

Phase 2 site inspection findings

5.39. Based upon the sampling approach discussed at paragraphs 5.11 to 5.13, the phase 2 sample consisted of the following:
### Table 11: Breakdown of Phase 2 site inspections by selection criteria

<table>
<thead>
<tr>
<th></th>
<th>Businesses</th>
<th>Sites</th>
<th>Installations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top 20 sites – highest projected RHI payments</td>
<td>20</td>
<td>16</td>
<td>141</td>
</tr>
<tr>
<td>Non poultry over £1M</td>
<td>14</td>
<td>14</td>
<td>40</td>
</tr>
<tr>
<td>Observations</td>
<td>1</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>35</strong></td>
<td><strong>33</strong></td>
<td><strong>184</strong></td>
</tr>
</tbody>
</table>

5.40. The graph below provides an overview of the inspection scores assigned to each installation inspected, across each of the phase 2 sample segments:

*Figure 5: Inspection categories by selection criteria (Phase 2)*

5.41. Fewer installations inspected in Phase 2 were scored as Category 1, 40.24% compared to over 55.56% inspected in Phase 1; this differential was expected due to the targeted nature of the Phase 2 sample selection.
5.42. Phase 2 site findings were consistent with the outcomes from Phase 1, with respect to the identification of installations with a primary domestic use. A significant number of sites were inspected, where it was apparent that the majority or all of the heat output in respect to one or more boilers was serving a domestic residential property. It is possible that these installations may not be adhering to the Guidance relating to the treatment of domestic dwellings under the NI Scheme. These installations have all been scored as category 4. Please refer to paragraph 5.83 et seq.

5.43. Almost half the installations inspected in phase 2 were scored as Category 2 – generating heat for an eligible purpose which does not meet the intentions of the NI Scheme. The purpose while potentially compliant, seemed contrary to the intentions of the scheme and may therefore take advantage of its design weaknesses. As with phase 1 the majority of these installations were drying facilities with multiple boilers, drawn from the Top 20 businesses.

5.44. The majority of farms with expected turnover over £1m inspected were scored as Category 1; as in Phase 1 these installations primarily service mushroom farms. 29.4% of this population has been scored as either a category 2 or category 3, representing mainly installations used as drying facilities located on farming premises.

5.45. In relation to the sites inspected as a result of exceptions identified from the application data, all of these sites and associated installations had independent ownership, that is where the applicant (the Authorised Signatory to the NI Scheme application) owned the installations on each site, but did not own the site or business using the installation. The Authorised Signatory was providing fuel to the business owner free of charge to power the boiler and in return, the Authorised Signatory was receiving the periodic support payments for the heat generated. Each of these installations were being used for an eligible purpose and in the main were using the heat generated efficiently. The fact that this structure works commercially for the third party owner of the installations (Authorised Signatory) suggests that users of the Scheme can not only generate heat for free, but can also generate an additional commercial return beyond that. We note that there is no express prohibition in the NI Regulations or Guidelines against such a practice, however it is our view that an individual purposely making a business out of the NI Scheme itself is contrary to the intention of the NI Scheme; these installations were both scored as a Category 2.

5.46. The four same key issues identified from the phase 1 inspections were identified within phase 2:

- drying wood chip;
- domestic use;
- heat wastage; and
- the use of multiple smaller boilers.
5.47. The graph below summarises the prevalence of each of these issues from the Phase 2 inspections:

*Figure 6: Main issues identified and their associated category (Phase 2)*

Please note that some of the installations exhibited more than one issue (for example an installation involved in drying may also have had issues regarding heat waste). In those instances, those installations would be counted within both columns. The totals within this graph will therefore not reconcile to Figure 5.

5.48. As can be seen from the graph above, the majority of issues identified in the Phase 2 sample related to drying and the use of multiple boilers. In the main, these were categorised as either category 2 or category 3; however some installations in these categories were also categorised as category 4. All of those issues relating to domestic use were categorised as category 4. Please note that the two installations where heat wastage was identified also exhibited one of the other characteristics which rendered them category 4 in overall terms.

5.49. The breakdown of the outcome from the Phase 2 site inspections, by category, has been analysed between those that have already been accredited and those that have yet to be accredited, as follows:
Main issues identified during the site inspections

5.50. As discussed above, there were four main issues, or practices, identified during our site inspections (both Phase 1 and Phase 2) which, in the view of both PwC and Ramboll represent high risks for the NI Scheme, both in terms of eligibility and also efficiency. These relate to:

- Drying;
- Multiple Boilers;
- Domestic use; and
- Heat waste and poor energy management.

These are each discussed in more detail below.

5.51. These practices should be reviewed by both the Department and Ofgem, in particular to consider:

- Whether the heat is useful;
- Whether the heat is economically justifiable based on the amount of heat used per unit of output;
- Whether there is an observed or potential waste of heat; and
- Poor energy management practices.
Drying

5.52. Of the 80 sites and associated installations inspected as part of both the Phase 1 and 2 inspections a significant number involved using biomass generated heat for some form of drying; the drying applications included those for wood chips to be used as biomass fuel, chicken manure, grain/feed, seaweed and sand.

5.53. Any drying operation should be considered as potentially high risk with respect to the NI Scheme. There is the potential to use and waste large amounts of heat in uncontrolled drying operations as well as the potential double counting of support payments. Many of the installations inspected, which were involved in drying operations, have been classified as Category 2s and 3s, with a number classified as category 4s.

5.54. A number of these drying applications are discussed further below.

Wood fuel drying

5.55. The drying of wood chips to be used as fuel was the most common form of drying application. These installations can be separated into:

- those that dried wood chip for commercial sale (commercial wood drying operations); and
- those that dried wood chip for their own use (parasitic wood chip drying operations).

Commercial wood drying operations

5.56. The commercial wood chip drying businesses generally displayed a greater knowledge of how to effectively dry wood chip fuel than sites which used drying to dry fuel purely for their own boilers (parasitic wood chip drying operations). Nevertheless there is the potential in commercial drying businesses to utilise much larger amounts of heat than may be technically necessary. The economic viability of drying the wood fuel in most sites inspected was questionable without unlimited RHI support payments.

5.57. The use of high grade heat to dry wood chip is not usually economically viable if the heat being provided is from gas or oil fuelled boilers as the price of fuel is too high relative to the product value of the dried wood chip. However the existence of the NI Scheme has created an environment in which woodchip drying has become economically viable and has therefore produced a sector that carries out the drying of woodchip using various methods.

Parasitic wood chip drying operations (self-consumption)

5.58. Many examples of parasitic wood drying operations were inspected, i.e. where wood chip was dried purely for internal use both to supply boilers drying the woodchip and other boilers that supply loads such as to a domestic house. Some of the heat use appeared to be extremely wasteful. There is also the potential issue of double counting of support payments. Support payments are received for the heat used to dry fuel which is then used to generate heat on site for which further support payments are received.
5.59. Installations inspected used for this purpose were categorised as either a category 2 or category 3; if any commercial resale the installation was categorised as a 2, if no commercial use it was categorised as a 3.

Other drying applications

5.60. Sites were visited that dried materials other than wood chip. Examples included sites that dried sand, grain, manure, seaweed, mussels etc. Many of these sites used large amounts of heat and received significant support payments. The drying processes varied in their sophistication but most involved passing hot air once over or through the material to be dried and exhausting the heat to atmosphere. Controls were observed to be generally poor so that hot air continued to be delivered even when the material was dry. There is little or no heat recovery. Most operations were observed to be operated on a 24/7 basis. This was confirmed by an examination of meter readings that showed a very high boiler average utilisation: typically over 85kW.

5.61. The economic viability of most of the drying operations appears questionable in the absence of support payments.

Multiple boilers

5.62. As discussed at paragraph 5.34 the existence of the high tariff level for smaller biomass boilers (up to and including 99kW) appears to have led to the artificial proliferation of these boilers, rather than larger capacity boilers.

5.63. Sites have been visited with multiple 99 kW boilers in the same plant room, each boiler having its associated buffer tank and distribution system. Without the incentive of the NI Scheme, these systems would most likely have been designed with larger boilers linked together hydraulically with common headers and buffer tanks. Distribution circuits would have been consolidated. In these cases the capital cost of insulation would almost certainly be reduced. A caveat to this statement is that the use of the smaller boilers may be more flexible in terms of space and design where it is necessary to install plant in a pre-existing space.

5.64. Compared with other wasteful energy management practices observed during the site inspections the effect on the overall system efficiency of using multiple 99 kW boilers is difficult to quantify for the reasons of operating efficiency relative to the load (the need for a constant load versus seasonal or fluctuating demand where smaller independent boilers may provide more flexibility). If the load is relatively constant as in some of the drying operations that were observed then there is no apparent reason to install multiple 99 kW boilers.

Domestic use

5.65. The NI Regulations and Guidance state that installations which serve a single, private residential premise are currently not eligible for support in the NI Scheme. The NI Regulations define ‘domestic premises’ as “single, self-contained premises used wholly or mainly as a private residential dwelling where the fabric of the building has not been significantly adapted for non-residential use”.

13 January 2017
5.66. There were a reasonably large number of sites where it was apparent that the majority or all of the load on a given boiler was serving a domestic residential property as defined in the Guidance. Several properties were visited where the application indicated that the boiler was supplying an office or commercial storage area with an attached house. Often the office or storage area was very small compared to the overall size of the domestic property which accounted for the majority of the heat load.

**Heat waste and poor energy management**

5.67. There were a large number of sites where waste of heat was observed. This was often through evidence of:

- an installation having been let run for excessively long periods of time; or
- where internal distribution pipes were uninsulated.

5.68. There were also a number of sites where heat appeared to be wasted more actively through the use of heat in areas where that use is not normal custom and best practice in the industry or through lack of control and the absence of any heat recovery systems. There were also some instances which appeared to be intentional waste of heat; these installations were categorised as 4s (and are discussed in more detail at paragraph 5.83 et seq.)

**Risk appraisal**

5.69. Taking the findings from the site inspections together, provided below is some high level commentary on risk factors.

**Risks by Industry**

*Table 12: Risk analysis by Industry*

<table>
<thead>
<tr>
<th>Industry</th>
<th>Adjudged level of risk/risk commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>The risks in the commercial sector are variable:</td>
</tr>
<tr>
<td></td>
<td>• Premises where no previous heating system existed are considered high risk</td>
</tr>
<tr>
<td></td>
<td>• Premises where a previous heating system existed are considered low risk</td>
</tr>
<tr>
<td></td>
<td>• Premises involved in drying are considered higher risk (Please therefore refer to the section on Risk by Characteristic).</td>
</tr>
<tr>
<td>Agricultural – Poultry</td>
<td>Low risk for businesses with 2-6 boilers</td>
</tr>
<tr>
<td></td>
<td>Medium risk for businesses with 7 or more boilers</td>
</tr>
<tr>
<td>Agricultural – Farm</td>
<td>Many of the farms we visited were mushroom farms. The adjudged level of risk for mushroom farms is low risk.</td>
</tr>
</tbody>
</table>

Some further commentary on: Poultry; mushroom farming; and commercial and industrial space and process heating is provided below:
**Poultry**

5.70. Generally poultry farms demonstrate a good use of biomass generated heat, with increased productivity and also improved animal welfare.

5.71. Many of the poultry farms inspected were broiler farms. These can be judged to be relatively low risk. The poultry sheds, when in use, are controlled to set temperatures that change as the chickens age. They start off at 34°C and by the end of six weeks, when the chicks are fully grown the temperature has substantially been reduced. There is the potential to increase ventilation rates and hence waste heat but there is a limit to this without affecting the chickens in an adverse manner. Users should be encouraged to take weekly meter readings – this should then show an expected heat pattern.

5.72. There is the potential to waste heat when the sheds are empty. The sheds can be empty for a week, every six weeks. We did inspect some farms where the poultry sheds were empty on the day of inspection, however, the boilers were either turned off or turned down to a low setting.

5.73. Multiple boiler installations carry a higher risk mainly because the boilers may be switched to other uses such as drying and domestic property.

**Mushroom Farming**

5.74. A number of mushroom farms were visited. These do not require large amounts of heat as the mushrooms need an ambient temperature no higher than 18°C. There is the potential for simultaneous heating and cooling in the air handling units when dehumidifying but since the maximum humidity requirement is around 85% then in practice this will be only for a small amount of time.

**Commercial and industrial space and process heating**

5.75. A variety of commercial sites were visited. These included, retail car and kitchen showrooms, pre cast concrete manufacturers, care homes, dog kennels, aerospace manufacturer, wood product manufacturers, commercial vehicle repairers, electrical contractors and office complex.

5.76. Based on the observations from the site inspections, those sites that had previous heating systems for either process or space heating, were at a far lower risk than those sites that installed new systems linked to the availability of support payments under the NI Scheme. The need to install a new system, usually for space heating, which is considered an eligible purpose under the NI Scheme, indicates that heating was not a previous requirement and therefore may raise questions as to the need for heating unless the site has changed its use. The introduction of new installation(s) requires a large investment both in terms of generating plant, distribution network and heat emitters. Several sites were observed where the introduction and use of space heating in large industrial units to maintain high temperatures appears difficult to justify economically in the absence of incentivised support payments.
### Risks by heat use

**Table 13: Risk analysis by heat use**

<table>
<thead>
<tr>
<th>Industry</th>
<th>Adjudged level of risk/risk commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woodchip drying</td>
<td>High risk - please refer to paragraphs 5.53 and 5.55 to 5.59.</td>
</tr>
<tr>
<td>Other drying applications</td>
<td>High risk - please refer to paragraphs 5.53 and 5.60 to 5.61.</td>
</tr>
<tr>
<td>Domestic use</td>
<td>High risk - please refer to paragraphs 5.65 and 5.66.</td>
</tr>
</tbody>
</table>

### Schematics

5.77. The quality of schematics supplied on applications varied considerably, albeit the version made available for this review may not represent the final version used for accreditation. The quality of schematics supplied on applications varied considerably. Please refer to paragraph 4.10 for further detail.

5.78. Some of the available schematics were detailed CAD drawings showing the heat generation plant, distribution network, heat meters, outline of buildings and heaters that were supplied by the system. Other schematics were relatively basic and hand drawn showing much less detail. Critically the details of the load were not shown – simply a symbol for heat load labelled ‘eligible heat’. There appeared to be a correlation between lack of detail and installations where site inspections identified potential waste of heat. For example for many of the drying operations – wood, wood chip, poultry manure, seaweed etc., - the schematics provided lacked detail regarding the drying load. These comments are provided based on the schematics provided to the site inspection team at the outset of the site inspection process. These are the schematics that were submitted by the NI Scheme participant on initial application. Ofgem has advised that they may have received more updated schematics from the NI Scheme participant during the accreditation process. The schematics reviewed by the site inspection teams, on which the above comments have been made, may therefore not represent the final version.

5.79. Additional detail in respect of the specification and design, in particular of drying operations, should be requested from applicants to check whether what is being proposed is efficient.

5.80. It cannot however be assumed that the existence of detailed schematics adequately mitigates the risk of heat wastage; it has been observed that some schematics have been incorrectly labelled. For example it was observed that loads had been labelled ‘farm guest house’ whereas in fact they were part of a domestic house where the signatory lived.

### Metering

5.81. The location of meters and associated sensors was found to comply with the requirements of the NI Scheme. There were some meters which were not ideally placed and were slightly closer to bends than is recommended by manufacturers (i.e. they were less than 10 pipe diameters away from the bend), however the large majority of meters appeared correctly installed, based on a purely visual inspection.
Sites recommended for further review

5.82. Based on our site inspections a number of installations are recommended for further review by the Department and Ofgem. We deal with these using the risk classification categories as outlined in Appendix 1.

Category 4 installations

5.83. In total we scored 19 installations across 14 sites and 14 businesses as a Category 4.

5.84. Of the Category 4 installations, 11 single installations (on 11 sites) all involve a level of domestic use which may deem them ineligible under the Guidance.

5.85. The remaining 8 installations, on 5 separate sites, represent a range of other issues, including cases where it appears that the heat load may have been artificially created to receive support payments under the NI Scheme, such as would be contrary to section 33(p) of the NI Regulations – participants “must not generate heat for the predominant purpose of increasing their periodic support payments.”

5.86. We recommend that all Category 4 installations should be subject to follow up investigation by the Department and Ofgem. These installations may not have an eligible purpose and therefore may represent a breach of the NI Scheme. We have already provided details of all these sites, including the number of installations affected and the detailed site inspection documentation, to both the Department and Ofgem for follow up.

Categories 2 and 3 installations

5.87. Of the 138 installations which we scored as category 2 or category 3, we have identified 53 installations that, in our view, should also be reviewed as a matter of priority, primarily drying sites and in particular parasitic wood chip drying. These installations and related sites are considered to have an eligible purpose, however represent particular behaviours or practices where;

- heat is being used in an inefficient way, including the loss of heat; and/or

- the use of heat generated may be contrary to the intentions of the NI Scheme.

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8 The total number of sites referenced in paragraph 5.84 and paragraph 5.85 do not reconcile to the 14 sites highlighted in paragraph 5.83 due to two sites having failed on two separate issues.
5.88. These specific installations appear to take advantage of both design weaknesses and ambiguity within the NI regulations and Guidance. The associated RHI payment support does not appear to represent best value for money with respect to the use of public funds. While we recognise that the opportunity for recourse in respect of some of these installations might be limited due to limitations in the design of the Scheme, these matters do need reviewed and if possible challenged where the current Scheme rules allow. Learnings from these reviews can also serve to inform how the Department and Ofgem move forward with the monitoring and management of the NI Scheme.

**Summary findings**

5.89. 80 sites with 295 biomass boilers accredited, or in the process of accreditation under the NI Scheme were inspected in August and September 2016. All these sites had boilers (installations) registered before the tariff change on 18 November 2015.

5.90. The single tier tariff rate applicable to boilers up to 19kW is 6.7p/kWh and the tariff applicable to boilers from 20kW to 99 kW is 6.4p/kWh of heat generated\(^9\). This tariff results in a profit for each kWh of heat generated and hence there is an incentive for participants to generate maximum heat in order to maximise support payments under the NI Scheme. 284 of the 295 biomass boilers successfully inspected had a capacity of up to and including 99kW.

5.91. It was agreed with the Department that the installations would be scored against four risk categories. The evidence requirements for this categorisation were developed in consultation between PwC and Ramboll to reflect the variations of installation types and degree of compliance or non-compliance. The four risk categories are as follows:

**Category 1:** Participants generating heat for an eligible purpose within the intentions of the scheme. (This category was not in the original Department’s brief but was added to create a baseline for compliance)

**Category 2:** Participants generating heat for an eligible purpose, which does not meet the intentions of the scheme.

**Category 3:** Participants generating heat for an eligible purpose, but using heat in a way that’s not energy efficient.

**Category 4:** Generating heat which *may* be for an ineligible purpose and therefore *may* be in breach of the scheme.

5.92. In total, for both Phases 1 and 2, our successful site inspections were scored as follows:

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\(^9\) The tariff rate for boilers with an installation capacity of 100kW or greater is 1.5p/kWh.
### Classification

<table>
<thead>
<tr>
<th>Category</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>70</td>
<td>68</td>
<td>138</td>
</tr>
<tr>
<td>Category 2</td>
<td>29</td>
<td>81</td>
<td>110</td>
</tr>
<tr>
<td>Category 3</td>
<td>17</td>
<td>11</td>
<td>28</td>
</tr>
<tr>
<td>Category 4</td>
<td>10</td>
<td>9</td>
<td>19</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>126</strong></td>
<td><strong>169</strong></td>
<td><strong>295</strong></td>
</tr>
</tbody>
</table>

5.93. The sample for which site inspections were completed represent c. 14% in terms of the number of installations within the NI Scheme, or c. 20% by value of estimated RHI support payments.

5.94. Less than half (46.77%) of the total installations inspected were categorised as generating heat for an eligible purpose within the intentions of the NI Scheme.

5.95. It is recommended that all 19 installations categorised as a 4 are reviewed further by the Department and Ofgem in order to determine whether there has, in fact, been a breach of the NI Scheme. These include a number of installations that appear to serve either wholly, or mainly, domestic premises.

5.96. In addition, it is recommended that a selection of installations categorised as 2’s and 3’s are also reviewed by the Department and Ofgem primarily in relation to whether the processes are economically viable and/or grossly wasteful of heat. We have identified 53 of these installations that are a mix of category 2 and 3 classifications and which represent priorities for follow up.
6. Opinion on allegations received

Introduction

6.1. As discussed at paragraph 2.14 the following six allegations were received by the Department in relation to the NI Scheme:

- The NI Scheme is being “seriously abused by many who are not working within the intended guidelines”;
- The NI Scheme “is not being monitored”;
- It is being “left to the installer to vet whether you are a suitable business” to be accredited under the NI Scheme;
- Many people are availing of the NI Scheme who had no previous means of heating, or if they did, no comparison is made between the cost of the previous heating system and that of the new system;
- Large factories, with no previous heating, have installed multiple biomass boilers with the intention of running the boilers “24/7 all year round” to collect approx. £1.5m over the next 20 years; and
- A local farmer, with no business need for biomass boilers, is aiming to collect £1m over the next 20 years for heating an empty shed.

6.2. Evidence has been sought to help either support or refute each allegation, drawing mainly from the site inspection findings (which have been discussed in section 5 of our report).

‘Abuse’ of the NI Scheme contrary to its intention

6.3. Site inspections identified 19 installations across 14 sites where concerns exist with respect to the eligibility of the purpose for which heat is being used. All of these installations have been categorised as 4’s (see paragraph 5.83 et seq. for further details). The heat being generated across these 19 installations may be for an ineligible purpose and therefore may represent a breach of the NI scheme.

6.4. The site inspections undertaken, by their nature, represent a ‘snapshot’ at a point in time of the installations and their heat use. Further, prompt investigation is required by the Department and Ofgem in respect of all of these installations to determine whether there has, in fact, been a breach/abuse of the NI Scheme.
6.5. In addition, site inspections identified a further 138 installations which were classified as 2’s and 3’s. As discussed at paragraph 5.87 some 53 installations from 13 businesses, from within the cohort classified as category 2 and category 3, have been flagged for specific follow up given the significant nature of the concerns identified. These installations appear to have a technically eligible purpose under the NI scheme, however presented a number of particularly concerning practices that appear not to be in keeping with the intention of the NI Scheme, both in respect of the purpose of the heat generated and the efficiency with which it is being used. These specific installations should also be subject to further review by the Department and Ofgem.

6.6. Site inspections have therefore identified some potential abuse of the NI Scheme with respect to possible non-compliance with its eligibility requirements. In addition, behaviours have been identified in a cohort of other installations, that while possibly generating heat for an eligible purpose, have raised significant concerns as to the purpose and efficiency of the heat generated and highlights potential examples of ‘gaming’ the NI Scheme, i.e. where advantage may have been taken of both design weaknesses and ambiguity within the NI Regulations and Guidance.

**The NI Scheme is not being monitored**

6.7. Ofgem is responsible for administering the NI Scheme on behalf of the Department, which includes responsibility for the eligibility of applications, ongoing compliance, payment processes, monitoring and onsite inspections. There is an administration arrangement in place to this effect but responsibility for the controls framework and monitoring of the Scheme was ultimately that of the Department, a responsibility which cannot be delegated under the NI Regulations.

6.8. It is not therefore correct to say that the NI Scheme is not being monitored.

6.9. However, the controls framework, put in place to ‘monitor’ compliance with the NI Scheme did not adequately take account of the increased risk profile of the NI Scheme, relative to the GB Scheme because of design differences, primarily the lack of tiered tariffs and degression. The controls framework therefore fell short of that required to manage the specific risks of the NI Scheme effectively (while accepting that designing and operating an effective control framework was always going to be a challenge given the design weaknesses in the NI Scheme).

6.10. The Department did not exercise sufficient governance and oversight. There is no evidence of it having asked Ofgem for information or of it having acted on information received. A lack of regular and detailed information both being sought by the Department and being provided by Ofgem prevented effective governance of the NI Scheme.

**Vetting being undertaken by the installer**

6.11. Vetting or accreditation of applications is not being undertaken by, nor is it the responsibility of installers; rather, responsibility for accreditation is delegated to Ofgem.
6.12. The NI Scheme has been designed to allow the Department, through Ofgem, to request a level of information that, if robustly scrutinised, should be sufficient for it to make an informed decision on whether or not an application is an eligible installation under the NI Scheme.

6.13. Evidence is only required and used from an installer as part of the Ofgem administered accreditation process if the installation requires Microgeneration Certification Scheme (“MCS”) certification. MCS certification is only required for boilers with a capacity of 45kW or less. There were 233 installations from the total NI Scheme population of 2,128 that had a boiler capacity of this size or less, a relatively small population, representing approximately 1 in 10 installations.

**Participants with no previous means of heating**

6.14. The specific allegation is that many people are availing of the NI Scheme who had no previous means of heating, or if they did, no comparison is made between the cost of the previous heating system and that of the new system.

6.15. As the diagram below highlights, based upon the application data, 62% of applications to the NI Scheme are for new heat requirements.

6.16. There is, however, no requirement under the NI Scheme that an eligible heat load should be an existing requirement; one of the three principles on eligible heat use set out in the Guidance is that an installation can be an “existing or new requirement”.

6.17. Further, as part of the accreditation process there is no requirement under the NI Scheme to compare the cost of the previous heating system and that of the new system.

6.18. While the allegation is factually accurate, this does not represent a breach of the NI Regulations and Guidance.
Running boilers 24/7

6.19. The specific allegation made is that large factories, with no previous heating, have installed multiple biomass boilers with the intention of running the boilers “24/7 all year round” to collect approx. £1.5m over the next 20 years.

6.20. If a participant intentionally runs a boiler(s) for “the predominant purpose of increasing their periodic support payments”, this would be contrary to section 33(p) of the NI Regulations.

6.21. In seeking to address this allegation the “Top 20 sites by projected spend” (calculated by average payments to date and estimated boiler usage) have been taken as a proxy for ‘large factories’. All of the sites and respective installations within the ‘Top 20’, as defined above, were the subject of site inspections. For each of the Top 20 sites, projected support payments are well in excess of £1.5m in value over the 20 year lifetime of the NI Scheme as referenced in the allegation; this reference in the allegation is factually accurate. In addition, each of the Top 20 sites have multiple boilers; this reference is also accurate.

6.22. In relation to the allegation that these sites are running their boilers 24/7, an analysis has been performed which calculated the hours per day that each boiler would have needed to run in order achieve its recorded (or metered) heat output over the most recent period; the heat output, per hour, of the boiler has been identified, based on the capacity of the boiler, this has then been compared to the heat generated in the last available period, (the difference between the meter readings taken at the time of the site inspection and the last meter reading submitted by the participant to Ofgem) and the number of available hours during that period.\(^{10}\)

6.23. This data set was further analysed to identify those installations which had no previous heat requirement, i.e. the installation was a new build, in order to isolate that cohort of installations to which the allegation was directed.

6.24. This information is presented graphically below:

\(^{10}\) Please note that 2 of the installations had no meter reading date and therefore we could not perform this analysis
6.25. There were 176 installations across the Top 20 sites; of this total 98 were new build installations, not replacing a previous heating requirement. The graph above plots the estimated average hours per day that each of these installations have been operating over the period from the date of the last meter reading to the date of the site inspection. 50 of the 98 new build installations had an estimated utilisation of over 80% (highlighted in the graph by the orange bar charts); a further nine were estimated to have over 100% utilisation, or to be running in excess of 24/7 (these are represented by the darkest bar charts).11

6.26. While it appears that in fact many of the Top 20 sites are running multiple boilers close to 24/7, this does not of itself identify an issue, with a number of processes having a legitimate basis for 24/7 use, for example Poultry farms.

6.27. The nine installations estimated to be running in excess of 24/7 were given the following inspections scores:

- One installation was categorised as a 1;

- Seven were categorised as a 2 or 3. These installations served four business, which were involved in commercial manure drying, dog breeding and two commercial woodchip drying operations; and

- One installation was categorised as a 4. This installation was being used to dry timber in an extremely inefficient way.

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11 Please note that there are several reasons why an installation may legitimately achieve a utilisation greater than 100%, the most common likely to be an issue of data quality.
6.28. The seven installations that scored category 2 and category 3 may or may not have a legitimate basis for 24/7 use given the nature of the four businesses. Four of the seven installations are included within the cohort of category 2 and 3 scored installations recommended for further review, see paragraph 5.87 et seq.

6.29. The installation categorised as a 4 was found to have excessive heat wastage. As such, this practice appears consistent with the content and principle of the allegation; as a category 4 this installation has been flagged for further investigation, see paragraph 5.83 et seq.

Local farmer with no business need heating an empty shed

6.30. The specific allegation made is that a local farmer, with no business need for biomass boilers, is aiming to collect £1m over the next 20 years for heating an empty shed.

6.31. The Phase 2 sample selection purposely sought to target non poultry farms with projected support payments over £1m in order to obtain evidence to support or refute this specific allegation. Poultry farms were specifically excluded due to the fact that were considered to be mainly low risk, based on the findings of phase 1 inspections, where some 48 poultry farm installations were inspected, see paragraph 5.70 et seq.

6.32. 40 installations were selected for inspection from the non poultry farm target population, across 14 businesses and 14 sites. 34 of these inspections were successful; no one was available to provide us with access to the other 6 installations.

6.33. Of the successful inspections 16 installations (across 7 businesses) were scored as either Category 2, 3 or 4. Four of these installations appeared to have a commercial purpose (which was observed on site) so these have been excluded from the analysis, given that the allegation is specific to a farm business.

6.34. Of the remaining 12 installations, 3 were parasitic woodchip boilers (where woodchip is dried as fuel for themselves and other boilers on the site), 3 were predominantly serving domestic premises.

6.35. The remaining six installations, all of which were located on, or connected to farm sites, were used for a range of different heat use. Five of these installations were categorised as a 2 or 3 with one scoring a 4 for the reason that the site inspection team considered it possible that the heat was being generated for the predominant purpose of increasing support payments under the NI Scheme.

6.36. The practices identified across the six installations highlighted appear consistent with the principle of the allegation.

6.37. In the absence of the NI Scheme and related support payments it is unlikely that the heat generated by these six installations or the use to which it is being put would be serviced by any alternative form of energy; they do not appear to represent economically justifiable heating requirements as set out in Guidance.
6.38. Each of these six installations has been flagged to the Department and Ofgem as requiring further review.

**Summary findings**

6.39. Six allegations were received by the Department in relation to the NI Scheme. The findings in relation to each allegation are as follows:

**Allegation 1** – site inspection work has identified some potential abuse of the NI Scheme with respect to possible non-compliance with its eligibility requirements. In addition, behaviours have been identified in a cohort of other installations, that while possibly generating heat for an eligible purpose, have raised significant concerns as to the purpose and efficiency of the heat generated and highlights potential examples of ‘gaming’ the NI Scheme;

**Allegation 2** - it is not correct to say that the NI Scheme is not being monitored. However the monitoring and controls in place fell short of that required to manage the specific risks of the NI Scheme;

**Allegation 3** - responsibility for accreditation (vetting) is delegated to Ofgem, not the installer as alleged;

**Allegation 4** - while the allegation is factually accurate – NI Scheme participants have had no previous means of heating – this does not represent a breach of the NI Regulations and Guidance;

**Allegation 5** – practices have been identified that appear consistent with the content and principle of the allegation, one particular installation has been flagged for further investigation having been categorised as a 4, four other installations have been recommended for further review; and

**Allegation 6** – practices have been identified, in large non poultry farms, which appear consistent with the principle of the allegation. One particular installation has been flagged for further investigation having been categorised as a 4 and five other installations have been recommended for further review.
7. Conclusions

7.1. We have been asked specifically by the Department to provide an opinion on the design of the Scheme, the robustness of the controls in place to ensure that applicants met the scheme eligibility criteria and participants continue to operate within the scheme guidelines and to provide an opinion on whether there is evidence to support or refute the allegations received.

7.2. In most respects, the NI Scheme mirrors the provisions and criteria of the GB Scheme, with two fundamental differences, namely the absence of tiered tariffs to discourage heat waste and of a suspension or degression mechanism to act as a cost control measure.

7.3. Given the inherent financial uncertainty that attaches to a demand led scheme, the omission of these provisions in the initial design and, in particular, the fact that they were not introduced early in the course of the Scheme life, was a critical omission, even when balanced against the need to facilitate and encourage a change of behaviour from non-renewable to renewable heat.

7.4. The eligibility criteria in the NI Scheme are essentially the same as those in the GB Scheme, however the general lack of clarity available to participants and administrators as to what constitutes an eligible use of heat is of particular pertinence in Northern Ireland given the clear incentive which existed under the NI Scheme, due to the absence of tiered tariffs, to generate heat over and above that which is ‘useful or usable’.

7.5. We do not therefore consider the design of the NI Scheme to be sufficient to ensure that only heat generated for a valid and necessary purpose is eligible for support.

7.6. In addition, it is our opinion that the controls put in place over the NI Scheme – including both the design of the criteria contained in the NI Regulations and Guidance (in particular during the period before November 2015) and the design and operation of the related control framework – were not sufficiently robust and therefore not fit for purpose.

7.7. Whilst Ofgem was responsible for administering the NI Scheme on behalf of the Department, responsibility for the controls framework and monitoring of the Scheme was ultimately that of the Department, a responsibility which cannot be delegated under the NI Regulations.

7.8. In this regard the Department did not exercise sufficient governance and oversight. It is not clear why the Department failed to review such a material and inherently risky scheme despite commitments to do so, in particular relating to tariff rates; the setting of these tariff rates was underpinned by a set of assumptions which was not adequately monitored against actual behaviour.

7.9. There is evidence to support a number of the allegations received by the Department in relation to the NI Scheme.
8. Recommendations

Further review of sites inspected

8.1. Based on our site inspections, a number of installations are recommended for further review by the Department and Ofgem.

8.2. It is recommended that all 19 installations categorised as a 4 are reviewed further by the Department and Ofgem in order to determine whether there has, in fact, been a breach of the NI Scheme. These include a number of installations that appear to serve either wholly, or mainly, domestic premises.

8.3. In addition, it is recommended that a selection of installations categorised as 2’s and 3’s are also reviewed by the Department and Ofgem primarily in relation to whether the processes are economically viable and/or grossly wasteful of heat. We have identified 53 of these installations, which, in our view, are priorities for follow up; the majority of these installations are drying sites and in particular parasitic wood chip drying. These specific installations appear to take advantage of both current design weaknesses/omissions and ambiguity within the NI Regulations and Guidance.

8.4. Whilst we recognise that the opportunity for recourse in respect of these installations might be limited within the constraints of the existing NI Regulations and Guidance, these matters do need to be reviewed and if possible challenged where the current NI Regulations and Guidance allow. Learnings from these reviews can also serve to inform how the Department and Ofgem move forward with the monitoring and management of the Scheme.

Additional site inspections

8.5. The Department may wish to consider undertaking a sample of additional inspections beyond the 326 inspections (at installation level) performed as part of this review, in order to determine if the findings from these additional inspections are consistent with the findings to date. This would provide further evidence to inform an opinion on whether the issues identified to date are systemic and representative of the wider Scheme population.

8.6. Any additional site inspections should focus on the four main application types, or practices, identified from site inspections as representing high risks for the NI Scheme, both in terms of eligibility and efficiency. These relate to:

- Drying;
- Commercial applications;
- Domestic use; and
- Multiple boilers.
**Ongoing site inspections**

**Applications prior to 18 November 2015**

8.7. Applications made prior to 18 November 2015 pre date the introduction of tiered tariffs and therefore the commercial incentive exists to potentially waste heat. It is essential that the three principles (set out in the Guidance) underlying the Department’s policy on heat uses that are eligible for support are applied rigorously to this population, in particular those applications still to be accredited, in an attempt to limit as far as possible waste, namely:

- a. The heat generated is “useful and useable”;
- b. The heat load it is being used to meet must be an economically justifiable heating requirement, i.e. a heat load that would otherwise be met by an alternative form of heating; and
- c. The heat load should be an “existing or new requirement” i.e. not created artificially purely to claim the support payments.

8.8. Particular focus should be directed towards installations and sites where heat is being used across any of the high risk application types; drying, commercial applications, domestic use, or where multiple boilers have been installed.

**Drying**

8.9. Drying applications should be deemed to be high risk as they have a high potential to waste large amounts of heat.

8.10. The test of ‘economic viability’ should be applied and evidence sought to compare the viability of the drying system to other forms of heating.

8.11. More detailed schematics and drawings of the complete system, including the connected load, should be requested. The specification, predicted throughput and drying parameters should be included and independently verified.

8.12. Applications where there are multiple boilers and potential high payments should be prioritised for future site inspections.

8.13. Any site that is drying woodchip for use within its own boilers should be scrutinised in detail.

**Commercial applications**

8.14. Applications for space heating of commercial premises should be deemed high risk if there was no prior space heating system.

8.15. Evidence should be sought to support the need for heating, and site inspections prioritised for large sites with multiple boilers.
**Domestic use**

8.16. Numerous installations were observed during our site inspections where the heat load appeared to be serving a ‘domestic premises’. The rules as set out in the Guidance regarding the test of whether a property is classified as domestic should be considered more thoroughly, e.g. where a property is treated as a ‘single self-contained’ premises for domestic rating purposes.

**Multiple boilers**

8.17. The use of multiple 99kW boilers, where the load is relatively constant, as in some of the drying operations, should be subject to more detailed scrutiny partly because there is potential for a large cost for the NI Scheme but also because such a practice may indicate an intention on the part of a participant to generate heat for the predominant purpose of increasing their periodic support payments (contrary to section 33(p) of the NI Regulations).

**Applications post 18 November 2015**

8.18. As a result of the introduction of tiered tariffs, the incentive to waste heat and run boilers for excessively long periods should not exist to the same extent. Nevertheless, applications and/or installations considered as high risk should be subject to significantly greater scrutiny going forward.

**Inspection methodology**

8.19. We understand that the Ofgem methodology for inspection in Northern Ireland mirrors that adopted in GB where the risks of heat waste are much less due to the tariff structure. Consideration of the following additional factors, across the four high risk application types identified, should provide a more robust review of potential non-compliance within future site inspections in Northern Ireland by Ofgem:

- Whether the heat is useful;
- Whether the heat use is economically justifiable based on the amount of heat used per unit of output;
- Whether there is an observed or potential waste of heat; and
- Poor energy management practices.

**Revision of NI Regulations and Guidance**

8.20. We recommend that legal advice is sought as to the opportunity to amend the NI Regulations and have this applied retrospectively to pre 18 November 2015 applications. We also suggest that consideration is given to providing greater clarity in the Guidance, with illustrative examples, in relation to the following definitions:

- ineligible purpose;
- predominant purpose;
- useful and useable; and
- economically justifiable.

**Ofgem**

8.21. We have made a number of recommendations in relation to the control framework in place over the NI Scheme in relation to four of the five key processes: eligibility, ongoing compliance, monitoring and onsite inspections.

8.22. Our key recommendations relate to the following:

- independent validation of meter reading data;
- appropriate governance arrangements between the Department and Ofgem;
- a Fraud Prevention Strategy that is NI Scheme specific and which takes account of the risks associated with the NI Regulations;
- a revised Audit Strategy for Northern Ireland using a risk based approach; and
- a site inspection methodology that includes observations designed to identify potential abuse and/or undesirable behaviours.

8.23. We have provided a list of all recommendations (including those relating to our review of NI Scheme processes and controls) in tabular form in Appendix 2.
# Appendix 1 – Risk Matrix

<table>
<thead>
<tr>
<th>Cat</th>
<th>Category Definition</th>
<th>Examples of evidence expected under this definition</th>
</tr>
</thead>
</table>
| 1   | Participants generating heat for an eligible purpose within the intentions of the scheme. *(Note: we have interpreted the intention of the scheme as developing the NI heat market through the use of renewable energy in a way that is efficient and consistent with the Department’s policies and objectives).* | • Heat generated for an eligible purpose i.e. to heat a space, a liquid or to carry out a process (where the heat is used in a building), or for cleaning and drying carried out on a commercial basis (used otherwise than in a building).  
• Heat generated is useful and useable, an existing or new requirement and has not been artificially created for the predominant purpose of increasing support payments.  
• Heat generation is in line with industry best practice.  
• High level of controls to optimise heat use. |
| 2   | Participants generating heat for an eligible purpose which does not meet the intentions of the scheme. | • Heat generated for an eligible purpose i.e. to heat a space, a liquid or to carry out a process (where the heat is used in a building), or for cleaning and drying carried out on a commercial basis (used otherwise than in a building).  
• Multiple boiler installations (e.g. 99kW) where a smaller number of larger capacity boilers would be more efficient.  
• Evidence where applicant could potentially use more efficient equipment, layout or process.  
• Ambiguous commercial use. |
| 3   | Participants generating heat for an eligible purpose, but using heat in a way that's not energy efficient | • Heat generated for an eligible purpose i.e. to heat a space, a liquid or to carry out a process (where the heat is used in a building), or for cleaning and drying carried out on a commercial basis (used otherwise than in a building).  
• Using heat in a wasteful manner which is not in line with industry best practice.  
• Low level of controls in place to optimise heat use.  
• Concern as to whether heat load is being used to meet an economically viable heating requirement. |
| 4   | Generating heat for a purpose which may be ineligible and therefore may be in breach of the scheme. | • Generation of heat that may not be an existing or new requirement and may have no useful or useable purpose.  
• Heat load potentially created for the predominant purpose to claim RHI support payments.  
• Heat use may be wholly or mainly serving a single domestic property. |
## Appendix 2 – Recommendations

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Priority</th>
<th>Target implementation date</th>
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</thead>
<tbody>
<tr>
<td><strong>Review of NI Scheme legislation and guidance</strong></td>
<td></td>
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<tr>
<td><strong>Recommendation 1: Revision of NI Regulations and Guidance</strong></td>
<td>1</td>
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<tr>
<td>a) We recommend that legal advice is sought as to the opportunity to amend the NI Regulations and have this applied retrospectively to pre 18 November 2015 applications.</td>
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<tr>
<td>b) We also suggest that consideration is given to providing greater clarity in the Guidance, with illustrative examples, in relation to the following definitions:</td>
<td></td>
<td></td>
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<tr>
<td>i. ineligible purpose;</td>
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<tr>
<td>ii. predominant purpose;</td>
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<td></td>
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<tr>
<td>iii. useful and useable; and</td>
<td></td>
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<tr>
<td>iv. economically justifiable.</td>
<td></td>
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<tr>
<td><strong>Review of NI Scheme processes and controls</strong></td>
<td>2</td>
<td></td>
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<tr>
<td><strong>Recommendation 2: Independent validation of applications</strong></td>
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<tr>
<td>a) Ofgem should consider what additional/different information it could obtain from applicants to enable a higher degree of independent validation to be performed such that the issues in respect of inaccurate schematics (which were identified through the site inspections part of this review) would be prevented. This might include for example photographs showing the complete system.</td>
<td>2</td>
<td></td>
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<tr>
<td>b) Though we understand that the use of pre-accreditation inspections has increased in 2016/17, consideration should be given, within the overall Audit Strategy, as to whether further use could be made of risk based pre-accreditation visits during the assessment of the outstanding applications. (NB the scheme is now closed to new applicants).</td>
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<tr>
<td>c) Ofgem should consider whether outstanding applications received in respect of installations at the same location / with a common owner could be reviewed by the same individual within</td>
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<tr>
<td>Recommendation</td>
<td>Priority</td>
<td>Target implementation date</td>
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<tr>
<td>the Operations Team in Ofgem. In any event, a process should be implemented whereby applications are considered in the context of previous applications / installations.</td>
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<tr>
<td><strong>Recommendation 3: Installer records</strong>&lt;br&gt;Ofgem should consider, for the remaining applications that are still to be accredited, the feasibility of recording the same of the installer for each applicant, to enable the easy identification of sites which have used the same installer.</td>
<td>3</td>
<td><strong>Person to progress:</strong> Senior Manager, Applications&lt;br&gt;<strong>Target implementation date:</strong> 31 December 2016</td>
</tr>
<tr>
<td><strong>Recommendation 4: Independent validation of meter reading data</strong>&lt;br&gt;DfE and Ofgem should discuss and agree additional action to be taken to provide additional and independent validation of meter readings on a periodic basis.&lt;br&gt;This could include arranging for meter readings to be independently obtained, obtaining a date stamped photograph from the applicant (which could provide evidence to confirm not only the meter read data, but also the date the evidence was obtained). Ofgem may also want to consider the appropriateness and efficacy of the latest advancements in the industry such as Smart metering.</td>
<td>1</td>
<td><strong>Person to progress:</strong> Head of Policy and Comms in discussion with the Head of Energy Renewables (DfE)&lt;br&gt;<strong>Target implementation date:</strong> Actions to be agreed by 31 December 2016; implementation where appropriate by 31 March 2017</td>
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<tr>
<td>Recommendation</td>
<td>Priority</td>
<td>Target implementation date</td>
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<tr>
<td><strong>Recommendation 5: Exceptions raised in respect of periodic data</strong></td>
<td>2</td>
<td>Person to progress:</td>
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<tr>
<td>(a) The system should be modified such that participants of the NI Scheme are</td>
<td></td>
<td>a) Senior Manager,</td>
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<tr>
<td>not made aware of the logic behind triggers which will invoke further</td>
<td></td>
<td>Periodic Data (and DfE)</td>
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<td>scrutiny.</td>
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<td>b) Senior Manager,</td>
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<tr>
<td>(b) Evidence should be sought where appropriate to support explanations</td>
<td></td>
<td>Periodic Data</td>
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<td>provided where trigger points have been activated, not just those where Ofgem</td>
<td></td>
<td>c) Head of Operations in</td>
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<tr>
<td>is not (initially) satisfied with the explanation. Standard Operating</td>
<td></td>
<td>discussion with DfE</td>
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<tr>
<td>Procedures should be updated to reflect the need to obtain, document and</td>
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<tr>
<td>review appropriate evidence.</td>
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<tr>
<td>(c) Ofgem to consider, in discussion with DfE, what steps could be taken</td>
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<td>to develop data analytics to identify exceptions based on other</td>
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<td>applicants’ heat use in similar circumstances.</td>
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<tr>
<td><strong>Recommendation 6: Estimated data</strong></td>
<td>3</td>
<td>Person to progress:</td>
</tr>
<tr>
<td>(a) When a participant submits estimated data on the basis that their</td>
<td></td>
<td>Senior Manager, Periodic</td>
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<tr>
<td>meter/s is/are broken, Ofgem should seek additional evidence, where</td>
<td></td>
<td>Data</td>
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<tr>
<td>appropriate, to support this.</td>
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<td>Target implementation</td>
</tr>
<tr>
<td>(b) Ofgem to consider setting clear timescales for meters to be repaired.</td>
<td></td>
<td>date: 31 March 2017</td>
</tr>
<tr>
<td>(c) Consideration should be given to introducing seasonality into late</td>
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<tr>
<td>data estimations.</td>
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<tr>
<td><strong>Recommendation 7: Oversight arrangements</strong></td>
<td>1</td>
<td>Person to progress:</td>
</tr>
<tr>
<td>(a) DfE should develop and agree with Ofgem revised governance</td>
<td></td>
<td>Head of Energy Renewables</td>
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<tr>
<td>arrangements. These should include inter alia:</td>
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<td>(DfE) in dialogue with</td>
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<tr>
<td>• Outline of key operational roles and responsibilities;</td>
<td></td>
<td>Head of Policy and</td>
</tr>
<tr>
<td>• Key decisions in respect of which Departmental approval should be sought;</td>
<td></td>
<td>Communications</td>
</tr>
<tr>
<td>• Details of management information to be provided;</td>
<td></td>
<td>Target implementation</td>
</tr>
<tr>
<td>• Form and regularity of assurance to be provided to the Department by</td>
<td></td>
<td>date: 30 November 2016</td>
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<tr>
<td>Ofgem.</td>
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</table>
Department and Ofgem for the delivery of services. These should include at a minimum:

- Timeliness of turnaround of applications (for the installations that have yet to be accredited);
- Timeframes for processing of information received from applicants and NI Scheme participants.

The reporting frequency against these key performance indicators should be agreed and performance reported at the agreed frequency.

(c) The Department and Ofgem should agree the format of information to be communicated in respect of the audit process. At a minimum the following should be provided:

- Number of site inspections undertaken split by pre and post accreditation inspection;
- Results of the site inspections;
- Key themes arising from site inspections; and
- Highlight areas or practice where DfE might wish to consider further action, e.g. update to NI Regulations / guidance for applicants.

(d) Where resource limitations constrain the work that can be undertaken in respect of the audit process, this should be communicated to the Department in a timely manner.

(e) It should be made explicit that any concerns regarding ambiguity in respect of eligibility arising from the wording of the legislation or guidance should be raised with the Department.
### Recommendation 8: Risk Management

(a) A Fraud Prevention Strategy should be produced and agreed with the Department which is NI Scheme specific and which takes account of the risks associated with the NI Regulations.

(b) The risk register for the NI Scheme should be reviewed regularly to ensure that it is accurate and that the stated controls are working as intended. The Department and Ofgem should agree on the information which is required to be provided to the Department such that the Department has sufficient assurances that controls identified are working as intended.

**Person to progress:** Head of Operations and Head of Energy Renewables (DfE)

**Target implementation date:** 31 December 2016

### Recommendation 9: Standard Operating procedures

(a) All Standard Operating Procedures should be reviewed regularly to ensure that they accurately reflect the key controls of the process to which they relate. Where applicable the SOPs should be updated.

(b) Any SOPs which are no longer relevant should be marked as such.

(c) All SOPs should be updated to include details of when the SOP will be subject to review.

**Person to progress:** Senior Manager, Assurance

**Target implementation date:** 31 December 2016
### Recommendation 10: Audit Strategy

(a) The Department should ensure Ofgem continue to adopt a risk based approach for the audit / site inspection programme. A revised Audit Strategy for Northern Ireland should be drawn up and presented to the Department for approval. As part of this revision process, the following should be considered (inter alia), and noting that these already form part of the current approach taken in 2016/17:

- Risk profile in Northern Ireland, not being restricted by the requirements of the GB Regulations;
- Requirements of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (as amended);
- Internal systems in place to support effective delivery of audit/site inspection programme;
- Number of applications received and participants accredited within Northern Ireland; and
- Sampling technique to be employed, for example, targeted inspection based on Site Suggestion Log, target inspections based on risk based sampling and statistical sampling (i.e. random sampling).

(b) References to activities which are no longer undertaken or which are not undertaken within Northern Ireland should be removed from the Audit Strategy.

(c) Clarity should be provided as to where a site re-inspection is likely to be necessary, following the identification of a non-compliance.

<table>
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<tr>
<th>Priority</th>
<th>Target implementation date</th>
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<tbody>
<tr>
<td>1</td>
<td>Person to progress: Head of Energy Renewables (DfE) and Senior Manager, Audit &amp; Compliance</td>
</tr>
<tr>
<td></td>
<td>Date: 31 December 2016 (for updates to 2016/17 audit strategy); 31 March 2017 (for 2017/18 audit strategy)</td>
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</tbody>
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13 January 2017

Received from DfE on 27.02.17
Annotated by RHI Inquiry

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## Recommendation 11: Future site inspections by Ofgem

(a) The site inspection audit approach should be reviewed to assess whether there are any other elements which should be taken into account during future site inspections undertaken by Ofgem which would enable the current regulations to be effectively monitored and enforced, and seek to identify other high risk areas with particular reference to the four high risk application types identified:

i. Whether the heat is useful;
ii. Whether the heat use is economically justifiable based on the amount of heat used per unit of output;
iii. Whether there is an observed or potential waste of heat; and
iv. Poor energy management practices.

(b) The revised audit approach should be subject to DfE agreement.

<table>
<thead>
<tr>
<th>Priority</th>
<th>Target implementation date</th>
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</table>
| 1        | **Person to progress:** Head of Technical and Compliance and Head of Energy Renewables (DfE)  
**Target implementation date:** 31 March 2017 |

## Recommendation 12: Addressing concerns

The purpose and use of the site suggestion log should be reviewed to ensure that it is working as intended. In particular the following should be considered:

- Frequency of review of the site selection log;
- Action to take if concerns are identified via the site selection log;
- Criteria to be applied to determine whether a referred site should be subject to inspection and further information to be obtained in respect of each of the referred sites; and
- Ofgem and the Department to agree the process by which sites which are not subject to audit will be decided. This decision-making process should be clearly documented to provide an audit trail of the decision making process and outcome; and
- Where relevant, follow-up of other installations at same location / with same owner where concerns or non-compliances have been raised / identified in relation to one installation.

Where an installation has been included in the site suggestion log, but Ofgem is otherwise able to satisfy itself that the eligibility criteria has been met without the need for an inspection, comprehensive

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<th>Priority</th>
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</table>
| 2        | **Person to progress:** Senior Manager, Audit and Compliance  
**Target implementation date:** 31 December 2016 |
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Priority</th>
<th>Target implementation date</th>
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<tbody>
<tr>
<td>documentation should be retained to record how Ofgem has discharged its initial concerns.</td>
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<tr>
<td><strong>Recommendation 13: Site inspections and audit process</strong></td>
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<tr>
<td>(a) Going forward, the site suggestion log should be reviewed on at least a quarterly basis to identify any significant concerns. Site inspections should be scheduled throughout the year.</td>
<td>2</td>
<td>Person to progress: Senior Manager, Audit and Compliance</td>
</tr>
<tr>
<td>(b) Consideration should be given to carrying out unannounced site inspections. If it is decided to undertake unannounced site inspections, this approach should be agreed with the Department.</td>
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<tr>
<td>(c) The defined key performance indicators outlined for the submission and review of audit reports and the subsequent closure email to the NI Scheme participant should be reviewed to ensure these remain appropriate. Once reviewed, staff should be reminded of the importance of adhering to these key performance indicators.</td>
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<td>(d) The process for tracking observations should be reviewed, and the approach to obtaining evidence should be considered. The SOP should be updated accordingly.</td>
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<td><strong>Recommendation 14: Timeliness of addressing audit findings</strong></td>
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<tr>
<td>Documented timescales should be set for requesting and dealing with information received from NI Scheme participants. Performance against these targets should be monitored.</td>
<td>2</td>
<td>Person to progress: Senior Manager, Audit and Compliance</td>
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<tr>
<td><strong>Recommendation 15: Fuel records</strong></td>
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<tr>
<td>The Department should consider whether any further action is necessary regarding its expectations in respect of the verification of fuel records.</td>
<td>3</td>
<td>Person to progress: DfE Head of Energy Renewables, working together with Ofgem’s Head of Technical and Compliance</td>
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Target implementation date: 31 December 2016
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<tr>
<th>Recommendation</th>
<th>Priority</th>
<th>Target implementation date</th>
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<tbody>
<tr>
<td><strong>Recommendation 16: Waived repayments</strong>&lt;br&gt;The situations in which repayments can be waived should be documented and formal agreement sought from the Department.&lt;br&gt;This should include guidance on thresholds beyond which overpayment should not be waived.</td>
<td>3</td>
<td><em>Person to progress:</em> Head of Policy and Communications&lt;br&gt;<em>Target implementation date:</em> 31 December 2016</td>
</tr>
</tbody>
</table>

### Site inspections

| Recommendation 17: Further review of sites inspected<br>Based on our site inspections, a number of installations are recommended for further review by the Department and Ofgem:<br>(a) all 19 installations categorised as a 4 should be reviewed further by the Department and Ofgem in order to determine whether there has, in fact, been a breach of the NI Scheme. These include a number of installations that appear to serve either wholly, or mainly, domestic premises.<br>(b) a selection of installations categorised as 2’s and 3’s should be reviewed by the Department and Ofgem primarily in relation to whether the processes are economically viable and/or grossly wasteful of heat. We have identified 53 of these installations, which, in our view, are priorities for follow up; the majority of these installations are drying sites and in particular parasitic wood chip drying. These specific installations appear to take advantage of both current design weaknesses/omissions and ambiguity within the NI Regulations and Guidance. | 1 | *Person to progress:* Head of Energy Renewables (DfE)<br>*Target implementation date:* 31 December 2016 |
### Recommendation 18: Additional site inspections

The Department may wish to consider undertaking a sample of additional inspections beyond the 326 inspections (at installation level) performed as part of this review, in order to determine if the findings from these additional inspections are consistent with the findings to date. This would provide further evidence to inform an opinion on whether the issues identified to date are systemic and representative of the wider Scheme population.

Any additional site inspections should focus on the four main application types, or practices, identified from site inspections as representing high risks for the NI Scheme, both in terms of eligibility and efficiency. These relate to: drying, commercial applications, domestic use and multiple boilers.

### Recommendation 19: Application of eligibility criteria

It is essential that the three principles (set out in the Guidance) underlying the Department’s policy on heat uses that are eligible for support are applied rigorously (in particular to those applications made prior to 18 November 2015) in an attempt to limit as far as possible waste, namely:

- **a.** The heat generated is “useful and useable”;
- **b.** The heat load it is being used to meet must be an economically justifiable heating requirement, i.e. a heat load that would otherwise be met by an alternative form of heating; and
- **c.** The heat load should be an “existing or new requirement” i.e. not created artificially purely to claim the support payments.

Particular focus should be directed towards installations and sites where heat is being used across any of the high risk application types; drying, commercial applications, domestic use, or where multiple boilers have been installed.
the motion will have three minutes to propose and three minutes to make a winding-up speech. If the House divides, it will be by simple majority.

Mr O'Dowd had a point of order.

Mr O'Dowd: Sorry, Mr Speaker, you have just given your ruling. My point of order was to ask for further details.

Mr Speaker: OK. I propose to suspend the sitting for 10 minutes to allow Members to make arrangements for speaking in the debate. The Assembly is, by leave, suspended.

The sitting was suspended at 5.42 pm and resumed at 5.58 pm.

Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017: Motion to Delay

Mr Speaker: The sitting is resumed. The next item of business is a motion to delay the debate on the draft renewable heat incentive regulations.

Mr Nesbitt: I beg to move

That this Assembly, in accordance with Standing Order 16, adjourns the debate on the draft Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 until Monday 23 January 2017.

It hardly needs to be said that this is an incredibly serious issue, given what it has done to us collectively over the last number of weeks and what came to pass almost exactly one hour ago. Let me emphasise that this is not party political; this is about the integrity — Members may snigger, but this is about the integrity — of these institutions.

It is about starting the process — it would be only a very small step on a long journey — of restoring public confidence in devolution.

6.00 pm

I will use language that I have thought through carefully. The renewable heat incentive scheme is a debacle. That is not my word but the First Minister's. What the public probably think of these institutions, and of us collectively because of RHI, is probably not fit for parliamentary language. Why delay? Very simple: It is at no cost to the public purse.
£85,000 a day that we are burning off because of the overspend continues, even if these regulations are agreed today or next week, until at least 1 April. That is over £6 million. However, there will be no cost to the public purse if we wait for one week. In waiting for one week, the Minister has opportunities. Specifically, there is an opportunity for the Examiner of Statutory Rules to give a definitive view on what is being proposed. We do not have a definitive view from the Examiner. Reference was made to Standing Order 43. The proper way to do business — the good way and the best-practice way — is to get the view of the Examiner.

The Committee for the Economy would also have the opportunity to consider and scrutinise the legislation. The Minister and permanent secretary were before that Committee this morning. All that the Committee could do was to note the legislation, not approve it. There is no business case for it, and the Minister made clear that he has been working on it for a long time. Another seven days gives him the opportunity to complete it.

Finally, the European unit can give a view on whether it is compliant with European legislation. Let us remember that the regulations make clear that they will take effect from 1 April or when the European Union says that it is happy that they do not contravene state-aid rules.

There are four very solid reasons for why we should delay for a week at no cost to the taxpayer. Given that this is about good governance, the argument is made. Let us adjourn until Monday 23 January.

Mr Lyons: The whole House will be aware of the public concern over, interest in and anger about the renewable heat initiative. I certainly support the Minister bringing the regulations before the House, because, along with an independent inquiry, one of the things that the public want to see is cost controls. They want to see the cost of this brought under control. The regulations brought by the Minister will help to do that.

We met as a Committee this morning, and the timings for all of this have not been ideal. We would like to have had more time for the Examiner of Statutory Rules and the Committee to have a look at the legislation so that we can give it some of the extra scrutiny that it needs. That is not always possible, however. When we began our debate this afternoon, we were not aware of how long we had left in this Assembly. That has now been clarified, and we now know that the Assembly will not be dissolved this week but that we will have an opportunity to meet next week. Doing nothing on this is not an option. However, to delay for one week is a reasonable request, and I believe that it will give us time for some of that extra scrutiny that the Member who spoke previously mentioned.

Therefore, we are content to support the adjournment. We want to see the regulations go through and believe that it is right that they should. The Secretary of State has afforded us an extra week, so we believe that we have more room in which to do that. It is important that the regulations be brought back to the Chamber next Monday so that Members can have their say and a vote can take place.

I want to bring up something that was said during the debate by the Member for South Belfast Mr Ó Muilleoir. He talked about other parties' dereliction of duty. I look around the Chamber, just as I sat in Committee, and it seems to me that there is only one party that has abdicated its responsibility, and that is Sinn Féin. It has not been prepared to come to Committee and do the work and scrutiny that should be done on this.

I certainly hope that they will change their mind and play a role in the Assembly. The public are not interested in some of the party political back and forth that has been going on. They want to see a solution to this.

Mr Speaker: Will the Member conclude his remarks?

Mr Lyons: They want to see costs controlled. I believe that we can do that through these regulations, so let us use the next week to scrutinise that further.

Ms S Bradley: As the SDLP's economy spokesperson, I welcome the opportunity of the extension. I doubt very much if any Member drove to work today in the hope that we could genuinely plug the hole in what is an £85,000 per day haemorrhage to the public purse. Sadly, even though I arrived here with an open mind and a positive outlook, I watched the day unravel. I listened to the Minister, who presented to us a case. He expressed his regret that there had not been time to get the agreed business case and that we would not be able to follow normal scrutiny process, and he put it to us that the decision would have to be made in the absence of good legal practice. Members of my party, including me, were very uncomfortable with that, weighing up the
balance of the loss to the public purse with the request that was put in front of us to carry out a piece of work that would be highly irregular, face legal challenge, no doubt, and maybe cost the public purse beyond anything we could begin to calculate or anticipate.

Things have moved quickly here today, as you will appreciate. I listened then to the Finance Minister give a very moving speech, although I am rather cynical that it was on the sniff of an election, about how he has great concerns about the public purse, as do I. He has great concerns, and he used the opportunity to list things that were of precious importance to him — things that did not appear in the draft Programme for Government. He made clear to the House that he believed the right and proper thing to have done would have been to stop the loss of that money to the public purse. Herein, we are agreed. We all agree that the further haemorrhaging of this money from public finances should be stopped in any way possible. I therefore put it back to the Finance Minister: be true to your word. Show the House that you were genuine in your words. Along with the Economy Minister, show your constituents and the people of Northern Ireland that you are genuinely minded to save the public purse the money that is being lost. Anybody who was genuine in their position would use this week wisely. They would put public interest before any party political interests that are already evident in the House.

Mr Aiken: Speaking as the Deputy Chair of the Economy Committee, in the continued absence of Sinn Féin, I welcome the opportunity for the Economy Committee to provide more detailed scrutiny of this statutory rule. It would give us great opportunity to get the Minister and the permanent secretary back, to take the detail of the business plan, which we have not had a look at yet, and to have the draft PwC report presented to us so that we are able to provide some detailed scrutiny. We may be able to call directly on key stakeholders like RHA NI, the Ulster Farmers’ Union and other groups. It will also allow very clearly, as my party leader pointed out, for the Examiner of Statutory Rules to take the opportunity to report to us, having had appropriate time to be able to consider the rule.

I suspect that we will also consider the issues around the economic impact, take views on the understanding of what the European dimension is and what it is likely to be, and apply, even at this short final stage, more effective scrutiny for the Assembly and, more importantly, for the people of Northern Ireland. I support the motion.

Mr Agnew: As things stand, the Green Party is unable to support the proposals brought forward by the Minister for the Economy, so we welcome the opportunity of an adjournment so that we can glean more information on them. The Minister has asked us to gamble on his proposal — gamble that it will save us more money in money not lost to the RHI scheme and save us more money than it will cost in potential legal cases, and I think that that potential is great. I have to say that, right now, the Green Party is not minded to gamble on a DUP Minister’s assurances at this time.

The Minister appears to be trying to dig the DUP out of a hole of its own making. He has stated clearly that these proposals would have to face the scrutiny of the EU, and I think that he does so knowing that they will not pass muster. I think he does so in the hope that he will be seen to put forward a proposal to deal with this debacle that the DUP has created and that the EU will shoot it down, because he knows that it is unworkable. He has record on this; he previously sought to blame the EU for his failed attempt to woo United Airlines with public money to get it to stay in Northern Ireland. He said that the EU blocked it, but United Airlines came out and said that, in fact, it chose to leave.

The Green Party proposes instead a windfall tax and asks the Minister to take the extended time that he has been given to explore the
option of 100% tax on exessive profits as a result of RHI. Under our proposals, claimants
would only receive a maximum of the cost of wood pellets, thereby removing the incentive to
heat empty sheds and burn heat needlessly and to ensure that there was no cash for ash. It
would be fair, legal and protect public money. I support the motion to adjourn today’s debate so
that such a proposal can be considered.

Mr Allister: There is nothing to be lost and potentially something to be gained by an
adjournment. This matter has been bounced upon the Assembly with incredible speed and
without any of the routine or attempted scrutiny that would normally be expected by our
Standing Orders and by due process. There never was a need to rush it, because the
Minister has known since the day he came into office that there was a major issue here, as did
his predecessors for months before that. Yet if there had not been the BBC ‘Spotlight’
programme, and if we were not facing into an election, I suspect that we would not have this
proposal at all, because there was a laissez-
faire attitude of, “Let’s brush it under the carpet”
until it became uncontrollable in consequence of the ‘Spotlight’ programme.

What we were to debate today should have
been tackled months ago but now it is rushed at
the very last minute. It is right and appropriate
that, if there is another week, it is taken so that
some semblance of scrutiny can be given to it
and we can address it on a more proper footing
than hitherto. I support the motion.

6.15 pm

Mr Bell: Given that this incurs no cost to the
public purse and allows us to see whether what
is occurring is legal — there are, rightly, many
concerns around Northern Ireland — it is only
right that we take the time to get this right rather
than rush it.

Many people have asked me why, in 20 years
of elected politics, I spoke for the first time in
the fashion that I did. I would like it read into
the record of the House that I spoke for the first
time in the fashion that I did because journalists
were able to conclusively prove to me that they
had contacted the Democratic Unionist Party’s
press office day after day after day and were
being fed back misinformation that Jonathan
Bell was unavailable.

I also want a very major concern read into the
record of the House that an instruction went out
from DUP special advisers John Robinson,
currently special adviser to the Economy
Minister, and Andrew Crawford, the current
special adviser to Michelle McIlveen, to try not
to get Arlene called to the Public Accounts
Committee, but:

"under no circumstances allow Jonathan
Bell to be called".

These matters need to be deeply investigated

Mr Speaker: Mr Bell, we are moving outside
the scope of the renewable heat incentive.

Mr Bell: With an adjournment of a week, I am
saying that these matters can be investigated in
this week alongside the very first piece of
information given to me in a ministerial office by
the DUP party officer who was appointed as a
special adviser, Timothy Cairns, which was that
I would not be allowed to reduce the tariff on
the scheme because Timothy Johnston, the
special adviser to the then First Minister, and
John Robinson, at that time the DUP director of
communications and now the special adviser to
the Economy Minister, had such extensive
interests in the poultry industry that it was not
allowed to be on my ministerial agenda. I have
the information, Mr Speaker, and I have kept
the records in many formats. This party has
suspended me for telling the truth while I gave
the First Minister, the deputy leader and the
chairman of the party all the Information

Mr Speaker: Mr Bell, we are way outside the
scope of the motion.

Mr Bell: — about people who are sitting beside
them and behind them and much more serious
offences.

Mr Nesbitt: Mr Speaker, will you just confirm
that Sinn Féin is not speaking on the motion?

Mr Speaker: There is no indication from Sinn
Féin that it wishes to speak on the motion.

Mr Nesbitt: It would have been useful to hear
from Sinn Féin. I also note the absence of the
Economy Minister. I thank Mr Lyons, Ms
Bradley, Mr Farry, Mr Alken —

Ms Ní Chuilín: Will the Member give way? I
just want to clarify the situation. We have been
very consistent on accountability and
transparency and on stopping the flow of public
money into this scheme. People have been
very patient. You have asked for a tactic in
order to look at further scrutiny. That is our
position. I thought, even going by some of your
own comments earlier, that we were speaking ad nauseam so, hopefully, that has clarified it again.

Mr Nesbitt: Thank you very much.

Mr Speaker: The Member has an additional minute.

Mr Nesbitt: Right. I thank Mr Lyons, Ms Bradley, Mr Farry, Mr Aiken, Mr Agnew, Mr Allister and Mr Bell for their comments, and I thank Sinn Féin for the clarification.

If we had done it today, we would have had 74 days until we could bring in these cost controls. It goes down to 67 days although, again, I stress that that is dependent on the European authorities saying that it is compliant with state aid; that must remain an open question.

Finally, once again, over the next seven days, we can hear from the Examiner of Statutory Rules, and the Committee can look again and, as Mr Aiken says, take on board the PwC report. We can have a business case from Mr Hamilton, and we can hear from the EU unit on its presumably preliminary discussions with the European Commission.

If we were an irresponsible Opposition, we would not have tabled this motion. We would have said, "Let the Executive play fast and loose with the public purse. Who cares about £85,000 a day?" If we had been an irresponsible Opposition, we would have wanted to hear a lot more than the two minutes and 32 seconds that we have just heard from Jonathan Bell MLA — he has whetted my appetite for the debate when it resumes next Monday — but no. On this day, as the Executive parties bring the mandate crashing to its knees four and a half years early, you have a responsible Opposition holding the Executive to account.

Question put and agreed to.

Resolved:

That this Assembly, in accordance with Standing Order 16 adjourns the debate on the draft Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 until Monday 23 January 2017.

Mr Speaker: I ask Members to take their ease for a moment.

The House took its ease from 6.21 pm to 6.25 pm.

Assembly Business

Mr Speaker: Members, owing to the nature of the next item of business, I will not be chairing the debate. I have been advised that the three Deputy Speakers will also be unable to do so. Standing Order 9A(1) provides for these circumstances by requiring the sitting to be chaired by a temporary Speaker. The temporary Speaker is defined as:

"the member, present at the sitting, who has served the Assembly the longest number of days, and in the case of a tie, the oldest of these."

In accordance with Standing Order 9A(1), I therefore ask Lord Morrow to take the Chair. I invite Members to take their ease while we make a change at the top Table.

The Temporary Speaker (Lord Morrow) in the Chair.

Private Members' Business

Speaker: Motion of No Confidence

The Temporary Speaker (Lord Morrow): The Business Committee has agreed to allow up to two hours for the debate. The proposer of the motion will have 10 minutes to propose and 10 minutes to make a winding-up speech. One amendment has been selected and is published on the Marshalled List. The proposer of the amendment will have 10 minutes to propose and five minutes to make a winding-up speech. All other Members who wish to speak will have five minutes.

I inform Members that I have been advised by officials that a valid petition of concern has been presented today in relation to the motion of no confidence in the Speaker. Under Standing Order 28, the vote cannot take place until at least one day past. The vote will therefore be taken at the beginning of business tomorrow morning, Tuesday 17 January. I remind Members that the vote will be on a cross-community basis. I ask the Clerk to read the motion.

The following motion stood in the Order Paper:

That this Assembly has no confidence in the Speaker of the Assembly; believes that his position is untenable as he has compromised the independence and integrity of the office of
FROM: MIKE BRENNAN  
DATE: 19 JANUARY 2017  
TO: MÁIRTÍN Ó MUILLEOIR, MLA  

RHI NON DOMESTIC BUSINESS CASE – CONCERNS  

1. Your Special Advisor emailed me on 18 January 2017 setting out your remaining concerns about the business case submitted by the Department of the Economy (DfE) to resolve the financial problems associated with the Non Domestic RHI scheme. You have requested my thoughts on a number of aspects.

2. I would begin by pointing out that the business case presented to us is what I would term ‘sub-optimal’ in that it doesn’t present a solution that would result in an immediate and permanent cessation to payments that are a call upon the Executive’s DEL budget (but not halting continued access to AME funding to allow genuinely eligible projects to continue).

3. However, in light of the legal advice that option 2 is a robust defensible position and the need to have some further time to collate more usage data, I must conclude that the proposed way forward is indeed the only practicable action that can be taken immediately to significantly reduce the current irregular expenditure. I take the view that in our current circumstances this is an essential first step in implementing a sustainable and permanent solution. However that solution will only work if DfE delivers on the commitments set out in the business case.
4. The key commitments in the business case that continue to worry me are, as you have identified, the role of OFGEM and the planned inspection programme.

5. OFGEM’s engagement to date has been inadequate. There undoubtedly needs to be a more pro-active role taken up. Our concerns have been made to the DfE and in a response (13 January 2017 – extract below). It is important to note that there isn’t really any option for DfE but to continue the relationship with OFGEM at this stage as it would take considerable time to procure an alternative client with suitable systems.

1. At the current time the Department has no choice but to continue to rely on OFGEM’s administration of the scheme, additional actions we have taken include:

1.1 Detailed communication and discussions with OFGEM, at Permanent Secretary level, to agree the approach to inspection and enforcement;

1.2 The appointment of, within the DfE RHI Taskforce team, an ex CPD Grade 6 (Dave Glover) to assist with the management of the OFGEM contract;

1.3 The start of the commissioning process to procure 100% inspections;

1.4 The consideration of medium to long term options on enforcement including the ‘contracting out’ of this function;

6. However the more critical issue to successfully delivering on the business case objective is to expedite the inspection process of all installations. Quickly rolling out the inspection process will have two immediate benefits – triggering a behavioural change and also identifying ineligible usage. Combined, these two benefits will likely reduce costs significantly.

7. To give you greater comfort on delivering a timely inspection process, we have asked CPD to assist in putting in place a robust contract management regime. We have also informed DfE that we need to have the inspections business case with us before close tomorrow to allow us to conduct an initial assessment before the wider RHI business case is approved.

8. In relation to your wider concern about approving what might be deemed later to be a ‘botched’ plan, I can only say that this proposed way forward does:

- Immediately constrain tariff payments through the introduction of a tiered tariff and usage cap
- Offers a strong legal defence to challenge
- Puts in place an inspection and audit process that should drive down long term costs
- Offers best possibility of being State Aid compliant.
9. In conclusion I would endorse our previous advice that the DfE Accounting Officer’s request for business case approval should be granted subject to the various conditions outlined in the draft Supply approval letter provided to you last Sunday. I have agreed the terms of this memo with David Sterling.

MIKE BRENAN

cc: David Sterling
    Hugh Widdis
    Colin Sullivan
    Emer Morelli
    Michelle Scott
    Eoin Rooney
The Deputy Chairperson (Mr Aiken): Before we start, I will just say that I will not be asking the questions that I posed on ‘The Nolan Show’ this morning — you will be happy with that, Andrew. Stephen, you must have the most thankless task of anybody in Northern Ireland, but you are welcome. Shane, you are welcome as well. For those who do not know, Stephen McMurray is the renewable heat incentive (RHI) task force leader.

Mr Stephen McMurray (Department for the Economy): Yes, indeed.

The Deputy Chairperson (Mr Aiken): You must have been standing in the wrong place at the wrong time, and somebody volunteered you.

Mr McMurray: I must have committed a sin in a previous life.

The Deputy Chairperson (Mr Aiken): Andrew, one of the reasons we want you here is to talk about the business plan. In particular, we want to talk about the business plan going forward and, specifically, any alternatives that you looked at. That, a windfall tax and rateable issues are among the issues that we will be considering going forward. As you are aware, we had a legal briefing just before this session, and I would like to hear your view on the potential legal risks. Another issue that has been raised is the question of whether, going forward and bearing in mind that we have already had one year in which £30 million was spent, there is any process of recovering that excess money from the scheme. Those are the points that I would like to open up with. It is over to you and the team, Andrew.
Dr Andrew McCormick (Department for the Economy): Thanks, Deputy Chair, and thanks for the opportunity to do this. In a moment, I will ask Shane to talk through the analysis in the business case, including, as you asked, the options that were considered, the bones of the analysis and the appraisal of those options that takes us towards the recommendation that emerged in the business case. That is what Shane can do with the economic expertise that he brings to that.

I got one chance to talk about the big picture perspective at the Public Accounts Committee (PAC) yesterday. I was following on from the question that you asked me on Monday — we touched on it on Saturday as well — on the issue of ministerial direction. I said to the PAC that, on the contrary, not to do this would probably require ministerial direction. That is a slightly contrived point because there is no such provision as a ministerial direction for inaction. However, I want to make that point rhetorically to emphasise that the imperative that I am under as accounting officer is to secure value for money, regularity and propriety of expenditure. As we stand, in 2016-17, the expenditure on RHI will be irregular. That is not because it was not approved; some of it was approved by the Department of Finance. That, however, is not the only condition. If you look at 'Managing Public Money', you will see that regularity also requires that there is adequate control. As we stand, as is well known, there is not adequate control, so my obligation as accounting officer is to take action to secure that. One key to the whole analysis is that we have not found a quicker or better option to move towards regularity in relation to this expenditure. That is one reason why we regard this as urgent and imperative.

The Deputy Chairperson (Mr Aiken): Andrew, on another point, we talk about how you are the accounting officer for the Northern Ireland side of the funding, but, for the annually managed expenditure (AME) —

Dr McCormick: I am also the accounting officer for the AME.

The Deputy Chairperson (Mr Aiken): You are accounting officer for both.

Dr McCormick: Yes. Part of the fallacy that crept into this was, "This is free money. Treasury will pay". For my responsibilities as accounting officer, that is totally irrelevant: I am accountable for the whole lot. My accounts cover the lot.

The Deputy Chairperson (Mr Aiken): To clarify, you account to the Northern Ireland Executive and to HM Treasury.

Dr McCormick: All of it goes through the Assembly request for resources process, so it is all approved by the Assembly through the Budget Bill.

The Deputy Chairperson (Mr Aiken): It is all on the vote.

Dr McCormick: It is all on the vote, so, in that sense, the accounting officer role is purely within Northern Ireland, although I have to say that HM Treasury has noticed — they read the Northern Ireland newspapers.

The Deputy Chairperson (Mr Aiken): I am sure that they have.

Dr McCormick: They have noticed this and are very concerned. There is something of a postbag going to Treasury Ministers and to Ministers at the Department for Business, Energy and Industrial Strategy (BEIS) asking, "What is going on here?", given the contribution from UK taxpayers through the subvention to Northern Ireland. There is concern in London, and, therefore, we have, de facto, a responsibility to act and secure control of public expenditure.

The Deputy Chairperson (Mr Aiken): For clarification, Andrew, have you received a letter from the Chief Secretary to the Treasury or any direction from Her Majesty's Government (HMG)?

Dr McCormick: No, we have not, but we are aware informally of concerns.

I have given my perspective as accounting officer and my strong reasons to back the approach. I draw your attention to the appraisal of the business case. One of the suggestions that came to me from the Department of Finance, as it was considering this last week, was whether it would be a good idea, given that we are moving at pace, to secure an independent opinion on the business case. The Minister mentioned this briefly on Monday, and I will elaborate slightly. We approached a colleague
called Bob Hanna, who does some independent work. He is the chief technical adviser to the Department of Communications, Climate Action and Environment (DCCAE) in Dublin, and he is doing this work in an independent capacity.

**The Deputy Chairperson (Mr Aiken):** I know Bob.

**Dr McCormick:** He told us:

> "The documents constitute a very good and complete analysis of the current situation and possible early-term courses of action, albeit that it is recognised that this had to take place over a very short period of time and with quite limited data. The documents are extremely well prepared. There are a small number of typos and grammatical issues but nothing substantial, and the conclusions are logically drawn and the recommendations well stated."

We had that independent scrutiny over the past weekend. He has done an urgent piece of work for us, and that is totally independent expert advice on the quality of the work.

**The Deputy Chairperson (Mr Aiken):** Can we have a copy of that?

**Dr McCormick:** Subject to the Minister’s approval, yes, we will get it to you.

**The Deputy Chairperson (Mr Aiken):** I am sure that the Minister will be content.

**Dr McCormick:** I will touch briefly on the legal issues. I am not sure that there is much I can do to expand on what the Minister said in the Chamber on Monday. We have analysed this on the basis of two main potential lines of challenge. The first is a general one in relation to legitimate expectations, where we go back to the fact that the expectations created at the time of the launch of the scheme were very clear and stated the nature of the incentive that was being drawn together. There are references in Hansard and in documents produced in 2012 that indicate that the expectation was that the rate of return that would apply to beneficiaries of the scheme would be of the order of 12%. Shane can explain this in more detail, but that is the kind of expectation that needs to be in place to incentivise an investment in something that is unusual or novel. That is good economics, in that sense.

**The Deputy Chairperson (Mr Aiken):** One of the questions that have come out is about the incentivisation — maybe Shane could talk about this — for other renewables and the likely return. One of the things that seem to be out of step is the incentivisation for the renewable heat scheme compared with the incentivisation process for other renewables. Perhaps you could address that when you are talking it through.

**Mr Shane Murphy (Department for the Economy):** My understanding of the logic is that this was about incentivising renewables compared with what a business would otherwise do. A business could choose to continue with its oil boiler for its heat — let us say that it is heating an office — and choose to invest its capital in another activity. The benchmark is not necessarily an investment in different energy systems and what were the returns for energy investments. This was to incentivise businesses to use their capital in order to change their boiler system compared with what other investments they might have made by keeping their oil boiler. The difference between oil boilers and biomass boilers is substantial, so that was the logic — that a commercial-orientated rate of return was likely to be required. You could argue the toss about whether 12% was the right number.

**The Deputy Chairperson (Mr Aiken):** For clarity, then, was the incentive for the replacement of existing systems?

**Mr S Murphy:** Yes, or to choose a renewable boiler over an oil boiler if building, for example, a hotel. The idea of the tariff was that it would cover the additional investment and the additional operating costs by way of a tariff-based system. It was not for the entire cost of the biomass boiler or geothermal system or for the entire operating cost; it was for the additional costs. The logic was that they should be existing businesses with a heat demand that was par for the course for a business. A leisure centre with a swimming pool, for example, needs to heat that pool anyway, so this makes sense for it. It needs a boiler of some sort in order to generate revenue for its business. If someone who has an office block wants to have tenants, they need to have a heating system. That is just part of their normal business and their normal income and outgoings. Given that it will potentially be more
expensive to go green, the idea of the tariff was to cover the extra. That is important, because it is sometimes lost.

**The Deputy Chairperson (Mr Aiken):** It was only for the heating; it was not for anything additional to that.

**Mr S Murphy:** It was for heating, and the tariff is based on heat output from boilers.

**Dr McCormick:** I will go back to a point that was made in the Chamber on Monday. There was a very clear statement of intention; the problem with this is a mismatch between intention and delivery. The mistake was made in designing the system and in the overgenerous tariff. That was not intended; indeed, it was not understood and spotted. I explained at length yesterday the nature of the mistakes that were made in the Department and the responsibility that we, as civil servants, have to take for the departmental flaws in that design, but no one can say that there was any intention to provide anything more generous. That is an important point that goes to the legal advice.

The second main potential ground of challenge, as the Minister explained, is in relation to article 1 of protocol 1 (A1P1) of the European Convention on Human Rights: the right to property. The clear advice from our senior lawyers is that the right to property in this context — the context of future income — is very different from the right to property in relation to existing property and that the A1P1 contains a specific reference to the public interest, so there is a power. It says that there is a need not to interfere with people's property except in the public interest. The exception for that to be done is explicitly there in A1P1. The clear argument behind this proposal is that the public interest is not being served by the excessive compensation that is going to beneficiaries of the scheme through the existing tariff. The legal advice that we have is very clear and robust, and we are very confident that the case is there.

I think that I have touched briefly on your main points, Deputy Chair. Is it best to let Shane expand on the analysis of options and the basis for the recommendation?

**The Deputy Chairperson (Mr Aiken):** Yes, please.

**Mr S Murphy:** I will start by talking about the driver of actions. At times, there appears to be a mixing up of abuse and overcompensation as one and the same thing and a view that the only issue with the scheme is abusers and, if they went away, the scheme would be fine: that is absolutely not the case.

On drivers for action, I will start with overcompensation. I might dwell on this a bit longer than I will on other things because we could well return to it. The tariff that was set initially within the Cambridge Economic Policy Associates (CEPA) work was based on a 50-kilowatt boiler running 17% of the time. It envisaged moderate-sized office blocks, with office hours driving the heat loads.

**The Deputy Chairperson (Mr Aiken):** That was based on the Department of Energy and Climate Change (DECC) decision in the original GB scheme.

**Mr S Murphy:** What came along, however, were not 50-kilowatt boilers but 99-kilowatt boilers, already doubling the heat load assumption. What came along was not a 17% load factor but something like a 40% or 45% load factor, so the heat load assumption was out by a factor of about five. There were fewer offices and far more industrial processes, so the load and size of boiler were much greater. Tiering has been talked about a lot in terms of cost control: its biggest function is actually to regulate the rate of return. The rate of return goes up until the tier is reached and then starts to flatten out. It would flatten out around the 12% mark. However, without tiering, as loads go up, the rate of return keeps rising. In practice, for far too many people, the rates of return are 30%, 40% or 50%-plus. That is very significant. We can come back to this, and I can give you more evidence, but overcompensation is a key driver. That leads to —

**The Deputy Chairperson (Mr Aiken):** I am sorry, but I just want to check something. The standard boiler at the time was about 50 kilowatts, is that right?

**Mr S Murphy:** That was assumed.

**The Deputy Chairperson (Mr Aiken):** Those were the industry standard. However, the 99-kilowatt —
**Mr S Murphy:** That was the most popular boiler, by a long stretch, put in in that tariff band.

**The Deputy Chairperson (Mr Aiken):** In GB, they were mostly 50-kilowatt boilers, weren't they?

**Mr S Murphy:** I do not know what was installed in GB. Certainly, the analysis anticipated that something like a 50-kilowatt boiler would be typical.

**Dr McCormick:** It is quite a natural behavioural response that businesses would say, "We will get this high tariff for a bigger boiler, so let us get as big boiler as possible to maximise the tariff". It is a logical commercial response; indeed, we also have the phenomenon of multiple boilers — eight 99s where one really big one would do. That is part of the way that this is worked.

**Mr Chambers:** You talked about the returns. The layman is hearing that people were getting back £1.60 for every £1 that they put in; that is the story going around. Was it only the abusers who were getting that return, or was everyone getting it?

**Mr S Murphy:** The abusers are a subset of the overcompensated. I will give you an illustration of the profile. For this tariff, the tier is set at 15%, which, by our calculation, will, broadly speaking, deliver a 12% return on the additional investment and operating environment for a biomass boiler. For the profile of applicants for whom we have sufficient data — some had not logged invoices, usage and so forth — about 15% of applicants currently run their boiler at load factors of 15% or less. Those 15% are, therefore, earning no more than 12% or so. The remaining 85% range from minor or marginal overcompensation right up to earning multiple rates of return. We reckon that about 70% are outside the range that we gave to the European Commission. Those are where there are the most serious rates of return that are out of kilter. We also gauge that probably about 10% have earned so much to date that, if you cut off their payments completely, you would still need some retrospective action to get them back into kilter.

**The Deputy Chairperson (Mr Aiken):** Gordon, did you want to make a point of clarification?

**Mr Dunne:** My point is that there was no pre-approval system in place for the boilers. Is it possible that applicants brought in 99-kilowatt units and were almost setting their own specification for suppliers rather than there being a pre-approved specification?

**Mr S Murphy:** I am not sufficiently technically orientated to answer some of the questions.

**Mr Dunne:** It is the case that there was no pre-approval. People went ahead and installed the boiler and then applied for it to be approved: is that not correct?

**Dr McCormick:** Yes, that is the case. However, there is a stage of testing between installation, application and accreditation. Ofgem looks at the application, the schematic and the diagrams that are provided to show what the installation does and what it is there for. The typical pattern is that they have several exchanges with the applicant to clarify points of information. Then, assuming that all is well, Ofgem accredits, and the payments are backdated to the date of application. The date of application is still the determining point for expenditure, but there is a process of approval. That is why there are still cases in the pipeline of people who applied before the scheme was suspended at the end of February. Those cases are still in the process of consideration by Ofgem. They will still get payments backdated to the date of application.

**Mr McMurray:** They have to go through accreditation.

**Dr McCormick:** Exactly.

**Mr Dunne:** There was no pre-approval system.

**Dr McCormick:** No.

**Ms S Bradley:** It might seem an obvious question, but how is that measured? If I have a boiler, how do I tell you how much heat I have generated? How do you determine how much was above what I would have generated in my business anyway? Do I give you a copy of an invoice for the material for burning that I have used? How does that system work?
Dr McCormick: I am not sure that any of us are aware of all the precise details of how Ofgem does that, but a requirement to submit meter readings is part of the process. Part of the test of our inspection, enforcement and audit process to ensure that there is a verification process. There are two stages to your question. First, what is required by way of information at the point of application? That is where they need to understand the design of the boiler. The second stage is to get information on the purpose for which the heat is being generated. That looks at boiler size and the proposed load factor. What proportion of the day will it be used for? Are we talking about 17% — the classic working day — or the kind of usage that the poultry industry needs? All of that information comes in, and there is not a single definition of "excess" in that context. That is why, in looking at enforcement and inspection, we will have to design and specify exactly what we mean by "excess". That is part of the process that we are in.

Mr S Murphy: We will touch on some of the attempts in the business case to gauge what that might mean for expenditure. Overcompensation is a driver, and that feeds through to overcommitment. The AME budget next year is a bit over £22 million, and we are nowhere near on track. Unless we change, we will be closer to £50 million.

The Deputy Chairperson (Mr Aiken): Sorry, excuse me?

Mr S Murphy: Without any change — without this course of action — we will have something like a £50 million cost for domestic and non-domestic RHI next year, of which just over £22 million will be available from AME.

The Deputy Chairperson (Mr Aiken): OK.

Mr McMurray: That means a £28 million potential overcommitment.

Mr S Murphy: There is a big budget driver there as well.

The third driver is undesirable behaviours. You have heard about those, so I do not want to list them again. That leads to pretty poor value for money, and there has been much public concern.

The objective of the business case was to undertake a legally defensible course of action that, starting next year, could remove the perverse incentive to produce excessive heat. Work has been done on longer-term options, but the conclusion was that they are not sufficiently developed. Bearing it in mind that we will be setting something for 18 to 20 years, we are not at a stage where there is full assurance in legal terms, incentive terms or budgetary terms and we could take the plunge on them without crossing our fingers. Therefore, in conclusion, we asked, "What's available to us as a first step to get the excesses of the scheme back to normal standards, as far as we can, in the incoming year?". That led to several standard options. We can continue as we are, which will cost something in the order of £50 million. We can take something off the shelf that is known to the industry and is grounded in the logic of the scheme, going back to the other legal points, namely the post-November 2015 tariff structure. There was also an option of suspending all non-domestic payments for the coming year. There were options in between that involved fairly arbitrary reductions in tariffs, whether they be budget-driven or driven by some other arbitrary process.

In the main, the concentration comes down to a choice between staying where we are, which overcompensates and is, basically, taking money out of the block and paying people supernormal profits — that is pretty much what it is — and continuing poor behaviours, or do we take some action? Then the question becomes the severity of that action and how well it gets us within budget for next year. Superimposing the November 2015 tariffs on to installations that were there beforehand can get you somewhere around £24 million to £25 million for the incoming year, depending on how much behavioural change is incentivised. I will talk about that in a minute.

The Deputy Chairperson (Mr Aiken): Will you clarify that? Do you mean that £24 million to £25 million, even if there is no behavioural change, would be —

Mr S Murphy: No, we have some variations in it. With some behavioural change, we have got it to £24-5 million or so; without it, a bit over £25 million. I will come back to behavioural change in a minute, because I do not want it to be taken as fact that that is the cost of behaviours. Just bear with me.
Another option on the table is one that was reverse-engineered from the budget, to deliver something that would keep you within the AME allocation of just over £22 million. That is where the key choice comes: do you go with an off-the-shelf set of tariffs that was publicly grounded in the logic of the scheme and could be used to aid your defence, or do you risk going for the extra £1 million or £2 million financial gain, with a potential reduction in the legal strength of your case?

**The Deputy Chairperson (Mr Aiken):** One of the big drivers is legality. To what extent will it be challenged? There will be legal challenge, but the question is this: what is the worst-case option?

**Mr S Murphy:** Is it worth going for the extra £1 million or £2 million, given the extra legal risk? That is the judgement inherent in this.

**Mr McMurray:** I suppose, Shane, that this is getting us back to the original policy intention and what the scheme was about in the first place.

**Mr S Murphy:** Yes. It might be reasonable to expect that, by bringing in the tier and the cap, there would be some change in behaviours. Certainly, the incentive to burn above the tier when you do not need the heat should pretty much plummet or disappear. The question will be how much of the current heat and loads are truly not needed or would not be needed with some adjustment and whether the heat loads will start to gravitate towards the levels of the tier and the cap.

There was some endeavour, based partly on logic and partly on guesswork, to model the outcome of heat loads starting to gravitate towards the tier of 1314 hours and to the cap of 400,000 kilowatt-hours. That is the lower figure — the £24-odd million — that we are talking about. Let us be very clear: it is a logic-driven scenario; it is not driven on any data that we have, because we do not have data. In a year's time, if this tariff operates for a year, we will be able to gauge what the behavioural effect seems to have been by looking at the usage of installations before and after.

**The Deputy Chairperson (Mr Aiken):** I am quite shocked to hear that you do not have any data.

**Mr S Murphy:** We do not have any data post-behavioural change. We have data on current behaviours, but we do not know, within that data, which is good behaviour and which is bad. We do not know which is which.

**The Deputy Chairperson (Mr Aiken):** I am getting quite nervous here. To confirm, you are talking about logic, guesswork and having no data about looking forward.

**Mr S Murphy:** No. We have an estimate of around £25 million next year based on there being no behavioural change and if the patterns of consumption in previous years are repeated in future years.

**The Deputy Chairperson (Mr Aiken):** It has been running for only a year.

**Mr S Murphy:** No, we have some applicants for which we have two or three years of data.

**The Deputy Chairperson (Mr Aiken):** You have the data for that, but what data sets do you have at the increased rate since 2015 from the spike and going forward?

**Mr S Murphy:** For the November tariffs.

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

**Dr McCormick:** The reduced tariffs.

**Mr S Murphy:** We do not have as much data because that came in later. We do not have the same amount of data for people on those tariffs as we had for those on the earlier tariffs. A lot of times, those installations are still getting accredited and, until they are, they cannot put in invoices. Until there are invoices, there is no usage data.

We have very limited data on those who have this tariff in place, and, as a result, there is not a means to nicely model what before-and-after usage looks like. The range is not that large though, because,
in the new tariff structure, if there is a gravitation towards the 400,000 kilowatt cap, while that might be useful for policy outcomes, it will not save any money because it will be at zero pence. Everything beyond the cap is at zero pence. A gravitation towards the tier saves 1·5 pence per kilowatt hour, so it is not truckloads of money. The big thing that delivers, first, rate of return regulation and, secondly, cost saving, is the existence of the tier itself. That is the big factor that takes this down from £50-odd million to half or a fraction less.

**Dr McCormick:** Any exercise like this involves using empirical evidence on past behaviour and projections forward involving a range of assumptions. Let me say something risky. It is a well-known fact that all financial models are wrong but some are useful. This is useful. This is a useful analysis.

**The Deputy Chairperson (Mr Aiken):** Andrew, I worked for the Ministry of Defence before; I am well aware of models.

**Dr McCormick:** The numbers will not turn out exactly as projected; that is certain. This gives as good an indication as it is possible to get on how future behaviour will run, and we are also clear that, without this, the present way of doing things is easier to model and easier to project. It is exactly as we have it now, which is excess heat. The case for doing this, which is to do something for one year, is as well founded as it could be. Going back to what Shane said about the objectives, this is not trying to design the perfect model that will last for 20 years. We need to take on this task because we need to have a more stable and permanent solution for April 2018 and we need to buy time to let that happen. The beauty of this is that it introduces clear control straight away. It goes back to my urgent need for regularity in expenditure, the need for value for money and the need for some degree of restoration of confidence through people no longer having an incentive to burn to earn. To me, that is the summary of the case. Shane, have I interrupted your flow?

**Mr S Murphy:** No, that was pretty much it.

**Mr McMurray:** Tied in with this is the idea of 100% inspections and the information that we will get from those. This will influence us as well and provide a whole new data set for us.

**Mr S Murphy:** It is important to note that those figures do not involve any presumption. There could be 50 or 75 installations, but I do not know what the number might be. Whatever number of installations the inspection regime might pick up and discard or remove from the scheme is not part of that figure work.

**Dr McCormick:** When I was talking to the team about the business case in the last couple of weeks — it is only during that period that we have been doing it — I was asking, "How much can we get? How much more of a reduction would we be likely to secure through a highly effective inspection, audit and fraud prevention regime?". The recommendation was to adopt not a conservative or safe figure but a prudent mid-range figure of £1 million or so of possible savings. When Moy Park or others claim that all you have to do is come down on fraud, that is simply not the case. There is no evidence whatever that that would be sufficient to make a difference. Yes, separately, we need to pursue 100% inspection and bear down on every case where there is abuse or fraud in the system.

**The Deputy Chairperson (Mr Aiken):** This is the difference between abuse and overcompensation.

**Dr McCormick:** Exactly. That is Shane’s point.

**The Deputy Chairperson (Mr Aiken):** I am very conscious of time, and I know that some people want to come in. You said that you have been working on the business plan for only a couple of weeks. The Minister told us, categorically, in July that he was looking —

**Dr McCormick:** On this particular business case. We had examined a range of options; indeed, as I said to the PAC yesterday, we had consultation papers worked up in September/October on other options that were full and complete long-term solutions. Then, as I said to the Committee yesterday, we spent some time looking very hard at the closure option, especially in November and December. Those are all dealing with solutions that would have been long-term and permanent.

The particular task in the last few weeks has been to come up with a short-term solution that would bear down immediately. That was just an evolving set of considerations. For example, the closure option was exposed publicly before Christmas and there was a lot of criticism and concern about the
potential loss of future AME. We do not want to lose out. It is still beneficial to Northern Ireland to have the flow of that resource; it is our 3% share of what is going on for renewable heat across the water and it is right to try to continue to make use of that. All those considerations came in, hence the work that has been done. There has been extensive work and, again, some degree of consultation. We probably could have written more to the Department of Finance in the course of the autumn, but, as a matter of fact, we are where we are and we have got a very defensible and viable proposal.

The Deputy Chairperson (Mr Aiken): On what date did you start this revised business plan?

Dr McCormick: 30 December.

The Deputy Chairperson (Mr Aiken): OK.

Mr S Murphy: You should be aware, though, that, because the core of this business plan is superimposing the November 2015 tariffs, that was part of the options work that was done earlier in the autumn.

Dr McCormick: Yes, that is right.

Mr S Murphy: The modelling work that was done in September, October or November was refined further in that last two-week period.

The Deputy Chairperson (Mr Aiken): Shane, that is fine; we fully understand that.

Dr Farry: To pick up on that point and before I get into specific questions, I want to say that these exchanges are useful. What you are setting out, as it is explained, is that the process of reassurance is ongoing. The pity is that the timescale for all this is so tight. That leads me into the first point that I want to make, which is that the first point that I want to make, which is about the timescales and what is, in essence, a paradox in what we are hearing you say. It is causing us concern. It is probably feeding our frustration in the current context. On the one hand, you are telling us that what you are going for is, in effect, the easiest and most simplistic off-the-shelf approach, designed to be a one-year patch to allow for a wider public consultation and policy process around what will be a much more long-term, sustainable process. It begs the question as to why, if you were doing this from a standing start in the autumn or even at the end of December, this particular process could not have been initiated in June and reached the point where regulations were before the Executive and Assembly in early September. I cannot get my head around why we are where we are.

Dr McCormick: I commented on this yesterday as well. The truth is that, for a fair bit of last year, we were limited by the view that the grandfathering concept — the commitment — could not be overcome. It took us some time to realise that there were grounds to challenge the illegitimate expectations point. We have probably been too limited in our thinking. You cannot do something before you think of it, is the honest answer to your question. The thought of doing it this way only came to us over the Christmas period. That is just the human explanation. We thought of it. In fairness, it came from special advisers.

Dr Farry: There is a saying that sometimes the most obvious solution is just in front of your nose. It is a case of that. Nonetheless, it is frustrating for us and it does not really help us in our process.

Dr McCormick: I accept entirely that there is that sense of frustration.

Dr Farry: In that spirit, Andrew, could you give us an indication as to whether the Department has a preferred, or even a preliminary, view of the best longer-term solution? Can you give us an idea as to what the trajectory of this will be?

Dr McCormick: Obviously, I am wary of saying anything that might indicate pre-judgement of the consultation process. That is part of how we regularise this. It is not unreasonable to say that this looks quite good for the longer term. Continuing with exactly this tariff for the longer term might be quite a good idea. I think that we have to really stress-test that and look at the implications. We will have a lot more data to consider and we will understand the behaviours. Also, in the course of the next few months, we will have the emerging progress on inspection and so on. All that will feed into a consideration of those future options. Certainly, as I said yesterday, I was highly attracted to the...
closure option, for accounting officer reasons, because it kills the abuse just like that. It wipes it out instantly, and it would have been very attractive. It would have left us with no question marks. This deals with a lot of problems, but it does not instantly deal with abuse.

The Deputy Chairperson (Mr Aiken): Could I just interject? Andrew, I know that you are under time pressure, but I also know that this is vital. If I ask for your indulgence for another 10 to 15 minutes from the time you said, I will guarantee that you will be out of here by 4.45 pm.

Dr McCormick: I am not sure yet whether the meeting that I have been trying to organise is working. It is quite an important meeting. If someone could check with Siobhan Tweedie and establish whether the 4.30 pm meeting is confirmed, it would be helpful. My device is turned off.

The Committee Clerk: We will get one of our team to do that. I assume that we can get that from the ministerial office upstairs.

Dr Farry: I will pick up the pace.

The Deputy Chairperson (Mr Aiken): If you could. I know that every member wants to ask questions, and we have three more want to speak.

Dr Farry: I will group this into three broad areas. Maybe Shane could outline the risks, in terms of this approach, cited in the business case, to give us a picture of the preferred outcome, and the cleanest, most effective way to address the overspend in the short run. Is it also the least risky? Is there greater risk with other approaches?

Mr S Murphy: The least risky approach is to do nothing, but then that will cost us 25-plus million quid next year, which I do not think that anyone around this table is keen to live with. There was a description earlier of the legal defence for this type of move.

There were risks in the business case around operational risk. Putting the tariffs into regulations is all fine and dandy, but can Ofgem operationalise them? Stephen can probably say more about that, but my understanding is that comfort has come from Ofgem that it actually can put this through their computer systems and deal with the operational aspects of it. It is very easy to think that this is just changing something on the computer and Bob's your uncle. It is a much more complicated process than that, but that assurance is there. Clearly, legal risks have been talked about.

Dr Farry: What about European Commission risks? Is that a legal risk or a compliance risk?

Dr McCormick: It is a separate process. I had a discussion with the Commission in December when we were exploring the closure option and the message they gave us then was that: closure would, of course, be accompanied by compensation, and if that compensation was equivalent to the entitlement of the individuals under UK law, then that would not be aid and, therefore, there is no process required whatsoever.

That, to me, was another reason for thinking of that as quite a good idea. However, the Commission also made it very clear that any other proposal would be notifiable. The process for the Commission on state aid is that it likes pre-notification. So, a member state sends a paper explaining the proposal and that allows for discussion and testing of the idea with Commission officials, and only when that has been through a process and a good understanding has been secured, you move to the formal process of notification. That is significant because, once a formal notification goes in, the Commission has two months in which to take a decision. You will now be picking up the significance of the timing. We still would like to keep on good terms with DG Comp and ensure that there is goodwill towards the process. That is probably one of those situations where the least said the better, given one or two of the other things that have happened in the last few months. Therefore, the proposal is to have an early discussion with them, but that is best done after. Subject to Assembly approval, we will then have a clarity of role here, and we would ideally move to notification immediately and therefore have a hopeful expectation of a decision before the end of March. We could not take a chance on that, hence the formulation in the regulations that says 1 April or notification —

Mr McMurray: That lies in neatly with Ofgem because giving it that window gives it enough time to make those changes. It has given us that assurance.
Dr Farry: My final question has two parts and relates to the core issue of excessive profits or superprofits of the overcompensation. It is normal. I will not ask you why that did not happen; that is for another place. It is normal in contracts to build in a clawback clause in terms of superprofits. De facto, is the tiering approach the cleanest, smoothest way of protecting against superprofits, if you were doing this from day one, or are there other conceivable approaches around clawback on superprofits that you could envisage and were they considered in the business case?

Mr S Murphy: This was probably not in the Cambridge Economic Policy Associates (CEPA) report. One of the jobs of tiers is to regulate the rates of return and significantly reduce the scope for variation.

The Deputy Chairperson (Mr Aiken): Sorry, just to halt it. Andrew has to go to a meeting at 4:30 pm, but Stephen and Shane will stay.

Dr Farry: Can I park my question on the tiering? I want to ask Andrew —

The Deputy Chairperson (Mr Aiken): We will have Andrew back again on Monday morning.

Dr Farry: It is a question ahead of Monday. It is actually more of a point than a question.

The Deputy Chairperson (Mr Aiken): Quickly, Stephen.

Dr Farry: I am very conscious that the Minister wrote to party leaders today about a public inquiry. I appreciate that the issue and content of that is for another time and another place in the PAC process, but the fact that a public inquiry is potentially being set up is a scrutiny issue for this Committee and I am conscious that there is a lot of concern and that reassurance is required around the terms of reference. I want to make the point and the request that, while we may not be in a position to discuss it today, if Andrew and the Minister are coming back on Monday, we should be in a position to discuss it then. We will not go into what happened or why it happened — that is for another discussion — but what will happen in any proposed inquiry should be brought to our attention on Monday.

Ms S Bradley: Andrew, we were thrown a bit of a lifeline by having extra time before the debate. Has anything changed from that? Have we got any further Department of Finance cover? Has the Minister been in touch with the Department of Finance?

Dr McCormick: There has been contact and my understanding is that the process is progressing well. We have certainly dealt with any questions that have come from the Department of Finance. There is no reason to believe that that should not come through. Obviously, a much better position would be for that to be secured before the resumption of the debate, whether that is Monday or Tuesday. We are very hopeful about that and we have also made progress with the Examiner of Statutory Rules. She is considering it and we have provided documentation and analysis to her to facilitate her process. We are confident about these processes.

Ms S Bradley: I appreciate that. Given the weight of consideration on this Committee, it is important that we get live updates on where that is. We are trying to balance leaving due process against the public interest, and we are not — I certainly am not — privy to the information that I need. That is a critical piece of information that we need to be fully aware of.

Dr McCormick: We will do our best on that. Certainly —

The Deputy Chairperson (Mr Aiken): Can we make a firm commitment that we are kept fully informed regularly —

Dr McCormick: Sure.

The Deputy Chairperson (Mr Aiken): — and updated on a 24-hourly basis on where we are? That would be very appropriate to the members here.

Ms S Bradley: Are you getting the reassurance directly from the Minister or departmental officials?

Dr McCormick: We will keep you up to date with what we have from whatever source.
**Mr McMurray:** We have had three to four days of quite intensive going back and forward to DOF, and as far as we are concerned we have completed that process. We have supplied all the information that was requested.

**The Deputy Chairperson (Mr Aiken):** Andrew, we look forward to seeing you at 9.30 am on Monday, bright and breezy. Thank you.

**Dr McCormick:** I will leave you with my expert colleagues.

**Mr S Murphy:** Would you like me to return to the tiering question —

**Dr Farry:** I will reframe the question in two parts. Essentially, is tiering the only, or most efficient, means of dealing with a super-profit situation? My second point is on what is maybe the slightly broader issue of the justification for the 400,000 kilowatt-hour cap and the potential there for unfairness. That is maybe a more blunt instrument. Tiering is much more clearly linked to use, irrespective of the level of investment. Does the cap potentially throw up more anomalies or grievances than the tiering process?

**Mr S Murphy:** Tiering is good at regulating rates of return. Superimposed on the pre-November 2015 applications, it will do a good job of regulating rates of return going forward. It will not do the job of addressing overcompensation already received. Some of the other options that we have been looking at long-term might be more helpful in that respect. There might be long-term scope to look at tariff structures that help that. However, we do not have time for that level of innovative thinking if we want to get a first step in the correction ready for 2017-18.

**Mr McMurray:** There are examples of that happening, especially in big capital-based projects, where super-profits are looked at. There are grounds to do that, but, as Shane said, we need more time to look at that sort of thing.

**Mr S Murphy:** My understanding is that the cap was brought in as a budgetary control to limit what any one installation could receive. It is a feature of the November 2015 tariff changes. This was something off the shelf. It was publicly stated to be in line with the original objectives of the scheme. Then you are into the question of whether, if you deviate from that, there is an impact on the legal assurance because what you have is no longer the same as something that you claimed in November 2015 was in line with the original objective of the scheme. I am not legally competent to say that would damage your case not at all, significantly or somewhere in between.

**Dr Farry:** But from an economic or financial point of view, is there a rationale for the 400,000 kilowatt-hours particular to that —

**Mr S Murphy:** My understanding is that the rationale for the 400,000 kilowatt-hours was driven by what was typical in the poultry industry. From recollection, there was an assessment by the College of Agriculture, Food and Rural Enterprise (CAFRE) that the poultry industry might be expected to use something like 388,000 kilowatt-hours per annum per shed. That could be a little bit higher in a colder year. I think that was the basis for choosing 400,000 kilowatt-hours. However, I am going on the basis of my memory bank, not having been involved.

**Mr McMurray:** That is correct.

**Ms S Bradley:** I am just a little concerned by the last answer that it seemed to be built up around a particular industry, but I will leave that aside for now.

I will run through some questions. I am conscious of time, and my colleagues will, equally, want to ask questions. I will not repeat the question that Dr Farry put so eloquently. My first concern is about why it could not happen sooner. We were firmly told that there were no grounds on which we could deny anybody their right to a valid claim, but that thinking seems to have changed. For me to put any weight to that, I really need to know where the business case is as regards approval from the Department of Finance. I did get an answer, but I am no wiser, to be quite honest, at this stage.
Mr S Murphy: For example, Department of Finance economists were round today. They would have been there on Monday, but, obviously, the regulations were initially moved on Monday. They had a second session on the modelling on the rates of return inherent in the tariff band. Certainly, there are no questions from DOF on the numbers and the financial side of things that are sitting with me.

Ms S Bradley: But there is no DOF approval as such? It is still within the gift of the Minister, I understand, to have a look and say, "Give this the nod", but there is no action there. I am reading between the lines.

I will move on to my question. Basically, I want to know whether the savings we are looking at that could be achieved out of any remedial measures could also extend to the Treasury. If there were past mis spendings, would they necessarily also extend to AME in terms of what could be clawed back?

It is a matter of record that the regulations expired in March 2015, but spending continued. I just want to know how that period from April through to September was covered when they would not have been granted retrospective approval. Did that come out of the Department of Enterprise, Trade and Investment budget or the Department for the Economy budget, or was there AME money to close that gap?

We keep talking about going back to the objective and the original intent, which was about a renewable heat incentive. Have you had anything to suggest that the materials being used in some of the boilers are not renewable? I know that that is maybe looking at fraud as opposed to overcompensation, which is what we are trying to make a distinction about here. If that is the case, whilst we are changing things, fraud could still be happening even within the new limits. I just want to know whether there has been any suggestion, or whether any inspections have picked up anything to suggest, that the materials are not all renewable.

In the application process, did an applicant not have to give the nature or type of business, the reason for installing and the anticipated usage? Would that not be a good measure then to visit the anticipated usage that they would have subscribed to at the outset and their actual usage. Again, how is that measured? I know you said that is done through meter readings, but what if a non-renewable product is being used? There still seem to be lots of questions here, and I know that the answer to one will only reveal probably 10 or more questions that I want to put to you. I am trying to garner sufficient information to make a judgement here.

Mr S Murphy: I will take the anticipated usage question; all the previous ones are operational. Yes, applicants indicated their level of anticipated usage. We have a database on that, but there are probably a few blank cells in it. By and large, the applicants in the pre-November 2015 era, using 99 kW boilers, tended to indicate that they were going to run between 50% and 55% of the time. The data to date suggests that those expectations were probably a bit high, and the more typical usage was 40% to 45%. Post-November applicants indicated usage that was — if I can remember correctly — about 25% lower than that. Our behavioural-change modelling shows that it is not as high as 25%; it is around 14%, which is about 60% of that. So, yes, we have information about anticipated usage, but what turns out seems to be a bit less than that. There does seem to be a difference, albeit there are different boiler sizes as well, which could partly account for these differences. The bands are going to extend to 199 kW boilers, which are twice the size. Whether you would expect load factors to be exactly the same we cannot say, but there is certainly a difference in the anticipated running hours between those who applied before and those who applied after the changes. I am not sure if that has exactly answered your question.

Ms S Bradley: I want to know that it is one of the measures that you are recording, because that would indicate abuse if someone has that intent and then maximises the boiler.

Mr S Murphy: Going forward, I imagine that they will want to prioritise inspections. One way of prioritising that would be to use the data to gauge where you would want to focus your resources early. You would imagine that data such as usage compared with expected usage and usage compared with comparators would be indicators as to those you would prioritise for inspection and those that you might leave until later.

Mr McMurray: You are absolutely right about that. With the 100% inspections, for which we are writing the spec at the moment, that will be a big part of it. Even looking within industries at what the typical usage should be and comparing it with the actual usage has been will be built into the 100% inspection regime.
On the question of things being used for renewable heat that are not renewable, I am personally not aware of any of those cases. All cases are referred to Ofgem for follow-up, but I could take a look to see whether that has been the case. I am not aware of anything myself on that front to date.

I will now turn to the question of clawback and whether the Northern Ireland block or the Treasury gets the clawback funds. My understanding is that those stay in the Northern Ireland block, but there is a thing called a consolidated fund extra receipt (CFER), which is a non-budgetary estimated amount that returns to the Treasury. I will look into that specific point for you. Just off the top of my head, I think that the clawback funds stay in the Northern Ireland context. Does that answer all your questions?

Ms S Bradley: I asked about the period when money was paid outside Budget cover and outside any legal cover. Do you know whether that came out of AME or from the Departments?

Mr McMurray: I am not sure. I would need to check that.

Mr S Murphy: My understanding is that the approval would not impact on what budget line it comes from. This was in the period when there was no DFP approval in place and whether that would impact on its going against either AME or DEL.

Ms S Bradley: I do not know where that money came from; it did not have cover.

Mr McMurray: I will check up on that.

Mr Dunne: Thanks, gentlemen. In relation to the contracts that each applicant signed, is there any reference there to the Department having an option to review the tariff, that you are aware of?

Mr McMurray: I am not sure. That whole concept of review is very important, and we will be building that in as we go forward. In comparing us with the GB scenario, that was one of the major failings. In GB things are reviewed quarterly; they look at what the tariff is compared with how the market is changing. That is what we intend to do as well.

Mr S Murphy: I am not an expert on the legal advice by any stretch of the imagination. Andrew knows more about it than I do. This is part of the consideration of the legal advice. It is a question of a legal distinction between whether these were contracts or whether they were tariffs set in regulations by government. That is a feature of the legal advice, but I am not competent to go into the technicalities of it.

The Deputy Chairperson (Mr Aiken): To do that again, we do not know whether they are contracts or not.

Mr S Murphy: I am not saying that. I am not competent to say. My understanding is that part of the legal advice draws a distinction about what is a contract. In this situation, the tariffs were set in regulations, and that is a feature of the legal advice that has drawn particular comment in respect of our case. I am not competent enough legally to describe exactly why that distinction is important, but it was drawn out as important.

Mr Dunne: Earlier, you said that 388 kilowatt hours per annum per poultry unit is a figure produced by CAFRE.

Mr S Murphy: From recollection.

Mr Dunne: Yes, approximately or thereabouts.

Mr S Murphy: Yes, 388,000 per annum was the CAFRE analysis. Again, this is from recollection, not from the time but from recent documents that we have looked at, and that is what I understand helped to drive the choice of the 400,000 cap.

Mr Dunne: Do you think that that is a fair benchmark for a lot of the units that are working on farms across Northern Ireland? Do you think that that is a reasonable figure to be working on?
Mr S Murphy: If I were sitting here next year with the benefit of the data, with the tier in place and with abusive behaviour better exposed by comparing next year's data with this year's, I think that I would be in a much better position to answer the question on whether the cap is set at the right level. That might be something that is reasonably looked at in the next year, but, at the minute, I cannot answer that question because there is evidence that there is abuse in the system. I do not know how extensive it is, and I do not know whether it is distorting the pitching of the cap.

Mr McMurray: The poultry industry accounts for roughly 40% of the total amount of applicants.

Mr Dunne: That is with an operational time of about 40% to 45%. Is that right? That is what your assessment was.

Mr S Murphy: The load factor is around the mid-forties. I could do my calculation if you want.

Mr Dunne: You mentioned that, under the new tiering system, that reduced down to 25%. Is that right?

Mr S Murphy: Under the new tiering system, if you had a load of 400,000 kWh per annum, for the first roughly 130,000-odd kilowatt hours, you would get 6.5p. For the balance of that, the 270,000-ish, you would get 1.5p.

Mr Dunne: You are saying that the behavioural change brought around a 20% reduction —

Mr S Murphy: No, what I was saying earlier was that the new tariff was introduced in November 2015. We do not have that much data. Accreditations for a lot of those applications are still pending in the system. As a result, there is no invoice and there is no data on usage, so there is only limited data. I do not think that I have enough data at the minute to give you an indication of the extent of the behavioural change.

We do have data based on what people said they were going to run, and there is a material difference in what people said before. That is the 1,800 or so people who applied before November 2015 compared with the 300 or so who applied after. There is about a 25% reduction. That may not be an absolutely fair comparison because the applicants in the pre-November era predominantly had 99 kW boilers. Post-November 2015, there were a lot of 199 kW boilers. Those boilers are twice the size and might not be expected to run at the same load factor because it takes fewer hours to produce the same heat. Until we have a year's data, I cannot really give you a conclusive steer on that. I am trying to give you the best indication that I have from the data that I have, which is not ideal without having a year or two of data for a sufficient number of installations running on the new tariff to do that compare and contrast. I just do not have that yet.

Mr Chambers: I do not know whether you are empowered to answer these questions, and maybe Andrew would have been better placed, but I will ask them anyway. We understand that John Robinson, Minister Hamilton's special adviser, has stood aside from any further involvement in the renewable heat incentive scheme. Has Mr Robinson had any involvement in crafting this scheme to date?

Mr McMurray: I am not aware of any.

Mr Chambers: No politician is coming forward to call the botched scheme their plan, but I have heard the Minister referring to this mitigation plan as being his plan. Is it his plan? Did he knock on somebody's door on a Monday morning and say, "Look, I've been thinking about this over the weekend; I've come up with a great idea here to mitigate this", or has the plan been developed and crafted by the civil servants in the Department as opposed to it being a political plan?

Mr McMurray: It is fair to say that it is an element of both. We have had a number of round-table discussions internally about what options we have. Those have involved the Minister.

Mr Chambers: Is it fair to say that there were ministerial round-table talks about formulating the botched RHI scheme and putting it together? Presumably, if that is the way you do it, the original
scheme would have been put together in the same way, with ministerial input and round-table discussions —

**The Deputy Chairperson (Mr Aiken):** May I just interject at that point? Thank you, Mr Chambers, for your point. I have just been advised that we are straying into PAC territory. The question is on the record. I fully understand that Stephen and Shane are probably not in a position to answer.

**Mr Chambers:** I did not want to put you in an impossible position. Thank you.

**Ms S Bradley:** I notice that 31 March has been used as the closing date. For the public record, whose job do you anticipate it will be to note that date, revisit it and make sure that action is taken before it? We know that there has been slippage in the past. Will that date be in the diary of any future Committee as well being in the diary of the Department?

**Mr McMurray:** We have developed a timeline of what we need to do in the next 12 months. We need to do things far sooner than March. I think that decisions have to be taken by November in terms of what the new second-stage, permanent solution will be. That would allow us time to bring forward regulations that would even allow us to extend the current system. We have a timeline, and we will work very much to it. There are key milestones that we have to achieve. November is a key date by which we have to have things in place.

**Ms S Bradley:** Who is "we"? Is that the Minister?

**Mr McMurray:** That is at official level.

**Ms S Bradley:** Would the Committee have —

**Mr McMurray:** Absolutely.

**Ms S Bradley:** OK. It is in diaries.

**The Committee Clerk:** It might be useful for me to clarify that this is a one-year set of regulations. Once this set of regulations expires, something else has to come into place. If there is a Committee to scrutinise it, it will look to scrutinise any subsequent —

**Ms S Bradley:** It is just that we have already had the gap in legislation. A repeat of that would not be helpful. It might be helpful to put any longer-term vision that may be in the discussions of the Department into the public domain so that potential applicants that may look at the scheme now and be minded to take legal action or a judicial review may see a satisfactory balance in the longer term. There is a bit of an onus on the Department to be more open than it has been to date.

**The Deputy Chairperson (Mr Aiken):** One final thing before you go, Shane and Stephen. You will probably be very thankful to get out of here. Stephen, when were you appointed to this role?

**Mr McMurray:** On 19 December.

**Mr Chambers:** Your Christmas box.

**The Deputy Chairperson (Mr Aiken):** Shane, when were you appointed?

**Mr S Murphy:** I am not part of the RHI task force or team; I am part of analytical services in DFE. I have been in DFE since it was set up. Before that, I was in the DETI analytical services unit. I am not part of Stephen’s team, but I was drafted in to help with the number-crunching and the modelling of the tariffs.

**The Deputy Chairperson (Mr Aiken):** I do not envy either of you your tasks. Thank you very much indeed. Please pass on our thanks to the permanent secretary as well; tell him that we look forward to seeing him on Monday morning.
T6. Mr Allen asked the Minister of Education what his Department and the Education Authority are doing to support those children who are waiting on an autism assessment, many of whom are waiting up to two years, especially given that recent figures revealed a 280% increase in these waiting times. (AQT 681/16-21)

Mr Weir: We are cooperating with the Department of Health in particular, because a lot of the assessments are on the Health side rather than with the Department of Education. There is a working group that is trying to work through those issues with the Department of Health. I suppose the key test on delivery will be on the basis of what can actually happen on the ground. We are faced with a situation where there is a much greater level of awareness of autism in particular. I met some of the autism groups around early autumn, and I think that one of the issues, thankfully, is that we are detecting this a lot earlier. That is creating a level of pressure on how quickly those can be processed. My Department is happy to work with the Department of Health to try to process those as quickly as possible, but we need to ensure that we get the right diagnosis as well.

Mr Allen: I thank the Minister for his answer. Minister, I am sure that you will understand and appreciate that for many of those children waiting on the assessments will have an impact on their school life. Will you give a commitment to review what support is being offered, and also perhaps look at the level of training being offered to teachers and classroom assistants to support those children?

Mr Weir: I think that my Department will be progressing those issues. We reach dissolution on Wednesday night, so there is a limit to what I can deliver in the short term. There is a very important issue that needs to be progressed, and I will certainly be tasking my officials to try to have the maximum level of cooperation to ensure that waiting times are kept down to a minimum.

Investing in the Teaching Workforce: Update

T7. Ms Hanna asked the Minister of Education for an update on the Investing in the Teaching Workforce scheme. (AQT 682/16-21)

2.45 pm

Mr Weir (The Minister of Education): Currently, the situation is that expressions of interest have been sought, and a lengthy list was produced of those who were interested within that. The advice and, indeed, the nature of the pilot scheme that was progressed by the Executive was that this was open to 120 in this year; that was felt to be the maximum number that could be progressed. We had a lot more than that, and those teachers who were successful in reaching that top 120 have now been written to. There is also a legal challenge, from a judicial review point of view, from somebody who is challenging that. The outcome of that will be critical to the progress of that, but if that judicial review is not successful, progress will happen to ensure — at least with regard to the pilot scheme — that those will be progressed and reach a point of conclusion in year.

Madam Principal Deputy Speaker: Sorry, there is no time for your supplementary. That concludes topical questions. I ask Members to take their ease while we change the top Table.

(Mr Deputy Speaker [Mr Kennedy] in the Chair)

Executive Committee Business

Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017

Debate resumed on motion:

That the draft Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 be approved. — [Mr Hamilton.]

Ms S Bradley: I will pick up where I left off before Question Time. Essentially, I was trying to talk to the facts as they are presented to us today on this regulation or amendment to it. We are acutely aware that what is being asked of Members falls outside anything that would be considered good governance or arrangements for making good legislation or amendments to it. It was very disappointing that the Minister was not in attendance at the Committee this morning, as many legitimate questions are still unanswered. It is not a very comfortable place to find oneself in when there are so many questions that are unanswered, and yet the business has to proceed against a ticking clock set by others.
The omission of critical things include the agreed business case. In probing and trying to get to some sort of answer around the business case, we did hear that there is no valid objection to it, which falls far short of there being any agreement to it. At this moment — I could be corrected on this — the Minister of Finance has yet to give any agreement to it. As we are charged here today with measuring the probability of judicial review against the potential costs of such a judicial review against the public interest, what would certainly have weighed in favour of this regulation going through as amended would have been the Finance Minister stepping up and giving some commentary or lead on it.

I refer to the Iron Curtain of politics, which, ironically, the two Executive parties now find themselves on the wrong side of because if the House had been privy to any sort of monitoring rounds or draft Budget we would have been able to measure whether it was workable or whether it was workable with regard to the debate and the priorities that were being set. Of course, while some talk about equality, they were very comfortable with the fact that they did not treat other Members with equality. They were very satisfied to sit behind that Iron Curtain and reserve information for themselves only. Today, unfortunately, it is not the SDLP or the opposition parties that have fallen foul of that but the general public.

That is an absolute indictment of this Executive and the way they operated. Regardless of who or what, if anything, is returned to the House, I surely hope that there will be time to reflect on that and the manner in which business was done.

I will move on. On the probing, a cynical person might say that this is the Minister basking in the sun for his electorate, trying to push something through at the eleventh hour, so that, when he knocks on the door and they ask, “What did you do to stop the loss of money?”, there will be a piece of paper. That might have been true, only we learned today in Committee that this is the brainchild of a SpAd, an unknown SpAd.

Mr Allister: A super-SpAd.

Ms S Bradley: A super-SpAd. We do know that it was not a SpAd in the Department for the Economy. A good idea is a good idea — I have no problem who it comes from — and if a good idea saves money for the public purse, I will be the first to jump in and support it. However, when there appear to be political fingerprints all over this and, like everything else, that information was withheld, forgive me for being cautious, forgive me for having another list of questions that will go unanswered.

There is no trust here. It has been lost through a drip effect from the Executive over a long time, and I ask this question: who knew what and when? We are trying to place the amendment in front of us into context. I noticed that Mr Maskey has absented himself from the Chamber, maybe wisely so. When we reflect on who knew what and when, we know that, in November, the scheme was revisited and sensible proposals were put forward on putting in caps and tariffs that were voted on and rightly so. We also know that, in February, the Minister came to the House and referred to an advertising campaign as part of his explanation of why, suddenly, the scheme had become so popular. The SDLP’s response at that time — I stand over it — was very measured and considered, given the information that was in its domain at that time. Others reacted in a different way. With hindsight and a look back over Hansard, it would lead you to wonder why others were less measured. Why did they feel a need to hurry in? What information were they privy to? How did they know the importance of cutting the scheme short of two weeks, not that it was going to make a big difference at that stage? It raises suspicions, and it certainly raises eyebrows. What was Máirtín Ó Muilleoir referring to when he urged the House to vote in a way that did not stack up in a measured way, considering what was in front of us? Mr Maskey may be muddled in his recollection because, perhaps, what he has to do and I do not is to separate what he knew and what he should have known. I have the privilege of standing here speaking on the public record on the basis of what was allowed to be known to the public and to the Opposition parties in the House.

Mr Frew: Will the Member give way?

Ms S Bradley: I will give way.

Mr Frew: Will the Member agree that one of the people who knew well what was happening with the scheme was none other than the Chairperson of the Committee for Enterprise, Trade and Investment, her party colleague? Has she studied what Mr McGlone — I have a lot of respect for him, and he did a lot of work on the Committee with me — said in that debate?

Ms S Bradley: I thank the Member for that intervention. It is quite an astute one. He might
be disappointed to know that I have studied it, and, if you look carefully, you will see that it is clearly on record that Patsy McGlone at that time made it known to the House that questions remained unanswered. He did not know. He, like others, was kept in the dark.

The people who appear to have had the privilege of knowing are the people who had the gift of delivering a public inquiry over the last seven to eight months. Those people, for reasons that will become increasingly well known to us all, did not want such a public inquiry, when, in fact, the SDLP could see — I am sure that, with the benefit of hindsight, even the DUP may see this — that the right thing to do was for Arlene Foster to step aside to allow for a full, independent public inquiry, to allow lessons to be learned and to allow a consultation and a measured approach on how to bring this to a close.

Mr Stalford: I appreciate the Member giving way. She will be aware that, at the end of December, her party brought tabled a motion in the House. The motion that her party tabled was not about establishing a full public inquiry; it said that Mrs Foster was not fit to hold public office. You said that before we had even had the inquiry in the first place. You prejudged any outcome.

Ms S Bradley: Let us be clear about that: the motion that was presented to the House asked the First Minister to step aside.

Mr Stalford: It did not ask her to; it told her to, for six months.

Ms S Bradley: It did not ask her; you are right. When I took an intervention via Conor Murphy, I asked him whether it was not the first step in creating a credible public inquiry. At that time, Conor Murphy let me know that in no circumstances would the SDLP’s idea of asking Arlene Foster to step aside first have anything to do with a public inquiry. He saw no reason in it. He said that we were after a head. That was not the case. We asked Arlene Foster to step aside for good reason. She was the Minister who created the scheme, oversaw the policy around it and set it off in its delivery, and there was a clear, unequivocal conflict of interest. She could not have served in the role of First Minister while such a critical inquiry was being brought about.

Sinn Féin did not share our opinion. As you know, you had their full support on that day that Arlene Foster should remain in post. Therefore, SDLP calls for the public inquiry again could not be heard through the iron curtain of the Sinn Féin/DUP Executive. The calls for that independent inquiry, like everything else that appeared to come from these Benches, was dismissed — dismissed at the expense of people waiting for hospital beds and educational establishments that are being run down to nothing. It is shameful that anybody would attempt to come here and give a revisionist history of what happened, when the public record shows clearly what happened. Sinn Féin members can account for themselves on the doorsteps as to why they did not support the SDLP on that.

I move on to the reasons and other suggestions that are really causing a problem here and that we must put on the public record. We have no agreed business case. There has been no consultation. We cannot brush over that fact. That is a serious flaw. To just circumnavigate consultation in any legislative process suggests that we are on very thin ice. I say that with the greatest respect to the Minister because I know that he was intent on pushing this across the line, but he must acknowledge that the things that are missing in this process weigh heavily on us all.

Because there was no consultation or no time for consultation, we never got near the period where compensation would be discussed. The public appetite for compensation might not be high, but I am weighing all this up against the possibility of a judicial review. The fact that it was not even referred to or that there was no time or allowance for it again weakens the position. Our access to information has been shamed. Asking any legislator to come into a House and legislate in a way that allows them access to small amounts of information at a time of someone else’s choosing is simply not good enough and never will be good enough.

3.00 pm

Let us not forget that there is a danger in going ahead with this. We are setting a very dangerous precedent that this is how law can be achieved. We know that people come into the House who do not enter into the spirit of how it has been set up. They are here to manipulate it to their own ends at every turn. To lower the bar to this standard suggests a doomy future for the House.

There is no doubt in my mind that people are watching this debate and looking at the possibility of taking forward a judicial review. The regulations go no way towards trying to separate out people who are being overcompensated, people who are wasting
energy and money and people who are simply abusing the system. We are no further on, in that, if we pass the regulations today, which is regrettable, the public deserve to know exactly the lie of the land about who is using and abusing the scheme.

I will go further. We shall still and maybe will hear from — there are a lot of eleventh hour decisions here, so who knows? — the missing Minister of Finance about these regulations. We need to know what conversations he has had. What is his thinking on this? Has he an appetite to make it work, or is he satisfied to walk away from his responsibility?

There is no doubt — others will join us now in learning how things are being mooted over the airwaves — about the need for an independent review. I have serious questions about who knew what and when. I mentioned why I have suspicions that Sinn Féin and the DUP were privy to information that others in the House were not privy to at a time when a vote was taken in the Chamber. Given that, I do not think that it is in the best interests of the House that either of those parties put forward the Minister for an investigation. I have thought that the best person to step up and lead on this investigation has to be Claire Sugden, our Minister of Justice, which would create enough political distance from any investigation. Whether I like that or not, I welcome an investigation. It has to happen, and it is not too late for Claire Sugden to step up and play her role. However, I find it regrettable that the people of Northern Ireland are being asked to vote on this important matter before they get the facts. Every candidate who intends to stand for the Assembly in the forthcoming election should make a public declaration on RHI.

Mr Deputy Speaker (Mr Kennedy): I remind the Member that this is not an election forum. This is a debate.

Ms S Bradley: I make my remarks in the context of talking about the regulations, and there is the possibility that the individuals returned will be responsible for working on the temporary plan. They should declare an interest and beyond, because this is not about family members; it goes beyond that. Is any Member sitting on critical information that will come out during an inquiry that they would in good faith like to share with the House today? The public deserve to know the facts. A lot of facts are clearly and obviously missing, which is to our detriment.

I find it very unfortunate that this is our last chance to get to any deal. It is the eleventh hour. It is unfortunate that Sinn Féin has walked out — fled the crime scene. Simon Hamilton is before us, but in what capacity? I am not sure, because he was unable to meet us as Minister this morning. I remain very much in the dark, but I will remain measured in listening to the remainder of the debate. I assure the public that, going forward, the SDLP will take a very cautious approach to the debate.

Mr Frew: As always, I speak on energy matters with enthusiasm and passion. This is where I come from; it is my background. I sat on the Enterprise, Trade and Investment Committee for so long, and I like this stuff; I actually do. I have found the whole debate or debacle — call it what you will — fascinating and historic. I have not yet made up my mind on incentive schemes. My colleague Steven Agnew, who is sitting across the way in the corner, knows my stance on this, as we have attended many an Enterprise, Trade and Investment Committee together. Not only have I not made up my mind about incentive schemes but we must ask this question: how, and at what level, do you fund an incentive scheme? An incentive scheme, by its nature, incentivises businesses and households to do something that you want them to do. You are channelling them and causing an effect by the incentive that you give. That is what an incentive scheme is.

Mrs Long: I thank the Member for giving way. He talks about what it means to give an incentive. I am sure that the Member understands the difference between subsidy, incentive and profit. Whilst it may be possible to subsidise activity — that is, to reduce the cost of it — or to give an incentive — an inducement for somebody to do something that they might not otherwise do — the problem with this scheme is that it generated a profit for doing what had previously been done. That goes to the nub of why people are concerned.

Mr Frew: I thank the Member for her intervention. She is exactly right, but let me tell her and the House this: all incentive schemes are about profit. When you have a renewables obligation certificate (ROC) scheme in place, you get money to generate electricity to the point at which it is free. That is a profit; there is no other way of dressing that up. That is what an incentive scheme is and was, and it has spread right across western Europe.

Mrs Long: I am quite happy that you have given way. There is a difference between incentivising activity and what you have just described. Allowing people who produce
electricity beyond that which they would normally use and pay for to sell it back to the grid is an incentive. Creating profit simply from burning pellets is a different matter altogether. It generates profit by doing the business you would have been doing rather than simply reducing the cost. The first is an incentive; this is a profit.

Mr Frew: I hear what the Member says. Does she not realise that we are moving an incentive scheme from what could be a 60% profit to a 12% return. However, it is still a return; and it is exactly the same with wind, solar, biomass or tidal energy. Name any incentive scheme for renewable technology, and it will come down to pence and profit. That is an undeniable truth; it is what we are talking about here. We are talking about assisting businesses and households to go to a certain place that we want them to go to. Some of us might not, necessarily, want them all to go that way, but that is the case, and it has been the case —

Mr McNulty: Will the Member give way?

Mr Frew: I will finish the point. That has been the case right across the Western World. That is what we are talking about. It alarms me that, when we talk in this place about a scheme of this nature, sometimes, there is a lack of knowledge on these subjects. That really gets at, and grates at, my heart. I will give way.

Mr McNulty: Will the Member please recognise the difference between profit for a farm as a whole — as a business — and profit through heating your shed? Will he please distinguish between the two?

Mr Frew: There absolutely is, and that is where we will talk about the abuse of any given scheme. I completely qualify that; I quantify that. You are exactly right: if unuseful heat has been generated, that is an abuse; it is a complete fraud. That is not what the scheme was designed for.

Mrs Long: Will the Member give way? He has been generous, but will he give way again?

Mr Frew: I will, certainly.

Mrs Long: I thank the Member for giving way. There is a danger, because it has been suggested in a number of comments that, if the scheme had been operated within the rules and the spirit, it would not have generated a profit from burning the fuel: that is not the case. You do not need to scam the scheme to make a huge profit and return on the scheme. That is the difficulty. Suggesting that is the case is completely wrong.

Mr Frew: I did not suggest that, Mr Speaker. I am basically trying to lay down the laws and policies of an incentive scheme, why they even exist and why we are discussing incentive schemes for renewable technology. That is what we have been about for the past 20 years. That is why we have set targets for renewable technologies, wind energy, solar farms and all of that in our Programmes for Government. That is why we are here.

Mr McGrath: Thank you for giving way. Do you take the point that there is a difference between an incentive scheme and one that has absolutely no controls in it — a badly managed scheme — and that the people of Northern Ireland and Members are angry at the way this scheme was managed, as opposed to any incentive that there may or may not have been in it?

Mr Frew: The Member is absolutely right. We will get to controls now, if I am allowed.

Whilst Sinéad Bradley let me in during the second half of her contribution — after half-time — she did not let me in at the start. There are facts around this, and then there is hyperbole, sensationalism, loose language, insincere language and, in some ways, dangerous and reckless language being used here in these debates. It is all about the political stances and political games that we all play. I understand all of that, but, at the hub of the matter, the people need to know what is taking place here. Since the debate started way back in 2012, I have known that there has been too much noise around this — too much noise that is not actually fact. That is the truth.

Sinéad Bradley talked about facts. She rightly tried to pin Sinn Féin down, because it has a lot to answer for on its current stance. Why are they not in the Chamber now, when they were here for the first part of the debate? It is a very important regulation that needs to be passed. Sinéad Bradley talked about facts. She corrected herself in the second half of her contribution. The scheme was amended for new entrants in November 2015, and, in February 2016, it was closed. Of course, we all know how people voted at that time on whether to keep it open or to close it when it needed to be closed. At the start, she talked about her house being on fire. She used the illustration of her house being on fire and asked, "Is it not
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better to put the fire out before you investigate?* I think she was trying to say — I will give way if she wishes — that you stop the scheme straight away and then investigate: that is not an option. That is not an option for businesses that have forked out £70,000 or £80,000 on a new boiler for a broiler house that they have been building because the Government have told them and inspired them to do so. Remember Going for Growth? What was it all about? It was about incentivising growth in our farming industry. I listened to the point that the leader of the —

Ms S Bradley: Thank you for giving way. I appreciate what you are saying; I take your point. Can you explain, if it was not an option to stop, what has changed? Why is it an option now?

Mr Frew: It is not an option now; we are putting in cost controls that will bring the costs down. That will mean that they are not as burdensome on our block grant as they would have been if we had allowed the scheme to go on. We are also finding, day in and day out, that there are people who are acting fraudulently and not in the nature of the incentive scheme itself and, as your colleague rightly says, burning the pellets in a boiler that is situated in an empty shed. That is totally and utterly wrong, and it has to stop. Having listened to this the whole way through since 2012 and considered incentive schemes throughout the Western World, I want a Minister who will fix it. I want a Minister who will bring legislation to the House to fix it, and that is what the Minister is doing today.

3.15 pm

The Member mentioned at the end of her contribution the time that we have had to scrutinise the legislation, and she is absolutely correct in that. There are legislative stages to go through, and we need to scrutinise these matters and the regulations carefully, but the facts are that we do not have that time. We wish we did, but, because of the position of Sinn Féin and the actions that it has taken, this is it, folks. This is it — it is coming down. We need to get things in fast. Síneád Bradley, my colleague across the way, was quite right too —

Mr Agnew: I thank the Member for giving way; he has done so a number of times. On the point that, "This is it", I am working on the basis that we will be back here after the election. The regulations do not kick in until after 1 April, so is there not time to come back to a new Assembly to put something in place?

Mr Frew: I congratulate the man on his optimism. I wish that I shared it, I really do. I have seen the sea change — the change in stance and even in the demeanour of members of Sinn Féin in the House in the last week — and I do not see this place coming back any time soon even after an election. So, again, our chances have been shot.

We have a Minister now wanting to bring in regulations that will protect the burden placed on the Northern Ireland block grant, even when he is not in position after the election. That is commendable and is the right thing to do, and I think that he has moved in that way. But to think that the Minister has done something in a knee-jerk way is utter nonsense. The crisis did not start in an episode of a show or on a media outlet or the front page of a paper; it started last year when the scheme was closed. When people realised what was going on, they closed the scheme and then investigations kicked in, first with the Audit Office. That is how long this has been going on — not since late autumn. If people think that this started in late autumn, they have not been reading it at all and do not know what they are talking about. That is what really annoys me at times on incentive schemes. Where is the Finance Minister today?

Mr Allister: Will the Minister give way?

Mr Frew: Yes, I will. I am not a Minister, Jim — not yet.

Mr Allister: Yes, sorry for my slip of the tongue.

The Member says that this has not crept up on us suddenly. Why then is it that, at the last gasp of this Assembly, this is the first time that we have seen a proposal to put tiering into the tariffs? The second point, if I may, is that I do not think that it is too pejorative to say that this is but a sticking plaster, because the regulations run out after one year. What is the vision for thereafter? Will there be a scheme continuing the tariffs but with compensation to those affected? Is there some other grand plan, or do we just not know what will happen then?

Mr Frew: The Member raises very good points. Of course, he talks about compensation: the incentive scheme is a compensation scheme. That is what an incentive scheme is. On his point, when the scheme was closed, there was an Audit Office investigation. There was a PAC investigation after that. The Ministers would have got around, seen the context and the depth of the problem and then acted out what
they were going to do. That takes time because, first of all, you have to measure and inspect the problem, and, to date, there have been 300-odd inspections. These are things that have been going on; they do not happen overnight. You do not want the Minister to come to the House in a knee-jerk fashion; you want him to come here with proper regulations that he can put to the House. The House can then either pass them or disagree with them and the thing falls, just like when other Ministers brought the incentive scheme to the House on the first occasion in 2012 and on the other occasions in 2015 and 2016 when decisions were made in the House.

I would also like to add something to my colleague Emma Little Pengelly’s point. She was right, of course, that Committees have a scrutiny and support role. I sat on the Enterprise, Trade and Investment Committee and know its worth. I also know that the Committee saved electricity bill payers £700 million over 20 years. How did we do that? We did it because the Minister at the time was going to bring in a Northern Ireland only ROC scheme. That would have cost bill payers £700 million over 20 years, and the Committee blocked it. It did so four times, in May, June, July and September 2015. The run in RHI that was created happened that autumn. Why did the run take place? Should we then blame everyone who was involved in that run? Are these the people who we think are scamming the scheme? No, they are not. It is quite simply this: there is a world of renewable energy. We all know about it, and we have all met the people who installed the boilers and the wind farms and everything else for the ROC scheme.

Amber Rudd in Westminster closed the ROC scheme a year early. When she did that, Northern Ireland had a decision to make, and Northern Ireland made that decision. What that did was generate interest and debate in this topic. RHI installers and influencers were going round telling businesses — rightly so; I am not saying that there was anything wrong with that — that if the ROC scheme can close early, so can the RHI scheme. Of course, there was a longer lead-in period for RHI — many more years. However, I believe that that caused concern in the industry that the scheme was not viable; it was not here for ever and could close early. I believe that businesses then decided that instead of replacing their boiler in five years’ time, they would do it while the RHI scheme was open because it might close the following year along with ROCs. ROCs, of course, applied to wind power, solar power and other technologies. There was also tidal power and biomass. I suspect that that was one of the reasons why a run was created.

There were 900 applicants in the scheme before that — a scheme that was under-subscribed and underspent. The Northern Ireland Assembly and the Executive were being criticised by Westminster because the scheme was underspent. Then there was the run, which created the overspend. That is something that we have to deal with. This happened over a period of weeks and maybe months, and the Minister at the time decided to change the regulations in November 2015 and was right to do so. He decided to close the scheme in February 2016, which he was also right to do, even though most of the Opposition parties voted against it at that time. It was the right thing to do at that time.

Here we are now with this House about to fall in two days’ time, and we have a Minister who needs to act fast. By putting these measures in to introduce tariffs and cost controls, he will bring the cost of the scheme down. Instead of people making a 60% return, it will be brought down to 12%, which is probably reasonable enough for an incentive scheme. I support the Minister in that regard. It has to be done. Then we have to look at a long-term solution to the problem.

What annoys me, however, is the white noise from some people, I may say, who do not have a clue about incentive schemes or even about renewable energy but who will use this situation as an opportunity to take a scalp. They will say, "We are the Opposition, and it is our job to scrutinise and harass and argue the other side of any argument." I get that; if that is what you are there for, I get that. Remember, however, that we have to be responsible.

Mr Nesbitt: Will the Member give way?

Mr Frew: I will give way.

Mr Nesbitt: You might think that it is a small point, but part of the function of this Opposition is not to harass; absolutely no way.

Mr Frew: OK. We have all witnessed the attacks on some of our members and on our leader. We will let the public decide whether "harass" is one of the words that we can choose to describe what has happened over the last number of weeks.

I have looked at the scheme and studied it. Whilst it is not perfect — I do not think that the Minister would argue with that — it is what now
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has to happen to reduce the burden on the Northern Ireland block. The evidence overwhelmingly supports the action that is proposed today. It is an approach that will address the excesses that have led to clear public concern, move the regime back towards its original policy goals and move towards zero the cost pressures that the scheme placed on the Northern Ireland block grant.

When you are out there in the media, please do not talk about an incentive scheme as if it is a bad thing. I might think that it is a bad thing, because I just do not like incentive schemes, but this is spread across the Western World and it is how people incentivise their energies. Do not bad-mouth an incentive scheme when so many good businesses picked this up and ran with it and converted to the very scheme that we tried to push on them. They have been growing their broiler houses. The leader of the Alliance Party made an intervention about Moy Park earlier — I am sure that her East Belfast constituency is flooded with chicken farmers — and she made a very good point. We have been pushing these companies to grow. Going for Growth is the title of our policy around this, on both the ETI and Agriculture sides of things. We have been pushing this. We have been encouraging our businesses to grow and to put more broiler houses on their sites. What are you going to use when you build a broiler house? You are going to use the technology that is there and that is easily incentivised; that is what you are going to use. There are so many businesses here that have done so much good work. Profit is not a bad word; that is what business is. They have also employed people; that is what businesses do. Politicians do not employ —

Mr Agnew: Will the Member give way?

Mr Frew: I will make this point and then I will give way. Politicians do not create jobs; businesses do. Politicians only create the runway for businesses to take off; that is what our job is. An incentive scheme does exactly that.

Mr Agnew: I thank the Member for giving way. He makes the point quite properly that many businesses will have availed themselves of this scheme legitimately. Does he not believe that there is an incentive for those businesses to come forward and say, "Yes, we do have these boilers; look and see what we use them for"? That would further expose businesses that have abused the scheme.

Mr Frew: I think —

Mr Stalford: I appreciate the Member's giving way. The Member will be aware that a business in my constituency, a car dealership that had one of these boilers, effectively had its reputation damaged without any accusation that it had done anything wrong but simply by virtue of the fact that it was part of this scheme. It is an important point that, in the fevered atmosphere that there has been around a lot of these issues, good people who have not done anything wrong have had their reputations damaged.

Mr Frew: Both gentlemen make very good points. My colleague Christopher Stalford makes the most salient point that these businesses cannot trust the media. Look at the media over the last two months. Look at how businesses have been ridiculed, slammed and smeared. That is what has happened out there. I tell you now: the media have a lot to answer for in this regard. These are businesses that are doing good work in Northern Ireland. They are creating profit, jobs and investment, and now they are going to be slammed.

I take the other Member's point, but if businesses come out now, will that help them? I simply point to the honourable action that Jim Wells took this week. How will the media play that out? I will tell you something: it will not be played out in a good way.

A business will come forward and could even show its profit lines and profit margins and how much it will make in any given year, and what will the media do with that information? It will be pound signs and shame. That is what it will be, but it should not be because we are trying, in the Northern Ireland Assembly, to help businesses to grow.

3.30 pm

We have tried for years in the House to get round state aid rules and to be able to say to businesses, "We can support you a, b and c", like other countries and other member states do and somehow get away with it. Incentive schemes are one way of bypassing state aid rules. Let us be fair. Let us say it as it is. Let us be frank. Now we have all this mess and hyperbole around this. Do not attack the businesses. If you attack the scheme as an incentive scheme, you attack the applicants. If you attack the applicants, you attack the people who employ people in this country and create wealth. I plead with you: please do not do that. Do not take that opportunity just because you want a scalp and just because you want extra
airtime in the radio or TV studios. Please resist that opportunity.

Let us look at the sensationalism in our media, let us look at the drip-feeding that we have experienced over the last number of weeks and let us look at the agendas of media. It is all information. I always think that something happened to the media — maybe the leader of the Ulster Unionists would agree with me — in that, somewhere along the line, the media stopped reporting the news and started wanting to be the news. Somewhere along the line, that has been lost. Let us look at sensationalism and drip-feeding. Where is the information going out on the air waves about Sinn Féin's resignation and the fact that that will have cost this country and the Assembly £600 million come July? That is real money. It is 5% of our Budget. Where is that on the newsreels? Where is that on the air waves? We also know that Sinn Féin and the SDLP —

Mr Deputy Speaker (Mr Kennedy): Order. As I have had to remind Members earlier, I remind the present Member speaking that this is not an election forum yet. Can we go back to the topic before us?

Mr Frew: I will, Mr Speaker. Of course, the projected spend on the scheme, if it is not fixed, will be — I have lost my train of thought.

Mr Nesbitt: £1.18 billion.

Mr Frew: No, that is the full scheme. The overspend — the Minister will help me out, I am sure —

Mr Hamilton (The Minister for the Economy): £480 million.

Mr Frew: Sorry, £480 million. Of course, that is a lot of money for anybody, but that is over 20 years and is a projected spend. It has not been spent yet. We have £600 million in one year going out of our Budget. Put that in context.

Arlene Foster, the First Minister of this country, was asked to come to the Chamber. She came to the Chamber, and you walked out. She was asked to go to the PAC to give an account of her actions when it was investigating the RHI scheme. She agreed to do that. It was not enough: you wanted her head. You wanted her to stand aside then. Why would the First Minister either being in place or standing aside make any difference to any inquiry or investigation, public or otherwise? It does not make sense.

Mr Nesbitt: I thank the Member for giving way. Continuing his logic of saying that it would not have made sense for First Minister Foster to stand aside, what does he think about the fact that First Minister Robinson stood aside in the same circumstances? Is that an implied criticism of Peter Robinson?

Mr Frew: I thank the Member for his contribution, but those were totally different circumstances. I will not go into that today because the Speaker will pull me back.

Mr Deputy Speaker (Mr Kennedy): I will not allow you to.

Mr Frew: I know that. Total respect to you, Mr Speaker.

Let us see what has happened here. The public can see what has happened with the head-on-a-platter stuff from the Opposition parties, but I am also appalled by the stance of Sinn Féin. They have not come out of this very well. They have flipped and flopped and done all sorts of things because, first, they are not sure of their stance and, secondly, they want to prolong the hyperbole because it suits their agenda.

I will leave it there because I do not want to incur the wrath of the Speaker any more. I support the Minister in his plans. It is essential that the regulations are passed today; he needs to get them through. It will be a 12-month plan that will curb the burden on our block grant. Let us then find a lasting solution that will fix it one way or the other and allow businesses to get on with doing what they are meant to be doing: creating jobs and making profits.

Mr Lunn: I rise as a member of the Public Accounts Committee. I am glad to finally speak openly about the issue because we have been constrained to some extent by the conventions of the Committee.

Mr Frew referred to his thoughts about incentive schemes, and I tend to agree with him. When the scheme was first conceived, it was meant to be exactly that: a good scheme to encourage people to move from fossil fuel wastage to renewable energy. There is absolutely nothing wrong with that. The idea was that it would be cost-neutral, with money coming in from the Treasury, us and the recipients. All fine and dandy. It followed about a year after the GB scheme, which did exactly the same thing but was a year ahead of us. It is fair to say that the GB scheme did not, at the outset, include flogging or depression, but the authorities there
Mr Lunn: I knew you would. Yes, get up.

Mr Frew: I thank the Member for giving way. Let us get away from "cost neutral". It may be cost neutral to the Northern Ireland block grant, but it costs ratepayers throughout the UK — in GB and Northern Ireland. No incentive scheme is cost neutral, but you raise a good point: if you delay something or increase the time allowed for something to take place, whether by two weeks or longer, an argument could be made for doing that at every stage of this scheme and every time it was changed. Sinéad Bradley raised the question of why the two weeks were allowed. She asked why it happened and said that answers were needed. The answer is quite clear: to allow people to put in the boiler that they had paid for and ordered.

Mr Lunn: The damage was done in the period running up to November 2015. It was not done between that date and 2016. No more damage would have been done between February 2016 and the end of March, which was the proposed date of the scheme's closure to new applicants.

As far as the application of the regulations are concerned, which is what we are here to talk about, there are serious doubts about whether this is feasible or legal and whether it infringes European regulations in particular. It will affect bona fide recipients of the scheme. These are people who took advantage — I will rephrase that — decided to enter the scheme out of the best of motives. Others, and some are becoming public knowledge, quite clearly saw an opportunity to scam the system and make a lot of money through a use of heat that had nothing to do with heating a business for commercial purposes. This, however, is a broad-brush approach. The tiering will hit people, and the 400,000 kilowatt-hours a year limit will also hit some bona fide businesses. It may well not disadvantage people in the second category — those who were trying to take advantage of the scheme — because they use only 390,000 kilowatt-hours a year. You can follow the argument without me telling you.

Mrs Pengelly said that it was important that what was proposed was fair and in the public interest. I tend to agree. Those are noble ambitions when trying to frame law, but we are trying to frame a regulation that breaches a legal contract that people have taken out in good faith and which both parties signed. It is very clear — I should rephrase that as well — it is totally unclear in some aspects, but it is a legal contract. People signed up to the scheme with the expectation of a 20-year return, and the Minister of the day wrote to the banks, as we
know, to reassure them that it was a good scheme and worthy of their support in the form of bank loans for boilers, which they may not instinctively have warmed to, so to speak.

Ms S Bradley: Will the Member give way?

Mr Lunn: In a minute. The banks were reassured by that letter telling them that there was to be a 20-year return at a decent rate of interest. Certainly, 12% sounds like a decent rate of interest or return. Yet, because of how the scheme was constructed, it turns out that some of the recipients here could be looking at a rate of return miles above that — rates of 60% and 70% have been mentioned. I have heard that 84% is the top-line figure possible.

Ms S Bradley: Does the Member share my concern that there has been nothing by way of an economic assessment of the implications for those businesses going forward?

Mr Lunn: Yes, I share that concern. The whole thing has been hastily conceived and put together, in some ways necessarily so because we will all be redundant after Wednesday — except for the Minister, of course. Be that as it may, rushed laws and decisions are not necessarily good ones. We will have to see where this goes.

One legal issue is that this could be challenged because of the lack of consultation. Mr Lyons took me to task earlier — he is not here now — in a very gentlemanly way for suggesting that we should have had a consultation. Of course, given the current timescale, we cannot consult because we will not be here. If we had dealt with the problem at any of the points in time when it arose, we would have had plenty of time for a consultation. I am thinking back to November 2015 and July 2015; I will come back to that date in a wee while.

3.45 pm

How did we get to this point? Various experts had input into the formation and gestation of the scheme. There were so many expert authorities, starting off with Cambridge Economic Policy Associates. There was also Ofgem and all the input of the Civil Service, the Executive, the energy experts in the Department — I gather that that is going to be renamed the energy unit or something, but I presume that it will be the same personnel — and, of course, the Enterprise Committee, on which, for the record, Alliance did not have a seat at the time. So it goes on. How could all those people look at the scheme and not see the potential flaws, given the experience of the GB scheme? Cambridge Economic Policy Associates admitted freely that it made a bit of a mistake, to put it mildly, right at the start. What we have here is a considerable mess. One Member a wee while ago indicated that my party leader would not have many chickens in her constituency, but she can recognise a cock-up. That is what this is. It is beyond belief that we can get to this point.

Mr Nesbitt: Oof.

Mr Lunn: You can say "oof"; I have heard you say worse than that. [Laughter.] We hear a lot about ministerial responsibility. I have been here long enough to know that when Ministers get something right they are perfectly happy to take the credit, preen themselves and say, "This is a fantastic result". They are not so keen to take responsibility when something goes wrong or, in this particular situation, for the activities of special advisers, which has been much addressed. There is absolutely no doubt about it: a Minister is responsible for the actions of their special adviser. It does not matter whether he or she authorised those actions; he or she is still responsible. When I hear about Ministers not being across every jot and tittle or having to rely on their Department or advisers, or when I hear that they did not know that their advisers were doing particular things, I wonder what is going on.

In July 2015, the Minister of the day, who is with us today — Mr Bell — his permanent secretary, who is with us today; and the special adviser, Timothy Cairns, recommended that the scheme should be closed. What happened then? They had a visit from another special adviser —

Mr Deputy Speaker (Mr Kennedy): Order. I remind all Members that officials in the Officials' Box should not be addressed during debates.

Mr Lunn: OK. I apologise to the official in the Box. [Laughter.]

Mr Deputy Speaker (Mr Kennedy): Order. It probably does not warrant a red card, but it certainly warrants a yellow card, I would have thought.

Mr Lunn: I will refrain in future, Mr Deputy Speaker.

The fact is that the closure of the scheme was recommended at that time. Just think of the mess that we could have avoided if that recommendation had been acted on. As people have said, up to that date, there was
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I have already dealt with this, but the question that has been much discussed here today is why we voted against the closure of the scheme in February 2016. We have addressed that. The real damage was done here between July 2015, when this incident occurred amongst special advisers and two Ministers, and November and December 2015. I understand there were something like 800 applications in those two months. That is when the damage was done — when the scheme was still wide open. I have to say it is a pity we are coming to discuss this so late in the day — in the dying days of the Assembly. I would like the Minister, as best he can, to address the questions I and others have raised. Is this legally possible? We seem to have two different legal opinions, one of which came to us, through the PAC, from the permanent secretary, and one which the Minister has apparently obtained. You would think they might both be from the same source, but perhaps not.

I really hope the Minister can bring this to an end. It is in everybody's interests that he does, but, as I started off saying, we have serious reservations about whether this is possible, whether it is legal, whether it is fair and transparent and all the rest of it. There are too many questions and too much avoidance of responsibility.

I will close by saying — I will try to phrase this very carefully, Mr Deputy Speaker, to avoid your wrath — that the people who have come before the PAC from various quarters have given us a different impression of their ability to answer a question.

We had the architects of the scheme, Cambridge Economic Policy Associates (CEPA), before us, and their evidence was, frankly, poor. Its representatives were evasive. They did eventually admit that they had made a mistake, but there was no follow-up.

I will mention the whistle-blower. In the middle of 2013, the whistle-blower came on the scene. Three of us, of whom I am the only one in the House at the moment, have met the whistle-blower. She pointed out in an email to either the Department or the then Minister at the time severe doubts and reservations that she had about the scheme. I think that the email went to the Minister. The Minister passed it, quite rightly, to her departmental officials for comment. It is not clear whether any feedback was received, whether the Minister asked for any feedback, or whether she just passed the email on.

Mr Deputy Speaker (Mr Kennedy): Order. Can I bring the Member back to address the points on the incentive and the regulations, please?

Mr Lunn: Thanks, Mr Deputy Speaker. Everybody else has ranged far and wide, but I will try not to.
The whistle-blower sent another email, this time to Mrs Foster's personal server, so she certainly got that one. That email was a lot more pointed. However, the first one — the main one — made it absolutely clear that there was a potential problem with the scheme that had not yet started to cost the country a load of money. At last week's meeting of the PAC, its DUP members tried to imply that this lady was really interested in a business opportunity and that she had spoken against the scheme because she was in a business that conflicted with it. That is totally unfair to say somebody who came forward as a concerned citizen, with absolutely the right motives, to point out that the scheme was going to cost us money. The problem for her was that she was in a business involved in energy economy. She was trying to get people to take fairly simple actions that would improve their energy economy and energy usage, through insulation, digital technology and a lot of other ways in which you can cut your fuel bills. She was being told by potential customers, "Why would we do that when the Government are offering us money to burn fuel? It is far more profitable for us to burn fuel and take advantage of this" —

Mr Swann: Will the Member give way?

Mr Lunn: Certainly.

Mr Swann: Does the Member agree that, had her concerns been listened to, we would not be in this situation today?

Mr Lunn: I absolutely agree with the Chair of the PAC. If the Department and the Minister had listened to the whistle-blower at that time, we would not be here. If they had listened to Mr Bell two years later, we would not be here. There had been concerns raised before hers, but the whistle-blower — the concerned citizen — got it absolutely right.

Her concerns were laid out very clearly in the email, which is now in the public domain. Even Stephen Nolan has it. Talk about an opportunity lost. I do not imagine that anybody realised the magnitude of the situation at the time, but that is three and a half years ago. Think of the damage that has been done since. I hope that Departments and Ministers will at least learn the lesson of the necessity to listen to whistle-blowers and not to discount them, because it is perfectly clear that that is what happened in this case. The emails went into the system and were not reacted to. I do not know whether there was personal contact between the whistle-blower and Mrs Foster, but there was certainly email contact. There may have been telephone contact. It was an opportunity missed.

I am not going to go on beyond that, save to say that I hope that we can put this thing to bed along with the remaining time of this Assembly and that a public inquiry will be set up to deal with matters properly and come to firm conclusions on blame and lessons to be learned.

Mr Chambers: I begin by referring to a subject that some Members have already placed on record during the debate, and I make no apologies about revisiting that subject, as it is part of the journey to the debate today on these regulations. During recent weeks, when the media and the Opposition parties in this Chamber performed a public service by shining a light on the RHI debacle, much play has been made of the fact that all parties in the Assembly on 15 February last year, with the exception of Sinn Féin and the DUP, voted against the statutory rule brought by then Minister Bell to suspend the scheme at the end of February. I was not serving in the Chamber at that time, but I have read the Hansard report on the debate to try to understand the background and the context of what was said and done that day. It is quite clear to me that some of the subsequent comments around the vote that day have been, to put it mildly, as economical with the truth as President Trump's chief press officer has unashamedly been in the last few days.

4.00 pm

In reality, MLAs were seeking the continuation of a properly revised and tiered RHI scheme that had the proper cost controls applied since the previous November through to the end of the financial year on 31 March 2016. That would have permitted a controlled wind-down. It is quite clear from Hansard that members of the Committee for Enterprise, Trade and Investment, especially its Chairman at that time, along with all the Members of the Assembly, felt that they were being starved of information around the scheme. It is also clear that the DUP and its, until quite recently, friend and partner in the Executive, Sinn Féin, voted as they did after that debate because they knew much more than others about this developing scandal that they hoped would simply go away.

This regulation has been brought to the House by the Minister with a haste that I suspect has more than one eye on the public judgement on the RHI scandal. The House was invited last Monday to pass it into law with total disregard
for due process or scrutiny by the Economy Committee and the official Examiner. Where is the precedent for such a manoeuvre? Surprisingly, it is the draft Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016, which was laid in the Business Office on 8 February 2016, a mere four working days before the plenary session at which it was considered. It is truly amazing that this scheme has twice had to short-circuit the normal protocols of this Chamber. Is it any wonder that there was considerable suspicion about the amendment that was being rushed through the House last Monday?

Last February, there was not the normal Committee scrutiny of the motion to suspend the RHI regulations. It will take the investigation of a full public inquiry to find out the full truth of what was going on behind the scenes in January and February. We have heard contrasting stories of bullying and shouting as Minister Bell attempted to close the scheme early. All normal Assembly scrutiny processes were bypassed, yet the DUP has unashamedly tried to blame the Committee and Opposition MLAs ever since, with fingers being pointed in any direction that they could think of except towards themselves and refusing to recognise the concept of ministerial responsibility that pertains in most countries outside of North Korea.

It is obvious from what is in the public domain at present, with no doubt more to come, that an attempt was being made to keep most of the Assembly in the dark in February 2016. It was known that there was an overspend, but the full financial disaster was not made clear before the Comptroller and Auditor General’s report at the start of July. The DUP knew exactly how bad the situation was, and this prompted it to vote as it did last February.

However, Sinn Féin must equally have known how bad it was, and yet it chose to vote alongside its Executive partner. In my eyes, this poses questions for it to address. It is ironic that a party that played a very bad game of hokey-cokey around a full public inquiry, with its position changing two and three times a day, should now be attempting to instigate such an inquiry and announcing it just a few hours after a senior figure in its party was on the radio saying that it would not and could not support one.

It will be interesting to discover, through an inquiry, how much they did know and how they allowed their non-aggression pact with their partners in the Executive to adopt the example of the three brass monkeys, who saw no evil, heard no evil and refused to talk about the evil.

I am grateful that the Opposition were able to ask the House to delay the debate for one week to allow some level of scrutiny to take place. The Economy Committee has worked hard since to gather evidence and take some legal advice, without the help of Sinn Féin. It seems to me that this exercise, far from providing answers, has actually raised more questions. Since last July to the end of December 2016, a further £15.5 million of the public purse has gone up in smoke. The Economy Committee was told that lots of work was going on behind the scenes to try to come up with a mitigation plan. The permanent secretary informed the Committee that the plan contained in this statutory rule had only been conceived on 30 December last year. Just two weeks later, it was announced to the world as a finished article — an amazing feat of record-breaking administration after seven months of inertia since the audit report of last July. We were told that, because of a lack of any sustainable data, a lot of guesswork had to be employed in its formation. Is this really the way to run a country? However, a more damning piece of information came to the Economy Committee this morning, when the permanent secretary told us that this latest plan was actually suggested by a special adviser from another Department, whom he refused to name. Why the secrecy? Have we not had enough of this culture of lack of transparency that breeds suspicion in the mind of the public we serve?

Last week, the Committee heard evidence from representatives from the mushroom-growing industry, the poultry sector and spokespersons for the renewable industry. The mushroom industry representative told us that large contracts with customers had been agreed for the supply of product based on a price tendered on the basis of the sums that they had done around their heating outgoings. They felt that they would be unable to simply tear up their contracts with customers in the way that this statutory rule was going to allow. The poultry sector expressed similar concerns and felt that many livelihoods were going to be put in jeopardy if the goalposts were moved. One of the spokespersons for the renewable industry highlighted a point I made to the Minister that, if the Government decided to simply tear up existing contracts, future overseas investors might think twice about coming here to do business with a Government that may not be prepared to see out the terms of a contract.

This plan smacks of being a desperate measure by the DUP to bring some level of
respectability to a monumental failure of their making. It is obvious that they want to draw this upcoming election back to their comfort zone of a battle between green and orange. From what I am hearing — I suspect that the DUP are hearing it as well — an angry Northern Ireland public will not be falling for that trick.

During an Economy Committee meeting, I pointed out to the Minister the dilemma that many people had signed up to this scheme in good faith and were encouraged to borrow large amounts of money from banks that Mrs Foster had written to, in glowing terms, to allay any fears they had around lending money. The Minister replied that, indeed, many people had not signed up in good faith. Surely, if people of ill intent could see the golden egg on the other side of their boiler, why did the then Minister or her staff not pick it up? When asked who requested leaving out the cost controls section contained in the UK model, the permanent secretary replied that it was a policy decision. Who makes policy decisions? It is not a Committee or a civil servant but the Minister. Why was it allowed to be left out by the Minister?

I believe that pressure was being applied by whatever means necessary to make this scheme a political flagship success. I received information from one businessman who was visited at his home by officials who told him about this wonderful scheme. He thought it was too good to be true and was politely walking them to his gate. He mentioned that, since the scheme was only open, at that point, to commercial users, he would not be eligible. They then asked him whether he ever brought work home from his business or visited his company’s computer from home. They suggested that they could be creative with paperwork to get him into the scheme. He told them to close the gate behind them on the way out, as he recognised the whiff of fraudulent behaviour. Were these salesmen being judged on how many people they signed up, with weekly targets to meet? It seemed to me to be so. Was the thinking behind the renewable heat incentive scheme to make it a political success story at any price? A lot of what we know now certainly points in that direction. Had that success materialised, I am sure that we would have heard from many authors, and the kudos would not have been shared, like the blame for this scandal being thrown in every direction open to the political policymakers — in this case, the DUP.

The permanent secretary expressed his disappointment this morning that, during the spike in applications, nobody told him that it was potentially a licence to print money, but did the whistle-blower not do that very thing some time ago and, in one case, directly to Mrs Foster?

The House is in an impossible situation today on whether or not to support the statutory rule, given the lack of information. We are damned if we do and damned if we do not. No doubt, if it all subsequently goes sour through legal action, we will be reminded that we all supported it. What a way to govern. What a way to run a country. This is all a monumental mess of the DUP’s making. The taxpayers and the rest of us in the House are being asked to do the heavy lifting to sort it out. Some things never change.

Mr Frew referred to the fact that we should not attack the concept of the scheme and so forth. I remind the House of some comments that I made in a recent debate when I said that the RHI was a good concept, damaged by poor administration and lack of ministerial control.

Mr Bell: As I stand here today, another £85,000 of public money has been spent. That is in addition to the tens of millions of pounds that have already been spent: I believe that it is some £30 million. Let me address the House through the absence of a filter that Dr Paisley taught us, which was, when you speak, tell the truth should the heavens fall. That is how I will approach the regulations that the current Minister is bringing forward. I will examine them against the truth of what occurred in the past and see what we can do to take devolution forward in Northern Ireland.

People sometimes criticise politicians for looking at the issue of morality. I believe that it is at the core of RHI. I think that there were practices and procedures at significant and serious levels that were fundamentally immoral and wrong, and for those out there who say to us that morality should not influence your politics, I refer them to one of the greatest politicians, Mahatma Gandhi, who said:

"Morality is the basis of things and truth is the substance of all morality."

A lot has been said and done, and, with your permission, Mr Deputy Speaker, I will examine the regulations against the truth of what has occurred, and I want to reveal further information before a public inquiry.

When I spoke, I set out two objectives. The first one was to achieve a judge-led public inquiry with the ability to compel witnesses and evidence. My real fear — it was borne out over
the last several weeks — was that, if we did not have a judge-led public inquiry, a series of allegations, counter-allegations and misinformation would be put out there, and it aggrieved me that, for weeks, I watched while no public inquiry was brought forward. If it is the case that we are now going to have a judge-led public inquiry under the Inquiries Act, everything that they have put me and my family through will have been worth it.

4.15 pm

The second objective that I wanted to achieve was to stop the haemorrhage of public funds. Let us not pretend that the money is still to be spent: tens of millions of pounds of taxpayers' money has already been spent — £85,000 a day, day by day, as we go along. It is the greatest financial scandal that Northern Ireland has had to deal with since its conception. If it is the case that, prior to my speaking out — I speak as an avowed unionist — £1.18 thousand million of British taxpayers' money was to go into the scheme, you know why I speak.

People ask why, in 20 years, this was the first time that I had broken ranks and spoken out. Looking at these regulations, I will tell you why. It is because I genuinely believe that, if I had not spoken out, these regulations would not be before you. They were not before us at the beginning of December. When I spoke out then, we were not told that we could reduce the cost to the taxpayer to zero, so why did I speak out, break ranks and speak to the press? I spoke to the press because, day after day, broadcast, print and digital journalists were requesting interviews with me on the truth of these matters, yet the DUP press office told them that Jonathan Bell was not available to speak. They never once asked me whether I was available to speak. I spoke out after journalists provided me with conclusive proof that they had asked that I be contacted, and the reply was, "Jonathan Bell is saying that he is unavailable". Let me tell you this: Jonathan Bell never once said that he was unavailable — never once.

I understand that this puts everybody in an invidious position. I was placed in an invidious position. I think that the Speaker was placed in an invidious position. He is a man whose integrity and honesty I knew within only a very short time of knowing him. Having known him now for three decades, I can only stand over the Speaker's integrity and honesty, and that is on the basis of those 30 years of knowing him.

Let us look for wisdom in these regulations. It was Thomas Jefferson who said:

"Honesty is the first chapter in the book of wisdom."

Let us look to wisdom to see how we can get to the bottom of this.

Let me say for the record that, when I made my concerns known, a DUP MLA came to me and was able to prove to my satisfaction that special advisers John Robinson and Andrew Crawford — in their words, not mine — had said, "Try not to get Arlene called before the Public Accounts Committee, but under no circumstances allow Jonathan Bell to be called to the Public Accounts Committee". Those are the words that were given to me by one of my colleagues. I stand suspended from the party for, as far as I can see, telling the truth on this issue. That was the information given to me: prevent him from coming before the Public Accounts Committee. It was on that basis that I spoke out. Why? I did so because terminally ill children were being prevented from getting a hospital place in my area. While attempts were being made to prevent me from coming to the Public Accounts Committee, a terminally ill child was told, after being seen by doctors, that they could not have a hospital place and that, if they needed one, they would have to go to Craigavon, some 40 miles-plus, I estimate, from their home. A terminally child was prevented from getting a hospital place.

While attempts were being made to prevent me from coming before the Public Accounts Committee, these regulations were not in place, the £85,000 was still being spent and the Maynard ward in the Ulster Hospital, through some nurses taking sick, was closed. We did not have regulations like these today whereby we could have stopped the £85,000 haemorrhaging. These regulations were not in place. Do you know what happened? The ward was closed. There was no money to pay for bank nurses, but there was £85,000 a day to pay for this.

Maybe, by speaking out and supporting these regulations, we can find ourselves in a position
— It is too late for that terminally ill child; it is too late for all the children that needed the Maynard ward, and they did need it — where we can finally get regulations in place and we can do better for future generations of seriously ill children and offer them a better way forward.

Mr Swann: Will the Member give way?

Mr Bell: Yes.

Mr Swann: I want to make it clear through the Deputy Speaker that the Public Accounts Committee had intended to call you, previous Minister Foster, previous Minister Wilson and the former Chair of the Committee for Enterprise Trade and Investment Patsy McGlone. Unfortunately, due to timing and the events in this House my Committee inquiry was cut short, but we would have truly liked to hear all four testimonies given in front of the Committee.

Mr Bell: Thank you for that, and I thank the Chair. I did receive the invitation and I am more than willing to appear at that or any future inquiry. People have said that I have used the cloak of Assembly privilege. Mr Deputy Speaker, every word I have said in the Chamber will be repeated with my hand on the Bible under oath in front of the judge-led public inquiry — just in case anybody is in any doubt about that.

The latest of the thousands of messages I have got, confirm it for me again today. I will not give Teresa’s surname, but it is from your colleagues in the NHS, and this is why I believe these regulations have to be supported —

Mr Deputy Speaker (Mr Kennedy): Can I encourage the Member to stick to the issue before the House which is the regulations.

Mr Bell: If I did not explain correctly, I apologise. It is from Teresa and my other former colleagues in the NHS, and it is why these regulations need to be supported today. They need the £85,000 a day. Sick children need the £85,000 a day.

Ms S Bradley: I appreciate what the Member is saying. I believe he is saying it in good spirit, but I ask him to consider if he has given any cognisance to the fact there are other permutations that may roll out. Mike Nesbitt alluded to it earlier, but the possibility exists whereby a judicial review could and may happen and, if it is won, we could end up not just returning this money but creating a further loss to the public purse. That will not aid the hospitals he refers to or the wider community who are so desperately looking for this money. Is it time for a more cautious considered approach, because, in good faith, we are all walking on a road that could prove to be very costly?

Mr Bell: The Member makes a very interesting and valuable contribution. Mr Chambers made a similar one in the last couple of minutes. There are serious concerns about these regulations, and we have to address them the best we can. It is my considered view that it is best to support these regulations. They have gone through in this limited time because we are in a very difficult situation whereby if they are not supported we cannot get the figures down.

I do have serious reservations about people who say they can get this down to zero; media have advertised that we can get this down to zero. I do not agree with a lot of what has been said about the media. If it were not for the media and the BBC, I could not have got my points out.

I doubt very much, had it not been for them, that we would be in a position today where we have, we are led to believe, a public inquiry and proposals to stop the haemorrhage. It is a balance. That is the best that Members can be asked to do: make a balanced judgment on what has occurred.

I look at the regulations to see, truthfully, how they can help us get out of the mess that we are in. I spoke to the permanent secretary and made known my concerns about closing the tariff. I said:

“When it was coming to me to close it, had it not been interfered with by the higher Department, I could have closed this on 1 October and halved the bill. Isn’t that right?”

The permanent secretary told me, "Well, that’s right".

We now have regulations on the table that were not on the table when I tried to close the scheme on 1 October, before I was interfered with. I asked, "Is it right that we could have closed it?". Had we closed it then, I believe, as Mr Lunn said in his contribution, the cost to Northern Ireland would have proved to be minimal. Mr Lunn is entirely correct in his assertion. I say to you again:

“When it was coming to me to close it, had I not been interfered with by the higher
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Department, I could have closed this on 1 October and halved the bill. Isn't that right?"

Dr McCormick replied to me, "Well, that is right". But history did not turn out that way.

Mr Deputy Speaker (Mr Kennedy): Order. I have cautioned Members and reminded them that they should not refer to officials by name.

Mr Bell: I ask for your indulgence: can we refer to them by title, Deputy Speaker?

Mr Deputy Speaker (Mr Kennedy): Yes.

Mr Bell: OK. Let me read that into the record, and I will obey your instruction. This is what I asked — verbatim:

"But when it comes to me to close it, had I not been interfered with by the higher Department, I could have closed this on 1 October and halved this bill. Isn't that right?"

The permanent secretary replied, "Well, that is right".

There were no regulations on the table when I spoke out. There was no suggestion that we could reduce to zero or even significantly reduce the costs, and we had no legal procedure, that I was aware of, that we could have followed.

In preparing to speak today, I sought from the Department for the Economy and the permanent secretary all the information that was made available to me as Minister. I understood that a Minister could see all the stuff that was there before. I have to inform the House that, on the first occasion when I went to do it, I agreed to call down at 2.00 pm. I was told that the permanent secretary was not available. I then went to the Department. I was left for, I think, hours on end while nobody came to see me. I had asked for all the information, so that I could inform the House properly in the debate. I was left for hours. Eventually, another official came to see me to say, "Look, the permanent secretary is somewhere in Parliament Buildings. Do you want to go and look for him?". I said, "No, I will stay in the Department until I get the information that I have requested". It is with regret that I inform the House that I still have not seen the information that was before me as Minister.

It has been confirmed to me by the permanent secretary that there is an email in the system that says that DUP party officers interfered in the process. I do not believe that to be correct; I believe that it was the DUP special advisers who interfered. But I cannot speak authoritatively because, even after the Public Accounts Committee meeting, when I asked the permanent secretary last week whether I could come and see the information that, I believe, legally should be made available to me, I got no reply. Nothing.

That left me with those famous two roads diverging into a narrow wood. Which one would you take? Was I going to tell the truth? Was I going to stand behind Minister Hamilton, who had said in July on 'Good Morning Ulster' that Mr Bell had acted very quickly. I could have sat back and let the £85,000 per day continue to be spent, the hundreds of millions of pounds be committed, the terminally ill children be sent away and the wards be closed. I could have sat back, but I do not believe that that is the role of a public servant. That is what we are: servants of the public. The public are not our servants.

4.30 pm

I look through the actions that were taken prior to the regulations coming through. I have been suspended. For the avoidance of doubt, if people say to me that I did not speak out until very late, I have a letter to the former First Minister, Arlene Foster, dated 23 March 2016. There are three pages of A4, and I gave her my permission to put it into the Assembly Library and to make it public. The first paragraphs of that letter, after the introduction, are on the renewable heat incentive scheme and refer to the fact that the SpAds advised mine to keep the scheme open and to all of the difficulties. That is in a letter dated 23 March 2016, given to Arlene Foster. It surprises me, when I see the contents of the letter, that I am suspended from the party for telling the truth, while people on the Front Bench and those behind them are guilty of far more serious inappropriate relationships and behaviour than I am — far graver. That has been there, and it is in the public domain. I will take those forward, if necessary. I am taking legal advice with the Commissioner for Standards to see how those can be taken forward.

I believe that the regulations have to be made. I do not believe that we have the luxury of continuing to pump out hundreds of millions of pounds to take £1.18 thousand million from the British taxpayer. I do not think that we have the luxury to continue to do that. We have to do something.
There are questions that I asked myself when there were no regulations in place. If I do not speak out, who will? If not now, when? If not here, where? I am glad that we have the regulations in place today because I spoke out, because nobody else was going to speak out, and because I did it in December. You can see that I laid the concerns before the First Minister — now the former First Minister — Arlene Foster on 23 March 2016. If it was not in December, when was I going to do it? If it was not here at Stormont, where were we going to do it?

We need to take action on the scheme. I asked the Department to show me all the information so that I could speak today. I asked for it last week. They have not contacted me. They have not shown me all the information. I have not seen all the information — not even emails that were sent to me personally. You may hide information from me, but you will not hide it from a judge-lead public inquiry.

Mr Ford: I appreciate the Member giving way. He has announced on two occasions that he sought ministerial papers. Members may recall that there was an aside in the debate on 19 December about a possible involvement of the Department of Justice. I was given sight of the papers that day before the debate took place, because an issue had appeared in one of the Sunday papers. I was also given copies of all relevant papers relating to my time as Minister. It is certainly my understanding of normal procedures that Ministers should be given copies, with the names of junior officials and so on suitably redacted. Nonetheless, I now have copies of everything relevant in my possession.

Mr Bell: That is also my understanding, and I will take it up with Malcolm McBride, if necessary, by means of a formal complaint. As late as last week, I heard in a Public Accounts Committee that I was given only partial information from the time that I was Minister. When I asked for the email that, the permanent secretary told me, stated that DUP party officers had interfered at the start of the process, I was told, last week, that I would be able to see it. I asked to see all the papers, but I have not had a single communication from my direct conversation with the permanent secretary last week. That is why —

Mr Deputy Speaker (Mr Kennedy): Order. I ask the Member to return to the matter before the House: the statutory rule.

Mr Bell: I look back to the regulations —

Mr Allister: Will the Member give way?

Mr Bell: I will give way to Mr Allister.

Mr Allister: Why does the Member think he is being obstructed, if that is what has happened? Does that include the important period pertaining to 1 October and the delays relating thereto?

Mr Bell: It certainly includes that period. I will not go on to speculate on why. Perhaps the head of the Civil Service will be able to reveal it to me in the coming days. Perhaps the judge, when all the papers are laid before him, will be able to give a more definitive answer.

What I do not see in the regulations that needs to be in them in this: can records be expunged? I happened to be at a carol service in my church in Newtownards on the Sunday before Christmas while the Economy Department was sending out press releases to the media on the issue. When I again asked — I will reveal this to the judge under oath — the permanent secretary why references to Arlene Foster and the Department of Finance were taken out of emails without my permission, he replied, "Because the record was expunged". How is it that a Minister can have the email record changed without his knowledge or without his consent? How can that happen? I asked the permanent secretary, and I referred to the deputy permanent secretary — this is not in the regulations — where the instruction came from to cleanse the record of any reference to OFMDFM and the Department of Finance and whether there was evidence to the effect of this changing of records. The permanent secretary replied to me:

"There is an email to that effect, yes".

There is evidence in what the permanent secretary told me of records being expunged, and there is evidence in the permanent secretary's words that there is an email to that effect. Just to be clear — this is not in the regulations, and perhaps it should be — I said:

"If there were emails there" —

as there were—

"you said they're telling you to expunge the record".

The permanent secretary replied with one word: "Yes".
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Is it the case that we are here today and hundreds of millions of pounds could be saved only because I spoke out, because I told the truth, because I was prepared to take the suspension and because I was prepared to have my political career effectively terminated, albeit that, with no disrespect to any political party, it will be the public who decide if my political career is to be terminated? I have heard it said, "Jonathan, you believe the public want to hear the truth; you'll find out that they don't". I believe that the public want to hear the truth.

There is nothing in the regulations — this concerns me — in relation to how special advisers can interfere in a process and how, when a Minister makes a decision —

Mr Deputy Speaker (Mr Kennedy): Order. I think that the Member is straying beyond the topic for debate this afternoon. I ask him to reflect on that and bring forward his remarks accordingly.

Mr Bell: I will reflect on that, Mr Deputy Speaker.

How did we get to the situation where we needed the regulations? We need to regulate because the regulations that are in place are completely ineffective and have been proven to be completely ineffective. I ask the Minister to say, when he is summing up, whether the regulations will prevent a member of a party or a party collectively deciding things against the wishes of a Minister. A lot has been said in connection with the regulations. I look at the information and the evidence that I have before me, and I ask permanent secretaries whether it is right that a member of the party can do this. Then I look at the regulations. In my head, I have an understanding of the evidence of what the permanent secretary said to me: "Your special adviser, Timothy Cairns, is right: you're a member of the party, and your party decides these things collectively". Will the regulations prevent that sort of thing happening again? He said to me, "Your special adviser, Timothy Cairns, is right: you're a member of the party, and your party decides these things collectively". Therefore, a scheme was kept open. It should have been for four weeks, and I still do not have the information to tell you why it was kept open for six weeks. I cannot see the papers; I have not been allowed access to them. Why are we in a situation where we need regulations for what could have been put right had I been allowed to do what I wanted to do on 1 October? That is why the regulations, while I support them today, need to be more robust.

At that time, I said to the permanent secretary — I will quote the evidence:

"That's OK, but I don't want somebody coming back and saying to me, 'Jonathan, you had the authority to do it on 1 October and you did not do it'."

The permanent secretary replied "No" and said that everybody would recognise that every government worked by and on collective responsibility.

We are in a mess, and somebody has to shine a light on that mess. It fell to me, and I do not know why. I did not seek it, nor did I want it. I did not want to do it. Twenty years of loyalty to a party should show that I am a fairly loyal person. I support the regulations because they are, perhaps, the first step in getting that mess sorted out. Johnny Bell does not matter. The public will decide whether Johnny Bell comes back to the House, nobody else. The public will decide whether they want their representatives to shine a light and, effectively, to be salt and light on a hill. The regulations are necessary because special advisers — is there anybody here who doubts it? — interfered in the process. They kept the scheme open, hundreds of people poured into that scheme and, as a result, contracts were issued to allow hundreds of millions of pounds — going up to £1.18 thousand million over the next period — to be spent.

Mr Lunn: I thank Mr Bell for giving way. As he knows, the total number of applicants in the end was about 2,100: does he recollect how many had applied when he made the recommendation to close the scheme in July 2015?

Mr Bell: Remember that this was only beginning to be discussed in July and August 2015. There was a period in September, with the McGuigan murder, when ministerial offices were not held. In rough figures, I think that there were about 1,000 in place. I have already read into the record the evidence where the permanent secretary told me that I was right. I wish that it had been read into the record at the Public Accounts Committee, but I have the record.

The situation is that we need the regulations because special advisers interfered to keep the scheme open. Members on the DUP Benches to my left came to me to say that it was kept open because Timothy Johnston's brother was installing the boilers and spoke about John Robinson: I am not going into whose family
member was installing them. If the Members to my left have information, they must not try to filter it through me but must stand up and tell it like I had to stand up and tell it. It is the hardest thing to do, I can assure you.

4.45 pm

Mr Deputy Speaker (Mr Kennedy): Order. As all Members know, Members enjoy privilege in these proceedings for the purposes of defamation under section 50 of the Northern Ireland Act, but all Members must take responsibility for their remarks. I caution all Members to ensure that their views are expressed with due care.

Mr Bell: Today is not the day to have the inquiry, not least because the Department will not give me the information. I only wish that I could be like Mr Ford and have seen the information. I find it very interesting, Mr Ford, that you say that you were allowed to have copies. I was told that I could look at them but was not allowed to have any copies. That is something else that I will take up with Malcolm McKay, the head of the Civil Service. It seems that one former Minister is given that level of access, and this former Minister is treated in the way that he has been.

Mr Ford: I am grateful to Mr Bell for giving way again. Just to clarify, on the day that I was given sight of the documentation, when I then formally requested copies, it was agreed that I would get copies a couple of weeks later.

Mr Deputy Speaker (Mr Kennedy): Order. We are again beginning to stray away from the issue before the House. I respectfully ask the Member who is speaking and the Member who intervened to bear that in mind.

Mr Bell: Let me conclude, Mr Principal Deputy Speaker. The regulations are necessary because of the extreme mess that we have found ourselves in. The points that I made when I had to shine a light on this devastating situation were not made in December. The points were made in writing to the then First Minister in March 2016. The reason why we have the regulations now is because I spoke out in December 2016. The regulations are necessary because terminally ill children are being sent away from our hospitals, and our wards are being closed because we cannot afford bank nurses. The £85,000 could be spent there every single day. I hope that the regulations can address that. I hope that future generations of children and our health service will not be deprived of the funding needed because of the actions that I felt led to take. I make no apology for telling the truth. I am one of these people who actually believes that there is a time to say:

"Here I stand, I can do no other".

As Martin Luther also said:

"Peace if possible. Truth at all costs."

Mr Deputy Speaker (Mr Kennedy): I call Mr Christopher Stalford.

Mr Stalford: I do not know what I did to deserve being called after that, but thank you very much, Mr Principal Deputy Speaker. Mr Principal Deputy Speaker, this is a major —

Mr Deputy Speaker (Mr Kennedy): Order.

Mr Stalford: I beg your pardon.

Mr Deputy Speaker (Mr Kennedy): Yes, I am far too modest to be a principal.

Mr Stalford: A school principal, maybe. This is a major issue that has adversely affected public confidence in the institutions of the Assembly and the Executive. It would be wrong to seek to deny or minimise the fact that that is the case. This is not a situation that any of us who ran in the Assembly election for the first time not seven months ago would have envisaged that we would have to deal with. It is not a situation that, I suspect, even some of the auld hands who have been in this place from the start ever envisaged that they would have to deal with. However, we are where we are. It is incumbent on us all, as responsible public representatives, where a problem has been identified, to do all in our power to ensure that the situation is corrected and put right.

I have sat through most of this debate, and, to be fair, it has been tempered and reasonable. Members from all sides have made reasonable and tempered contributions, and it has been conducted in a spirit of trying to put the problem right and of trying to fix the situation. Indeed, if that had been the tone of the discussion throughout, we might well be closer to a solution to the problem. Alas, that is not the way that it has worked out.

Steps are needed to put the matter right and to improve this situation. That is why I welcome the proposals brought to the House by the Minister. Other Members commented, and I absolutely agree with them, that we are not in an ideal situation to provide a level of scrutiny
or review of the Minister’s proposals. That is not of the making of anyone in the House bar one party, which decided that it would rather crash the institutions than deal with the problem. That is that party’s entitlement, but, if we are being elected to talk, one of the things that I want on the agenda is an end to the situation whereby one party walking away from this place can bring it crashing down. If people want substantive talks, I am all on for that because never again can the democratic institutions of Northern Ireland be threatened by one party walking away as it has. We are not, because of that, in the position to offer the fullest scrutiny of the Minister’s proposals. That is regrettable. I would have welcomed the fullest possible scrutiny of his proposals. I welcome the fact that cost controls are being introduced into the scheme. I think that all Members agree that that is necessary.

I have reviewed the evidence that was presented to the Public Accounts Committee, and I urge all Members to study it in full, particularly the evidence concerning the role played by Mrs Arlene Foster the former First Minister. I urge all Members to read that.

I welcome the fact that these measures have been brought forward, and I welcome the fact that, as someone else said during the debate, they have been described as defensible and viable proposals. It is important that whatever comes forward cannot be simply seen, as has been suggested, as a stopgap solution. It is important that we have defensible and viable solutions to the problem that confronts us.

I have been an Assembly Member for a short time, and this has been an inglorious end to a brief term of devolution. There is no point in seeking to deny that. Those of us who were elected here for the first time — there are some of us in all parties — did not envisage that it would come to this. However, the mark of a responsible politician and the mark of a sensible public representative is that, when a problem presents itself, they seek to find a solution. The fact that the Minister has found a solution, or has at least put forward ideas, is to be welcomed. It stands in stark contrast to others who serve in the Northern Ireland Executive but who, frankly, would rather give press conferences in the Great Hall than come to the House with positive solutions or positive ideas. That speaks to what their agenda really is.

Mr Lyons: I appreciate the Member giving way. Can the Member give us any clue to why Sinn Féin may have removed itself from the Assembly? The fact that it has removed itself not only from the Executive but from the Assembly and Committees as well shows that it not only wanted to bring this place down but that it does not care about what happens here either, does it not?

Mr Stalford: Frankly, they do not give two figs, Mr Lyons. They do not give two figs about putting the situation right. They do not give that —

Mr Deputy Speaker (Mr Kennedy): Order. We are checking that; I mean your terminology.

Mr Stalford: I apologise if the word “fig” is unparsimonious, I did not think that it was. They do not give a hoot about putting the problem right. If they did, they would be here, they would have come forward with ideas. Instead — ah, a trio has joined us for the first time in days. Welcome to the place that you were elected to serve. If they cared truthfully about the issue and about putting things right, they would be here offering suggestions. In fact, what we have seen from people serving in the Northern Ireland Executive is that any time a Minister — in this case, Mr Hamilton — put forward a suggestion and any time a public suggestion was put forward on potential ways of getting around the problem or solving the problem, what were the other half of the Executive doing? They were trying to undermine efforts to fix the problem. That speaks to me about the real agenda, which is not about fixing the problem. They were determined not to —

Mr Deputy Speaker (Mr Kennedy): Order. Could I —

Mr Stalford: I shall return to the subject in hand, Mr Deputy Speaker.

Mr Deputy Speaker (Mr Kennedy): And we will worry about figs later.

Mr Stalford: We will worry about figs — as long as there not an incentive for growing them.

I welcome the fact that there will be an inquiry. I have said from the start that I want every scrap of paper — every email, every memo, every letter. I want everything relating to the matter put into the public domain for people to see and judge for themselves. It is not in the interests of anyone, whether you are DUP, Ulster Unionist, SDLP, Alliance, Sinn Féin or whatever if there is not full disclosure of everything relating to the scheme. I absolutely support that and want to see that, because it is not in the interests of any of us for the
reputation of politics and those who engage in it to be damaged or maligned.

The lack of consultation on the measures has been raised during the debate. I have said that that is not a situation of the Minister's creation or of any other party in the House bar one. If we had devolution, functioning devolution, Members would have had the opportunity to pore over the regulations. I am glad that even what we have had today, in accountability and discussion, has afforded the elected representatives of the people, at least those who decided to turn up and be in the Chamber, the opportunity to raise their issues and concerns and ask questions. I hope that the Minister is able to answer all the questions that have been asked by everyone who spoke in the debate thus far.

Are people interested in the solution? Are they interested in fixing the problem or are they more interested in showboating? When the time comes for the vote, if the House divides, that is when people will be able to see for themselves who is interested in fixing the problem and who is interested in showboating and political point-scoring.

I would like to finish with a quote from Dr Paisley:

"Never confuse sitting on your side with being on your side."

Mr McNulty: Just over a week ago, I was travelling around south Armagh, navigating the treacherous roads in the snow. We were enjoying picture-postcard views of Slieve Gullion, Sturgan mountain, Topney and Camlough mountain, looking down over Camlough lake. It was hard to imagine that, in just a few months' time, hundreds of athletes will be swimming that lake competing in the crooked lake triathlon. If any of you has not visited Slieve Gullion and the area of outstanding natural beauty, I encourage you to come along to see the spectacular scenery.

5.00 pm

I will get to the point. My colleague Councillor Thomas O'Hanlon and I were observing that not too many farmers around Sturgan Brae were availing themselves of the RHI scheme. The farm sheds had a blanket of snow that was not being melted by the heat generated by multiple wood pellet boilers. I recognise that those farms and businesses that are availing themselves of the incentive are not doing anything wrong under the law, which legitimately allowed them to claim a subsidy for switching to, or beginning to use, renewable heat. I also know that our farmers have got a little bit of a bad rap around this scandal. The farmers I know are honest and hard-working and recognise the daily grind of milking cows; dosing and testing their livestock; moving their stock to and from market; maintaining their fences, ditches and hedgerows; cleaning out their houses; draining their land; ploughing, sowing and harvesting their crops; covering silage pits; and calving and lambing in the middle of the night. Our farmers do not do weekends; they work a seven-day week.

Back to the RHI motion. There are a number of issues and questions that I would like to raise in relation to the scheme. The scheme had already been set up in the UK, where it was operating as it should, by promoting the use of woodchips as a renewable fuel. Around 80% of boilers are fuelled by woodchip in the UK. Woodchip boilers have a smaller carbon footprint than wood pellet boilers and are better for the environment. Unlike wood pellets, the production of woodchip supports local businesses, as it can be produced locally by any farmer, carpenter's workshop, willow grower, garden centre or wood yard. However, here in the North, our scheme has been set up in such a way that it encourages the adoption of wood pellet boilers. Some 80% of boilers in the North are burning wood pellets, a globally traded commodity. In the North we have one privately owned producer of wood pellets, with an annual revenue of £100 million.

Let us do a quick deep dive into the figures for the scheme as it was set up here; they are very revealing. Let us say that your farm sheds or chicken houses have a 500 kW heat demand. For a 500 kW heat demand, you would expect to use a 500 kW boiler as your configuration. The tariff for a kilowatt-hour is 1-8p; the subsidy per hour is £7-50. The annual subsidy for running the boiler 24/7 for 50 weeks of the year, shutting it down two weeks for maintenance, is £63,000. The cost per hour to run the boiler, with wood pellets costing around 4p per kilowatt-hour, is £20 per hour. The cost per year to run the boiler is £168,000. So to run your boiler full tilt for a 500 kW heating demand costs £105,000 per year.

But wait: why use one boiler when you can use five? Let us replace our 500 kW boiler with five 99 kW boilers. Our tariff per kilowatt hour then moves up to 6-5p, and the subsidy per hour rises to £32-18. The annual subsidy for running the boilers 24/7 for 50 weeks of the year is £270,270. The cost per hour to run the boilers is £19-80. The cost per year to run the boilers
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is £166,320. That is a profit of £103,000 from running five 99 kW boilers as opposed to a cost of £100,000 from running one 500 kW boiler. Did no one see anything wrong with that? The scheme was set up as a disincentive to run one boiler, when using five is much more lucrative.

Are we to believe that nobody in the Department knows how to use an Excel spreadsheet? Are we to believe that none of the highly paid SpAds knows how to use an Excel workbook?

The cost of setting up a woodchip storage and delivery system is twice that of wood pellets. Pellets are refined sawdust; the calorific value is higher for pellets. Pellets are approximately double the cost of woodchip to buy and pellets have a much larger carbon footprint because of the high energy demand of the production process and transport. Whereas, as I said, woodchip can be produced by any farmer, carpenter’s workshop, garden centre or willow grower locally, the only wood pellet producer in the North cannot meet the demand for wood pellets so we have to import them. A big opportunity was missed to keep money in the country; the socio-economic benefits are not in Ireland.

Why was the scheme set up here in such a way as to promote the use of the globally traded commodity wood pellets as opposed to woodchips, which are producible locally, with the obvious socio-economic and environmental benefits? This was a green scheme that has turned into a scheme deep in the red.

Mr Agnew: I thank the Member for giving way. He made reference to the fact that it was supposed to be a scheme about reducing carbon. However, in 2013, when I asked the Minister what work was being done to ensure that people had energy-efficient measures in place before they installed a boiler, the answer came back that it was assumed that they would do that.

Mr McNulty: Thank you. We see where assumptions have got us.

When the scheme went out to consultation, what submissions were made? Who made them? Did those submissions influence the decision-making? Who benefited? Why did they remove the cap or tiering system that was introduced in the UK? Who made that decision? Why was the tariff reduced above the 100 kW threshold in NI as opposed to the 200 kW threshold in the UK? Who made that decision?

Ms S Bradley: I thank the Member for giving way. It was suggested at Committee today that nobody removed the caps and tariff because they were never there in the first place. That is not true; the scheme was otherwise adapted from what was in the UK, so it was a very conscious decision by someone to remove the checks and measures that should have remained.

Mr McNulty: Thank you. It is obvious that those checks and measures were removed; that is why we are in the present crisis.

Were no heads raised when farmers were installing five boilers to do the job of one? Who knew what and when? Boiler suppliers and fitters were laughing all the way to the bank, but now they have no business because the scheme was not set up in a sustainable manner, as it was in the UK.

The EU renewable energy directive sets a binding target of 20% final energy consumption from renewable sources by 2020. A major point to recognise is that that scheme was set up to ensure that the UK as a whole achieves the renewable heat targets required by 2020 under that EU directive. The UK is still required to meet those targets or else face fines. In the current frenzy to come up with a fix, which has been proposed by the people who caused the problem in the first place, we cannot lose sight of the fact that there is still a target to be achieved, or else the taxpayer will ultimately face EU fines for not achieving it. That point is being completely lost: this was a green scheme that has turned into a scheme deep in the red.

What is the current percentage of renewable heat against total heat? How much more is required to achieve the target by 2020? We need to ensure that the amendments to the scheme include a plan to achieve the targets. The SDLP voted against the amended scheme being closed down in February 2016. That was the amended scheme that should have been adopted in the first place; it was a scheme that incorporated caps and tiering to prevent abuse.

I know the propaganda machine of the party to my right is presenting this in a different way, twisting the truth to hide its incompetence as silent partners —

Mr Deputy Speaker (Mr Kennedy): Order. Mr McNulty, I have cautioned others that we are not yet in an election forum, so I offer that advice in the spirit in which it is intended.
Mr McNulty: I know the machine of the party to my right is presenting this in a different way, twisting the truth to hide its incompetence as silent partners of the "Look After Its Own" party. The "Look After Its Own" party wants us to believe its Minister Arlene Foster, her SpAds and officials could not grasp the importance of a cap or tiering. Her advisers or an official decided to remove that protection, but the fundamental fact is that Arlene Foster did sign off on it.

Those questions need answers. They need to be answered by the Economy Minister, who is here, and by the Finance Minister, who is not here. We need an urgent, time-bound, judge-led public inquiry into the RHI scheme.

Mr Agnew: There has been a lot of discussion in the debate about scrutiny, such as what scrutiny of the proposal for the RHI scheme took place, who is culpable, where things went wrong and how they were not spotted. Today we are being asked to approve regulations with very little scrutiny and very little time for scrutiny. We know why that is: we are facing an election, the Assembly is due to dissolve on Wednesday and we are pushed for time. The question is this: why? Why are the institutions collapsing? Why have we got here? It is the Executive that have collapsed, and I think it is fair to put the blame at the door of the Executive parties. We had a possible scenario in which Arlene Foster could have stepped aside, we could have had a public inquiry and, indeed, we could have taken the necessary time to find a solution to the RHI debacle in order to protect public money. Arlene Foster is no longer First Minister — she did not step aside — but there is the same result. We are having a public inquiry, it would seem, and we will get the details of it tomorrow. We have these regulations proposed as a solution but without proper scrutiny and with an election looming.

The first scenario would be much more preferable, in which our institutions were not facing collapse; we, as public representatives, were not being contacted by organisations that are having to put their staff on protective notice because there is no Budget and they have not been given any certainty about their funding; and what was left of the goodwill towards politics in Northern Ireland was not completely destroyed. We are being asked to back the Minister's proposals. Given the time, we had the extra week to examine the proposals, hear from the Examiner of Statutory Rules and see whether more confidence could be given. I cannot read the paper by the Examiner and not continue to be concerned by what is being put forward.

5.15 pm

This is a gamble. On the one hand, the prize is savings to the public purse. The Minister has not outlined as much. I notice that, last week, he did not refer to reducing to zero the cost to the Northern Ireland Budget, although some of his colleagues have today. I will see whether he makes that commitment today. We therefore have the prize of some reduction in the public spend. On the other hand, we have the risk of litigation and judicial review, and of further waste of public money on expensive legal challenges. And for what? What is being proposed is a temporary fix. It is a sticking plaster for one year while we, I assume, work on a proper solution. I do not think that I can take that gamble with public money. Given the focus that there is on this and the scrutiny that we do as MLAs in the midst of it all, I do not think that I can support the proposals today.

There has been a lot rehearsed about the RHI scheme, so I will not go into it in great detail. It was supposed to be a green scheme, with £25 million from the UK Government to help us switch to a low-carbon economy. I raised in September 2013 the issue of the perverse incentive. I got a response back from the then Minister. She stated:

"In designing the domestic Renewable Heat Incentive (RHI) DETI has included energy efficiency assumptions that will ensure that the tariffs are most appropriate and most beneficial for those that have already carried out energy efficiency improvements".

She continued:

"within the existing RHI for commercial premises it is assumed that the installation of a biomass boiler; or another renewable technology, would be the final action taken by a business seeking to become 'low-carbon'." — [Official Report (Hansard), Bound Volume 88, pWA209, col1].

That for me was the problem: assumptions were made. When those of us in the wider green movement — I and others — questioned at the scheme's inception why energy-efficiency measures were not being required as standard before installing, which would have required an audit in advance of installation rather than retrospectively, as we have now, the position was clear: we assume that people will do the
right thing, so we will not add in those measures.

There is a lot of talk about whether it was a case of omission by lack of action or deliberate action that led to this. I believe that there were deliberate decisions made not to have audits and inspections of properties in advance of installing the boilers. There was consultation on the proposals for depression. You have a consultation, and the assumption that I make — a fair one, in this case — is that you are considering having a form of cost control. Again, a deliberate decision was taken not to introduce cost controls. Indeed, when I questioned the head of energy division at the ETI Committee in February 2016, he made it clear that it was a policy decision by the Minister not to introduce depression because we were focused on implementing the domestic scheme. That throws up the question of why you cannot have two priorities, but how that unit was funded and resourced is another matter.

Enough evidence was presented about the risk of £490 million of public money being lost that the then Minister, Arlene Foster, could and should have stepped aside until we got to the bottom of the issues. That it is what any honourable Minister would do, and, indeed, as has been pointed out, it is what Peter Robinson did when there were suspicions about him. Again, when that is the bar that is to be achieved, it is a sad day when Peter Robinson is being held up as the pinnacle of respect.

Mr Poots: Will the Member give way?

Mr Agnew: Yes.

Mr Deputy Speaker (Mr Kennedy): Order. Before the intervention, all Members need to show proper respect during any debate.

Mr Poots: Thank you, Mr Deputy Speaker, and I thank the Member for giving way. If he cares to look back on any of the communication from Peter Robinson around the period of him stepping down, he will see that that was not for investigation but because he wished to spend time with his family, who were going through extremely difficult circumstances. There seems to be a lot of confusion about that, and it appears to me that, if you keep pumping out a message, even though it is the wrong message, it appears eventually to be the truth when, in actual fact, it is not.

Mr Agnew: I thank the Member for his intervention. That is not my recollection, but I am happy for what is in the public domain to prove me wrong. Certainly, he stepped down, and an investigation took place — it was not a full public inquiry — by which he said that he was exonerated, but we never saw the result of that investigation.

I will come back, as I am sure you will agree we all should, Mr Deputy Speaker, to the regulations. There is considerable risk with them. I feel that they do not appear to have been conceived when the Audit Office reported. They do not even appear to have had their genesis at the time when the scheme was being amended and the problems were realised and beginning to be addressed. It appears that they have been prepared only since the time that this became a significant public story in recent weeks, when it was clear that the Assembly was on the brink of collapse and it was important to be seen to be doing something. That is not the right circumstances in which to take such a risky action.

I have serious concerns, and I genuinely hope that I am proven wrong. If the Assembly passes the regulations today, I hope that they save public money. If people want to come back to me in six months' time or whatever when they have proven to have done so and tell me that I was wrong, I will admit that. I will not hide behind excuses or advice that I have been given from my office. I hope that I am wrong. If they are passed, I hope that they save public money, but my worry is that they will cost more in legal challenge or, indeed, if the caveat that they can go ahead only if approved by the EU finds that, whilst the Minister looks like he is trying to do something, the EU says no and someone else can again be blamed. We had this situation before when the Minister sought to incentivise United Airlines. He said that he could not do so because the EU said no, and United Airlines said that it chose not to take our money, thank you very much.

I am not going to stand here simply to oppose what has come forward with no alternative. The Green Party has proposed a windfall tax, and I have written to the Finance Minister about that. I think that I am right in saying that I have yet to receive a formal reply, although we raised it again in our meeting today in relation to the public inquiry. We believe that our proposal can do what the Minister seeks to achieve with these regulations but in a way that, I believe, is safer regarding any potential legal challenge. I believe that it is fair in that, in our proposal, any payment made over the cost of wood pellets would be considered a windfall so that this perverse incentive to burn and heat empty sheds would be gone.
Those who purchased boilers to heat empty sheds would never get that money returned. They would be out of pocket — rightly so — because of their fraudulent activity in seeking to use public money in such a perverse way for personal profit. I think that it is a fair and right proposal, and it would impact. Those who bought boilers legitimately would still get a fair return on their investment and still receive an incentive, but they would have no incentive to waste heat or to be energy inefficient. There would be no cash for ash. I hate the fact that a green scheme has been abused in this way and that a scheme that was designed to reduce carbon has resulted in a likely increase in emissions. I hate the fact that the scheme was botched, but I do not think that these botched regulations are the way to right that wrong.

Mr Poots: I appreciate the opportunity to speak on this issue. Much has been said about RHI over a number of months, but there has been very little action. Now is the opportunity for Members to take action to do something about it and to ensure that the £490 million that the BBC claimed had gone up in smoke does not go up in smoke and that public resources are used for other purposes. At the same time, that would give us time to come forward with a more comprehensive package to deal appropriately and adequately with the issues of concern that have rightly been raised on the overspend.

The concept of RHI is a very important one because, as of today, we are still members of the European Union.

Mr Deputy Speaker (Mr Kennedy): Order. I encourage the Member to stay closer to the microphone so that Members can hear and benefit from his wisdom.

Mr Poots: Thank you, Mr Deputy Speaker, and apologies for moving around.

A number of years ago, of course, nobody imagined that we would be leaving the European Union, which has set us very stringent targets for the use of renewable energy. Therefore, the concept of a renewable heat initiative, using woodchip instead of fossil fuels, was a good one. When the uptake was slow, many did not anticipate that there would be a spike at some stage. The spike happened only after a Minister in the Westminster Government announced that they were to withdraw funding from wind energy. Nonetheless, the spike happened, and we are now in the circumstance that we are in, and something needs to be done.

There has been a whole series of efforts to try to make it appear that this is hugely corrupt. I do not believe that that is the case. I believe that there are significant inadequacies, that people got it wrong and that the scheme as devised is clearly flawed. All of those issues are out there, but I do not believe and have not seen evidence that this involves political corruption. I do not think that that case can stand. Nonetheless, let us have the public inquiry, and let us have its findings as quickly as possible. I do not like and would resist a long public inquiry, as might be proposed. I would much prefer a very rapid inquiry: one that has all the papers, witnesses and everything else that you can have at a public inquiry, but one that also gets answers for the public quickly.

We find ourselves in this circumstance today, and we will see the colour of Members’ money. Those Members who choose to go through the Lobbies and do something different are saying, “Roll on. Keep spending the money. We will make plenty of noise and plenty of protest and seek to get as much publicity as possible over this issue. Let us get as angry as possible, but we are quite happy for it to go up in smoke because then we can continue to blame the DUP for what is going on”. So, let us see the colour of your money. If you are for real, you will do the right thing and vote for the proposals today. I know that the proposals will hurt people who have installed boilers. People who installed woodchip boilers are not criminals, rogues, thieves, murderers or a whole lot of other things; most are just involved in a business that needed heat and, therefore, they looked at this option and did it.

Moy Park encouraged its growers to do it. What really bugs me, particularly on social media, is that people do not seem to realise that day-old chickens need considerable amounts of heat, and for quite a long period afterwards. Woodchip boilers provided that heat from non-fossil fuels, and that was beneficial. Moy Park encouraged farmers to install them because the chickens —

5.30 pm

Mr McNulty: Will the Member give way?

Mr Poots: Yes, I will give way in a moment. The chickens thrived better in the drier heat produced by the woodchip boilers than that produced by gas boilers. The gas boilers are on also. They are not part of the scheme, by the way, before we get new accusations flying about. Very often, woodchip boilers do not
bring the heat in the house up to a high enough temperature. So, for people who think that heat was being generated just to be blasted out the doors, that is not the case; the heat was being generated and was being augmented by the old gas systems when those chicks were in their early stages.

Mr McNulty: Will the Member make the distinction between woodchips and wood pellets because 80% of the boilers in the North run on wood pellets as opposed to woodchips?

Mr Poots: Woodchips and wood pellets are for renewable heat boilers. They are both renewable forms of heat. Nonetheless, I was trying to explain that these are being used for good purpose. So, when Mr Wells discovered that his brother and a number of his cousins have one, they are not doing anything wrong. They are legitimately carrying out a business and have invested many tens of thousands of pounds each in acquiring the boilers. I will add that I know Mr Wells's brother, and the last person he would seek agricultural advice from is Jim because Jim is not really someone who is known to be that interested in broiler chickens; he is more interested in birds of prey.

Mrs Long: I thank the Member for giving way. The point that he makes is well made. It is similar to the point that I made earlier about the number of new boilers that were installed where previously there had been no heating, but this was partly due to an expansion, so there were new buildings. So, there is some explanation for some of this. Does he agree with me that one of the saddest things about all this is that the whole concept of renewable heat and what was trying to be done was valid and good and that businesses good and bad alike have been tarnished by the incompetent way in which the scheme was administered?

Mr Poots: This is a very difficult moment for me because I have to agree with absolutely everything that the leader of the Alliance Party has just said. In truth, it is common sense.

I deeply regret that we are in the circumstances in which we find ourselves. I committed to the Assembly 10 years ago to try to get devolution off the ground again and I think that, for all its faults and foibles and so forth, it has been a good thing, and last night's shooting demonstrates the importance of us working together. The fact that we are going into an election and probably going into negotiations after that election takes us into an unknown, which, I believe, was avoidable and hugely regrettable.

Getting back to the point, Mr Deputy Speaker, before you pounce on me, supporting the regulations would be a demonstration that the Assembly means business.

It wants to put right something that it got wrong. It would be a step forward for the public. As I have said before, the public are looking for solutions; some politicians are looking for scalps. That is unfortunate. Even on the evidence that has been provided thus far, it has been demonstrated that it has been wrong to engage in the hate campaign against Arlene Foster and to identify and pinpoint one individual as the person who devised the scheme. She did not devise the scheme, and everybody knows that.

We are where we are. I encourage people to support the regulations. I would not be altogether happy with the regulations as they stand if they were for 25 years, so I encourage the Department to work comprehensively with the industry to identify the means by which to go forward with a scheme that can support those who are involved in producing renewable heat and does so in a way that gives them a return on their investment but does not lift £490 million from the taxpayer. Everybody would be a winner at that point.

Mr Smith: Like Mr Bell, I sincerely hope that these proposals end the £85,000 per day cost of the RHI scheme, but the proposals must be more than a pre-election panic measure in the hope that the public will forget the incompetence and the arrogant response to the scandal. What is proposed in the regulations is the introduction of some of the controls that should never have been removed in the first place on the previous Minister’s watch. As my colleague Alan Chambers said, the permanent secretary, when he was giving evidence to the Economy Committee earlier today, admitted that the scheme that is in front of us today was cooked up by a special adviser over Christmas. He did not say who it was. Perhaps the Minister may elaborate when he is summing up later this evening. I have to say, though, that, in most people’s eyes now, having the fingerprints of a SpAd on anything will not be seen as much of an endorsement.

I have questions that, I hope, the Minister will reflect on and address when he gets an opportunity to make his comments on the regulations. Does the business case — we have yet to see the business case, of course — achieve the zero additional cost that he and Arlene Foster first promised a number of weeks ago? I believe that the proposals before us will retain an ongoing cost of over £2.25 million. I
would appreciate it if the Minister could confirm whether that will still be the case.

The key question of course is this: are the proposals legally sound, or will they fall at the first legal challenge? I will come to that in a bit more detail further on in my remarks. First, why did it need the threat of an election to generate a response to mitigate the impact of the scheme on the public purse? The Minister, as we all know, has had the Northern Ireland Audit Office report since July. Lack of action to date has already cost taxpayers over £16 million since then. These proposals will add another £6.5 million to the bill before it comes into force on 1 April. We now, at least, have a public inquiry following Sinn Féin’s welcome U-turn on the issue. Arlene Foster had promised to call one nearly a fortnight ago, and, of course, we have had nothing since then as well. Despite this better-late-than-never proposal, we have many questions outstanding, and no one, of course, has been held to account for the, at best, appalling errors of judgement and mismanagement.

As has already been mentioned, the eleventh report of the Examiner of Statutory Rules to the Assembly refers in detail to the regulations before us. It highlights issues that I would be grateful if the Minister could respond to at the end of the debate. We know that there has been no detailed scrutiny by the Economy Committee due to the tight turnaround for the regulations. My colleague Steve Aiken has stepped up in the absence of the Chair to maximise the engagement and scrutiny by the Committee in such a short timescale. Why has it taken so long to finally produce a scheme to stem the waste of public funds, thereby curtailing the time available for proper scrutiny? Have we not learned the hard lessons from the failures of the scheme? The question is raised in the report of the Examiner of Statutory Rules of whether this instrument is intra vires under section 24 of the Northern Ireland Act 1998 because of its incompatibility with the European Convention on Human Rights, specifically article 1 of protocol 1. Can the Minister confirm that there is no risk under ECHR and that the proposals under the regulation are deemed to be proportionate?

No doubt the Minister will have a copy of the letter that all parties received from David Capper, a reader in law at Queen’s University Belfast, urging the inclusion of a hardship clause in the regulation to ensure that it is not seen as a blunt instrument. Mr Capper suggests that a hardship clause:

"would allow any participant in the scheme to make a case to the Department for compensation if they could prove that cuts to their support payments would cause them hardship or severe hardship or significant financial difficulty or expose them to the risk of significant legal liability. You could put the onus on the applicant to show that, without some compensation, they would bear an unfair share of the burden that the taxpayer would otherwise have to bear if nothing were done to control the costs of this scheme."

Mr Capper concludes his letter by saying:

"This will maintain a fair balance between private rights and the general interest."

Has the Minister considered that proposal? What are his views on the issues raised by Mr Capper? Is the Minister satisfied that his duty to consult those potentially affected by the regulations will not be used as a reason for legal challenge?

My party has proposed the use of a windfall tax — Mr Agnew referred to that a little earlier — to recoup the excess income from the RHI scheme. That is the best method for recouping the excess cost while minimising the potential for legal challenge. Has the Minister considered that option? If not, why not? If he has excluded it as an option, can he tell us why he has come to that conclusion?

(Mr Speaker in the Chair)

Today is about trying to put right the mistakes of the past concerning the now infamous RHI scheme. The priority must be to put in place cost controls to minimise the liability to the public purse, but any proposals must minimise the scope for legal challenge; let us not repeat previous mistakes. The purpose of the regulations must be to stop the waste, protect public finances and put in place the protections that were — for some unknown reason that, I hope, the public inquiry will uncover — removed when the scheme was introduced in Northern Ireland.

No doubt like many in the Chamber, I was out on the doorsteps at the weekend, and people are genuinely angry at this incompetence and scandal. I have never witnessed a public reaction like it. They would be even angrier, if that were possible, if the regulations failed to stem the flood of waste. If the mitigating actions were also introduced in an incompetent way, making them open to legal challenge and
continuing the £85,000 per day waste of taxpayers’ money —

Mr Beggs: Will the Member give way?

Mr Smith: I will.

Mr Beggs: Will the Member recognise with me that, if there is a judicial review, the cost of £85,000 per day will still be incurred into the next financial year, not just this financial year, and continue until there is a judgement? Therefore, this is not a cost-free solution. There is a high likelihood of legal challenge — indeed, we have been advised by those in the industry that they are likely to seek a judicial review — and there will be ongoing costs incurred into the future. We will not face zero costs in the future as a result of this botched scheme.

Mr Smith: I thank the Member for his intervention. I share his understanding of what the likely ramifications may be. I fear that the regulations have too many holes and are too open to legal challenge, which could mean that the £85,000 per day of waste that my colleague refers to will continue.

I am afraid that this so-called solution is half-baked and produced in haste, and I worry that it will fail in its objective. Despite all those caveats, questions and concerns, as my party leader said earlier, we will not stand in the way of the regulations, in the hope that the waste will be curtailed.

Mr Murphy: Regrettably — other Members have accepted this — this is not the solution promised by the former First Minister a number of weeks ago, which boasted that it would be a comprehensive solution dealing with the entirety of the costs to the public purse of this DUP fiasco of the RHI scheme. Minister Hamilton is clearly bringing forward an interim solution for decision today. It has been described as “sub-optimal”, which is government speak for better than nothing.

In essence, it is a sticking-plaster solution for one year only, and it is now, unfortunately, the only option available to us in the short term.

5.45 pm

We are presented with a plan at the eleventh hour because successive DUP Ministers have let the public down on this issue. Arlene Foster was the Minister responsible when the scheme was created; Sammy Wilson signed it off; Jonathan Bell failed to close it, although he alleges political interference in relation to the delay in closing down the scheme; and the current Minister, Simon Hamilton, has failed to act in a timely manner to try to staunch the flow of public funds.

Since the summertime, the Department for the Economy has failed to respond to persistent requests from the Department of Finance to sort out the RHI mess. That means that it is now bringing forward — according to the permanent secretary, at the advice of a special adviser only on New Year’s Eve this year — a stopgap plan when, last July, with the publication of the Comptroller and Auditor General’s report, or indeed last October, with the publication of the PricewaterhouseCoopers report, it could have brought forward the full plan that the public deserves. So the upshot —

Mr Poots: I thank the Member for giving way. Sinn Féin was in the same Executive as the DUP when all this was happening, and one of the Ministers who was promoting RHI was the Minister of Agriculture and Rural Development. Can the Member deny or confirm that that Minister, right up to and even during the spike, in November 2015, was publicly promoting RHI to farmers?

Mr Murphy: The Member may well be correct in that assertion, but the reality is that, in January 2016, the Committee was first advised of it, and the deputy First Minister was advised by the senior civil servant, the head of the Civil Service at that time, that the scheme had run out of control and that the advice of the officials in July was to close it down. Quite clearly, nobody in the Department of Agriculture was aware of the advice given to the Minister of Enterprise, Trade and Investment at that time. Nobody in Sinn Féin was aware of the advice being bandied around within the Department of Enterprise, Trade and Investment. If other people were promoting the scheme, it was in the lack of knowledge that the scheme from June/July 2015 was recognised within the Department of Enterprise, Trade and Investment as being out of control, financial costs were spiralling and the advice was to close it down as quickly as possible. If other officials were briefing their Minister to go out and support the scheme in the autumn of that year, clearly officials in other Departments were not aware of the knowledge in the Department of Enterprise, Trade and Investment and, apparently, among the special advisers of the DUP and other DUP Ministers.

As I was saying, the upshot of the failure to bring forward a scheme to deal with RHI losses
since earlier this year — you could argue that within the Department of Enterprise, Trade and Investment until the election, and the Department for the Economy since — continues to cost the public purse £85,000 per day. The solution that we have before us is severely flawed. I do not think that anyone disagrees with that. As yet, it does not have European Commission state aid approval, and therefore the plan may not kick in for definite on 1 April. If state aid permission is not through by then, it stalls until such time as that approval comes through. No one knows for sure how long it will take to clear the state aid hurdle. I also read in the media that it is likely to face a judicial review. A point was made in an intervention during the last contribution that that also creates uncertainty as to when this stopgap scheme may kick in.

It is clearly not a zero-cost solution. Another £6 million will be lost to the public services between now and 1 April, when this plan is scheduled to kick in with lower tariffs. In the 2017-18 financial year covered by this plan, losses to the renewable heat scheme will be at least £2.5 million, and another £2 million-plus will be spent on inspections and the inevitable legal challenges. So it is not the full and comprehensive solution that was trailed in the media by the former First Minister over the Christmas period. In fact, while this plan deals with £30 million of public funds at risk next year, what is clearly needed is a plan to deal with the full £500 million of public funds at risk over the 20-year period.

To accept this plan today requires, as Stephen Farry said in the earlier part of this debate, a "leap of faith". However, to have faith in this solution, we have to have faith in those who are tasked with its delivery. Ofgem remains at the centre of this plan. Ofgem's involvement in this scheme has been disastrous. It has done virtually nothing to tackle the fraud and abuse of the scheme, and the Public Accounts Committee evidence given by Ofgem in October was one of the low points in this entire debacle.

A robust, 100% inspections regime is central to any solution. As yet, no business plan has been produced for that inspections regime, and inspections may not start until 1 May. That is a disgraceful delay. The business plan for the inspections regime needs to be developed and approved as a matter of urgency. Then, we have to have confidence that the DUP's fingerprints are not on the plan; that it has not been influenced by the architects of this mess, Arlene Foster, or by the DUP special adviser in the Department for the Economy who has had to step aside from all issues relating to RHI because of his family connection to the scheme. Of course, to make that leap of faith, we will also have to have confidence that the names of the beneficiaries during the spike period are not being held back because they contain more revelations about DUP links to those applicants. Minister Hamilton was asked repeatedly to release the names before this debate in order to build confidence in the solution he is proposing, and he refused to do so. That is a necessary confidence-building measure, Mr Speaker.

The part of the interim solution that has merit is the intention to reduce the tariffs for all business users from 1 April for one year. That is expected to reduce RHI losses by around £25 million next year. The rest is a hotchpotch that may or may not deliver as promised. That is why, regardless of how the vote goes today, the Minister of Finance must continue to engage with the Department for the Economy to make sure that he is satisfied that this plan will not only slow the runaway train, which is the DUP's RHI scheme, but enable us to stop it dead in its tracks from 2018 onwards and save not £25 million but £500 million for the public purse.

Mr Lyons: I appreciate the Member giving way. Now that he is here and is setting out his view regarding the regulations, will he explain why he as Committee Chairman has been absent from the Committee for the Economy and why his two party colleagues have not bothered to turn up? If he had, he would have had the opportunity to question officials and other people who gave evidence, but he absented himself. Does he have an explanation for that?

Mr Murphy: I can assure you that I am as much across this part of my brief as anybody who has been at the Committee. I notice that the Committee failed to take any position with regard to this proposition when it was put to them.

Mr Lyons: Why were you not there?

Mr Murphy: Do not worry; I have been keeping a very close eye on matters.

Mr Lyons: Why were you not there?

Mr Murphy: Mr Speaker, through you, if the Member's only issue with Sinn Féin in relation to this is our attendance at Committee meetings, when we recognise the full scale of
the impact on these institutions, public finance and public confidence that this scheme has brought to the Assembly, he is living in cloud cuckoo land. This has been a disastrous scheme from start to finish, and the handling of it has been disastrous. The proposal in front of us is not the proposition that was outlined by the First Minister a number of weeks ago. It is a sticking plaster solution, which, we hope, will have some effect in saving at least £25 million. The reality is that we have had to initiate, through the Department of Finance, a public inquiry to try to get to the heart of this matter, because of the refusal of the DUP to deal responsibly with the matter, when there was an opportunity before Christmas for the DUP and the former First Minister to do so. So, if the only issue that the Member has is attendance at Committee meetings, I think he is missing the point by a very, very wide margin.

This is a very serious issue. It has hugely damaged public confidence. I suggest that the solution being proposed is a long, long way short of one that will restore any degree of public confidence, but we have to deal with it as we see it in front of us. We have to accept that it is not the solution that was promised, and we have to look at it in the round to see if it will do what it intends to do by way of saving some element of public finance in relation to this, and we will make our judgement accordingly.

Mrs Long: Tempting as it might be in the current context to go beyond the scope of the regulations and comment more widely on the RHI scheme and the damage that that scheme, and, I would argue, more so, the manner in which it has been handled, has caused, I will not test your patience, and I will try to confine myself to the regulations.

The permanent secretary — an official thrust uncomfortably into the spotlight over recent weeks, but whose integrity and honesty has not seriously been called into question by anyone throughout this sorry episode — was adamant in his evidence to the Committee this morning that these regulations are required and that no ministerial direction has been issued.

Indeed, if the Minister had stalled on them, he would have sought a ministerial direction to deal with the issue.

We are not here to question whether action is required; we acknowledge, however, that this is only a patch for one year and is not a permanent fix to the issue of RHI. The potential long-term solution to it may end up being something very similar to this approach, subject to further policy reflection and public consultation, and it may be better than other approaches such as a windfall tax. Representations have been made, however, by some of the legitimate users of the scheme that the regulations may not be the best option, bearing in mind their legitimate business needs. Regardless of that, this remains a rushed process. The regulations have not been subject to public consultation, so the views that I referred to earlier with respect to those legitimate businesses have not and cannot be fully considered.

I want to linger on that point for a second. From a number of the speeches that we have heard today one might have got the impression that the overspend was solely due to abuse of the scheme: that is simply not the case. The lack of cost controls, tiering and degression, coupled with the level of the tariff, means that the scheme, when operated entirely lawfully and as intended, is much more generous than the comparable scheme in England and Wales. The blame for the overspend lies primarily with the failure of the Minister and the Department to design the scheme properly and include cost controls. Those who applied to the scheme fall, I guess, into three categories: those who are flagrantly abusing the scheme; those who are complying with the letter of the law but exploiting the loopholes in the scheme; and those who are complying with both the letter and the spirit of the law in an attempt to meet their business needs legitimately through the scheme. Suggesting that they are all to blame for the mess is unjust, and it runs the risk of the businesses that applied to and operate the scheme in good faith suffering reputational damage as a result. The scheme, when operated within the letter and spirit of the law, would still create an overspend. It is right that scheme participants ought to be audited, and those abusing or exploiting the scheme ought to be, at the very least, removed from it and potentially face criminal proceedings for fraud, when that is appropriate. However, businesses acting in good faith ought not to be unfairly castigated as a result of this mess.

Our second concern is that the regulations have not been subject to Executive approval; they were brought here by one Minister. The scheme is not coming to us with the agreement of the Executive. While the scheme itself is not a cross-cutting matter, the impact on our finances most certainly is. There is as yet no approval for the business case on which this is predicated, and there is no clarity on whether there will be agreement on that going forward.

Thirdly, we are concerned that the regulations have not been subject to any meaningful
Committee scrutiny, notwithstanding the extra week that was secured. All things being equal, it was the Minister’s intention to continue last week to press the regulations to a vote; it was others who asked for the adjournment of the debate, which has allowed some very limited scrutiny by the Committee. Sadly, however, the Minister was not in attendance at Committee this morning to answer questions, instead sending his officials. Given the political importance and sensitivity of the issue and the fact that the Minister is essentially asking Members to take him on trust, it is not an issue that should be devolved to officials.

I am aware of the traffic chaos across north Down and Ards this morning after last night’s accident and a further one this morning on the diversion routes. However, my colleagues and others managed to be present at meetings here this morning regardless of that, so I would be interested to hear the Minister’s reasons for not attending the Committee. It certainly does not create confidence at a time when Members are seeking that reassurance directly from the Minister, who, as the legal advice given to the Business Committee indicates, remains ultimately responsible for any consequences of the scheme.

That scrutiny, although very restricted, has, in fact, raised further concerns about how the scheme emerged. Under questioning today, the permanent secretary informed the Committee that the plan before us came from a special adviser. Under further questioning, it emerged that the special adviser who brought the proposals forward was not the Minister’s special adviser but another one from a different Department. That raises really significant questions about what the roles of special advisers in this debacle have been. There is no justifiable reason for a special adviser from another Department to become so intimately involved in the business of a Department that is not his own.

6.00 pm

Mr Alken: Will the Member give way?

Mrs Long: I will indeed.

Mr Alken: Does the Member agree that, with this plethora of special advisers doing this and that, it would have been much better had the Minister just come clean and told us which special adviser advised what?

Mrs Long: I suspect that a public inquiry might get some clarity on that, though it seems that there was such a tangled web that it may be difficult to extract any clarity from it.

The fact that we have a special adviser from one Department putting forward a patch repair for a scheme that is in another Department’s remit simply adds weight to the perception that it is the special advisers who are in charge of the Ministers rather than Ministers being in charge of their Departments, and that is despite special advisers not being accountable to the Assembly and the public, whereas Ministers now simply act as though they are not.

It was also indicated that the business case was commenced on 30 December when the scheme was brought forward. That is despite the fact that, on 19 December, Mr Speaker, you recalled us to the House under a promise that was made publicly — it was in the public domain and in the media, who have taken much criticism from some in the Chamber today — that we would get not just a statement about what had happened but the presentation of a comprehensive scheme that would reduce the cost implications to zero. Not only did that not happen on 19 December but it is clear that what was being said in public was at odds with the timeline in private, as no such scheme was presented until almost two weeks later and is not a comprehensive solution but a patch repair. It gives further weight to the perception that the scheme and the timing and content of this repair are being driven by political considerations rather than considerations of good governance. There is genuine concern that this is less a patch to prevent the continued leaching of public funds over the next year and more a political fig leaf to cover the DUP’s embarrassment over the RHI shambles ahead of the elections. It is one that carries significant risk, on which I will elaborate. Therefore, we have serious reservations about supporting such regulations.

Fourthly, the regulations have been given only limited scrutiny by the Examiner of Statutory Rules. Whilst the Examiner was able, in a very restricted manner, to look at the rule in the last week, that was not as complete and thorough an examination as would be expected, particularly of something that carries such risk. In fact, the Committee was, I believe, unable to agree the Examiner’s report this morning, as it did not have confidence that it had been given sufficient time to consider the limited response that the Examiner was able to produce or to have full confidence that those would be the only remarks on it.

Fifthly, there is a major risk of legal challenge, primarily focused on the lack of consultation on
the scheme. I realise that the intention is to consult during the first year of the scheme, but the risk of legal challenge is immediate. It is exacerbated by a lack of consultation with the sector and by the lack of Executive and Committee scrutiny. That approach, far from being cost-neutral, could place us at significant risk of incurring legal costs and, at the end of the process, still being liable for the £85,000 a day overspend.

There is, as a result, also an absence of analysis of the impact of a change in the scheme — in particular any sudden change — on a range of sectors including, for example, poultry and mushroom production. It was said earlier that I would not know much about poultry, but, from being in the Assembly, I know quite a lot about the cultivation of mushrooms. I have to say that, at times, when you sit in Committee, you feel that that is exactly how you are being treated. That may open up further opportunities, however, for legal action around the fairness of the measures that are being introduced and the impact that they could have on specific sectors and businesses.

Sixthly, there is a risk of the European Commission not endorsing what has been proposed as it may breach state aid rules. That places Northern Ireland at risk of infraction proceedings. I suspect that, in real terms, Europe has bigger issues to wrestle with over the next weeks and months. However, we are, essentially, looking for them to be generous towards us at a time when, perhaps, our Government have been less than generous towards them.

Why is all this being done in such a rush? I know that the DUP will focus on the fact that the resignation of the former deputy First Minister has added pressure to complete this process quickly, and we accept that to a point. However, whilst the collapse of the Assembly may have added to the pressure to complete it now, it does not explain why the action that is being taken today was not taken at any point in the last couple of years. We are now being told that this is the most straightforward and off-the-shelf solution to the problem. However, the Department did not actively consider this approach until the very end of last year. It was as a result of public and political pressure, not concern to protect the public purse, that this belated burst of activity was brought forward. The lack of action from February 2016 when the scheme closed and now is inexplicable.

Arguably, if his had been initiated even in June 2016, we could have saved around £15 million in this financial year alone. That £15 million would have been adequate to introduce the cancer drugs fund, which costs £13.6 million.

In his comments earlier, Mr Frew was very critical of the media. He said that, at some point, the media had moved from reporting the news to wishing to be the news. It is called investigative journalism. Had it not been for the pressure of investigative journalism and the public and political scrutiny that followed it, I doubt very much that we would be standing here today discussing this solution, because it was that pressure and not foresight or protecting public resources that has driven this scheme.

The Minister is here today seeking our trust in the absence of the normal rigorous scrutiny to which issues of such importance rightly ought to be subjected. We have a duty to judge the regulations on their merits and the Minister on his record. Despite the lack of opportunity for Members to properly scrutinise this and the need for him to engender confidence and go the extra mile, if you will, he refused to take a single intervention when he introduced these regulations to the House last week. Further, as I referenced earlier, the Minister was not available to attend the Committee this morning to answer questions, leaving it to his officials to answer questions that are of a politically sensitive and urgent nature.

Last week, when the Minister sought my party’s support in his bid for an independent public inquiry into the matter, we responded in detail to that request. We set out our grounds for supporting such an inquiry and contacted the Minister’s private office to take Minister Hamilton up on his offer of a meeting to discuss it. We called for a public inquiry and we are willing, despite reservations, to support that were it to meet certain conditions. We were not seeking a scalp, as some in the Chamber have suggested today. We were seeking the truth on behalf of the people who employ us and who will pay for this mistake: the public. Their money is at risk. Their services are being jeopardised. Their confidence in these institutions, which are here to serve them and not party or self-interest, is being eroded. I want to set out what happened as detailed in the last paragraph of the letter that I hoped to give to the Minister at that meeting but ended up having to email to his private office.

“In conclusion, we welcome your offer of a meeting to discuss this matter. Having sought to arrange a time through your Private Office, we were advised that you would not be attending, but that the meeting could proceed with your Permanent
Secretary and a lawyer. Given the time pressures and sensitivities of these matters, it is our view that a meeting at ministerial level is required in order that you can indicate directly whether you would be satisfied with the terms that we have outlined."

Again, we see a Minister happy to assume the trappings of office but appearing too readily to leave the heavy lifting, the jolt and little if you will, of serious issues to officials and advisers. It is that eagerness to assume power but unwillingness to take responsibility that is at the very heart of this sorry mess.

The Minister's own record of avoidance of transparency and robust decision-making processes extends beyond this scheme. When we look at the manner in which a rushed decision was taken with respect to United Airlines without all the due diligence, only for it to unravel in an unholy mess later; we have serious reservations about the robustness of the scrutiny to which he, personally, will have subjected this statutory rule. The cynical view in the public mind remains that this is primarily a play on the part of the Minister and his party to give the appearance of having acted ahead of these elections. Given the antics of the Minister and his colleagues and their poor record on accountability and transparency, I have to say that, with the best will in the world, it is difficult to conclude otherwise. Ultimately, however, we believe that we need to try to stop the leaking of cash on this scheme, so we will not stand in the way of this passing today.

I want to take the opportunity, through you, Mr Speaker, to remind the Minister that he will be responsible for what is decided here, not me, not my colleagues and not any other Assembly Member in the Chamber. No amount of buck-passing, muck throwing or ducking of responsibility will change that fact. These are his proposals; they came from his Department; he is responsible for them.

In answer to Edwin Poots, I have to say that no one is suggesting that any Minister alone devises every scheme, every policy and every action of their Department, but every Minister is legally responsible for the actions of their Department, and it is good governance and leadership to step up when that occurs. The real scandal here is that, while we have people unable to heat their homes and struggling to feed their families, we have barns being raided by the police — empty barns with steam rising off them in the snow. I want that to stop.

We will not block these proposals today, despite our serious reservations. I hope that these proposals are a success, not for the Minister or his party but for the sake of the public who ultimately are paying the price for this debacle though they carry none of the responsibility for it.

Mr E McCann: I think that it was Mr Smith who asked a little while ago how we got here and what brought us to this pass. It is worth going into it, because you cannot understand this scheme and the flaws in it, and the regulations and the flaws in the regulations, other than in the context of the internal politics of our two major parties and, indeed, of the entire system of governance created under the Good Friday Agreement.

We have had a very good debate in one sense. A lot of it was fascinating. The most fascinating thing that I discovered — at least one of them — during the day is that — you were not here, Mr Speaker, for this bit, so I wonder, did you know that day-old chicks pre'er woodchips? I did not know that until Mr Poots explained it to us. I am taking it seriously. I am sure that you are right. It is something I know nothing about. What I am really wondering is, how did we get here in relation to the major items; how did our debate get to a position where we have to be informed and take on board the preferences of day-old chicks with regard to particular fuels used for heating their sheds? How did that happen?

One of the reasons it happened is, of course, because a lot of people in here and a couple of parties in here cannot deal with the matter in a straightforward manner. And because they cannot deal with it in a straightforward manner and face up to all the issues which are raised, we get taken into all sorts of meandering, winding paths and into the netherworld and the fringes of the Assembly.

For a start, I would like to demonstrate the way in which the internal politics and the ideology, if you like, of the DUP and Sinn Féin have played a role in generating this present situation with the renewable heat incentive scheme. It may seem a very far distance from political ideologies of parties — do not worry, Mr Speaker, stick around and I will demonstrate it now. The fact of the matter is that, in the course of this debate — it is relevant, I am picking up things that have already been said in this debate. Mr Bell made the second fascinating statement that he has made in the House. At the end of it — I am sorry about the pun — there is no need to ask any more for
whom the bell tolls; it tolls for Arlene Foster. We learnt that after Mr Bell's statement.

6.15 pm

I was very struck when, the last time we had a debate on this subject — I am dealing with things that have already come up, Mr Speaker — Mr Bell told us, and he may well be right, that if the Reverend Ian Paisley were here, he would be sitting alongside him and not with the other DUP colleagues further along the Bench.

I am sure that he is right about that. One of the reasons why I am sure that he is right is that, a couple of days after that, I happened to be watching my television set and there I saw Ian Paisley junior making some remarkable statements about Mr McGuinness. I thought to myself, "There is something up. There is something happening here". Is the dissident DUP claiming the Rev Ian Paisley? And, of course, is there a leadership bid? It also demonstrates the ideological chaos in the DUP. It is the chaos arising from the fact that their traditional ideology does not meet the material realities of Northern Ireland society any more.

In that situation, we have the politics of opportunism and the politics of — I hesitate to use the word "corruption", so I will not. There is a questionable and murky behaviour conducted in that dark territory where SpAds and spivs infest the system of government in Northern Ireland. You cannot understand the way the entire scheme emerged and the regulations — the inadequate regulations — that we are invited to vote for unless you take that into account.

Why did the scheme cause the collapse of the Executive and then the Assembly? How did that happen? Just a few weeks ago, everybody will remember the remarkable scenes in which you had Members looking across the Floor from the Sinn Féin Benches to the DUP Benches. They were gazing at one another doe-eyed; now, they are looking daggers at one another.

That was just a week later. How did that happen? Again, there are ideological problems for Sinn Féin, as they know — I have talked to their Members about it. It is a party that is dedicated to a united Ireland or nothing, yet they were locked into an embrace with the DUP. It is hard to explain that to people who believed that they were supporting or joining the party to make a drive for the full realisation of the ideals of 1916 and all that business. There was a contradiction there and, as I said, the ideological contradiction in the DUP that was brought about by the fact that, by coming together to form a government, they were contradicting the stated reasons for their very existence. In that situation, you are bound to get internal turmoil and, as Sinn Féin found when they went back to their grassroots, people were telling them "No, nay, never".

Mr Nesbitt: Will the Member give way?

Mr E McCann: Sorry, Mike. Yes. I mean, not sorry. Come ahead. [Laughter.]

Mr Nesbitt: I thank Mr McCann for giving way. When you talked about the doe-eyed gazing, there were smiles from those on the Sinn Féin Benches, but do you not think that the fact that Conor Murphy said earlier that they knew that the scheme was falling apart in January 2016 but chose not to make it an election issue proves your point?

Mr E McCann: Thank you —

Mr Speaker: Mr McCann —

Mr E McCann: I suppose that it does. I am glad that you made that point.

Mr Speaker: Mr McCann, before you continue, I have been very liberal with you in particular. I ask you to come back to the regulations that we are debating.

Some Members: Aw.

Mr E McCann: That is fair enough, Mr Speaker. I will. I have to say to you that in the course of the debate — it has been a lengthy one — we have had passages of debate in which the regulations, or anything associated with them, were not mentioned for five or 10 minutes. I have certainly said nothing so far that was as far removed from the regulations as other Members have been — repeatedly — in the debate. However, I will leave that particular aspect of it there.

Mr Speaker, you will be aware, as we all are, of the extent to which — I think that it was Mr Smith who referred to the fact that he had never encountered anger like it. I have to say that I have; I have encountered more anger on the streets over other issues over time. Nevertheless, I take your point. There is a lot of anger and dismay and a widespread belief that the RHI scheme is a racket, and that is not good for any of us. I am not saying that I endorse that belief, but people are disgusted, and anyone who has talked to people in the community about it will know that the RHI scheme is seen as a racket. That is what
people believe it to be. Everything that they hear about it — what they hear is accurate — is about dodgy practices and people being secretly or confidentially alerted to the fact that a scheme existed and were told to fill their boots with public money. When people hear that and consider it against the background of all the things that have led up to it — anyone can rhyme them off. There was Research Services Ireland a few years ago. That was a 'Spotlight' production too, was it not? If I am right, that was in November 2014.

Incidentally, there were attacks on the media here. If it was not for 'Spotlight' shining its light, we would still be in the dark about many of these things. I pay tribute to Stephen Nolan, Sam McArdle, Allison Morris and all the other journalists, who have given great service to this community, far better than that given by some people in parties in here over recent weeks, by bringing these shocking events and situations to the public mind. We would not have been here, as someone remarked, if it had not been for honest, investigative journalism in this part of the world. Everybody would be trundling on in a complacent manner. Far from attacking the media, we should be giving it credit and praise. Some of the remarks about the media from the DUP Benches reminded me of a Donald Trump press conference, in which he called out people and asked them, "How dare you tell the truth? We have got an alternative truth that we are promoting. How dare you tell the facts?" That was the tone of some of the remarks from the DUP Benches.

At the end of the day, we have to ask ourselves what are we going to do about all this? What is "all this"? "All this" is not just RHI. We all know that one of the reasons for the seething anger that Mr Smith referred to is that it is not the first such thing to come before the public. It was the last straw, not the first example. It came after Research Services Ireland and then — all these incidents have something in common — Red Sky, NAMA and all the rest, and on those you cannot say, "One side is as bad as the other". You cannot; it is not the case.

Mr Butler: I thank the Member for giving way. Just on that last point, the Minister was reluctant to attend the Committee this morning, and Sinn Féin has been absent from the Health Committee over the last two weeks. That is an amazing correlation. Does the Member agree that it is a demonstration of power before people?

Mr E McCann: Power before people. When I was coming in this morning, I was accosted by Mr Allister, who said, "I believe that you are from People Before Pellets". [Laughter.] So, power before people I will accept too.

Where was I?

Ms Hanna: NAMA and Red Sky.

Mr E McCann: NAMA and Red Sky and all that. Is it not interesting that, when you look back, some of the same names appear. All those SpAds. Mrs Palmer has not spoken yet, has she?

Mrs Palmer: If the Member will give way, I would be delighted to contribute to the debate.

Mr E McCann: Absolutely, Jenny.

Mrs Palmer: Does the Member agree that civil servants have an obligation to act in a non-partisan, non-political fashion and that the public, because of all the scandals that SpAds have been involved in — Red Sky, NAMA and all the others — believes that the culture in the Civil Service is that officials are overruled by SpAds and that they do not take their codes of conduct, codes of recruitment and ethical codes with any great seriousness, which means that the two main political parties have the biggest say in what happens in the Departments? Mr Allister brought before the Assembly an opportunity to curb the role of SpAds, and Sinn Féin blocked it, after saying initially that they would support it. There are serious issues to clean up in this House, and not just on the role of the SpAds but on giving back correct procedures to civil servants.

Mr E McCann: No sensible person could object to anything that Jenny Palmer has just said. The role of SpAds in our system — why they have this role and influence — is a very interesting one. We keep hearing it, and it is true, that there are so many SpAds in this little place, serving the Executive Office and other Departments, compared to Wales, Scotland and even Westminster. Why is that? Is it just people filling their boots again and saying, "We will create jobs for the boys"? There are hardly any girl SpAds, are there? There is a reason why we have so many SpAds. What their job is really is to police the Departments for their parties. They are not there to help in the administration or to make it more efficient. Given the nature and the structures of these Institutions, which are based on the Belfast/Good Friday Agreement, it is quite understandable that that should be so.

If you set up a system of governance in which every Department is a silo operating
independently of all the others, it makes perfect logical sense to have groups of SpAds to make sure that every silo is secure and a particular party’s perspectives, policies, desires and interests are vindicated in that Department rather than any general overall interest of the people or the political system. That is what lies behind that, and that is why they need all those SpAds. It is why SpAds feel entitled, as they do in this part of the world — they do not across the water — to tell permanent secretaries and Ministers what to do. In this jurisdiction, if senior civil servants are having a discussion with a group that has come in to talk to them and a suggestion is made, one senior civil servant will say to another very senior civil servant, “We’ll never get that past so-and-so”, naming a SpAd. That is a grotesque system. It all comes from the nature of the structures. Tomorrow we are discussing the spirit and values of the Good Friday Agreement. Perhaps we will go into some more detail at that point. All that provides the context in which these problems have arisen.

Mr Bell talked about the £85,000 a day and what that could do in the health service and so forth. It is an easy argument to make, but there is a bigger one. I am not objecting to that argument; it is just an obvious one to make. When I say “ordinary people”, I mean people who come from the area where I come from. Raymond McCartney comes from the same area. Loads of us are from areas where people struggle day to day. They know that, if they ripped off the state for a relatively small amount of money, if they claimed and took more in social security than they are entitled to under the rules and regulations, they might well be up in court being named and shamed in front of their neighbours as reprehensible people for a couple of hundred quid. They then read in the newspaper that relatively vast sums of money are slooshing about at Stormont and are being siphoned into the pockets of particular individuals. They also read that people here, whether politicians or officials, are tipping off their mates to join the scheme. What are they supposed to think? Of course they are raging mad. That is what has given rise to the chaos in the DUP and the pressure from below on Sinn Féin, which has led to the collapse of the institutions. That is what caused it.

This is not an election meeting, but the fact is that, if we have another Assembly with the same relative result for the major parties and so forth, we will have solved nothing whatsoever. You advised me, Mr Speaker — you were absolutely right — to stick to the point. When it comes to dealing with this matter, is it sticking to the point to say that all this is an attempt to weaken unionism or for Sinn Féin to make a similar point in reverse to the DUP? How is that relevant to the debate? That tells us that those parties have suffered and are uncertain about whether their ideology has been maintained and is still as strong as it was. They are retreating to particular positions in advance of 2 March. The DUP says, “You’re damaging unionism. Vote DUP or the Union is under threat”. Sinn Féin says, “Vote Sinn Féin for progress towards a united Ireland”, which it claims will be achieved —

Mr Speaker: Mr McCann —

Mr E McCann: — and all the rest of it.

Mr Speaker: I ask you to come back to the regulations.

Mr E McCann: I will come back —

Mr Speaker: Now.

Mr E McCann: OK.

Mr Carroll: Will the Member give way?

Mr E McCann: I will certainly give way.

Mr Carroll: Does the Member agree that the scheme has done serious damage to the valid and legitimate case for renewable heat energy? Alternative forms of energy are really needed, given the threat of climate change. Does he find it ironic that the RHI scandal, which has done serious damage to the case for renewable energy, was the fault of a party that has long and often denied the existence of climate change?

Mr E McCann: Absolutely. It is one of the sadder aspects of all this. As anyone who has campaigned on environmental matters will know, one of the big hurdles when you are arguing for the need for something like the renewable heat incentive scheme in terms of energy efficiency, controlling CO2 emissions and all the rest of it is that people think that environmental things are just too expensive, are not practical or do not bring jobs and all the rest of it. The little saga that we have had here will make that much more difficult. The RHI scheme was, on the face of it, intended to make a contribution to protecting the environment and might well have done so. The controversy that has arisen, mainly because of the DUP — I keep saying, “Sinn Féin and the DUP”, but let us be clear about it: there is no equality of arms in this. The DUP is the star of this
production. Sinn Féin may be in line for an award as best supporting actor, but this whole thing is a DUP production. They are responsible for it and for the damage done to environmental campaigning.

6.30 pm

It seems to People Before Profit that we do not need just a proper investigation into what happened or just the regulations, although they are a little better than nothing. We can deal elsewhere with the question of the 2005 Act under which there will be an inquiry. That is not a perfect document either — far, far from it.

Can I just throw this in, with your indulgence, Mr Speaker? No, I will leave it.

We need a different type of politics here if we are to avoid debates, scandals and issues like this in another mandate. I know that I have said this before, but the perception that RHI was a racket has added and contributed to a perception that Stormont itself is a racket. That is what is out there. People have a cynicism about this place. We might have thought a couple of months back that it could not get any deeper or darker — well, it just has because of this. We are undermining trust. I am not too worried about undermining the status of the Assembly because of the regulations and the RHI. Every time you look down, Mr Speaker, I mention the regulations to remind you that I am being relevant with all this. What I am saying is that we believe that we need a different type of politics that does not need the separation of Departments into silos or to be policed by SpAds and spivs. We need a system of government in which the interests of the people come first. To my mind, that requires a socialist approach; others might disagree and will not go the whole hog with me. The fact of the matter is that we need a different type of politics in Northern Ireland, and, if we do not get that after 2 March, we are doomed — doomed — to go through this little circle of hell yet again and to make no progress. Surely after all these years and all this time, we can say to the people, as we say to the people — Catholic, Protestant or anything else — "Vote for a change. Voting the way you have always voted is how the problem arose. That is where the problem is rooted in the first place".

I believe that we are better than this. I believe that the people of the North are better than this. The working class of the North are 10 times better than the sordid shenanigans going on here. Give the people working-class politics, as People Before Profit is trying to do, and we may not have to go through this nightmare again.

Mr Allister: Mr Speaker, I am sure that you will be relieved to have a Member who is much easier to control than the last. [Laughter.]

Mr E McCann: Will the Member take an intervention?

Mr Allister: Yes.

Mr E McCann: I take that as an absolute compliment. [Laughter.]

Mr Allister: You are very welcome.

Are the regulations a fig leaf, or are they a solution, even an interim solution? I hope that they are the latter, but I fear that they are the former. They show many signs of being a fig leaf for the DUP to get it through the election arising from, in the terminology of one of its members, the "omnishambles" of RHI and to create the aura and impression of something being done about it: "it is sorted. Nothing to see here. Move on". The suspicion that it may indeed be a fig leaf comes from two sources: the timing and the dubious nature legally of what is being tried.

The problem has been known about for months upon months upon months in the Department and maybe even longer than that.

It is only now, however, in the teeth of an election, that a proposal — any proposal — has come forward to attempt to ameliorate it. Indeed, if we had not had the BBC 'Spotlight' programme, would we be having this debate? I suspect not. If we had not had the vigorous, persistent, necessary, worthwhile investigative journalism of Sam McBride, Stephen Nolan, Conor Spackman, Allison Morris and others, would this matter have continued to be swept under the carpet because it was too embarrassing to deal with? I suspect so.

The fact that the regulations come at the time that they come at suggests to me that they are indeed more of a fig leaf to get us beyond 2 March, but fig leaf or not, the regulations contain a mammoth embarrassment for the DUP. Belated beyond description, they seek to put into the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 the very thing that Arlene Foster, when she was Enterprise Minister, took out of the GB template. The regulations put in what should have been in there in the first place. They put in what was in —

Mrs Little Pengelly: Will the Member give way?
Mr Allister: In a moment.

They put in what was in the GB regulations, which was tiering in the tariff. That is the essence of the regulations now before us: to put in retrospectively, with impact for one year and one year only, for now, that tiering. Of course, that is the most crucial thing that gave rise to this scandal: the taking out of tiering in the first place. We are told by some, "Well, that was not the Minister's fault. That's how she was advised". If it is how she was advised, what sort of a Minister is it who, when given advice that you do not have to bother with the tariffs that are in the GB scheme and that you can run it: at the top-tier tariff in perpetuity, does not ask, "Why would we want to do that? Why would we not want a safety net in case this scheme runs away with itself? Why would we want to over-incentivise the scheme in such a way?" What sort of a Minister would not ask that question? It would have to be one asleep at the wheel. Even if some dim-witted civil servant advised that we need not bother with tariff tiering, a Minister with any wit would have known to interrogate the issue and not to let it rest there, and, if she did not, the Finance Department would, because this scheme, before it ever got off the ground, had to be approved by the Supply officers in DFP. The Supply officers in DFP had to consult their economists and ask this question: is this scheme value for money? That question has to be answered. Not only did the Economy Minister fall on the most fundamental component of this scheme, but it seems that the Department of Finance also failed by approving this scheme through its Supply division.

Mr Agnew: I thank the Member for giving way. He made mention of the Minister being asleep at the wheel. Is it not a sad state of affairs when, in defence of that Minister, her own party says, "Our Minister is not corrupt. She is merely incompetent"?

Mr Allister: Yes. Incompetence now seems to be a refuge, and is it not amazing —

Mr Aiken: Will the Member give way?

Mr Allister: In a moment.

Is it not amazing that, in all of this, not a single civil servant, if they failed, not a single consultant, if they failed and certainly not a single Minister has paid any price whatsoever? What a contemptuous approach to this scandal towards the public, who are expected to pay the price.

Mr Aiken: Thank you very much indeed for giving way. I ask the Member to reflect on the fact that, if incompetence is a defence for what has gone on, maybe we should reflect on the complete incompetence of this whole Fresh Start Sinn Féin/DUP Government. If incompetence seems to be the lead for what we are trying to achieve going forward, it is best gone and gone now.

Mr Allister: I think that it is gone and, hopefully, it will never have a resurrection. I do not want to offend Mrs Pengelly, and she did indicate that she wanted me to give way.

Mrs Little Pengelly: Albeit belatedly because the point has rather moved on. The Member stated a number of times that Arlene Foster removed the tariff tiering from this. The evidence thus far to the PAC and elsewhere has absolutely clearly indicated that that is not the case. The recommendation to the Minister did not have tariff tiering in it. On what the Member — who sits in the Chamber also as a barrister and as somebody who has been in the courts for a very long time — has just said about people paying the price, he knows that the proper process should be that the evidence is heard, the judgement is given and, after the judgement, there are the consequences. That is the appropriate way to deal with this, not for people to be hounded before that evidence is heard and due process takes place.

Mr Allister: There are two points there. On Mrs Foster's culpability, the reality, indisputably, is that the GB scheme that was first produced had within it tiering in the tariffs. The Northern Ireland scheme, based on that template, is almost identical in every dimension save the tiering in the tariffs. Therefore, a conscious decision was taken in Northern Ireland to remove from the template that they had from GB the tiering in the tariffs. The one person, the one Minister, the only Minister who is accountable for that is the Minister who signed off the scheme. The Minister who signed off the scheme is Arlene Foster. There is no hiding place for her on this. That is indisputable, and it is no excuse to say, "No civil servant told me that I should not sign off a scheme that had taken out the tariffs". If she had been across her brief at all and was asking questions at all and was not just thinking of the next photo opportunity but was thinking about what the job was about, she would have been interrogating the issue of why we were doing this. Surely, she did not fail, as was the contention that was made somewhere, I think to the PAC, for the juvenile belief that there was that this was free money.
Surely, as a Minister, she knew that once you tamper with a national scheme to make it more expensive regionally, you pay the difference. There is no such thing as free money in those circumstances. Surely she did not fail for that, or did she?

6.45 pm

Mr Wells: Will the Member give way?

Mr Allister: Yes.

Mr Wells: I had the opportunity, along with Mr Girvan, to sit through most of the PAC hearing in the Public Gallery on Wednesday. He will note that, on at least three occasions, various members of that Committee asked the permanent secretary, Mr McCormick, "Did Mrs Foster act honourably, or did she do anything untoward throughout this entire process?". His reply was that she did not do anything untoward; she acted honourably throughout the entire process. How does that tie in with the accusations he is making at the moment?

Mr Allister: I do not think the word was "honourably". I do not think that was what was in the scripted questions that were asked of the permanent secretary. I noticed his rather hesitant reply but, yes, he agreed that there was nothing untoward. I must say that I beg to differ with the permanent secretary. Unless the whole Civil Service is in such an embarrassment about this that they do not want to put the finger on anyone, I do not understand how a permanent secretary, as accounting officer for his Department, could say, "It was OK; it was not a fault and it was not a failing to sign off a scheme which had this huge massive flaw in it". By anyone's book, that is a fault.

Mr Lunn: I thank Mr Allister for giving way. The question that Mr Wells refers to actually used the word "wrongdoing". The person who I cannot name was asked if he thought that Mrs Foster was guilty of wrongdoing, which has a completely different connotation.

Mr Allister: I am grateful for that. I could not actually, on my feet, remember the exact word, but I knew that it was not "honourable".

Mrs Long: I thank the Member for giving way. One of the most frustrating elements of this — I am sure the Member will agree — has been the complete inability for people to accept that, while there may be no evidence that the Minister did something that was inappropriate and wrong, there is every evidence, given that this scheme went through, that the Minister did not do what was required of her in office, which is to properly scrutinise the advice, to weigh that advice and to make her own judgement as to whether or not it was an appropriate way forward. That is a fault in itself. It does not require her to have acted out of any improper motive for it to be a failing on her part.

Mr Allister: I think the Member puts it accurately; that is correct. A Minister's job is not just to sign off whatever is set in front of them. They are there as guardians to interrogate the issue, to make sure that the right decision has been taken and to ask the hard questions. My goodness, if you have a situation where the tiering is being taken out of the tariffs and the hard question is not asked as to why we would want to do that and not keep a safety net, then that is a failing by a Minister. In my book, it is, and that is what has led to this sorry pass that we are in today.

Ms S Bradley: I thank the Member for giving way. I take note of what you are saying. I referred earlier to Emma Little Pengelly's contribution that we are all human and error can happen. Does the Member, travelling through this logic, then raise concern when somebody — a member of the public — actually takes time out to point out the errors that have been made? Is that not a continued failing and a deeper, darker hole that this Minister fell into?

Mr Allister: Yes. The whole aspect of the whistle-blower and, particularly, the second email to the Minister's personal or political office account — whichever it was — the failure to convey that to the Department. I would have thought that was something that might have struck the permanent secretary as a failure which put the Minister at fault in failing to do that. That robbed the Department of the opportunity to waken up to this issue and to get proactive with it. Yet, that email, which seems to have been fairly explicit about the fault lines in the scheme, never made it out of the Minister's inbox. Surely, that is a significant failure.

Mr Agnew: Will the Member give way?

Mr Allister: Yes, although I will have to stop doing this.

Mr Agnew: I thank the Member. I will try to make this my last intervention. Will the Member acknowledge that there was a further opportunity to introduce cost-control measures when her Department consulted on the proposal to introduce regression? As was
confirmed to me by the head of energy division in a February 2016 meeting of the Committee for Enterprise, Trade and Investment, the Minister made a policy decision — I am paraphrasing here — that we wanted to get the domestic scheme up and running. That, and not regression, was the priority.

Mr Allister: I think that regression was another missed opportunity, and that has compounded the situation. There was also the missed opportunity that when DFP originally signed off on the scheme and approved the business case, it declared that it needed to be reapproved by 1 April 2015. It did not happen because DETI did not send it back to DFP, and DFP did not ask for it. It only came back belatedly to DFP in the autumn of 2015 and was then, amazingly, signed off for a second time at the height of the spike in October 2015, by which stage Mrs Foster was then the Minister of Finance.

There were repeated failures in this, and that is what has led us here. Yet, to listen to some, it is no one's fault. It is certainly not a Minister's fault. We could not have that. It is no one's fault. Well, it is, and the public knows that, in government, the buck stops with the Minister or, at least, it should, but there have been such contortions in this to avoid the buck stopping with the Minister that, frankly, it is embarrassing that, as politicians, there cannot be a facing up with the public on this issue.

I asked whether this was a fig leaf because of the genesis of it and how it was delayed. I also wanted to ask whether it was a fig leaf because of the dubious legal nature of it. Never mind being a fig leaf, these regulations, in the heat of litigation, could turn into a chocolate fireguard; they could melt very quickly because they defy a number of principles enshrined in this area of law.

What is involved here is the state seeking to derogate from something that it has granted to members of the public. There is a legitimate expectation created with the beneficiaries of the scheme that they are tied into a scheme upon which there is commitment to deliver: if they fulfill their side of the bargain, the Government will fulfill their side of the bargain. Indeed, article 3 of the original 2012 regulations expressly says that the Government must — must — make these payments. So not only do you have a contractual-type situation created in the acceptance of the letters of offer, but you have, in the statute, a solemn obligation on the Government that they must make these payments.

That has created contractual rights and legitimate expectations, which were of course underscored by Mrs Foster's letter to the banks. In her letter to the banks, Mrs Foster went out of her way to highlight just how guaranteed these schemes were. She stated:

"Tariffs are 'grandfathered' providing certainty for investors by setting a guaranteed support level for projects for their lifetime in a scheme, regardless of future reviews."

"Regardless of future reviews" — guaranteed. In the letter's penultimate paragraph, she states:

"The government support, on offer through the incentive schemes, is reliable, long term and offers a good return on investment."

Not only have we got letters of offer and regulation 3, which says that the Government must pay, we have the very Minister promoting the scheme by lauding it to the highest and underscoring the certainty of the guarantee of payments. It is indisputable that legitimate expectation has been created in respect of the beneficiaries of the scheme.

Yes, it used to be the case that, in the law, Parliament could do what it liked, so to speak, and, yes, if you go back to some of the older legal authorities, you will find, for example, quite a well-known statement by a legal scholar called Greenberg, which says that no person has a right to demand compensation for something that was done by or under the authority of statute. That is how it used to be, but then we signed up to the European Convention on Human Rights. Article 1 of protocol 1 came in which indicates:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

That introduced a radical change and constraint on the right of Parliament to do what it liked with regard to dealing with the property and possessions of individuals. It is indisputable that the rights and possessions that people have under the RHI scheme qualify as property rights in the law.

I remind the House that, back in 2013, I brought a special advisers Bill to the House to remove some people from office. The House will recall
that, of necessity, within that Bill, were two safeguard provisions. One guaranteed compensation to anyone who was removed. Why? They were having removed from them property or possession rights, so they had to be compensated. Indeed, the Attorney General gave evidence during the hearing of that Bill in the Finance and Personnel Committee that it would be unlawful to remove possession rights without compensating. Unlawful; that was the evidence of the Attorney General. That is because of article 1 of protocol 1 of the European Convention. Yet, these regulations have no compensation within them.

7.00 pm

Mr Stalford: Will the Member give way?

Mr Allister: Yes.

Mr Stalford: This is a genuine question, as opposed to some of them. [Laughter.] I am happy to bow to the Member's obviously superior legal knowledge. Can the Member outline for us, in the context of what he has said, how the actual mechanism of vesting exists, if people's land and property can be vested by the state within the framework he has outlined?

Mr Allister: No one's land can be vested without compensation. Indeed, you bring me on almost to the second point. Where you are not satisfied with what is offered to you in the vesting, you have the right of appeal to the Lands Tribunal.

The second thing, I remind you, that was in the SpAd Bill, was not just that there had to be compensation for anyone removed but that anyone so removed had a right of appeal for what they had lost to the arrangements set up by the Bill. Again, there is no right of appeal within these regulations for anyone, on hardship or other grounds, such as Dr Capper has suggested, in consequence.

So, it does seem to me that these regulations are very likely to be challenged, and they are not obviously judge-proof. We will see what happens to them, but I would be fearful about their probity, because they so directly negate the rights that come from the protocol to the European Convention — it is just not there. We will see what happens.

I fear that the regulations are further at risk because of the process that has been deployed to get us to this point. We know in this House — I raised it — that we have essentially bypassed Standing Order 43, in large measure. We know, and the Minister certainly knows, that there is a document that governs these matters. The Minister will be familiar with it from his time in the Department of Finance, if not before. It is the document, 'Managing Public Money Northern Ireland'. It is quite a volume that sets out the requirements including for when you are changing the law. At A.2.2.1, it says:

"In preparing all legislation, departments must always consult and get DFP agreement ... before any proposals for legislation with financial implications are submitted to the Executive for policy approval."

These regulations, whether it is positive or negative, have financial implications. Certainly, they have financial implications for the beneficiaries. They fly in the face of the requirements of 'Managing Public Money', which requires that in their preparation the Department of Finance must have been consulted and must have agreed. Perhaps it was consulted, but it does not seem to have agreed. We have a flagrant breach of 'Managing Public Money' arise. Where that is relevant is that, when it comes to a legal challenge to these regulations, the court will be entitled to look behind how they were made and at whether they were adequately and properly made.

This also arises where it says, within that same paragraph of 'Managing Public Money', that you must prepare, consult and get DFP agreement on an explanatory and financial memorandum. They have not done that either.

It says:

"The financial implications of subordinate legislation should be explained in the Explanatory Memorandum."

Ms S Bradley: Will Member give way?

Mr Allister: Just let me finish this point. Let us go to the explanatory memorandum that has been issued with these draft regulations. Under "Financial Implications", the very thing that 'Managing Public Money' says must be articulated — "explained" is the word — in the proposals, it says:

"The Financial implications will be further examined as part of the next stage."

There is nothing whatsoever in the explanatory and financial memorandum that deals with
financial implications, something that, according to 'Managing Public Money', is required to be there.

Ms S Bradley: I thank the Member for giving way. On that point, it was suggested in Committee that that agreement may still be forthcoming. Does the Member share my opinion that, before any vote is taken on this, the House should be fully updated on whether such an agreement has been arrived at and, if not, when and where communications broke down?

Mr Allister: It is very disappointing that the Finance Minister, who has a critical role of having an input to this, has ignored the House on the issue. I read on Twitter today that he is still not happy with these proposals. Why are we not being told that in the House? The Economy Minister can tell us, when he comes to respond to this debate, whether he has received clearance or approval from the Department of Finance. We really should have been hearing it, I would have thought, in these circumstances from the Minister. The Minister who is here needs to tell us that.

Another potential weakness in the process of the regulations is the fact that there was no consultation. The stakeholders have a common law right to be consulted before their circumstances are changed, yet there has been no consultation whatsoever with them. I fear that the regulations will be rigorously tested, and I do not have the confidence of some that they will pass that test. It might be said that they are only for one year, so we will invite the court to ignore, as it were, our failings, breach of property rights etc. It will be interesting to see whether the court is prepared to go down that road. They have all the signs of draft regulations that may not deliver. I said at the outset that I hope that they do because this situation needs to be resolved, but I have severe doubts as to whether they will.

The one group of people whom the regulations will greatly affect are bona fide applicants to the scheme. I have no interest in any rip-off merchant who abuses the scheme, but there are genuine people who did no more than become aware of a Government scheme and applied for it in good faith. Now, Government is about to say, "Never mind all our platitudes, undertakings and promises, we are about to pull that rug from under you, in the public interest". Some of those people are at their wits' end. I had one of those farmers with me last week. Interestingly enough, this farmer was introduced to the scheme by the then DUP special adviser Stephen Brimstone, no less. I will come back to Mr Brimstone. This farmer—a genuine, large-scale farmer in the poultry industry in the north Antrim area—applied in the early days of the scheme, made his commitment, spent tens of thousands of pounds and, assured that he had a 20-year return, used the collateral of that with his bank to increase his investment in his farm. Now, he finds that the rug has been pulled from under him, yet his scheme is a perfect operation of this. He goes through the seven- or eight-week cycle of rearing day-old chicks through to the broiler stage. The audit shows that in the first week, when the heat is needed the most, his use is at its highest, and it begins to dwindle as the chickens need less and less. By the time you get to the end of the cycle, the heat use is significantly less than what it is in the first week, thus confirming that he is a bona fide user of the scheme. When that person asks me, "What about us?", I do not have an answer for him. When that person asks, "What's going to happen to the fact that I am relying on this promised return to pay off my bank?" What am I to say to my bank manager, Mr Allister? I do not have an answer for him. That is replicated many, many times across this country.

There are others, of course, who saw this as a way of making a quick buck or as a means to heat their house. One of the flaws in this scheme is that there is a right to use the heat, it seems, for what should be an ancillary purpose of heating your home—

Mr Swann: Will the Member give way?

Mr Allister: Yes.

Mr Swann: Further to that point, when Ofgem was in front of the Public Accounts Committee, it declared that, in its reading of the scheme, it would be OK to use up to 99% of the heat generated from a non-domestic boiler to heat a house. That is how obtuse that part of the scheme was.

Mr Allister: How ridiculous it is. That is the scheme that our Ministers approved and signed off, and that is the scheme that Mr Stephen Brimstone is benefiting under—heating his house on the non-domestic boiler scheme. Did he claim that he had a few sheep and was a sheep farmer? Does he have sheep? One thing is for sure: he is heating his own house. Is that right? Is that how things should be under this scheme? Was this scheme so lax and so perforated that that was an OK thing to do? Even if the individual thought it morally the right thing to do, does this scheme permit that? If it does, is that not one of the loopholes that
the Minister should have addressed in these regulations? It is scandalous that someone can purport to qualify for the non-domestic renewable heat scheme and devote the greater bulk of the heat that they produce to heating their own house, and to do it with considerable forethought. Mr Brimstone built a new house some years ago. He had a biomass boiler in it, but he took it out to qualify for this scheme, because you had to have a new boiler.

He put in a new non-domestic scheme boiler under the scheme in order to qualify. That is the sort of rip-off that brings disrepute to all of the scheme and, sadly, causes great injury to the bona fide users.

7.15 pm

This is a scheme that, in a collective sense, covers the House with shame, because it brings the entirety of the process into disrepute. It is quite shocking that this squander, made not by some distant, unassuming, disconnected direct rule Minister but made in Stormont, has inflicted upon us this mammoth potential financial loss — and then to pretend that it is nobody’s fault to the point that anyone should pay with their job.

Mr Hamilton (The Minister for the Economy): The clear purpose of the regulations before the House this evening is to introduce cost control for the non-domestic renewable heat incentive scheme. The reason for these regulations — I want to make this clear from the outset and remind the House of why we are here — is to prevent a budgetary shortfall in the region of £30 million in the next financial year. There are many other issues surrounding the RHI scheme that absolutely need to be investigated, and I join other Members of the House in welcoming the announcement of a public inquiry. I look forward to that getting under way soon and concluding as quickly as possible. Today, though —

Mr Aiken: Will the Minister give way?

Mr Hamilton: Let me make some progress. Today —

Mr Aiken: I will be brief.

Mr Hamilton: Well, OK; I will give way.

Mr Aiken: Minister, one of the key questions that we are going to have going forward here is whether the business case has, in fact, been received. Will the Minister address that now before we go any further, because that will probably colour some of the remarks?

Mr Hamilton: It is a good question and it is one that I am happy to address now. I have not yet received approval for the business case that underpins the regulations before us, and that is deeply troubling. I submitted the business case to the Department of Finance some 11 days ago, which I appreciate, is shorter than is usual. It was, though, given priority by the Finance Minister — comments that he has made in public and in the House. My understanding is that it was making good progress in the Department. Indeed, I understand that departmental officials recommended it to the Finance Minister for approval. I and my Department have cooperated fully with the Department of Finance. We have answered all questions and queries, and we have provided all requested information. Yet, no approval has been forthcoming.

The business case process is there to assess value for money and regularity. I understand that there have been no issues raised in respect of either. I know that the Finance Minister is just coming into the House, and I would be happy to give way to him if he were to offer approval for the scheme. The question that the Member and, I am sure, the House will want to ask is this: why is there no approval? That is a question that only the Finance Minister can answer. Unreasonably withholding approval could be unlawful, and it is certainly contrary to the commitment that was made to make the assessment politics free. I have been told that it will likely be approved but not today. I think that that says it all, and the House can reach its own conclusions.

Mr Ó Muilleoir (The Minister of Finance): If the Minister wants to take an intervention —

Mr Hamilton: I am happy to do so. I would more than welcome an intervention if he is going to indicate his approval for the business case.

Mr Ó Muilleoir: I would like to be more helpful tonight, but we are not there just yet. The area of concern remains that we do not have state aid approval. I know that the European Commission has been contacted, and I have some concerns in that regard. The scheme cannot kick off on 1 April without the state aid approval. That is an added difficulty for us, and we need to do more work in that regard. I am committed to speak to Colette Fitzgerald again.
tomorrow, and I hope that we can make some progress there.

As the Minister knows, there are also major concerns around the inspection regime. He will accept — I am sure it will be in his narrative later — that without rigorous, robust, 100% inspections, this interim solution will fall. I do not have a business plan for the inspections regime. I think that it is like a horse and carriage; both go together. I am confident that I am applying myself today, tomorrow and the day after that, if necessary. Without repeating what I have said previously, the assessment, as the Minister said, will not only be politics-free but will be accurate and will stand up. When I sign off on the business plan, I will be able to say not only to Members but to the public that it stacks up financially and legally and that I can have confidence that it will be implemented. In that regard, those two stumbling blocks remain. I hope that we can make progress on the lack of clarity around state aid and, of course, on the fact that I still do not have in my possession or on my desk a business plan to approve the inspection regime.

Mr Hamilton: I commend the Minister for highlighting and illustrating, once again, his flair for the dramatic. He knows that state aid approval cannot be sought and will not be given unless there is approval from the Department of Finance and approval from this House. I am reluctant to say that it is almost a chicken-and-egg situation, given the issue that we are debating, but it is. The Minister is also well aware of our intentions in respect of bringing forward a tender for a 100% site inspections regime. I will give him a commitment to continue to work with his officials, so long as he responds to that in good faith and keeps this issue politics-free. Unfortunately, at this stage, that is not a conclusion that I can reach.

I will go back to what I was saying —

Mr Allister: Will the Minister give way?

Mr Hamilton: No, let me make some progress.

Today is about bringing in cost controls that are outlined in the regulations that are before us. To permit the current situation to continue would be grossly irresponsible. We have a situation where an average rate of return for recipients of the non-domestic RHI scheme is 60%. It is estimated that over 80% of recipients are earning over 12% rate of return. That is more than the original state aid approval for the scheme. I do not believe that any of us can allow that to continue, especially when we know the consequences to the public purse. I accept that the process has not been perfect, but we need to act urgently.

I want to address the range of questions and points that have been raised by Members today and last week. The first point that I want to touch on is the issue of timing and why we are coming forward with the proposals when we are. There have been all sorts of suggestions as to why that is the case. It has been described as rushed, fast-tracked and a frenzy. In the Committee last week, Mr Chambers described it as going at a rate of 100 mph. I absolutely and fully accept that it is not ideal to bring forward regulations in the way that they have been. The haste in bringing them forward is not, of course, of my doing. I would have by far preferred to do so in the normal process. That is what was originally intended. I originally intended to bring these regulations to the Committee and the Assembly in the normal fashion, and I was planning to do so. Circumstances, though, have clearly changed.

Some argued that we were going too slowly; now they argue that we are going too fast. I would argue that Members who make those arguments cannot have it both ways.

Mrs Long: Will the Minister give way?

Mr Hamilton: Yes, I will.

Mrs Long: The Minister said that you cannot have it both ways, but you can. You can contrast the pace of change in February 2016, when the scheme closed and nothing appeared to happen, with the period since the 'Nolan Live' broadcast and the 'Spotlight' show, when suddenly there was a frenzy of activity to address the underspend. Members can have it both ways, because on one you dragged your heels and on the second you rushed into this. That is why we are now up against time. If this had been started in February of last year, we would not be in this situation.

Mr Hamilton: What I was going to say before the Member's intervention was that the Department for the Economy had not been inactive in addressing issues with the RHI scheme — far from it. I want to give a flavour of some of the things that the Department has been engaged in on the issue. When I took up post, I initiated site inspections on behalf of the Department by PricewaterhouseCoopers to investigate and examine accusations of fraud and abuse. Some 20% of installations have been inspected; that is a total of 295 installations. That work has been greatly useful.
in informing our work on cost control, particularly on the modelling of use. We also commenced an internal fact-finding investigation looking specifically at why warning signs were not heeded and particularly at what happened with the concerned citizen. That has impacted on the Department's capacity to undertake this important work. There has been a need to rebuild that team, and I outlined last week how we intended to do that. There has been ongoing, almost constant, work on a range of cost control options that has conversations with the Department of Finance and the European Commission, and, at times, that work has focused on different options. Options were favoured and worked up, and other options were then considered and moved above them. The accusation that the Department has been doing nothing on RHI, never mind in respect of working on cost control measures, is nonsense. It was always my intention to bring forward regulations such as these at around this time of the Assembly session, although I accept that it would be preferable had it been earlier. Obviously, circumstances have changed, and we are now doing so in a fashion that, I freely admit, is far from ideal.

Another issue raised is that this is a short-term solution. This is a two-stage approach, and it is deliberately that for good reason. First, we need to stop the losses to the public purse; hence the time-limited solution before us. Secondly, it creates the time and space to work on and agree a suitable long-term solution to the problems with RHI. That will be done initially by a consultation to commence very soon. It will examine, as you would expect it to, the full range of long-term solutions that could be brought forward. I believe that there are benefits to a two-stage approach. First, we can consult those who are affected to find the right long-term solution. We can look at a full range of options. We can test them, model them, take account of things and decide on the best way forward. Secondly, I believe that it improves the legal robustness of this approach rather than proceeding, as some have advised me, to a long-term solution now. The Examiner of Statutory Rules points out that benefit in paragraph 6.12 of her report.

Another point raised is that the costs of the scheme are not zero. I would be the first to point out that I never said that they would be zero. My public comments on the plan were that it would reduce costs to effectively zero or, in effect, zero. The estimated cost to the Northern Ireland Budget in 2017-18 is £30 million. This plan will have a cost of between £2 million and £2.5 million. [Interuption.] Some Members might not want to hear it, but that is a 92% reduction in the cost to the Northern Ireland Budget. I have said that it is "effectively zero", because I do not believe that that is where it stops. First, I believe that there will be behavioural change. The business case that underpins this has a conservative estimate of the behavioural change that will be caused by the introduction of tiering. I believe that that could go further and, indeed, may already be happening. Secondly — this is the very important point — I believe that the cost of just over £2 million will be reduced significantly further because of the bearing down on fraud and abuse. There will be a further bearing down on fraud and abuse that will produce cost benefits through the 100% site inspections that I referred to in response to the Finance Minister.

7.30 pm

Dr Farry: I am grateful to the Minister for giving way. I will park making a flippant comment about the difference between "zero" and "effectively zero", but will the Minister recognise that the comment that he is making is highly speculative and is, in fact, at odds with the evidence that his officials gave to the Committee last week, when they were very clear in saying that the figures presented did not take it down to zero and there would be a residual £2 million to £3 million and, indeed, that they were presenting a model and, in practice, there is a margin of error in that model that could go either way by quite a considerable margin? That is what they stated at the time. Therefore, he is in danger of overstating the prospects of this becoming zero on the basis of the factors that he is suggesting, and that is at odds with the caution that his officials gave to the Committee last week.

Mr Hamilton: I do not believe so. The important point — I will reiterate it for the Member and for the whole House's benefit — is that we have already undertaken significant work on site inspections. As I said, 20% of sites have been inspected, and that has produced some interesting results. As a result of that, some 33 companies on the scheme have had their payments suspended. I caution that you cannot take that 20% and multiply it, because the initial inspections were heavily targeted, but there is substantial work still to be done even on the 20% that have been inspected and on the remaining 80% that will be inspected, and I believe that that will highlight further potential fraud, further abuse and other things that should not be happening in the scheme. We will bear down on that, and that
will reduce costs even further from the £2 million.

Mr Swann: Will the Minister give way?

Mr Hamilton: No. I accept that it is not as low as we would want it to be, but it is significantly lower than the £30 million that the cost overrun will be if nothing is done. If the House does not support the regulations that are before us, the cost will be £30 million, and that will be no laughing matter at all. What is before us is a significant reduction with the potential to have it reduced even further. I am very hopeful that those inspections will root out fraud and abuse and, indeed, save us much more.

In her contribution, Claire Hanna — it seems a long time ago; it was last week — talked about Her Majesty's Treasury and the potential loss of the money that comes through annually managed expenditure. As well as turning off the tap of the flow of public funds, the intention of the regulations is to continue to keep the scheme in place and to take the scheme back to the original intention of the scheme living within its annually managed expenditure envelope. Over the 20-year lifetime of the scheme, the Barnett share of the Great Britain scheme is estimated to be £660 million, and the importance of having a scheme continue in place by whatever means that is in the long term is that that will be utilised and will not be lost to Northern Ireland.

Some have suggested that we should focus on the audit that I talked about in response to Dr Ferris's intervention and said that, to reduce costs, we should focus on audit and inspection rather than tariff reduction. I will make several points in that respect. First, in my view, they are not mutually exclusive and nor should they be. Secondly, audit and inspection are essential if we are to stamp out abuse, which we cannot tolerate. As I said, the PwC inspections have inspected 20% of sites, which is 295 installations in total, and I repeat the point that I made some moments ago that payments to 33 installations have been suspended. Work is advanced on issuing a tender for 100% site inspections. That is much needed to further instil public confidence.

It would have happened as part of the scheme administration over the lifetime of the scheme anyway, but I believe that it needs to be accelerated.

Thirdly, no one should expect the sort of supernormal profits that they are getting from the scheme as it is currently constructed — that is, returns of 30%, 40% or 50%-plus. As I said before, over 80% are earning more than a 12% return, which is above what was in the state aid approval, and the average rate of return is 60%. Trevor Lunn made the point about bona fide operators and that was repeated by, I think, Mr Allister. I agree with the comments that they made about bona fide operators. There are many. There are some who are not, but many — indeed, probably the majority — are bona fide. In my view, it is not bona fide to have returns of 50%-plus from the scheme.

I was troubled by comments made by Michael Doran from Action Renewables in 'The Irish News' on Saturday. When asked by the newspaper why no one in Action Renewables relayed concerns about the operation of the scheme, Mr Doran said:

"That's not what we were employed to do."

What we have is an organisation that helped 550 applications and that is now on the public record as saying that it would be:

"Improper to then undermine that application by trying to have it withdrawn."

I think that there is something seriously wrong if an organisation that helped with over a quarter of applications knew that there were flaws but ploughed on and did not, as far as I am aware, alert the Department.

Another argument that has been made is that the proposals do not stack up economically for those who are on the scheme —

Mr Dickson: Will the Minister give way?

Mr Hamilton: I will give way, yes.

Mr Dickson: I thank the Minister and acknowledge the comment that he has just made about Action Renewables. I and, I am sure, many others were very concerned about the remarks that were made in 'The Irish News' on Saturday. To that point, Minister, I inform you that I have today written a letter to the chief charity commissioner for Northern Ireland to ask him to investigate that charity in respect of those comments.

Mr Hamilton: I thank the Member for his intervention. I think that the action he has taken is sensible, and I thank him for doing that. I think that and, I am sure, most Members, if they reflect on those comments and go away and look at the article, will agree that it is deeply troubling. The implication of the comments is
that there was an understanding that there were serious flaws, yet nothing was done to alert the Department to those.

Some have argued that the proposals do not stack up economically for those who are on the scheme. That point was raised by the Renewable Heat Association and some Members during last week’s debate, if not today. To reiterate the point: the proposed tariff is not new. It is the same as that which was introduced in November 2015. The proposals put all participants on the scheme onto the same regime. The November 2015 tariff was still considered an attractive incentive for many, and over 300, including many in the poultry industry, applied for the tiered-tariff scheme in the three- to four-month period that it was available before the scheme’s ultimate closure in early 2016.

Whilst the Renewable Heat Association has said much and given evidence to the Committee, it has offered no real solutions beyond the audit and inspection point that I made before, which is, of course, going ahead. They have made no suggestions to tackle overcompensation or the fact that the rate of return is well beyond what was approved in the state aid approval and there are supernormal profits of above 50%. None of us can allow that sort of overgenerous subsidy to continue.

Some have asked why the measures contained in the regulations are not being introduced immediately. I would like to have had an immediate implementation of the regulations, so that we could immediately start to bear down on the cost to the public purse, but there are two practical considerations. First, Ofgem, the current scheme administrators, need some time to make the necessary administrative changes for enacting the new tariffs. Secondly, there is the issue of EC state aid approval. The proposal seeks to reduce state aid and better align it with the level originally intended. Discussions with the European Commission are ongoing and have been positive to date. It is likely to be approximately two months before approval is received. A long-term solution would take longer for state aid approval to be given. A slight delay in implementation is inevitable, which is why the dates are in the regulations.

This is probably an opportune moment to talk a little bit more about state aid approval. I know that I have already addressed it in response to the Minister of Finance. The proposal, as I said, seeks to reduce state aid and better align it with the level that was originally approved. I believe, therefore, that it is compatible with state aid, and all the advice that I have received would suggest that it is. Officials have been working hard with their EC counterparts to ensure that state aid approval is secured. Those discussions have been positive, but, obviously, we will not know for sure until it is submitted. The clear message from informal discussions with the Commission in December was that doing nothing was not an option, and I agree with that. It is important to stress that it is clear in the regulations that they come into effect only if the Commission gives state aid approval.

Mr Nesbitt: I very much appreciate the Minister giving way. If I heard him correctly, he is suggesting that, while state aid will not be an issue, it will delay the initiative beyond 1 April. Do you have a date?

Mr Hamilton: The regulations mean that the initiative will come into effect by 1 April or on the date it receives state aid approval, whichever is the later. The Member will recall that last week, before the Secretary of State announced the date of the election and, therefore, the date of dissolution, one of my concerns was that any delay in passing the regulations would impact on the time frame for getting state aid approval. My understanding from the positive discussions that we had with the EC is that it takes around two months to get approval. I still fully imagine and believe that it will be 1 April when the regulations are enacted. I do not foresee any reason why state aid would be denied. Not least because of the point I made at the outset that this is in effect reducing state aid. State aid was sought because it was an incentive. Support being given to businesses is reducing that; so I do not envisage any particular problem.

Mr Allister: Will the Minister give way?

Mr Hamilton: Yes, I will.

Mr Allister: I do not disagree with the Minister that it is reasonable to anticipate that there will be approval in respect of state aid. However, did he not tell the House earlier that you cannot even seek it or obtain it without Department of Finance approval for the scheme? Therefore, it could fall at the first hurdle. Without Department of Finance approval tonight, is he content to ask the House to approve the regulations? If they proceed without Department of Finance approval, whatever the politics of it, has he any concerns about what that does to undermine the probity of the regulations?
Mr Hamilton: Rather than turn this into some party political pantomime — we have had enough of that — I will take the Minister of Finance's intervention at face value — some might caution me against doing that — and assume that work is ongoing and that approval will be granted. I regret that that approval is not in place this evening; I see no reason for it not to be in place. It is deeply regrettable that it is not. Clearly, it would be ideal to have that approval in place, which would allow us to go to the EC with some confidence. I welcome the fact that the Member agrees with me — I note the date and time — that it will not have any difficulty in receiving state aid approval. However, he will understand and appreciate that, until it is formally approved by the House — clearly, we want Department of Finance approval as well — we cannot proceed to go to the EC formally. We have had informal discussions, and they have been positive.

I turn to another area that Mr Allister laboured in his contribution, which is the legalities of the proposals. I have taken extensive legal advice on the regulations, and that supports their robustness. Work started on cost controls some time ago, contrary to what some have suggested or may believe that this has been done only in the last number of weeks. It has been done over the last several months.

Two particular areas have been considered. They were both the focus of Mr Allister's latter contribution. The first was legitimate expectation.

The regulations are consistent with the well-stated original intention of the scheme in terms of its rate of return, even if that original intention, in its construction and how it worked through the scheme, was wrong. Excessive returns and supernormal profits, such as those that some are receiving, are not, were not and could not have been a legitimate expectation.

7.45 pm

Mr Allister talked about article 1 of protocol 1 of the European Court of Human Rights (ECHR). My understanding, from the advice that I have received, is that the court has been much less solicitous over the future income loss than taking away currently owned property. There is — the Member did not focus on this in his contribution — a public interest override. I believe that that is clearly the case. In a situation in which we are losing between £20 million and £30 million to the Northern Ireland Budget, there is a clear public interest for the Assembly to act in the way that I am advising this evening. There is a clear imbalance between public and private interests. The Examiner's report deals with this issue in paragraph 16.18:

"It may be argued that these regulations are nonetheless a proportionate means of achieving that legitimate public interest objective."

Mr Allister quoted from article 1 of protocol 1 of the ECHR but stopped short. Beyond what he read into the record, the article states:

"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest."

There is a right to property, and the court is much less solicitous about income derived from that property than the taking away of property itself, but, importantly, the same article in the ECHR states:

"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest."

Mr Allister and other Members raised the point about compensation. Recipients of the non-domestic RHI scheme are being, and will continue to be, compensated. They will get a return in the range of 12%, as was originally intended. It is not in the region of the supernormal profits that the flaws in the scheme permitted. It is not like taking property off someone and not compensating them. The scheme remains in place, and members of the scheme are compensated as originally intended in terms of the rate of return.

It was Mr Aiken, I believe — it was that long ago; I think that it was last week — who mentioned, as he did at the Committee last week, the need for a renewables audit. Whilst the focus of this debate has been on the RHI scheme, some have raised issues or concerns about other schemes. Whilst there is no evidence, or none has been produced, I understand the supposition that some will make that, if mistakes have been made in one renewable scheme, that could be the case in others as well. I have ensured that some concerns that have already been brought to my attention have been investigated, but I will formalise that by initiating an audit of all renewable schemes. I have also signalled my
intention to establish, in my time left in post, a new strategic energy team in the Department. That will draw on experience from the public and private sectors to strengthen the quality of the advice that the Minister — whoever that is — receives.

The details of the businesses in receipt of the non-domestic RHI scheme should be published. I understand the concerns of many recipients, but there is also an overriding public interest in the matter. Last month, I wrote to all non-domestic RHI recipients, indicating my desire to publish details. The Department had to undertake a process that was consistent with section 10 of the Data Protection Act to assess the objections that were received against a public interest test. That work has concluded, and I wrote to all recipients again today indicating that it is the Intention of the Department to publish details this Wednesday. I want transparency on the names — on the details, rather — of non-domestic RHI scheme recipients. I imagine that it will reveal many parties — many parties in the Assembly. Indeed, I note that today the DUP indicated that Sandra Overend has an aunt and uncle who are recipients of the scheme and that former MLA Neil Somerville is a recipient. I believe when publication happens it will show that it is not just, as some would seek to portray it, DUP members or supporters who are benefiting from the scheme.

In conclusion, the way in which these regulations have come forward is not ideal. I would far prefer full scrutiny and more time and to take them through the House in the normal way. The imminent dissolution of the Assembly has necessitated the approach I have adopted. I was planning to do it conventionally, but circumstances have dictated otherwise.

A lot has been said about various aspects of the RHI scheme, and there will be a time and a place to address and answer all that. That time and that place is the public inquiry. The choice today is simple: bring in the cost controls these regulations allow for; or fail to take this final opportunity — indeed, this is the only opportunity — to control the costs of the RHI scheme.

The House can support the regulations, or it can permit up to £30 million to be lost to the Northern Ireland Budget next year. I hope Members view the regulations in that context and support them. I commend the regulations to the Assembly.

**Resolved:**

That the draft Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 be approved.

**Grants to Water and Sewerage Undertakers Order (Northern Ireland) 2017**

Mr Hazzard (The Minister for Infrastructure): I beg to move

That the draft Grants to Water and Sewerage Undertakers Order (Northern Ireland) 2017 be approved.

The order I am bringing forward extends the power for my Department to pay a grant to NI Water in lieu of domestic water charges. The current powers to pay a grant will expire on 31 March 2017, and the Water and Sewerage Services Act 2016, which was passed by the Assembly in January last year, provided the power to extend that date by an order laid before and approved by resolution of the Assembly.

The Assembly will be aware of the commitment of the Executive to not bring in water charging. It is the intention of the Executive to continue to bear the cost of water charges on behalf of domestic customers for the next five years. My Department had a timetable for implementing this order that would have enabled it to complete the draft affirmative resolution process in adequate time prior to the expiry date of 31 March 2017. However, the imminent dissolution of the Assembly means I have decided to bring the draft order here today.

The grant provides NI Water with the funding to enable it to maintain drinking water supplies and deliver sewerage services. Without funding, NI Water would quickly run out of cash and those services, which are fundamental to public health, economic growth and environmental protection would be put at risk.

I commend the motion to the Assembly and ask that it approve the order.

(Madam Principal Deputy Speaker [Ms Ruane] in the Chair)

Mr McAleer: I take this opportunity to commend the motion to the House this evening. This is a good news story, and it is certainly in line with our party’s position of opposing
The Department for the Economy makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011(a).

Citation, commencement and cessation

1.—(1) These Regulations may be cited as the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 and shall come into operation in accordance with paragraph (2).

(2) These Regulations shall come into operation on the 1st April 2017 or the day after the European Commission gives approval that the provision made by the Regulations, to the extent that it constitutes the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies, is, or would be, compatible with the internal market, within the meaning of Article 107 of that Treaty whichever is the later.

(3) These Regulations shall cease to have effect on 31st March 2018.

Interpretation

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

Application

3.—(1) These Regulations shall have effect in relation to periodic support payments calculated and paid after these Regulations come into operation.

(2) In paragraph (1) “periodic support payments” has the same meaning as in the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012(c).

(a) 2011 c.16
(b) 1954 c.33 (N.I.)
(c) SR.2012 No.396
Amendment of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

4. The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 are amended in accordance with regulations 5 and 6.

5.—(1) In regulation 36(3) for “paragraph (7)” substitute “paragraphs (7), (7A) and (7B)”.
(2) For regulation 36(5) substitute:—
“(5) Subject to paragraphs (6), (7), (7A) and (7B), the tariff for an accredited RHI installation is the tariff set out in Schedule 3, 3A or 4 as the case may be in relation to its source of energy or technology and installation capacity.”.
(3) In regulation 36(6) for “paragraph (5)” substitute “paragraphs (5), (7), (7A) and (7B)”.
(4) regulation 36(7) shall cease to have effect in relation to installations falling within the small or medium biomass tariffs set out in Schedule 3A and accordingly, in Schedule 3, the references to such installations shall cease to have effect.
(5) After regulation 36(7A) insert:—
“(7B) The tariffs for installations accredited before 18th November 2015 and falling within the small or medium biomass tariffs set out in Schedule 3A are the tariffs set out in the Schedule adjusted by the percentage increase or decrease in the retail prices index for the calendar year 2016 (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards).”.
(6) In regulation 36(8) for “paragraph (7)” substitute “paragraph (7), (7A) and (7B)”.
(7) After regulation 36(9) insert:—
“(9A) Where an accredited RHI installation falls within the small or medium biomass tariffs set out in Schedule 3A:—
(a) the tariff for the initial heat generated by the installation in any 12 month period commencing with, or with the anniversary of, the date of accreditation (regardless of whether that date falls before or after the coming into operation of the Renewables Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017) is the relevant Tier 1 tariff specified in Schedule 3A;
(b) the tariff for further heat generated in that same 12 month period up to a maximum of 400,000kWhth is the relevant Tier 2 tariff specified in Schedule 3A; and
(c) any further heat generated over 400,000kWhth in the same 12 month period shall not be eligible for periodic payments.”.
(8) In regulation 36(10) for “paragraph (9)” substitute “paragraphs (9) and (9A)”.

6. After Schedule 3 there shall be inserted the Schedule set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department for the Economy on 24th January 2017.

Andrew McCormick
A senior officer of the Department for the Economy
Table 1

Tariffs for Small Biomass and Medium Biomass Installations

<table>
<thead>
<tr>
<th>Tariff name</th>
<th>Sources of energy or Technology</th>
<th>Installation capacity</th>
<th>Tariff Pence/kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Biomass</td>
<td>Solid biomass including solid biomass contained in municipal solid waste</td>
<td>Less than 20kWth</td>
<td>Tier 1: 6.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tier 2: 1.5</td>
</tr>
<tr>
<td>Medium Biomass</td>
<td>Solid biomass including solid biomass contained in municipal solid waste</td>
<td>20kWth and above up to but not including 200kWth</td>
<td>Tier 1: 6.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tier 2: 1.5</td>
</tr>
</tbody>
</table>

EXPLANATORY NOTE
(This note is not part of the Regulations)

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

Regulations 5 and 6 amend regulation 36 in the Principal Regulations to introduce a tiered tariff and an annual cap of 400,000kWth for eligible heat payments for installations accredited before 18th November 2015 falling within the small or medium commercial biomass installations in Schedule 3A.

These Regulations will cease to have effect on 31st March 2018 as set out in regulation 1(3).
INTRODUCTION

Ar an 19 Eanáir, d'fhógair mé go bhfuil sé i gceist agam fiosrúchán poiblí a thionscnamh ar an Scéim Neamhtheaghlach In-athnuaite Dreasachta Teasa (SDT) – inniu, tagaim os comhair an Tionóil le sonraí an Fhiosrúcháin sin a dhearbhú, lena n-áiritear ballraíocht an fhiosrúcháin agus a théarmaí tagartha.

Mar sin féin, sula dtugaim faoi seo, tá sé tábhachtach go bhfanaimid dirithe ar na cúinsi a thug chun an pointe seo muid agus a chiallaíonn anois gur fiosrúchán poiblí an t-aon bhealach inchreidte chun tosaigh.

On 19th January, I announced my intention to institute a Public Inquiry into the non-domestic Renewable Heat Incentive Scheme – today I come to the Assembly to confirm the details of that Inquiry.

However, before doing so it is important that we remain focussed on the circumstances that have brought us to this point and which now make a Public Inquiry the only credible way forward.

BACKGROUND

The non-domestic RHI Scheme was introduced in November 2012 to support the then Executive’s Programme for Government commitment in relation to renewable energy. It was conceived with laudable ambitions – to achieve 10% of our energy consumption from renewable sources by 2020.

We must focus on why the botched RHI Scheme went wrong and the circumstances surrounding it rather than the environmental principles underpinning it, which remain right and proper.

It is important to acknowledge that although this Inquiry examines allegations of wrongdoing, many people did act appropriately in relation to the RHI Scheme. In particular I would like to recognise the work of my officials who, working with the Comptroller and Auditor General, have diligently and fulsomely applied the principles
of financial governance and probity as set out in the Managing Public Money requirements.

It was my officials who unearthed this financial calamity and formally notified the Comptroller and Auditor General who then reported to the Public Accounts Committee. They have played a crucial role in bringing transparency and scrutiny to this scandal.

Given the position of my Department at the nexus of government, I am ideally placed to initiate this Inquiry.

WHY - CASE FOR AN INQUIRY

The case for an independent investigation into the RHI Scheme is clear cut: in his June 2016 report, the Comptroller and Auditor General concluded that the scheme had “serious systemic weaknesses from the start”, weaknesses that have resulted in over-compensation, abuse and significant financial risk to our budget and the public services it supports.

The RHI Scheme, according to the Comptroller and Auditor General, has the potential to cost the public purse up to £490 million over twenty years. That is money that I, as Finance Minister, would much rather see directed towards vital public services - strengthening our health and social care system, building an infrastructure fit for the 21st century and educating and training our people.

In recent weeks we have had a drip-feed of serious allegations of corruption, mismanagement, incompetence and political interference surrounding the Scheme.

Members know my preference for a time bound independent judge-led investigation under new legislation.

This was underpinned by two key requirements to ensure that the public could have confidence that it would get to the truth and that this would come out for all to see.

Firstly, it is absolutely vital that any investigation has the powers to compel witnesses and evidence. And secondly, the investigation needs to be free from Ministerial control or interference.

But the need for agreement on new legislation and the pending dissolution of the Assembly mean it was not possible to pursue this preferred approach.

But there cannot be obstacles placed in the way of truth. That would be unacceptable to the public.

In that context, the only way to respond to the public interest now is for me to launch an Inquiry to be held under the Inquiries Act 2005, reflecting the scale of the public concern regarding this matter.

I am pleased therefore to inform Members on the shape that Inquiry will take.
INQUIRY TEAM / TERMS OF REFERENCE / TIMESCALE

I now have in place an independent Inquiry Chair – distinguished retired Lord Justice of Appeal, Sir Patrick Coghlin, who was nominated to chair the Inquiry by the Lord Chief Justice.

I am very pleased that Sir Patrick Coghlin has agreed to lead this Inquiry and I know that he will be unflinching in his pursuit of the truth and scrupulous in his analysis of the evidence.

I have agreed with Sir Patrick Coghlin that he will be supported by two Panel Members to get to the truth of this affair. If the Panel considers it appropriate assessors may be appointed to assist them. These individuals, to be appointed, will have relevant expertise and be from outside the North.

I want to turn to the Terms of Reference for the Inquiry which I have made as broad as possible in order to give latitude to the Inquiry Chair in his work.

It sets the framework under which the Inquiry will investigate, inquire into and report on the RHI scheme. This will include its design, governance, implementation and operation, and measures to control the costs of the scheme, from its conception in 2011 to the conclusion of the Inquiry.

While the areas it will investigate will be wide-ranging it will necessarily include key areas in which there has been huge public interest, including:

- the development and roll-out of the RHI Scheme by the then Department of Enterprise, Trade and Investment;
- the signing-off of the Scheme by the then Department of Finance and Personnel;
- the issue of cost controls and tariffs;
- the delay in implementing cost control measures before November 2015 which led to the spike of autumn 2015; and
- the closure of the Scheme in February 2016.

I want to thank the Assembly Parties for their input to the Terms of Reference which have, along with Sir Patrick Coghlin’s expert opinion, helped to shape what I believe is a robust and balanced framework for the Inquiry.

I have laid a copy of the Terms of Reference in the Assembly Library. These will only be amended at the request of the Chair.

The Inquiry team will begin its work on 1st February 2017 and will report as expeditiously as possible.

OPENNESS AND TRANSPARENCY

Openness and transparency will be key touchstones for Sir Patrick Coghlin and his team.
In terms of the two key requirements I pointed to earlier, the investigation will have the power to compel witnesses and evidence. Rest assured, every stone will be turned and there will be no dark corners where the light won’t be shone.

There are shortcomings in the Inquiries Act around the potential for political interference. I therefore wish to reassure the public by setting out the steps that I think must be taken to ensure absolute openness and transparency in that regard.

The arrangements that I have detailed in this Statement are intended to ensure this.

It is also important to stress the following.

Having established the Inquiry, it will now progress entirely in the hands of the Chairman. Sir Patrick Coghlin will, within the Terms of Reference I have set out, have absolute control over the scope and execution of the Inquiry. The Chair has indicated that it would not be appropriate to issue an interim report.

Likewise, the Chair informs me of his obligation to deliver the report to the Finance Minister. I call on all Members to join me in pledging that any future Finance Minister will immediately publish the report as received.

The Inquiry will be impartial and objective. It will be tasked to get to the truth of the RHI Scheme. I will not interfere in its work – it will be entirely independent.

CONCLUSION

There is an urgent need to get to the facts of the RHI Scheme, to identify negligence, incompetence, alleged corruption and abuse, and to hold those responsible to account.

Tá mé feasach go dtéann an cheist SDT thar chúrsaí airgeadais chuig ceisteanna rialachais agus ionracaíos. Trí aimsiú na fírinne faoin scannal SDT, creidim go rachaidh an fhoireann seo phósadh a chreidmear, faoi stiúir Sior Patrick Coghlin oiric, i ngileic leis na saincheisteanna sin agus dá bhri sin, rachaidh sé bealach éigin le hatógáil a dhéanamh ar mhúinín scriosta an phobail sna hinstiúidí.

I am aware that the RHI issue goes beyond financial matters to questions of governance and probity. By getting to the truth of the RHI scandal, this Inquiry team, led by the distinguished Sir Patrick Coghlin will, I believe, address those wider issues, and, therefore, go some way to rebuilding the shattered public confidence in the institutions.
Purpose and Scope

1. To investigate, inquire into and report on the Non-Domestic Renewable Heat Incentive scheme ("the RHI scheme"). This will include its design, governance, implementation and operation, and efforts to control the costs of that scheme, from its conception in 2011 to the conclusion of the Inquiry. This is to restore public confidence in the workings of Government and will include, without prejudice to the generality of the forgoing, in particular to:

a) Examine how the RHI scheme was developed in strategic policy and legislative terms, including its primary purpose and objectives; the approval of the business case by the Department of Finance and Personnel; how the scheme’s operational roll-out was agreed (including the promotion and communication of the scheme to external stakeholders and beneficiaries of the scheme), administered and implemented in order to match these objectives; and where overall accountability and compliance for the RHI scheme rested in both policy and financial accountability terms.

b) Examine the role of Ministers, Special Advisors, Civil Servants, and any others involved in the RHI scheme (including external consultants) and whether their actions and/or advice met appropriate professional standards, were ethical, within the law, and compliant with standards in public life including in particular the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisors, and conditions of employment.

c) Examine the initial design and the implementation of cost controls with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.

d) Examine the work on the RHI scheme by relevant Government Departments (particularly the Department for Enterprise, Trade and Investment / Department for the Economy (DETI/DfE), the Office for Gas and Electricity Markets and any others with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.

e) Examine the delay in implementing cost control measures in November 2015 in the light of the spike in applications which occurred before those measures were implemented, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.
f) In relation to the introduction of cost controls in November 2015, examine what lobbying occurred, by whom and what implications that had for the delay in the cost controls.

g) In connection with the closure of the RHI scheme to new applicants in February 2016, examine what lobbying occurred, by whom and what implications that had for the delay in the closure.

h) Examine the efforts made by Department for Enterprise, Trade and Investment / Department for the Economy and the Department of Finance and Personnel / Department of Finance to mitigate costs after November 2015, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.

i) Examine any real or perceived conflicts of interest, including whether any individual (including Ministers, Civil Servants, special advisors or others), acted in a way incompatible with their duties (including by premature disclosure of any information), and/or intentionally or dishonestly sought gain from the RHI scheme or the supply chain (including the installation of boilers), for themselves or others.

j) Examine the Public Expenditure implications of the foregoing.

k) Examine the handling of whistleblower disclosures and others who raised concerns in relation to the RHI Scheme, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.

l) Examine whether there were any systemic failings in the structures, organisation or operation of government bodies particularly in relation to the design and administration of grant aid schemes and identify any lessons that may be learnt.

m) To take into account, where appropriate, the work of:

- the Public Accounts Committee;
- the Department for Enterprise, Trade and Investment / the Department for the Economy Statutory Committee;
- the NI Audit Office;
- the fact-finding investigation into the role of current and past officials in the design, management and control of the RHI Scheme commissioned by the DfE from Price Waterhouse Coppers (PwC) in October and December 2016;
- PwC’s Project Heat;
- the related work of the independent HR consultant;
any audit and enforcement inspections in relation to accredited RHI installations; and

any other relevant report

n) To make findings of fact, report on these matters and to make such other observations and recommendations as the Inquiry considers appropriate.

Principles

2. The Inquiry will be wholly independent and not accountable to the Executive, Assembly, or any public body.

3. The Inquiry shall have access to all the documentation it seeks and the cooperation of all relevant witnesses to enable the Inquiry to produce a comprehensive report.

Method

4. Prepare a ‘Protocol on Full Disclosure’ for all documentation to be provided to the Inquiry

5. Where required, use the powers of compellability under the Inquiries Act 2005 to compel the attendance and giving of evidence by witnesses and the production of documents or any other thing in the custody, or in the control of a person which is relevant to the Inquiry.

6. To recover and keep safe all relevant documents and records made available to the Inquiry as soon as possible.

7. Consider all the relevant evidence, to include all documentation and witness testimony.

8. The conduct and procedure of the Inquiry are to be such as the Chair directs, subject to the Inquiries Act 2005 and any rules made under the Act.

9. The Inquiry will examine and review all documents as the Inquiry deems necessary and appropriate in the circumstances.

10. The Inquiry will receive such oral and written evidence as the Inquiry deems necessary and appropriate in the circumstances.

11. The public disclosure of documentation will be determined by the Inquiry Chair.

12. All evidence provided to the Inquiry will be appropriately protected.

13. Where public interest or other issues arise under section 19(3) of the Act the procedure for seeking a restriction order made by the Chairperson under section 19 (2) (b) shall apply.
14. Amendments to the Terms of Reference are to be made by the Minister only upon request from the Inquiry Chairperson.

**Cost**

15. The cost of the Inquiry will be met by the Department of Finance, but the Chair is encouraged to keep costs to a reasonable level.

16. The Department will provide for such independent secretariat support as the Inquiry Chair considers necessary to fulfil these Terms of Reference, and the Panel will have access to external support and advice, including individuals with appropriate knowledge.

**Timeframe and Report**

17. The Inquiry will seek to work expeditiously and complete its report within a reasonable timeframe.

18. Subject to any determination made by the Chair, the report should include the full public disclosure of all documentation and evidence relating to this matter.

19. On its completion the Inquiry report will be made public immediately and in full by the Minister.
Pol-10501

Wash Up

Eoin Rooney <eoin.rooney@sinnfein.ie>  
To: Ted Howell <ted.howell@sinnfein.ie>  
Cc: Aidan <aidan_ncateel>  

meeting Simon at 10 so could be at sevy street for 11.

On 24 Jan 2017 22:05, "Ted Howell" <ted.howell@sinnfein.ie> wrote:

---------- Forwarded message ----------
From: Ted Howell <ted.howell@sinnfein.ie>
Date: Tue, 24 Jan 2017 at 22:04
Subject: Re: Wash Up
To: Máirtín Ó Muilleoir <mairtin@newbelfast.com>

Ola: Just seeing your e-mail now after weekly Tuesday night charitable act of mercy visit by eldest sister. Have forwarded to usual suspects to keep all in the loop. Can you do an 11.00 on this in Sevvy St???
Ted

On Tue, 24 Jan 2017 at 21:20, Máirtín Ó Muilleoir <mairtin@newbelfast.com> wrote:
I meet Simon Hamilton tomorrow re business plan he submitted for interim solution to RHI.

There is now no further reason for me to delay holding up this business plan.

I have concerns about the business plan for the inspections, which is separate to this business plan, but have received repeated assurances from my staff that it is coming to me and will be robust. I accept those assurances.

I also raised the issue of State Aid. However we have NO flexibility about the requirement that the solution not kick in until State Aid is approved as that was a condition of the Regulations the DUP passed on Monday night. It may be that turns out to be a mistake if Europe holds up State Aid permission but for now, it is out of our hands.

Would you be content if I were to sign off the business plan on Wednesday afternoon.
It remains a flawed plan but it is the only show in town with a strong chance of saving £27m to the public purse.

Mairtin
DUP will come back soon to defend their plan and accuse us of sabotaging it for political grounds. It’s essential therefore that we ask Mike Brennan to update the one-pager he did highlighting potential shortcomings of Hamilton approach. Even though he doesn’t have the new paper, he should be able after yesterday’s meeting to provide a stronger paper highlighting the areas which are likely to be of concern including legal challenge and costs and benefits. Eoin can you ask for that from Mike.

M

From: Seán Mag Uidhir
Date: Dé hAoíne 6 Eanáir 2017 12:31
To: Eoin Rooney, Ciaran Quinn
Cc: Ted Howell, Máirtín Ó Muilleoir
Subject: Re: Draft letter to Simon Hamilton - to be made public

Ted,

I'm ok with this and there is the basis of a statement here as well.

But will await your counsel.

Thanks,
Seán

On Fri, Jan 6, 2017 at 12:21 PM, Eoin Rooney <eoin.rooney@sinnfein.ie> wrote:

Thoughts?

Dear Simon

Since taking up office my officials and I have repeatedly pressed the Department for the Economy to produce a concrete plan to address the devastating financial impact of the RHI scheme. It is extremely disappointing that seven months on I am yet to receive such a plan.

Although you expect to provide me with a paper next week you indicated that this will only propose an 'interim' measure. Let me be clear. A piecemeal approach is not sufficient.

The handling of this scheme – from the stripping out of the costs controls contained in the British legislation, through to the failure to close the scheme promptly when the threat
posed by the absence of cost controls materialised – has been characterised at least by incompetence and potentially by corruption.

In this context the only solution that is acceptable to me and to the public is a comprehensive one that deals with all elements of this disastrous scheme. It must stack up financially and protect the public purse. It must be legally sound. It must recoup overpayments made to date. And it must future-proof the scheme from further abuse.

As Finance Minister I will not allow the botched management of this scheme to be exacerbated by a botched solution. I urge you to bring forward a comprehensive plan.
Subject: FW: FM full statement
Date: Dé Máirt 10 Eanáir 2017 16:23:35 Meán-Am Greenwich
From: Máirtín Ó Muilleoir
To: Eoin Rooney
CC: Seán Mag Uidhir, Ted Howell

Response on 'plan' part of her statement. Thoughts?

Arlene Foster apparently has more knowledge of the so-called interim plan to resolve the RHI mess she created than the Finance Minister. That raises clear questions of conflict of interest. As of today, I have still had no sight of this interim plan.

A plan was submitted to my department at 5:55pm on Monday but withdrawn ten minutes later. Yesterday, Moypark briefed my officials in relation to further concerns over the RHI scheme. That briefing has raised further issues around the soundness of the Department of the Economy approach. The Comptroller and Auditor General has also been alerted to the Moypark concerns. Since my appointment, I have been urging the Department of Economy to bring forward proposals to resolve the RHI debacle. It's beyond time that I received those proposals. Once received, they will be assessed fairly against value to the public purse criteria.

From: "Moore, Martin"
Date: Dé Máirt 10 Eanáir 2017 16:06
To: Máirtín O Muilleoir, "Rooney, Eoin", "Brennan, Mike", "Sterling, David"
CC: Anne Armstrong
Subject: FM full statement

Máirtín to see new statement from Arlene Foster regarding RHI this afternoon

Martin

Statement from DUP Leader Arlene Foster MLA

"I indicated last evening that I am disappointed that Martin McGuinness resigned as Deputy First Minister. Today the consequences of what has happened is that it is much more difficult to deal with the RHI problems which I want to see resolved in a way that restores public confidence.

You may wish to speak to Oisin Black about the timescale we have been unable to find..."
I very much regret that as politicians we have been unable to find a way through the issues and the impact of that failure is to penalise the people of Northern Ireland who have now no effective functioning Executive at a time of major challenges.

For our part we have sought to offer up solutions to the problems over the last number of weeks. We had a number of meetings with Sinn Fein which, had the political will existed on their part, could have allowed us all to avoid the situation we now find ourselves in. Indeed the reason the Assembly was recalled on 19th December was based on the fact we had reached agreement at the Executive on 14th December with Sinn Fein to do so, and had a clear plan in place to deal with the need to hold a full investigation and to bring costs under control.

There was never any political difference of opinion on the need to get to the bottom of what happened and to ensure the overspend was eliminated.

The major sticking point between us over the last few weeks has been the fact that Sinn Fein would not agree to the establishment of an enquiry until I agreed to step aside as First Minister.

For me I felt to have done so would have led to the conclusion that I was guilty of something improper which is not the case.

I am no longer the First Minister so therefore there is no reason, under Sinn Fein’s reasoning, why an investigation cannot now be established.

If, however, Sinn Fein are still unwilling to allow an investigation to be established I intend to ask for an investigation, on the basis of the terms of reference discussed as part of our discussions with Sinn Fein, to be set up under the Inquiries Act 2005.

I am determined that the public will get the facts in an independent
and impartial way free from party political demands and bias.

I want to see an investigation commenced quickly so that it will be independently demonstrated that I did nothing wrong and that my integrity is vindicated.

This is vitally important from a political perspective but also fundamental for me on a personal basis. I have been quite disgracefully maligned in the most viscous manner and therefore it is of the utmost importance that the truth comes out.

Detailed work on cost controls is ongoing and material will be sent to the Department of Finance. We want any draft legislation to bring spending into line and the Minister for the Economy will consult with other parties on this. Simon will, later this week, have more to say on both transparency and cost controls.

For my part I am determined to do all I can to help put right what went wrong, to find out through an investigation why things went wrong and to seek to restore the credibility of Stormont in the eyes of the public.

The DUP has not given up or walked away. We want truth, transparency and cost control even though others would rather play high stakes politics with Northern Ireland’s stability.

However even if we were to address all of the problems that flowed from the RHI it is clear that Sinn Fein have additional concerns which they are attempting to introduce into discussions on their own terms. Attempting to frame negotiations in a way that is acceptable to one party only cannot be the basis for successful discussions.

A DUP delegation met with the Secretary of State yesterday afternoon and I indicated to him our willingness to take part in any discussions to see whether a way forward can be found. I remain open to further discussion with Sinn Fein, or any of the other parties in the Assembly over the next few days.

If necessary we will take our case to the electorate and use it as a platform for further discussions. I have never taken the verdict of the electorate of Northern Ireland for granted and while an election is not of our making we trust the judgement of the people.
trust the judgement of the people.

Last May people gave us a mandate and despite all of the challenges I remain dedicated to representing all the people of Northern Ireland. I want to do what is in the bests interests of Northern Ireland and I want us to be able to build a better future.

Despite the undoubted setbacks over these last few weeks we have achieved much for Northern Ireland over the years. While at this moment in time it may seem all hope is lost I still believe we can work to achieve better and brighter days ahead."
Mr Lunny: Sorry.

Mr Ó Muilleoir: On the Tuesday, Mr Lunny, I announced the public inquiry, and on the Wednesday, I sign off on the regulations.

Mr Lunny: Right. Well, you, in terms, took your officials’ advice. You took Ms Morelli’s advice, Mr Brennan’s advice and Mr Sterling’s advice together. Is that a fair —

Mr Ó Muilleoir: Yes.

Mr Lunny: — summary?

And the only other question I want to ask you about that process, or the — sorry, the penultimate of two questions I want to ask you about that process is the input that your party had then, even at that stage. And I want to take you to one final document on this, which is at POL-10501. So this is an email — if we maximise the bottom half of if first, please, and scroll up slightly, we’ll see that on Tuesday the 24th of January — so, after you’ve received Mr Sterling’s letter that we’ve just looked at — you say:

“I meet Simon Hamilton tomorrow re business plan he submitted for interim solution to RHI. There is now no further reason for me to delay holding up this business plan.”

You then mention some concerns that you have, issues that you have raised and what can or can’t be done about them, and you then say:

“Would you be content if I were to sign off the business plan on Wednesday afternoon. It remains a flawed plan but it is the only show in town with a strong chance of saving £27m to the public purse.”

And that, it appears, is an email, if we scroll up, that you sent to, if we scroll up further, to Ted Howell. Do you see that?

5:45 pm

Mr Ó Muilleoir: Yes

Mr Lunny: So you’re, essentially, asking Ted Howell is he content that you do what all of those officials, by that point, are recommending that you do.
Mr Ó Muilleoir: Well —.

Mr Lunny: So, Emer Morelli, Mike Brennan and the permanent secretary, but you’re still asking Ted Howell for permission.

Mr Ó Muilleoir: Well, no, I would reject that. I’m telling Ted Howell that my decision has now been made. We have probed this. We have exhausted it. I have come to the conclusion that, while there are still risks inherent in it, risks to the public purse, risks to my reputation, risks to Sinn Féin if we signed off on a botched solution which was challenged and which would turn out in three weeks’ time to dissemble. And I’m telling him, as someone who is heading up a crisis committee dealing now with the collapse of government and all that that entails, that this is when it’s going to happen. Did —.

Mr Lunny: You’re not asking his permission.

Mr Ó Muilleoir: No, I’m not asking his permission, but I am doing him the courtesy of someone who chairs this crisis committee of letting him know that this is the timeline and if there was some reason, unbeknownst to me, of a crisis or an additional crisis that this might cause in the peace process. So, I’m giving him his place as the head of that crisis committee, but my decision was my decision.

The Chairman: Just go down to the end of it again, please, so I can see the wording.

Mr Lunny: If we could scroll — the last —.

The Chairman:

“Would you be content”.

Is that right?

Mr Lunny: See the penultimate sentence —

Mr Ó Muilleoir: Yes —.

Mr Lunny: —

“Would you be content if I were to sign off the business plan on Wednesday afternoon.”
Mr Ó Muilleoir: I’m asking him about the timing; I’m not asking him about if he wishes me or doesn’t wish me to sign off the business plan. I’m making a case why this is the solution that we are going to support.

Mr Lunny: And if he’d come back and said, “I wouldn’t be content”? 

Mr Ó Muilleoir: Well, there must be something happening. I would have to speak to him about it, but it would be about the timing, but my decision had been taken.

Mr Lunny: And to give you that chance, just at the end of that sequence, I mean, to address the allegation that what you were doing, particularly in correspondence like this — this internal correspondence — was looking for potential political capital in a crisis situation, rather than looking for real legitimate reasons to test their — the DFE proposal.

Mr Ó Muilleoir: Well, you know, I reject that. It’s now — we’ve now reached the end of the road. I have discharged my obligations as Finance Minister to make sure that, for the first time, a solution brought forward does protect the public purse, serve the public interest. I have tested it rigorously, perhaps to a degree never experience before by the Department. They have responded, I think, in exemplary fashion and told me on the Friday, “It’s ready to go. We stand over it”. It’s still my decision — that my name would be on the business plan, that I would have to sign it — and it was my decision, alone.

This is a political world, and we cannot divorce what was happening from the collapse of the Executive, from all the things that are happening outside the confines of Clare House. It was my decision, but I think it was appropriate and prudent to say to the Sinn Féin chair of the crisis committee this is when it was going to happen.

Mr Lunny: OK. Well, I said I would ask you about five topics. I’ve covered four of them.

The fifth one is really a one-question topic —

The Chairman: I hope so.

Mr Lunny: — that I want to ask you about. When you made your statement on the 24th of
Sir Malcolm McKibbin: Well, there certainly is now.

Mr Lunny: Do you think there was at the time.

Sir Malcolm McKibbin: [Laughs.] That was the obvious follow-up. I think there would’ve been awareness. As I say, perhaps because it hadn’t arisen before in my experience, it wasn’t —

Mr Lunny: As an acute an awareness as it maybe ought to have been.

Sir Malcolm McKibbin: — as acute as people have now. But you’re right. There is a duty of care for a civil servant, whether he be temporary or permanent.

Mr Lunny: Well, is that something that, should an Executive be reinstated at some point in the future — you mentioned the various strands to those talks, I think you mentioned an induction for new Ministers and new spads — that that might be something that should be included in that induction for both of them and maybe something that permanent secretaries could be reminded of?

Sir Malcolm McKibbin: Absolutely. I do think, and the panel has visited it on many occasions, there are issues around, you know, how spads are operating and how they should operate in the future. No doubt this will be looked at by David Sterling in particular.

Mr Lunny: If I leave that issue and look at the issue of advisers who were not special advisers, so the third sub-issue under this topic.

We have heard evidence, and there’s been no secret made of the fact, either by Mr McAteer or by Sinn Féin, that Mr McAteer wouldn’t have been able to have been employed as a special adviser after the 2013 Act. Now, we know he’d been a special adviser in the past. He’d then been away from that role for a number of years, and he then came back in 2014 and was appointed by Sinn Féin as an adviser. He couldn’t have been appointed as a special adviser at that point because of the 2013 Act. Now, when were you first aware of Mr McAteer and his role as an adviser?
Sir Malcolm McKibbin: I think it was March ’14 he came in.

Mr Lunny: Uh-huh.

Sir Malcolm McKibbin: I remember the deputy First Minister called me into his office and introduced me to Aiden, and he introduced him as his strategic adviser. I know there’s been all sorts of job titles used, but that was the one that was used with me. He was the strategic adviser, and Martin advised me at the time that he would be working underneath his direction and authority, a term that has appeared, I think, in witness statements as well.

Mr Lunny: Many of the Sinn Féin witness statements we have point out that Mr McAteer was working under Mr McGuinness’s direction and authority. That’s pointed out repeatedly. That was actually said to you by the deputy First Minister when you were introduced to Mr McAteer.

Sir Malcolm McKibbin: Yes. I remember the expression being used.

Mr Lunny: Had you an awareness —? Again, we’ve heard evidence of where Mr McAteer sat in the hierarchy, if there was one. He has been described as being the most senior Sinn Féin adviser or the one with the greatest authority, and it’s been pointed out that stemmed from the fact that he was working under the direction and authority of the deputy First Minister.

Sir Malcolm McKibbin: I think that’s a fair summary.

Mr Lunny: You would’ve been aware of that?

Sir Malcolm McKibbin: Yes.

Mr Lunny: And would he have been a frequent presence in Stormont Castle, where OFMDFM was based, just like, say for example, Mr Johnston on the DUP side?

Sir Malcolm McKibbin: Well, I mean it’s an interesting point. You say, you know, a frequent visitor to the castle, so to speak. He was. But I understand — because whenever this issue raised, I asked a few questions of people, and I was speaking to the premises
officer in Stormont Castle and was saying, well, you know, I was talking about people having access during a talks process. And then I was advised by the premises officer that, whenever the last head of the Civil Service was in charge, there was an arrangement made between the head of the Civil Service and the First Minister and deputy First Minister that two or three, I’m not sure which, “advisers” in inverted commas from each party would have access to the castle. I understood this was mirroring —. I’m advised that this was mirroring an arrangement that operated in Number 10, where, you know, additional advisers were able to come in and see the First Minister and deputy First Minister, and I’m aware that both parties took this up. There had been, if you like, a different kind of adviser in existence from well before I came into the role.

Mr Lunny: So from before 2011.

Sir Malcolm McKibbin: Yes, that’s correct.

Mr Lunny: So to the extent that there’s a suggestion that this second type of adviser, who isn’t a temporary civil servant, was a by-product of the 2013 Act, that’s not your understanding. That second type of adviser has been there since before the 2013 Act.

Sir Malcolm McKibbin: It has. I mean Mr McAteer just happened to have a history that puts him in some difficulty with the 2013 Act, to put it mildly.

Mr Lunny: In terms of the day-to-day role, I appreciate you’re watching them and interacting with these advisers, special advisers. You can’t know everything that they're doing. You don’t know everything that’s going on between them and the First Minister and the deputy First Minister. What difference did you see in the sort of work that somebody like Aiden McAteer was doing and the sort of work that somebody like Timothy Johnston was doing?

1:00 pm

Sir Malcolm McKibbin: Well, actually, they were probably quite similar in a way — in
certain aspects, certainly — in that they were both fixers; you know, they were the people, whenever there was a difficult issue or a difficult political issue, would’ve probably been engaged with each other, and they actually worked very well together.

Mr Lunny: At resolving difficult issues?

Sir Malcolm McKibbin: At resolving di—. They didn’t —.

Mr Lunny: Brokering an agreement?

Sir Malcolm McKibbin: I don’t recall Aidan getting involved in — at all in, like, routine subs or anything like that; it tended to be whenever there was a high-profile issue.

The Chairman: Yes, well, one can understand, Sir Malcolm, them both being “fixers”, but they are very different “fixers”.

Sir Malcolm McKibbin: I agree.

The Chairman: Johnston is a spad. Mr McAteer’s — one of his major functions was to hold a meeting with all of the Sinn Féin spads once a week, at which he would manage and coordinate the spads, so, the spads who are chosen for their particular skills, their trust that they imbue into the Minister, they are put in a meeting, and all of them are then managed and controlled from somebody who is paid from a political party. And if you look at the code — and you probably have looked at it in relation to this provision — it talks about being extremely careful that somebody who is paid by a political party does not influence the spads.

Sir Malcolm McKibbin: Yes, I fully recognise that there’s a difference between —.

The Chairman: Well, was that perceived — was his role perceived in that way; as something that, at least prima facie, breached the code? Or was he just tolerated, as it were? And I don’t mean “tolerated” in any negative way; it was accepted that —.

Sir Malcolm McKibbin: I think that —. I think the expression’s been used on a number of occasions in the Inquiry, you know, the “realpolitik”.
The Chairman: Yes, that’s —.

Sir Malcolm McKibbin: Whether or not Aidan McAteer had been in the building or not, and whether I had ever seen him, he could’ve exercised that same function from party headquarters. And it’d be, I think, unfortunate for people to believe that — the way the parties operated, there was a certain amount of central control exercised by party headquarters, and I think that, you know, is probably not uncommon in political parties in Great Britain as well. But I agree with you: there is a difference between somebody who has to comply with the spad code of conduct and Aidan, who was clearly outwith that. I have to say I never saw any behaviour that would’ve caused me any concern, but that’s not really relevant to the point you’re making.

The Chairman: Did you know that he managed and coordinated all the spads once a week?

Sir Malcolm McKibbin: Well, no, I wouldn’t’ve known the frequency at which he did it, but I knew he would have — “managed” might be too strong a word. I was aware —.

The Chairman: That’s his word.

Sir Malcolm McKibbin: I know it’s his word cos I read his evidence, but it’s not a word I would’ve used. I saw him coordinating the work of the spads; in other words, he would’ve — if he thought one of them wasn’t pursuing a particular sub rapidly enough, he would’ve — he maybe perhaps would’ve intervened, but I didn’t see him get involved in the routine assessment of spads — sorry, of subs. As I say, he would’ve got involved in something like the RHI, you know, which is a big one, or something around Brexit maybe. And he was heavily involved in the political talks processes as a member of Sinn Féin.

The Chairman: I make no criticism of him for what he was doing, but I am concerned about how he coexists with the code.

Sir Malcolm McKibbin: No, I understand why you have that concern.
Gaming

7. Please describe the approach adopted by the RHI Taskforce in relation to “gaming” of RHI Scheme.

The 2012 Regulations which established the Scheme were not drafted tightly enough to mitigate the risk of ‘gaming’ on the Scheme. The Scheme provides a tariff for 20 years on heat produced and just as in any economic incentive, the Regulations governing the payments provided an opportunity to influence behaviour to control payments and return.

The Department delegated its authority for the delivery of Scheme, including compliance to Ofgem. Ofgem is also responsible for the delivery of the GB RHI Scheme for BEIS and had a very firm view on the interpretation of the Regulations with respect to gaming. Further, Ofgem continues to be reluctant to do anything in compliance on the NI Scheme that would create a ‘bad precedent’ for its administration of the GB Scheme. However, there was one fundamental difference between the GB and the NI Scheme – the tariff.

In the NI Scheme, the lack of a tier meant that each kWh of heat produced was paid an incentive of around 6 p/kWh whilst the cost of wood pellets was around 4 p/kWh. Therefore there was a perverse incentive to generate heat for profit even when the heat was not needed. Neither Ofgem nor the Department recognised this perverse incentive for a long period of time.

In April 2017, the Department introduced new Regulations which created a tiered tariff for all participants. Therefore after 1,314 hours of maximum capacity usage of the boiler installation in each year, the amount paid reduced to 1.5 p/kWh (now 1.6 p/kWh due to the application of RPI in April 18). This immediately and dramatically reduced the potential for gaming with respect to the production of unnecessary heat. The consequence of this is that we have seen a year on year reduction in heat production, in the year following the introduction of the 2017 Regulations, of around 25%.
Report by the Comptroller and Auditor General for Northern Ireland

Department for the Economy
Resource Accounts
2018-19
Introduction

1 In each of the past three years, I have reported on significant concerns surrounding the operation of the non-domestic Renewable Heat Incentive (RHI) scheme. Each of my reports attached to the Department's Resource accounts have outlined significant weaknesses in the scheme and set out the ongoing actions proposed by the Department to address these weaknesses.

2 My initial report in June 2016 was followed by seven evidence sessions of the Public Accounts Committee between September 2016 and January 2017. The Renewable Heat Incentive Inquiry was then established to carry out an in-depth investigation of the operation of the scheme and is likely to report later this year.

3 My report below provides an update on:

- how actions taken by the Department have reduced the total costs of the scheme;
- how the reduction in tariff rates from 1 April 2017 has affected the behaviour of applicants on the scheme;
- actions taken by the Department to increase the number of inspections and deal with any enforcement action; and
- why I have again decided to qualify my regularity audit opinion.

Total costs in 2018-19

4 In order to protect the Northern Ireland block budget and to bring the scheme back within the allocated budget, the Department imposed significant changes to the tariff paid from 1 April 2017 to all users of the scheme. Legislation was passed through Westminster to extend this revised tariff rate to 31 March 2019. Table 1 below compares the tariff rates payable for a typical 99kW boiler accredited onto the scheme before 18 November 2015.

<table>
<thead>
<tr>
<th>Table 1: Change in tariff rates</th>
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<tr>
<td></td>
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<tr>
<td>Heat generated per kWh up to 1,314 hours (15 per cent of total hours in the year)</td>
</tr>
<tr>
<td>Heat generated per kWh over 1,314 hours</td>
</tr>
<tr>
<td>Maximum kWh payable</td>
</tr>
</tbody>
</table>

Source: Department
Based on rates payable for a 99kW boiler accredited before 18 November 2015

*400,000 kWh equates to a 99kW boiler operating approximately 11 hours each day of the year

158
5 The implementation of the rates after 2017 have significantly reduced the cost of the scheme to the extent that in 2018-19 the annual cost of RHI was less than the share of the UK budget available by £1.9 million.

<table>
<thead>
<tr>
<th>Table 2: Annual costs of the RHI scheme</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Annual cost of non-domestic RHI scheme</td>
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<tr>
<td>Annual cost of domestic RHI scheme</td>
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<tr>
<td>Annual cost of both RHI schemes</td>
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<tr>
<td>Costs covered through NI share of UK RHI budget</td>
</tr>
<tr>
<td>Annually Managed Expenditure (AME)</td>
</tr>
<tr>
<td>Costs met from the NI Executive Department</td>
</tr>
<tr>
<td>Expenditure Limit (DEL)</td>
</tr>
<tr>
<td>Unused AME budget for RHI</td>
</tr>
<tr>
<td>Source: Department</td>
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</tbody>
</table>

6 The further significant reduction in RHI tariffs from 1 April 2019 will further significantly reduce the cost of RHI, well below the Annually Managed Expenditure (AME) budget available. I asked the Department to comment on this underspend and whether it intends to introduce any new Renewable Energy schemes in the future to help utilise this budget. The Department told me that work to consider the required support for renewable energy, in general, is being considered as part of the development of the new draft Energy Strategy for Northern Ireland during the next 18 months.

Change in behaviour of applicants

7 The significant amendments to the tariffs from 1 April 2017 appears to have been a key factor in a substantial reduction in the overall heat generated under non-domestic RHI since 2016-17. This reduction may suggest that in some cases, heat produced before April 2017 was not actually required for business purposes but rather some of it may have been produced only with a view to increasing RHI payments.

8 I reported last year on the significant reduction in both heat output produced and the corresponding RHI payments and this trend has continued again in 2018-19 as outlined in Tables 3 and 4 below. This reduction is particularly marked in the forestry/wood sector which would typically have been engaged in generating heat for wood drying.

<table>
<thead>
<tr>
<th>Table 3: Heat Output produced in MWh for all applicants</th>
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</thead>
<tbody>
<tr>
<td>Sector</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
</tr>
<tr>
<td>Forestry/wood</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Source: Department Based on meter readings to May 2019</td>
</tr>
</tbody>
</table>
Table 4: Non – domestic RHI payments for all applicants

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of installations</th>
<th>2016-17 £million</th>
<th>2017-18 £million</th>
<th>2018-19 £million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>1,114</td>
<td>26.8</td>
<td>12.9</td>
<td>12.8</td>
</tr>
<tr>
<td>Forestry/wood</td>
<td>186</td>
<td>4.7</td>
<td>1.6</td>
<td>1.5</td>
</tr>
<tr>
<td>Other</td>
<td>828</td>
<td>10.5</td>
<td>7.2</td>
<td>6.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,128</strong></td>
<td><strong>42.0</strong></td>
<td><strong>21.7</strong></td>
<td><strong>21.1</strong></td>
</tr>
</tbody>
</table>

Source: Department

9 I asked the Department to comment on the apparent changes in behaviour shown following the new tiered rate and cap on heat output imposed from 1 April 2017. The Department told me that the introduction of the tiered tariff to all applicants had significantly reduced the incentive to produce unnecessary heat. Before the changes in 2017 the incentive paid for each kWh of heat generated was higher than the cost of production whereas after 1 April 2017, once the applicant reached the top of Tier 1, the incentive paid reduced to significantly below the cost of production.

Inspections

10 I reported last year that the Department had appointed inspectors to complete 250 site inspections in 2018-19, selected on a risk assessment basis. As well as this the Department had undertaken to complete a series of desk reviews of sites assessed as low risk.

11 Since then the Department has conducted its full risk assessment based on a number of criteria such as heat generation statistics, existence of a previous heating system, number of installations and the date installed. Based on this it was able to produce a list of installations in risk order which was then used to create a list of the first 250 sites to be inspected based on the highest risk.

12 The first site inspections commenced in July 2018 and consisted of a technical examination to ensure that the information initially provided to Ofgem when the installation was accredited was the same as the actual configuration and that it was complying with regulations. In addition there was analytic and other desk based work carried out to support ongoing eligibility and in particular to examine if the heat generated since installation is reasonable for the purpose stated by the applicant.

13 The Department has also used its own team to carry out desk based work on those installations which it assessed to be of a lower risk. This was intended to cover 200 sites in the first year.

14 As at 31 May 2019, 231 of the highest risk sites had been visited for the technical inspection. The Department expects site visits for all of its initial list of 250 to have been completed by the end of June 2019. In addition to this all of the 200 desk reviews on the least risky sites are well progressed.
15 The results of the site visits are added to the desk based analysis for consideration by the Department’s compliance team. In some cases these are also passed on to Ofgem for further consideration.

16 One of the main compliance issues that has been identified has been an apparent over production of heat prior to the introduction of the tiered tariff in April 2017. As I reported before, the rate for most applicants before that date incentivised them to generate as much heat as possible, even if it was not required, as the rate of subsidy was higher than the cost of fuel. Once the new tariff was implemented, the incentive to generate heat that was greater than needed disappeared and in many cases the heat actually generated reduced substantially, as set out in tables 3 and 4 above.

17 The generation of heat only for the purpose of earning RHI payments is a breach of scheme rules and therefore the Department has agreed a process with Ofgem of identifying these cases. The outcome for these cases could range from no action (where the applicant provides more information to support the change in heat use) to revocation from the scheme and a clawback of payments already made.

18 Other compliance issues include:
- Inability of some participants to provide required information such as maintenance records or incomplete fuel records;
- Inaccurately reported meter readings;
- Errors in heat loss assessments submitted by the applicant;
- Undeclared carbon trust loans; and
- Lack of evidence of appropriate planning permission or building control approval.

19 Of the 231 site visits that had been completed, the Department has told me that it is working its way through its assessment of them and that this assessment can take several months. At this stage its experience has been that around 80 per cent of cases it looks at have potentially serious compliance issues, mainly in relation to past over production of heat. Of these the Department expects that it will be able to resolve most cases through discussion and other actions short of revocation although it estimates that around 10 per cent will enter the Department’s revocation process with potential clawback of grant already paid. Only 3 have so far been revoked from the scheme as a result of the latest inspection process, but the Department has told me that it expects this to increase over the coming months.

20 The Department has also told me that its intention is to complete the programme of site inspections and desk reviews before the end of June 2021. I am pleased that progress is now being made in carrying out the reviews, but would point out that the key measure of success will not be in simply carrying out the reviews, but in the ability to take action where problems are identified. I asked the

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1 Carbon Trust Loan is an interest free loan between £3,000 and £400,000 to businesses in Northern Ireland, investing in energy-saving projects, supported by Invest Northern Ireland. The loan is repayable within four years.
Department to comment on its plans to follow up on issues raised by its inspection process. The Department told me that due to the range and complexity of issues being identified and the need to treat participants in a consistent and proportionate manner, a suite of detailed approaches have been developed to support evidence based decision-making on compliance issues, capable of withstanding legal scrutiny.

Future tariffs

21 Independent experts employed by the Department carried out extensive reviews of the tariffs and concluded that the reduced tariffs were still over generous and further changes to the scheme were required to comply with State Aid rules and an agreed rate of return of 12 per cent per annum. Following a public consultation in 2018, engagement with the European Commission and the completion of a business case approved by the Department of Finance, legislation was passed through Westminster agreeing the preferred option for the future of the scheme, which included:

- A new tariff structure (see Table 1) for all small and medium sized biomass boilers to apply from 1 April 2019 for the remainder of the scheme which the Department has calculated to give a rate of return of 12 per cent in line with the adopted State Aid decisions;
- The new tariff structure will result in the subsidy paid to the owner of each individual boiler on the scheme receiving a maximum of approximately £2,000 for a 99kW boiler or £4,000 for a 199kW boiler each year for the remainder of the scheme; and
- The introduction of a voluntary buy-out opportunity for participants on the scheme that wish to avail of it. This provides a one-off payment equivalent to a 20 year, 12 per cent rate of return which is in line with the initial intent of the scheme, less any payments received to date.

22 The Northern Ireland Affairs Committee is currently conducting a short inquiry into the new tariff structure and its report will be published in due course.

Judicial Review – RHI regulations

23 As set out in note 19 to the accounts, there is currently a Judicial Review against the introduction of the 2019 amended RHI regulations and an appeal against the introduction of the 2017 Regulations. If the appeal against the 2017 regulations was to be successful then this could result in an additional cost to the Department of around £19 million for the two years of 2017-18 and 2018-19. However on the basis of their legal advice the Department are anticipating that the case will be successfully defended. It is likely that these legal cases will continue for some time.

Qualified audit opinion

24 I am required under the Government Resources and Accounts Act (Northern Ireland) 2001 to report my opinion as to whether the financial statements give a true and fair view. I am also required to report my opinion on regularity, that is,
whether in all material respects the expenditure and income have been applied
to the purposes intended by the Northern Ireland Assembly and the financial
transactions conform to the authorities which govern them.

25 I have qualified my audit opinion again this year for the same reasons as the last
three years:
   • ongoing weaknesses in controls in the non-domestic RHI scheme; and
   • expenditure incurred without the necessary approvals in place.

26 While costs have again reduced in 2018-19 because of the introduction of the
revised tariff in 2017, I was still unable to obtain sufficient evidence that the
controls over the spending on the non-domestic RHI scheme were adequate to
prevent or detect abuse of the scheme as issues are still being identified as part
of the ongoing inspection process.

27 I have also qualified my regularity audit opinion because of a lack of required
approvals being received by the Department in relation to a significant proportion
of the spending on the non-domestic RHI scheme. At the commencement of the
scheme in November 2012, the Department of Finance and Personnel (DFP –
now the Department of Finance (DoF)) had given approval for expenditure under
the scheme up to 31 March 2015. DETI (DfE was previously known as DETI) was
due to seek re-approval of the scheme from DFP from 1 April 2015 but this
was overlooked and DFP approval was not granted until 29 October 2015.

28 During this seven-month period in 2015-16, there were 788 boiler applications to
the scheme, out of a total of 2,128 boiler applications (37 per cent). The ongoing
costs incurred during 2018-19 in relation to these 788 applications amounted to
£8.1 million (£7.9 million in 2017-18) and as stated above, because these
applications were accepted onto the scheme by DETI during a period in which
there was no DFP approval, the total expenditure in relation to them continues to
be irregular.

29 The above irregular expenditure incurred on the non-domestic RHI scheme in
2018-19 of £8.1 million represents 38 per cent of the total expenditure incurred
on the non-domestic RHI scheme of £21.1 million in 2018-19. It is likely that a
similar proportion of the non-domestic RHI expenditure will continue to be
irregular each year until 2037-38 when the scheme closes unless the Department
is able to obtain retrospective approval from DoF. To date, the Department has
not formally sought retrospective approval for these 788 applications, but will
consider it following the implementation of the long term tariff structure.

Payments to North South bodies

30 I have also qualified my regularity opinion in relation to expenditure in 2018-19 of
£13.6 million to Tourism Ireland Limited and £4.4 million to InterTradeIreland
(total of £18 million) as due to absence of a DfE Minister, it was not possible to
secure North South Ministerial Council (NSMC) approval for the 2018 and 2019
Business Plans for these two North/South bodies. While DoF has agreed that
these payments are legal in the absence of approved Business Plans, I have
decided to qualify my regularity opinion as the expenditure has been incurred without the necessary approvals in place.

Presbyterian Mutual Society

31 The Presbyterian Mutual Society (PMS) went into administration at the height of the financial crisis in 2008. In total £225m of loans were made by the former Department of Enterprise (DETI) to bail out PMS. Of this amount, £50 million, is at the end of the list of creditor priorities and is unlikely to be repaid. The remaining £175 million is being repaid through annual instalments over 10 years and is due to be settled in full by November 2020.

32 Joint Supervisors (who are licensed Insolvency Practitioners) manage the affairs, of the Society. The property investment portfolio consists of 14 sites of retail and office properties predominantly located in the north of England and in Scotland. At 31 March 2019, the total amount to be repaid is £98 million and final settlement of the loan due in November 2020) is dependent on the 14 properties being sold. Independent insolvency advisors employed by the Department to assess the Joint Supervisors’ plans have indicated that they expect the loan to be repaid in full, however, given their strategy of selling these properties by November 2020, there is no certainty over the total repayment of the loan until these sales have taken place. I note the Department’s disclosure in relation to this loan at notes 12 and 19 to the accounts and I shall continue to closely monitor progress and may report on this matter in the future.

Conclusion

33 The Department continues to address issues arising from my previous reports on the non-domestic RHI scheme, but significant challenges remain. I welcome the fact that the inspection process has now got substantially underway although the proof of success in this work will be the extent to which proper enforcement action can be taken, in line with the Scheme regulations, where serious issues are identified.

34 Whilst recognising that progress has been made on the non-domestic RHI scheme, I continue to have concerns about the operation of this scheme. I will continue to monitor the results of the ongoing inspection process and any further actions taken by the Department to address the concerns I have previously raised.

K J Donnelly
Comptroller and Auditor General
27 June 2019

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Wash Up
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Tue 1/24/2017 9:59 PMDeclan Kearney (declan.kearney@sinnfein.ie);Martin Lynch (martin.lynch@sinnfein.ie);ainem@msn.com;michelle o neill

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From: Máirtín Ó Muilleoir <mairtin@newbelfast.com>
Date: Tue, 24 Jan 2017 at 21:20
Subject: Wash Up
To: Ted Howell <ted.howell@sinnfein.ie>
Cc: Aidan McAteer Personal information redacted by the RHI Inquiry Eoin Rooney <eoin.rooney@sinnfein.ie>

I meet Simon Hamilton tomorrow re business plan he submitted for interim solution to RHI.

There is now no further reason for me to delay holding up this business plan.

I have concerns about the business plan for the inspections, which is separate to this business plan, but have received repeated assurances from my staff that it is coming to me and will be robust. I accept those assurances.

I also raised the issue of State Aid. However we have NO flexibility about the requirement that the solution not kick in until State Aid is approved as that was a condition of the Regulations the DUP passed on Monday night. It may be that turns out to be a mistake if Europe holds up State Aid permission but for now, it is out of our hands.

Would you be content if I were to sign off the business plan on Wednesday afternoon.

It remains a flawed plan but it is the only show in town with a strong chance of saving £27m to the public purse.

Máirtín
Section 1: Introduction

Preamble

1.1 Section 28A of the Northern Ireland Act 1998 (the Act) provides for a Ministerial Code. This document is that Ministerial Code. It sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers of the Northern Ireland Assembly as specified in the Belfast Agreement, the Northern Ireland Act 1998, the St Andrews Agreement and the Northern Ireland (St Andrews Agreement) Act 2006.

1.2 In accordance with section 28A (1) of the Act, without prejudice to section 24 of that Act, a Minister or junior Minister shall act in accordance with the provisions of this Code.

1.3 The Ministerial Code of Conduct, referred to at paragraphs 1.5 and 1.6 below is an integral part of the Ministerial Code. The Ministerial Code of Conduct is not to be regarded as a substitute for, or an alternative to, the full provisions of the Ministerial Code.

Pledge of Office

1.4 Under the Belfast Agreement and under sections 16, 18 and 19 of the Act, it is a condition of appointment that Ministers of the Northern Ireland Assembly, including the First Minister and the deputy First Minister and junior Ministers, affirm the terms of the following Pledge of Office.

(a) to discharge in good faith all the duties of office;

(b) commitment to non-violence and exclusively peaceful and democratic means;

(c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;

(cia) to promote the interests of the whole community represented in the the Northern Ireland Assembly towards the goal of a shared future;

(cb) to participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council;

(cc) to observe the joint nature of the offices of First Minister and deputy First Minister,