Weekly Report - Renewable Heat Incentive (NI) - Operations

Enquiries answered within 10 working day
Regis’r’n and Accred’n decisions within 10 working days
Online systems available (within support hours)
including Sharepoint and Email
Tel. calls answered within 30 seconds
Payments made within 30 working days

Key Performance Indicators

<table>
<thead>
<tr>
<th>Period</th>
<th>Overall Status</th>
<th>Summary</th>
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<th>Nov</th>
<th>YTD</th>
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<tr>
<td>Enquiries answered within 10 working day</td>
<td>90.00</td>
<td>100</td>
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<td>Regis’r’n and Accred’n decisions within 10 working days</td>
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<td>Tel. calls answered within 30 seconds</td>
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<tr>
<td>Payments made within 30 working days</td>
<td>95.00</td>
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Enquiry Handling – TC

- WTD: 51 calls and c. 36 emails received.
- Nov: 173 calls and c. 117 emails received.

Applications - TC

- WTD: 20 applications approved; 13 applications received.
- MTD: 28 applications approved; 42 applications received.
- Since scheme inception: 249 applications approved (excludes rejections, withdrawals and amendments), 13 amendments.

Periodic Data - TC

- WTD: 33 PD submissions received from ‘live’ applications; 22 submissions review completed.
- Nov: 89 PD submissions received from ‘live’ applications; 84 submissions review completed.

Technical Support - EW

Nothing by exception

Payments & Drawdown - TA

A total of 1,518,623.19 has been paid in the year to date for 25.1 Gwh of heat. 493 individual payments have been made since the inception of the scheme to date, amounting to £1,884,255.24
Pat

You will probably recall some of our previous conversations around the NIRHI. The Administrative Arrangements between DETI/Ofgem were eventually signed (see pdf above) and the scheme is underway.

However, as soon as there was an applicant to the scheme, DETI asked Ofgem for the name of that applicant. Ofgem said there was a data protection issue around providing us with the name and have now issued the applicant with a privacy document to sign; they say once this is signed they will provide us with the information. This seems slightly bizarre to us given that the Regulations at every point talk about applications being made to DETI, information being provided to DETI etc. etc. I appreciate there are issues around storage/ databases etc – this application would have been e-mailed or posted to ofgem. My first question is - is Ofgem correct in saying it cannot provide us with the info?

This question then gives rise to a further issue. We sent the following e-mail query to Ofgem

The regulations governing the NI scheme clearly state that

‘all applications for accreditation must be made in writing to the Department’ where the Department is defined as ‘the Department of Enterprise, Trade and Investment’ and accreditation is defined as ‘accreditation of an eligible installation by the Department following an application’

There is no mention of Ofgem in the Regs – it is clear that the application is to be to DETI and that it is DETI that accredits; so, legally the power and responsibility resides with DETI.

We are of the view that Ofgem is carrying out this work on our behalf in which case I cannot understand how there could be any issue in providing us any information provided by an applicant. If you do not consider that you are doing this work on our behalf I would be grateful for your view on how you think your position sits with the Regulations as drafted – in layman’s terms how is DETIs legal responsibilities under the Regs, transferred to Ofgem?

and their response is as attached below. Ofgem has repeatedly stated that they do not consider that they are doing this work on our behalf. I’d be very grateful for your view on the e-mail below.

http://www.legislation.gov.uk/nidsr/2012/9780337989193
Keith

I understand from Joanne that Ofgem is not going to provide us with the names of applicants until a privacy policy (currently being drafted) is signed by applicants. I thought we had found a pragmatic way to progress the ‘Who owns the data?’ issue before Christmas and I am disappointed that the very first time we seek some information (and it is only a name and address) there appears to be an obstacle.

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We are of the view that Ofgem is carrying out this work on our behalf in which case I cannot understand how there could be any issue in providing us any information provided by an applicant. If you do not consider that you are doing this work on our behalf I would be grateful for your view on how you think your position sits with the Regulations as drafted – in layman’s terms how is DETI’s legal responsibilities under the Regs, transferred to Ofgem?

Furthermore, it seems completely bizarre that if we were to terminate the Agreement you would provide us with the information (as previously agreed) but you will not share it while the arrangement is in place (without a signed privacy policy).

This current issue does not bode well moving forward as I am sure we will be seeking further information in the future. If we cannot reach a workable solution then I think the best way forward is for DETI to amend our processes to ensure that applicants approach DETI in the first instance – applications could then be passed on to Ofgem.

Grateful for a quick response
Regards
Fiona

Fiona Hepper
Head of Energy Division
Department of Enterprise, Trade & Investment
Netherleigh
3. Update on question of legal responsibility

Joanne provided an update on the question of legal responsibility and ownership of data. Following correspondence from Ofgem lawyers Joanne had liaised with the Northern Ireland Departmental Solicitor’s Office (DSO) to gain their view. It was fair to say that the DSO view conflicted significantly to that offered by Ofgem with DSO firmly of the opinion that the Regulations stated clearly that DETI owned all the data relating to the RHI with the point made that Ofgem were not even named in the legislation. DSO believed that Ofgem were acting on behalf of DETI, as stated in the administration arrangement, and therefore data could and should be shared. The formal opinion from DSO would be with DETI shortly and would be shared with Ofgem when received.

It was discussed that “on behalf of” might have been interpreted differently by the two sets of lawyers and that finding an agreement could be problematic. Matthew advised that Ofgem was willing to share information and data as long as the requests are reasonable and have a purpose.

Fiona raised the issue of FOI and the difficulty that DETI might have if a request came to the Department that could not be answered as Ofgem held the information and refused to share it. Matthew advised that in those circumstances he would not expect there to be any issue with information sharing.

In order to progress this issue it was agreed that the DSO advice would be shared with Ofgem when it became available and that there would be further exploration of what was covered under the ‘privacy policy’. In the interim, DETI would continue to receive monthly reports and if there was essential information identified that was missing from the reports this would be raised with Terri and the operations team.

Action: DETI to share DSO advice and Ofgem to consider response. DETI also to consider the need for additional information on applicants.

4. Any other business

Fiona provided an update on the development and implementation of phase 2, focussing on the expansion of the existing non-domestic RHI. Fiona advised that consultancy work examining the options, costs and tariff levels for new technologies had been carried out by CEPA and Ricardo-AEA and was in the process of being finalised. It was likely that DETI would largely follow the GB expansion insofar that tariffs would be made available for biomass/bioliquid CHP, biomass direct air, deep geothermal and air source heat pumps. DETI was also considering support for biomass over 1MW and heat only bioliquids. Separately, DETI was also designing a domestic RHI scheme.

Peter advised that the other areas of divergence with DECC relating to administration, legal definitions and eligibility standards would also be considered in a forthcoming consultation.
Matthew

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From: Hepper, Fiona [mailto:Fiona.H@apple.deni.gov.uk]
Sent: 03 July 2013 09:00
To: Matthew Harnack
Cc: McCutcheon, Joanne; Hutchinson, Peter
Subject: FW: Admin Arrangements

Matthew

We discussed this matter when we met on 29 May and I indicated that we would get back to you once we had further input from our Solicitors. I have now received their response and they have reiterated their point - that the provisions of the primary legislation expressly use language indicating that GEMA acts on behalf of DETI i.e. GEMA has not replaced or extinguished DETI’s overall responsibility and interest in the scheme. I think this issue could go backwards and forwards between our legal teams indefinitely - perhaps we should park it at present and return to it if and when the need arises.

As regards the sharing of data, the Solicitors have asked whether GEMA is registered with the Information Commissioner’s Office for the purposes of the NI RHI scheme - perhaps you could clarify this for us? They also raise the possibility of two data controllers – any views?

In any case, it is their view that even were GEMA the sole data controller there is no impediment within the Data Protection Act 1998 which would prevent you sharing applicants details with DETI.

With regard to the assessment of fairness they refer to:

(a) para 1.24 of the Guidance which clearly envisages GEMA sharing personal data with DETI for the purposes of monitoring – applicants could not be said to possess any expectation that their details were not liable (at some stage) to be disclosed to DETI.
(b) The fact that no one has been mislead or deceived as to DETI’s involvement with the scheme when the information was collected
(c) Their inability to identify any conceivable harm to the interests of the applicant – perhaps GEMA could identify the adverse consequences/harm they envisage?

With regard to Schedule 2 they make the point that applicants have applied voluntarily, are aware from the outset that the scheme is a DETI scheme and that it is difficult to envisage what possible ‘prejudice’ would be caused to them by having their details disclosed to DETI. Finally, as regards Article 8 ECHR the Solicitors cannot see how disclosure would bring any risk of contravening this article.

In summary, even if we cannot achieve agreement over the ‘ownership’ of the data, it is the view of our Solicitors that DETI, as the specific public authority with statutory responsibility for the scheme, has a legitimate interest in the scheme and as such there should be no difficulty in disclosing the data to us for a ‘legitimate purpose’.

At present we are receiving some details of applicants. The additional details that we would like access to are - name of applicant, postcode of applicant and the Standard Industrial Classification (SIC code) of business if held. The purposes for which we require the information are (i) to enable us to coordinate the RHI with other NI Department’s funding initiatives to ensure there is no double funding (ii) monitoring take up in relation to our other projects e.g. gas extension and (iii) for the briefing of our Minister – Northern Ireland is a small place and our Minister regularly asks about individual companies.

I would be very grateful if this information could be added to our regular reports. If this is possible then I would be content to park the wider issue for now.

Regards
Fiona

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Annotated by RHI Inquiry
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From: Matthew Harnack [mailto:Matthew.Harnack@ofgem.gov.uk]
Sent: 19 April 2013 17:00
To: Hepper, Fiona
Cc: McCutcheon, Joanne; Hutchinson, Peter
Subject: RE: Admin Arrangements

Fiona,
Thank you for sharing your legal advice on 12 February, and my apologies for such a slow reply. Mary’s maternity leave unfortunately disrupted getting this advice to you, as has Easter and the annual leave I took last week and on Monday.

Our views on this advice are marked up in red below. I’d be grateful if you could consider these points and feed back DETI’s views. I agree that it’s important to try and reach a common view on this issue.

Regards
Matthew

From: Hepper, Fiona [mailto:Fiona.Hepper@deinti.gov.uk]
Sent: 12 February 2013 16:29
To: Matthew Harnack
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter
Subject: Admin Arrangements
Importance: High

Dear Matthew

Further to our recent tele-conference, and with regard to Keith’s e-mail, I provide below the advice of our Departmental Solicitor. The main points made by our Solicitor are as follows:-

Relationship between DETI and GEMA

- It is right to say that the legislative intention (as reflected in the express language of the Renewable Heat Incentive Regulations (NI) 2012 (the 2012 Regulations)) is to refer to DETI. That is not surprising given the 2012 Regulations are Regulations made by DETI and the power to make such Regulations is exclusively reserved to DETI. agreed
- It’s important not to consider the 2012 Regulations in isolation, but to look at those Regulations in the context of the powers contained in the Energy Act 2011 which provide DETI with the enabling powers to make the 2012 Regulations. agreed Section 113 wholly vests DETI (not GEMA) with the powers to make a scheme, section 114 then goes on to provide:
  “(1) GEMA and a Northern Ireland authority may enter into arrangements for GEMA to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions that may be
conferred on the Northern Ireland authority under, or for the purposes of, any scheme that may be established, under section 113.

(2) In this section—

- “GEMA” means the Gas and Electricity Markets Authority;
- “Northern Ireland authority” means—
- the Department of Enterprise, Trade and Investment...” agreed

The language of section 114 makes it clear that within any arrangement (for powers conferred on DETI under a scheme established by section 113 to be carried out by GEMA) GEMA acts “on behalf of” DETI not to the exclusion/replacement of it. It is true that, in practical terms, GEMA may carry out those functions which have been transferred on a day-to-day basis, but in so doing it acts on behalf of DETI (whether or not the view is taken that one now interprets the references to DETI in the 2012 Regulations as references to GEMA - those 2012 Regulations will always have to be read subject to the primary powers under which they have been made i.e. subject to section 114). Agree that the Regulations must be read in the light of the primary powers.

As to the remaining points - although it may be a sterile debate (given that, as the Departmental Solicitor states, GEMA are in practice carrying out the day to day administration of the NI scheme without reference to DETI) the apparent view of the Solicitor as regards “on behalf of” is not shared.

For one thing, purely as a matter of language that term appears capable of having the effect that, during the subsistence of the section 114 arrangements, GEMA steps into DETI’s shoes and effectively replaces DETI in relation to the functions concerned.

Secondly, it seems that must anyway have been the intent: If it were anything less than that, it begs the question - what would that be? and the answer to that, presumably, would be that the Section empowered DETI to enter into a contractual relationship with GEMA whereby GEMA assisted DETI by undertaking specified activities on behalf of DETI as DETI’s agent, but with DETI retaining the full responsibility for the functions conferred on it by the Regulations. However if that were the case it is doubtful that it would be necessary to rely on section 114, as DETI would have the power to do that anyway without the need for express statutory authority. Moreover the arrangements declare that there is no intention to create legal relations (as is necessary for there to be a contract) and that no agency is intended. Indeed it’s suggested that the use in section 114 of the term “arrangements” indicates that the Parliamentary draftsman likewise did not envisage that any contract would be entered into.

Thus the Section must have had some other purpose: It appears that it is included in the Act because it was recognised by the Parliamentary draftsman that, without such a provision, it would not have been lawful to do that which it was contemplated it might be thought necessary/desirable to do, namely for GEMA to have transferred to it the responsibility for carrying out functions which, by virtue of the Scheme, are allocated to and would otherwise fall in law to be undertaken by, DETI.

Why would it not have been lawful to do that? The reason seems to be that, but for Section 114, any such transfer of responsibilities would offend against the rule outlawing “legislative sub-delegation” not sanctioned by an express statutory provision permitting that, i.e. DETI, having been designated under Section 113 as the Authority responsible for administering the Regulations, could not lawfully have divested itself of that responsibility by purporting to pass it on to GEMA.

Thirdly if, as suggested above, DETI does not in effect replace DETI when it comes to exercising the functions GEMA undertakes (i.e. those referred to in the Arrangements as the “conferred functions”, as opposed to those referred to therein as “the retained functions” – which remain with DETI) then it has to be
asked what rôle DETI retains in relation to the conferred functions? Does it share those functions with GEMA and, if so, what is the division of responsibilities between the two and how is that determined? Alternatively, does DETI somehow retain a supervisory role such that, in carrying out the conferred functions, GEMA is answerable to DETI for the way in which it does so or as regards the decisions it takes or obliged to act on any directions issued by DETI in regard to those matters?

It appears clear that these questions have to be answered in the negative. Otherwise it is difficult to see how GEMA could possibly comply with its administrative law obligation to exercise its discretion independently in relation to the functions conferred on it. Moreover it is not at all clear how, in practical terms, such a cumbersome arrangement could possibly work effectively and consequently GEMA could surely not have agreed to enter into the arrangements on that basis.

The terminology used in the administrative arrangements supports that conclusion – e.g. "conferred functions" and (in DETI's case) "retained functions".

Finally it seems relevant to point out that, in the case of the GB Scheme, there is no doubt that GEMA has an unfettered right, and indeed obligation, to carry out its functions independently of DECC. Of course in that case the functions are specifically allocated to GEMA in the Regulations, but it would surely be odd if GEMA's position under the NI scheme were different to that which pertains under the GB Scheme and that does not appear to be the case. It is simply that the legal mechanism whereby that is brought about is different; i.e. in the case of the GBRegs it is the Regs themselves that bring it about, whereas in the case of the NI Scheme it is the arrangements that do so.

- DETI ultimately remains responsibility for the Scheme, it and the DETI Minister remain solely accountable to the NI Assembly for the Scheme. Agreed, but this doesn't detract from the comments above.

Data Protection Act 1998

- In terms of data protection the Solicitor failed to see how there was any problem with DETI being provided with the names of applicants. The rationale for his conclusion was:
  - DETI is and remains, despite any processing of personal data by GEMA, the "data controller" for the purposes of the Data Protection Act 1998 (DPA). As a result there is no disclosure for the purposes of the DPA between GEMA and DETI; or see comments below
  - In any event, even if GEMA was to be considered the "data controller" any disclosure between it and DETI would satisfy the requirements of the DPA. ditto

- The DPA defines the term "data controller" as:
  "data controller" means, subject to section (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed; agreed

- Who is the "data controller" (as opposed to a "data processor") will be determined by the exact nature of the relationship between DETI and GEMA. GEMA has absolutely no control or discretion over the "purpose" for which the data they received is to be processed. It is DETI which is ultimately answerable here, the statutory responsibilities for the making of a scheme have been placed squarely upon it (s113 Energy Act 2011), the scheme has been made by it in exercise of the powers available under s113 of the Energy Act 2011, responsibility for achieving the statutory objectives and it is ultimately accountable to the NI Assembly for how the scheme operates. Deciding where the line is crossed between "data controller" and a "data processor" is often never easy, but it seems to me that a more than respectful argument could be made that DETI remains the "data controller".

This view is not shared by Ofgem: It would be most surprising if, in relation to the GB Scheme, it were
seriously to be suggested (and it seems not to have been) that (merely because DECC retains ultimate responsibility for strategic matters, policy and the Regulations) GEMA was not a “data controller” for the purposes of that scheme. GEMA administers that scheme independently of DECC. In practice this means that GEMA is the authority to which applications to join the scheme are made; GEMA makes plain to potential applicants that data submitted by them to it will be handled and processed by it in accordance with GEMA’s privacy policy and that applicants are deemed to accept that by virtue of submitting their application. If applications are made, GEMA then processes them and, as part of that process, requests from applicants any further information that it requires, decides whether applications are in the proper form, whether eligibility to join the scheme has been established and whether there is any reason prescribed in the Regulations why accreditation should not be granted. It then either accredits or declines to do so. Post accreditation, GEMA checks for compliance with ongoing obligations and, in the event of contravention of any such, considers what enforcement action may be appropriate and takes it. It also of course calculates and makes payments under the scheme.

Against that background (from which it is clear that GEMA’s remit under the GB scheme is very considerable) it would surely be extraordinary if GEMA were not a “data controller” for the purposes of the GB Scheme and the DPA and, given that GEMA’s duties under the NI arrangements are very largely the same and almost as extensive, it’s not clear how the position can be any different in relation to the NI Scheme – notwithstanding that, as discussed above, it is entirely on the strength of the arrangements that GEMA has acquired its NI Scheme responsibilities. For as long as those arrangements subsist, GEMA’s position under the NI RHI is for present purposes no different to its position under the GB RHI.

- The DPA does not absolutely prohibit the disclosure of personal data, it simply requires any disclosure, if it is to happen, to adhere to the data protection principles. agreed In terms of disclosures the focus tends to be on the first data protection principle, agreed but the second principle is being relevant here too. this principle requires any "processing" (which includes "disclosure") agreed to be:
  a)  lawful,
  b)  fair,
  c)  satisfy a Schedule 2 condition; and
  d)  in the case of "sensitive personal data" a Schedule 3 condition. All agreed
- We can ignore (d), the data does not relate to individuals physical/mental health, sexual life, political opinion, religious beliefs, membership of trade unions, the commission of a criminal offence or the existence of criminal proceedings. agreed
- A consideration of "fairness" looks at the circumstances of the case part II of Schedule 1 to the DPA also makes it clear that reference is to made to the method by which information is obtained, whether persons have been deceived to provide the information or have been mislead as to the purposes for which the information is to be processed. In circumstances in which applicants are making the conscious decision to apply to a DETI scheme, I cannot see any unfairness to those persons if their details are subsequently passed to DETI. See comments below In fact, it’s hard to understand how the scheme could operate without such information being passed to DETI. It is doubtful that routinely supplying names and addresses of individuals is necessary for this purpose – see the comments at the end of the next para in relation to how information sharing with DECC is working in practice.

By way of general perspective - there appears to be no question of DETI receiving no information (Ofgem is required, under the arrangements, and subject to any overriding legal requirements, to provide information to DETI in accordance with reasonable requests for same made by DETI) and indeed it is
anticipated that DETI may end up receiving (on request being made by DETI) information of a similar kind and quantity to that which is supplied to DECC under the GB scheme. In that regard it should be noted, as regards legal constraints, that these apply in relation to the GB scheme also and that, as a result, we in particular do not routinely disclose to DECC names and addresses of individuals and, should we receive an ad hoc request for those from DECC, we would first need to be persuaded that to supply it would be compatible with the DPA and section 105(1) of the Utilities Act 2000. Despite this, the information sharing arrangements that have been put in place for the purposes of that scheme (which went live a year before the NI Scheme and under which the total number of accreditations is increasing steadily) are working perfectly satisfactorily and certainly DECC receives information which appears adequate to enable it effectively to conduct strategic oversights of the scheme.

As to the first principle and fairness, Ofgem are not as confident as the Departmental Solicitor that disclosure of names and addresses would not be regarded as unfair. Although the privacy policy does not specifically rule this out and mentions that certain information may be passed to DETI, it does not state specifically that names and addresses may be supplied either and whilst to do so might, in an appropriate case, conceivably be squared with the DPA, it seems doubtful that that would be the case if the request from DETI was made, for example, purely for the purposes of satisfying Departmental curiosity as to the identity of applicants.

• In relation to a Schedule 2 condition, the matter of obtaining consent appears at paragraph 1, however obtaining consent in every case is going to be time-consuming and burdensome, agreed DETI does not need to seek consent in every case. An alternative condition is that contained in paragraph 6, this provides: “The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of the prejudice to the rights and freedoms or legitimate interests of the data subject”

• This balances the legitimate purposes pursued by DETI against any harm that would be caused to the applicants i.e. whose personal data is sought to be disclosed. Agreed Again, in circumstances in which it is the applicant (of their own motion) making the application to the scheme I do not believe there would be any prejudice caused to those applicants in having their details disclosed to DETI.

That seems too simplistic. The applicant, if (s)he wishes to join the scheme, has no choice but to make an application and supply any information required by GEMA for the purposes of processing that information. Moreover, whether or not any subsequent disclosure of that information causes prejudice to the applicant surely cannot be determined by reference simply to the fact that the applicant supplied it at the outset.

Furthermore, it has not been explained what would be the “legitimate purposes” here for which the processing would be necessary. This seems quite a high threshold to meet and it is doubtful that doing so would be straightforward, especially if a considerable amount of other information has been made available. In particular, it must surely be very doubtful, again, that merely satisfying curiosity would constitute such a purpose.

• Our view is that there is no issue with the requirement of “lawfulness”, a disclosure by GEMA to DETI would not be unlawful. It would neither constitute a breach of private life guaranteed by Article 8 of the European Convention on Human Rights or the common law duty of confidence. This would need to be assessed on a case by case basis. It is not possible to lay down hard and fast principles. There is also the question of section 105(1) of the Utilities Act 2000 to consider. Whilst this does not appear to be engaged in relation to the DETI scheme, it would be interesting to hear whether the departmental solicitor agrees with
that and in any case whether, to his knowledge, there is any equivalent NI legislation.

- In these circumstances a disclosure between GEMA and DETI would be fully capable of satisfying the requirements of the DPA. See comments above.

As mentioned above, it seems that the second part of the second data protection principle is also relevant: That provides that, to determine whether disclosure of personal data is compatible with the purpose(s) for which the data was obtained, regard is to be had to the purpose or purposes for which the personal data are intended to be “processed” (defined very widely in the Act) by any person to whom they are disclosed. This bears out the view that GEMA should not routinely disclose personal data and that, before doing so, a case by case assessment would be necessary in order to determine whether a disclosure of personal details to DETI was lawful.

I would be grateful if you could consider each of these arguments and provide us with your response. I feel it is very important that we address these issues so that, going forward, we each have a clear understanding of the legal relationship between us and what that means in terms of the exchange of data and the administration of the Northern Ireland scheme.

Regards
Fiona

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Please consider the environment - do you really need to print this e-mail?

From: Keith Avis [mailto:Keith.Avis@ofgem.gov.uk]
Sent: 30 January 2013 13:48
To: Hepper, Fiona
Cc: Mary Smith; McCutcheon, Joanne; Hutchinson, Peter; Matthew Harnack
Subject: RE: NIRHI: Administrative Arrangements

Fiona

As promised, I can now respond to your question.

In Ofgem’s view the reason DETI and not the Authority are referred to in the Regulations is because that is what the relevant legislation calls for. You could not in our view lawfully have referred to Ofgem in the legislation, so it is right that this did not happen. This is the case with or without signed arrangements.

Nevertheless, the Ofgem position is that most of the functions which the Regulations allocate to DETI now fall to be carried out by Ofgem. This is because the signed arrangements, which were entered into under the same legislation, provide for that to be the case. The practical effect of the signed arrangements in our view is that, in relation to the functions transferred to Ofgem under the arrangements and for as long as the arrangements are in place, the Regulations have to be read and given effect to as if they referred to the Authority
other reasons why you would like the information, but they are for extraneous purposes other than monitoring a review of this scheme. So, can you give your observations on that, please?

Ms Hepper: Certainly, I mean, this was our first thinking through why we would want extra information, and I think any one of those is a good reason for getting the particular information. We then move into a position where we have a number of companies actually getting their first payments. We had five companies getting their first payment in June, and 11 more over the summer period starting to get their first payments. And our view was, “Well, look, if we can get hold of this information, we’ve already asked for it for these purposes. We can extend that usage”, albeit we’d tell Ofgem what we were doing it for, to actually start to look at what sectors are these companies in and is there any pattern or trend starts to emerge over the next months and years in terms of usage by certain sectors or is there any groupings of clusters of installations. And we would be interested why that is, and what’s going on there and whatever and also the what I call the softer side of things on the promotional side of things because we were, you know, promoting the scheme. We had the campaign during the first year. Are there any gaps in Northern Ireland where either — and for what reason are there gaps? It might’ve been that it’s an area where there was a gas extension going in and people weren’t interested, or, you know, was there just — or was there no industry there or whatever — just to see and get a feel for what is the lay of the land out there, what’s happening with the scheme on the ground, and we would’ve used that in our regular monitoring, but I would’ve also seen that that then — that monitoring information and that additional disaggregation — would’ve been fodder for the review in 2014.

Mr Scoffield QC: You’ve made a number of points there. One of the points that you’ve made is that each of the reasons given here you feel was a good and sensible and defensible
reason for asking for the information.

Ms Hepper: Absolutely, yes.

Mr Scoffield QC: Leaving that aside for the moment, would you accept that it’s not made clear in this email that you want it for the purpose of conducting a review, which you mentioned just a moment ago?

Ms Hepper: No, we don’t specifically mention the review, but either around this time or certainly in the run-up, you know, to the autumn when, you know, our minds were thinking about further analysis or whatever, this was something that, if we got extra information, it was all going to be quarry for the review. And, again, I think that is a bona fide, legitimate reason for having the information.

The Chairman: It is, but it’s not a reason you gave.

Ms Hepper: No, no, not at this point. Not at this point.

The Chairman: And it’s a good reason for the Minister’s curiosity, is it?

Ms Hepper: Well, what we needed —. What we did want was, if the Minister got invitations to visit companies or whatever, we would produce a briefing, we would be asked to input to a briefing, and, you know, it would be useful to tell her that this was a recipient of the RHI in case matters of renewables came up in conversation when she was out at a meeting with them.

The Chairman: The:

“briefing of our Minister — Northern Ireland is a small place and our Minister regularly asks about individual companies.”

Ms Hepper: This is the point I was making that, you know, a number of times the Minister was out at events and a businessman or lady would say, “I’ve applied”, or, “I’ve been accredited”, or, “I’m on the scheme” — whatever — and she would come back and say, “Is that so?” and, “Any issues?”.
The Chairman: If there was any point in the DPA material, it’s very difficult to see how the Minister’s personal curiosity stemming from the small size of Northern Ireland would begin to be a valid reason.

Ms Hepper: Well, I think it’s more than curiosity. It’s in her role as economy Minister and dealing with companies. I think it’s a legitimate reason, you know, that she should be aware if it’s relevant to the meeting that she’s going to or the visit that she’s going to that this company is availing of a scheme that is within her responsibility.

3:00 pm

The Chairman: Well, weak though that reason is, it’s not put in that way. It’s just, “She regularly asks about individual companies”.

Ms Hepper: Maybe that’s my fault for the way it’s drafted. But there was conversations around this as well; there wasn’t just that email.

Mr Scoffield QC: Just picking up on that final point, can you remember any of the individual companies that the Minister was specifically asking about?

Ms Hepper: Hmm, I’ve a couple of names in my head, but I don’t know whether it’s because of this or other things, so I’ll not say. I know one of them: she had the invitation from Sheridan Hood, you know, and they were a legitimate beneficiary of the scheme.

Dr MacLean: What was the situation with the NIRO? Would she have had access to information about who was a beneficiary of that?

Ms Hepper: I’m not sure. That scheme was administered by the two regulators. But, I mean, she would’ve been, hmm, she would’ve been out and about at times, and we would’ve been able to tell her certain companies, you know, who were beneficiaries because they’d been in touch with us.

Dr MacLean: But not through access to —.

Ms Hepper: I’m not sure through access to that. It might well have been, but I know that
there was a lot of companies would’ve been in contact with the branch. And some of the
bigger utility-type companies who were setting up wind farms etc, she would’ve been aware
of that, and, indeed, asked to go and open some of them etc, etc.

Dr MacLean: But you hadn’t been through similar debates with the regulator here about
gaining access or —.

Ms Hepper: No. No, we hadn’t. We would regularly have got, I think, monthly or quarterly
information on the take-up and the amount of electricity —

Dr MacLean: But not about postcodes or —.

Ms Hepper: — but we didn’t go through all of that with them, no.

Dame Una O’Brien: Can I just ask do you recall the Minister asking you, “Has company X
got their accreditation yet?”?

Ms Hepper: Hmm, I’m not —. No, I don’t think she would’ve been that specific, but she
would maybe have passed a comment, you know, “I was at such-and-such event” or it would
come through the private sector, “The Minister was at such-and-such an event, and this
company said they were applying for the RHI or they had been accredited for —”. I can’t
remember the specifics, but it was more, also, that, if she was going out to a particular
company, we would sometimes have got a request from the private office for — as would
other divisions — you know, “Has there been any —? Is there any activity around this
company that the Minister should know about? Any issues?”.

Dame Una O’Brien: I only ask that because, just reading it, the obvious reading of it is
that you need to know because you’re under pressure to make sure that certain companies
get their boilers accredited.

Ms Hepper: Oh, absolutely no, no, no. Let’s get that out on the table. Absolutely not.
Absolutely not.

Dame Una O’Brien: I do think it’s important to just clear that up because —
Ms Hepper: Absolutely. I can clear that up.

Dame Una O’Brien: — others reading it could read that into it.

Ms Hepper: No. The Minister would not have been involved in any part at any time of that process; that accreditation process was entirely for the professionals in Ofgem.

Dame Una O’Brien: So when you say, “asking about individual companies”, you’re referring to the way you described it earlier, a few moments ago, which is relating to visits.

Ms Hepper: Yes, exactly.

Dame Una O’Brien: Is that correct?

Ms Hepper: Exactly. That is it in its entirety, yes.

Mr Scoffield QC: So you didn’t think that this Minister had an unusual or surprising interest in any particular company?

Ms Hepper: Absolutely not.

Mr Scoffield QC: I want to move on from this email to OFG-148028. That’s OFG-148028.

And this is an email — just the second email on the page, if we focus in on the top — from Peter Hutchinson. This is now at the end of August 2013, and it’s to Teri Clifton, who’s the official in Ofgem that you mentioned who’s now, I think, leading the operational team there.

And he says:

“We receive weekly reports ... these are very helpful, however as we discussed when we met it might be helpful to have additional information (post code of installation, name of applicant / company etc) depending on whether we can sort data protection issues.”

And then he goes on to discuss something else. The same point really is made there. There’s no fleshing out of the reasons as to why that is needed in terms of some of the things which the evidence that the Inquiry has now seen suggests this information would’ve relevant to, so: review, monitoring, the issue of multiple boilers and how they were treated. Now, you made the point a few moments ago that that wasn’t expressly raised in your email of the 3rd
of July. Can you remember: were those reasons ever advanced in the discussions with

Ofgem, either in writing or —?

Ms Hepper: I don’t think the multiple-boiler issue would’ve been, cos that wouldn’t have
been necessarily on our radar; but, the other issues, I would be fairly sure that, in
discussions, they would’ve come to the fore, particularly as we advanced, you know, into the
last quarter of 2013.

The Chairman: Why would you not put them in writing, then?

Ms Hepper: Um —.

The Chairman: Forget the multiple boilers. Why not say, “We want them to decide
whether these people are in agriculture or car sales or hotels or care homes”? It’s
straightforward.

Ms Hepper: No, no, absolutely. We’d assumed that when you asked for the standard
industrial classification that’s exactly what that is. So, maybe we just didn’t —. We thought
that that had been articulated well enough. We want the industry classification. So, what is
that? It’s the, um, er —. Is it agriculture? Is it hotels? Is it care homes? Is it whatever?

The Chairman: Well, that’s what you asked for in the one we looked at just a moment
ago, but instead of giving that breakdown, you talked about the Minister’s curiosity or where
the place was. This one actually doesn’t specifically refer to that industrial classification.

Ms Hepper: No. It —.

The Chairman: It says postcode, name of applicant, etc, company. And that does need
fleshing out, but it didn’t come.

Ms Hepper: No, and the way Peter’s written it, you know, and the etc, you know —. We
had been round this a number of times with them, and, you know, they knew what the issue
was, and I think that’s just a shorthand, so —. I mean, it was —. We felt we had articulated
what we wanted; we felt we’d given some reasons why we wanted it. If there’d been any
would have been going to different places and bump into people who said, “I’ve got an
application in” or “I’ve just been accredited”. And sometimes she’d come back and say, “Was
that the case? Well, that sounds interesting. That sounds good”. And one of the ones was
there was some big event — one of the big golf championships — and the Minister was
going to formally open it in her tourism Minister capacity, and they had let it be known that
they were either a recipient of or an applicant to, and we just wanted to make sure that, you
know, if this is raised with the Minister in conversation that she’s appropriately briefed.

Mr Scoffield QC: I think just on that, maybe by way of parenthesis, I think the panel has
maybe heard a bit about that from Mr Hood. That was the Northern Ireland Open golf —

The Chairman: Portstewart.

Mr Scoffield QC: — championship at Galgorm.

The Chairman: Oh, Galgorm, yes.

Mr Scoffield QC: And I think that was the event where Mr Hood got his certificate from
the Minister for being the first accredited applicant.

But that moves on to the next topic that I wanted to address with you, because it ties in
with this theme about why you were asking for this information. And, again, what I want to
do is —

Dr MacLean: Is it still data sharing?

Mr Scoffield QC: — yes — is explain to you what Ofgem’s analysis of this issue is in terms
of its interaction with the Inquiry and then ask you to comment. And on this issue, I don’t
think there is any dispute that DETI was asking for postcode and industry classification
information in relation to applicants, but Ofgem’s view on that is that DETI didn’t explain at
the time why you wanted this information. Or, insofar as you did, it wasn’t explained to
them in a way such that it was made clear that DETI wanted the information to monitor the
scheme. Certainly, not to monitor in relation to the issue of multiple boilers nor in relation to
a planned review of the scheme.

They say when the request was made there were other reasons which were given which
were much less compelling than those reasons that I’ve just mentioned, and reasons which
would have given them more concern about sharing the information with you, in terms of
their compliance with data protection obligations. OK. So, that’s —

Ms Hepper: Uh-huh.

Mr Scoffield QC: — the Ofgem analysis of this.

And, in particular, one of the documents that they rely on in that regard is your email of
the 3rd of July, which we mentioned a few moments ago. You’ve had the meeting with Mr
Harnack, and then you send an additional email specifying this information which is being
sought. And we find that at OFG-148029. Again, I think we have it included in the bundles in
a number of places. If you’re using the numbering in your witness file, you’ll find it at page
2768. And, really, for present purposes, I want to look at the penultimate paragraph of that
email, and it says:

“At present we are receiving some details of applicants.” —

this is July 2013, as I mentioned a few moments ago —

“The additional details that we would like access to are - name of applicant, postcode of applicant and the
Standard Industrial Classification (SIC code) of business if held.”

And then you say:

“The purposes for which we require the information are (i) to enable us to coordinate the RHI with other NI
Department’s [sic] funding initiatives to ensure there is no double funding (ii) monitoring take up in relation
to our other projects e.g. gas extension and (iii) for the briefing of our Minister — Northern Ireland is a small
place and our Minister regularly asks about individual companies.”

And the point that has been drawn to the Inquiry’s attention in respect of this email is that
this email doesn’t say, “We need this to monitor our own scheme”; it’s giving a range of
Mr Nolan: Yes. No, I think that’s a fair comment. I mean, my sense on the data protection issue, or on the DSP, was that DECC had an automatic right conferred by legislation.

Mr Aiken: Yes.

Mr Nolan: When DETI asked Ofgem for some of this information, Ofgem said there were data protection issues, “Why do you want it?”. My sense would be again this is — I’m not quite sure of all the specificity — they said — well, I think the first example was, “The Minister is coming. The Minister is making a speech at place x. We need it for that”. And I think Ofgem kinda went, “Well hold on, I’m not sure if it’s the right purpose because there are data protection issues”.

Then a process took place which Ofgem — which took too long, and I think much of that lies with Ofgem, yes. I mean, I think there were genuine concerns about what did DETI want it for: data protection concerns are not trivial. But it took too long to put the DSP in place.

The Chairman: Are you referring to information and factual results arising from the inspection of installation and accreditation and so on?

Mr Nolan: Um, sorry, I think I’m referring to the — these are postal codes?

Mr Aiken: You were: scheme applicant information. That’s what —

The Chairman: Yes.

Mr Aiken: — I took you to be acknowledging —

Mr Nolan: Yes.

Mr Aiken: — took too long to sort out. It is the case, and it’s been made explicitly clear by Ofgem, including in a recent annex to a letter I received yesterday, lots of information was being transferred.

Mr Nolan: Yes.

Mr Aiken: So that’s not the subject I’m addressing.

Mr Nolan: OK.
Mr Aiken: Well, there was still a data-sharing protocol in England. It has two lengthy pages of the reasons why scheme applicant information was required. We’ll leave today getting into with you if that had been provided to DETI: they could’ve changed the name at the top and sent it back and say, “There’s all the reasons. Can we have the information?”.

That’ll be something for another day, but your point, ultimately, in this, as I understand it, is: could’ve been done better; should’ve been done quicker.

Mr Nolan: Could’ve been done better and should’ve been done quicker; I do acknowledge that, um, but my sense was, again, that really for quite a while, Ofgem had no idea, or no particularly clear idea, as to why it was wanted.

Dr MacLean: Mr Nolan, you mentioned there:

“ambiguity” in comparison to the situation in GB. Is that suggesting that it wasn’t black and white; that it was definitely needed that —?

Mr Nolan: I suppose I’m saying — again, slightly vaguely — but I’m saying Ofgem, I think, would’ve reacted in saying, “Well, if you want specific data, we need to know why because there are data protection issues”. As to whether it was needed or not, I’m not sufficiently over the details. My understanding is DETI made a request; Ofgem said, “Why do you want it?”, and then iteration took too long.

Mr Aiken: There are a series of —.

Mr Nolan: I don’t know what —. Sorry, excuse me. I don’t know what it was for and I don’t know the specific purpose.

Mr Aiken: It was just your use of the word “ambiguity” is suggesting that it wasn’t necessarily even clear what was needed or not.

Mr Nolan: Um, actually, in that case, I’m not sure about that. Sorry, my apologies. I’m not sufficiently over the detail to say whether or not —. DETI asked for it. Whether it was
you’ve got the scheme up and running, just so that the panel understand —. As I said to you,  
I’m not getting into whether it’s the right view or not, but, based on how you were seeing  
matters, once the scheme is up and running and this is the scheme that we’ve got, and we’re  
running it — save these four things that we’re not dealing with — if we identify problems  
with the scheme and it’s running, even though the policy function, you said, remains with  
DETI, is it Ofgem’s responsibility to tell DETI what those problems are so that they can look  
at them?

Mr Porter: Well, um, it’s slightly difficult without concrete examples, but, yes —.

Mr Aiken: Take the tiering as an example. Let’s say we’re running the scheme —. So, the  
administrative arrangements are signed. Somebody like Mr More realises, “Hold on a  
minute” — six months in — “this doesn’t have tiering. That is a potential fraud scenario  
might arise, or an abuse scenario might arise, or a heat-wastage issue might arise”. At that  
point, given that the functions are with Ofgem, is it Ofgem’s responsibility to tell DETI so that  
DETI can then take the steps, or is it DETI’s responsibility to fin—? Do you see what I’m  
getting at?

Mr Porter: No. I mean, I think that joined-up government demands that, if, in the course  
of our administration of the scheme, something arises that looks as if it’s gonna cause a  
problem, whether it’s tiering or anything else — something that we perceive to be significant  
—

Mr Aiken: Yes.

Mr Porter: — then, yes, we should pass it on.

The Chairman: Well, that’s what happened on the ground, wasn’t it? Mr Ward had a  
conversation with Mr Hutchinson, telling him that there was an enormous — there was 90%-  
odd less than 100 kilowatts, and the usage, the load factors, were not 17%; they were 40+%.  
That came from you; from Ofgem.
Mr Porter: Yes.

The Chairman: Yes.

Dr MacLean: Can I ask, with respect to a separate issue, namely one that you, only Ofgem, would’ve been able to know about, which was multiple boilers on a single site, because, under the definitions of data protection that you were imposing, you were not prepared to share addresses, postcodes and so on, which would mean that it would be impossible for DETI to identify an issue relating to multiple boilers, so, under those circumstances, you were the only party capable of spotting the issue, are you saying that the arrangements meant that that was clearly Ofgem’s responsibility?

Mr Porter: Well, I’m at a slight disadvantage in regard to the postcodes issue because I don’t think I was involved —.

Dr MacLean: No, it’s the principle, not the —. So, the —. You are the only —. By your definition and the conferred powers that you have, and the situation that comes to pass with regard to your inability to pass on particular information about addresses and so on to DETI, that meant, in practice, you were the only party capable of identifying and potentially dealing with issues without breaching data protection.

4:15 pm

Mr Porter: That sort of makes sense, yes, because if the information was within our possession and nobody else’s —

Dr MacLean: So, in that —.

Mr Porter: — we would have to —.

Dr MacLean: In that specific regard, you would have a much clearer obligation to raise the issue in some way with DETI because you would know, by definition, that DETI would have no way of knowing what was going on.

Mr Porter: Yes, I mean, again, I’d say it would depend on the exact facts but, yes, on the
face of it, that seems right.

Mr Aiken: I think the multiple boilers is a point I’d be coming to with you in due course, but it’s an illustration of the way the data was communicated meant, by looking at the spreadsheet, you wouldn’t have known necessarily that I had eight boilers on the list. All of the installations are listed but you couldn’t tell from that spreadsheet that there were eight of them that were mine in order to then say, “Hold on a minute, should he have eight boilers? Is that what we meant to happen?” And the point that Dr MacLean is making is, if Ofgem are the only people who know that, then, perhaps that evidences the point I’m trying to discuss with you, that that’s information that would have to be conveyed in a form that DETI could understand. Equally, you could come back and say, “Well, DETI could ask about multiple boilers if they saw that as an issue”, but what I’m getting at is where the responsibility lay based on how you saw matters. It doesn’t matter whether you’re right or not; I’m trying to just work out with you what the practical effect was of seeing matters as you did.

Mr Porter: What, in terms of passing on information?

Mr Aiken: In terms of, “If we are running the scheme, there’s a problem with the scheme, do we have to tell DETI? Is it our job to be watching for problems and, if we see them, to tell DETI about them?”.

Mr Porter: I think it’s part and parcel of our obligation as a government Department administering a scheme in conjunction with another government Department to be on the alert for issues arising, problems that may have long-term implications and, at the very least, considering whether they should be raised with the other Department, and almost certainly I would have thought doing so, but it’s rather difficult in the abstract.

Dame Una O’Brien: Mr Porter, what you’ve just said there is absolutely common sense. Do you think that that is reflected in the administrative agreement?
Mr Porter: In the arrangements?

Dame Una O’Brien: Yes, in the arrangements, because the way it played out was not, in practice, necessarily always the way you describe.

Mr Porter: Um, it certainly hadn’t occurred to me that the arrangements were prejudicial.

Mr Aiken: Well, in fairness to you, I want to show the panel, then, regulation 5.2, which is OFG-18387. And that’s why I said to you I want to understand what you understood was to happen, and then the panel will have to look at, with witnesses, whether seeing it as you did in fact that actually happened in practice. But looking at 5.2, we can see that one of the obligations:

“Where either party” —

so either DETI or Ofgem —

“becomes aware of any actual or proposed amendments to or re-enactments of the Regulations or the Guidance, or that there is a need to effect such amendments or re-enactments, it will be responsible for informing the other Party as soon as reasonably practicable.”

So, that seems to, on one view and potentially consistent with your legal view of the conferring of the powers, meant that, in practical terms, where Ofgem saw a problem, they should be telling DETI about it.

Mr Porter: Yes, well —.

Mr Aiken: Aside from the common-sense wisdom of doing that, but that’s the outworking of your legal position. Is that right?

Mr Porter: Yes. I’m not sure it would be any different under the GB regulations. I don’t think it would.

Mr Aiken: But you saw that legal relationship in —

Mr Porter: The same way.

Mr Aiken: — the same way. Yes. So, what I’m saying is the outworking of your position is:
Nevertheless, DETI of course has the ultimate responsibility for policy formulation and for giving effect to that policy in the NI Scheme.

In addition to the functions in regulation 51 of the NI Scheme which, as mentioned above, are being retained by DETI, they also retain under the Arrangements the obligation to publish annually tariffs updated in accordance with RPI, recovery of overpayments as a civil debt where that is thought appropriate and statutory review of decisions made by the Authority where an applicant requests that.

**NATURE OF THE AUTHORITY’S OBLIGATION TO SUPPLY INFORMATION TO DETI AND APPLICABLE LEGAL CONSTRAINTS**

Instead of provisions in the NI Scheme Regulations obliging the Authority to supply information, what we have instead, in the Arrangements, are provisions whereby -

(a) we are required to supply DETI with whatever information they need to deal with any civil debt and statutory review cases (see above); and

(b) we must provide such other information as DETI may reasonably request and which GEMA may hold in relation to the “conferred functions” (i.e. those not retained by DETI as mentioned above).

Both requirements are subject to an overriding requirement that the Authority will at all times act in accordance with the law. This is as per the GB Regulations, the only difference being that the Arrangements specifically advert to the legal constraints in this way.

My assumption is that the automatic obligation to supply information for the purposes of repayments and reviews is unlikely to occur frequently and that, consequently, the requirement will not in practice normally require our consideration.

As to any other information, in my view the position is effectively as it would be under the GB Regulations if regulation 53 were omitted and only regulation 54 included. In other words, information should be provided only in response to a prior written request for it.

This means that the initiative in relation to the supply of information must come from DETI – though doubtless following discussion with us, just as is the case under regulation 54 of the GB Scheme.

Thus we are not obliged to volunteer any information to DETI under the Arrangements but rather only to provide it as and when they reasonably request it under the provisions referred to above. Moreover, I would strongly advise against choosing to volunteer such information as it is doubtful that we have the necessary legal powers to do so.

However, as with the GB Scheme, repeated requests may be avoided if the initial request is made in terms that make clear that what it is also desired that the information being supplied is supplied again at specified intervals in the future.

The need for a request is effectively one of the legal constraints mentioned above. Others are as outlined below and, again, they are largely common to the two Schemes.

As already indicated, certain information should not be collected or disclosed under the NI Scheme (or indeed the GB Regulations):

In particular, we should collect information only because we consider it necessary for the purposes of our administration of the NI Scheme, e.g. to process applications for accreditation, not because we anticipate that the information may be of interest to DETI. There is a risk of contravening data protection principles (see below) otherwise and going beyond our legal powers.
Policy: Multiple installations

- A number of unintended developments have been encountered through RHI audits
  - Multiple <200kWth systems are being installed on the same site to maximise RHI payments i.e. poultry sheds
  - System design is geared towards decentralised heating systems
  - Example of heating system being hydraulically separated but feeding same heating unit

- These above issues represent a significant financial cost to the programme in terms of RHI payments. Also represent burden (increased costs) to Ofgem administration.

- **Ricardo-AEA recommendations**
  - The definition of site boundary should be changed. Multiple installations on one site/property should be regarded as a single RHI installation. Applicant retains flexibility for multiple or individual boiler, total capacity of boilers sets tariff payment levels.
  - Defining site boundary would negate the need to define a heating system in further detail i.e. to amend regulations for hydraulically separated systems in Hereford case. This would be regarded as one installation as it is on the same site.
Overview of audit programme to date

- Audit programme started April 2012.
- 232 audits carried out (April 2012 - September 2013)
- 85% of sites audited are solid biomass
- 107 out of 232 sites were non-compliant (47% non-compliance rate)
Key statistics and trends to date
Non-compliance statistics

Non-compliances Q1-Q6

- Lack of biomass fuel records
- Heat Meter installed incorrectly
- Accredited as simple when it should have been complex
- Boiler output higher than rating
- Meter not calibrated (glycol)
- Significant schematic discrepancy
- Building not fully enclosed
- Flow meter reading incorrectly
- Ineligible heat use
- Meter reading anomalies
- Temperature probes installed incorrectly
- Other

Key messages:

- Lack of biomass fuel records a significant issue for self suppliers
- In Q5/6 53% of non-compliant sites failed to maintain fuel records (due to multiple non-compliances on the same site it is a lower percentage of total NCs).
- We have not seen much of a drop in non-compliance pre and post RHI go-live (53% vs 43%)
Observations

The majority of audits have at least one observation identified

Q4 observations

- IRMA does not accurately reflect the situation on site
- Lack of awareness regarding maintenance requirement for heat meters
- Minor schematic discrepancy that does not affect payments
- Serial number discrepancy
- Small amount of inhibitors in system but there are no details of effect they might have on heat meters and accuracy
- Minor (<10kW) capacity discrepancy
- Lack of commissioning certificate/commissioning certificate discrepancy
- Periodic data submission errors previously notified to Ofgem

Key observation messages

- Three main observations consistently are identified
- Opportunities for Ofgem E-Serve to focus communication messages to reduce levels of observations identified
- Opportunities to improve process checks to clarify application data i.e. minor capacity discrepancies.
RHI auditing case studies
Case studies - milking parlour

Unenclosed farm buildings

Convection heater

Open spaces

Milking robot

Example highlights a range of issues
- Buildings not being fully enclosed
- Metering arrangement inappropriate
- Wider policy issues surrounding definition of useful heat.
Case studies- fully enclosed buildings

- Definition of a fully enclosed building has caused challenges to auditors and F&C

Cases of good and bad practice observed. Similar installation audited on the same day for a warehouse application had a motion sensor fitted.

Should doors that are open most of the time but can be closed be allowed under the RHI?
A challenge facing Ofgem and Ricardo-AEA is the technical understanding of participants. Important to realise that in many cases participants have very little understanding of renewable heating technologies.
Challenging audits

Issues identified:
- Participant has hydraulically separated heating system
- Multiple boilers heating same space
- External heat losses (classed as simple)
- Participant’s own records indicate a higher heat output than stated on boiler nameplate
- Authorised signatory is also system designer

Wider implications:
- Example of a participant reading the guidance documentation and identifying loopholes
- Policy development, this installation is an example of a system designed to maximise RHI benefits, would not have been designed this way without RHI.
Challenging audits - agricultural site

- Highest number of issues to date from one audit:
  - 7 non-compliances (incl meter installation issues, major schematic discrepancies)
  - 7 observations

Potato grading shed being heated
Gap in wall 1.5m high
Undisclosed fan coil units

Straw bales waiting to be burnt
Farmhouse heat meter located 50 m away from farmhouse

The auditor also encountered a dispute between the IRMA author (also the installer) and participant. Difficult to know who was correct.
Plenty of good practice examples exist

- Many sites represent good practice across range of scales. One example, Glen Avon Growers, audit identified no observations or non-compliances.
- Heat provision to greenhouses for cultivation of salads
- Site also had large gas boiler, coal fired boiler and gas fired CHP

Boiler configuration, biomass boiler 2.8MWth

Oil seed rape straw bales being loaded into boiler
Grey areas and policy recommendations
Grey area: Discrimination of useful heat

- Current regulations have a broad definition on ineligible heat use, for example outdoor swimming pools and heating outdoor spaces. No definition of useful heat.

- Audit identified that solar thermal installation was connected to underfloor heating system (not shown on schematic).
- The participant had used this during wet summer of 2012.
- Regulations do not prohibit internal heating of properties providing they are an eligible heat use
- Creating heat demand which would otherwise not exist.

- Participant is chipping and drying biomass (alongside other drying functions i.e. grain)
- In this case selling heat used for drying to customers
- Several examples where participants are drying biomass to be used in RHI installations and claiming RHI on the heat used for drying.
Policy recommendation useful heat

- The RHI policy development should consider whether a definition of useful heat should be introduced. Examples which are (probably) allowed under current regulations:
  - Heating an eligible installation over the summer (i.e. underfloor heating user solar thermal)
  - Heating a agricultural building housing livestock
  - Heating a milking parlour
  - Drying biomass feedstock to be used in RHI installation
- Ricardo-AEA has experience of defining useful heat from CHPQA. Definition below is taken from the EU Energy Efficiency Directive (2012/27/EU) as follows:
  - ‘useful heat’ means heat produced in a cogeneration process to satisfy economically justifiable demand for heating or cooling (Article 2, Paragraph 32)

  Equally “economically justifiable demand” is defined as follows:

  - ‘economically justifiable demand’ means demand that does not exceed the needs for heating or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration (Article 2, Paragraph 31)
Ricardo-AEA recommendations to reduce number of observations and low risk non-compliances

Accreditation checks
- Small biomass heating capacity discrepancies can be checked through referring to fuel type to be used
- Referring to the milking parlour example for some agricultural properties it could be worth requesting photographs of buildings that will be heated
- Do these buildings have an eligible heat load?

Communication with accredited participants
- Generic finding is that Volume II of the Ofgem E-Serve guidance has not been read by participants.
- Most schemes are relatively simple so key points from Volume II are:
  - Lack of biomass fuel records
  - Lack of awareness surrounding heat meter maintenance
  - Unaware of frost corrosion inhibitors
- Opportunity to make target guidance i.e. by technology to be issued as part of accreditation
Minor capacity discrepancies

- Opportunity to remove minor errors in capacities where participants are stating the incorrect capacity figure on application form
- Issue impacts payments through Tier 1 threshold for biomass boilers normally in applicants favour
Policy: Multiple installations

- A number of unintended developments have been encountered through RHI audits
  - Multiple <200kWth systems are being installed on the same site to maximise RHI payments i.e. poultry sheds
  - System design is geared towards decentralised heating systems
  - Example of heating system being hydraulically separated but feeding same heating unit

- These above issues represent a significant financial cost to the programme in terms of RHI payments. Also represent burden (increased costs) to Ofgem administration.

- **Ricardo-AEA recommendations**
  - The definition of site boundary should be changed. Multiple installations on one site/property should be regarded as a single RHI installation. Applicant retains flexibility for multiple or individual boiler, total capacity of boilers sets tariff payment levels.
  - Defining site boundary would negate the need to define a heating system in further detail i.e. to amend regulations for hydraulically separated systems in Hereford case. This would be regarded as one installation as it is on the same site.
General experiences from RHI auditing

- Most installations are less than 500kW\text{th}. Participants generically have very little understanding of technology or heating system.

- Very few cases of suspected intentional fraud (less than 5 examples)

- Most non-compliances arise from a lack of understanding by the participant, installer or IRMA author.

- Dealing with non-compliances should ensure consideration of this lack of technical understanding. Can direct correspondence with participants be introduced to speed up issue resolution?
Next steps
Next steps for audit programme

- Ricardo-AEA are carrying out 122 audits over the period October 2013 to March 2014

- Looking to implement Ofgem E-Serve Technical Audit Assurance Categories to audit findings

- Ofgem E-Serve Audit team planning to select more pre-accredited sites for audit in place of some accredited sites

- Extending checks being covered to include
  - Additional metering questions
  - Vents
  - Pipework
  - Biomass Air Quality
Questions and wider discussion
Northern Ireland RHI Audit Programme

Introduction

Ricardo-AEA was commissioned to undertake five non-domestic RHI audits in Northern Ireland during March 2014. All the audits related to solid biomass installations. The audits followed the same steps as those undertaken by Ricardo-AEA across Great Britain for Ofgem. The five sites selected for audit were of comparable size but varying complexity and geographical location, see table 1 below.

Table 1: NIRHI installations audited

<table>
<thead>
<tr>
<th>NIRHI no</th>
<th>Installation name</th>
<th>Technology</th>
<th>Size (kWth)</th>
<th>Complexity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Solid biomass boiler</td>
<td>97</td>
<td>complex</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Solid biomass boiler</td>
<td>99</td>
<td>complex</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Solid biomass boiler</td>
<td>99</td>
<td>complex</td>
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<td></td>
<td></td>
<td>Solid biomass boiler</td>
<td>40</td>
<td>simple</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Solid biomass boiler</td>
<td>99</td>
<td>complex</td>
</tr>
</tbody>
</table>

Audit findings

No non-compliances were identified at any of the five installations and three installations had no observations either.

The two observations identified were minor points:

- No boiler nameplates fitted
- Not complying with a non-standard condition relating to the biomass boiler and oil boiler operation. However, the auditor identified that given the metering configuration this would have no impact upon meter readings and so this was raised for Ofgem information only.

It is positive that the audits identified just a couple of minor observations, which is much lower than identified during audits in GB. When comparing the findings to GB, the following factors may help explain the results of the Northern Ireland pilot.

Key non-compliances in the GB audit programme have been around maintaining biomass fuel records, and the use of waste wood with fossil fuel contamination. Of the five Northern Ireland audits all were utilising biomass wood pellets supplied by Balcas Brides. This meant that all sites were using a uniform biomass product and had purchase invoices to hand. The greater problem in GB has been with sites using other forms of biomass to wood pellets, particularly self-supply and in the wood working sector.

A second feature of the Northern Ireland audits is that they were generally small and had one or two heat meters only, consequently they were less complicated compared to some of the audits in GB.

Finally it should be caveated that a sample selection of 5 sites is very small and so it is difficult to comment on whether these findings are representative of the installations installed...
do If you want us to do more, that’ll cost more money. Do you know at any stage if the
actual audit report coming back from Ricardo was actually provided to DETI?

Mr John: Not that I’m aware of.

Mr Aiken: Is there any reason why it shouldn’t’ve been?

Mr John: I can’t see any reason why it wouldn’t be shared.

Mr Aiken: So, if it wasn’t shared, is that something you think ought to have happened?

Mr John: In hindsight, potentially. It just, you know, wasn’t practice.

Mr Aiken: Do you know why it wasn’t practice? These reports are being carried out — or
the audits are being carried out to inform whether the scheme is being complied with. Why
wouldn’t the report of that be provided to the Department who owns the scheme?

Mr John: [Short pause.] I don’t know. Potentially, you know, they could’ve been. It was
something that I picked up from a process point of view; I inherited. It was not something
that changed until much further down the line.

The Chairman: I’m not sure of the answer to that. Is his answer they could’ve been or
they weren’t?

Mr Aiken: Do you know that they were?

Mr John: I’m not aware of whether they were or whether — whether examples were
shared or not.

Mr Aiken: Right. I haven’t found — the Inquiry, to date, has not found examples of this
type of report being shared, but it’s something that Ofgem can look in further —.

The Chairman: Well, there’s no obvious reason why there wouldn’t be, is there?

Mr Aiken: I’m sorry, Chairman?

The Chairman: There’s no obvious reason why there wouldn’t be.

Mr Aiken: No, I think you’re agreeing with that, Mr John: there’s no obvious reason why
you wouldn’t provide these. In reading it, if it had been provided and if it had been read, it
Hi Teri, your answers seem fine to me. On point 4, I suggest that when we report back on the initial round of audits, we include an outline of the audit process and the work that is carried out.

From: Teri Clifton
Sent: 28 October 2013 10:53
To: Robert Reid
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Rob
I’m not sure I understand a couple of them. The operating costs we have given to DETI include an allowance for 5 audits. Not sure whether that answers points 1 and 3. There is an agreement in place which covers this.
They are happy that they will get a good sample from 5 seeing as they have only had 30 accredited, so they are really looking for early warning signs and then an understanding of what that looks like against the GB non-compliances and whether there is the similar pattern emerging.
I’m not aware that anyone has ever spoken to them about what the audits entail.
Regards
Teri

From: Robert Reid
Sent: 28 October 2013 10:37
To: Teri Clifton
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Teri
Can you let me know whether any progress has been made with DETI regarding Procurement’s questions listed below? I would appreciate a response by the end of the week so that I can start circulating the Com:2 form for internal approval.
Please let me know if you have any queries.
Thanks,
Rob
X7298 (working from home today).

From: Robert Reid
Sent: 16 October 2013 14:28
To: Teri Clifton
Cc: Ade Obaye
Subject: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Teri
See below email from Procurement regarding the NIRHI site audit contract. Can you confirm the following:

- Are DETI satisfied that the cost quote provided by R-AEA includes T & S that may vary from R-AEA’s cost quote within 10% contingency?
- Are DETI satisfied that the small sample size of five installations is unlikely to identify any possible trends in non compliances or observations?
- Are DETI happy to provide Ofgem money for the work without any formal undertaking between Ofgem and DETI?
- Are DETI fully aware of the audit reporting approach including the level of detail provided in audit reports?

I have a Consultancy 1 form ready for approval, so I would be grateful for a prompt response.
Many thanks,
Rob

From: Nadia Coleby
Sent: 16 October 2013 13:19
To: Robert Reid
Subject: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Teri,

See below email from Procurement regarding the NIRHI site audit contract. Can you confirm the following:

- Are DETI satisfied that the cost quote provided by R-AEA includes T & S that may vary from R-AEA’s cost quote within 10% contingency?
- Are DETI satisfied that the small sample size of five installations is unlikely to identify any possible trends in non compliances or observations?
- Are DETI happy to provide Ofgem money for the work without any formal undertaking between Ofgem and DETI?
- Are DETI fully aware of the audit reporting approach including the level of detail provided in audit reports?

I have a Consultancy 1 form ready for approval, so I would be grateful for a prompt response.
Many thanks,
Rob
Continuation sheet  

267. The volume of site audits conducted to date has been agreed annually with the Department, and has increased in each financial year since the start of the Scheme. At the outset, the volume was based on the agreed approach of conducting audits at a rate of c.3% of GB RHI audit volume. Installations audited in 2013-14 amounted to 2.3% of the GB audit volume, increasing to 3.2% in 2014-15. We reacted to the increase in application rates in 2015-16 with an increased rate of audits in both 2015-16 (6.9%) and 2016-17 (c.25%).

268. In terms of numbers of audits conducted, they are as follows:

a) Financial year 2013-14, 5
b) Financial year 2014-15, 12
c) Financial year 2015-16, 14
d) Financial year 2016-17, 57.

269. We discussed our audit strategy with the Department regularly since the Scheme began. This strategy is designed to identify non-compliance with the regulations. The initial audit sample size was based on our experience from Great Britain, and based on optimising the combination of prevention and detection. There was discussion between Keith Avis and Joanne McCutcheon towards the end of 2012 about the proposed audit programme. On 29 November 2012 Joanne McCutcheon sent an email to Keith Avis asking for further details about audit proposals, sample sizes and the sharing of information, and on 3 December 2012 Keith Avis replied responding to each of her questions. He indicated that the number of audits carried out for NIRHI would be dictated by the percentage of Scheme costs that the Department was paying, and hence by the value of tariff payments made in NI as a portion of total RHI payments. This meant that if the Department was paying for 3% of total Scheme costs then that would mean that 3% of tariff payments were being made to NI installations, and so for both of these reasons “it would be appropriate to ensure that 3% of audits were conducted on NI based installations”. He also said that “while our current view is that we need to take the final decision on which installations to audit, we would be happy to commission additional audits beyond those that we would normally do should your audit team need these, although this will incur additional cost as it will fall outside the scope of this work and also beyond the number budgeted for”.

40 I note that audits can also be expressed as a percentage of the applications received as appears to have been the case before the Public Accounts Committee in 2016, or as a percentage of the participants on the Scheme. For example, due to the spike of applications in 2015/16, the number of audits as a percentage of applications made to the Scheme during that year dipped below 1%, despite our intervention as agreed with the Department, which saw us increase our audit volume, exceeding the original level agreed with the Department which was based on of 3% of the number of GB audits.
applications were received, on a month-by-month basis, through the life of the scheme, and if we scroll down slowly, we’ll see he runs it right the way through into 2014-2015. And we can see, then, the application — there’s a spike in February 2016 just before it closes, and then there are a small number — I think five in total — that seem to post-date the closure of the scheme. I don’t know whether you can cast any light on those. I haven’t included them in that 2,120 figure. And you can see the total figure at the bottom there is 2,133.

**Dr Ward:** There were some —. I can —. We can give you a definitive answer on that, but my understanding is that, after the scheme closed, people made applications. If an application had been made but then needed to be resubmitted through the IT system for some reason —.

**Mr Lunny:** So, it could be a resubmission of an application.

**Dr Ward:** It could be a resubmission of an application. I mean, to be clear, we haven’t accepted any applications which were —

**Mr Lunny:** Yes. But that —.

**Dr Ward:** — made after the scheme was suspended; yes.

**Mr Lunny:** Now, again, subject to the important caveat that these are my maths, if we break it down by financial year, the April ’13 to March ’14 inclusive, there are 119 applications; April ’14 to March ’15 inclusive, there are 434; and April ’15 to March ’16, there are 1,567 applications. And if we look, then, at the number of audits performed in each of those years, and they were, if you recall, it was five in the first year, 12 in the second and 14 in the third. Again, by my maths, the five as a percentage of 119 is 4.2%; 12 as a percentage of 434 is 2.76%; and 14 as a percentage of 1567 is .89%. Or if you take the total number of applications over those three years of 2120, 31 as a percentage of that is 1.46%.

**Dr MacLean:** Sorry, can you say the first two again?

**Mr Lunny:** For the first year, it was 4.2%, the second, 2.76, and the third, .89, and, overall,
Mr Lunny: — over the budget, you needed to look at what was roughly 7.5% of the
application volume. But I think the paragraph —.

Dr MacLean: So there would be 7.5% was derived from that rather than the —? I thought
the 7.5 was a figure that had been used at the beginning as rough guidance and then this
was a refinement of that. But it’s the other way round if I —.

Dr Ward: So again, for clarity, I wasn’t personally involved in the audit programme at this
stage, but from what I understand from the documents that I’ve read for this Inquiry and my
later role, yes, it was basically a case of the, sort of, the scope and the amount of funding
and resources available for audit programme had been set, based on a nominal sort of 7.5%
of applications. From that, that had set sort of a budget and then it was within that budget,
within that number of audits, to get a statistically significant result, what level of confidence
will that result have. So, if you had more audits, you would be more confident on the level of
your sampling; if you had fewer audits, you would have less confidence based on what
Deloitte —.

The Chairman: Where does the 7.5% come from?

Dr Ward: So, as I understand it, that was a discussion between DECC and Ofgem at the
point of initiating the GB RHI scheme.

The Chairman: Well, if you’re going to do 7.5% — look at 7.5% for the purpose of seeing
whether or not it’s statistically significant — you need to know why that 7.5% figure is
statistically significant in terms of the overall body you’re supposed to be surveying. Now,
who said, “7.5% is the statistically significant figure we need to do”?

Dr Ward: So, my understanding is that that was an Ofgem position that was advanced
back in 2011 for the GB scheme. That was agreed with DECC.

The Chairman: So that’s an Ofgem figure, is it?

Dr Ward: Yes, as far as I understand, and, I think, from —
The Chairman: And, presumably, then, Of—.

Dr Ward: — what I’ve seen, I think that was sort of with reference to experience on some of the other E-Serve schemes at the time.

The Chairman: Well, whether it was or whether it wasn’t, Ofgem have said that the statistically significant number of audits you need to do is 7.5%. So, somewhere, there must be a calculation of Ofgem working that out, showing the significance of it.

Dr Ward: I agree we should try and find a straightforward way to describe this. I think what I would say in sort of simple terms is between —. I think Ofgem proposed a level of audits, maybe 7.5%. In the initial years of the GB scheme, there was no statistical approach to sampling, so there was targeted auditing as well. That led —

The Chairman: Where’d the figure come from? Out of the sky?

Dr Ward: I think it was —. Again, I don’t have a definitive answer to that. My understanding is that that was based on experience across other schemes and an understanding of the likely sort of risk factors associated with the scheme. I’m happy for Ofgem to go away and investigate that.

The Chairman: You do understand why you need to know the validity, the statistical validity, of a particular figure that you take. You need to know that that number gives you a statistically significant chance of reflecting the whole. Now, as I understand what you’re saying, 7.5% was just taken maybe to be comfortable for Ofgem, maybe to be consistent with what they were prepared to pay for doing that number of audits, but it was not done on a mathematical basis.

Dr Ward: Well, again, I think that’s right in that, in the initial year of the GB scheme, there was no attempt to do a statistical sample. I think —. My understanding is the expectation was, “There’ll be a low volume of audits in the initial years of the scheme. We want to understand some of the risk factors. We want to go and do an audit programme for a small
Non Domestic Renewable Heat Incentive Audit Strategy

This paper sets out the means by which Ofgem will fulfil its responsibilities to audit GB and NI NDRHI installations to verify compliance with the scheme requirements.

Author: Rob Reid
Audience: Jacqueline Balian
Date: 20 February 2014

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1. Version History

<table>
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<th>Version</th>
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<th>Author</th>
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<td>1 September 2011</td>
<td>Ade Obaye</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>16 January 2014</td>
<td>Rob Reid</td>
<td></td>
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<td>3</td>
<td>28 January 2014</td>
<td>Rob Reid</td>
<td>Incorporates Ade Obaye comments</td>
</tr>
<tr>
<td>4</td>
<td>20 February 2014</td>
<td>Rob Reid</td>
<td>Incorporates Jacqueline Balian comments</td>
</tr>
</tbody>
</table>

2. Introduction

2.1. The Renewable Heat Incentive (RHI) is a Government environmental programme that provides financial incentives to increase the uptake of renewable heat. For the non domestic sector, it provides a subsidy, payable for twenty years to eligible, non domestic renewable heat generators and producers of biomethane for injection.

2.2. We are responsible for implementing and administering the scheme. DECC are responsible for policy development. Our duties and functions lie primarily in the administrative and compliance elements of the scheme. These include:

- receiving and assessing applications for accreditation
- receiving and reviewing periodic generation data for accredited non-domestic installations
- receiving and assessing proposed fuel measurement and sampling procedures for biomass fuels
Non Domestic Renewable Heat Incentive Audit Strategy

- receiving and assessing fuel measurement and sampling data for biomass generators
- calculating periodic support payments to accredited installations and making payments
- undertaking enforcement such as withholding payment, reducing payment or revoking accreditation
- undertaking fraud prevention and detection activities including site and desk audits, ID verification checks and reviews of schematic diagrams and other information.

2.3. DECC estimates the NDRHI will deliver 12,000 heat generation installations by 2015 and DETI estimates the NI NDRHI will deliver 360 heat generation installations by 2015. £32 million has been paid to over 2,800 NDRHI participants as at January 2014.

2.4. With a scheme of this size, it is important that measures are put in place to protect the available funds from fraud and ensure that payments are only made to those that are entitled. An ongoing cycle of RHI installation audits is a key tool in ensuring this.

3. Audit Approach

3.1. A sample of accredited and not yet accredited NDRHI installations and biomethane facilities will be subject to inspection during accreditation/registration and throughout the duration of eligibility for NDRHI payments. Audits will typically be conducted to commence at six monthly intervals (April - September and October - March) during the year. Audits will also be carried out on an ad-hoc basis where Ofgem decides suspected abuse, misuse or fraud issues necessitate an immediate inspection.

3.2. We will carry out desktop audits on a percentage of small (≤45kWth) and medium scale (46kWth - ≤1MWth). Desk based audits will typically be carried out where they would prove more cost effective than a site audit and where a physical inspection is not required to verify compliance. The remainder and all large (>1MWth) scale installations will be subject to site audits.

3.3. Inspections of NDRHI installations are permissible under the RHI Regulations 2011 and the RHI Regulations (Northern Ireland) 2012. Regulation 50 states that the Authority or its' authorised agents may request entry at any reasonable hour to inspect an accredited RHI installation and its associated infrastructure to undertake any one or more of the following:

- verify that the participant is complying with all applicable ongoing obligations
- verify meter readings
- take samples and remove them from the premises for analysis
- take photographs, measurements, video or audio recordings
- ensure that there is no other contravention of these Regulations.

3.4. We have interpreted “reasonable hour” to mean that site inspections will generally be conducted between 9am – 5pm, Monday to Friday. In order to simplify access and ensure availability of key personnel, data and documentation, we will normally give prior notice of inspections. However, there may be occasions where we believe it is appropriate to conduct unannounced site inspections and we reserve the right to do so.

3.5. We will appoint an external contractor with the necessary capabilities to undertake site audits of NDRHI installations. These will be carried out in accordance with the audit plan while ensuring value for money. The contractor will be required to:

- agree an audit programme with Ofgem
- review relevant documentation relating to the installation
Non Domestic Renewable Heat Incentive Audit Strategy

- carry out a site visit (and, where necessary, visit any off-site heat use measurement or off-site sampling facilities)
- provide a report detailing audit outcomes.

3.6. The external contractor will also supply us with a periodic report for the relevant audit round that includes:

- A summary of the NDRHI audit programme findings to date
- A summary of the NDRHI audit programme findings for the reporting period
- Feedback on the NDRHI audit programme including any recommended actions related to the RHI Regulations, Ofgem NDRHI communications materials and improvements to internal controls to address issues identified at site audits.

3.7. We will be responsible for the development and implementation of the audit programme, including management of the external contractor undertaking site audits on our behalf (see section 8 for further details).

4. Audit Objectives

4.1. The objectives for the NDRHI Audit Programme are that it will:

- monitor participant compliance against RHI eligibility criteria and obligations
- detect instances of suspected abuse, misuse, fraud or non compliance
- act as a deterrent to those that may be tempted to break the rules of the scheme
- provide indicative information on the quality of system design, installation and operation where these would indicate a need for further training.

4.2. In order to satisfy these objectives, we will audit a sample of targeted and randomly selected installations to ascertain whether:

- information provided during accreditation or registration is correct and that an installation is entitled to be accredited or registered
- accurate and reliable fuel measurement data is being submitted to Ofgem (where applicable)
- eligible heat claims are plausible given the capacity of an installation and the amount of fuel being used
- meter readings/output volumes notified to Ofgem are appropriate and are such that the right amount of NDRHI support payments are being made quarterly
- meter numbers, positions, installation date, calibration date are correct
- temperature sensors are appropriately placed and have not been tampered with
- the installation does not have a heat rejection facility, or if it does, that it is appropriately metered (to detect where a participant may be purposefully wasting heat)
- any calculations of ineligible heat are plausible and failure to install meters is reasonable
- systems have been suitably installed, commissioned and maintained and heat generation is at acceptable levels given the capacity of the plant and heat load.

5. Selection Criteria

5.1. In order to make best use of resources and be cost effective, the audit sample will consist of installations targeted due to:

- installed capacity/size of NDRHI payments
Non Domestic Renewable Heat Incentive Audit
Strategy

- reasonable concerns by staff while processing applications or periodic data submissions
- risk-based selection based on trends from audit findings and other risk criteria
- geographical considerations

5.2. We will also select a random sample of installations to verify the effectiveness of the targeting and as a means of identifying new risks and issues that may not have been identified through the targeted approach. Table 1 shows some of the risk-based selection criteria that are currently being used and their associated risks.

Table 1: Examples of risk-based selection criteria

<table>
<thead>
<tr>
<th>Selection criteria</th>
<th>Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installations receiving the greatest payments</td>
<td>Undetected non compliance could lead to significantly large NDRHI payments being made to installations that are not eligible to receive accurate payments</td>
</tr>
<tr>
<td>Installations commissioned before RHI go-live in November 2011</td>
<td>Installations are eligible for the RHI if they were commissioned on or after 15 July 2009. As the RHI went live in November 2011, this means that there are installations that would have been installed and commissioned without any Guidance materials or Regulations to refer to. This increases the risk that these types of installations are not compliant with the scheme requirements.</td>
</tr>
<tr>
<td>Installations with complex or multiple metering arrangements</td>
<td>Complex installations typically include multiple buildings, multiple meters, ineligible plant and external pipework that increase the risk that at least one component of their installation is non compliant</td>
</tr>
<tr>
<td>Biomass installations using fuel supplied from their own sources</td>
<td>Participants using fuel from their own sources to supply their biomass boiler are less likely to be maintaining records regarding the type and quantity of fuel used in their boiler</td>
</tr>
<tr>
<td>Multiple biomass installations on one site</td>
<td>Where one installation on one site identifies a non compliance, it is likely that all installations on the same site are non compliant. Undetected non compliances are likely to result in significant cumulative payments being made as multiple installations on one site have frequently been designed to maximise payments at the higher biomass tariff.</td>
</tr>
<tr>
<td>Complex or multiple installations using IRMA providers that have been identified as having not correctly identified ineligibility issues for other installations.</td>
<td>Inaccurate Independent Reports on Metering Arrangements (IRMAs) increase the risk that installations are being accredited on the basis of incorrect information. This increases the risk that significant payments are being made until the issue is identified at audit</td>
</tr>
</tbody>
</table>
6. Sample Size

6.1. As part of our work to determine the appropriate sample size for NDRHI audits in mid-2011, we commissioned Deloitte to investigate the most appropriate methodology for audit sampling based on industry best practice, and to produce data on appropriate sample sizes based on their findings.

6.2. Deloitte recommended the Monetary Unit Sampling (MUS) method for determining the NDRHI audit sample size. Monetary unit sampling provides a direct linkage between the financial value of payments and sample selection, applying materiality (an "acceptable" level of error) and confidence percentages reflecting an assessment of risk in the population. The MUS approach weights each installation's chance of select to reflect the volume of heat generated and the tariff for the technology type and installation size.

6.3. A further refinement involved segmentation of the audit population into sub populations sharing similar characteristics in order that each sub population could be sampled and evaluated separately. Audit effort could then be focused to those installations considered to present the greatest risk of error. The segmentation adopted was installation size reflecting DECC’s categorisation of installations.

6.4. We have correlated with Deloitte’s recommended sample size as much as possible, weighting our selection towards installations receiving the greatest payments. However, there have been far fewer applications than originally forecast. There have also been significantly more medium installations and significantly fewer large installations’ accredited on the scheme. Table 2 represents how the sample size has had to be adjusted accordingly to remain within the available site audit budget.

Table 2: Comparison between Deloitte forecast and actual sample size for site audits

<table>
<thead>
<tr>
<th>Year</th>
<th>Installation size</th>
<th>Deloitte forecast</th>
<th>Actual sample size</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>Small</td>
<td>37</td>
<td>30</td>
<td>(19%)</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>48</td>
<td>103</td>
<td>115%</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>57</td>
<td>7</td>
<td>(88%)</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>142</td>
<td>140</td>
<td>(1%)</td>
</tr>
<tr>
<td>2013-14</td>
<td>Small</td>
<td>43</td>
<td>39</td>
<td>(9%)</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>98</td>
<td>177</td>
<td>80%</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>74</td>
<td>17</td>
<td>(77%)</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>215</td>
<td>233</td>
<td>8%</td>
</tr>
</tbody>
</table>

6.5. We recognise that Deloitte recommended the sampling methodology and sample size before the audit programme had begun. As a result, their recommendations do not take into account our audit findings, in particular non compliances identified to date and their material impact on payments. They also do not take into account the level of uptake, in particular variances between accredited medium and large installations.

6.6. Fraud Prevention and Audit Governance (FPAG) is undertaking an assessment of the potential cost of misuse, abuse, fraud, misreporting and error across all eServe  

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1 Small = up to and equal 45kWth, Medium = 46kWth up to and equal 1MWth, Large = greater than 1MWth
environmental schemes. The first phase involves research and analysis on the assessment of risks posed, and the application of different types of fraud to each of our schemes within the context of our fraud strategies and existing risk management framework. The second phase will involve developing methodologies to be applied to each scheme, and also collectively.

6.7. Subject to the completion of FPAG’s work, we will require Deloitte to provide the following based on the level of non compliance being identified and their material impact on payments for NDRHI:

- a robust methodology for determining the audit sample size by number of installations segmented by installation size
- a robust methodology for determining the audit sample percentage segmented by volume of new and cumulative applications.

6.8. Deloitte will be required to provide guidance so that we can modify the audit sample size and audit sample percentage described above to reflect updated application projections, levels of non compliance and their material impact on payments.

6.9. In the interim, we plan to maintain our site audit sample size at 7.5% of new applications in 2014-15. This is based on the high level of non compliance from site audits and will be subject to actual application volumes. On the basis of application projections, this will result in up to 308 site audits being carried out in 2014-15.

6.10. We plan to apply Deloitte’s recommended 3.5% audit sample size for desktop audits carried out in 2014-15. This is based on the findings from the desktop audit pilot phase that took place in 2013-14. On the basis of application projections, this will result in up to 142 desktop audits being carried out in 2014-15.

7. Auditor capabilities

7.1. Depending on the type of audit, there will be significant differences in the skill set and knowledge base required for the audits to be carried out effectively and accurately.

*Desk-based audits*

7.2. Generally, desk-based audits will require less technical expertise than a site audit. A typical desk-based review will require checking documentary evidence and process descriptions against NDRHI application responses, periodic data submissions and ongoing obligations. We will carry out this type of audit, making use of internal technical resource as required to verify compliance with NDRHI requirements.

*Site audits*

7.3. For smaller installations, including those classified as having simple or standard metering arrangements, we will require auditors with the following skills or knowledge:

- water supply operations
- energy and mass balances
- data handling
- comparing records
- fluid mechanics
- thermodynamics
- understanding of eligible heat use
- hot water metering
- metering installation and calibration
7.4. For larger installations, including those classified as having complex or multiple metering arrangements, we will require auditors with the same skills and knowledge as for smaller installations, and in addition:

- steam system operations
- steam metering
- biomass/biogas handling
- statistics (sampling theory, errors and uncertainty)
- process engineering experience
- interpreting system schematics

8. Resources

8.1. We will require an audit team to manage the NDRHI audit programme. The team will be responsible for specific tasks that include:

- planning and monitoring the audit programme
- managing the external contractor(s)
- developing and refining audit checks
- carrying out desk-based audits
- approving site audit reports including assurance ratings
- compiling management information and reporting to senior management
- assisting with E-Serve audit contract procurement processes

8.2. We will recruit staff with the necessary skills and knowledge to undertake the duties and functions of their respective roles. This will include:

- strong numerical and analytical skills paying particular attention to detail
- excellent written and verbal communication skills including reporting to senior management
- experience of applying the principles and practices of risk management
- experience of contract monitoring and management

8.3. We will maintain standard operating procedures that are updated periodically, in particular where process improvements are made. These will provide detailed descriptions of processes, roles and responsibilities, with timescales for when tasks are carried out. These will be used as the basis for induction training so that new starters can become productive as quickly as possible

8.4. We will monitor resource requirements taking into account variations in application volumes, audit findings and other factors that have an impact on the audit sample size. Based on current audit volumes, we require three FTEs that include an Audit Manager, Audit Assistant Manager and Audit Administrator.

9. Procurement of external contractors

9.1. We will outsource the site audit function to an organisation that has the necessary skill set and knowledge base to undertake site audits on our behalf. The tender process is being managed by FPAG as a combined contract, incorporating requirements for all E-Serve environmental schemes.

9.2. We will play an active role in the procurement process, in particular by providing content for the Invitation to Provide a Proposal, assessing bids and contract mobilisation before contract commencement. On an ongoing basis, we will also participate in contract management arrangements coordinated through FPAG.
Non Domestic Renewable Heat Incentive Audit
Strategy

10. Budget

10.1. We have an agreed budget for the site audit programme that has been submitted as part of the corporate planning process. Table 3 includes details of the budget for the site audit programme during 2014-17. This will be reviewed annually taking into account application volumes, audit findings and the resulting impact on sample size.

Table 3: Proposed budget for the site audit programme (April 2014 – March 2017)

<table>
<thead>
<tr>
<th></th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Audits</td>
<td>£374,000</td>
<td>£365,000</td>
<td>£269,000</td>
</tr>
</tbody>
</table>

11. Reporting and Governance

11.1. We will report internally through the NDRHI Implementation Board, while responding to regular and ad-hoc requests from other E-Serve Management Committees.

11.2. On a bi-annual basis, we will review management information on audit findings to date in advance of site selection for the next audit round. Our audit findings will inform decisions regarding our risk-based approach to site selection.

11.3. On an annual basis, we will provide a report on the audit programme to the NDRHI Implementation Board and DECC Project Board. This will include analysis on the audit programme, including the material impact of non compliances and actions being taken to address issues identified at audits.
RHI Audit Objectives

- Monitor participant compliance
- Detect fraud and non-compliance
- Deter those tempted to break rules
- Capture lessons on installations
Background

- Audit programme commenced in April 2012
- Visual inspection of installations to verify compliance and identity instances of non-compliance
- Audit sample size based on 7.5% of new applications received per annum
- Over 300 site audits carried out to date with up to 900 audits planned over the next three years
at the methodology which Deloitte had proposed, we used that and applied that to the population size in Northern Ireland, the number of audits, and we realised what was already probably, as a layperson, fairly clear, which was, if you’re only doing five or six audits, you can’t draw any statistically significant conclusions.

Mr Lunny: But to be clear, and before the numbers got larger in the Northern Ireland scheme, you never had the type of confidence in relation to the audits that you were doing there that you could’ve had in relation to the GB scheme, because in the GB scheme you have expert input saying, “In order to be a% sure that you’re not losing more than £b, in money, you need to audit c number of installations”.

Dr Ward: Yes.

Mr Lunny: You had that very reassuring, expert help in relation to what you were doing in respect of your GB audit system, “So we now know we need to do whatever c number of installations is, be it 700 in a year, 500 or a certain percentage”. You didn’t have that type of statistical audit or monetary unit sampling method approach to the Northern Irish audit system.

Dr Ward: That’s correct, and part of my handover from Jacqueline Balian in 2015 was, in terms, we don’t have enough audits to be able to do anything statistically significant so we target audits in Northern Ireland to best address any risk factors.

Dr MacLean: So did these Deloitte numbers supersede the 7.5%?

Dr Ward: I think that funding had been based on 7.5%. That set the envelope for doing audits, and I think then what was done in practice, which Mr Lunny sensibly skipped in terms of some of the detail, but I think the summary of that is that by, I think, we sort of — Ofgem cut its cloth in terms of the confidence level to fit the available funding to a degree. So rather than having 95% confidence, I think, for example, from memory, one of these years, it was based on an 86% confidence level, because you could draw conclusions to that level of
5.23. Under the GB RHI auditing is managed by Ofgem through a combination of regular desk-based audits, and outsourced site-audits. The tender for site-audits is currently being prepared and we will need confirmation from DETI by the end of December at latest to ensure that the needs of the NI RHI can be included under this tender. The current tender can only be utilised for NI RHI site audits if DETI’s final policy position does not require any additional technologies or audit requirements. In the case that DETI’s audit requirements arising from final policy differs from the GB RHI audit requirements and arrangements available under the tender, it may be necessary to undertake a new tender process. As the costings provided in this feasibility study are based on the draft regulations shared with Ofgem on 11 October 2011, if there are additional/different audit requirements there may be additional costs involved.

5.24. The GB RHI audit strategy uses an audit sampling approach based on Monetary Unit Sampling. This means selection for auditing is based on the financial value of RHI payments rather than the number of installations, and the chance of selection is proportional to the value of the payment. A confidence level of 86% is adopted from sampling, which combined with other sources of assurance provides overall confidence of 95%.

5.25. The GB RHI audit strategy also takes a segmentation approach – dividing the scheme into small (<45kWth), medium (>45kWth and <1MWth) and large (>1MWth) installations. Segmentation could also be done by technology type, depending on the outcome of an assessment of the areas of highest risk. The advantage of this approach is that different sampling rates can be applied to each segment so that areas assessed as presenting a higher risk can be more effectively monitored, and those assessed as relatively lower risk can be monitored at a more cost-effective level.

5.26. To determine the approach most suited to the NI RHI it will be necessary to undertake a separate risk assessment during the development phase. However these same broad principles should be applied to the NI RHI audit strategy.

5.27. The audit processes themselves will remain in line with the GB RHI scheme, and be administered by the same team with internal desk-based audits and site audits outsourced accordingly. Where changes may be necessary to this process will be in the approach taken to sampling and how segmentation is determined. These factors will be decided following the outcome of the risk assessment and will impact on the method by which sites are selected for audit or investigation, but should not alter operating procedures.
The answers to each of your questions are below. I should say that the number of audits carried out for NIRHI will be dictated by the percentage of scheme costs that DETI is paying, and hence by the value of tariff payments made in NI as a portion of total RHI payments. In other words, if DETI were paying for 3% of total scheme costs then that would mean that 3% of tariff payments were being made to NI installations, so for both of these reasons it would be appropriate to ensure that 3% of audits were conducted on NI based installations.

Also, while our current view is that we need to take the final decision on which installations to audit, we would be happy to commission additional audits beyond those that we would normally do should your audit team need these, although this will incur additional cost as it will fall outside the scope of this work and also beyond the number budgeted for.

A response to each of your questions is as follows:

**Would you be willing to share the terms of reference/scope of the audit exercise?**
Yes we would be willing to share the scope of the audit exercise with you.

**Who currently conducts the exercise – is it AEA and/or Deloitte?**
Ricardo-AEA carry out site audits/inspections of RHIGB installations.

**How often is the exercise carried out and when is it next due?**
Audits are being carried out on an ongoing basis. We are currently trialling audit selection on a 6-monthly basis. Most recently, we selected installations in October, covering the period until the end of March. We agreed with Ricardo-AEA that this was the preferred approach as it mitigates the impact of peaks and troughs being experienced over quarterly cycles. It also allows flexibility to accommodate issues such as accessibility in rural locations during Winter and availability of auditor/applicant in Summer. We do have the option to select installations for ad-hoc audits should there be an urgent need to audit an installation.

**What sort of details are included in the report produced?**
For the GB scheme, an example of the details provided are:

- **Paper-Based Investigation**

Mr Lunny: So that confidence and materiality, “To be 95% confident that we’re not losing
more than this tiny percentage of the overall spend we need to audit this number of
installations”, that exercise had never been performed for the Northern Ireland scheme.

Dr Ward: That’s correct. It wouldn’t have been possible to draw statistically significant
conclusions based on the number of audits that were being conducted on the Northern
Ireland scheme.

Mr Lunny: Yes. There were too few audits being conducted in Northern Ireland to
perform a statistic—, to perform the type of —, to draw, or extrapolate conclusions about
the whole scheme from the audits. That wasn’t being done in Northern Ireland?

Dr Ward: That’s correct, yes, to my understanding.

Mr Lunny: So, there was a plan to do that for GB. And by the start of 2014, according to
this document, it was being achieved.

The Chairman: There were too few audits or too few applications in Northern Ireland?

What was the problem?

Dr Ward: In Northern Ireland, as I understand it, the problem was the number of audits
for which funding was available was so small —

The Chairman: Going back to funding again, isn’t it? Yes.

Dr Ward: — there wasn’t enough to be statistically significant. And that was what was
agreed between DETI and Ofgem at the point of establishing the scheme, is my
understanding.

The Chairman: But it’s not a question of applications, it’s a question of audits. The reason
there were too few audits was because you couldn’t agree funding?

Dr Ward: So, I think the principle of how the funding for the Northern Ireland scheme was
going to work was: however many audits we’re doing on the GB scheme we’ll take that
number of audits and we’ll do 3% of those and we will do that number of audits in Northern
Hi Rob

Yes I also spoke to Jacqueline about this. The agreement for 5 audits is in Matthew’s letter to them from May not in the original baseline scope, so I will need to speak to them again today.

Regards

Ted

From: Robert Reid
Sent: 31 October 2013 10:27
To: Teri Clifton
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Ted,
I spoke with Jacqueline yesterday regarding the 5 x NIRHI site audits. Jacqueline asked me to confirm with you that there is definitely funding available for these audits. I know that you have stated this below, but Jacqueline was unsure whether funding was available. Can you confirm?

Thanks,
Rob

From: Teri Clifton
Sent: 28 October 2013 14:03
To: Robert Reid
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Rob
Sounds good to me
Thanks
Ted

From: Robert Reid
Sent: 28 October 2013 14:02
To: Teri Clifton
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Teri, your answers seem fine to me. On point 4, I suggest that when we report back on the initial round of audits, we include an outline of the audit process and the work that is carried out.

From: Teri Clifton
Sent: 28 October 2013 10:53
To: Robert Reid
Cc: Ade Obaye
Subject: RE: Action: Please respond to questions from Procurement regarding NIRHI site audits

Hi Rob
I’m not sure I understand a couple of them. The operating costs we have given to DETI include an allowance for 5 audits. Not sure whether that answers points 1 and 3. There is an agreement in place which covers this. They are happy that they will get a good sample from 5 seeing as they have only had 30 accredited, so they are really looking for early warning signs and then an understanding of what that looks like against the GB non-compliances and whether there is the similar pattern emerging.
I’m not aware that anyone has ever spoken to them about what the audits entail.

Regards
Ted

From: Robert Reid
Sent: 28 October 2013 10:37
To: Teri Clifton

Hi

I spoke with Jacqueline yesterday regarding the 5 x NIRHI site audits. Jacqueline asked me to confirm with you that there is definitely funding available for these audits. I know that you have stated this below, but Jacqueline was unsure whether funding was available. Can you confirm?

Thanks,
Rob
Hi Teri
Can you let me know whether any progress has been made with DETI regarding Procurement's questions listed below? I would appreciate a response by the end of the week so that I can start circulating the Con-1 form for internal approval.
Please let me know if you have any queries.
Thanks,
Rob

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From: Robert Reid
Sent: 16 October 2013 14:28
To: Teri Clifton
Cc: Ade Obaye
Subject: Action: Please respond to questions from Procurement regarding NIRHI site audits
Importance: High

Hi Teri
See below email from Procurement regarding the NIRHI site audit contract. Can you confirm the following:
- Are DETI satisfied that the cost quote provided by R-AEA includes T & S that may vary from R-AEA's cost quote within 10% contingency?
- Are DETI satisfied that the small sample size of five installations is unlikely to identify any possible trends in non compliances or observations?
- Are DETI happy to provide Ofgem money for the work without any formal undertaking between Ofgem and DETI?
- Are DETI fully aware of the audit reporting approach including the level of detail provided in audit reports?

I have a Consultancy 1 form ready for approval, so I would be grateful for a prompt response.
Many thanks,
Rob

---

From: Nadia Coleby
Sent: 16 October 2013 13:19
To: Robert Reid
Subject: RE: Northern Ireland RHI - Request for quote to carry out site audits

Dear Robert
I would probably just include their estimate – hopefully this is a realistic estimate. We do allow a 10% contingency so this would be on the total of £6,844, so some leeway if we are just looking at travel-type costs. If there is an increase in the costs, are DETI happy to pay the additional or are they capping their contribution to the estimated £6,844?
Are you happy that the 5 site audits will give you and DETI what you need – noting the point from Ricardo about the sample size? Are DETI happy to give Ofgem the money for the work, without any formal undertaking between Ofgem and DETI, and I have assumed that DETI have seen the GB reporting approach and that is their expectation of the final output?
Is March 2014 still the deadline for the completion of the audits and production of the report?

Many thanks
Nadia Coleby
Procurement Officer
Procurement and Building Services
Tel: 0207 901 3886
www.ofgem.gov.uk
(I) such information as is necessary to enable DETI to carry out in a proper manner the powers and duties imposed on DETI by regulations 47(1)(a) and 50; and

(II) such other information as DETI may reasonably request, which GEMA may hold in relation to the Confirmed Functions;

(b) inform DETI of any complaint or request for a formal review that is received by GEMA in connection with the carrying out by it of the Confirmed Functions or the Ancillary Activities;

(c) provide such assistance as DETI may reasonably request in connection with any court proceedings or other dispute with third parties in connection with the carrying out of the Functions on condition that any costs incurred by GEMA are charged to DETI at a daily rate to be agreed in advance of the provision of such assistance;

(d) nominate a person as a contact point for the purposes of these Arrangements and inform DETI of the identity of that person;

(e) take all reasonable steps to ensure that wherever possible it will facilitate the ability of DETI to operate effectively in relation to the Regulations. This may mean providing briefing or attending meetings with Industry, providing resources are available to do this. GEMA will communicate with DETI on matters of common interest and common concern as appropriate;

(f) share in advance with DETI proposals for public announcements relating to or impacting on the scheme established by the Regulations when appropriate;

(g) ensure that any information it requests from DETI should be relevant to the Administration Costs, the Functions, the Ancillary Activities, the Regulations, the Guidance, Local Regulations, or any legislation made or proposed to be made under section 113 of the Energy Act 2011;

(h) ensure that where it requests information from DETI under these Arrangements, it will specify the information or nature of the information it requires, the format in which it requires it, the deadline for providing it and the reason it is required; and

(i) give DETI reasonable notice of the date by which it requires information, wherever possible.

(j) take the steps referred to in the Annex to these Arrangements

4. DETI'S RESPONSIBILITIES

4.1 DETI will:

(a) pay the Administration Costs, on a pass through basis;
Lessons learned workshop – Millbank - 5 January 2017 2-5pm

Attendees

Chris Poulton(Chair), Gareth John(Content Lead), Charles Hargreaves, Alison Hardie(By VC and phone), James Robinson, David Fletcher, Trish Dreghorn (by phone), Edmund Ward, Jane Pierce, James Kilmartin, Teri Clifton (minutes), Heath Hibberd

Introduction

Further to NI RHI Scheme developments in 16/17 and attendance to NI Public Accounts Committee and subsequent activity relating to the NI scheme, we held a workshop to reflect on any lessons learned. We agreed that this would form the basis of a report to E Serve Board, and would take learning points forward as appropriate pan – E Serve. The workshop consisted of a round the table reflection, followed by an open session on areas that should be taken forward.

Round the table reflection

<table>
<thead>
<tr>
<th>Who</th>
<th>Thoughts</th>
</tr>
</thead>
</table>
| Chris Poulton | 1. Overall control – are we confident with our approach?  
               | 2. PAC preparation – how could we have better prepared, who should we have had advice from, better briefings  
               | 3. Project not BAU – should have brought in a team of people dedicated to all issues and backfilled as needed  
               | 4. Should we consider a different approach to administering schemes in general? |
| Gareth John   | 1. Good team engagement and ongoing operational account management to meet needs. Could have had a more formalised approach to account management to cover admin arrangements.  
               | 2. Need better connections and stakeholder management in line with BEIS arrangements (Sarah Redwood/Gareth; Chris/Clive Maxwell)  
               | 3. Tighter controls in place for regular assurance with DETI/DfE  
               | 4. Risk log to show issues raised and DfE decisions log not to progress, and what Ofgem consider risk to be  
               | 5. We have been too reactive rather than communicating / planning in a formal way. This has now changed.  
               | 6. Wider team support could have been better – internally heat team worked very closely, but needed to be clearer about accountabilities and support outside of the team.  
               | 7. Process over last 3 months should have been projectised, as it would have been more efficient.  
<pre><code>           | 8. Should we challenge more? Could we have raised more points without blurring lines of our administrative role. |
</code></pre>
<table>
<thead>
<tr>
<th>Name</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Charles Hargreaves | 1. This is very much a policy issue as there were no cost controls.  
2. Good to challenge our governance but don’t deflect from this being a policy issue.  
3. Root cause is policy and absence of cost controls – should we have taken on scheme knowing there were no cost controls in place? The scheme followed on from GB and thoughts have changed from then to now.  
4. Proportionality important relevant to other schemes and £s.  
5. More dry runs/dress rehearsals needed by people independent of the core team  
6. Language – we should have controlled the use of ‘gaming’ and been firmer in saying it was not appropriate for auditors to use this language – it’s either within the regulations or not. |
| Alison Hardie  | 1. Prior to PAC we should have agreed a stakeholder management programme in line with Scotland and Wales to explain what we do.  
2. We could have anticipated NAO report and reacted sooner, so that we didn’t go to PAC cold. The MLAs knew nothing about Ofgem’s work or role in delivering the scheme  
3. Have PAC preparation people who are independent of the scheme.  
4. Should have had more support in preparing the material and the numbers should have been available for each member to avoid confusion. |
| James Robinson | 1. Instructive to be caught up in politics in the raw form – lots of different agendas.  
2. Briefing – needed more formalised independent set up.  
3. Formal letters – lots of drafting by committee, difficult to have strict version control. Need to consider a different approach especially for time constrained letters. |
| David Fletcher | 1. Move to a SWAT team/project earlier.  
2. Lack of a real challenge session in PAC preparation.  
3. Policy tracking linked to operational delivery over the period of the scheme.  
4. What is our ability to influence?  
5. Original design conversations were around independence and not commenting on policy  
6. Internal Comms could have been better in keeping people informed |
| Trish Dreghorn | 1. We could have been more consistent / frequent on internal messaging.  
2. Basic principles – Don’t take on work outside of our risk range. Should do a risk assessment.  
3. Account management could have been better with a wider team. Small team were too close to the detail. |
| Edmund Ward    | 1. Been working on this incrementally, not just last 3 months.  
2. At what point should we have got a team together, not one defining moment – when PAC started perhaps? |
<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>3.</td>
<td>Corporate memory a big issue with staff turnover and scheme lengths generally</td>
</tr>
<tr>
<td>4.</td>
<td>When you appear at the PAC you feel responsible for the organisation</td>
</tr>
<tr>
<td>5.</td>
<td>It took a crisis to prioritise efficiently</td>
</tr>
<tr>
<td>6.</td>
<td>Messaging/clarity, trying to be a good delivery partner</td>
</tr>
<tr>
<td>7.</td>
<td>Were we too helpful?</td>
</tr>
<tr>
<td>8.</td>
<td>Being in the detail is really important due to complexity – condensing messaging hasn’t been straightforward and all had to come through heat team for nuances.</td>
</tr>
<tr>
<td>9.</td>
<td>Did we get wrong advice from DFP regarding opening statement and how to answer? We should have had chance to explain our role.</td>
</tr>
<tr>
<td>10.</td>
<td>Red flagging – given me more confidence to raise issues and prioritise</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jane Pierce</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Small group of people in run up to PAC.</td>
<td></td>
</tr>
<tr>
<td>2. Not a massive group to draw on – would be good to have a virtual team to mobilise at short notice.</td>
<td></td>
</tr>
<tr>
<td>3. Knowledge management key – how to get phone calls/emails.</td>
<td></td>
</tr>
<tr>
<td>4. Difficult to get external relations support early on, luckily James K supported from the day he joined.</td>
<td></td>
</tr>
<tr>
<td>5. We should be more open and transparent in sharing information (eg audit reports)</td>
<td></td>
</tr>
<tr>
<td>6. Post PAC, should have had conversations earlier – so that we were aligned on drafting etc</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>James Kilmartin</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Expectation management – organisational impact.</td>
<td></td>
</tr>
<tr>
<td>2. Need to consider what report will say about Ofgem when produced.</td>
<td></td>
</tr>
<tr>
<td>3. Too many facts – should have thought about more lines to take – eg we struggled with the narrative on audits.</td>
<td></td>
</tr>
<tr>
<td>4. Should have spent more time on tactics, dynamics and personalities. Spent time on this with Dermot for separate committee.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Teri Clifton</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Difficulty with relationship – too friendly/where do we draw line</td>
<td></td>
</tr>
<tr>
<td>2. DfE are dealing with multiple priorities and need support at very short notice</td>
<td></td>
</tr>
<tr>
<td>3. We need to be clearer on what type of relationship we have, especially when looking at new work. The MOU clarifies expectations between us.</td>
<td></td>
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<table>
<thead>
<tr>
<th>Heath Hibbard</th>
<th></th>
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<tbody>
<tr>
<td>No real reflections - feeding key points for Tim’s E-Serve assurance review</td>
<td></td>
</tr>
</tbody>
</table>

**Ideas to take forward.**

All of the above has been incorporated into an E Serve Board pack, with the following ideas being considered further:
Clearer audit strategy built on external expertise in statistical sampling to determine right level of checks

- Improved formal governance & controls
- Enhanced MOU building on existing governance

**Issue Management**

- Mobilise project team with skills to deliver at short notice – need to consider for ongoing NI issues / media management.
- Virtual pan Ofgem resource and defined roles / ownership

**How schemes operate and delivery options**

- Consideration to overall approach to how we set up with demand-led schemes. Risk assessment and a range of options along the risk/compliance spectrum (e.g. 100% site audits)
- Explore potential to use our people to complete application and audit at outset on site at start of process
- Use NI as an opportunity to consider benefit of meter readings on site in addition to site audits across RHI and other schemes.

Gareth John confirmed we would summarise the key themes, along with actions already taken as well as share the outputs from a similar workshop held with BEIS colleagues in December.
INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 170 of 2018
DATE: 04/09/18

Witness Statement of: Stuart Wightman

I, Stuart Wightman, will say as follows: -

If it is necessary for you to obtain information from others in order to provide answers for the assistance of the RHI Inquiry, then you should do so. Where you do obtain information from others, then please indicate that you have done so as part of your answer, identifying the person (or persons) who have provided you with information.

On the 16 November 2015 you had an exchange of emails (OFG-35338, OFG-35337, OFG-35336). As to this:

1. Was this the first occasion you were given any information by Ofgem about the audits that were being conducted under the NI Non Domestic RHI Scheme?

No. From my recollection our regular teleconferences with Ofgem included some high-level discussion of some of the non-compliance issues identified during site audits such as insufficient fuel records. However, we received no detail on the number of audits being conducted and were not provided with any copies of audit reports. I first became aware of the low number of site audits being carried out by Ofgem during a teleconference between Energy Efficiency Branch and Ofgem on 15 September 2015. Seamus Hughes emailed Ofgem about audits (Annex A) immediately following this meeting on 15 September 2015. I then formally wrote to Dr Edmund Ward on 19 October 2015 (WIT-17693) confirming that DETI was wrongly of the impression that more site visits were being undertaken, probably in the order of 1 in 10 for new installations with regular checks on meter readings. Our mistaken believe was based on my experience of the much lower value Domestic RHI / RHPP schemes for which DETI was completing site audits at 1 in 4 of all new installations each year.
Edmund

It was good to have our catch up telecon meeting this morning and we find these a good means of exchanging information.

We touched briefly on inspection visits/audits and I know we agreed to formally place this on the agenda for next month when someone from your audit team will join the meeting. In advance of that we thought it might be useful to put a short email in the system just to highlight the site audit issue.

We had thought more site audits were being undertaken, probably in the order of 1 in 10 for new installations and then additional meter reading checks at regular intervals. It will be useful to talk through the current process and rationale at our next meeting and we can also explore how DETI might be able to assist with increasing resource to facilitate more site audits if need be.

Regards

Seamus

Seamus Hughes
Energy Efficiency Branch
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9532 (ext: 29532)
TextRelay: 18001 028 9052 9532
Web: www.detini.gov.uk

Please consider the environment - do you really need to print this e-mail?
Dear Edmund

RHI INSPECTION VISITS/AUDITS

In our last telecon meeting on 15th September we discussed the issue of inspection visits/audits and I know we have agreed to have the item on the agenda for our next meeting tomorrow morning.

I thought it might be useful to record something formally in the system in advance of that meeting to highlight the issue, (I know Seamus sent you an email after our last meeting about the matter).

DETI was wrongly of the impression that more site visits were being undertaken, probably in the order of 1 in 10 for new installations, with additional regular checks on meter readings.

As discussed we hear through anecdotal evidence of “gaming” of the system and we would want to ensure that appropriate controls are in place to circumvent this as far as is practical and possible.

We can discuss further in our meeting but our thinking would be that 1 in 10 inspections, perhaps targeted at installations recording more than 400,000kWh annual hours might be a workable framework. In addition, (and your procedures may already cover this), regular submission of photographs of meter readings could be a useful additional control.

I appreciate that this is likely to attract additional costs etc and it would be useful if you had some ball park figures around this that we could feed into our discussions. One other option we could consider would be for DETI to audit a number of installations either directly or through a procured third party. I know that you plan to have one of your audit colleagues’ join our meeting and it would indeed be very useful to have that perspective feeding in to the discussion.
revoking accreditation, the decision would normally be made by my manager, Gareth John, or another senior civil servant within Ofgem.

379 In summary, as the scheme has grown, we increased the size of our audit programme to cover 2.4% of the accredited installations by the end of 2016-17. On a number of occasions, we indicated to the Department that we would be willing to increase the audit rate if the necessary funding was provided by the Department, and, when additional funds were provided for the 2015-16 year and after, we did so. In the early years, we focused on announced audits in order to avoid uncompleted audits in order to maximise value-for-money. However, the experience of unannounced audits conducted in 2016 demonstrated that these could also be effective, and we now regularly deploy unannounced audits. We can audit any participant at any stage, and this has included conducting repeat site visits.

380 Where a case is referred to Ofgem and investigated by Ofgem’s Counter Fraud team, we employ certain additional controls, including to ensure that any sensitive information is treated appropriately, and to ensure any evidence collected can be passed through to other agencies such as Action Fraud and PSNI. We have refined this process over time, and as we have made changes to processes, we did have to address some particular challenges. This was not to do with how the audits were conducted, but rather to how we manage the complex evidence-gathering and decision-making process in relation to these cases. Ofgem has benefitted from independent assurance advice on our systems and processes, including a deep-dive on some specific cases – and has taken forward a number of changes. I understand Ofgem has shared examples of these with the Inquiry.

381 We have established procedures for sharing information on investigations, including in relation to counter fraud cases, with DETI, and any issues identified through our approach to appropriately progressing cases, would be escalated to our monthly governance meetings, which DETI attends.

Q70. What, if any, audit information was provided to DETI and how often?

382 Prior to 2015, we did not routinely share the results of audit findings with the Department. In response to a request in 2015 to share information on audit findings, I shared a summary of audit findings from the NI RHI programme to date [479]. More recently, Ofgem has been proactive in seeking to share audit findings and lessons learned. We now routinely share the completed audit reports for all site inspections, as part of our normal processes.
Annex: Auditing

Ofgem shall notify DETI immediately in writing if any financial irregularity in relation to the NI RHI is suspected, and indicate the steps being taken in response. Irregularity means any fraud, theft or other impropriety, mismanagement, or use of funds for purposes other than that approved.

Ofgem will communicate with DETI regarding the Terms of Reference for the audit activity undertaken by Deloitte/AEA, and endeavour to ensure that any DETI concerns regarding the NI RHI are adequately addressed. Upon completion of the audits, Ofgem will share the outcomes where they relate to the NI RHI.

While being consistent with the obligations set out in the arrangements, including the requirement to comply with any legal obligations, Ofgem will provide any records, information, or explanations which may reasonably be required to enable DETI to follow scheme payments, including but not limited to information relating to accredited installations, calculation of payments and transfer of funds from Ofgem to the Installer. If DETI has any issue requiring further consideration, Ofgem will provide DETI, or the Northern Ireland Audit Office, with access rights relating to the payments made to accredited installations.
So, there’s a clear obligation there upon Ofgem to share information arising from audits where they relate to the Northern Ireland RHI. Is that correct?

Dr Ward: Yes.

Mr Lunny: Did that extend not just to information arising from audits of Northern Ireland-accredited installations but also information arising from GB audits that was relevant to Northern Ireland scheme?

Dr Ward: It’s a good question.

Mr Lunny: I’m asking you —. You were responsible for technical compliance, which included audits from 2015 onwards.

Dr Ward: From 2015, yes.

Mr Lunny: Did you interpret that as meaning you should communicate with Northern Ireland, not just about issues that are arising in audits their accredited installations, but also issues that are relevant to their scheme arising from GB installation audits?

Dr Ward: To be honest, I’m not sure I sort of used as my reference for every engagement with DETI the annex to the arrangements. In terms of how I acted in practice, [Short pause] I think I did — in terms of how I would read that now, I think that implies outcomes. Doesn’t necessarily mean sharing every detail of every audit report, but probably would mean if there were themes arising that were relevant to the Northern Ireland scheme, whether they were the result of audits in Northern Ireland or, more broadly, in GB but might be relevant. That would seem a reasonable —.

Mr Lunny: Interpretation.

Dr Ward: Reasonably to be caught by that, yes.

Mr Lunny: And, if that was your approach, do you know was that the approach that was taken in respect of audits prior to you becoming responsible for audits in 2015?

Dr Ward: I don’t know all of the details from what went before me. I do know that we
report, through the testing against the guidance, rather than just against the regulations, it
certainly would’ve communicated to Ofgem what those trends were, whatever Ofgem then
decided to communicate to DETI.

Dr Ward: I’m not disagreeing with your point, but I think, for me, you asked, you know,
“Might that have been the case?”. Yes, it might. For me, would that have been the biggest
driver of understanding areas of policy intent not being achieved? I think there would’ve
been much more value-for-money ways of identifying that information than going and doing
a much bigger number of audits, which, while they might be used to infer some of those
trends, were focused on non-compliance.

Mr Lunny: Yes, and other examples that might have been better value for money, for
example, might have been DETI monitoring what information they had a bit more closely.

Dr Ward: Yes.

Mr Lunny: Another might have been Ofgem communicating basic things to DETI like,
“This is what Ricardo are telling us they are finding in the GB scheme. Here, for example, are
the 20 pages of slides from their November 2013” —

Dr Ward: Yes, I agree, absolutely agree. Another might have been a —

Mr Lunny: — “presentation”.

Dr Ward: — sectoral study, or “We’ve now, our understanding, we’ve got a lot of poultry
houses or farms or whatever; let’s look at those in detail”.

Mr Lunny: Yes. Or Ofgem, for example, sharing details about name, address, postcode
and SIC of each applicant much sooner than February or March 2015.

Dr Ward: Yes.

Mr Lunny: So there’s no question that there might have been lots of other ways to get to
the point quicker or more cheaply, but focusing on audits, you’ll agree — I think you have
agreed — that perhaps a greater number of audits, with the type of focus that they had,
might have revealed some of these trends as well in Northern Ireland.

Dr Ward: Yes, I agreed early on, but I think the fact that you said “might” triggered me to weight that. We can move on, sorry.

Mr Lunny: Yes. And there’s a — there’s a degree of the hypothetical about it, because you simply didn’t do more than the 31 audits that were done over those three full years. But what we do know is that when PwC carried out their audits, through Ramboll, in 2016, they looked at, I think it was, almost 300 installations across maybe 80 sites, something like that.

And what they found — and I can take you to their report — was that —. They categorised them into four groups. Category 1 was “Everything’s absolutely fine”, category 4 was “Possible non-compliance”, and categories 2 and 3 could broadly be termed, “Possible gaming”. And what they found was that just under 50% came into category 1, which was “Everything fine”, but almost exactly the same amount, the same percentage — just under 50% — fell over categories 2 and 3, the “Possible gaming”.

Dr Ward: I agree. Yes. Yes.

Mr Lunny: And that’s why I suggest, whilst there’s a degree of the hypothetical about it, there we have a situation where 100 — or where almost 300 installations were audited, and a very high degree of possible gaming was observed.

Dr Ward: And I agree, but that’s where it comes back to my point. I think the scope of those PwC audits, by design, was different. They were specifically going out to look at particular issues that might be considered gaming, so there was a different focus of those audits.

Dr MacLean: But that was — that was what your fraud prevention risk strategy said you were supposed to be doing. We just looked at that in the spreadsheet just now, and had a conversation about it. One of the mitigating actions was for site audits to be carried out to look for those things.
HCS/018/16

FROM: MALCOLM MCKIBBIN

DATE: 27 JANUARY 2016

TO: ANDREW McCORMICK

RENEWABLE HEAT INCENTIVE

I am writing to you on foot of our conversation last night and your subsequent email to DETI officials on the RHI issue. I am extremely concerned over the escalating costs of this scheme and its potential to materially impact on the 2016/17 budget and, indeed the budgets of subsequent years.

I understand that this has been the subject of ongoing engagement between DFP and DETI for some time. The most recent DFP correspondence is a letter to DETI from Emer Morelli yesterday referring to the Chief Secretary’s letter of 13 January to the Finance Minister setting out the level of AME cover from 2016/17 to 2019/20. Emer emphasised DFP’s real concerns about the rising costs and their implications. I also understand the unfunded pressure for 2016/17 could be as high as £33 million and that you have been communicating with David Sterling on this issue.

I note that you are looking at options to close the scheme as soon as possible. Given the seriousness of the situation, I would ask you to let me know what actions you are taking to expedite this matter so that I can keep the First Minister and deputy First Minister informed.

I understand the Northern Ireland Audit Office has been advised of DFP’s decision not to grant approval for the retrospective element of the RHI addendum which DETI
submitted to Supply in October 2015. It would therefore be prudent to investigate how this ‘unfunded’ budgetary pressure arose.

A further matter I believe requires your attention relates to correspondence (copy attached) which I was given by the First Minister who received it from a constituent concerning perceived abuse of the scheme. I believe that DETI or its ‘managing agent’ needs to consider this issue.

Finally in your email last night, into which I was copied, you advised that you had a clear message from your Minister and his Special Adviser that the RHI issue was now a matter for the First Minister and me. I have spoken to the First Minister who has made it quite clear that it is the responsibility of DETI to mitigate costs and to urgently cease accruing further liabilities from this scheme for the NI Block in 2016/17 and beyond.

MALCOLM MCKIBBIN
FACTS ABOUT GREEN ENERGY AND BIOMASS IN N.I.

1. In the last few years a big push has been made to encourage businesses to use renewable energy sources to heat their business. In the last few years a government backed scheme, where the business owner installs a biomass boiler can receive payments for up to 20 years for the heat produced.

2. This scheme has been taken up by many businesses in N. Ireland, but we also believe it is being seriously abused by many, who are not working within the intended guidelines.

3. Where we believe the problems are arising is that the scheme is not being monitored and is very much left to the installer to vet whether you are a suitable business to enter this scheme.

4. Many people are availing of the scheme who have had no other means of heating previous to this, or if they presently have a heating system there is no comparison made between the cost of the current heating and the heating generated by the new system.

5. Examples of this are large factories who have had no previous heating have installed three biomass boilers and intend to run them 24/7 all year round. With the intention of collection approx 1.5 million over the next 20 years, approx £1500 per week, paid every 3 months.

6. Another example a local farmer who has no business or need for biomass boilers is aiming to collect 1 million ponds over the next 20 years heating an empty shed.

We feel the legislation was never intended to be abused like this.
FROM THE PERMANENT SECRETARY
Andrew McCormick

Chris Poulton
Managing Director
Ofgem E-Serve
9 Millbank
London
SW18 3GE

Adelaide House
39-49 Adelaide Street
Belfast BT2 8FD
Tel: 028 90529441
email: andrew.mccormick@economy-ni.gov.uk

11th July 2016

Dear Chris

NON DOMESTIC RENEWABLE HEAT INCENTIVE

Thank you for your letter of 26 May 2016 setting out the proposed arrangements for the phased review of the non domestic Renewable Heat Incentive, (RHI). I have just seen your letter of 8 July, and I will reply more fully to that as soon as possible – but I can say straight away that I accept that you should have had fuller information about the NIAO Report and for that I apologise. I would like to update you regarding our investigation into the allegations of abuse that have been received.

A Steering Group has now been established within DfE to formalise governance controls over RHI and there have been useful and productive discussions around the second phase of the review, involving site audits.

The NI Audit Office has addressed the RHI issue in its Report qualifying the DETI Resource Accounts for 2015-16. An evidence session at the NI Assembly PAC has been scheduled for 28 September.

You will understand, as outlined in my letter of 9 May 2016, that it is of paramount importance that any investigation provides a robust analysis of the information and fully addresses and concludes on the allegations received. Ofgem colleagues have now advised us that there are constraints around what will be provided in terms of providing an independent view on the potential for recipients to take advantage of the scheme and the extent to which they are taking advantage of the scheme at present; expressing an opinion over the allegations of abuse; and providing an independent view which can be provided to NIAO and PAC as evidence. There is a strong concern here, not only from my perspective as Accounting Officer, but also from the Minister, that it is essential that we can secure a clear assessment of the allegations and an approach to investigation that is proportionate and fit for purpose. I would ask you to note my concern that we have not been able to secure a satisfactory approach through the established arrangements, which is not a point I make lightly. The fact that Ofgem has not been able to commit to a process that would provide the clarity of opinion that I have been seeking as Accounting Officer has had the

Received from DFE on 16/05/2017
Annotated by RHI Inquiry
effect of delaying the start of on-site inspections, and while it is still possible that the allegations we received were overstated, it is now increasingly likely that we will face criticism from the PAC here that we have for too long allowed potential abuse to be continued.

In this light, the Steering Group has decided not to proceed with Phase 2 and instead it has been agreed to appoint an independent auditor to carry out a series of detailed site audits. Naturally it will be vital that Ofgem facilitates our appointed agent and provides access to relevant data and, where appropriate, Ofgem staff. I believe that this is covered under the Administration Arrangements between Ofgem and the Department and I would ask Ofgem to give this an absolute priority.

I acknowledge the work that has been carried out on Phase 1 via Deloitte on behalf of Ofgem. My officials will be in touch in relation to finalising the Phase 1 work as soon as possible. This decision about Phase 2 will not impact on the normal ‘business as usual arrangements’ as per Ofgem’s contract as the scheme’s administrators.

Please do not hesitate to contact me should you wish to discuss further.

I am copying this letter and our previous exchanges to Clive Maxwell in DECC.

Yours sincerely

ANDREW McCORMICK
Permanent Secretary
Dear Andrew,

**Northern Ireland Non Domestic Renewable Heat Incentive (RHI)**

Thank you for your letter of 11th July 2016 and follow-up of 21st July. Following the approach taken in your letter of 11th July, I am also copying this letter to Clive Maxwell.

I am grateful for your reassurances that Ofgem will be kept fully up to speed on all developments going forward and note that an administrative oversight led to us not being informed about the publication of the Northern Ireland Audit Office (NIAO) report. Going forward, I am accepting that we will have the opportunity to engage prior to the release of information into the public domain, including your preparations for the NI Assembly PAC meeting currently scheduled for 28 September.

I note your update on the Steering Group concerning governance controls over RHI. I can confirm that we remain happy to provide input into this or any other initiatives you may have in place in regard to the RHI, in line with the Administrative Arrangements under which we operate.

You refer to Ofgem colleagues advising of constraints around what will be provided in respect of the joint review. Following discussions between officials at Ofgem and DfE, I understand that this refers to the additional requests that have been raised in dialogue since May about increases in scope beyond the agreed terms of reference previously discussed and agreed with DETI. At the time of the original agreement to proceed with a joint review, we were clear that this is something that we could support, under our existing framework, and that this (a) would not result in a publishable report, and (b) would likely rely on Ricardo E&E and Deloitte, and (c) would focus on finding findings in line with the regulations as drafted, rather than commenting on wider policy matters. DETI agreed to this at the time, and confirmed that this provided the required level of independence. It is therefore not helpful to describe this approach as Ofgem having subsequently imposed constraints or restrictions on the approach to the review, when an agreed approach was clearly agreed as set out above.

In terms of our engagement with DfE on any joint review actions as well as continued business as usual activity, I can confirm that we have continued and will continue to act in line with the Arrangements, while taking proper account of appropriate provisions and controls around issues such as data sharing which is controlled in line with our Data Sharing Protocol.

You note concern that you have not been able to secure a satisfactory approach through the established arrangements. The Arrangements set out our responsibilities, and we have...
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.
sampling approach of 50+ audits per annum.

In terms of point 3 - it's a balance here between volumes / patterns and what we see on site from the audits we have done. Key here is in terms of what PWC have found and if it is contrary to the regs - and can action be taken.

Gareth John

Gareth.John@ofgem.gov.uk
On 7 Sep 2016, at 08:12, Chris Poulton <Chris.Poulton@ofgem.gov.uk> wrote:

Sorry, that sent early

So the point being is the person not in the room most likely to get a hard time?

Just a thought, I come at this through no knowledge or experience and trying to work out our best way to get across our thoughts in the right forum

Who is the best person OFGEM wide to advise on what we should do at this point?

Chris

Chris Poulton

Managing Director
Ofgem E-Serve
On 7 Sep 2016, at 08:10, Chris Poulton <Chris.Poulton@ofgem.gov.uk> wrote:

Hi

Thanks for the note

I don’t want us to volunteer on this, however.... There is a view that’s been taken that

1 our administration may have caused overspend
2 our site audit strategy wasn’t right and might have allowed people to game
3 PWC have found we things we didn’t know about on site and in our activities

Chris Poulton

Managing Director
Ofgem E-Serve
On 7 Sep 2016, at 07:37, Edmund Ward <Edmund.Ward@ofgem.gov.uk> wrote:

Hi Chris

Our sense is that we would know by now if a request was to come direct from the PAC. [Although we have not approached the PAC direct to ask the question, given risk of prompting anything].

We understand the DfE PermSec (Andrew McCormick) is meeting this Friday to discuss DfE attendance/procedures for the hearing – I suppose it is possible that he would then ask/invite us to attend alongside, but we’ve been making clear to both branch colleagues and those on the PermSec’s steering group (Brendan/Michael) that we don’t expect to attend.

So I’d say unlikely for the 28th September – especially as focus of this session is on the DETI overspend rather than administration or allegations.

As it sounds like there will be a later follow-up session focusing on findings/allegations (probably after Christmas), my view is we would be somewhat more likely to be asked to attend that.

Edmund
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\(^1\); 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

\(^1\) 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.
applications were received, on a month-by-month basis, through the life of the scheme, and if we scroll down slowly, we’ll see he runs it right the way through into 2014-2015. And we can see, then, the application — there’s a spike in February 2016 just before it closes, and then there are a small number — I think five in total — that seem to post-date the closure of the scheme. I don’t know whether you can cast any light on those. I haven’t included them in that 2,120 figure. And you can see the total figure at the bottom there is 2,133.

Dr Ward: There were some — I can —. We can give you a definitive answer on that, but my understanding is that, after the scheme closed, people made applications. If an application had been made but then needed to be resubmitted through the IT system for some reason —.

Mr Lunny: So, it could be a resubmission of an application.

Dr Ward: It could be a resubmission of an application. I mean, to be clear, we haven’t accepted any applications which were —

Mr Lunny: Yes. But that —.

Dr Ward: — made after the scheme was suspended; yes.

Mr Lunny: Now, again, subject to the important caveat that these are my maths, if we break it down by financial year, the April ’13 to March ’14 inclusive, there are 119 applications; April ’14 to March ’15 inclusive, there are 434; and April ’15 to March ’16, there are 1,567 applications. And if we look, then, at the number of audits performed in each of those years, and they were, if you recall, it was five in the first year, 12 in the second and 14 in the third. Again, by my maths, the five as a percentage of 119 is 4.2%; 12 as a percentage of 434 is 2.76%; and 14 as a percentage of 1567 is 0.89%. Or if you take the total number of applications over those three years of 2,120, 31 as a percentage of that is 1.46%.

Dr MacLean: Sorry, can you say the first two again?

Mr Lunny: For the first year, it was 4.2%, the second, 2.76, and the third, 0.89, and, overall,
1.46. So, never 7.5% of the applications that were being submitted in Northern Ireland
annually and, in fact, a diminishing percentage as Northern Ireland’s applications increased
—

**Dr Ward:** Yes.

**Mr Lunny:** — and it tracked very well ahead of GB.

10:30 am

**Dr Ward:** Yes, and I think that’s reflected in the fact that the number of audits went up
each year. Clearly, there was spike in ’15-16, and the response between Ofgem and DETI was
then to do something radically different in terms of the audit programme in ’16-17, so —.
But I agree with your fundamental point here; this is not representing 7.5% of Northern
Ireland —

**Mr Lunny:** Applications.

**Dr Ward:** — applications.

**Mr Lunny:** Annually.

**Dr Ward:** As we discussed sort of earlier this morning, I think it’s not immediately clear to
me whether that 7.5% was even in the sort of the minds of DETI and Ofgem officials at the
point that they were agreeing this in 2012.

**Mr Lunny:** Well certainly I think we’ve agreed that doing 3% of the GB audit numbers
should give you 7.5% if Northern Ireland is mirroring GB, tracking proportionately with GB.

**Dr Ward:** If Northern Ireland is tracking and if there’s a lag factor because Northern
Ireland applic— scheme opened more or less after the GB scheme, but those two factors
needed to be taken into account if you want to get the confidence that it’s 7.5% of Northern
Ireland.

**Mr Lunny:** Yes, and there was an anticipation that Northern Ireland would be broadly 3%
of GB. We can see that with the various costs issues that were being raised, that Northern