

**The Report of the
Independent Public Inquiry
into the Non-domestic
Renewable Heat Incentive (RHI)
Scheme**

Volume 1 — Chapters 1–19

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**The Report of the Independent Public Inquiry into the
Non-domestic Renewable Heat Incentive (RHI) Scheme**

and

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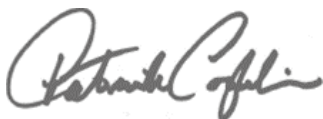
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Rt Hon Sir Patrick Coghlin



Dame Una O'Brien



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Introduction

I.1 On 1 July 2016 the Comptroller and Auditor General for Northern Ireland and head of the Northern Ireland Audit Office, Kieran Donnelly, published his report¹ dealing with the Department of Enterprise, Trade and Investment (DETI) Resource Accounts for the financial year 2015-16. That report specifically considered the development and performance of the Northern Ireland Non-Domestic Renewable Heat Incentive Scheme (the NI RHI scheme). After completing a detailed analysis Mr Donnelly concluded:

“This scheme has had serious systemic weaknesses from the start. The fact that the Department decided not to mirror the spending controls in Great Britain has led to a very serious ongoing impact on the NI budget and the lack of controls over the funding has meant that value for money has not been achieved and facilitated spending which was potentially vulnerable to abuse. I am very concerned about the operation of the scheme and it is an area which I expect to return to in the very near future.”²

Mr Donnelly’s concerns³ included that the NI RHI scheme:

- was not designed to include any viable cost controls despite the clear indication in April 2011 that the scheme would not be funded without limit by Her Majesty’s Treasury (HMT);
- did not take the opportunity in 2013 to mirror the equivalent GB RHI scheme and introduce some cost control measures at that time;
- did not take account of changes to underlying costs since 2012 and therefore was over-generous in incentivising renewable heat;
- could not be changed quickly when it became apparent that demand was rising quickly;
- was not approved by the Department of Finance and Personnel (DFP) after April 2015, which resulted in irregular expenditure. If the need for this approval had been identified at the right time then it could have been the catalyst for a wider review of the scheme;
- had at least facilitated the possibility of payments that were, at best, not in line with the spirit of the scheme and, at worst, possibly obtained by fraud (though there was no *prima facie* evidence of fraud at that time);
- was not properly monitored and controlled by the Department, which solely relied on the work being done by Ofgem that administered the scheme; and
- did not identify the risks of overspending at an earlier stage, even though Annually Managed Expenditure (AME) allocations had been previously advised. This had led to an impact on the Northern Ireland block grant which was likely to be measured in hundreds of millions of pounds.

1 Dated 28 June 2016. See CAG-01351 to CAG-01368. Where footnotes in this Introduction or in the Inquiry Report give references in the format above, this refers to pages within one of the Inquiry’s evidence bundles. This page numbering system is sometimes referred to as ‘Bates’ numbering and was explained during the course of Senior Counsel to the Inquiry’s Opening: see TRA-00038 to TRA-00039. Documents referred to in this way in the Inquiry Report may be found on the Inquiry’s website (unless, exceptionally, the Chairman considers that there is good reason for restricting publication in accordance with the Inquiry’s protocols).

2 CAG-01365

3 Set out in the conclusion of his report at CAG-01365

- I.2 At that time Mr Donnelly estimated that, after taking into account the NI RHI funding HMT had confirmed it was making available through the five years' 2015 Spending Review, the NI RHI scheme would produce a deficit in the finances of the Northern Ireland devolved administration over the subsequent five years of in or around £140 million.⁴
- I.3 Prior to the publication of Mr Donnelly's report the Public Accounts Committee (PAC) of the Northern Ireland Assembly,⁵ which, already aware of the emerging problem, had determined at its meeting on 22 June 2016⁶ that it would conduct an investigation into what had gone wrong with the NI RHI scheme, using its powers to compel witnesses to attend and give evidence. A number of PAC meetings then took place during the autumn of 2016.
- I.4 Mr Donnelly's report and the consequent PAC meetings stimulated public and media interest but it was not until the broadcast of a BBC 'Spotlight' documentary on the issues on 6 December 2016⁷ that the interest of the general public in Northern Ireland really became engaged. A short excerpt gives a flavour of the broadcast:
- “Did you hear the one about the Renewable Heat Incentive? It was a government scheme which went hugely over-budget. Supposedly a green scheme reducing our reliance on fossil fuels, but, believe it or not, as well as being economically a disaster, it actually turned out to be damaging to the environment. There was a series of extraordinary – extraordinary blunders, and now, because of those blunders, we are likely to spend the next 20 years picking up a tab of hundreds of millions of pounds. Tonight, on 'Spotlight', we hear about the missed alarm bells, and we reveal a previously unseen email from a whistle-blower which was ignored by Arlene Foster's Department.”⁸
- I.5 That well-explained documentary by the reporter Conor Spackman simplified and repackaged the findings of the Comptroller and Auditor General's report for easy public understanding and focused on the absence of, first, tiering of the medium biomass subsidy and, second, cost control of the NI RHI scheme. The documentary also contained a reference to a person described as a 'whistle-blower' who had contacted the DETI Minister, Ms Foster, in late 2013 and engaged with departmental officials.
- I.6 Mr Spackman's documentary was followed by a series of television interviews shortly before Christmas 2016, which focused on the regulations amending the NI RHI scheme in November 2015.⁹ Those regulations implemented a new system of tiering in respect of the most popular biomass tariffs which would affect those applicants entering the scheme on or after 18 November 2015. For the small and medium biomass tariffs, tiering limited the payment of the pence per kilowatt hour initial higher tariff to a fixed amount of 1,314 hours per year, after which the payment was substantially reduced to a second lower tariff for any subsequent hours of heat produced. An annual cap was also imposed on the total heat output that would be eligible for payment of subsidy: 400,000kWh.¹⁰ Attention was also directed to the further amendment

4 CAG-01363

5 The Public Accounts Committee (PAC) is a Standing Committee of the Northern Ireland Assembly established in accordance with section 60(3) of the Northern Ireland Act 1998 and under Assembly Standing Order 56.

6 PAC-03314 to PAC-03316

7 DOF-16579 to DOF-16598

8 BBC Spotlight, 6 December 2016, TRA-00019

9 The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015 (2015 No. 371)

10 Approximately the equivalent of running a 99kW biomass boiler at its full capacity for just over 4,000 of the available 8,760 hours in a common year.

of the scheme regulations in February 2016¹¹ which provided power for the Department, by notice, to suspend the NI RHI scheme to new applicants.

- I.7 These interviews were conducted by the radio and television broadcaster Stephen Nolan, the first being with Jonathan Bell, who had been the DETI Minister from May 2015 to May 2016, and the second with Arlene Foster who had been the DETI Minister during the development and implementation of the RHI schemes from 2008 to May 2015, subsequently appointed Minister for Finance and, latterly, First Minister. Mr Nolan characterised the RHI scheme as “the biggest financial scandal ever to hit Northern Ireland politics.”¹² His interview with former Minister Bell¹³ proved to be politically explosive containing, as it did, allegations by the former Minister that his desire to bring the scheme under control had been continuously thwarted by DUP Special Advisers (SpAds) and that First Minister Foster had ordered him to keep the scheme open for an additional two weeks when he wanted to close it because of overspending.
- I.8 For her part, in the course of her interview with Mr Nolan,¹⁴ First Minister Foster took strong issue with Mr Bell’s allegations and, on 19 December 2016, she made a formal statement to the Assembly about the scheme and her involvement with it.¹⁵ Ms Foster resolutely rejected the allegations made by Mr Bell and strongly maintained that she had never been provided with any warning during her time as DETI Minister that scheme spending was out of control or that cost controls were urgently required.
- I.9 As a consequence, 2016 came to an end amid a veritable firestorm of political and media allegations and counter-allegations. The one common feature appears to have been an agreed desire for an independent investigation, free from political influence, to establish the facts relating to the NI RHI scheme.
- I.10 On 9 January 2017 the then deputy First Minister, the late Martin McGuinness, resigned from that post, which he had held for some 10 years. The content of his letter of resignation,¹⁶ which ranged over a variety of political complaints, included a reference to “the current scandal of the Renewable Heat Incentive.” The late Mr McGuinness referred to “a public mood which is rightly outraged at the squandering of public money and the allegations of misconduct and corruption” and he added that he had urged First Minister Foster to stand aside, given her involvement in the creation of the NI RHI scheme, so as to “ensure confidence in the necessary investigation and in the wider public interest.” The deputy First Minister’s resignation had the effect of removing the First Minister from office, given the joint nature of their appointments.
- I.11 On 19 January 2017 the Minister then with responsibility for the Department of Finance in Northern Ireland announced¹⁷ his intention to establish a Public Inquiry into the Non-Domestic Renewable Heat Incentive Scheme. Minister Ó Muilleoir made a formal statement to the Northern Ireland Assembly on 24 January 2017¹⁸ providing further details of the proposed inquiry. Following this, the “Independent Public Inquiry into the Non-Domestic Renewable Heat

11 The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016 (2016 No. 47)

12 DFE-228963

13 DFE-228963 to DFE-228988

14 DFE-424313 to DFE-424345

15 INQ-00107 to INQ-00162

16 INQ-00105 to INQ-00106

17 INQ-00177 to INQ-00188

18 INQ-00006 to INQ-00020

Incentive (RHI) Scheme” (generally referred to as ‘the RHI Inquiry’) commenced its work on 1 February 2017.

- I.12 In his impressive opening statement to the Inquiry Mr Scoffield QC, Senior Counsel to the Inquiry, asked rhetorically how such a relatively unexciting scheme to incentivise businesses to meet their heating needs from renewable sources came to be in the news at all, let alone becoming a contributing factor to the downfall of devolved government in Northern Ireland, thereby striking at the very heart of our democratic institutions. It has been the task of this Inquiry to attempt to answer the questions raised by Mr Scoffield QC, a task that has involved considering and processing some 1.2 million pages of evidence and arranging for witnesses to provide oral evidence over a period of some 114 days of Inquiry hearings, inclusive of opening and closing statements.

The purpose of the Inquiry

- I.13 This Inquiry was established in accordance with section 1 of the Inquiries Act 2005 (the 2005 Act). The purpose and scope of the Inquiry was defined in its Terms of Reference (TOR), a full copy of which is both available on the Inquiry’s website and is included among the appendices to this Report. Paragraph 1 of the TOR defines the purpose and scope of the Inquiry as follows:

“To investigate, enquire into and report on the Non-Domestic Renewable Heat Incentive scheme (“the RHI scheme”). This includes its design, governance, implementation and operation, and efforts to control the costs of that scheme, from its conception in 2011 to the conclusion of the Inquiry.”

- I.14 The purpose of such an investigation is specified as a need to restore public confidence in the workings of Government. Particular requirements of the Inquiry’s task are then set out and they include an examination of the role of Ministers, Special Advisers, Civil Servants, and any others involved in the RHI scheme (including external consultants) and whether their actions and/or advice met appropriate professional standards, were ethical, within the law and compliant with standards in public life including, in particular, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and Conditions of Employment. The Inquiry was required to examine the work on the scheme by relevant Government Departments (particularly the Department for Enterprise, Trade and Investment which, in May 2016, became the Department for the Economy (DETI/DfE), the Office for Gas and Electricity Markets (Ofgem) and others) with a view to determining what, if anything, went wrong. Under the heading “Principles” the TOR specified that: “The Inquiry will be wholly independent and not accountable to the Executive, Assembly, or any public body.”
- I.15 The Inquiry panel has been particularly concerned to preserve the independence of the Inquiry, which is supported by the impartiality provisions contained in section 9 of the 2005 Act. Independence is a key feature of any inquiry established in accordance with that legislation and, while the Inquiry was established by a Minister of the Northern Ireland Executive, as required by section 1 of the Act, the Inquiry panel has also relied upon a Ministerial Statement promising full independence made at the time of setting up the Inquiry; and the panel members are satisfied that they have been able to carry out their functions as they think fit, independently, without fear or favour and free from any external pressures of any kind whatsoever. By agreement, the TOR were made as broad as possible with an emphasis upon the keystones of openness and

transparency and in his statement to the Assembly on 24 January 2017 the then Minister of Finance, Mr Ó Muilleoir, confirmed that the Inquiry would extend beyond financial matters to questions of governance and probity on the basis that such wider issues would go some way towards rebuilding what was said to be the shattered public confidence in the institutions.

The structure of the Inquiry

- I.16 The Inquiry panel was chaired by the Right Honourable Sir Patrick Coghlin, a retired Northern Ireland Court of Appeal Judge. He was assisted by a panel member, Dame Una O’Brien and a technical assessor, Dr Keith MacLean.
- I.17 Dame Una O’Brien enjoyed a long and distinguished career in the Home Civil Service. She was the Permanent Secretary at the Department of Health in London, a post which she held for some six years, having earlier acted as Director General of Strategy at the Department. As Permanent Secretary Dame Una was the Accounting Officer for the overall performance of the health system in England with an annual budget in excess of £115 billion. She also held executive membership of the Civil Service Board, the Department of Health Board and the NHS Management Board, as well as non-executive membership of the Government Legal Service Board. Dame Una holds Honorary Doctorates at the universities of Birmingham and Coventry and was also Chair of The Charity for Civil Servants with a benevolent fund of £36 million. She was awarded a CB in 2010 and created a Dame for public service, particularly in health, in the Birthday Honours List of 2015. She had previous experience in public inquiries, including acting as Secretary to the Kennedy Inquiry into the NHS and Children’s Heart Surgery in Bristol.
- I.18 Dr Keith MacLean served as an assessor to provide technical advice and guidance to the Inquiry. After graduating from Heriot-Watt University, Edinburgh with a first class degree in chemistry and the University Prize for Merit, Dr MacLean worked in industry for over thirty years, including ten years as Policy and Research Director for SSE. In that position he had responsibility for research and development, energy and climate change policy, public affairs and stakeholder engagement on major projects and sustainability. He has worked extensively with technology developers and regulators across Europe and has been regularly invited to give evidence to Select Committees. Dr MacLean is a member of the Institute of Directors and, as a former SSE Telecoms Managing Director, he has very considerable commercial experience, which brings an additional dimension to the Inquiry’s expertise. Following early retirement from SSE, he now acts as an independent adviser on energy to private and public bodies including both the UK and Scottish Governments. He has also served as industry Co-Chair of the Energy Research Partnership as well as Chair of the UK Energy Research Centre and UKRI’s Scientific Advisory Committee. As a board member of a number of trade associations and policy groups he has worked with government on, *inter alia*, the design and review of policy and legislation for low carbon energy support mechanisms. This has included work on issues such as banding and revision of support levels. He is an honorary fellow of Energy Policy at the University of Exeter and was awarded an OBE for services to energy in the 2017 New Year Honours List.
- I.19 The Chairman wishes to acknowledge the invaluable benefit that both he and the Inquiry generally have derived from the respective contributions of Dame Una O’Brien and Dr Keith MacLean. This report is a joint production of all three individuals assisted by the legal team.
- I.20 The Inquiry legal team consisted of David Scoffield QC, Donal Lunny BL, Joseph Aiken BL and the Inquiry Solicitor Patrick Butler. The members of the Inquiry panel are extremely grateful

for the long hours of preparation and analysis, together with the high degree of forensic ability, demonstrated on a daily basis by the legal team.

- I.21 It is also important for the panel to acknowledge the high quality of the work carried out by the legal and administrative support teams headed by the Inquiry Secretary Andrew Browne OBE and later Paula Dawson MBE. Quite simply, it would not have been possible to process, analyse and present the documentary and oral evidence, stretching over a period of some three years and more than 1.2 million pages without the high quality of work, application and intellectual ability displayed by the Inquiry support team.
- I.22 The Inquiry Counsel and Solicitor are also grateful for the invaluable support and assistance they received from the team of lawyers in the Inquiry legal support team and the Inquiry's executive and administrative staff.
- I.23 It would not be right to complete this introductory section of the Report without also expressing the gratitude of the Inquiry panel for the much appreciated support that it received from all the other providers of services to the Inquiry, including the communications, technological, administrative, joinery, catering and security staff at Parliament Buildings, both before and during the 114 days of public hearings. This was a public inquiry carried out fully in the public eye in order to restore a degree of confidence amongst the general public of Northern Ireland in the structures and arrangements by which they are governed. To that end it was the intention and hope of the Inquiry that the online streaming of its proceedings, during the taking of oral evidence, would enable each member of the viewing public to have an opportunity to see and consider for themselves the evidence of the witnesses as they gave it on a daily basis.
- I.24 The Inquiry also appreciates the quality of the media coverage which the proceedings attracted which was generally fair, non-sensational and careful, with appropriate attention to detail.
- I.25 Finally the Inquiry wishes to record its sincere thanks to all those who provided evidence for its consideration and, in particular, to those who gave oral evidence. The experience of giving oral evidence in public can be daunting at the best of times and that must be particularly so when proceedings are streamed online.

The procedure of the Inquiry

- I.26 A public inquiry is not a court and its procedure has, certainly in recent times, been inquisitorial as opposed to adversarial. Section 2 of the 2005 Act expressly prohibits a public inquiry from ruling on or purporting to determine any person's civil or criminal liability, although an inquiry panel is not inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that they determine or recommendations that they make. In adversarial systems the responsibility for collecting and presenting evidence lies generally with one of two or more parties who make allegations and counter-allegations; a judge will then decide the case on the evidence presented. Public inquiries are different. In the Bloody Sunday Inquiry Lord Saville explained the purpose of a public inquiry in the following terms:¹⁹

“An Inquiry like the present Inquiry is quite different. Here the Tribunal takes the initiative in trying to ascertain truth. Unlike an adversarial contest, it is for the Tribunal to seek all the relevant material. Its task is not to decide the matter in

19 Opening statement of the Tribunal, 3 April 1998, found at A2.1 of Volume X to the Report of the Bloody Sunday Inquiry.

favour of one party or another. Indeed, from the point of view of the Tribunal there are no parties or sides. There will, of course, be those who have material evidence to give or who have a legitimate interest in challenging such evidence, but the Tribunal will not treat them as sides or parties in an adversarial contest, but rather as a means of seeking out the truth.”

- I.27 A public inquiry generally applies the inquisitorial approach because it considers it most likely to assist it to get to the truth of a matter of public controversy by way of its own extensive investigation and examination of all the evidence.
- I.28 Section 17 of the 2005 Act provides that “subject to any provision of this Act or of rules made in accordance with section 41, the procedure and conduct of an inquiry are to be such as the Chairman of the inquiry may direct.” Section 17 also provides that “in making any decision as to the procedure or conduct of an inquiry the Chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).” While rules have been made in accordance with section 41 of the Inquiries Act 2005 relating to inquiries set up by a Minister of a Westminster Department²⁰ or a Minister of a Scottish Government Department,²¹ no such rules have been made to date in the Northern Ireland jurisdiction either by Westminster or by the Northern Ireland Assembly. Furthermore, Rules 13 to 15 of the Inquiry Rules 2006 (the 2006 Rules), which required a particular form of warning letter process, have now been the subject of adverse comment by a House of Lords Select Committee²² and a report for the Treasury Select Committee²³ both of which recommended the need for change.
- I.29 Accordingly, it was necessary for this Inquiry to issue a number of protocols and orders dealing with the Inquiry’s procedures and the taking of evidence. The Chairman indicated that, where appropriate, when he was exercising a discretion he would take into account any relevant provisions of the 2006 Rules, although bearing in mind that they did not apply in this jurisdiction or to this Inquiry. The protocols and orders issued by the Inquiry Chairman are published on the Inquiry’s website.
- I.30 Public inquiries are not bound by the formal rules of evidence. Flexibility and fairness are the key concepts. Hearsay evidence is admissible but individuals must be given a fair opportunity to defend themselves against adverse criticism.
- I.31 The Inquiry provided ‘core participant’ status to those government Departments that it considered most involved with the NI RHI scheme, and which the Inquiry considered were most likely to face significant or explicit criticism: DETI/DfE, the Department of Finance and Personnel/ Department of Finance (DFP/DoF)²⁴ and Ofgem. This status gave the relevant Departments certain participatory rights in the inquiry process, designed to ensure fairness. They were each also legally represented.
- I.32 Further, the Chairman of the Inquiry, in the exercise of his discretion, afforded ‘enhanced participatory rights’ to 27 individuals or organisations whom the Inquiry considered could be subject to significant or explicit criticism. This status again provided the individuals

20 The Inquiry Rules 2006 (2006 No.1838)

21 The Inquiries (Scotland) Rules 2007 (2007 No.560)

22 House of Lords Select Committee on the Inquiries Act 2005 “The Inquiries Act 2005; post-legislative scrutiny” HL Paper 143

23 For the Treasury Committee “A Review of ‘Maxwellisation’”.

24 DFP became DoF in May 2016

and organisations with certain participatory rights and, as necessary, such individuals and organisations were legally represented before the Inquiry.

- I.33 During the course of its work the Inquiry gathered evidence through the service of over 800 statutory ‘Section 21 Notices’. Of those Notices that required production of documents, individuals or organisations were required to provide material that they knew to be potentially relevant to the Inquiry’s work, as well as specific material that the Inquiry knew to exist and wished to receive. In turn, the Inquiry provided organisations and individuals with sight of relevant documents amassed during the Inquiry’s evidence gathering process where this was necessary or desirable to facilitate their giving of evidence.
- I.34 Notices also required the provision of witness statements. Invariably, Notices seeking witness statements would ask questions of witnesses, including questions about events, interactions or documents with which they were involved. Some witnesses received a number of Notices. Where necessary, individuals or organisations had legal representation to assist with the provision of a witness statement or statements in response. Relevant material from this process has been published on the Inquiry’s website and there is now a very great deal of such material available to the public through the work of the Inquiry.
- I.35 Where necessary, individuals were also given the opportunity to expand upon their statements in oral evidence. It was not necessary for all witnesses who provided written statements to give oral evidence to the Inquiry. Questioning during oral evidence sessions was conducted by Inquiry Counsel, and by the panel. Most witnesses, including core participants and those with enhanced participatory rights, were legally represented during the process and had an opportunity to contribute to suggested lines of questioning in respect of themselves or, more importantly, others. Transcripts of the oral evidence received by the Inquiry can also be found on the Inquiry’s website, along with copies of the documents considered during the relevant evidence session.
- I.36 The Inquiry also provided core participants, and those with enhanced participatory rights, with the opportunity to make closing submissions. The closing submissions received by the Inquiry are also published on the Inquiry’s website.
- I.37 In addition, in accordance with the duty to act fairly, the Inquiry also engaged in a representations process in respect of those individuals or organisations that the Inquiry considered, after its hearings, should be the subject of significant or explicit criticism in the Inquiry’s Report. Written representations received during the course of this process, although referred to at relevant points in the course of the Inquiry Report, are one of the few categories of relevant documentation received by the Inquiry which are not being published by it. This is because the representations were made in respect of draft material shared by the Inquiry as it continued to work on this Report. This Report is itself the culmination of that process.
- I.38 The Inquiry is grateful for the level of co-operation it received during its work from individuals, organisations, private businesses and government Departments. Significant volumes of relevant documentary material, often prejudicial to its author or holder, were produced to the Inquiry. In the event, the Inquiry did not encounter the need to utilise any of the civil and criminal processes open to it beyond its use of Section 21 Notices.
- I.39 The Inquiry is also grateful for the collaborative engagement it sought and received from those legal representatives engaged on behalf of those involved with the Inquiry.

- I.40 As with any public inquiry, the application of the concept of fairness will of course depend, to some extent, on the particular nature and circumstances of the controversy that the inquiry has to consider. As Sir Richard Scott observed in delivering an address to the England and Wales Chancery Bar Association in 1995 entitled “Procedures at Inquiries - The Duty to be Fair”:
- “The golden rule, in my opinion, is that there should be procedural flexibility, with procedures to achieve fairness tailored to suit the circumstances of each Inquiry.”²⁵
- I.41 For example, in the circumstances of this Inquiry fairness required the Inquiry panel to avoid hindsight and ensure the context was properly understood when considering the actions of individuals. Those who were responsible for the implementation, administration and control of the NI RHI scheme did not have the benefit of the 1.2 million pages currently available to the panel or the current experience and knowledge as to how matters were to develop over the years. Context also required fair consideration to be given to the under-resourced and overburdened conditions of work in which officials were required to perform their duties against a background of recession and reduction in Northern Ireland Civil Service staff (not to mention the regular political crises so familiar to those with knowledge of the devolved administration in Northern Ireland).
- I.42 On the other hand, while hindsight must be avoided when considering events in the past, it is important to recognise that it may discharge a very helpful function with regard to determining what should happen in the future. There may well be some basis for the traditional Irish saying that “Hindsight is the best insight into foresight.”

The nature and structure of this Report

- I.43 In the main body of this Report the Inquiry considers the evidence it received during its investigation, sets out the facts it established as well as its detailed findings on those facts, and then provides a summary and its recommendations for the future.
- I.44 The next 55 chapters contain a detailed narrative in respect of the Northern Ireland Non-Domestic Renewable Heat Incentive scheme (generally referred to in this Report as the ‘NI RHI scheme’). Each chapter contains findings which are associated with the relevant narrative. This is to assist the reader to understand the findings the Inquiry has made, each of which is based on the evidence provided to the Inquiry in the course of its investigation into the matters within the Inquiry’s Terms of Reference. In total there are in excess of 300 findings and, together, these represent the Inquiry panel’s conclusions in relation to those matters.
- I.45 The Inquiry panel’s intention is that anything which they consider to constitute an explicit or significant criticism of an individual or organisation will be contained in one of those findings. It is within the findings that a reader of this Report will find the Inquiry’s specific conclusions on many aspects of the detailed evidence which it heard and the panel’s commentary on how the problems with the NI RHI scheme emerged.
- I.46 While, in general terms, a finding will be supported by the narrative text in the relevant chapter, it may well also be based on text to be found elsewhere in the Report and/or in the published written and oral evidence received by the Inquiry (to which detailed reference has been made in the footnotes to the text of the Report). In the interests of brevity and readability, not all relevant evidence has been rehearsed in each instance in respect of each point addressed by a finding.

25 Scott “Procedures at Inquiries – the duty to be fair” LQR 1995 page 616

- I.47 After the explanation of some key background topics, the chapters proceed in a broadly chronological fashion, detailing the historical background and subsequent development of the scheme from the early years of the 21st century to suspension of the scheme in 2016 and further amendment of the tariffs in 2017.
- I.48 The Report then analyses in detail a number of specific areas in which problems arose with the NI RHI scheme, including the departmental relationship with Ofgem; the failure to establish and maintain an effective system of review; and the failure to create and maintain an effective system of budget control.
- I.49 Further important themes are then addressed, which relate to issues of wider import or application but which were brought into acute focus in the context of the NI RHI scheme, namely the failure to ensure that important meetings, particularly those involving Ministers, were properly minuted and recorded; the law and practice relating to Special Advisers (SpAds); and the failure to ensure an adequate and effective system of departmental governance and control.
- I.50 After the detailed narrative and accompanying findings the Inquiry, in its concluding chapter, summarises some important themes or key points which emerged from the evidence before setting out the Recommendations that the Inquiry makes for the future. The summary in the final chapter is not intended to go, and should not be seen as going, beyond the criticisms contained in the Inquiry's detailed findings.
- I.51 There are a number of important matters that the Inquiry wishes to make clear to any reader of this Report. The first is that the Report, including the findings and the narrative on which they are based, must be read as a whole in order for the context to be properly understood and in order to ensure fairness to those individuals and organisations that the Inquiry has criticised.
- I.52 Second, it is neither necessary, nor desirable, for the Inquiry to make a finding in this Report on every issue that arose during the Inquiry's work or in respect of which it heard evidence. To do so, given that the Inquiry's investigation involved events spanning a number of years, and involved a multitude of individuals and over 1.2 million pages of relevant documentation, would in the Inquiry's view result in an already lengthy Report running to many more hundreds of pages without any worthwhile benefit.
- I.53 Third, the Inquiry considers that there were many issues of factual controversy which arose in the course of the evidence which it is extremely difficult, at this remove, to resolve with a high degree of confidence or which are unnecessary for the panel to seek to resolve in order to discharge the obligations imposed upon it by its Terms of Reference, notwithstanding the interest which a number of those issues may have generated in the media or public eye.
- I.54 Rather, the Inquiry in this Report has addressed the issues that it considered needed to be addressed, criticised those individuals or organisations that it considered warranted criticism, and in the form that the Inquiry considered appropriate, and has made those findings and recommendations that were necessary in the circumstances. On a range of other issues, the Inquiry considers that the evidence it has received and put into the public domain should be permitted to speak for itself or should be left to others to judge. The transparency generated by the gathering and publication of evidence on a broad range of matters relevant to the body politic in Northern Ireland, in particular through the 114 days of oral hearings which were streamed online, has, the Inquiry hopes, already served a vital public interest.

- I.55 Fourth, it should be emphasised again that it was not part of the Inquiry's Terms of Reference to investigate or comment upon those individual members of the NI RHI scheme (those with accredited installations) affected by the 2016-17 amendments to the non-domestic NI RHI scheme and who entered the scheme in good faith relying upon Government promises or guarantees. Their position is the subject of ongoing judicial review litigation; and energy expert Mr Andrew Buglass has also been appointed by DfE to examine the issue of hardship suffered by participants in the scheme.
- I.56 Ultimately, the Inquiry's hope is that if its recommendations are followed, both in letter and spirit, it will be much more difficult for the types of general problems discovered in respect of the NI RHI scheme to re-occur. Hopefully that will, in turn, lead to a better functioning Northern Ireland Civil Service, and provide for a much healthier devolved administration in Northern Ireland. The Inquiry is aware that work has already progressed within the Northern Ireland Civil Service with regard to a number of matters which are covered by the Inquiry's Recommendations. That said, the Inquiry would counsel against any tendency to conclude that some of the necessary changes have already been fully achieved. The Recommendations set out in the concluding chapter of this Report require sustained, system-wide change and will take time to implement effectively.
- I.57 Further, the Inquiry recognises that often, once a public inquiry has completed its work, recommendations that it made may not be given effect by those whose responsibility it is to do so. There can be a wide variety of reasons for this; some better than others. In the interests of ensuring, so far as possible, that this does not occur in respect of this Inquiry's Recommendations, the Inquiry has asked the Comptroller and Auditor General for Northern Ireland to monitor and, as necessary, pursue the effective implementation of this Inquiry's Recommendations. The Inquiry is very grateful that the NIAO has agreed to undertake this task.

