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Mr Robin Swann

Chairperson

Public Accounts Committee

Chris Poulton

Managing Director

Ofgem E-Serve

Re: Request for documents following PAC Evidence Session

4 November 2016

→ [Preface/key messages – as per Chris/Alison/Simon drafting – to be added]

Please see our responses to your requests for documents as follows. Note that we have provided short excerpts of relevance, and provided the full documents as Annexes to meet your request.

1. **The names of Department of Trade, Enterprise and Investment (DETI) staff who instructed OFGEM to operate the RHI scheme on a different level than the scheme in GB;**

When it was launched in November 2012, the RHI scheme in Northern Ireland was largely similar to the GB scheme. We note that when the GB scheme was launched in November 2011 with interim cost controls.

We entered into statutory Arrangements, under section 114 of the Energy Act 2011, on 28th December 2012, signed by **Fiona Hepper** of DETI, which set out the manner in which we would administer certain aspects of the scheme. [There were some differences in both the regulations, and the nature of our role, between the NI and GB schemes, and the different Arrangements reflected that.]

Updated Arrangements were subsequently signed by **John Mills** of DETI on 13 October 2014, 12 December 2014 and 1 December 2015 [see Annex 1 – Arrangements]

As per DETI's public consultation, Phase 2 of the NI RHI, issued on 22 July 2013, DETI proposed changes to the RHI scheme including "to support improved performance and to remain in line with DECC in terms of administration" (4.20). Sections 4.12-4.14 covered cost controls, and set out that "DECC are in the process of introducing a system of tariff depression in GB whereby tariffs will automatically reduce when deployment levels reach set trigger points. DETI expect to introduce similar measures in the future but in the interim it is

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*proposed that a simpler system is put in place” (4.12). The correspondence address for responses to the consultation was **Peter Briggs** [note: by convention, this name to be considered for redaction prior to publication].*

There were regular meetings between DETI and Ofgem during the set-up phase during 2012. These included references to the GB scheme. For example, in the meeting of 3rd July 2012 between Ofgem and non-SCS DETI officials, para 6.3:

“Ofgem pointed out again that when DECC make amendments to the GB RHI in January 2013, there may be a significant difference in the way the GB and NI schemes are administered which will add complexity to the schemes and costs.”

2. Details of the notes from discussions OFGEM had with the Department of Energy and Climate Change and DETI when concerns were raised;

We discussed the GB and NI schemes separately with DECC and DETI, however our discussions incorporated themes from our experience of administration of the RHI schemes across the UK.

As administrators of the scheme, majority of our discussions focussed on scheme administration. However, our dialogue also included raising concerns around policy.

During the development phase, and prior to the launch of the scheme, we raised concerns regarding the cost control provisions. For example, our internal records dated 8 December 2011 [**Annex**; see section ‘Governance’] include a note that *“DETI staff were expressing concerns about oversight of the scheme and particularly controlling scheme costs”*.

We note that the original Regulatory Impact Assessment for the NI RHI identified that *“the most obvious risk”* to the NI scheme related to setting incorrect support payment levels, and also noted that regular, planned reviews of subsidy levels were proposed from January 2014.

During our administration of the scheme, we discussed, with DETI, DECC’s introduction of cost controls including degression on a number of occasions and at various levels. For example:

In 2012, we set out in our Baseline Scope document [**Annex**; see section 3.1], issued alongside our Arrangements entered into to accommodate the launch of the scheme, that *“DECC have announced that they will be making amendments to the GB RHI legislation in 2013 to primarily streamline the accreditation process for generators and will include significant extensions to the scheme, such as regarding air quality, biomass sustainability and substituting long term cost control provisions for the interim ones that come into force in July 2012.”*

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During the development phase of the NI RHI there were telephone meetings between DETI and Ofgem, and we have located minutes for 6 of these meetings held over the period July-August 2012. In the DETI/Ofgem meeting of 3rd July 2012, it's recorded that "*Ofgem pointed out again that when DECC make amendments to the GB RHI in January 2013, there may be a significant difference in the way the GB and NI schemes are administered which will add complexity to the schemes and costs*" (section 6.3).

Our view is that DETI were fully aware of DECC's introduction of cost controls and this was referenced in their 2013 consultation issued on 22 July 2013.

In 1 April 2015, DETI forwarded documents setting out proposed changes, including to cost controls and tariffs. It confirmed that "*This is in response to representation from Ofgem and from stakeholders in the intervening period since the consultation ... The extension of the tariff would broadly bring the NIRHI into line with the GB scheme for small and medium biomass, although the GB scheme does have a tiered system in operation which we are not proposing to introduce in Northern Ireland.*"

We also discussed, with DETI, aspects relating to operation of the scheme in practice, including examples of practices such as the sizing of boilers. Examples include our email of 14 May 2014, which provided a case study for a 990kW boiler which operates for 153 hours each week; and also made reference to considerations on tiered tariffs under the NI RHI. We also forwarded to DETI on 14 May 2014 an item of correspondence (**Annex**) we had received from industry, relating to "*multiple boilers*"; and referencing "*round the clock*" operation of boilers.

3. A copy of the annual declaration form which applicants are required to complete;

The text of the annual declaration, which is completed online, is as follows:

I, [name], declare that, to the best of my knowledge and belief:

In relation to the accredited RHI installation in respect of which I am the participant (or nominated officer of the participant), I am (or the participant is) using the installation in accordance with the relevant eligibility criteria under the RHI scheme, and I am (or the participant is) complying with such of the ongoing obligations set out in regulations 28 to 31 and 33 to 35 of the NI RHI Regulations 2012 as are relevant. This includes keeping records of the type of fuel used and fuel purchased for the duration of my participation on the scheme, where applicable.

I am aware that it is a criminal offence to knowingly make a false representation. I am aware that a person convicted of this offence is liable to imprisonment or a fine or both.

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4. Details of any appeals which were made out of the 12 rejected applications, the stages of appeal and who finally approved them;

The appeals process is summarised in DETI's published Guidance. In brief, where an application is rejected, the applicant can request an internal review of that decision by Ofgem. Where the applicant is not satisfied with the outcome of that review, they can request a review from DETI, who have responsibility for conducting a review in accordance with Regulation 50 of the NI RHI Regulations.

We have summarised details of appeals to rejected applications in the Annex 'Appeals'. In brief:

- 1 application was rejected in 2013 on the grounds of state aid funding, and a review was conducted by DETI. DETI decided that the decision to reject should be revoked. A further application was subsequently approved by Ofgem, having received confirmation from DETI that the amount of state aid would not present an exception to the duty to accredit.
- 1 application was rejected in 2015 on the basis that it had not been commissioned at the time of application; this decision was not appealed.
- 10 applications were rejected in 2016 and a review is currently being conducted by Ofgem

5. Copies of the weekly communication notes from discussions between OFGEM and DETI from June 2013;

The weekly data we have sent over since June 2013 has included an extract from our Register. We have provided examples in the **Annex** 'Data Extracts'; if the Committee would like to see copies of every data extract and covering note we would be happy to provide that but the volume of data involved means this might require an additional few days for us to provide this. This data has supplemented the different sorts of engagement with DfE, over different stages of the scheme, including meetings, teleconferences and formal correspondence as appropriate.

6. Any OFGEM internal minutes in which RHI was discussed;

We have provided minutes of the Internal Ofgem RHI Governance meetings, which have been held monthly since [November 2011]. We have also provided

We have also provided minutes of the weekly implementation meetings held in the run-up to the launch of the Northern Ireland RHI.

7. Copies of correspondence with DETI which highlight that it was aware of the GB scheme;

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As referenced above, we have provided examples in the **Annex** which include:

Our baseline scope shared with DETI in December 2012, which included references to:
“DECC’s forthcoming changes, includes substituting long term cost control provisions for the interim ones which come into force in July 2012”

DETI’s 2013 consultation which references GB changes including cost controls

2014 correspondence between DETI and Ofgem where DETI reference discussions with DECC or regulations, including:

“From my perspective I would assume the position in NI and GB is consistent as there would be no differences in the legislation or policy” [Annex, 17 April 2014 regarding heat pumps]

Policy templates provided by the DETI in April 2015, including on cost controls and tariff changes, reference changes to align with – e.g. heat use – or contrary to – e.g. no tiered tariffs - the position on the GB scheme.

Examples of contact made by Ofgem to open channels of communication between DETI/DfE and DECC/BEIS during 2015 and 2016 [EW to add specific text]

8. Confirmation that the signed change to arrangements was made on 1 December 2015;

Changes to Arrangements were signed by John Mills on 13 October 2014, 12 December 2014 and 1 December 2015. Copies are provided in Annex 1.

9. Any documentation which shows that OFGEM raised concerns with DETI about the use of multiple boilers;

As noted above in response to point 2, we discussed with DETI aspects relating to operation of the scheme in practice, including examples of practices such as the sizing of boilers. Examples include our email of 14 May 2014 (**Annex**), which provided:

A case study – for a 990kW boiler which operates for 153 hours each week;
and

Reference to considerations on tiered tariffs under the NI RHI.

Alongside discussing these items, we also forwarded to DETI an item of correspondence (**Annex**) we had received from industry, relating to:

“multiple boilers”; and referencing “round the clock” operation of boilers.

Further to this, DETI acknowledged in its email of 1 April 2015 that “Ofgem has highlighted the issue of multiple 99KW applications for single sites in the course of its application processing.”

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10. What date was a decision made on de minimis rules?

The change relating to *de minimis* aid regulation 23(1) was made through Arrangements signed on 13 October 2014.

11. Confirmation of whether whistleblower(s) came directly to OFGEM or through another avenue and how were these allegations followed up?

We are currently investigating 3 ongoing suspected fraud cases.

Over the lifetime of the NI scheme we have looked into 8 referrals. 3 of these were opened as cases, 4 were closed before reaching the investigation stage and 1 is ongoing.

We have closed 2 cases. There was insufficient evidence of fraud in both cases. Both were opened in 2014, one was closed in 2014 and the other one closed in January 2015.

None of the external notifiers were classified as Whistleblowers. The definition of a Whistleblower (as outlined in the Public Interest Disclosure Act 1998) is a person raising concerns about wrongdoing, risk or malpractice that they are aware of through their work. Please note this is different to other external notifiers, e.g. those who may have previously worked for installation companies.

12. A copy of the email from OFGEM to DETI in which OFGEM indicated it had concerns about the tariffs.

We wrote to the Department on 14 May 2014 as detailed in our answer to point 9 above.

We also referenced the lack of cost controls in our Feasibility study in 2011 (Annex; see Section 6.9:

“At present there are no mechanisms in place to control costs of the scheme in the event that uptake is considerably higher than anticipated.”

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Annex – Documents:**Annex 1: Arrangements:**

2012-12-28: Signed Arrangements between DETI and Ofgem

2012 NIRHI Admin
Arrangements_final_5

2014-12-12: Letter from John Mills confirming Agreement to revised Arrangements

<http://sharepoint2010/es/Environ/Renewable Heat Incentive Lib/NI%20RHI/Review%20October%202016/Scene%20administration%20related%20documents/General%20administrative%20matters/5%20-%2012.12.2014%20-%20Revised%20Administrative%20Agreement.DOC>

2015-12-01: Signed Arrangements by John Mills

2014-10-13: Arrangements signed by John Mills (and accompanying letter setting out the basis of our administration in this regard)

NIRHI Amending
Arrangements_OctobDETI October
2014.pdf**Annex 2: State Aid:**

2014-07-10: Proposed approach to Carbon Trust Loans and De Minimis Funding

Letter to Chris
Poulton re Carbon Tr**Annex 3: Cost controls**FW NI RHI - Phase 2 Non domestic phase Non domestic phase
Feasibility Study - res2 policy review templ2 policy review templNon domestic phase Non domestic phase
2 policy review templ2 policy review templ

Extract from note by Catherine McArthur, 8 December 2011:

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In addition to Ofgem's internal governance structures we have proposed a Joint Ofgem-DETI Administration Board to oversee the Development of the NI RHI scheme, make decisions around key issues that may arise and manage the contingency fund.

DETI staff have expressed concerns about oversight of the scheme and particularly controlling scheme costs. At present there are no mechanisms for cost control (such as a trigger to notify when a certain number of applications have been received or an installation capacity limit has been reached).

- Whilst in Belfast Catherine and Matthew discussed the option with DETI of this board continuing to meet on a quarterly basis throughout the operation of the scheme to monitor the costs, uptake and any issues arising.

Baseline scope, December 2012:



NIRHI Baseline
Scope 21 Dec.docx

Multiple boilers/99kW boilers/high usage (references to operating 'round the clock'):

Email 2014-05-14:



Email sent to DETI on
14 August 2014 includ

Email from Edmund [to insert]

Annex 4: Data Extract

Email 2016-10-24: example of email sent attaching weekly data extract:



FW NI Data W- 24 FW TRIM NI Weekly
10 2016 xlsb OFFICIData 15-02-2015 OF

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	No. of Rejections	Detail	Appr
g heat for ing periodic payment	10 in 2016	The 10 NI rejections for ongoing obligations are for the same site. These are the drying installations that have no commercial sale of wood and there is not any other non-domestic use on site	Yes – currently un
	1 (2013)	The applicant received a Carbon Trust interest free loan towards the cost of the installation. This is considered "public support" under the RHI Scheme Regulations (Northern Ireland) because the Carbon Trust was administering the loan on behalf of Invest NI which is a part of DETI (Department of Enterprise, Trade and Investment). As the installation was commissioned after the RHI	Applicant requested a Statut Arrangements is the duty o decision to reject should be rev subsequently approved by Ofge from DETI that the amount of exception to the duty to ac

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		Scheme Regulations (Northern Ireland) came into force on 1 November 2012 the applicant would not be allowed to repay the grant in order to dis-apply the exception to the duty to accredit in Regulation 23	
	1 (2015)	Not satisfied the installation was commissioned at the time of application.	

Annex 5: Minutes of Internal Meetings

[Attached separately]

Annex 6: References to DECC policy/engagement



Note on equivalence Example of 2013
of DETI and DECC reDETI engagement wit

Non-Domestic Renewable Heat Incentive

User Management | Accreditation | Periodic Gate | Declarations | Registrants

View Awarded Installations | View Annual Registrations

Declaration of Compliance

I, **Seamus Dobbs**, declare that, to the best of my knowledge and belief:

In relation to the accredited RHI installation in respect of which I am the participant (or nominated officer of the participant), I am (or the participant is) using the installation in accordance with the relevant eligibility criteria under the RHI scheme; and I am (or the participant is) complying with such of the ongoing obligations of the RHI scheme set out in regulations 28 to 31 and 33 to 35 of the RHI Regulations 2012 as are relevant. This includes keeping records of the type of fuel used and fuel purchased for the duration of my participation on the scheme, where applicable.

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