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Dear Chris

#### **JOINT DETI/OFGEM REVIEW OF NI NON DOMESTIC RHI SCHEME**

During our telephone conference on 16 February 2016, we recognised the opportunity for DETI and Ofgem to jointly commission a review on aspects of the Non Domestic RHI Scheme to address relevant developments over recent months. These developments have included significant changes in the volume and shape of applications to the scheme, driven by announcements and changes in regulations. Claims have also been made that the scheme is being abused or is vulnerable to abuse. We recognised the importance of establishing an appropriate evidence base upon which to ensure that existing arrangements are appropriate to address potential abuse in NI, and on gaining an understanding of possible future steps that might be appropriate.

As you are aware, we recently received an anonymous letter on 28<sup>th</sup> January 2016, stating that the RHI Scheme is being “seriously abused” by many businesses and that they are not working within the scheme guidelines. The allegations also state that where 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”. In addition, a number of specific unnamed examples are provided including:

- Factories who have no previous heating have installed three biomass boilers and intend to run them 24/7, with the intention of collecting approximately £1.5m over the next 20 years; and
- A local farmer who has no business or need for biomass boilers is aiming to collect £1m over the next 20 years heating an empty shed.

We take these allegations very seriously even if the evidence is not clear at the moment. Our Minister has therefore asked us to undertake extra checks and look at existing processes to make sure the scheme is operating in compliance with the legislation.

We agreed that as part of the ongoing approach to audit and compliance under the scheme, there are a range of measures and mitigants already in place and that these are subject to ongoing monitoring to ensure they continue to remain appropriate. We are conscious of recent changes in scheme shape, including a significant increase in applications in advance of regulation changes in November 2015, and likely additional application/participant volumes following the announcement of scheme suspension. We agreed that, as part of Ofgem's ongoing strategy, you would in any event expect to review systems and processes as part of your routine administration of the scheme in light of these changes.

Our common view was that such review activity is likely to be in line with the Administrative Arrangements between DETI and Ofgem. However, we also discussed the need to agree the appropriate funding and mechanism to support any additional review (whether conducted by Ofgem officials or commissioned by a third party) for any work over and above the system and process review and assurance which would be delivered as part of the relevant scheme costs element of agreed funding between DETI and Ofgem. Once a costed proposal has been received, we agreed that DETI and Ofgem would confirm any additional amount, and my expectation is that any such sum would be treated as a separate line item in our shared budget and cost reporting.

To fully address the scheme changes and concerns described above, we proposed that, in line with our division of duties as set out in the Administrative Arrangements, the Department would agree with Ofgem an approach to commission an independent investigation of the allegations. You suggested that, in this case, engaging an independent auditor with whom you already have a suitable framework for work of this nature in place might be a possible mechanism by which this could be taken forward in an efficient and timely manner. After some discussion between our teams, I have attached at **Appendix 1** a suggested set of objectives for such a review. I note that this would form the basis of a Terms of Reference for the review to be set out in the proposal from the independent auditor.

We expect that this review will need to sample, on site, a selection of installations in Northern Ireland and should seek to establish if there is any evidence of the scheme having been abused, fraud having occurred or if businesses who have applied or are in receipt of funding have failed to operate within the confines of the scheme guidelines. We agreed that in the case of site audits of RHI applicants or participants, these could be delivered via the continuation or extension of existing audit arrangements already procured by Ofgem. It is important to ensure that the independence of any party conducting checks is demonstrable and that, for example, they have not been involved in the promotion of applications.

Our understanding is that reporting arrangements and sample size for any such audits would be set out in the proposal and relate to the proposed objectives captured in Appendix 1, and Ofgem and DETI would then have an opportunity to review the proposal before agreeing (in line with our administrative arrangements) whether to proceed. However, based on DETI's thinking to date I would expect the sample should be stratified to enable analysis across the following bands:

- Site inspections of a sample of current applications awaiting award, this is allowable under paragraph 22 (4) of The Renewable Heat Incentive Scheme Regulations (NI) 2012;

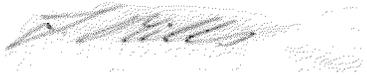
- Site inspections of a sample of businesses, currently in receipt of funding, who have multiple installations; and
- Site inspections of a sample of businesses with single installations.

I would welcome the advice of the Independent Auditor on the size of the sample to be examined in each of these three bands.

I can confirm that we could fund up to 50 checks this financial year on the basis of £1k per check. To ensure this can be utilised, it will be important to agree what is feasible.

Assuming you are content with these proposals and the Terms of Reference and objectives in Appendix 1 I would expect that you would then engage formally with any potential 3<sup>rd</sup> party and request that they submit a proposal prior to us discussing further how the Review should be progressed in more detail. Any variations to the terms of reference or objectives in light of our further discussions could then be agreed prior to commencement of the review.

Yours sincerely



**JOHN MILLS**  
Head of Energy Division

cc Stuart Wightman  
Seamus Hughes  
Adele Willis

## Appendix 1

**Terms of Reference and Objectives to be addressed by a 3<sup>rd</sup> party Review of RHI****1. Summary of Scope**

1.1. As provided by existing Administrative Arrangements between DETI and Ofgem, DETI and Ofgem have agreed for Ofgem to seek a proposal for a third party (the '3<sup>rd</sup> party') to review certain elements of the RHI scheme administration. The review is expected to take the form of:

- (i) an initial review by the 3<sup>rd</sup> party of areas as set out in the objectives below, to inform the scale and scope of the review and to set terms for any additional information required;
- (ii) recommendations by the 3<sup>rd</sup> party for any additional data gathering, some of which might be carried out as part of Ofgem's existing audit framework;
- (iii) a proposal, including costings and timings, to be drafted by the 3<sup>rd</sup> party and provided to Ofgem and DETI; and
- (iv) subject to agreement to proceed, the completion of the review, with a report drafted in line with agreed costs and timelines.

**2. Audience and Relevant Parties**

- 2.1. Ofgem would expect to commission the 3<sup>rd</sup> party review in line with its existing assurance framework.
- 2.2. DETI and Ofgem would both be recipients of both initial proposal and final report.
- 2.3. With reference to point 1.1(ii) above, it is suggested that data gathering might be conducted directly by the 3<sup>rd</sup> party, and/or could, in the case of site audits of RHI applicants or participants, be delivered via the continuation or extension of audit arrangements already in place between Ofgem and their audit or site inspection providers.

**3. Specific Objectives**

- 3.1. The output of the review will be a report, issued to both DETI and Ofgem, informed by evidence and providing a view on each of the following objectives.
- 3.2. For each of the areas, the report should comment specifically on (a) the appropriateness of the approach, and (b) identify any policy, regulatory or resourcing constraints which may impact on the underlying objective being met.

**3.2.1. Eligibility**

- 3.2.1.1. The extent to which current processes ensure that applications to the RHI Non Domestic Scheme meet the conditions set out in the scheme guidelines and legislation and that supporting information supplied as part of the application processes by the applicant is true and accurate

**3.2.2. Ongoing Obligations**

- 3.2.2.1. The extent to which current processes ensure that accredited installations meet ongoing obligations under the scheme guidelines and legislation and that information provided in the application remains accurate

**3.2.3. Payments**

- 3.2.3.1. The extent to which current processes ensure that payments made under the scheme are only made on the receipt of valid, relevant and accurate information supplied by the business in receipt of RHI support

#### **3.2.4. Compliance with Ongoing Obligations**

- 3.2.4.1. Based on inspection on site of a sample of installations, the extent to which installations meet the conditions set out in the scheme guidelines and legislation and any changes in the nature of the installation, from the information contained in the application, do no impact on the continuing eligibility of the installation
- 3.2.4.2. To consider as a result of the onsite inspections, if there is any evidence to indicate suspected fraud or abuse of the scheme by the applicants or participants.

#### **3.2.5. Governance**

- 3.2.5.1. To assess whether existing processes and guidance are sufficient to provide reasonable assurance on the scheme's proper functioning.

#### **3.2.6. Benchmarking and preventative/policy areas**

- 3.2.6.1. To qualify the assessments above on the basis of any experience and available benchmarks
- 3.2.6.2. **[Subject to further discussion between DETI, Ofgem and any potential provider:]** *To provide a view, which could feed into any possible further review, on any policy or legislative areas which may be significant drivers of non-compliance, or where policy review might lead to an alternative approach to non-compliance*