



E-Serve Board

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NI Non Domestic RHI: An Update

This paper is for information and provides an update on the Northern Ireland Non Domestic RHI scheme and the NI Public Accounts Committee Enquiry which is currently underway.

From Gareth John
To E-Serve Board
Cc
Date 10th January 2017

1 Purpose

1.1 Ofgem administers the Non Domestic RHI scheme on behalf of the NI Department for the Economy (DfE, formerly DETI) and in line with the regulations. The design of the policy and the regulations are a matter for DfE.

1.2 This paper provides an update on recent developments in relation to the NI Non Domestic RHI following the suspension of the scheme in February; the PWC investigation commissioned by DfE; the NI Public Accounts Committee's investigation; and the First Minister's recent statement to the NI Assembly. The scheme continues to be subject to wider political and media scrutiny, including to a lesser extent, Ofgem's role in administering the scheme.

2 Timing

2.1 The situation is evolving rapidly and we expect a continued political and media focus on the scheme over the next few months. The Deputy First Minister resigned on the 9th January following a call for a public enquiry into the RHI and the First Minister standing down whilst the inquiry takes place. If a replacement Deputy First Minister is not nominated, this could result in elections taking place. Depending on this, there may be a number of further developments throughout January, these could include publication of the PAC's report (though the timing of this may depend on the First Minister and other Ministers' appearance at the PAC); and a possible DfE policy announcement.

3 Summary

3.1 Ofgem's responsibilities as scheme administrators are set in Administrative Arrangements agreed with the Department. In general terms, these relate to receiving applications and assessing eligibility, determining applications, calculating and paying periodic support payments, and inspection and enforcement functions.¹

3.2 DfE also has overall responsibility for budget and policy issues. The key issue is the fact that the scheme has significantly overspent. The scheme did not include cost control mechanisms until November 2015. Where we have identified concerns, including

¹ The functions expressly retained by DfE were:

- calculating and publishing yearly tariff rates (regulation 36(8));
- requiring repayment of periodic support payments (regulation 47(1)(a)); determining reviews of decisions under the Regulations (regulation 50); and
- publishing guidance and information in aggregate form about the scheme (regulation 51) including number of installations; technology types; capacity; heat generated; and payments made.

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referring to the absence of cost controls, we have flagged these to the Department (this has been highlighted in both PAC and NI Assembly sessions).

- 3.3 In addition there have been a number of anonymous allegations that the scheme was subject to abuse, for example, through heating empty sheds. However, much of the practice that has been identified is within the scope of the current legislative framework via which we are required to administer the scheme.
- 3.4 Following internal and external scrutiny, we have taken steps to identify areas for improvement and learn lessons from this issue to inform our administration of the NIRHI scheme in particular, and our approach to scheme administration more broadly. Overall our approach is to (i) focus on continuing to administer robustly in line with regulations, (ii) to clarify the nature of our role with stakeholders, and (iii) be prepared to respond to further developments as appropriate.
- 3.5 Actions we have already taken include:
 - Making further improvements to our internal governance mechanisms. We have held monthly, formal (minuted) board meetings for the Non Domestic RHI schemes since they began. However, we have taken steps to further strengthen our internal governance mechanisms and we now hold a separate monthly NI specific NDRHI Board Meeting with DfE attendance (by phone).
 - Updating our audit strategy for the remainder of the 2016/17 financial year.
 - Taking action to ensure all of our Standard Operating Procedures are up to date.
 - Updating and documenting the process for making internal audit referrals via our site suggestion log
 - Acting on PWC recommendations (as set out in Annex A).

4 Media Coverage

- 4.1 The scheme has been subject to significant media interest from television, radio and printed media, primarily in Northern Ireland, but there has also been some coverage within Great Britain. At the current time, the media's focus is on political and policy issues, but we are also receiving media questions about our approach to administering the scheme. We have developed fact based lines to take and are working closely with E-Serve's stakeholder management and media colleagues as well as Ofgem's External Relations team to manage media interest/requests on a reactive basis. To date, and in recognition that the PAC's investigation remains ongoing, we have not accepted bids for radio/TV interviews. We will continue to monitor the position closely and update our media strategy accordingly.

5 Background

- 5.1 Ofgem has administered the scheme since it began in November 2012. A timeline of key dates is set out below.

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Northern Ireland RHI – Key Dates and Actions

Date	Action
September 2010	NI RHI scheme announced by NI Department of Enterprise Trade & Investment (DETI)
September 2011	DETI agree funding for Ofgem to prepare feasibility study into administration of non-domestic NI RHI
December 2011	Ofgem issue draft feasibility study to DETI, including noting there are “no mechanisms in place to control costs of the scheme in the event that uptake is considerably higher than anticipated”
January 2012	<p>GEMA Board agrees to Ofgem administration of non-domestic NIRHI, subject to funding. This is recorded in the minutes:</p> <p>“The Authority was invited to agree a proposal from the Northern Ireland Department for Enterprise, Trade and Investment for E-Serve to administer of the NI RHI scheme alongside the GB scheme run by Ofgem for DECC which went live in November 2011. The Authority looked at the advantages and synergies; and agreed the recommendation, subject to policy alignment with the GB scheme and suitable funding and MoU arrangements”.</p>
May 2012	DETI writes formally to Ofgem confirming they wish to enter into an agreement with Ofgem
November 2012	NI RHI (non-domestic) launches
December 2012	Funding agreement and formal arrangements signed between DETI and Ofgem, with Ofgem to deliver most administrative functions but with DETI retaining functions including public reporting. DETI also retains overall responsibility for the scheme, including all matters relating to policy and cost control
October 2013	DETI undertakes a consultation on RHI, including on introducing cost controls – but no measures are implemented until November 2015
2014	Ofgem continue to engage DfE, including raising options to introduce cost control mechanisms, providing weekly data on scheme uptake, and meeting at SCS level in Belfast to confirm funding and audit levels
September 2015	DETI announces proposed regulation changes, including introduction of tiered tariffs and a cap on heat demand, to apply to new applicants
November 2015	DETI regulation changes come into effect, following a huge spike with 982 applications received during September to November 2015, almost as many as had been received in the previous 34 months of the scheme
December 2015	Ofgem increases planned audit volume for 2015/16 to reflect increased volume of applications, with further increase in audits planned for 2016/17
February 2016	DETI announces legislation to suspend the scheme to new applications, causing a further spike in applications; the scheme is suspended on 29 February 2016
April 2016	Deloitte review provides assurance on Ofgem’s processes and controls relating to NIRHI, with 1 key medium finding acknowledging need to update audit strategy which is already underway

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Date	Action
July 2016	Northern Ireland Audit Office (NIAO) publishes report highlighting issues with financial controls and noting potential abuse of the scheme
August 2016	PwC commences further review, commissioned by Department for the Economy (new name for the department replacing DETI)
September 2016 onwards	Northern Ireland Public Accounts Committee hearings and media/political attention as described in this paper

- 5.4 In advance of the scheme’s launch we prepared a feasibility study for DETI in December 2011 which set out detailed proposals for how we would operate the scheme. These proposals, which were agreed by the Department were based on a largely IT/paper based accreditation system and also referenced the absence of cost control mechanisms on the NI scheme.
- 5.5 DETI consulted on changes to the scheme in 2013, including cost controls. We provided evidence of heat use patterns and advised when application volumes began to increase, via provision of weekly data and frequent dialogue. We have discussed the scheme and cost controls with DfE officials as part of our ongoing dialogue, including during meetings with DETI/DFE in Belfast at senior level in April and November and 2014. April 2015.
- 5.6 DETI was due to seek re-approval of the scheme from the Department of Finance and Personnel (DFP) from 1 April 2015. However, this did not happen at the time resulting in £11.9 million of expenditure without the necessary approvals.
- 5.7 DETI introduced regulation changes including a tiered tariff in November 2015. In the gap between the policy announcement on the 8th September and the regulations coming into force on the 18th November, we received an unprecedented high number of applications to the scheme. The scheme was subsequently suspended to new applicants in February 2016.
- 5.8 Ofgem and DfE had commissioned a joint internal review of processes and controls by Deloitte, which gave a clean bill of health, with only 1 medium finding relating to increasing the volume and strategy for audits in 2016/17, which was already in place. The scope of this review was agreed with DETI, but following changes at DETI including machinery of government changes and political interest following the suspension of the scheme, DfE sought to expand the original scope agreed with the Department and Deloitte. We had planned to move to a programme of c. 72 site inspections, following which Deloitte would conduct a Phase 2 report incorporating the results of that review, but this was stopped at DfE’s request. The NI National Audit Office published a report in July 2016 which was critical of the NI RHI. Ofgem’s input was not sought and we did not have advance sight of the report prior to publication. As a result of the report, the NI Assembly Public Accounts Committee launched an investigation. Key points from the NAO report include:
- A significant overspend (c. £1.18bn forecast expenditure amounting to an overspend £460m over funding available from HMT).
 - Absence of necessary Department of Finance and Personnel approval for £11.9m expenditure during 2015-16.
 - Weaknesses in controls over spending to prevent or detect abuse of the scheme, including the absence of cost control mechanisms.
 - That DfE largely left administration/monitoring to Ofgem.

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- Audit volumes were too low and/or did not take action against abuse and/or gaming.
- 5.9 DfE then commissioned PwC to undertake a further independent review of the NI RHI. This review included independent site visits to NI RHI installations and a review of Ofgem's processes and controls. Ofgem cooperated fully with this review. DfE have confirmed that it is not their intention to publish the report, although it has been shared with the PAC. The report highlights a number of issues, including:
- absence of cost controls
 - ambiguity in terms of eligibility criteria
 - communication between DfE and Ofgem
 - differences between schematics and actual sites (which in many cases did not affect eligibility)
 - that we do not routinely require evidence of meter readings (e.g. meter reading visits or photographs)
 - the audit strategy did not take account of the risks on the ground in Northern Ireland
 - site inspections identified a range of behaviours which are not in line with the policy intent (including sites where the majority of the heat use was domestic, multiple small boilers or inefficient heat use)
 - In a small number of cases (less than 10% of sites), there is evidence of some possible non-compliance with the Regulations. However, these non-compliances may be relatively minor in nature and not have a material impact on eligibility or payments. We are investigating all cases of potential non compliance carefully (including a very small number of potential cases of generating heat predominately for the purpose of generating heat and wood drying/heating empty buildings).
- 5.10 DfE officials attended sessions of the NI Public Accounts Committee on the 28th September, 9th and 30th November. Ofgem (Chris Poulton, Edmund Ward and Jane Pierce) attended the committee on the 26th October. This was a long and challenging session where members asked questions relating the fact that key meetings were not minuted until November 2015; audit numbers and follow up compliance action; fraud and whistleblowing; how and when we flagged concerns with the Department; and the robustness of the application process. The PAC requested some additional information on the 28th October and we wrote to the Chair providing this (and a comprehensive accompanying evidence pack) on 7th November. We were told by the committee clerk's office in mid- December that they did not require anything further from us at this stage and that the PAC had no current plans to ask Ofgem to attend a further session. However, this position could of course change.
- 5.11 The consultancy (CEPA) who provided the initial economic modelling to the Department appeared on 23rd November and were asked about tariff levels.
- 5.12 We are committed to cooperating with the PAC in its inquiry, and we'll take action to address all recommendations arising from both the PAC and PwC investigations. The PAC investigation will continue into the new year with further attendance by DfE, the First Minister and other Ministers. The Committee are due to meet on 11th January for a closed session to consider correspondence relating to the RHI investigation. The PAC has been highly critical of the scheme and has so far explored whether there were policy design flaws; missed opportunities for checks and balances; why the scheme differs from GB;

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how the relationship with Ofgem is managed and how Ofgem has discharged its responsibilities as administrator.

- 5.13 Throughout December, there was significant media focus on the scheme and Ministers' roles and the action taken in response to concerns raised by whistle-blowers. This included an investigation by "Spotlight" an BBC NI investigative current affairs TV programme, daily coverage on BBC Radio NI's Nolan Show and a special BBC1 programme showing an interview with the former Minister, Johnathan Bell.
- 5.14 As a result of allegations made in the media about the scheme and Ministers' roles in acting on concerns, the NI Assembly was recalled from recess for a sitting on the 19th December. The First Minister made a statement on to the Assembly which confirmed that the scheme will be subject to 100% site inspections (these will be procured directly by DfE) and that the First Minister had agreed to give evidence to the PAC. A motion of no confidence was not successful. The Deputy First Minister resigned on the 9th January following a call for a public enquiry into the RHI and the First Minister standing down whilst the inquiry takes place. If a replacement Deputy First Minister is not nominated within seven days, this could result in elections taking place.

6 Actions / next steps

- 6.1 We're continuing to engage with DfE, to:
- support them as they consider policy decisions.
 - update on ongoing compliance actions taken as a result of evidence.
 - discuss governance arrangements.
- 6.2 DfE's Permanent Secretary wrote to Chris Poulton on the 16th December asking that we deploy an enhanced level of scrutiny, including seeking independent evidence where necessary (including site audits) and confirming that changes were needed to the Administrative Arrangements to reflect the move to a 100% site inspection process. Chris Poulton replied on the 22nd December seeking clarification as to the Department's requirements and the interaction between any site audits Ofgem undertake (designed to assess compliance with the Regulations) and DfE's own site inspection programme. Subject to the Permanent Secretary's response, we continue to administer the scheme including processing applications received prior to the scheme's suspension in line with the regulations.
- 6.3 Chris Poulton and the Permanent Secretary spoke by telephone on the 4th January, requesting Ofgem's support with DfE's new proposed policy change to resolve overspend. DfE are proposing to align all RHI scheme members to the lower tariff introduced in November 2016 along with tiering with effect from 1st April 2017. The Ofgem E-Serve RHI team are currently reviewing requirements in terms of administration for DfE including deployment of meter reading visit in early April to support this approach.
- 6.4 As set out in para 3.5 above, we are taking action to address the recommendations set out in the PWC report.
- 6.5 We are reviewing resource requirement for Q4 2016-17 and 2017-18 to ensure we have resourcing at the right level and these costs are passed onto DfE as appropriate. This will include understanding the cost implications of DfE's recent announcement in relation to 100% site inspections.
- 6.6 We're actively engaging with BEIS to ensure that emerging lessons are considered from the perspective of the GB scheme; this includes an ongoing programme of workshops

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and focus items at Boards at various levels. This has included more detailed monthly risk and issues review pre board meetings; work to develop a Joint Risk Appetite Statement.

- 6.7 We recognise that there are wider lessons to be learned around assurance of the NI RHI scheme. E-Serve senior management held an initial lessons learned workshop on the 5th January (see Annex A). In addition, we have commissioned an external assurance review with Deloitte which will commencing in the w/c 9th January.
- 6.8 In addition, we are considering reviewing E-Serve's approach review of new schemes and proposed policy changes so that we thoroughly examine scheme risks at outset or ahead of any major changes and undertake a joint risk appetite review.
- 6.9 More broadly, E-Serve is also commencing a review to reflect on the NI PAC experience and feed this into process and governance improvements where required.

7 Annexes

Annex A: GEMA decision paper January 2012

Annex B: Initial outputs from lessons learned exercise

Annex C: PwC actions arising and status