

FINAL



Tel No: 29203

From: Chris Stewart

Date: 4 February 2016

To: 1. Timothy Cairns
2. Jonathan Bell MLA

Copy Distribution List below

CLOSURE OF RHI – URGENT PROCEDURES

Issue:	Closure of the Northern Ireland Renewable Heat Incentive schemes (RHI).
Timing:	DESK IMMEDIATE: Clearance immediately to enable letter to OFMDFM to issue tomorrow – Thursday 4 February 2016.
Executive Committee Referral:	Urgent Procedures are necessary to secure Executive approval before announcing decision to close RHI Schemes
PfG Implications:	The PfG targets for renewable heat are 4% by 2015 and 10% by 2020.
Presentational Issues:	Not publicly consulting will attract criticism.
FOI Implications:	FOIA exempt under sections 35 (formulation or development of government policy)
Financial Implications:	Potential impact on DEL of £95m over 5 years.
Legislation Implications:	Legislative changes to the RHI require draft affirmative resolution Regulations. Not consulting may provide grounds for subsequent legal challenge on decision to close schemes.
Statutory Equality Obligations:	Screened out.
Recommendation:	That you issue: <ul style="list-style-type: none"> - the attached letter to OFMDFM seeking urgent Executive approval (Annex A); and - <u>subject to OFMDFM approval</u>, issue the attached letter to the Chair of the ETI Committee (Annex B) and a press release (Annex C).

Background

1. Further to the submissions of 29 January 2016 from John Mills, you had agreed to close the RHI schemes to new applications, subject to public consultation. Following further consideration, you have decided to proceed with legislation to close the schemes without public consultation. You have consulted the Finance Minister on these issues and he concurs with your concerns and desire to minimise the exposure of the NI Block DEL. This submission invites you to approve the immediate steps needed to obtain Executive approval.

Budget Deficit

2. To meet RHI commitments for existing installations, around £95m of funding will have to be found from Resource DEL (RDEL) for the next 5 years to address the current funding deficit. If both RHI schemes remain open to new applicants, the budget deficit increases to £185m.

Executive Referral

3. The closure/suspension and the budget position could be considered "significant or controversial" and cross cutting. Also any action other than closure would create a significant opportunity cost and, even if this was to be absorbed in the DETI/DfE budget areas, it would have consequences which could only be approved at collective Executive level. To meet the current timetable Executive approval must be secured under urgent procedure. A draft letter to the First Minister and deputy First Minister seeking urgent Executive approval is therefore attached at Annex A.

ETI Committee

4. I understand that, in view of the risk to the NI block, you wish to propose that the draft regulations are laid and the motion tabled at the earliest possible juncture, without prior consideration and approval by the ETI Committee. This action is, of course, likely to attract strong criticism from the Committee. I must also point out that, in seeking to reduce one risk (i.e. of increased overspending) by shortening the timescale for legislation, another risk will be increased; i.e. the risk of legal challenge to the shortened period of public notice of closure.
5. Assuming prompt Executive approval, the shortest feasible timescale would involve consideration by the Business Committee next Tuesday (9 February), with a proposal to schedule the debate for Monday 15 February. The scheme would close on 16 February (with less than 2 weeks public notice).

Announcement

6. Subject to Executive approval, the Chair of the ETI Committee should be given advance warning of your proposed announcement. A draft letter is attached (Annex B) along with a draft Press Release (Annex C).

Recommendation

7. That you issue:

- (a) the attached letter to OFMDFM seeking urgent Executive approval (Annex A); and
- (b) subject to Executive approval, the attached letter to the Chair of the ETI Committee (Annex B) and Press Release (Annex C).

CF Stewart

CHRIS STEWART
Head of Policy Group

cc: Andrew McCormick
Eugene Rooney
John Mills
Trevor Cooper
Stuart Wightman
Helen Vaughan
Rod Robson (DALO)
Ian McCrea MLA APS
Sean Kerr
Press Office, DETI

ANNEX A

**FROM: JONATHAN BELL MLA
MINISTER OF ENTERPRISE, TRADE AND INVESTMENT**

DATE: FEBRUARY 2016

TO: FIRST MINISTER AND DEPUTY FIRST MINISTER

**REQUEST FOR A DECISION BY URGENT PROCEDURE – CLOSURE OF THE
RENEWABLE HEAT INCENTIVE SCHEME (RHI)**

Introduction

1. In accordance with paragraph 2.14 of the Ministerial Code I am seeking agreement to take an urgent decision on the closure of the Northern Ireland Renewable Heat Incentive Scheme (RHI). The urgent decision is required to minimise significant Resource DEL (RDEL) overspending on the scheme.

Background

2. The Non Domestic RHI scheme was introduced in November 2012 and the Domestic RHI scheme in December 2014. Both schemes provide payments for people to move from conventional heating (mainly oil) to sustainable heating such as wood pellets (biomass). In light of unprecedented numbers of applications for the Non Domestic Scheme and the outcome of the Government's Spending Review, an urgent decision is now needed on the future of the NI RHI schemes.
3. Successful Domestic RHI applicants receive an upfront payment of up to £3,500 (depending on the technology) along with 7 annual tariff payments based on the heat requirements of the property. Annual payments are typically around £1,200 but are capped at a maximum of £2,500. Uptake of the Domestic RHI scheme has increased steadily (c.700 applications since the scheme was introduced).

4. The Non Domestic RHI scheme on the other hand involves 20 years of annual tariff payments based on the metered heat usage of the business. Tariffs are dependent on the type and size of technology. To date, average annual payments have been around £24,000. The Non Domestic scheme therefore involves much larger and longer financial commitments than the domestic scheme.
5. After a slow start during the first two years, non domestic scheme uptake increased steadily during 2015. During the Autumn of 2015 there was an unprecedented surge in applications. This increase relates to one particular technology – biomass.
6. A sustained increase in applications during March and April 2015 was the catalyst for the legislative changes I brought through the Assembly in November to, inter-alia, introduce a tiered tariff (reducing after 1,314 hours) and an annual cap (at 400,000 KWh) on RHI payments for biomass. However, in the run up to these legislative changes, the number of installations on the scheme doubled with over 900 applications received in 6 weeks. An increase in applications had been forecast as businesses tried to beat the deadline for tariff changes, but not at the unprecedented numbers received.
7. The increase in applications means that over 6% of NI's total heating needs are estimated to be provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded and we would be well on track to reach the 10% target set for 2020. However, this success comes at a price. Total expenditure for both RHI schemes in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are closed by 31/3/16), forecast RHI expenditure in 2016/17 is expected to be around £45m.

Scheme Approvals

8. When the business case for the non-domestic scheme was approved by DFP in 2012, one of the conditions was for re-approval in March 2015. Unfortunately the need for this approval was overlooked by DETI. DETI had no choice but to

keep making the payments because the RHI scheme is set out in Statutory Regulations and there are no grounds for DETI to cease making payments to properly made applications. Prospective approval has now been received from DFP for non domestic scheme expenditure from 29 October 2015 through to 31 March 2016. Retrospective approval from 1 April 2015 to 30 September 2015 has however been declined and the NI Audit Office accordingly notified. Approval for the Domestic RHI Scheme is in place up to 31 March 2020.

Affordability

9. The affordability of the NI RHI schemes going forward obviously depends on the budget available. The RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME) which normally would not have an impact on the NI RDEL Block funding. However, when the scheme was first introduced in 2012, HMT confirmed that RHI spending would not be treated as conventional AME, where the Exchequer takes on all risks. Instead, a risk-sharing arrangement was introduced whereby, should RHI spending in one year exceed the allocated budget, NI would need to repay this in future years. However, it was DETI's understanding that only a very small proportion of any required future savings (likely to be of the order of 5%) would have to be funded direct by NI through RDEL.

10. Also unlike conventional AME, the initial 4 year (2011/12-2014/15) NI allocation of £25m was based on a Barnett formula of circa 3% of the DECC budget (£838m). HMT confirmed that any 20 year commitments entered into during this period would be honoured. This arrangement was rolled forward in 2015/6 though the AME 2015/16 budget has since been raised to £30m in light of increased demand.

Implications of Chancellor's Autumn Statement

11. If RHI funding was conventional AME there would be no impact on NI DEL. However, the Chancellor's Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. DFP officials, after significant engagement with HMT officials in late November / early

December in preparation for the finalisation of the Chief Secretary's Settlement Letter, have also advised that HMT's position will be that NI will have to cover the full costs of any overspend. This means that the Block RDEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB. The Chief Secretary's wording is set out below:

Renewable Heat Incentive (RHI)

13. As in the previous Spending Review period, AME cover based on a population-proportionate share of the budget which has been set for the Renewable Heat Incentive in Great Britain will continue to be made available to the Northern Ireland Executive. The level of cover available is therefore £18.3, £22.3, £25.7 and £28.9 million from 2016-17 to 2019-20. Any spending on RHI above this level will need to be funded from the Executive's DEL budgets or other sources of income.
12. This creates significant budgetary pressures over and above the available AME budget cover for at least the next 5 years and, given the nature of the existing 20 year contracts, could extend far beyond the next budget period even if there are no new applications after the end of this financial year. Forecast costs in 2016/17 would be higher but would diminish over time i.e. if the scheme is closed to new applications the forecast costs would remain static but the HMT budget would rise therefore reducing the scheme overspend from around £27m in 2016/17 (latest estimate) to around £11m by 2020/21 (though if there are more applications than currently projected the additional costs could be around £33m in 2016/17). This, of course, all assumes that there are no further application spikes in anticipation of scheme closure.
13. In light of the HMT Settlement Letter I must therefore proceed on the basis that the major overspend that has now arisen will now impact upon the NI Block. DETI does not have the funding to meet this overspend. In the circumstances I have no choice but to propose immediate closure of the scheme to prevent the overspend from increasing further.
14. DFP and DETI have initiated an investigation into the effectiveness of the control and regulation of the Initiative in light of the significant increase in uptake of the scheme.

Consultation

15. I have consulted the Finance Minister on these issues and he concurs with my concerns and desire to minimise the exposure of the NI Block DEL.

Timing

16. Given the urgency of the situation I propose to close both the RHI schemes as soon as possible, subject to Assembly approval of the legislation. Indeed, the financial risk is such that I am seeking your approval on the basis that there is not sufficient time for the established convention of consideration of the draft legislation by the ETI Committee. I propose to lay the regulations in draft and table the motion for debate at the earliest possible juncture, without seeking prior Committee approval. This would mean asking the Business Committee (at its 9 February meeting) to schedule the motion for debate on 15 February.
17. Subject to your agreement, I will write to the Chair of the Committee, explaining the circumstances and the reasons for urgent action.

Recommendation

18. I therefore request your immediate agreement, in accordance with paragraph 2.14 of the Ministerial Code, to take an urgent decision to agree to the closure of the Northern Ireland Renewable Heat Incentive Schemes (RHI), subject to Assembly approval.
19. This letter is copied to all Executive Ministers, the Attorney General, the Departmental Solicitor, Office of Legislative Counsel and Executive Secretariat.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment

ANNEX B

Mr Patsy McGlone MLA
Chair of ETI Committee
Room 375
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3XX

February 2016

Dear Patsy

PUBLIC CONSULTATION ON CLOSURE OF THE RENEWABLE HEAT INCENTIVE SCHEME (RHI)

I am writing to inform the Committee that today I will be announcing the closure of both RHI schemes to new applicants. A copy of the Press Release is attached.

You will recall that I brought cost control measures for the Non Domestic scheme forward in November 2015. At that time I said that further measures might be necessary. A sustained increase in applications during March/April 2015 was the catalyst for these changes. However, in the run up to the November changes, there was an unprecedented surge in new applications with a further 900 applications received in 6 weeks. This doubled the total number of installations under the non-domestic scheme. It is estimated that over 6% of NI's total heating needs are now provided through renewable technologies. The PfG target of 4% renewable heat by 2015 has been exceeded.

However, this success comes at a price. Both RHI schemes (non-domestic and domestic) are paid out of Annual Managed Expenditure, (AME) which normally would not have an impact on the NI DEL Block funding. However, the Chancellor's Autumn Statement confirmed that the AME cap for Northern Ireland would be set at the Barnett share of circa 3%. This means that the Block DEL will be penalised for any excess spend for a period of at least the next five years and possibly up to 20 years ahead, depending on the approach taken to RHI in future in GB.

Total expenditure for RHI in 2015/16 is now forecast to exceed £30m. Even if no new applications are received in 2016/17 (i.e. both schemes are closed), forecast expenditure is expected to reach £45m. The increased costs associated with the recent surge in applications together with budget cuts arising from the Spending Review means the available budget for new applications has been exceeded. Meeting existing RHI commitments, let alone any new ones, will have a very significant impact on the NI Executive's budget, possibly as much as £19m p.a., for the next 5 years. DETI does not have the funding to meet this overspend.

In the circumstances I have no choice but to propose immediate closure of the scheme to prevent further overspend. I will bring forward legislation to the Assembly to close both schemes to new applications.

The urgent need to manage the financial risk means that I must bring forward the legislation at the earliest possible juncture. I have today laid the draft regulations and tabled the motion for debate, and I will be asking the Business Committee to schedule the debate for 15 February.

Regrettably, this timescale does not allow time to follow the established convention of seeking the Committee's approval of the policy and draft legislation. I must emphasise that this is not a decision that I have taken lightly. I recognise the importance of the Committee's role, and I would not contemplate this course of action if it were not for a very serious and urgent risk to the public finances.

My Department will also be carrying out a comprehensive review and audit, to ensure that the operation of the schemes is strictly in compliance with the scheme requirements and the underpinning legislation.

I enclose a copy of the draft regulations. I would be happy to meet you and the Deputy Chair to explain the position more fully if that would be helpful. I have also asked my officials to stand ready to brief the Committee at its convenience.

JONATHAN BELL MLA
Minister of Enterprise, Trade and Investment

Annex C

Enterprise, Trade and Investment Minister, Jonathan Bell announces proposals to close of the Northern Ireland Renewable Heat Incentive (RHI).

Enterprise, Trade and Investment Minister, Jonathan Bell announced his intention to close the domestic and non domestic Renewable Heat Incentive (RHI) schemes. The RHI was launched to the non domestic sector in November 2012 and extended to the domestic sector in December 2014.

Commenting on his decision the Minister said: 'It is with great reluctance today that I have had to announce my intention to close both RHI schemes. Both schemes have been very successful with the non domestic scheme in particular seeing significant uptake during the last 12 months and more so in the run up to the recent scheme changes introduced in November 2015. It is estimated that around 6% of NI's heating needs are now provided through renewable technologies. The Executive's target to achieve 4% renewable heat has been exceeded.

However, this increased demand means the available budget for new applications has been exhausted. To meet RHI commitments for existing installations, significant levels of additional funding will have to be found from within the NI Executive's budget for the next 5 years to address the current deficit. To prevent further overspend, I must bring forward legislation to the Assembly to close both schemes to new applications.

My Department will also be carrying out a comprehensive review and audit, to ensure that the operation of the schemes is strictly in compliance with the scheme requirements and the underpinning legislation.'

Notes to Editors

For press enquiries please contact DETI Press Office on tel 028 9052 9604. Out of hours please contact the Duty Press Officer via pager number 07699 715 440 and your call will be returned.

NOTE FOR THE RECORD**RENEWABLE HEAT INCENTIVE (RHI) –INTERVIEW WITH FORMER MINISTER BELL, 15 DECEMBER 2016**

1. This note refers to a matter raised by former Minister Jonathan Bell during the interview with Stephen Nolan, as described in the excerpt from the transcript of the programme (attached at annex A).
2. The context was that there had been a series of discussions arising from the DETI submissions on the urgent suspension of the RHI. The Minister had initially cleared advice (submission of 19 January) which would have led to an orthodox process of consultation, an opportunity for the Assembly ETI Committee to consider the proposed changes, followed by an Assembly Debate to approve the necessary Regulations. That submission would have led to the suspension taking effect just before the dissolution of the Assembly in March 2016.
3. Following discussions involving the Minister of Finance and the First Minister, a further submission was provided on 29 January, setting out three options for the process – two of which involved omitting stages from the orthodox process to accelerate closure. Based on legal advice, the submission recommended the option which retained the orthodox procedure. Minister Bell cleared this at 16.21 on 29 January, agreeing the recommended option.
4. A further submission the same day provided a draft minute from Minister Bell to the Minister of Finance and Personnel, seeking the latter's views on a draft paper to seek the agreement of the First Minister and the deputy First Minister under the Urgent Procedure for decisions referred to the Executive. The letter to Minister Storey issued on 1 February.
5. The discussions at this stage were widened to include the dFM's team, for example one aspect of the proposal was discussed between Andrew McCormick and Aidan McAteer (as recorded in an email of 2 February).
6. On 3 February, DETI officials were told that the decision agreed by both sides in OFMDFM was the most urgent available option, which would leave out consultation on the proposals and also the conventional consideration of draft regulations by the Assembly Committee.
7. On 3 February 2016, I put a submission to Minister Bell, via his political advisor, Timothy Cairns. The subject matter of the submission was the seeking of Executive approval to the proposed closure of the RHI schemes, by means of the 'urgent procedure', ie to take forward formally the approach that we knew had been agreed.

8. Paragraph 1 of the submission notes that the Minister had previously agreed to close the schemes to new applicants, subject to the outcome of public consultation. The original draft goes on to say that: 'However, **further to discussion with DFP and OFMdfM** (emphasis added), you have decided to proceed...without public consultation.'
9. In the final version of the submission, as presented to Minister Bell, the corresponding sentence in paragraph 1 read: '**following further consideration** (emphasis added) you have decided to proceed...without public consultation.'
10. The revision of the draft was requested by Timothy Cairns. I challenged the request on the grounds that there had indeed been consultation with OFMdfM. However, Mr Cairns continued to press for the change to be made, and I agreed. I assumed that the request had been made at the behest of Minister Bell, or at least with his knowledge. The submission was finalised and issued on that basis and the Urgent Procedure paper issued to the FM and dFM on 5 February. Paragraph 16 of that paper confirms that the recommendation was to proceed without consultation or a Committee stage.
11. The submission as finalised was wholly factual: the omission of the reference to the engagement with OFMdfM in no way altered the actions to be taken. A copy of the version showing the changes suggested by Timothy Cairns is attached as Annex B, and the final version as Annex C.
12. Some days later (almost certainly 10 February), I attended a meeting with Minister Bell, initially on a one to one basis. I did not seek a meeting with him as a whistleblower. The Minister asked why the submission of 4 February made no reference to discussion with OFMdfM. I explained that in finalising the submission, I had accepted some changes requested by Mr Cairns. The Minister indicated that he had not had prior knowledge of this, and expressed concern that it had been done without his knowledge. I explained that I had assumed that he was aware of, or had requested the change.
13. Mr Cairns and the Permanent Secretary (Andrew McCormick) joined the meeting. Minister Bell asked Mr Cairns for an explanation of what had happened. After a brief exchange, Dr McCormick and I were asked to leave the meeting, to allow for a private discussion between the Minister and Mr Cairns.
14. Shortly thereafter, the Minister left to attend to another matter, and there was further discussion involving me, Dr McCormick and Mr Cairns. Mr Cairns expressed the view that I had misrepresented the position to the Minister. Through discussion (which was initially heated, but which ended amicably) agreement was reached that this was not the case. The Minister later returned

and advised that he had dealt with the matter to his satisfaction elsewhere, and that it was closed.

15. This note has been seen and agreed by Andrew McCormick as a true record of the events insofar as he was involved.

CHRIS STEWART

Annex A

EXCERPT OF TRANSCRIPT OF THE BBC SPOTLIGHT PROGRAMME OF 15 DECEMBER

JONATHAN BELL

Here is the fact that I do know which reveals it. The Deputy Permanent Secretary of my department, Chris Stewart, asked for something that was highly unusual and only done once in the five years that I sat in the Executive, he asked to meet the minister, as he is entitled to do, to whistle-blow on a one to one basis. One to one basis.

STEPHEN NOLAN

What did he say?

JONATHAN BELL

He said the purpose of me being here today and for you not having even your own Special Adviser with you is, minister we have to advise you that without your knowledge the Special Adviser in your department has been asked by the other Special Advisers to remove references to Arlene Foster, the First Minister, and to the Department of Finance and Personnel. I have spoken about this subsequently to the Permanent Secretary who has verified all of this and is prepared if asked to put it formally on the record in an inquiry. I have asked for the changes that were sought to be made, when I said to him how can I see the evidence of what your deputy Permanent Secretary was telling me, he said there is an email trail, I cannot show you the email trail because you are only entitled to see the final email but he said you will see the changes that there were to take out the references to the Office of First Minister the Department of Finance and Personnel. Fact.

STEPHEN NOLAN

Now why would they want to do that?

JONATHAN BELL

That is for them to answer.

STEPHEN NOLAN

Why do you think? You have told me you are going to tell me the truth from your heart today. Why?

JONATHAN BELL

I can tell you the truth from my heart.

STEPHEN NOLAN

Why would they want to do that?

JONATHAN BELL

I cannot tell you what their thinking or motivation was. Personally I was deeply; deeply hurt that as a minister, the supposed number one in that department, the person who the buck stops with that without my knowledge and without my consent this attempt was made. It took a whistle-blower, a person of considerable integrity to brief me as minister that this was happening.