



RENEWABLE HEAT  
INCENTIVE INQUIRY

**WIT-23801**

RHI Inquiry  
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By post and email to: [tony.simpson@finance-ni.gov.uk](mailto:tony.simpson@finance-ni.gov.uk)

4 September 2017

Dear Sir

**Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme**  
**Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement**

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I enclose herewith a copy of the RHI Inquiry's Terms of Reference. You will no doubt be aware that the RHI Inquiry is currently conducting its investigations into the matters set out in its Terms of Reference. These investigations include gathering in of all of the relevant documentation from relevant departments, organisations and individuals as well as requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

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Chairman: **Rt Hon Sir Patrick Coghlin** | Secretary: **Andrew Browne** | Solicitor: **Patrick Butler**

In keeping with the approach we are taking with other individuals, the RHI Inquiry is now issuing to you a Statutory Notice (known as a 'Section 21 Notice') pursuant to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

The Section 21 Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Section 21 Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it.

The aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it may be that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

It is vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

As you may be aware, the Inquiry has already required the provision of a statement setting out the respective corporate positions of both the Department for the Economy and the Department of Finance in relation to the RHI Scheme. However, the Inquiry Panel is also interested in the roles played by individual civil servants who were involved with the Scheme. Moreover, the Inquiry Panel recognise that individual officials may have a different perspective from, or may even disagree with certain aspects of, the position adopted by their Department (or former Department). The statement which is required from you pursuant to the enclosed Notice is your opportunity to explain what you did in relation to the RHI Scheme and why you did it;

and also to make the Inquiry aware of any concerns you may have about the actions or omissions of others.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that the Department of Finance (DoF) is making arrangements to permit such access, at least in the first instance. You should contact Emer Morelli, Head of Supply, to organise this. She is contactable at [Emer.Morelli@finance-ni.gov.uk](mailto:Emer.Morelli@finance-ni.gov.uk). I have informed Ms Morelli that you may be making contact with her to arrange access to documentation; but there is, of course, no obligation upon you to do so.

Receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), but neither you nor they may show, communicate the contents of, or provide this correspondence or the Notice to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman. In addition, a similar restriction is contained in Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I note that you have already received two Section 21 Notices from the Inquiry: one seeking details in respect of phones, email accounts, and other modes of communication used by you, and another seeking the production of any potentially relevant documents in your custody or control. I also note that you replied to both notices some time ago. Nonetheless I would be grateful if, in light of the various detailed issues raised in the Schedule to this Notice (No. 418 of 2017) and the consideration you give to those issues when preparing your statement, you would revisit the question of potentially relevant documents in your custody or control so as to ensure that you have provided all of same to the Inquiry.

I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to [Patrick.Butler@rhiinquiry.org](mailto:Patrick.Butler@rhiinquiry.org).

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Butler', with a stylized flourish at the end.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE**  
**[No 418 of 2017]**

*Background*

1. Summarise your occupational history, qualifications, and experience.
2. Summarise your role(s) within the Department of Finance (previously the Department of Finance and Personnel) ('the Department' / 'your Department') including (a) the dates between which you held each role and what each role entailed, as well as (b) details of how each role related, if at all, to the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the RHI Scheme').
3. Explain, insofar as is relevant to any involvement you had with the RHI Scheme, to whom you were accountable and/or reported in the Department and who, if anyone, was accountable, and/or reported, to you.

*The RHI Scheme – Involvement with the Scheme or with Officials in respect of it*

4. Set out in detail the involvement that you had in, or relating to or touching upon, the RHI Scheme and, in particular, the following issues:
  - a. The creation of the Scheme;
  - b. The funding of the Scheme;
  - c. The administration/operation of the Scheme;
  - d. Any problems or difficulties (such as, for example, actual or projected overspend) which emerged in respect of the Scheme (including, but not limited to, the causing or permitting, identification, consideration [whether by the Public Accounts Committee or otherwise] and/or remediation of any such problems);

e. The amendment, suspension or closure of the Scheme;

in each instance providing:

- i. Details of any relevant interactions with Civil Servants (whether in your own Department, DETI, DECC, HM Treasury, or elsewhere), Committees (such as the Public Accounts Committee), Ministers, Special Advisers, MLAs, politicians, political parties and other potentially relevant persons (e.g. consultants, the renewable heating industry, actual or potential applicants for accreditation under the Scheme, journalists, etc.);
  - ii. Where you made any decision, or gave any advice, in respect of any of the matters set out at paragraphs a. to c. above, the reasons for that decision or that advice (as the case may be); and
  - iii. Details of any documents which are of significance or particular relevance (which should be annexed to the witness statement if you have access to the documentation which permits you to do so; or, otherwise, which are identified in clear terms).
5. If different from your answer to the previous question, set out in detail the involvement that you now consider you *ought properly to have had*, in, or relating to, the RHI Scheme and the issues mentioned in the previous question as well as the reasons why you did not, in fact, have such involvement.
6. Clarify whether, at any time, you became aware of actual or potential problems, anomalies, loopholes, risks, flaws, misunderstandings, or other issues in respect of the RHI Scheme, its administration, operation and/or funding, and, if you did, please provide the following details:
- a. The precise problems etc. of which you became aware;

- b. The date on / by which you first became aware of each one;
  - c. The means by which you became so aware;
  - d. The action (if any) actually taken by you in respect of each such problem etc. (e.g. raising the issue with DETI, etc.) including details of the date(s) of any step(s) taken by you and the name(s) and role(s) of any other person(s) with whom you engaged;
  - e. (If different from your answer to the previous question) the action that you now consider you ought properly to have taken, as well as the reasons why you did not, in fact, take such action at the relevant time.
7. Identify, in respect of the role(s) you performed relevant to the RHI Scheme, any documents which you consider to be of significance or particular relevance (same should be annexed to your witness statement, if you have access to them, or else identified in terms that include details of the person or body whom you believe holds the said documents).

*Promotion of the RHI Scheme*

8. Specify whether you promoted the RHI Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

*Lobbying and pressure*

9. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other relevant

persons in relation to the terms of the Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the RHI Scheme (including, but not limited to, the amendment of tariffs, tiering, deggression and Scheme suspension or closure) at any stage.

10. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on you in relation to any aspect of the RHI Scheme (including details of the person exerting the influence or pressure, the approximate date of same).
11. Identify any instances, to your knowledge or belief, where influence or pressure was exerted upon someone else in relation to the RHI Scheme (including details of the person exerting the influence or pressure, the person upon whom same was exerted, the approximate date of same, and how you came to be aware of it).

*Standards of conduct and conflict of interest*

12. Identify any instances, to your knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the RHI Scheme (including, if applicable, yourself):
  - a. Breached relevant standards (including, but not limited to, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and/or terms or conditions of employment or service) or acted in a way incompatible with their duties (including, but not limited to, by means of making premature or unauthorised disclosures);
  - b. Acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest;



in respect of any such instances, providing details and specifying the basis for any belief that there has been a breach of a relevant standard or duty or that a conflict of interest arose.

13. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the RHI Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

#### *Whistle-blowing and raising of concerns*

14. Identify any instances of which you are aware of whistle-blowing in relation to the NI RHI Scheme, or disclosures made in the public interest raising concerns about the Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.
15. In particular, provide an account of how you dealt with any disclosures raising concerns about the Scheme made or communicated to you at any time. In relation to each such instance, identify precisely how the concerns were communicated to you.

#### *General*

16. Summarise the risks, problems, flaws, anomalies, loopholes, or other issues that you consider existed in the RHI Scheme (as enacted on 31 October 2012) and its operation.
17. Set out what responsibility, if any, you consider your Department (and, in particular, your Division, Branch, etc.) bears for any of the said risks, problems, flaws, anomalies, loopholes, or other issues or for any issues that have

emerged in the RHI Scheme during the period of its operation.

18. Set out what responsibility, if any, you consider other persons or bodies bear for any of the said risks, problems, flaws, anomalies, loopholes, or other issues or for any issues that have emerged in the RHI Scheme during the period of its operation.
19. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

**NOTE:**

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**

**RHI REF: Notice 418 of 2017**

**DATE: 18/09/2017**

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**Witness Statement of: Tony Simpson**

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I, Mr Tony Simpson, will say as follows: -

*Background*

1. I am an Economist employed within the Northern Ireland Civil Service, (NICS). I commenced employment with NICS in May 1998. I am currently the Head of Strategic Policy Division, (Grade 5), this Division sits within the wider Strategic Policy and Reform Directorate, (SPAR), both of which sit within the Department of Finance, (DoF), formerly the Department of Finance and Personnel, (DFP). Over the course of my career, I have held various positions in various Departments; DoF/DFP, the Department of Enterprise; Trade, and Investment (DETI); and the Department for Regional Development (DRD). I have also worked as a Management Consultant in PricewaterhouseCoopers (PwC). I hold the following qualifications: BA (Hons) Applied Economics and MSc Finance.
2. As stated, I am currently the Head of SPD and have held this position substantively since September 2014, having been temporarily promoted to this post between end March 2014 and September 2014. I reported and continue to report to Dr Colin Sullivan, (Grade 3), SPAR. My direct reports are: Patrick Neeson (Grade 6), Noel McNally (Grade 7), and Conor Bell (Grade 7).

Prior to that, and between August 2010 and March 2014, I was a Grade 7 within SPD with responsibility for policy and briefing. I had no involvement in, nor line management responsibility for any other DoF officials involved in RHI matters in this position. During this time, I reported to Bill Pauley, then Head of SPD.



3. As detailed in the DoF Corporate Statement, SPD is responsible for the development of guidance to NI Departments in relation to the completion of economic appraisals and business cases – the Northern Ireland Guide to Economic Appraisal and Evaluation (NIGEAE). SPD also supports DoF Divisions and NICS Departments, and in particular provides professional economist advice to Supply Division, in DoF, on business cases and other casework issues. This advice is provided primarily by two Economic Appraisal Branches, (EABs), which sit within SPD. Each EAB is headed by a Grade 7 Economist, Noel McNally and Rachel McAfee. Each EAB has responsibility for assigned NI Departments. SPD's involvement in RHI matters arose mainly as a consequence of advice supplied by EAB in relation to the DETI/DfE business cases.

In my role as Head of SPD, I am responsible for, and manage the work of the EABs, and two other SPD branches ('Strategic Policy & Briefing' and 'Tax Policy'). This responsibility and management role is carried out in conjunction with the current SPD Deputy Director, Patrick Neeson, (Grade 6 Economist).

*The RHI Scheme – Involvement with the Scheme or with Officials in respect of it*

4. In relation to my involvement in the RHI Scheme:
- a. I had no involvement in the creation of the RHI Scheme;
  - b. I had no involvement in the funding of the RHI Scheme;
  - c. I had no involvement in the administration / operation of the RHI Scheme;
  - d. I had a minimal involvement in considering how RHI payments might be recovered in that I contributed to the development of 'lines to take', (on 21 December 2016), regarding the potential to use a 'windfall tax' to recoup RHI payments. The windfall tax was a suggestion raised in the media that the rating system could be used to this effect. In relation to the above:



- i Following the suggestion in the media (BBC Nolan Show) that the rating system might be used in this way, Dr Colin Sullivan, SPAR Director, suggested to colleagues in Rating Policy Division (a division within SPAR), that provisional 'lines to take' should be developed. I contributed to these from a taxation perspective (given that SPD's remit also includes providing advice on tax policy / devolution). I shared and discussed these with Hugh Widdis, DSO.
  - ii I provided high level lines to take which outlined some of the issues / practicalities that would need to be considered in relation to a windfall tax.
  - iii Email exchange (including lines to take developed) between myself and Hugh Widdis, DSO, is attached at Annex A.
  
- e. SPD officials, specifically EAB Officials and Patrick Neeson (Grade 6), provided advice on the 2017 business case, "Addressing the deficiencies in the non-domestic RHI scheme", that was submitted on 11 January 2017. This was the business case which led to the Renewable Heat Incentive Scheme (Amendment) (Regulations) Northern Ireland 2017.
  - i While I did not personally quality assure the 2017 business case, I did have high level discussions with SPD colleagues involved in providing advice to Supply Division, namely: Patrick Neeson, Noel McNally and Christine Finlay.
  - ii As above, while I did not personally provide advice on the 2017 business case, I did have high level discussions with SPD colleagues doing so and was content with the approach being taken.
  - iii The advice provided by SPD is contained in Patrick Neeson's note of 13 January 2017 to Emer Morelli to which I was copied and had prior sight of before issue (attached at Annex B).
  
- 5. I do not believe that I ought to have had different involvement to that described above. Advice on business cases to Supply Division is routinely provided and



managed by the Grade 7 Heads of the EABs.

6. Outside of the course of business described above, I only separately became aware of the issues associated with the RHI Scheme through the media coverage of this matter.
7. Documents referred to above are annexed accordingly.

*Promotion of the RHI Scheme*

8. I have not promoted the RHI Scheme, nor encouraged / assisted any third party to seek accreditation under the Scheme. Neither have I provided any information to any third party which may have influenced or aided any other person in applying to the scheme.

*Lobbying and pressure*

9. I have no knowledge nor belief of any lobbying or encouragement of/by Ministers, Special Advisors, Civil Servant or relevant persons in relation to the terms of the Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the RHI Scheme.
10. There are no instances where I believe any influence or pressure was exerted on me in relation to the RHI Scheme.
11. I have no knowledge nor belief regarding pressure being exerted on any other persons in relation to the RHI Scheme.

*Standards of conduct and conflict of interest*

12. In relation to standards of conduct and conflict of interest:



- a. I have no knowledge nor belief of any Minister, Special Advisor, Civil Servant or any other person involved in the RHI Scheme (including myself) breaching relevant standards;
  - b. I have no knowledge nor belief of any Minister, Special Advisor, Civil Servant or any other person involved in the RHI Scheme (including myself) acting in circumstances relating to or touching upon the Scheme in any way where they / I had a real or perceived conflict of interest;
13. To the best of my knowledge, I have no connection to any person or body receiving payment under the RHI Scheme or benefiting commercially from the Scheme in any other way.

*Whistle-blowing and raising of concerns*

14. I have no knowledge of any whistle-blowing in relation to the RHI Scheme.

*General*

15. As detailed above, my involvement in relation to RHI matters was limited to the periods December 2016 and January 2017. In relation to these two discrete matters, I had sight of very little documentation. I am not therefore suitably placed to make any informed or helpful comment as to the risks, problems, flaws, anomalies, loopholes which existed in the RHI Scheme as originally enacted on 31 October 2012.
16. As per para 15.
17. As per para 15.
18. As per para 15.
19. I do not have any further evidence to offer.



Statement of Truth

I believe that the facts stated in this 12 page witness statement are true.

Signed: 

Dated: 18/9/2017





**Annex A – Email from Hugh Widdis to Tony Simpson (dated 21/12/16) re:  
Windfall Tax - RHI boilers**

Tony

Thanks. The lines look good to me.

I am told that while the taxation idea was discussed briefly at an early stage with DfE, we did not do any advice beyond those discussions. DfE colleagues may have material.

We can provide an opinion as to legislative competence if you wish, but would need some detailed instructions, or at least a kick-off discussion. The kind of practical problems you identify below however might be more determinative of the workability of the idea. One might add to them a variant of Occam's razor/lean process design – the solution currently being advanced stops money going out at all, while a tax-based solution would allow it to go out for 20 years but then recover (some of) it. The latter is clearly a more complex process, perhaps unnecessarily so.

For info, some of the installations are not woodpellet-based, e.g. there is some solar., which would again make taxation complex.

H

**From:** Simpson, Tony  
**Sent:** 21 December 2016 11:27  
**To:** Widdis, Hugh  
**Cc:** Sullivan, Colin; McMahon, Aidan; Neeson, Patrick (DoF)  
**Subject:** FW: Windfall Tax - RHI boilers

Hugh – thank you for the call earlier. These are the LTT we have provided to SpAd/MoF.

Would be keen to see legal advice on issues associated with using a tax/levy – you are considering how best that can be done.

Tony

**From:** Sullivan, Colin  
**Sent:** 21 December 2016 11:19  
**To:** Rooney, Eoin  
**Cc:** Sterling, David; Brennan, Mike; Simpson, Tony; McAvoy, Andrew; McMahon, Aidan; Armstrong, Anne; Kerr, Sean  
**Subject:** RE: Windfall Tax - RHI boilers

Eoin

LLT on the potential for a possible Windfall Tax for RHI:

**Lines to take – potential for a Windfall Tax – RHI Recovery**



- I am focused on finding a solution that protects the interests of taxpayers. I'm open to all possibilities here.
- Well advanced in our thinking as to how to resolve this issue and DfE have given detailed consideration to a range of options.
- Now is not the time to discuss individual options until we have fully tested these.
- Some sort of tax or levy has been suggested, but this would not be as straightforward as some would lead you to believe.

**If pressed:**

- Number of complex design issues and practicalities would be associated with this.
- How would you differentiate between those using boilers under the scheme - reasonably or otherwise – and those that have been using this technology regardless.
- What is the scale of windfall you would seek to recoup and how might that be built into any design?
- What impact would a tax such as this (either on boilers or woodchips as suggested) have on our efforts to encourage the genuine use of renewable energy sources.
- What wider impact might this have on jobs and businesses in the renewables sector.
- Has been suggested that Westminster would be required to legislate to introduce a windfall tax/levy. The NIA also has the ability under the Northern Ireland Act to introduce taxes that are substantively different in character to existing UK-wide taxes. The legal issues around this would need to be fully tested.

Colin

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**Dr Colin Sullivan**  
**Strategic Policy & Reform Director**  
**Department of Finance**  
**2nd Floor West**  
**Clare House**  
**303 Airport Road West**  
**BELFAST**  
**BT3 9ED**



Int Ext: 68240

External: 028 9185 8240

Mobile: Personal information  
redacted by the RHI Inquiry

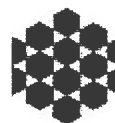
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**Annex B**

**Patrick Neeson**  
**Strategic Policy Division**  
Fin Tru House  
Gasworks Business Park  
1 Cromac Avenue  
BELFAST, BT7 2JA

Tel No: 028 9090 9339  
email: Patrick.neeson@finance-ni.gov.uk



Department of  
**Finance**  
An Roinn  
**Airgeadais**  
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**FROM: PATRICK NEESON**

**TO: EMER MORELLI**

**DATE: 13 JANUARY 2017**

**BUSINESS CASE: ADDRESSING THE DEFICIENCIES IN THE NON DOMESTIC RHI SCHEME**

1. DfE have submitted a business case which examines options for amending the Non Domestic RHI Scheme. The purpose of the business case is to review the tariff regime that applies to those recipients who entered prior to the amendment of the Scheme in November 2015. The aim is to introduce a revised tariff regime for this group of recipients as a temporary measure for the 2017-18 financial year, which will reduce the expected cost for that year, while a more in-depth review of the Scheme is undertaken.
2. This note does not provide a detailed commentary around the business case but rather highlights some of the key issues that need to be considered from our perspective in arriving at an approval decision:

**Options**

3. The business case acknowledges that the range of options it can consider is limited. Hence the only options examined are those which relate to amending the tariff, aside from suspending the Scheme completely. The business case refers to other options that have been considered, although none of these is listed, aside from one, which would be to offer one-off compensatory payments in order to 'buy-out' participants' initial investment. This option is not considered in any detail though, other than to question whether the Department would be able to use AME funding for such compensatory payments.
4. This lack of options means there is less certainty that the one selected is the most value for money. The business case is very much driven, though, by the need to bring the financial cost of the Scheme into line with the existing AME



allocation. In that context, the focus on options relating only to amending the tariff seems practical. Having said that, had the business case been accompanied by formal, written legal advice, this might have helped to inform the selection of options.

### Legal Risks

5. The absence of formal legal advice is clearly a key omission. As well as informing the spread of options, it is obviously vital in establishing whether the preferred option is likely to be legally defensible and in guiding decisions with respect to State Aid ramifications, litigation costs and so on. The business case does rehearse some of the potential legal arguments that would be presented if the decision to change the tariff was challenged. However, in the absence of definitive legal advice, it is clear that this will be a significant risk moving forward.
6. In terms of State Aid, the business case notes that the introduction of revised tariffs will require a fresh notification to the European Commission. It states that this is "*being taken forward urgently and within the timescale planned for the commencement of the new regulations*", adding, though, that "*navigation of the EU process cannot and should not be taken for granted*". It is not clear from the business case the extent to which failure to gain the necessary clearance from the EU would act as a barrier to new regulations being introduced.

### Modelling and Costs

7. The business case models the likely cost of each option. It makes clear that this is a "*high level analysis*", which is based on assumptions around particular variables and which, in some cases, has had to gross up the data available to reach an ultimate cost estimate. While there is therefore some uncertainty around these cost estimates, what the analysis does demonstrate is that option 2, which essentially means bringing all recipients more or less into the post-November 2015 tariff structure, will significantly reduce the cost of the Scheme for 2017-18. What it also shows, though, is that for some recipients, the level of payment will continue to be substantial. The business case acknowledges this (para 5.7).
8. What would have been useful is if the business case had included some sensitivity analysis which would have looked at the impact of changes to key variables which drive the Rate of Return calculation, such as fuel prices. It is clear that adjusting these can have a significant impact on the potential Rate of Return, if not the overall cost of the Scheme. This also highlights the need to ensure that the tariff is reviewed regularly to take account of factors such as changes in relative fuel costs.
9. There are some other points to note in relation to the cost estimates. For example, there is the potential that the current cost of the Scheme (the status quo option, in other words) might be reduced through the 100% inspection regime that is to be introduced. There is no estimation of the saving that this



might generate. Obviously, the greater the saving this achieves, the less the imperative for a revised tariff in order to bring the Scheme into line with the funding available.

10. The analysis carried out in Annex B also requires some clarification. There appear to be some differences in the assumptions applied here and those used in Annex A. While it would be useful to have these addressed, the primary piece of analysis driving the cost estimates is that contained in Annex A. This shouldn't affect the ultimate approval decision therefore. There are also perhaps some minor adjustments needed to the analysis within Annex A. Again, though, these would not have a significant impact on overall cost.

### **Conclusion**

11. In conclusion, therefore, the preferred option might be viewed as potentially sub-optimal but, in the circumstances, perhaps represents the best one for the moment given the thrust of the paper around the need to save the public purse. The analysis highlights, though, the sensitivity of the financial projections to the assumptions applied, particularly in terms of the rate of return that recipients can make. This reinforces the need to ensure that the Scheme, and in particular the tariff structure, (if it continues in its current form) is kept under regular review to take account of changing circumstances.