



RENEWABLE HEAT  
INCENTIVE INQUIRY

**WIT-134530**

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By post and email: [patsymcglone](mailto:patsymcglone@sdpld.com)

Personal information redacted by the RHI Inquiry

14 August 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').

The RHI Inquiry's Terms of Reference, which can be viewed on the Inquiry's website, are enclosed for your assistance.

I know that you will be aware, from my previous correspondence with you, of the work of the RHI Inquiry and that it is now conducting its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals. In addition, the Inquiry is also engaged in the process of 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.

You previously provided a written statement to the Inquiry (dated 8 June 2017) in response to Chairman's Notice No 156 of 2017, which asked you to provide evidence about a letter from Sheridan & Hood Limited of 27 November 2012 to the Minister for Justice and some other general questions. In the course of your response you provided considerable commentary in relation to your position as the (now former) Chairman of the Enterprise, Trade and Investment Committee, for which the Inquiry is grateful. The enclosed Notice seeks further evidence in relation to the work of that Committee at relevant times and some clarification or elaboration in relation to matters contained in your earlier statement (although the Notice also addresses a small number of further matters).

As before, 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.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the three restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents 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.

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.

I have copied this correspondence (by email only) to Jonathan McMillen of the Northern Ireland Assembly Legal Services Office (at [jonathan.mcmillen@niassembly.gov.uk](mailto:jonathan.mcmillen@niassembly.gov.uk)) since your previous response indicates that you sought advice or assistance from him when you received the previous notice.

I would be grateful if you (or your representative, on your behalf) 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 that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE****[No 391 of 2017]***The role of the ETI Committee generally*

1. In paragraph 3 of your statement of 8 June 2017 in response to Chairman's Notice No 156 of 2017 ('your earlier statement') you discuss the functions of the ETI Committee. As to that:
  - a. Please describe in detail how, in practice, the ETI Committee 'advised and assisted' the ETI Minister; and
  - b. Please describe in detail how, in practice, the ETI Committee scrutinised Departmental policy.
  
2. As to these functions:
  - a. Specify whether you consider the ETI Committee is an effective means of scrutinising Departmental policy making and outline the shortcomings or impediments, if any, of which you are aware in the effectiveness of the Committee's scrutiny function.
  - b. Explain whether you considered the ETI Committee to be adequately resourced (in terms of time, resources, expertise, etc.) to perform an effective scrutiny and challenge function in respect of the Department. Please give reasons for your answer.
  - c. Describe the level of assistance and cooperation provided to the ETI Committee by its Minister(s) and officials; and specify whether the Committee was content with the level of assistance and cooperation provided. In the event that you identify any concerns in this regard, please specify them and explain the reasons for those concerns.

*The ETI Committee's involvement in the RHI Scheme*

3. In paragraph 7 of your earlier statement you note that the ETI Committee had, prior to its meeting on 13 September 2012, considered the SL1 relating to the Renewable Heat Regulations (Northern Ireland) 2012 ('the 2012 Regulations'). Please explain from your knowledge and the records available to you:
  - a. Who the ETI Committee Chair was at the time of those previous meetings;
  - b. What consideration the ETI Committee had given to the SL1 in relation to the 2012 Regulations;
  - c. What concerns, if any, had been raised, explored or probed;
  - d. What explanation was given to the Committee on behalf of DETI about the type of scheme selected and the design of the tariffs; and
  - e. The outcome of the previous meetings at which the SL1 was considered.
4. Describe in detail the scrutiny given by the ETI Committee to the policy behind the 2012 Regulations and the decision to depart from the scheme of the similar Regulations which applied to the GB Scheme (including, for instance, the decision not to include tiering or degression in the Northern Ireland RHI Scheme). If the ETI Committee did not expressly consider the issues mentioned above, please make this clear. If it did so, and agreed or disagreed with the Department's proposed approach, please explain why this was.
5. Also in paragraph 7 of your earlier statement you note that, at the meeting of 13 September 2012, the ETI Committee considered correspondence from Action Renewables which, *inter alia*, raised the issue of applicants to the Scheme "*installing boilers with a smaller capacity than is required*" (given the differential between the tariff levels for boilers up to 100kWth and above 100kWth) as "*the most remunerative way of exploiting the scheme*". As to that:

- a. Please explain the capacity in which the ETI Committee understood Action Renewables to be writing to it and what role the Committee considered Action Renewables to have at that stage;
  - b. Whether any further information was sought, or any further questions raised, by the Committee (or any of its members) in relation to this representation; and
  - c. Whether any further action was taken to explore this issue or to ensure that it was addressed by the Department.
6. Without prejudice to the generality of paragraph 5 above, please give further details in relation to the statement in paragraph 12 of your earlier statement that you *“relayed the concern which had been communicated to the ETI Committee from Action Renewables and discussed above, and suggested this was something which might be considered by DETI in what was then termed ‘phase 2’ of the RHI scheme”*. In particular:
  - a. Outline when, how, and to whom in DETI, you communicated this concern;
  - b. Outline any response you received in relation to this;
  - c. Describe any follow-up steps taken by you, or the ETI Committee, to ensure that this matters was considered and/or addressed by the Department; and
  - d. Describe what the Committee had been told about ‘Phase 2’ of the RHI Scheme and what it anticipated would be done at that stage.
7. Please also describe any follow-up steps taken by you, or the ETI Committee, to monitor or scrutinise what the Department did, or did not do, in the course of Phase 2 of the RHI Scheme, including (in particular):

- a. With what information the Committee was provided in respect of what was being taken forward in the course of Phase 2;
  - b. What questions (if any) the Committee asked about that; and
  - c. What scrutiny the Committee applied to ensure that necessary reviews and/or amendments to the Scheme which had been anticipated in Phase 2 were actually implemented.
8. Also arising out of paragraph 12 of your earlier statement, you indicated that the ETI Committee would “*pay particular attention to the reviews*”. As to that:
- a. Please explain how precisely the Committee considered scheduled reviews to be “*built in*” to the Scheme.
  - b. State whether the Committee did subsequently pay particular attention to the scheduled reviews. If not, please explain (insofar as you can) why not. If so, please explain how this was done.
  - c. Please also describe what steps, if any, the Committee took to ensure that it was kept apprised of what was happening in relation to the scheduled reviews; and that the issue of scheduled reviews did not slip off either the Committee’s or the Department’s agenda.
9. You set out in paragraph 13 of your earlier statement that the Committee received an update from DETI in relation to the RHI Scheme on 7 February 2013 and that that it considered the RHI Scheme further on 11 April 2013, at which stage “*the ETI Committee agreed to receive 6-monthly updates on the RHI scheme from DETI*”. As to that, please explain why the Committee wished to receive 6-monthly updates and what it did to ensure that these updates were provided.
10. It is clear from your earlier statement, however, that the intended 6-monthly

updates were not provided by DETI. As to that, please explain (insofar as you can) why this did not happen; whether the Committee realised this at the time; and what steps, if any, the Committee took to remedy the position.

11. Without prejudice to the paragraph above, paragraph 16 of your earlier statement discloses that there was no "*oral briefing from DETI on the RHI scheme between December 2013 and consideration of an SL1 in respect of certain changes to the RHI scheme in September 2015*". As to that, please explain (insofar as you can) why there was no such briefing; whether the Committee considered this to be an omission; and what steps, if any, the Committee took to remedy the position.
12. Please also provide full details of the "*requests for updates on a twice-yearly basis*" referred to in your speech in the Assembly plenary debate on 15 February 2016 (and mentioned in paragraph 27 of your earlier statement), including when each such request was made, how it was made or communicated and to whom it was communicated.
13. In relation to the introduction of the second phase of the RHI Scheme, communicated to you as Chair of the ETI Committee in July 2013 and in respect of which the Committee carried out work in 2014, please set out:
  - a. Whether the Committee appreciated at that stage that previously proposed amendments to the Non Domestic RHI Scheme were not being progressed;
  - b. What, if anything, was explained to the ETI Committee about this and about why this position had been adopted;
  - c. In particular, whether the Department identified to the ETI Committee who had decided to prioritise the introduction of the Domestic RHI Scheme over further work on, review or, or amendment of the Non Domestic RHI Scheme;

- d. What steps the ETI Committee took, if any, to scrutinise, question or probe this position; and
  - e. Whether the ETI Committee was content for the Department to proceed as it proposed and, if so, why (and, if not, why not).
14. In respect of the statement at paragraph 18 of your earlier statement that no “*written or oral update on the RHI scheme was provided by DETI between July 2014 and September 2015*”, please address the following matters:
- a. Explain, insofar as you can, why this was so.
  - b. State whether you consider this to be an omission on the part of DETI.
  - c. If so, explain whether the ETI Committee considered this to be an omission at the relevant time. If so, what steps (if any) were taken to remedy the position? If not, why not?
  - d. Specify, with the benefit of what you now know, what in particular should have been brought to the ETI Committee’s attention by the Department during this period; why that is so; and, had any such matter been brought to the Committee’s attention, what steps the Committee may have taken in respect of it.
15. At paragraphs 20 and 24 of your earlier statement you refer to the SL1 for the Renewable Heat Incentive Scheme Amendment Regulations (Northern Ireland) 2015 (“the 2015 Regulations”) making reference to the Non Domestic RHI Scheme’s “*recent success*”. Do you consider this term to have been accurate; and/or do you have any further comment in respect of it?
16. Describe what steps, if any, the Committee took to scrutinise or enquire into (a) the need for urgency in bringing the 2015 Regulations into effect; and (b) once that urgency had been identified, the timescale within which the 2015 Regulations had been brought forward and were then brought into force.

17. Set out what you understood Stuart Wightman to be referring to at the ETI Committee meeting of 17 November 2015 when he indicated that the originally intended date for the introduction of the 2015 Regulations had been delayed "*due to a delay in securing the necessary financial and legal approvals*".
18. In light of the comments set out at paragraphs 24 and 44 of your earlier statement, do you consider that the ETI Committee was directly or indirectly misled by what was communicated to it (or not communicated to it) by or on behalf of the Department in relation to the 2015 Regulations or the situation which led to their being brought forward? Please give reasons for your answer.
19. In respect of paragraph 29 of your earlier statement:
  - a. Explain why you were surprised that the 'whistle-blower' had not contacted the ETI Committee?
  - b. Would it have been common for such persons to contact the ETI Committee? Were there any other such complaints or concerns communicated to the Committee?
  - c. Explain why you and other Committee members were "*concerned to note that DETI did not disclose to the ETI Committee that there had been a whistle-blowing complaint to it at any stage*".
  - d. Set out any steps you and/or the Committee took to examine the issue once it became clear that there had been a whistle-blowing complaint made to the Department which had not been communicated to the Committee.

*Breach of standards and conflict of interest*

20. Paragraphs 43 and 46 of your earlier statement suggest that you have answered the queries set out in paragraph 5 of the Schedule to Chairman's

Notice No 156 of 2017 taking account of your state of knowledge only up to and including February 2016. Taking account of any knowledge or information you have later gleaned, specify whether your answer would be different to those queries. If so, please explain how and the basis and source of the (later) information which permits you to come to a different conclusion.

*General*

21. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.
22. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.
23. 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.



**Northern Ireland Assembly**

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by the RHI Inquiry

Email: jonathan.mcmillen@niassembly.gov.uk

The Solicitor to the RHI Inquiry  
RHI Inquiry  
1st Floor, Waterfront Plaza  
8 Laganbank Road  
Belfast  
BT1 3LY

Your ref: No 391 of 2017  
Our Ref: CFE/3/2017

22<sup>nd</sup> September, 2017

Dear Sir,

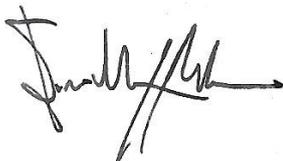
**Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme**

On 14<sup>th</sup> August 2017 you wrote to Mr Patsy McGlone MLA and required him to provide a further witness statement to the Inquiry with regard to his role as chairperson of the Assembly's Committee for Enterprise Trade and Investment ('CETI'). Please find attached that statement.

Reference is made in the statement to a number of audio-visual recordings of CETI proceedings in which the RHI Scheme was discussed, and where these recordings are available online a link is provided. Pre-2014 recordings are not available online and are not held by Mr McGlone. Should these recordings be required by the Inquiry, they can be obtained from the Assembly's Communications Office, headed by Ms Maeve Donnelly ([Maeve.Donnelly@niassembly.gov.uk](mailto:Maeve.Donnelly@niassembly.gov.uk)).

I am happy to discuss any matters arising from the above.

Yours faithfully



Jonathan McMillen  
Head of Legal Services

## INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 391 of 2017

DATE: 20<sup>th</sup> September, 2017

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Witness Statement of: Mr Patsy McGlone MLA

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I answer the questions in Notice 391 of 2017 as follows:

***The role of the ETI Committee generally***

1. *In paragraph 3 of your statement of 8 June 2017 in response to Chairman's Notice No 156 of 2017 ('your earlier statement') you discuss the functions of the ETI Committee. As to that:*
  - a. *Please describe in detail how, in practice, the ETI Committee 'advised and assisted' the ETI Minister*
2. The obligation to 'advise and assist' is drawn from section 29 of the Northern Ireland Act 1998 ('the 1998 Act'). I have served on a number of Assembly committees and the way in which each statutory committee understands this function (as with its other functions under section 29) is a matter for that committee. However, it is not a process by which the committee will tender formal advice to the Minister, nor would a Minister routinely expect a committee formally to 'assist' him in policy development, as he or she may utilise a large number of departmental officials for that purpose.
3. The ETI Committee under my chairmanship interpreted the function as an obligation to supplement and where necessary challenge the activities of DETI. The ETI Committee, as with any statutory committee, would expect to be listened to when it communicates with the Minister or department with which it is associated. Similarly, as chairperson I would expect DETI to take account of the contents of reports and reports of inquiries conducted by the Committee. Such reports were laid in the Assembly and transmitted to DETI. They were usually the subject of debate in the Assembly chamber.
4. The range of activity undertaken by the ETI Committee in the discharge of its statutory functions may be determined by reference to its legacy report, which sets out matters considered by it between 2011 and 2016.<sup>1</sup> The discharge of the section 29 functions involved the ETI Committee in consideration of primary and secondary legislation, taking evidence from DETI officials, and the conduct of

<sup>1</sup> <http://www.niassembly.gov.uk/globalassets/documents/enterprise-trade-and-investment/bill-folder/ceti-end-of-mandate-legacy-report-sep-2011-2016.pdf>

reviews and inquiries. For example, the ETI committee engaged in pre-legislative scrutiny of proposals for the Credit Unions and Co-operative and Community Benefit Societies Bill. The ETI Committee commissioned research, took evidence, analysed submissions and published a report. The input of the Committee significantly affected the final form of this legislation.

5. The inquiries conducted by the ETI Committee included inquiries into *Developing the Northern Ireland Economy through Innovation, Research & Development*, and a three-part *Electricity Policy Review*. Such inquiries involved evidence-gathering, commissioning research, analysing written submissions and making recommendations. The reports of such inquiries are debated in the Assembly chamber and the Minister is expected to respond: for example, then ETI Minister Bell responded to the debate on the ETI Committee's *Inquiry into Growing the Economy and Creating Jobs with Lower Corporation Tax* on 7<sup>th</sup> September 2015.
6. Between 2011 and 2016 the ETI Committee considered various subordinate legislative instruments, such as those relating to the Renewables Obligation Certificate ('ROC') Scheme. The ETI Committee's scrutiny of subordinate legislation is necessarily less detailed than that engaged in as regards primary legislation. The ETI Committee is, like other committees, assisted in the technical scrutiny of statutory instruments by an employee of the Northern Ireland Assembly Commission ('the Commission') known as the Examiner of Statutory Rules.
7. Subordinate legislation is made in the form in which it is laid by the sponsor department, and it is very unusual for a committee to recommend to the Assembly that subordinate legislation laid by a department should not be made by the Assembly (to support a 'prayer of annulment') - such motions have been moved only twenty times or so since the formation of the Assembly in 1998. In my time of the ETI Committee, it was always made clear to Committee members considering an SL1 that it was then, rather than at the point at which they were considering the draft legislation, that they should seek to influence DETI policy, because the legislation could not be amended.
8. The ETI Committee's scrutiny of a subordinate legislative instrument (generally a statutory rule) was informed by DETI policy, set out in the SL1 relating to the instrument, and the opinion of the Examiner of Statutory Rules on whether or not the instrument was intra vires the powers conferred on DETI by the Assembly. A useful example of the manner in which the ETI Committee sought to influence DETI on policy issues informing subordinate legislation is the way in which the committee dealt with the statutory rules which closed the ROC Scheme, which was laid in 2015 and 2016, and which is set out in detail in the Legacy Report.
9. The ETI Committee's consideration of the statutory rules relating to the ROC Scheme was informed by representations made to the Committee and to members of the ETI Committee by developers of, and objectors to, renewable energy resources such as windfarms and solar photovoltaic cells. The ETI

Committee engaged in detailed questioning of the Minister and DETI officials. The ETI Committee was cogniscent of the fact that, ultimately, what was engaged was a Ministerial power, but sought to modify the way in which that power was exercised.

10. As regards the Renewable Heat Incentive ('RHI') Scheme, the ETI Committee respected the primacy of DETI in making the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ('the 2012 Regulations', discussed further below), but sought to influence DETI in its use of the power to close the RHI Scheme (a power conferred by the Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016), in light of representations received by the ETI Committee. As is noted in the Legacy Report '*Following Committee concerns, the intended date of closure of 15th February 2016 was put back to 29th February 2016*'.
11. As chairperson of the ETI Committee, I would expect the ETI Minister to attend the relevant statutory committee 2 -3 times per year, and for DETI officials to attend more frequently. It was my experience on other committees that the Minister for the department with which that committee was associated would also engage informally with members of his or her scrutiny committee. Such engagement was less common with Minister Bell than had been my experience with Ministerial interaction on other committees.
12. The administrative relationship between a committee and the department with which it is associated is conducted primarily between the Committee Clerk, employed by the Commission, and the Departmental Assembly Liaison Officer ('DALO'), employed by the relevant department. As chairperson of the ETI Committee, I would expect the DALO for DETI to engage closely with the Clerk to the ETI Committee on matters within the Committee's remit.
13. In my experience of committees, the DALO would meet the Committee Clerk in advance of each session of the Assembly and would agree a work plan for the relevant committee for the coming Assembly year. On the ETI Committee, the DALO would advise the Clerk of forthcoming DETI work which would concern the Assembly. A Forward Work Plan (FWP) would be developed by the DALO and Clerk, setting out the DETI initiatives, including legislative proposals, on which ETI Committee input would be required.
14. The key areas in which I expected departmental engagement with the ETI Committee were as regards legislation, policy initiatives in DETI and linked bodies, and any other work in which Assembly input could reasonably be expected. In addition, in areas where the ETI Committee was planning to undertake a formal inquiry, I would expect to engage with DETI and to brief the DETI Minister and officials at an early stage.
15. Such forward planning allowed the ETI Committee to engage in effective policy scrutiny, to consider the content of and to inquire as to any delay in DETI

legislation, and to consider any resource and budget impacts likely to arise by reason of policy initiatives. The scrutiny by the ETI Committee of policy and resource use by DETI over the period 2011-2016 is usefully detailed in the Legacy Report.

16. To my recollection, the ETI committee would engage particularly closely with any delays in primary legislation; as regards matters in which the interests of constituents were concerned (as with the closure of the ROC payment scheme); and with the activities of arm's length DETI bodies, such as Tourism Ireland and Invest NI. The ETI Committee would also have considered the proposed cash and resource authorisations sought by DETI under the bi-annual Budget Acts and taken evidence from DETI, in general terms, on the proposed use of cash and resources.
17. In the period under consideration by this Inquiry, my recollection is that Members were concerned primarily with matters relation to the energy market in Northern Ireland, the potential impact of a reduction in corporation tax, and the various changes to and the eventual closure of the ROC scheme. The last was a matter on which to my recollection almost all members of the Committee received submissions from constituents and stakeholders. Part of the Committee's advisory role was to transmit those concerns to the Minister, and the ETI Committee was briefed on the changes to the ROC Scheme by the ETI Minister and DETI officials.
18. The domestic and non-domestic RHI Scheme, while of interest to the ETI Committee as it favoured investment in renewable energies, were not, before the steps taken to amend and close the Scheme in 2015/2016, matters which gave the ETI Committee particular concern.

*b. Please describe in detail how, in practice, the ETI Committee scrutinised Departmental policy.*

19. This is largely dealt with in the response to question 1(a). The function of scrutiny arises from the reference at section 29(1)(c) of the 1998 Act to the various functions of statutory committees set out at paragraph 9 of Strand One to the Belfast/Good Friday Agreement. In my experience, committees do not understand the various matters at section 29(1)(a) and (c) as discrete functions but as describing in general terms the relationship between a committee and the department with which it is associated. A committee may advise and assist through its scrutiny role. A committee might consider (say) the period for a closure of a particular scheme and make representations on extending that period: this is both scrutinising departmental proposals and advising on change to those proposals. Accordingly, the matters set out above as regards advising and assisting the Minister could equally be understood as scrutinising departmental activities.

20. In terms of the scrutiny practice of the ETI Committee, the process was as follows:
21. Prior to the start of each Assembly term ETI Committee officials would meet the DETI DALO and his or her team to consider and schedule agenda items that the ETI Committee might agree to include in its FWP, such as items that DETI intended to bring to the Committee during the term. Each Assembly term is approximately three months.
22. To my recollection, a planning session was held with ETI Committee members in advance of each term. This was either in the form of a stand-alone session or a planning session held following a formal ETI Committee meeting. During the planning session ETI Committee members made suggestions for additional items to be included in the FWP provisionally agreed between the Committee Clerk and DALO. As an Assembly term progressed, the FWP would evolve as items were deferred or cancelled either as agreed by the ETI Committee or, more frequently, at the request of DETI.
23. In advance of each ETI Committee meeting, I was as chairperson briefed by the Clerk. I was provided with a chairperson's brief which set out the business to be considered by the ETI Committee at the next meeting, and potential actions as regards each item of business. The items on the agenda for each ETI Committee meeting were at that meeting considered in turn by the Committee. Insofar as possible I sought to give all Members the chance to contribute to each item of business. Where scheduled, evidence would be provided to the ETI Committee in written and oral form by departmental officials and stakeholders. Where necessary the ETI Committee could hear from its own advisers – for example research officers employed by the Commission. Committee proceedings generally occurred in public session, and the use of closed sessions was rare.
24. After each ETI Committee meeting the Clerk would write to the DALO, setting out the matters considered by the ETI Committee during that meeting and any actions required of DETI by the Committee. This correspondence also set out any outstanding requests to DETI from previous Committee meetings which had not yet been addressed.
2. As to these functions:
- a. Specify whether you consider the ETI Committee is an effective means of scrutinising Departmental policy making and outline the shortcomings or impediments, if any, of which you are aware in the effectiveness of the Committee's scrutiny function.
25. The ETI Committee was in my view an effective way of scrutinising DETI policy, provided that the Committee was supplied with all relevant facts and information relating to the exercise of departmental functions by DETI. I found that the various members of the ETI Committee, whatever their party affiliation, worked

very well together and that the Committee would rarely divide. I recognised that DETI would have specialist knowledge in policy areas which could not be replicated by the ETI Committee, given the greater level of resources available to DETI and the ETI Committee.

26. A department is expected to be, and DETI in general was, responsive to requests for information on policy and legislation by its scrutiny committee. My experience in DETI and on other statutory committees, however, is that the members of those committees were heavily reliant on the department with which the committee was associated for the provision of briefing sufficient to enable the committee to achieve an informed picture of the work of a department in a particular area. Committees have statutory powers to require the production of information from Ministers and others<sup>2</sup>, but it would be highly unusual, if not unprecedented, for a committee to utilise such powers as regards the department with which it was associated.

*b. Explain whether you considered the ETI Committee to be adequately resourced (in terms of time, resources, expertise, etc.) to perform an effective scrutiny and challenge function in respect of the Department. Please give reasons for your answer.*

27. I consider that the ETI Committee was adequately resourced to carry out its functions. A committee is not a shadow department. Its function is to scrutinise and support the work of the department with which it is associated, in line with the 1998 Act and the Belfast/Good Friday Agreement. It is worth noting that, in 2012, the Assembly voted a cash resource for DETI of some £470 million pounds. By contrast, it voted a cash resource of £44 million to support all of the activities of the Commission.<sup>3</sup> In the same year, approximately 400 people were employed by the Commission to discharge all of the corporate and legislative functions of the Assembly, including staffing and resourcing 12 statutory and 6 standing committees. In that year, DETI, discounting its arm's length bodies, employed 470 people.<sup>4</sup>

28. The resources available to DETI were therefore an order of magnitude greater than those available to the ETI Committee, and without a relationship of good faith and candour between DETI and the ETI Committee the effective discharge of Committee functions would be almost impossible. The ETI Committee was supported by four permanent staff, including the Clerk, and while it could also call on the Commission's internal research service, which was able to develop research briefing on particular subject matters, and on the Commission's Legal Services Office for advice on legal issues. the degree of expertise in the

<sup>2</sup> Section 44 of the 1998 Act

<sup>3</sup> Budget Act (Northern Ireland) 2012

<sup>4</sup> Northern Ireland Statistics and Research Agency, *Quarterly Employment Survey Historical Tables June 2017, Table 5.11 - Employee jobs by broad industry sector June 1971 to June 2017*

legislature on a particular subject matter will rarely, if ever, match the level of expertise available in that specialism in the relevant department.

29. In addition, while a committee can employ specialist advisers, this is rare, and as regards matters within the scope of the ETI Committee, was very difficult. Those with experience and expertise in the energy markets were likely either to be DETI officials, who could not reasonably be expected to provide wholly objective advice to the ETI Committee, or working in the private sector and remunerated at a level which a public body such as the Commission could not reasonably be expected to match.
30. It is also to be noted that unlike a Minister, who has one portfolio, most members of the ETI Committee were also members of one or more committees – I recall that for much of the time I chaired the ETI Committee I held, alongside my chairmanship of that Committee, membership of the Committee for Justice, and later also membership of an ad hoc committee on the Mental Capacity Bill. These other legislative roles occupied a considerable amount of my time, in addition to which I also spent a significant amount of time on constituency matters. I expect that the majority of my colleagues on the ETI Committee were in comparable positions. In my experience, Members are not, with the best will in the world, able to get across every single aspect of departmental policy considered by committees of which they are a member, and are heavily reliant on the candour of the department and its officials.
31. A committee lacks the resources, therefore, to engage in detailed analysis of every departmental proposal brought before it. But that is not the role of committees, and it is neither necessary or appropriate for every departmental activity to be brought to the attention of the committee with which that department is associated. Rather, with the exception of primary and subordinate legislation, for which there are particular processes set out in the standing orders of the Assembly, it is for a department to agree the matters which should be brought to the attention of the relevant scrutiny committee, and to respond to the reasonable requests of the committee.
- c. Describe the level of assistance and cooperation provided to the ETI Committee by its Minister(s) and officials; and specify whether the Committee was content with the level of assistance and cooperation provided. In the event that you identify any concerns in this regard, please specify them and explain the reasons for those concerns.
32. In the period of which I was a member and chair of the ETI Committee I do not recall particular discontent with the approach of the ETI Minister and DETI officials to the Committee. Departments vary in their relationships with committees, and I recall that DETI was perhaps slower to provide information and to respond to committee correspondence than has been my experience on committees associated with other departments, but not excessively so.

33. In retrospect, of course, there was information relating to the RHI Scheme which might have been brought to the attention of the ETI Committee at an earlier stage. I would not have expected DETI to bring operational issues to the Committee, but part of the role of a departmental committee is budget scrutiny, and if there were significant problems with the budget of a particular departmental programme (as there was with RHI) I would have expected this to be raised with the Committee.

***The ETI Committee's involvement in the RHI Scheme***

3. *In paragraph 7 of your earlier statement you note that the ETI Committee had, prior to its meeting on 13 September 2012, considered the SLI relating to the Renewable Heat Regulations (Northern Ireland) 2012 ('the 2012 Regulations'). Please explain from your knowledge and the records available to you:*

a. *Who the ETI Committee Chair was at the time of those previous meetings*

34. Mr Alban Maginness.

b. *What consideration the ETI Committee had given to the SLI in relation to the 2012 Regulations*

35. The Committee's consideration of the SL1 was follows:

36. On 19<sup>th</sup> April 2012, the ETI first considered the SL1 for the 2012 Regulations. I do not recall this meeting, and I am not recorded as being a member of the Committee until 23<sup>rd</sup> April 2012. However, the ETI Committee records show that the Committee considered the SL1 for the 2012 Regulations, and agreed to request more detail from DETI on incentives for domestic installations, payments to participants, levels of tariffs, and how these were to be calculated, and to receive a timeline for the legislation and a summary of the consultation responses from DETI.

37. The ETI Committee records show that on 17<sup>th</sup> May 2012, the Committee considered the SL1 for what became the 2012 Regulations for a second time. I do not recall this meeting in any detail, but the records show the Committee considered DETI's response to the Committee's request for information of 19<sup>th</sup> April 2012. The response, it appears, was that as European Commission approval for the RHI Scheme tariffs had not yet been received, exact details of bandings and tariff levels could not be provided. The ETI Committee records show the Committee agreed to await further information being transmitted from the European Commission to DETI, and to request an oral briefing from DETI.

38. The ETI Committee records show that on 24<sup>th</sup> May 2012 the Committee received an oral briefing from Joanne McCutcheon and Peter Hutchinson of DETI, and that issues discussed at that meeting included Phase 1 and Phase 2 of the RHI Scheme, European Commission approval, and (in general terms) proposed tariff levels for the RHI Scheme.

39. I do not recall the detail of this meeting, but the minutes of the meeting show that the ETI Committee agreed to defer the decision on the subordinate legislation (that is, to defer the decision whether to approve in principle the policy to which the 2012 Regulations would give effect) pending the information required from the European Commission and discussed in the previous paragraph.
40. I have also reviewed a video recording of this meeting held by the Commission's Communications Office. I note that the ETI Committee was not willing to agree the SL1 without sight of the final tariff figures – at this meeting the SL1 had been presented by DETI to the Committee with 'indicative' figures as part of what DETI officials described as a 'parallel process' for seeking European Commission and ETI Committee approval before the Assembly's summer recess.
41. The ETI Committee records show that on 5<sup>th</sup> July 2012, the Committee again considered the SL1 for the 2012 Regulations, and that the ETI Minister notified the Committee that the European Commission was content to approve the RHI Scheme. It would also appear that on this date the ETI Committee agreed to obtain the views of Action Renewables (who are discussed below) on the policy proposals contained in the SL1 and to receive a further oral briefing from DETI before deciding whether or not to approve in principle the 2012 Regulations.
42. This next meeting of the ETI Committee at which the RHI Scheme was discussed took place on 13<sup>th</sup> September 2012. The ETI Committee records show that the committee received a further oral briefing from Fiona Hepper, Joanne McCutcheon and Peter Hutchinson, all of DETI. The ETI Committee also considered a response from Action Renewables in support of the RHI Scheme.
43. Having reviewed the video recording of this meeting it is perhaps worth noting that in response to a question from Ms Sandra Overend MLA, DETI officials indicated that the electronic system used to operate the RHI Scheme would produce regular statistics, that DETI anticipated weekly and monthly monitoring of the RHI Scheme, and that figures as to energy use and scheme cost were expected to be published quarterly on the DETI website. DETI officials also indicated that were any issues to emerge with the RHI Scheme, the Department could look at '*further tweaks*' – it was, DETI officials stated, '*a living scheme we will keep under active review*'.
- c. What concerns, if any, had been raised, explored or probed:
44. The issues and concerns considered by the ETI Committee as regards the policy set out in the SL1 are set out in the foregoing paragraphs. I have no recollection of any other issues raised at the ETI Committee.
- d. What explanation was given to the Committee on behalf of DETI about the type of scheme selected and the design of the tariffs; and
45. Beyond the details on the scheme selected set out in the foregoing paragraphs, and provided to the ETI Committee in the SL1, I have no recollection of the

explanation provided by DETI. Having reviewed a recording of proceedings, however, I note that Mr Agnew MLA raised concerns about the possibility of stage 2 of the RHI Scheme including payments for energy generated from landfill gas, about which he was concerned; and that Mr Flanagan MLA was concerned about the absence of incentives for deep geothermal energy from the RHI Scheme. There was no express discussion of the tariffs in the SL1, but in evidence DETI officials recognised the need to '*get the tariffs correctly positioned*' and that a tariff set too high would create a '*long tail... soaking up money*'.

e. The outcome of the previous meetings at which the SL1 was considered.

46. Details of each of the ETI Committee meetings at which the SL1 relating to the 2012 Regulations were considered are set out in the foregoing paragraphs. I have drawn this information from the ETI Committee records and a review of the video recordings of those meetings, and have no recollection of any other consideration of the SL1 by the ETI Committee.

4. Describe in detail the scrutiny given by the ETI Committee to the policy behind the 2012 Regulations and the decision to depart from the scheme of the similar Regulations which applied to the GB Scheme (including, for instance, the decision not to include tiering or degression in the Northern Ireland RHI Scheme). If the ETI Committee did not expressly consider the issues mentioned above, please make this clear. If it did so, and agreed or disagreed with the Department's proposed approach, please explain why this was.

47. The ETI Committee did not expressly consider the decision to depart from the scheme of the similar Regulations which applied to the GB Scheme. This was not something to which the attention of the ETI Committee was drawn by DETI in the SL1 or in the oral briefings provided to ETI Committee members. The ETI Committee would not in any case engage in clause-by-clause scrutiny of subordinate legislation – that is, it would not expect to be briefed on each regulation in the 2012 Regulations. Scrutiny of this kind would only be engaged in by the ETI Committee if it were considering primary legislation sponsored by DETI (as for example with the Credit Unions and Co-operative and Community Benefit Societies Bill already referred to).

5. Also in paragraph 7 of your earlier statement you note that, at the meeting of 13 September 2012, the ETI Committee considered correspondence from Action Renewables which, inter alia, raised the issue of applicants to the Scheme 'installing boilers with a smaller capacity than is required' (given the differential between the tariff levels for boilers up to 100kWth and above 100kWth) as "the most remunerative way of exploiting the scheme". As to that:

a. Please explain the capacity in which the ETI Committee understood Action Renewables to be writing to it and what role the Committee considered Action Renewables to have at that stage

48. To my recollection, the ETI Committee understood Action Renewables to be a lobbying group with a particular interest in renewable energy and environmental issues. I recall that the ETI Committee found the evidence given by Action Renewables to be helpful and it seemed straightforward. Action Renewables engaged with the ETI Committee as an interested stakeholder in the renewables field, and I did not see anything unusual in this.

*b. Whether any further information was sought, or any further questions raised, by the Committee (or any of its members) in relation to this representation*

49. No. DETI would obviously have been aware of the issues as this representation was discussed in an open meeting of the ETI Committee and I referred to it in debate. However, beyond the detail set out in my previous statement, where I detailed consideration of the correspondence by the ETI Committee and my speech on the motion to approve the 2012 Regulations, I do not recall this issue being considered again by the ETI Committee.

*c. Whether any further action was taken to explore this issue or to ensure that it was addressed by the Department*

50. To my knowledge, no further action was taken by the ETI Committee to explore the issue, or to ensure that this issue was addressed by DETI. The ETI Committee was assured by departmental officials that the operation of the RHI Scheme would be kept under 'active review' by DETI. As has been set out above, the ETI Committee is not resourced to carry out ongoing oversight of every aspect of departmental policy, nor would it be aware of operational issues not brought to its attention by DETI.

51. I do not recall that I had particular concerns about the issue of distortion in the renewables market raised by Action Renewables, but to control any such distortion would be an operational issue for DETI. In general, should a provision of any subordinate legislation subject to an Assembly procedure create operational problems for the department which made that legislation, the relevant scrutiny committee would not, unless briefed, be aware of that issue until it became necessary for the department to lay amending legislation (as in fact happened in this case).

*6. Without prejudice to the generality of paragraph 5 above, please give further details in relation to the statement in paragraph 12 of your earlier statement that you "relayed the concern which had been communicated to the ETI Committee from Action Renewables and discussed above, and suggested this was something which might be considered by DETI in what was then termed 'phase 2' of the RHI scheme'. In particular:*

*a. Outline when, how, and to whom in DETI, you communicated this concern;*

52. This concern was outlined in my speech in the Assembly, and correspondence tabled in committee is a matter of public record. I would expect a Minister to take

account of a speech made in the Assembly chamber by the chairperson of the scrutiny committee associated with his or her department, and I note that the ETI Minister was present in the chamber for this speech. My speech was also, of course, reported in the Official Report and was as such publically available.

*b. Outline any response you received in relation to this:*

53. I do not recall any response to the concern raised by Action Renewables being received by the ETI Committee.

*c. Describe any follow-up steps taken by you, or the ETI Committee, to ensure that this matter was considered and/or addressed by the Department; and*

54. I did not take, nor do I recall the ETI Committee taking, any follow-up steps. The issue was one which, as I indicated in the chamber, I expected could be addressed in Phase 2 of the RHI Scheme.

*d. Describe what the Committee had been told about 'Phase 2' of the RHI Scheme and what it anticipated would be done at that stage.*

55. I have no recollection of what the ETI Committee was told about Phase 2 of the Scheme, but having reviewed a recording of the evidence given by DETI officials on 13<sup>th</sup> September 2012, I note the view of DETI officials that it was hoped that Phase 1 would act as a 'primer' for the renewables market prior to the introduction of Phase 2 of the RHI Scheme.

56. DETI officials also indicated that in Phase 2 of the RHI Scheme it would consider funding emerging technologies (air source heat pumps, bio-liquids, landfill gas, deep geothermal) and extending the RHI Scheme to the domestic sector. There was also discussion, prompted by a question from Mr Agnew MLA, of whether the extension of the RHI Scheme to domestic installations was delayed by consideration of the means by which energy use in such installation would be measured – for example, by the use of metering or deemed use provisions.

*7. Please also describe any follow-up steps taken by you, or the ETI Committee, to monitor or scrutinise what the Department did, or did not do, in the course of Phase 2 of the RHI Scheme, including (in particular):*

*b. With what information the Committee was provided in respect of what was being taken forward in the course of Phase 2;*

57. Phase 2 of the RHI Scheme related to the domestic element of the RHI Scheme. The ETI Committee records disclose that we undertook consideration of the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland)

2014 ('the 2014 Regulations') between July and December 2014.<sup>5</sup> Having reviewed the minutes, the records provide limited detail on consideration of the domestic RHI Scheme by the committee. I do not recall, and the record do not disclose, that any further issue was raised about the non-domestic RHI scheme in the course of these meetings.

c. What questions (if any) the Committee asked about that; and

58. I do not recall the matter arising. The recordings of Committee proceedings of 3<sup>rd</sup> July 2014 disclose that Mr Flanagan MLA asked about why Phase 2 did not extend to deep geothermal energy, and that he was reluctant to approve the SL1 relating to the 2014 Regulations without clarification on these matters. No issue was however raised in respect of the content of the 2012 Regulations.

d. What scrutiny the Committee applied to ensure that necessary reviews and/or amendments to the Scheme which had been anticipated in Phase 2 were actually implemented.

59. DETI indicated to the ETI Committee that there would be a continuing 'active review' of the implementation of the non-domestic (Phase 1) scheme. The minutes and recordings of ETI Committee proceedings do not suggest that DETI anticipated amendments to Phase 1 of the RHI Scheme; rather that Phase 2 would see an expansion of the Scheme to the domestic sector and the inclusion of additional renewable energy resources. The consideration of periodical updates by the ETI committee is discussed further below.

60. In the Assembly chamber, I suggested that the potential distortion identified by Action Renewables was something 'on which [DETI] may wish to consult.' I did not understand that there were amendments prepared to the non-domestic RHI scheme dealing with this issue to be moved as part of Phase 2, nor in my recollection were such amendments something which had been proposed to DETI by the ETI Committee or vice versa.

8. Also arising out of paragraph 12 of your earlier statement, you indicated that the ETI Committee would "pay particular attention to the reviews'. As to that:

a. Please explain how precisely the Committee considered scheduled reviews to be 'built in' to the Scheme.

61. Recordings of ETI Committee proceedings make clear that the Committee was assured by DETI that the RHI Scheme would be subject to active review, and the electronic system under which the RHI Scheme was operated would generate weekly, monthly and quarterly updates. I do not recall precisely what I meant by

<sup>5</sup> Video recordings of ETI Committee meetings from January 2014 until March 2016 are available at [https://www.youtube.com/user/ETICommittee/videos?view=0&shelf\\_id=0&sort=dd](https://www.youtube.com/user/ETICommittee/videos?view=0&shelf_id=0&sort=dd). The relevant discussions took place on 3<sup>rd</sup> July 2014 (at 2.52.50) and 2nd December 2014 (at 1.36.44).

that part of my speech in which I referred to 'built in' review, but it is highly likely that what was meant was regular review of the operation of the RHI Scheme by DETI and communication of the results of those reviews to the ETI Committee. Clearly, the 2012 Regulations did not impose any statutory obligation to carry out scheduled reviews.

- b. State whether the Committee did subsequently pay particular attention to the scheduled reviews. If not, please explain (insofar as you can) why not. If so, please explain how this was done.

62. As indicated in the previous paragraph, the form of the scheduled reviews was not clear, but it was expected that the outcome of such reviews would be brought to the attention of the ETI Committee. Formal reviews were not scheduled by the Committee. The ETI Committee was first briefed on the 2012 Regulations in February 2013, some four months after they were made. In April 2013, the ETI Committee agreed to receive six-monthly updates on the Scheme. Whether or not scheduled reviews were carried out by the DETI, there is in my view little difference between a six-monthly update and a six-monthly review. DETI did for a period provide written briefing to the ETI Committee approximately every six months on the operation of the 2012 Regulations.

63. As to whether particular attention was paid to the updates, as I noted in my previous statement at paragraph 16, updates of this kind were very much in the ordinary run of business for the ETI Committee –periodical updates would also have requested from (for example) Tourism Ireland and Invest NI on policy initiatives from those bodies. I do not recall that DETI's updates on the RHI Scheme generated any concern in the ETI Committee.

- b. Please also describe what steps, if any, the Committee took to ensure that it was kept apprised of what was happening in relation to the scheduled reviews; and that the issue of scheduled reviews did not slip off either the Committee's or the Department's agenda.

64. Where the ETI Committee agrees to receive a periodical update from DETI on a particular matter, I understand that this is communicated by the Clerk to the DALO, and remains a standing action for DETI until carried out. The scheduling of updates on particular matters was an essentially administrative function, and given the other demands on our time, neither I nor other Members would necessarily be aware if periodical updates on certain matters were delayed. There would have been no reason for the ETI Committee to be concerned were an update on the RHI Scheme somewhat delayed, any more than there would have been reason to be concerned about delay in an update from Invest NI or Tourism Ireland. If a department is directed by its scrutiny committee to provide a periodical update on a particular matter I would expect that duty to be discharged in good faith.

9. You set out in paragraph 13 of your earlier statement that the Committee received an update from DETI in relation to the RHI Scheme on 7 February 2013 and that that it considered the RHI Scheme further on 11 April 2013, at which stage "the ETI Committee agreed to receive 6-monthly updates on the RHI scheme from DETI". As to that, please explain why the Committee wished to receive 6-monthly updates and what it did to ensure that these updates were provided.

65. I cannot recall the reason why the Committee wished to receive those updates, and the records of the relevant meeting show merely that this was agreed. Again, however, this was not an unusual course of action. The ETI Committee would agree to receive updates from DETI and its arm's length bodies on a regular basis, and that a six-monthly update was scheduled does not indicate particular concern about the 2012 Regulations. As is evident from the inquiries carried out by the ETI Committee between 2011 and 2016 and the detailed engagement with the Department on the ROC Scheme, the ETI had a keen interest in energy matters and in renewable energy in particular.

10. It is clear from your earlier statement, however, that the intended 6-monthly updates were not provided by DETI. As to that, please explain (insofar as you can) why this did not happen; whether the Committee realised this at the time; and what steps, if any, the Committee took to remedy the position.

66. I do not recall whether the ETI Committee realised that DETI was failing to provide six-monthly updates. On one view, as is discussed at paragraph 69 below, it did provide such updates, at least until July 2014. Where the ETI Committee requests periodical updates, it is my experience that such dates may slip in light of other pressures on DETI or on the Committee. However, I would expect any significant delay in the provision of an update requested by the Committee to be notified, with an explanation, to the Clerk and to be communicated to Members.

67. I cannot comment on why DETI did not provide the updates requested by the ETI Committee, at least after July 2014. When a Committee requests a six-monthly update on a matter, that is in my experience seen as a standing obligation on the relevant department. It should not be necessary for a committee to write to the department every six months. A department should interact with its scrutiny committee efficiently, as well as openly, transparently, and in good faith. I would have expected DETI to comply with any request reasonably made of it by the ETI committee and I would expect the DALO to agree an appropriate time for such updates as part of the forward work plan discussed above.

68. As regards the steps taken by the ETI Committee, I understand that a request for updates agreed by the Committee is communicated by the Clerk to the DALO. The Clerk wrote to the DALO after every committee meeting, setting out any actions required of DETI by the ETI Committee. I also understand that should any item of business become overdue, was is recorded on each weekly

communication as an outstanding action for DETI. I have no doubt that DETI were aware of, and were regularly reminded of, the ETI Committee's wish to receive six-monthly updates on the RHI Scheme.

69. It should, however, be noted that some detail on the uptake of the RHI Scheme was provided to the ETI Committee in Ministerial correspondence on 3<sup>rd</sup> July 2013, that written briefing was provided on 12<sup>th</sup> December 2013, and further written briefing on 5<sup>th</sup> June 2014. Thus while there was no oral update, DETI may have taken the view that between April 2013 and June 2014 it was providing updates to the ETI Committee on the RHI Scheme roughly every six months. Further detail on these updates is provided at paragraphs 14 -17 of my previous statement.

11. Without prejudice to the paragraph above, paragraph 16 of your earlier statement discloses that there was no "oral briefing from DETI on the RHI scheme between December 2013 and consideration of an SLI in respect of certain changes to the RHI scheme in September 2015". As to that, please explain (insofar as you can) why there was no such briefing; whether the Committee considered this to be an omission; and what steps, if any, the Committee took to remedy the position.

70. The reason why DETI did not arrange an oral briefing with the ETI Committee is not within my knowledge. However, at least until December 2013, when the ETI Committee requested an oral briefing, the Department may have considered written updates on the RHI Scheme to be adequate. Clearly, the failure to provide any oral briefing on the RHI Scheme between December 2013 and September 2015 was an omission. I do not recall this omission being discussed at Committee. However, I assume that it remained a standing action in correspondence between the Clerk and the DALO. As I have indicated, I would expect that when the ETI Committee requests an oral briefing DETI would provide that briefing without the need for repeated requests.

12. Please also provide full details of the "requests for updates on a twice-yearly basis" referred to in your speech in the Assembly plenary debate on 15 February 2016 (and mentioned in paragraph 27 of your earlier statement), including when each such request was made, how it was made or communicated and to whom it was communicated.

71. The requests for twice-yearly updates have been discussed in the preceding paragraphs. The Committee agreed that it should receive such updates on a six-monthly basis on 11<sup>th</sup> April 2013. That decision would, as I understand the relationship between a department and its scrutiny committee, require DETI to update the Committee on the RHI Scheme every six months until otherwise directed by the ETI Committee (or until the dissolution of the Assembly extinguished the obligation). A formal request to DETI every six months would not be issued, nor should it be required. However, as I have previously indicated, it is my understanding that when such updates become overdue they remain outstanding actions in correspondence between the Clerk and the DALO.

13. In relation to the introduction of the second phase of the RHI Scheme, communicated to you as Chair of the ETI Committee in July 2013 and in respect of which the Committee carried out work in 2014, please set out:

a. Whether the Committee appreciated at that stage that previously proposed amendments to the Non-Domestic RHI Scheme were not being progressed:

72. I do not recall, nor do committee records disclose, that *amendments* were proposed. In particular, although in evidence to the ETI Committee on 13<sup>th</sup> September 2013 DETI indicated that the RHI Scheme would be kept under review, in neither that evidence nor the evidence given to the ETI Committee on the 2014 Regulations were amendments to the 2012 Regulations discussed.

73. I note that certain consequential amendments were made to the 2012 Regulations by Regulation 61 of the 2014 Regulations but I do not believe these were drawn to the Committee's attention (and they were not in any case directed to the matters raised with the ETI Committee by Action Renewables)

b. What, if anything, was explained to the ETI Committee about this and about why this position had been adopted:

74. The Committee was not aware of this position

c. In particular, whether the Department identified to the ETI Committee who had decided to prioritise the introduction of the Domestic RHI Scheme over further work on, review or, or amendment of the Non Domestic RHI Scheme:

75. No such person was identified. This is not a question which would have occurred to ETI Committee members. The identification of priorities within a department is a matter for that department.

d. What steps the ETI Committee took, if any, to scrutinise, question or probe this position; and

76. This was not a position of which the Committee was aware.

e. Whether the ETI Committee was content for the Department to proceed as it proposed and, if so, why (and, if not, why not).

77. In the recordings of ETI Committee meetings relating to the SL1 for the 2014 Regulations, no objection was raised to the content of the 2014 Regulations (save that Mr Agnew MLA and Mr Flanagan MLA again questioned the application of the RHI Scheme to landfill gas and deep geothermal energy).

14. In respect of the statement at paragraph 18 of your earlier statement that no "written or oral update on the RHI scheme was provided by DETI between July 2014 and September 2015", please address the following matters:

a. Explain, insofar as you can, why this was so.

78. The reason that no update on the RHI scheme was provided by DETI between July 2014 and September 2015 is not within my knowledge.

*b. State whether you consider this to be an omission on the part of DETI.*

79. I consider this to be an omission on the part of DETI. I would expect a department diligently to co-operate with its scrutiny committee, and I would accordingly expect DETI to comply with any reasonable request made by its scrutiny committee. In the event that it was not possible for a department to comply with such a request, I would expect an explanation to be provided.

*c. If so, explain whether the ETI Committee considered this to be an omission at the relevant time. If so, what steps (if any) were taken to remedy the position? If not, why not?*

80. The ETI Committee was unaware of this omission at the relevant time, but as I have previously indicated I would expect the delay in providing these updates to be clear to DETI from the regular correspondence between the Clerk and the DALO.

*15. Specify, with the benefit of what you now know, what in particular should have been brought to the ETI Committee's attention by the Department during this period; why that is so; and, had any such matter been brought to the Committee's attention, what steps the Committee may have taken in respect of it.*

81. It is perhaps unhelpful to speculate, but given the ETI's committee role in budget scrutiny it would have been appropriate for the difficulties emerging in the RHI Scheme to be brought to the ETI Committee's attention. If DETI commitments to the scheme were expanding rapidly, I and no doubt other members would have encouraged the implementation of controls. If DETI was in possession of figures which showed that commitments to the scheme were either uncontrollable or quickly becoming uncontrollable, that should have been brought to the attention of the Committee, not least because the commitments would have a significant impact on the resources DETI could commit to other policy areas in which the ETI Committee was interested. Such evidence could if necessary have been provided in closed session.

82. It would also seem to me that if DETI was aware of significant difficulties in the RHI Scheme, it should have laid amending legislation at a much earlier stage. I do not doubt that the ETI Committee, if properly briefed, would have facilitated DETI in amending the 2012 Regulations. DETI might, for example, have considered briefing the ETI Committee and laying an SL1 and amending regulations simultaneously. In the event, as I detailed in my previous statement, the legislative approach adopted to amending and then closing the RHI Scheme (paragraphs 22-27 of my previous statement) was unsatisfactory and an unwelcome departure from established practice.

16. At paragraphs 20 and 24 of your earlier statement you refer to the SLI for the Renewable Heat Incentive Scheme Amendment Regulations (Northern Ireland) 2015 ('the 2015 Regulations') making reference to the Non-Domestic RHI Scheme's "recent success". Do you consider this term to have been accurate; and/or do you have any further comment in respect of it?

83. I do not consider this term to have been accurate. If, as seems likely, DETI was at this point aware that its commitments to the RHI Scheme were either uncontrollable or quickly becoming uncontrollable, to refer to 'recent success' was likely to mislead the ETI Committee.

17. Describe what steps, if any, the Committee took to scrutinise or enquire into (a) the need for urgency in bringing the 2015 Regulations into effect; and (b) once that urgency had been identified, the timescale within which the 2015 Regulations had been brought forward and were then brought into force.

84. Beyond my questions to Departmental officials on the 2015 Regulations, and the views I expressed in the Assembly, which are set out paragraphs 24 and 25 of my previous statement, I do not recall the ETI Committee taking any further steps to inquire into the urgency for the 2015 Regulations or the timescale within which the 2015 Regulations were then brought into force.

18. Set out what you understood Stuart Wightman to be referring to at the ETI Committee meeting of 17 November 2015 when he indicated that the originally intended date for the introduction of the 2015 Regulations had been delayed "due to a delay in securing the necessary financial and legal approvals".

85. It is not uncommon for a departmental official (whether from DETI or another department) to inform a committee that a particular piece of work is delay 'pending approval of the Department of Finance' or 'pending clearance by legal'. I have heard versions of this explanation from various officials on various committees and I would have understood Mr Wightman's statement to have the same meaning. Put another way, I (and I expect most Members) would find such an explanation of delay wholly unremarkable, and would not feel it necessary to press the official on the detail of the approvals.

19. In light of the comments set out at paragraphs 24 and 44 of your earlier statement, do you consider that the ETI Committee was directly or indirectly misled by what was communicated to it (or not communicated to it) by or on behalf of the Department in relation to the 2015 Regulations or the situation which led to their being brought forward? Please give reasons for your answer.

86. As I indicated in my previous statement, I consider that officials could have been more forthright in their explanations to the ETI Committee on the need for the 2015 Regulations. It was clearly not accurate to represent an unfunded commitment of many millions of pounds as a 'success'. The ETI Committee meeting of 8<sup>th</sup> September 2015 was an opportunity for DETI to raise their

concerns about the RHI Scheme with the ETI Committee, but the briefing to my mind suggested that there was nothing to worry about. The actions of DETI before that date had not suggested that there was an urgency for the RHI Scheme to be closed. The actions of DETI lead me to doubt that the problems with the RHI Scheme would have been fully disclosed to the ETI Committee by DETI, had those problems not quickly become matters of public knowledge.

20. In respect of paragraph 29 of your earlier statement:

a. Explain why you were surprised that the 'whistle-blower' had not contacted the ETI Committee?

87. My surprise was not particular to this individual. In my experience, if an individual is concerned about a departmental practice or policy he or she will generally raise it with a relevant Assembly committee. For example, I was for a time a member of the Public Accounts Committee, which would receive various complaints from individuals about departmental practices which those individuals regarded as 'whistleblowing complaints'. It would seem to me a matter of common sense that, if a departmental practice caused concern, the department was perhaps not best placed to address that concern.

b. Would it have been common for such persons to contact the ETI Committee? Were there any other such complaints or concerns communicated to the Committee?

88. I recall a previous complaint to the ETI committee about a matter relating to the use of grants and grant in aid by DETI, although not in any detail.

c. Explain why you and other Committee members were "concerned to note that DETI did not disclose to the ETI Committee that there had been a whistle-blowing complaint to it at any stage".

89. This concern related to the steps taken by DETI when it became apparent that flaws had emerged in the RHI Scheme. The ETI Committee would not expect to be briefed on a whistle-blowing complaint while that complaint was under investigation by the Department. However, DETI at no stage disclosed to the ETI Committee that any concerns had been raised by any person about the scheme.

d. Set out any steps you and/or the Committee took to examine the issue once it became clear that there had been a whistle-blowing complaint made to the Department which had not been communicated to the Committee.

90. None. The ETI Committee was dissolved on 29<sup>th</sup> March 2016 and the whistle-blowing complaint did not become public knowledge until December 2016 (not as I indicated in my previous statement December 2015). I understand however that the whistle-blowing complaint was to form part of the consideration of the RHI Scheme by the Public Accounts Committee.

**Breach of standards and conflict of interest**

21. Paragraphs 43 and 46 of your earlier statement suggest that you have answered the queries set out in paragraph 5 of the Schedule to Chairman's Notice No 156 of 2017 taking account of your state of knowledge only up to and including February 2016. Taking account of any knowledge or information you have later gleaned, specify whether your answer would be different to those queries. If so, please explain how and the basis and source of the (later) information which permits you to come to a different conclusion.

91. As I indicated in my previous statement, the major concerns I had with the approach of DETI to the ETI Committee were as follows:
- a. DETI did not update the ETI Committee on the RHI Scheme as regularly as it had undertaken to do.
  - b. The ETI Committee was unhappy at DETI moving the 2015 Regulations on the same day they were scheduled for scrutiny by the ETI Committee, a departure from usual departmental practice.
  - c. The ETI Committee was unhappy that it had a wholly inadequate opportunity to consider the 2016 Regulations as regards which no SL1 was laid.

92. I did not, in light of the information provided to me up until the closure of the RHI Scheme, consider that these actions would amount to the breach of the relevant standards. There has been a significant amount of media coverage about the RHI Scheme and alleged departmental activities since that date, but I have 'gleaned' no more knowledge than any other reasonably well-informed member of the public. I also take account of the fact that media reports may not disclose all of the facts relevant to questions such as those put at paragraph 5 of the Schedule to Chairman's Notice No 156 of 2017. The findings of the Inquiry will no doubt inform my view of these matters (as they will that of other Members), but I do not think it would be appropriate for me to add to my earlier statement based only on media reports.

**General**

22. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.

93. I received a number of representations about the closure of the Scheme which I have detailed at paragraph 28 of my previous statement. Beyond the matters set out in that statement and herein, I recall no other representations made to me about the RHI Scheme.

23. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.

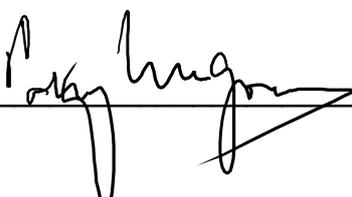
94. Beyond the matters set out in this statement and my previous statement, I do not recall having any discussions about the RHI Scheme which I regard as significant and of which I consider the RHI Inquiry should be aware.

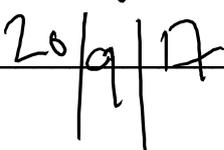
24. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

95. All evidence within my knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating is set out in this statement and my previous statement.

Statement of Truth

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

Signed:  \_\_\_\_\_

Dated:  \_\_\_\_\_