



Jenny Pyper
Chief Executive
Northern Ireland Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

20 June 2017

By post and email: jenny.pyper@uregni.gov.uk

Dear Madam

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 a copy of the RHI Inquiry's Terms of Reference for your information.

You may also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference.

In addition, the Inquiry has also now begun the process of requiring organisations 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.

The RHI Inquiry is aware that the Northern Ireland Utility Regulator may have been involved with the RHI Scheme to some degree.

In keeping with the approach we are taking with other organisations, the RHI Inquiry is now issuing to the Northern Ireland Utility Regulator 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 the Northern Ireland Utility Regulator 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 RHI Inquiry is aware that you may have been involved with the development of the RHI Scheme during your time in DETI. Consequently, if you consider that there is someone more appropriate within the Northern Ireland Utility Regulator who could provide the witness statement required by the RHI Inquiry then please feel free to nominate that person to provide the witness statement.

The aim of the enclosed Notice is to require the Northern Ireland Utility Regulator to provide all relevant evidence it has within its 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 the Northern Ireland Utility Regulator. In the event that there is a category of information in respect of which the Northern Ireland Utility Regulator has no evidence which it can provide, please state this in the response. Where it can provide evidence, the more comprehensive the 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 the Northern Ireland Utility Regulator provides to the Inquiry is its own evidence, absent the influence of others; that it is comprehensive; and that it fully explains its involvement in the matters about which

it has been asked.

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, nor 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.

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 would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

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

Yours faithfully

Patrick Butler



Solicitor to the RHI Inquiry

02890408928

SCHEDULE

[No 322 of 2017]

1. Please summarise the history and role of the Northern Ireland Utility Regulator.
2. Please summarise the make up and staffing of the Northern Ireland Utility Regulator.
3. Please set out and explain any involvement the Northern Ireland Utility Regulator had in what became the RHI Scheme (setting out the dates of any involvement, what the involvement was, and who from the Northern Ireland Utility Regulator was involved).
4. Please identify any staff of the Northern Ireland Utility Regulator who had any involvement with the RHI Scheme, explain their qualifications, the role they perform for the Northern Ireland Utility Regulator, and the involvement they each had in the RHI Scheme.
5. Without prejudice to the generality of paragraph 4 above, explain the involvement of the Northern Ireland Utility Regulator (if any) in:
 - a. the creation and development of the Scheme in, or before, 2012;
 - b. the administration/operation of the Scheme;
 - c. any problems or difficulties which emerged in respect of the Scheme (including, but not limited to, the causing or permitting, identification, consideration and/or remediation of any such problems);
 - d. the amendment, suspension or closure of the Scheme;

in each instance providing:

- i. details of any relevant interactions with Civil Servants, 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 paragraph 5 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 is identified as clearly as you can).
6. Identify any potential flaws or difficulties with the potential Scheme and/or its operation that the Northern Ireland Utility Regulator identified (or are aware of being identified), explaining in each instance, so far as you can, how these potential difficulties or flaws came to be known about and when.
7. Specify whether the Northern Ireland Utility Regulator promoted the 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

8. Identify any instances, to the Northern Ireland Utility Regulator's 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 Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.

9. Identify any instances, to the Northern Ireland Utility Regulator's knowledge or belief, where influence or pressure was exerted on someone in relation to what became the RHI Scheme. In respect of any such instance identify:
 - a. who provided that influence or pressure;
 - b. who it was exerted on;
 - c. when it occurred;
 - d. what it consisted of and how it was conveyed;
 - e. what you believe the motivation to have been, and why you believe that;
 - f. how it was dealt with; and
 - g. how and when you came to be aware of the influence or pressure.

Standards of conduct and conflict of interest

10. Identify any instances, to the Northern Ireland Utility Regulator's 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.

- 11. Specify whether, to the Northern Ireland Utility Regulator's knowledge or belief, its staff has any connection to a person or body receiving payment under the 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

- 12. Identify any instances of which the Northern Ireland Utility Regulator is aware of whistle-blowing in relation to the 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.
- 13. Specify when the Northern Ireland Utility Regulator first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel used to produce heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how the Northern Ireland Utility Regulator so became aware.

General

14. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to the Northern Ireland Utility Regulator about the RHI Scheme (which the Northern Ireland Utility Regulator regards as significant and about which the Northern Ireland Utility Regulator considers 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.

15. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions the Northern Ireland Utility Regulator is aware of about the RHI Scheme (which the Northern Ireland Utility Regulator regards 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.

16. Provide any further evidence, within the knowledge or belief of the Northern Ireland Utility Regulator, which is relevant to the matters that 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 322 of 2017

DATE: 25 July 2017

Witness Statement of: Donald Henry

I, Donald Henry, will say as follows: -

Please summarise of history and role of the Northern Ireland Utility Regulator

1. The Northern Ireland Authority for Utility Regulation (also known as the “Utility Regulator”) is a statutory body corporate established under Article 3 of the Energy (Northern Ireland) Order 2003 (the **Energy Order**). At its initial creation it was known as the Northern Ireland Authority for Energy Regulation (NIAER) and its remit extended to the carrying out of various functions relating to the regulation of the energy (i.e. gas and electricity) sector in Northern Ireland.
2. The Energy Order also abolished the offices of the Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland and transferred their respective functions to the NIAER.
3. The change of name took place by way of amendments made under Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006 (the **Water Order**) which also extended its remit to the regulation of the water and sewerage services industry in Northern Ireland.
4. As a statutory body corporate the Utility Regulator has a set of statutory functions – most of which are set out in the primary governing legislation which being the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), the Gas (Northern Ireland) Order 1996 (the **Gas Order**), the Energy Order and the Water Order.

5. The key functions include:
- grant, and subsequent modification, of licences authorising companies to undertake relevant licensable activities within the energy and water and sewerage services sector in Northern Ireland;
 - enforcement of the legislative and/or licence obligations with which authorised energy and water and sewerage service companies are required to comply;
 - setting of price controls for relevant licence holders;
 - setting standards of performance for relevant licence holders; and
 - determination of certain types of customer disputes and/or complaints.
6. The relevant governing legislation also set outs the Utility Regulator's objectives, powers, and duties in relation to each sector.
7. Our Forward Work Programme¹ is our annual business plan that sets out our most significant non-routine projects and our Annual Report² provides a general overview of our activities from the past year. The Utility Regulator is accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

Please summarise the makeup and staffing of the Northern Ireland Utility Regulator

8. The statutory body corporate that is the Utility Regulator consists of 'members' that are appointed by the Department of Finance. The legislative requirement (set out in Schedule 1 to the Energy Order) is for there to be a chairman and no fewer than three other members (referred to as the **Board**).
9. The Board is empowered to appoint such staff as it may determine. At the date of this statement the Board consists of the Chairman and six other members one of whom is also the Chief Executive of the Utility Regulator. The Board is

¹ <https://www.uregni.gov.uk/publications/20162017-forward-work-programme>

² <https://www.uregni.gov.uk/publications/utility-regulator-annual-report-2015-2016>

responsible for the overall strategic direction of the organisation and ensuring that it meets its legal obligations.

10. The office has five directorates each headed by a Director. The five areas are: Compliance and Network Operations, Finance and Network Assets, Wholesale, Retail and Consumer Protection and Corporate Affairs.
11. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals. At the date of this statement the number of staff in posts is eighty-two (excluding the Chief Executive).

Please set out and explain any involvement the Northern Ireland Utility Regulator had in what became the RHI Scheme (the RHI Scheme) setting out the dates of any involvement, what the involvement was, and who from the Northern Ireland Utility Regulator was involved.

12. The Utility Regulator had no involvement with the development, operation or administration of the Non Domestic RHI Scheme. We understand that at one stage the Department of Enterprise, Trade and Investment (DETI) may have considered whether the Utility Regulator should be responsible for administering the RHI Scheme but this was not pursued and Ofgem instead perform this role.
13. We were a formal consultee on a similar basis to other stakeholders. However, we decided not to respond to DETI's Renewable Heat Consultation which closed in October 2011 as we concluded that it would have minimal impact on the Utility Regulator's work.
14. While the RHI Scheme was being developed the Utility Regulator was a member of the Sustainable Energy Inter-Departmental Working Group (SEIDWG), set up by DETI in 2009. The Group discussed the Department's emerging policy on renewable energy (including with regard to renewable heat) and the draft Sustainable Energy Action Plan 2012 to 2015 which had a section on renewable heat. Consequently, any updates the UR received regarding renewable heat matters came through the SEIDWG papers and discussions.
15. The SEIDWG had a number of sub-groups and the Utility Regulator was a member of some, but not all, of the sub-groups. One such sub-group was the

Bio-Energy sub-group which later became the Renewable Heat Strategy sub-group. The Utility Regulator was not a member of this sub-group in either incarnation.

16. The Utility Regulator did however keep a watching brief on the development of DETI's policy on renewable heat, including proposed incentive schemes, to understand whether, and if so how, there would be any significant implications from a Utility Regulator perspective. In particular we were concerned to identify to the Department any potential impact that incentivising renewable heat might have on work to extend the gas network in Northern Ireland.
17. In addition the Utility Regulator is responsible for the administration of a programme known as the Northern Ireland Sustainable Energy Programme (NISEP) - which provides funding for energy efficiency schemes- and the Northern Ireland Renewables Obligation³ - which is an incentive scheme relating to the generation of renewable electricity. Both of these schemes pre-date the RHI Scheme and while policy responsibility for RHI and NIRO rests with the Department for the Economy (DfE), we kept a watching brief on renewable heat incentive schemes to identify any overlap between them and the NISEP and/or NIRO. We did not identify any overlap between the RHI Scheme and the NIRO or the NISEP.
18. We did identify some potential overlap between the domestic incentives available through the NISEP and the Renewable Heat Premium Payment Scheme (RHPPS⁴). The NISEP was amended to address that issue.⁵ We also introduced additional measures to NISEP to ensure that any future schemes falling within NISEP would not overlap with other government schemes.

³ Administered by Ofgem on our behalf.

⁴ Renewable Heat Premium Payment Scheme was launched on 24 May 2012 by DETI and has since closed. It allowed Northern Ireland householders to obtain support towards the costs of installing a renewable energy heating system in their homes such as the installation of biomass boilers, heat pumps and thermal solar panels in place of existing fossil fuel heating systems. When the Scheme was launched DETI stated that those availing of a premium payment under the RHPP would not be able to claim any other financial grant or support for the same installation but that they would be eligible for the renewable heat incentive when it became available for the domestic sector next year.

⁵ The funding for two domestic heating schemes, the domestic Air Source Heat Pump and Biomass schemes within NISEP, were transferred together with the domestic element of the Solar Water Heating scheme to alternative schemes.

Please identify any staff of the Northern Ireland Utility Regulator who had any involvement with the RHI scheme, explain their qualifications, the role they perform for the Northern Ireland Utility Regulator, and the involvement they each had in the RHI Scheme.

Without prejudice to the generality of paragraph 4 above, explain the involvement of the Northern Ireland Utility Regulator (if any) in;

(a) the creation and development of the RHI Scheme in, or before, 2012,

(b) the administration/operation of the scheme,

(c) Any problems or difficulties which emerged in respect of the scheme, (including but not limited to, the causing or permitting, identification, consideration and/or the remediation of any such problems);

(d) The amendment, suspension or closure of the scheme

19. The Utility Regulator had no involvement in the creation and development of the RHI Scheme, including at any time during or before 2012 or in the administration or operation of the RHI Scheme. Similarly, the Utility Regulator has had no involvement in any problems or difficulties which have emerged in respect of the RHI Scheme or the amendment, suspension or closure of the RHI Scheme.

Identify any potential flaws or difficulties with the potential Scheme and/or its operation that the Northern Ireland Utility Regulator identified (or are aware of being identified) explaining in each instance so far as you can how these potential difficulties or flaws came to be known about and when.

20. As explained above the Utility Regulator did not have any involvement with the development or operation of the RHI Scheme. It did not therefore have any role in considering potential flaws or difficulties with the operation of the RHI scheme.

Specify whether the Northern Ireland Utility Regulator promoted the 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.

21. The Utility Regulator did not promote the RHI Scheme in any way.
22. The Utility Regulator does not recall, and does not have a record of, any instance where it encouraged any third party to seek accreditation, assisted any third party in doing so or provided any third party with information knowing that they might apply or consider applying for accreditation under the Scheme.

Lobbying and pressure

Identify any instances, to the Northern Ireland Utility Regulators 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 Scheme (including but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.

23. The Utility Regulator does not know of, or have any belief of, any instances of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other persons in relation to the terms of the RHI Scheme or any matter relating to the cost controls of the RHI Scheme.
24. Similarly, the Utility Regulator does not know of, or have any belief of, any instances where influence or pressure was exerted on any person in relation to what became the RHI Scheme.

Standards of conduct and conflict of interest

Identify any instances, to the Northern Ireland Utility Regulators knowledge or belief, where a Minister, Special Adviser, Civil Servant or any 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.

25. The Utility Regulator does not know of, or have any belief of, any instances where Ministers, Special Advisers, Civil Servants or other persons involved in

the RHI Scheme breached relevant standards, acted in a way incompatible with their duties, or acted in circumstances relating to or touching upon the RHI Scheme in any way where they had a real or perceived conflict of interest.

Specify whether to the Northern Ireland Utility Regulator's knowledge or belief its staff had any connection to a person or body receiving payment under the 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 the 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.)

26. With regard to the question of the Utility Regulator's knowledge or belief of its staff having any connection to a person or body receiving payment under the RHI Scheme or benefiting commercially from the RHI Scheme in some other way, in responding to the Inquiry Chairman's Notice No 321 of 2017 and in preparing this statement the Utility Regulator asked all staff, including Board members, to provide details of any involvement or dealings they may have had with the Scheme at any stage.
27. In responding to this request, a few individual members of staff reported that they knew of relatives or close friends who may have benefitted from the RHI Scheme. As of this date, no other member of staff reported any connection to any person or body receiving payment under the RHI Scheme or benefiting commercially from the RHI Scheme in some other way. However, should additional information come to light in the coming weeks, we will provide that information to the Inquiry.

Whistle-blowing and raising of concerns

Identify any instances of which the Northern Ireland Utility Regulator is aware of Whistle-blowing in relation to the Scheme or disclosures made in the public interest raising of concerns about the Scheme, settling out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.

28. The Utility Regulator is not aware of any whistle-blowing in relation to the

Scheme, or disclosures made in the public interest raising concerns about the Scheme.

Specify when the Northern Ireland Utility Regulator first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel used to produce heat (that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how the Northern Ireland Utility Regulator so became aware.

29. The Utility Regulator first became aware of subsidies payable under the RHI Scheme exceeding the cost of biomass fuel used to produce heat when this matter came into the public domain.

General

Considering the RHI Inquiry's Terms of Reference, please identify any representations made to the Northern Ireland Utility Regulator about the RHI Scheme (which the Northern Ireland Utility Regulator regards as significant and about which the Northern Ireland Utility Regulator considers 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.

30. Having considered the RHI Inquiry's Terms of Reference the Utility Regulator has not identified representations made to it about the RHI Scheme.

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

31. Having considered the RHI Inquiry's Terms of Reference, the Utility Regulator has not identified any conversations or discussions, other than those which are referred to in documents provided to the Inquiry by the Utility Regulator in responding to the Inquiry Chairman's Notice No 321 of 2017.

Provide any further evidence, within the knowledge or belief of the Northern Ireland Utility Regulator, which is relevant to the matters that the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

32. The Utility Regulator does not have any further evidence which it knows or believes to be relevant to the matters that the RHI Inquiry is investigating.

Statement of Truth

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

Signed:  _____

Dated: 25/07/2017