



The Rt Hon Mrs Arlene Foster MLA  
DUP Headquarters  
91 Dundela Avenue  
Belfast  
BT4 3BU

By post and email: [arlene@arlenefoster.org.uk](mailto:arlene@arlenefoster.org.uk)

11 February 2019

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, once again, 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').

I assume that, by reason of your previous interactions with the Inquiry (including the provision of written and oral evidence to it), you remain familiar with the Inquiry's Terms of Reference.

As you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

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

As part of its further investigations, the Inquiry has obtained disclosure of emails from various accounts within the control of the DUP (pursuant to Section 21 Notice 230 of 2018). Arising out of the Inquiry's analysis of those emails, please find enclosed with this letter a further Section 21 Notice requiring you to provide further 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.

In the interests of fairness, you are also encouraged to provide, through the further written statement now being requested of you, any additional information that you can which is relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to any of its phases, in light of any additional matters which have emerged during the course of the Inquiry's evidence-gathering processes.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

As before, it is vital that the further 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.

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, please revert to me.

The questions in the attached notice refer to various documents. For the most part, these documents have already been provided to you or your solicitor. Where they have not, a copy of the relevant document is enclosed with the Notice.

I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice

and documents with your legal representative(s), under the same conditions as I set out in my previous 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.

A copy of this correspondence has also been provided to your legal representative, John McBurney of John McBurney Solicitors (by email only).

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

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

Yours faithfully

A handwritten signature in black ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE**  
**[No 8 of 2019]**

*Emails from DARD and/or CAFRE relevant to the RHI Scheme*

1. Emails disclosed by the DUP in response to Section 21 Notice 230 of 2018 reveal that the DUP received a number of emails from DARD and/or CAFRE in the period 2012 to 2016 promoting educational and/or training events at which the RHI Scheme was to be considered. Below is a non-exhaustive list of such emails:

- a. **POL-23001 to 23003;**
- b. **POL-42013 to 42015;**
- c. **POL-42026 to 42030;**
- d. **POL-42061 to 42064;**
- e. **POL-42071;**
- f. **POL-42072 to 42078;**
- g. **POL-42080 to 42082;**
- h. **POL-42083 to 42085;**
- i. **POL-42086 to 42089;**
- j. **POL-42092 to 42093;**
- k. **POL-42098 to 42101;**
- l. **POL-25001 to 25004;**
- m. **POL-42104 to 42107;**
- n. **POL-42111 to 42114;**
- o. **POL-42119 to 42123;**
- p. **POL-42124 to 42127;**
- q. **POL-42128 to 42131;**
- r. **POL-42133 to 42136;**
- s. **POL-42137 to 42140;**
- t. **POL-42142 to 42145;**
- u. **POL-38141 to 38144;**
- v. **POL-42150 to 42153;**
- w. **POL-42162 to 42166;**

- x. **POL-42166 to 42169;**
- y. **POL-42170 to 42173;**
- z. **POL-42287 to 42290;**
- aa. **POL-38628 to 38631.**

A number of the aforementioned emails (such as those referred to at sub-paragraphs m, o, and w above) suggested that payback periods for farmers in the poultry and mushroom sectors who invested in renewable heating systems could be 3 years or less under the RHI Scheme.

You are hereby required to address, comprehensively and in detail, the following issues which arise in respect of the aforementioned emails:

- i. Clarify whether you accept receiving all of the emails identified at sub-paragraphs a to aa above and –
  - 1. In respect of each of those emails which you accept you received, confirm the date of receipt;
  - 2. In respect of those emails (if any) which you deny you received, please identify same clearly;
  - 3. If it is the case that you deny you received some of the said emails but accept being made aware of their contents, please provide full details of this including when and by whom you were made so aware;
- ii. Without prejudice to the generality of the foregoing request, confirm (1) that receipt of the emails identified at sub-paragraphs m, o, u, and w above would have, from as early as October 2013 (**POL-42104 to 42107** refers), alerted a reader to the potentially short payback periods and high returns available under the RHI Scheme for users with high heat demands such as those in the poultry broiler and mushroom farming sectors, and (2) that you were so alerted or, in the event that you contend that you were not so alerted, provide an explanation for this and clarify how and

when you first became aware of the potentially short payback periods and high returns available under the RHI Scheme for users with high heat demands;

- iii. Clarify whether, and if so in what respects and to what extent, you wish to amend or correct any evidence previously provided by you to the Inquiry in light of your answers to the foregoing questions.

### *Energy Issues in the DUP*

2. A number of emails disclosed to the Inquiry by the DUP or its members suggest that, within the DUP (and distinct from his engagement with Timothy Cairns regarding the RHI Scheme during the summer of 2015), Andrew Crawford's input, assistance and/or view was sought on energy issues even when he was not the SpAd in DETI. Examples of this include the following:

- a. **IND-29757 to 29758** (June 2015);
- b. **POL-20045 to 20046** (August 2015);
- c. **POL-46881 to 46882** (July 2016);
- d. **POL-46888** (July 2016);
- e. **POL-46913** (July 2016);

In the circumstances, please address the following issues:

- i. Explain the role(s) (formal and/or informal) that Andrew Crawford performed within the DUP in respect of energy matters following his move from the position of DETI SpAd as well as the reasons why he performed the said role(s);
- ii. Clarify whether each of the following persons was, at each relevant time and to the best of your knowledge, aware of the said role(s) being performed by Andrew Crawford:

1. You, both in your capacity as Finance Minister and subsequently in your capacity as First Minister;
  2. The Minister for Agriculture, during the period when Andrew Crawford was her SpAd;
  3. The DETI Minister;
  4. The DETI SpAd;
- iii. To the best of your knowledge, set out whether continued involvement of a SpAd in issues which were no longer within his appointing Minister's remit was a practice which occurred on other occasions within the DUP (and, if to your knowledge it did, provide details of this).

*General*

3. In an email exchange between Andrew Crawford and you on 2 and 3 July (**POL-38715 to 38716**) you appear to discuss the issue of whether either of you had previously been aware that the NI RHI Scheme lacked 'safeguards' that had been present in the GB RHI Scheme. Please consider this email exchange and provide any (further) evidence on this issue which you believe to be relevant to the Inquiry's investigations. In particular, please provide full details of any further discussions or communications you had with Andrew Crawford regarding this issue.
4. In the email exchange to which reference was made in paragraph 3 of this Schedule, a number of the emails have the subject '*enfeebled heat scheme*'. Please address the following issues arising from this:
  - a. Confirm that '*enfeebled heat scheme*' is a reference to the RHI Scheme;
  - b. In the event that you answer the question at sub-paragraph a. in the negative, please explain the issue to which you were referring when using the phrase '*enfeebled heat scheme*';

- c. In the event that you answer the question at sub-paragraph a. in the affirmative, please address the following issues:
- i. Set out the reasons for referring to the Scheme as the '*enfeebled heat scheme*' (in particular, but not limited to, whether the said phrase was used so as to obscure the subject of your communications and/or to decrease the chance of your communications being disclosed during any subsequent investigation or inquiry);
  - ii. Clarify whether the said phrase was, to the best of your knowledge, used by you and/or other persons on other occasions when communicating about the RHI Scheme or issues relating to it (and, if it was, provide full details of those other communications, including copies of any relevant documentary evidence relating to same).
5. Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, having regard to (a) any additional information and documentation which is now available to you (in particular, but without prejudice to the generality of the foregoing, emails disclosed by you to the Inquiry including those summarised above), (b) your knowledge of the evidence of other parties in the Inquiry proceedings, and/or (c) any further developments or communications you have had with others.



**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 8 of 2019**

**DATE: 25 February 2019**

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**Witness Statement of:                      ARLENE FOSTER MLA**

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*Emails from DARD and/or CAFRE relevant to the RHI Scheme*

1.     Emails disclosed by the DUP in response to Section 21 Notice 230 of 2018 reveal that the DUP received a number of emails from DARD and/or CAFRE in the period 2012 to 2016 promoting educational and/or training events at which the RHI Scheme was to be considered. Below is a non-exhaustive list of such emails:

- a. **POL-23001 to 23003;**
- b. **POL-42013 to 42015;**
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- e. **POL-42071;**
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- g. **POL-42080 to 42082;**
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- i. **POL-42086 to 42089;**
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- u. **POL-38141 to 38144;**
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- x. **POL-42166 to 42169;**
- y. **POL-42170 to 42173;**
- z. **POL-42287 to 42290;**
- aa. **POL-38628 to 38631.**

A number of the aforementioned emails (such as those referred to at sub-paragraphs m, o, and w above) suggested that payback periods for farmers in the poultry and mushroom sectors who invested in renewable heating systems could be 3 years or less under the RHI Scheme.

You are hereby required to address, comprehensively and in detail, the following issues which arise in respect of the aforementioned emails:

- i. Clarify whether you accept receiving all of the emails identified at sub-paragraphs a to aa above and –
  - 1. In respect of each of those emails which you accept you received, confirm the date of receipt;
  - 2. In respect of those emails (if any) which you deny you received, please identify same clearly;
  - 3. If it is the case that you deny you received some of the said emails but accept being made aware of their contents, please provide full details of this including when and by whom you were made so aware;

**I do not believe I received the emails a to aa in the above list and I do not recollect having seen or read them or otherwise being made aware of their contents.**

- ii. Without prejudice to the generality of the foregoing request, confirm (1) that receipt of the emails identified at sub-paragraphs



m, o, u, and w above would have, from as early as October 2013 (POL-42104 to 42107 refers), alerted a reader to the potentially short payback periods and high returns available under the RHI Scheme for users with high heat demands such as those in the poultry broiler and mushroom farming sectors, and (2) that you were so alerted or, in the event that you contend that you were not so alerted, provide an explanation for this and clarify how and when you first became aware of the potentially short payback periods and high returns available under the RHI Scheme for users with high heat demands;

**From having now considered these emails it appears a reader would be alerted to potentially short payback periods and high returns for users with high heat demands. In accordance with my previous evidence, I was not alerted or made aware of potential difficulties with the Scheme until early 2016.**

- iii. Clarify whether, and if so in what respects and to what extent, you wish to amend or correct any evidence previously provided by you to the Inquiry in light of your answers to the foregoing questions.

**I do not wish to amend or correct my previous evidence.**

*Energy Issues in the DUP*

2. A number of emails disclosed to the Inquiry by the DUP or its members suggest that, within the DUP (and distinct from his engagement with Timothy Cairns regarding the RHI Scheme during the summer of 2015), Andrew Crawford's input, assistance and/or view was sought on energy issues even when he was not the SpAd in DETI. Examples of this include the following:
  - a. **IND-29757 to 29758** (June 2015);
  - b. **POL-20045 to 20046** (August 2015);



- c. **POL-46881 to 46882** (July 2016);
- d. **POL-46888** (July 2016);
- e. **POL-46913** (July 2016);

In the circumstances, please address the following issues:

- i. Explain the role(s) (formal and/or informal) that Andrew Crawford performed within the DUP in respect of energy matters following his move from the position of DETI SpAd as well as the reasons why he performed the said role(s);

**I believe that by virtue of Dr Crawford's experience gained during his tenure as DETI Special Adviser, he continued to provide informal advice or information to assist party colleagues when asked to do so.**

- ii. Clarify whether each of the following persons was, at each relevant time and to the best of your knowledge, aware of the said role(s) being performed by Andrew Crawford:

1. You, both in your capacity as Finance Minister and subsequently in your capacity as First Minister;
2. The Minister for Agriculture, during the period when Andrew Crawford was her SpAd;
3. The DETI Minister;
4. The DETI SpAd;

**1.1 would have been aware that Dr Crawford provided informal assistance to colleagues when required but I was not aware of the specifics.**

**2. I do not know but it is likely there was at least some awareness as it would be common practice for party colleagues to assist one another by sharing knowledge and experience where possible.**

**3. See reply to 2, above.**



**4. See reply to 2, above.**

- iii. To the best of your knowledge, set out whether continued involvement of a SpAd in issues which were no longer within his appointing Minister's remit was a practice which occurred on other occasions within the DUP (and, if to your knowledge it did, provide details of this).

**Party colleagues work as a team and provide assistance to one another on an informal basis. This would include in circumstances where there is a change in Minister/Special Adviser. This helps to ensure continuity and that knowledge is not lost unnecessarily.**

*General*

3. In an email exchange between Andrew Crawford and you on 2 and 3 July (**POL-38715 to 38716**) you appear to discuss the issue of whether either of you had previously been aware that the NI RHI Scheme lacked '*safeguards*' that had been present in the GB RHI Scheme. Please consider this email exchange and provide any (further) evidence on this issue which you believe to be relevant to the Inquiry's investigations. In particular, please provide full details of any further discussions or communications you had with Andrew Crawford regarding this issue.

**I have no further evidence on this issue.**

4. In the email exchange to which reference was made in paragraph 3 of this Schedule, a number of the emails have the subject '*enfeebled heat scheme*'. Please address the following issues arising from this:
- a. Confirm that '*enfeebled heat scheme*' is a reference to the RHI Scheme;

**Confirmed.**



- b. In the event that you answer the question at sub-paragraph a. in the negative, please explain the issue to which you were referring when using the phrase '*enfeebled heat scheme*';

**Not applicable, see above at a.**

- c. In the event that you answer the question at sub-paragraph a. in the affirmative, please address the following issues:

- i. Set out the reasons for referring to the Scheme as the '*enfeebled heat scheme*' (in particular, but not limited to, whether the said phrase was used so as to obscure the subject of your communications and/or to decrease the chance of your communications being disclosed during any subsequent investigation or inquiry);

**I believe that this is likely to have occurred as a result of the predictive text function on my iPad correcting my (mis)typing of 'renewable' to 'enfeebled'. There was certainly no intention to obscure the subject of the communication or decrease the chance of the communication being disclosed.**

- ii. Clarify whether the said phrase was, to the best of your knowledge, used by you and/or other persons on other occasions when communicating about the RHI Scheme or issues relating to it (and, if it was, provide full details of those other communications, including copies of any relevant documentary evidence relating to same).

**No, the phrase was not used on any other occasions, so far as I am aware.**



5. Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, having regard to (a) any additional information and documentation which is now available to you (in particular, but without prejudice to the generality of the foregoing, emails disclosed by you to the Inquiry including those summarised above), (b) your knowledge of the evidence of other parties in the Inquiry proceedings, and/or (c) any further developments or communications you have had with others.

**I have no further evidence to provide.**

Statement of Truth

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

Signed: 

Dated: 25<sup>th</sup> February 2019