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27 January 2017

Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme

Please find attached a copy of the Terms of Reference in relation to the above Inquiry which I referred to in my statement to the Assembly on 24 January.



MÁIRTÍN Ó MUILLEOIR MLA
Minister of Finance

Terms of Reference for the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme

Purpose and Scope

1. To investigate, inquire into and report on the Non-Domestic Renewable Heat Incentive scheme (“the RHI scheme”). This will include its design, governance, implementation and operation, and efforts to control the costs of that scheme, from its conception in 2011 to the conclusion of the Inquiry. This is to restore public confidence in the workings of Government and will include, without prejudice to the generality of the forgoing, in particular to:
 - a) Examine how the RHI scheme was developed in strategic policy and legislative terms, including its primary purpose and objectives; the approval of the business case by the Department of Finance and Personnel; how the scheme’s operational roll-out was agreed (including the promotion and communication of the scheme to external stakeholders and beneficiaries of the scheme), administered and implemented in order to match these objectives; and where overall accountability and compliance for the RHI scheme rested in both policy and financial accountability terms.
 - b) Examine the role of Ministers, Special Advisors, Civil Servants, and any others involved in the RHI scheme (including external consultants) and whether their actions and/or advice met appropriate professional standards, were ethical, within the law, and compliant with standards in public life including in particular the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisors, and conditions of employment.
 - c) Examine the initial design and the implementation of cost controls with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.
 - d) Examine the work on the RHI scheme by relevant Government Departments (particularly the Department for Enterprise, Trade and Investment / Department for the Economy (DETI/DfE), the Office for Gas and Electricity Markets and any others with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.
 - e) Examine the delay in implementing cost control measures in November 2015 in the light of the spike in applications which occurred before those measures were implemented, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.

- f) In relation to the introduction of cost controls in November 2015, examine what lobbying occurred, by whom and what implications that had for the delay in the cost controls.
- g) In connection with the closure of the RHI scheme to new applicants in February 2016, examine what lobbying occurred, by whom and what implications that had for the delay in the closure.
- h) Examine the efforts made by Department for Enterprise, Trade and Investment / Department for the Economy and the Department of Finance and Personnel / Department of Finance to mitigate costs after November 2015, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.
- i) Examine any real or perceived conflicts of interest, including whether any individual (including Ministers, Civil Servants, special advisors or others), acted in a way incompatible with their duties (including by premature disclosure of any information), and/or intentionally or dishonestly sought gain from the RHI scheme or the supply chain (including the installation of boilers), for themselves or others.
- j) Examine the Public Expenditure implications of the foregoing.
- k) Examine the handling of whistleblower disclosures and others who raised concerns in relation to the RHI Scheme, with a view to determining what if anything went wrong, what were the consequences of that and where responsibility for that lay.
- l) Examine whether there were any systemic failings in the structures, organisation or operation of government bodies particularly in relation to the design and administration of grant aid schemes and identify any lessons that may be learnt.
- m) To take into account, where appropriate, the work of:
- the Public Accounts Committee;
 - the Department for Enterprise, Trade and Investment / the Department for the Economy Statutory Committee;
 - the NI Audit Office;
 - the fact-finding investigation into the role of current and past officials in the design, management and control of the RHI Scheme commissioned by the DfE from Price Waterhouse Coppers (PwC) in October and December 2016;
 - PwC's Project Heat;
 - the related work of the independent HR consultant;

- any audit and enforcement inspections in relation to accredited RHI installations; and
 - any other relevant report
- n) To make findings of fact, report on these matters and to make such other observations and recommendations as the Inquiry considers appropriate.

Principles

2. The Inquiry will be wholly independent and not accountable to the Executive, Assembly, or any public body.
3. The Inquiry shall have access to all the documentation it seeks and the cooperation of all relevant witnesses to enable the Inquiry to produce a comprehensive report.

Method

4. Prepare a 'Protocol on Full Disclosure' for all documentation to be provided to the Inquiry
5. Where required, use the powers of compellability under the Inquiries Act 2005 to compel the attendance and giving of evidence by witnesses and the production of documents or any other thing in the custody, or in the control of a person which is relevant to the Inquiry.
6. To recover and keep safe all relevant documents and records made available to the Inquiry as soon as possible.
7. Consider all the relevant evidence, to include all documentation and witness testimony.
8. The conduct and procedure of the Inquiry are to be such as the Chair directs, subject to the Inquiries Act 2005 and any rules made under the Act.
9. The Inquiry will examine and review all documents as the Inquiry deems necessary and appropriate in the circumstances.
10. The Inquiry will receive such oral and written evidence as the Inquiry deems necessary and appropriate in the circumstances.
11. The public disclosure of documentation will be determined by the Inquiry Chair.
12. All evidence provided to the Inquiry will be appropriately protected.
13. Where public interest or other issues arise under section 19(3) of the Act the procedure for seeking a restriction order made by the Chairperson under section 19 (2) (b) shall apply.

14. Amendments to the Terms of Reference are to be made by the Minister only upon request from the Inquiry Chairperson.

Cost

15. The cost of the Inquiry will be met by the Department of Finance, but the Chair is encouraged to keep costs to a reasonable level.

16. The Department will provide for such independent secretariat support as the Inquiry Chair considers necessary to fulfil these Terms of Reference, and the Panel will have access to external support and advice, including individuals with appropriate knowledge.

Timeframe and Report

17. The Inquiry will seek to work expeditiously and complete its report within a reasonable timeframe.

18. Subject to any determination made by the Chair, the report should include the full public disclosure of all documentation and evidence relating to this matter.

19. On its completion the Inquiry report will be made public immediately and in full by the Minister.