

INQUIRY INTO THE NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) SCHEME

STATEMENT TO THE ASSEMBLY

BY

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MINISTER OF FINANCE

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INTRODUCTION

Ar an 19 Eanáir, d'fhógair mé go bhfuil sé i gceist agam fiosrúchán poiblí a thionscnamh ar an Scéim Neamhtheaghlach In-athnuaite Dreasachta Teasa (SDT) – inniu, tagaim os comhair an Tionóil le sonraí an Fhiosrúcháin sin a dhearbhu, lena n-áirítear ballraíocht an fhiosrúcháin agus a théarmaí tagartha.

Mar sin féin, sula dtugaim faoi seo, tá sé tábhachtach go bhfanaimid dírithe ar na cúinsí a thug chun an pointe seo muid agus a chiallaíonn anois gur fiosrúchán poiblí an t-aon bhealach inchreidte chun tosaigh.

On 19th January, I announced my intention to institute a Public Inquiry into the non-domestic Renewable Heat Incentive Scheme – today I come to the Assembly to confirm the details of that Inquiry.

However, before doing so it is important that we remain focussed on the circumstances that have brought us to this point and which now make a Public Inquiry the only credible way forward.

BACKGROUND

The non-domestic RHI Scheme was introduced in November 2012 to support the then Executive's Programme for Government commitment in relation to renewable energy. It was conceived with laudable ambitions – to achieve 10% of our energy consumption from renewable sources by 2020.

We must focus on why the botched RHI Scheme went wrong and the circumstances surrounding it rather than the environmental principles underpinning it, which remain right and proper.

It is important to acknowledge that although this Inquiry examines allegations of wrongdoing, many people did act appropriately in relation to the RHI Scheme. In particular I would like to recognise the work of my officials who, working with the Comptroller and Auditor General, have diligently and fulsomely applied the principles

of financial governance and probity as set out in the Managing Public Money requirements.

It was my officials who unearthed this financial calamity and formally notified the Comptroller and Auditor General who then reported to the Public Accounts Committee. They have played a crucial role in bringing transparency and scrutiny to this scandal.

Given the position of my Department at the nexus of government, I am ideally placed to initiate this Inquiry.

WHY - CASE FOR AN INQUIRY

The case for an independent investigation into the RHI Scheme is clear cut: in his June 2016 report, the Comptroller and Auditor General concluded that the scheme had “serious systemic weaknesses from the start”, weaknesses that have resulted in over-compensation, abuse and significant financial risk to our budget and the public services it supports.

The RHI Scheme, according to the Comptroller and Auditor General, has the potential to cost the public purse up to £490 million over twenty years. That is money that I, as Finance Minister, would much rather see directed towards vital public services - strengthening our health and social care system, building an infrastructure fit for the 21st century and educating and training our people.

In recent weeks we have had a drip-feed of serious allegations of corruption, mismanagement, incompetence and political interference surrounding the Scheme.

Members know my preference for a time bound independent judge-led investigation under new legislation.

This was underpinned by two key requirements to ensure that the public could have confidence that it would get to the truth and that this would come out for all to see.

Firstly, it is absolutely vital that any investigation has the powers to compel witnesses and evidence. And secondly, the investigation needs to be free from Ministerial control or interference.

But the need for agreement on new legislation and the pending dissolution of the Assembly mean it was not possible to pursue this preferred approach.

But there cannot be obstacles placed in the way of truth. That would be unacceptable to the public.

In that context, the only way to respond to the public interest now is for me to launch an Inquiry to be held under the Inquiries Act 2005, reflecting the scale of the public concern regarding this matter.

I am pleased therefore to inform Members on the shape that Inquiry will take.

INQUIRY TEAM / TERMS OF REFERENCE / TIMESCALE

I now have in place an independent Inquiry Chair – distinguished retired Lord Justice of Appeal, Sir Patrick Coghlin, who was nominated to chair the Inquiry by the Lord Chief Justice.

I am very pleased that Sir Patrick Coghlin has agreed to lead this Inquiry and I know that he will be unflinching in his pursuit of the truth and scrupulous in his analysis of the evidence.

I have agreed with Sir Patrick Coghlin that he will be supported by two Panel Members to get to the truth of this affair. If the Panel considers it appropriate assessors may be appointed to assist them. These individuals, to be appointed, will have relevant expertise and be from outside the North.

I want to turn to the Terms of Reference for the Inquiry which I have made as broad as possible in order to give latitude to the Inquiry Chair in his work.

It sets the framework under which the Inquiry will investigate, inquire into and report on the RHI scheme. This will include its design, governance, implementation and operation, and measures to control the costs of the scheme, from its conception in 2011 to the conclusion of the Inquiry.

While the areas it will investigate will be wide-ranging it will necessarily include key areas in which there has been huge public interest, including:

- the development and roll-out of the RHI Scheme by the then Department of Enterprise, Trade and Investment;
- the signing-off of the Scheme by the then Department of Finance and Personnel;
- the issue of cost controls and tariffs;
- the delay in implementing cost control measures before November 2015 which led to the spike of autumn 2015; and
- the closure of the Scheme in February 2016.

I want to thank the Assembly Parties for their input to the Terms of Reference which have, along with Sir Patrick Coghlin's expert opinion, helped to shape what I believe is a robust and balanced framework for the Inquiry.

I have laid a copy of the Terms of Reference in the Assembly Library. These will only be amended at the request of the Chair.

The Inquiry team will begin its work on 1st February 2017 and will report as expeditiously as possible.

OPENNESS AND TRANSPARENCY

Openness and transparency will be key touchstones for Sir Patrick Coghlin and his team.

In terms of the two key requirements I pointed to earlier, the investigation will have the power to compel witnesses and evidence. Rest assured, every stone will be turned and there will be no dark corners where the light won't be shone.

There are shortcomings in the Inquiries Act around the potential for political interference. I therefore wish to reassure the public by setting out the steps that I think must be taken to ensure absolute openness and transparency in that regard.

The arrangements that I have detailed in this Statement are intended to ensure this.

It is also important to stress the following.

Having established the Inquiry, it will now progress entirely in the hands of the Chairman. Sir Patrick Coghlin will, within the Terms of Reference I have set out, have absolute control over the scope and execution of the Inquiry. The Chair has indicated that it would not be appropriate to issue an interim report.

Likewise, the Chair informs me of his obligation to deliver the report to the Finance Minister. I call on all Members to join me in pledging that any future Finance Minister will immediately publish the report as received.

The Inquiry will be impartial and objective. It will be tasked to get to the truth of the RHI Scheme. I will not interfere in its work – it will be entirely independent.

CONCLUSION

There is an urgent need to get to the facts of the RHI Scheme, to identify negligence, incompetence, alleged corruption and abuse, and to hold those responsible to account.

Tá mé feasach go dtéann an cheist SDT thar chúrsaí airgeadais chuig ceisteanna rialachais agus ionracais. Trí aimsiú na fírinne faoin scannal SDT, creidim go rachaidh an fhoireann seo fhiosrúcháin, faoi stiúir Sior Patrick Coghlin oirirc, i ngleic leis na saincheisteanna sin agus dá bhrí sin, rachaidh sé bealach éigin le hatógáil a dhéanamh ar mhuintir scriosta an phobail sna hinstiúidí.

I am aware that the RHI issue goes beyond financial matters to questions of governance and probity. By getting to the truth of the RHI scandal, this Inquiry team, led by the distinguished Sir Patrick Coghlin will, I believe, address those wider issues, and, therefore, go some way to rebuilding the shattered public confidence in the institutions.

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.