

NORTHERN IRELAND (REGIONAL RATES AND ENERGY) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Regional Rates and Energy) Bill as brought from the House of Commons on 22 March 2018 (HL Bill 93).

- These Explanatory Notes have been prepared by the Northern Ireland Office and the Northern Ireland Civil Service in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill deals with matters arising from the continued absence of a Northern Ireland Executive and a sitting Assembly following the Assembly election on 2 March 2017. The Bill:
 - sets the amounts of the regional domestic and non-domestic rates for the assessment of rates and the billing of ratepayers in Northern Ireland for the financial year ending on 31 March 2019; and
 - makes provision to continue the Northern Ireland Renewable Heat Incentive cost control measures introduced on 1 April 2017 for small and medium biomass installations for a further 12 month period ending on 31 March 2019.

Policy background

- 2 There has been no Northern Ireland Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. The period for the appointment of ministers to form an Executive after the extraordinary Assembly election in March 2017 was extended to 29 June (by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017), but no ministers were appointed. The Northern Ireland Assembly has not met since its first post-election meeting on 13 March 2017. In November 2017, the UK Government addressed the clear and urgent need for budgetary certainty for the Northern Ireland Civil Service by introducing the Northern Ireland Budget Act 2017, an Act that would normally be required to be passed by the Northern Ireland Assembly.
- 3 With the parties not having yet reached an agreement on the formation of a new Northern Ireland Executive, this Bill makes necessary provisions in light of the continued absence of Assembly business, in order to protect and preserve public services and finances. It enables the collection of regional rates in 2018-19 and the continued operation of the current Renewable Heat Incentive (RHI) cost-capping scheme.

Regional rates

- 4 The Bill sets regional rates for domestic and non-domestic property for the 2018-19 rating year. It does so by stipulating a regional rate for domestic and non-domestic property, expressed in terms of “pence per pound of rateable value”. The figures in the Bill represent an inflationary increase in the non-domestic regional rate (based on a 1.5% GDP deflator) and an increase of inflation plus 3% in the domestic regional rate (i.e. a 4.5% increase). These were set out in the Secretary of State’s Written Statement to Parliament on *Northern Ireland finances* on 8 March 2018,¹ and represent an important source of revenue underpinning the 2018-19 budget in Northern Ireland.
- 5 Regional rates are normally set by an order subject to the affirmative resolution procedure in the Assembly and made under Article 7 of the Rates (Northern Ireland) Order 1977. It is necessary to proceed by means of primary legislation at Westminster because, in the continued absence of an Executive, these rates could not otherwise be set. The regional rates for 2017-18 were set in the same manner by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017.

¹ [Northern Ireland Finances: Written statement](#) - HCWS527, 8 March 2018

Renewable Heat Incentive scheme

- 6 The Bill enables a continuation of cost control measures for the RHI scheme in Northern Ireland. These cost controls regulate rates of return for participants with small or medium biomass installations accredited before 18 November 2015. These installations previously had the capacity to generate costs far beyond projected levels, placing public finances at risk. The original cost control measures were introduced on 1 April 2017 but are due to expire on 31 March, beyond which time cost controls for those installations accredited before November 2015 will have no legal basis. The cost controls reduce the overall cost of the RHI Scheme by around half, protecting the Northern Ireland budget from potentially very significant overspends. The Bill therefore provides for the continuation of the 2017-18 cost control measures for a further 12 month period (1 April 2018 to 31 March 2019), during which time work to develop and consult on long term cost control measures will be undertaken by the Northern Ireland Civil Service.

Legal background

Clause 1 - Regional rates

- 7 Article 6 of the Rates (Northern Ireland) Order 1977 requires a regional rate to be set for each rating year by the Department of Finance. Pursuant to Article 7 of that Order, it must be set by an order made by the department and subject to affirmative resolution in the Assembly. This is not possible in the absence of a sitting Assembly so the rate is therefore set by this Bill. The rate was set for 2017-18 by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017. As in that Act, the setting of the regional rate by this Bill is without prejudice to the department's powers to vary it by order in the usual way (see clause 1(4)).

Clause 2 and Schedule - Renewable heat incentive scheme

- 8 The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (the "Principal Regulations") established a Renewable Heat Incentive Scheme for non-domestic use, made under the powers conferred by section 113 of the Energy Act 2011. The Scheme is sponsored by the Department for the Economy (DfE) and the Principal Regulations also confer functions on DfE with regard to the general administration of the Scheme. The aim was to promote the use of renewable heat and it does that by providing for periodic payments to be made to accredited installations.
- 9 The Principal Regulations have been amended on several occasions to address concerns about the operation of the scheme. The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015 introduced a tiered tariff and an annual cap of 400,000kWh for certain installations accredited after 18 November 2015. Installations accredited before that date were able to receive untiered and uncapped payments, a situation which created unacceptable pressures on public expenditure. Accordingly, the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 (the "2017 Regulations") introduced the same tiered tariff and annual cap set out in the 2015 Regulations to installations accredited before 18 November 2015. The relevant provisions of the 2017 Regulations revoked and replaced the provisions in the Principal Regulations authorising payments to installations accredited before 18 November 2015. This means that, when the 2017 Regulations cease to have effect, there will no longer be a legal basis for payments in respect of those installations.

- 10 The 2017 Regulations will expire on 31 March 2018. In the absence of a sitting Assembly and Executive, they cannot be extended other than by primary legislation at Westminster. As such, corresponding provision for 2018-19 (with an inflationary uplift) is proposed to enable the continued protection of public finances while there is further work undertaken to develop and implement long-term cost control measures. State aid approval for such provision has been granted.

Territorial extent and application

- 11 The Bill extends to and applies in Northern Ireland only.
- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Fast-track legislation

- 13 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report, *Fast-track Legislation: Constitutional Implications and Safeguards*, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.²

Why is fast-tracking necessary?

- 14 All the matters included in this Bill are normally devolved to the Northern Ireland Assembly. The Government has sought to defer legislation for as long as possible to permit decisions on devolved matters to be made by the devolved institutions. It would have been inappropriate for Parliament to consider them on the normal timescale for scrutiny of primary legislation as it was hoped that a Northern Ireland Executive would have been formed in time to pass the (subordinate) legislation through which the aims of this Bill could have been met in the Assembly. Bringing forward this legislation on the normal timescale could indeed have undermined confidence in the inter-party talks seeking to restore devolution. However, it is now necessary to bring forward this legislation to protect public finances and uphold public confidence about arrangements in Northern Ireland for the next financial year.
- 15 It is necessary to fast-track Clause 1 to safeguard public revenues in the absence of a Northern Ireland Executive, and to protect the interests of the business and household ratepayers who normally pay by 10 instalments. A significant delay in the setting of the 2018-19 regional rates would result in ratepayers being presented with fewer instalments of a higher cost each time. This could cause financial hardship and lead to a demonstrable reduction in the total revenue collected.

² [House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I](#), para. 186

- 16 Clause 2 of the Bill requires fast-tracking as the 2017 Regulations are time limited and will cease to operate on 31 March 2018. If legislation to continue the cost control measures introduced by it is not in force on 1 April 2018, there will be no statutory authority for payments to be made, estimated to be in the order of £19 million for the period 1 April 2018 to 31 March 2019. This would have a negative impact on approximately 1,700 small and medium biomass installations accredited before 18 November 2015.
- 17 Any decision to pay participants would then lack statutory authority, inviting legal uncertainty and further challenge. To avoid the negative financial, legal and political implications that would arise, this Clause must therefore come into force by 1 April 2018.

What is the justification for fast-tracking each element of the bill?

- 18 The Bill is brief and the reasons for the fast-tracking of its provisions are set out above.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 19 The Government has sought to defer legislation for as long as possible to permit decisions with regard to devolved matters to be made by the devolved institutions, as set out above. In the circumstances, it has not been possible to give Parliament more time to scrutinise this short Bill.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 20 The Bill is being introduced in the absence of a Northern Ireland Executive and follows engagement with the Northern Ireland Civil Service.
- 21 As regards the regional rate provision, the Department of Finance in Northern Ireland published a Briefing on the Northern Ireland Budgetary Outlook in December 2017. This included a number of potential options for increases to the level of the domestic and non-domestic regional rate. The feedback received informed the Secretary of State's decision in setting out departmental allocations for 2018-19 on 8 March 2018, including the level of regional rates set out in this Bill.
- 22 Clause 2 on the Renewable Heat Incentive scheme simply continues in full the cost control measures introduced on 1 April 2017 by the 2017 Regulations which expire on 31 March 2018. The 2017 Regulations were considered by the Northern Ireland Assembly on 16 and 23 January 2017 and approved on 23 January 2017, and these provisions would not give rise to any change for stakeholders or scheme recipients.

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 23 All of the provisions in the Bill are time-limited. Clauses 1 and 2 set the level of the regional rates and make provision to continue cost control measures for certain Northern Ireland Renewable Heat Incentive participants, respectively, for the year ending 31 March 2019.

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Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 24 No post-legislative scrutiny is planned as all the provisions are limited in their application either to the 2018-19 financial year or to the current period without an Executive (see above).

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

- 25 Yes, legislation is required in each case.
- 26 Under the Rates (Northern Ireland) Order 1977, the regional rate must be set each year. Regional rates are normally set by an order subject to the affirmative resolution procedure in the Assembly. The Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 set the rate for 2017-18 only and so a rate must therefore be set in respect of 2018-19 and this requires further primary legislation.
- 27 Clause 2 amends the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 to enable the continuation of cost control measures introduced by the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017. There is no alternative statutory provision to allow for payments and if this Clause is not in force on 1 April 2018 there will be no statutory authority for payments to be made to small and medium biomass installations accredited before 18 November 2015.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 28 Due to the need to implement the Bill urgently to provide certainty on regional rates and the RHI scheme and the need to allow as long as possible for an agreement by the parties to be reached to allow these matters to be dealt with by the devolved institutions, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft.

Commentary on provisions of Bill

Clause 1 - Regional rates

- 29 This clause sets the levels of the regional domestic and regional non-domestic rates that are to be used in the assessment of rates and the billing of ratepayers in Northern Ireland for the year ending 31 March 2019. Subsection (3) sets the domestic regional rates, expressed in terms of 'pence per pound of rateable value', at 0.4365 pence and subsection (2) sets the non-domestic regional rate at 33.41 pence.
- 30 Subsections (4) and (5) clarify that the Department of Finance in Northern Ireland may subsequently vary the rates set by this Act, using the established procedure of an order under the Rates (Northern Ireland) Order 1977 and that it may set the rates for the whole of the year in which an order is made. Subsection (5) provides that any such order may only be made by the Department once Ministerial offices have been filled after the passing of this Act.

Clause 2 and Schedule - Renewable heat incentive scheme

- 31 This clause provides for the continuation of the cost control measures introduced by the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 ("the 2017 Regulations") to provide the Department for the Economy with sufficient time to fully develop and introduce long-term cost control measures by 1 April 2019.
- 32 Subsections (2)-(10) amend Regulation 36 of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ("the Principal Regulations") to continue the tiered tariffs and usage caps introduced for small and medium biomass installations accredited before 18 November 2015. The controls were introduced by the 2017 Regulations and, if corresponding provision is not put in place, will cease to have effect 31 March 2018.
- 33 Subsection (12) inserts a new Schedule 3A to the Principal Regulations. The new Schedule sets out the tiered tariffs for small and medium biomass installations accredited before 18 November 2015.
- 34 Subsection (14) ensures the correct tariffs are attributed for heat generated during the periods 1 April 2017 to 31 March 2019.
- 35 Subsection (15) provides that the Department for the Economy in Northern Ireland may subsequently make regulations under section 113 of the Energy Act 2011 to amend or revoke any provision amended or inserted by this Clause. This ensures that the power to make regulations under that section is not restricted by the amendments made by this Clause.

Commencement

- 36 Clause 1 comes into force on Royal Assent; Clause 2 and the Schedule come into force on 1 April 2018.

Financial implications of the Bill

- 37 The bill affects public expenditure in Northern Ireland, for which money has been voted by Parliament to the Consolidated Fund of Northern Ireland. The impact is therefore on Northern Ireland expenditure and not UK expenditure.
- 38 Under Clause 1, for the purposes of funding public expenditure by Northern Ireland Departments, the 2017-18 regional domestic rate will be increased by 4.5% and the non-domestic regional rate will be increased by 1.5%. The regional rate is forecast to raise some £613.7 million to fund departmental expenditure.
- 39 The context for Clause 2 is that the untiered and uncapped payments to installations accredited before 18 November 2015 created a serious and unacceptable pressure on Northern Ireland public expenditure with an over spend of £27 million in the financial year 2016-2017. This overspend had to be met by the Northern Ireland Executive from its budget allocation. Serious overspends of this nature would have continued to occur over the scheme's 20-year lifetime.

Parliamentary approval for financial costs or for charges imposed

- 40 No money resolution is required.

Compatibility with the European Convention on Human Rights

- 41 Section 19 of the Human Rights Act 1998 requires a minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).
- 42 The Lord Duncan of Springbank, Parliamentary Under-Secretary of State for Northern Ireland, has made the following statement:
- "In my view, the provisions of the Northern Ireland (Regional Rates and Energy) Bill are compatible with Convention rights."

Annex A - Territorial extent and application in the United Kingdom

43 The Bill extends to and applies in Northern Ireland only.³

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	No	No	No	Yes	No	No	Yes	No
Clause 2	No	No	No	Yes	No	No	Yes	No
Clause 3	No	No	No	Yes	No	No	Yes	No
Schedule	No	No	No	Yes	No	No	Yes	No

Subject matter and legislative competence of devolved legislatures

44 Both clauses and the Schedule affect matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Parliament will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, and given the pressing need for the regional rates level to be set, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We are satisfied that the circumstances of this Bill come within the exception allowed by the convention.

³ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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