

# NORTHERN IRELAND (REGIONAL RATES AND ENERGY) (NO.2) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Regional Rates and Energy) (No.2) Bill as brought from the House of Commons on 6 March 2019 (HL Bill 165):

- These Explanatory Notes have been prepared by the Northern Ireland Office (NIO) 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.

## Table of Contents

<b>Subject</b>	<b>Page of these Notes</b>
<b>Overview of the Bill</b>	<b>2</b>
<b>Policy background</b>	<b>2</b>
Regional rates	2
Renewable Heat Incentive Scheme	2
<b>Legal background</b>	<b>3</b>
Clause 1 – Regional rates	3
Clauses 2 to 5 and Schedule – Renewable Heat Incentive Scheme	3
<b>Territorial extent and application</b>	<b>4</b>
<b>Fast-track legislation</b>	<b>4</b>
<b>Commentary on provisions of Bill</b>	<b>7</b>
Clause 1 – Regional rates	7
Clauses 2 to 5 and Schedule – Renewable Heat Incentive Scheme	7
<b>Commencement</b>	<b>8</b>
<b>Financial implications of the Bill</b>	<b>8</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>9</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>9</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>10</b>
Subject matter and legislative competence of devolved legislatures	10

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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 2020;
  - implements a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme to replace the current interim arrangements for small and medium biomass installations introduced on 1 April 2018; and
  - introduces voluntary “buy-out” arrangements, in each of three consecutive financial years, beginning with 1 April 2019, under which participants can apply to receive a one-off payment in respect of an accredited RHI installation, upon receipt of which they are withdrawn from the Scheme, receiving no further periodic support payments. The voluntary buy-out provision is limited to a three-year period after the Act is introduced and the power to establish arrangements in respect of a particular financial year may only be exercised in the current period while there is no Executive.

## Policy background

### Regional rates

- 2 The Bill sets regional rates for domestic and non-domestic property for the 2019/20 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 increase of 0% (plus inflation) in the non-domestic regional rate and 3% (plus inflation) in the domestic regional rate. These were set out in the Secretary of State’s Written Statement to Parliament on *Northern Ireland finances* on Thursday 27 February 2019, and represent an important source of revenue underpinning the 2019/20 budget in Northern Ireland.
- 3 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. However, there has been no 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 Northern Ireland Assembly has not met since its first post-election meeting in March 2017. Without a sitting Assembly to legislate on these matters, it falls to Parliament to legislate to provide authority for expenditure in Northern Ireland.
- 4 It is necessary to proceed by means of primary legislation at Westminster because, in the continued absence of an Executive and a functioning Assembly, these rates could not otherwise be set. The regional rates for 2017-18 and 2018-19 were set in the same manner by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 and the Northern Ireland (Regional Rates and Energy) Act 2018 respectively.

### Renewable Heat Incentive Scheme

- 5 These clauses provide for a long-term tariff structure for all small and medium biomass installations accredited under the Non-Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland. These installations previously had the capacity to generate costs far beyond projected levels, placing public finances at risk. Interim cost control measures were introduced

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on 1 April 2017 for one year to allow for the development of the long-term solution. These interim measures were then extended for a further year and are due to expire on 31 March 2019 beyond which there will be no legal basis for making payments for approximately 1,800 small and medium biomass installations. The long-term tariff structure ensures that costs are controlled for the remainder of the Scheme's life and protects the Northern Ireland budget from potentially very significant overspends.

- 6 A further key consideration in the development of the long-term tariff has been compliance with State aid rules. Engagement with the European Commission has clarified that its State aid decisions adopted for the Scheme to date provided approval for an average 12% rate of return. The long-term tariff structure has been developed with independent, expert advice to achieve a prospective rate of return of 12% for typical installations and is considered compliant with the extant State aid decisions for the Scheme.
- 7 Recognising that the new tariffs may mean participants with lower usage needs could see returns far below 12%, the Act also makes provision for the introduction of voluntary "buy-out" arrangements in respect of the financial year beginning on 1 April 2019 and each of the two financial years immediately following. These arrangements allow participants to receive a payment equivalent to a 12% rate of return after which the installation is withdrawn from the Scheme.
- 8 The voluntary buy-out provision is exercisable only in the absence of a Northern Ireland Executive. When an Executive is formed, it will have the ability to legislate for any future voluntary buy-out arrangements in respect of subsequent financial years.
- 9 On completion of each financial year's voluntary buy-out arrangements, the Department for the Economy (DfE) is required to report on the number of participants who have withdrawn from the Scheme under those arrangements, and the total cost of the payments made to those participants by DfE. In the absence of a Northern Ireland Executive, this report will be provided to the Secretary of State for laying before Parliament. When an Executive is formed, any subsequent reports will be provided to the Economy Minister for laying before the NI Assembly.

## Legal background

### Clause 1 – Regional rates

- 10 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 for the 2019/20 rating year is set by this Bill. The regional rate implemented by this Bill is set without prejudice to the Department's powers to vary it by order in the usual way – and for the whole year – once Northern Ireland Ministerial offices are filled (see clause 1(4) and (5)).

### Clauses 2 to 5 and Schedule – Renewable Heat Incentive Scheme

- 11 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

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use of renewable heat and it does that by providing for periodic payments to be made to accredited installations.

- 12 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 (the “2015 Regulations”) 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 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. As the 2017 Regulations were time limited, ceasing to have effect on 31 March 2018, a corresponding provision was introduced on 1 April 2018 as part of the Northern Ireland (Regional Rates and Energy) Act 2018 to enable the continued protection of public finances while further work was undertaken to develop and implement long-term cost control measures.
- 13 The relevant provisions of the 2018 Act revoked and replaced the provisions in the Principal Regulations authorising payments to installations accredited before 18 November 2015. This meant that, when the provisions in the 2018 Act ceased to have effect, there would no longer have been a legal basis for payments in respect of those installations. The relevant provisions in the 2018 Act expire on 31 March 2019. In the absence of a sitting Assembly and an Executive, they could not be extended other than by primary legislation at Westminster. As such, corresponding provision for tariffs from 2019/20 and for the remainder of the Scheme is set out in this Act.
- 14 The powers provided for the Department for the Economy (DfE) to introduce voluntary buy-out arrangements, under section 4, are limited to a three-year period after the Act is introduced and can only be exercised during the period while there is no Northern Ireland Executive. The “period while there is no Northern Ireland Executive” is defined as the period beginning on the date of commencement of section 4 of this Act, and ending on the next occasion when the offices of all of the Northern Ireland Ministers are filled.

## Territorial extent and application

- 15 The Bill extends to Northern Ireland only.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Fast-track legislation

- 17 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.<sup>1</sup>

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<sup>1</sup> [House of Lords Constitution Committee, 15th report of session 2008/09, HL paper 116-I](#), para. 186

### Why is fast-tracking necessary?

- 18 It is necessary to fast-track this Bill to provide financial certainty and stability in the absence of the devolved administration to allow the Northern Ireland departments to continue to maintain public services in Northern Ireland.

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

- 19 The rating regime is governed by the Rates (Northern Ireland) Order 1977 (1977 Order). Rating bills cannot be issued for the financial year 2019-20 until the regional rate has been set in accordance with the 1977 Order.
- 20 Normally bills can be paid in 10 instalments, allowing for costs to be evenly spread, and maximising the certainty for households and the potential for revenue collection for the Executive. Unless rates have been set in order for bills to be issued in early April, this may not be possible for the year to 31 March 2020 and could lead to higher monthly costs to be met by ratepayers due to fewer instalments. Any delays in the setting of the rate that postpones rate bills increases the risk of bad debt and a loss of revenue for the Northern Ireland Executive. Therefore this Bill will set the rates and thus allow rate bills to be issued in the usual way.
- 21 This legislation is also needed to ensure the continued delivery of the RHI scheme in line with the original policy objective and in line with European Union State aid rules. The current legislation on RHI tariffs is subject to a sunset clause on 31 March 2019 and therefore it cannot be delayed further in the absence of a Northern Ireland Executive and a sitting Assembly.

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

- 22 The need for this Bill arises from the lack of an Executive within the timescale required given the end of the current tariffs on 31 March 2019. It is taken forward at the latest possible point before the risk to public finances could manifest.

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

- 23 The Bill is being introduced in the absence of any Northern Ireland Executive. The Northern Ireland Department for Economy designed the revised scheme following a public consultation on options for the RHI scheme, an independent review of tariffs, and engagement with the European Commission.

### 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?

- 24 The Bill does not contain a sunset clause, but the regional rate is set for this financial year only (and is set without prejudice to the Department's power to vary it by Order in the usual way if or when an Executive is formed). Tariff payments under the RHI Scheme are payable for a period of 20 years, after which the power to make incentive payments under the Scheme falls away. The powers to establish voluntary buy-out arrangements for the RHI Scheme may only be exercised in respect of the next three financial years and only in the current period while there is no Executive.

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

- 25 No post-legislative scrutiny is planned as all the provisions are limited in their application either to the 2019-20 financial year or to the current period without an Executive. The UK Government is working to restore an Executive as soon as possible, with a sitting Assembly undertaking the appropriate post-legislative scrutiny functions.
- 26 The calculation underpinning the new long-term RHI scheme tariff rates is based upon costs which are heavily dependent on market conditions (e.g. fuel and running costs). For this reason, it is important that tariff rates continue to be subject to ongoing monitoring and review at an operational level, to ensure that they remain appropriate and continue to provide value for money.
- 27 Under the new tariff rates, participants who no longer expect to receive the 12% rate of return that had been envisaged at the commencement of the RHI Scheme can apply to receive a voluntary buy-out payment calculated to provide the anticipated 12% rate of return on the additional investment they made. The legislation introduces a duty on the Department for the Economy to provide a report on the operation of the voluntary buy-out arrangements (on an annual basis) to the NI Assembly, or, in the absence of a sitting NI Assembly, to the Secretary of State for laying before Parliament. It is intended that separate voluntary buy-out arrangements will be launched on an annual basis allowing scope to refine each successive year's arrangements in line with any learning and representations made the previous year.

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

- 28 The Northern Ireland (Regional Rates and Energy) Act 2018 was passed by the UK Parliament to amend the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012. Clause 2 provided for continuation of the RHI scheme with the necessary cost controls to protect public funds. Further legislation is required to allow the scheme to continue beyond 31 March 2019 and ensure it aligns with the original policy objective and European Commission State aid rules.

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

- 29 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft, although members were offered engagement sessions with NIO officials, which were availed of by several members.

# Commentary on provisions of Bill

## Clause 1 – Regional rates

- 30 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 2020. Clause 1(2) sets the domestic regional rates, expressed in terms of ‘pence per pound of rateable value’, at 0.4574 pence and clause 1(3) sets the non-domestic regional rate at 34.01 pence.
- 31 Clause 1(4) and (5) clarify that the Department of Finance may, once Ministerial offices have been filled, vary the rates set by this Bill, 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.

## Clauses 2 to 5 and Schedule – Renewable Heat Incentive Scheme

- 32 Clause 2 provides for the implementation of a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme to replace the current interim arrangements for small and medium biomass installations introduced on 1 April 2018.
- 33 Subsections (1)-(10) of Clause 3 amend Regulation 36 of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ("the Principal Regulations") to introduce a long-term tariff structure for all small and medium biomass installations accredited under the RHI Scheme in Northern Ireland. The new long-term tariffs will apply from 1 April 2019 and will be linked to the Consumer Prices Index.
- 34 Subsection (11) amends Schedules 3 and 4 of the Principal Regulations to clarify that the small and medium biomass tariffs referenced in those Schedules no longer apply from 1 April 2019.
- 35 Subsection (12) inserts a new Schedule 5 to the Principal Regulations. The new Schedule sets out the tiered tariffs for all small and medium biomass installations from 1 April 2019.
- 36 Section 4 makes provision for voluntary buy-out arrangements in respect of the financial year beginning on 1 April 2019 and each of the two financial years immediately following, under which participants can apply to receive a payment in respect of an accredited RHI installation, to be then withdrawn from the Scheme.
- 37 Subsection (1) makes clear that the power provided for the Department to introduce voluntary buy-out arrangements can only be exercised during the period while there is no Northern Ireland Executive.
- 38 Subsection (2) sets out that the Department must publish the arrangements which allow participants to apply, and demonstrate the method by which the Department will determine whether they qualify for a payment and the amount of that payment. The Department is required to provide notice to applicants that do not qualify for payment, setting out how the Department came to that determination. For participants that do qualify for payment, the Department is required to inform them of the proposed amount and how it has been calculated. The qualifying participant then has the option to accept or reject the offer. Should the offer be accepted, the Department is required to make the payment.
- 39 Subsection (3) makes clear that in calculating the proposed payment amount the Department must take account of the amount of previous RHI support payments received; after taking this

into account, participants may not qualify for a payment as the amount of previous support payments is such that the installation may already have generated the target rate of return.

- 40 Subsection (4) sets out some elements which the Department may include in the buy-out arrangements including administrative elements and that for instance, where a participant has payments withheld or reduced under Part 7 of the Principal Regulations, they may not be eligible to receive a buy-out payment.
- 41 Subsection (5) provides that where a participant has accepted and been paid the buy-out amount, the relevant installation ceases to be an accredited installation.
- 42 Subsection (6) sets out the definition of “the period while there is no Executive” as meaning the period beginning on the date of commencement of Clause 4 of this Act, and ending on the next occasion when the offices of all of the Northern Ireland Ministers are filled.
- 43 Clause 5 introduces a duty on the Department, on completion of each financial year’s voluntary buy-out arrangements, to report on the number of participants who have withdrawn from the Scheme under those arrangements, and the total cost of the payments made to those participants.
- 44 Subsections (3) and (4) make clear that, in the absence of a Northern Ireland Executive, this report must be provided to the Secretary of State for laying before Parliament and, at all other times, such reports must be laid before the NI Assembly.

## Commencement

- 45 Clauses 1, 6 and 7 come into force on the day on which the Act is passed.
- 46 Clauses 2 and 3, and the Schedule, will be commenced on 1 April 2019.
- 47 Clauses 4 and 5 come into force at the end of the period of 2 months beginning with the day on which the Act is passed.

## Financial implications of the Bill

- 48 The context for clauses 2 and 3 is that the untiered and uncapped payments to installations accredited before 18th November 2015 created 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. Overspends of this nature would have continued to occur over the Scheme’s 20-year lifetime. The new long-term tariff structure being introduced will reduce the projected lifetime cost of the Scheme for all small and medium biomass installations (irrespective of the date of accreditation) to £190m, taking into account payments already made to date. This compares to a projected Scheme cost of £600m should the current interim tariffs be extended, and a projected Scheme cost of £1,140m, should the original 2012 tariffs be reinstated.
- 49 Clause 4 introduces a voluntary buy-out opportunity for participants on the Scheme who wish to avail themselves of it. This provides a one-off payment equivalent to a 20 year, 12% rate of return i.e. in line with the initial intent of the scheme. Buy-out payments will take account of the impact of RHI payments already received and the fact that payment is being made earlier than anticipated. A budget of £4m per annum for 2019/20, 2020/21 and 2021/22 has been specifically approved to fund the voluntary buy-out.

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## Parliamentary approval for financial costs or for charges imposed

50 No money resolution is required.

## Compatibility with the European Convention on Human Rights

- 51 The provisions setting regional rates may engage Article 1 of the First Protocol (“A1P1”), the right to peaceful enjoyment of property, of the European Convention on Human Rights to the extent that they enable the collection of rates. However, the rights in A1P1 are subject to the payment of taxes. Setting the regional rate allows rating bills to be issued and a liability to pay rates to arise, thereby enabling the collection of rates. It also guarantees significant payment rights to ratepayers under the Rates (Northern Ireland) Order 1977, such as entitling a ratepayer to pay the rates due over not less than 10 instalments.
- 52 The provisions in Clause 3 relating to the RHI Scheme may also engage A1P1 to the extent that they continue cost control measures which could result in reduced payments. However, we consider this is justified in pursuance of the legitimate aim of ensuring that the RHI Scheme meets its original objective, keeping costs within projected levels; and that the provisions strike a fair balance between the general public interest of protecting public finances, and the rights of individuals.
- 53 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).
- 54 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) No. 2 Bill 2019 are compatible with Convention rights.”

## Annex A – Territorial extent and application in the United Kingdom

55 The Bill extends to Northern Ireland only.

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 ?	Legislative Consent Motion needed?
Clause 1	No	No	No	Yes	No
Clause 2	No	No	No	Yes	No
Clause 3	No	No	No	Yes	No
Clause 4	No	No	No	Yes	No
Clause 5	No	No	No	Yes	No
Clause 6	No	No	No	Yes	No
Clause 7	No	No	No	Yes	No
Schedule	No	No	No	Yes	No

## Subject matter and legislative competence of devolved legislatures

56 All of the content of this Bill affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Government 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 to ensure that public services can continue to be delivered within Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. The UK Government is clear, therefore, that the circumstances in which this Act will be introduced would come within the exception allowed by the Convention.

# **NORTHERN IRELAND (REGIONAL RATES AND ENERGY) (NO.2) BILL 2019**

## **EXPLANATORY NOTES**

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