



House of Commons
Northern Ireland Affairs
Committee

Changes to the Northern Ireland Renewable Heat Incentive scheme payments

Eighth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Northern Ireland Affairs Committee

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The following Member was a member of the Committee during the inquiry

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Committee staff

Margaret McKinnon (Clerk), Matthew Congreve (Second Clerk), George James (Committee Specialist), John Hitchcock (Senior Committee Assistant), Kelly Tunnicliffe (Committee Assistant) and Nina Foster (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Northern Ireland Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2173; the Committee's email address is northircom@parliament.uk.

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Summary

The non-domestic Northern Ireland Renewable Heat Incentive scheme was set-up by the then Department for Enterprise, Trade and Investment in November 2012, following the introduction of a similar scheme in Great Britain in 2011. The rate of subsidy for the NI RHI scheme lacked two crucial mechanisms for cost control that were included in the GB scheme. By 2015, the projected cost for the Northern Ireland scheme had spiralled and several legislative changes were required to bring payments back within budget. The mismanagement of the scheme is largely blamed for the collapse of devolution in Northern Ireland and is the subject of an independent public inquiry.

We decided to conduct an inquiry into the most recent set of changes made to the NI RHI payments. Due to the collapse of the Assembly and Executive, the relevant legislation, the Northern Ireland (Regional Rates and Energy) (No 2) Bill had to be passed at Westminster. It was widely argued that insufficient time was given to scrutinise the Bill and its implications. There were many opportunities to avoid the use of emergency procedures for the Bill and it is evident that rushing Northern Ireland related legislation through Parliament has become the norm. This is unacceptable, and we urge the Secretary of State to commit to ending the practice of passing Northern Ireland related legislation under emergency procedures as a matter of course.

The 2019 tariffs

The changes made in April 2019 have seen a dramatic reduction in payments to scheme participants. Many respondents to our inquiry said their businesses were at risk due to high loan repayments, and they feared they would no longer be able to compete with their GB or Irish counterparts.

Department for the Economy officials told us that they were bound by state aid rules and a maximum 12% rate of return for participants. In calculating the new tariff payments, however, the Department has focused on a narrow range of costs. It has also disregarded costs of reasonable wider investment decisions participants have made.

The new payments will be dramatically lower than those made in GB. Over the lifetime of the schemes, participants in Northern Ireland could receive tens, or even hundreds, of thousands of pounds less than participants in GB. It is still unclear what a new scheme set up in the Republic of Ireland will pay its participants, but we heard it could be at least twice the amount as the NI scheme. In our view, one of these schemes must be incorrect and we are concerned that the NI tariffs have now been set far too low. We recommend that the Department revisit the tariffs to determine if they should include parity with the GB and Irish schemes where the costs are the same, the full reflection of costs to participants, including indirect costs, and to ensure the most appropriate counterfactuals are used.

Hardship and the buy-out proposal

Any hardship felt by participants would be best addressed by revisiting the tariffs. There may be some cases where people will wish to opt for the buy-out option, however, under the current proposals, the vast majority of participants would not be eligible. We welcome

any additional changes that would allow more people to be brought within the ambit of the scheme and any calculation should reflect applicant's individual circumstances and costs. Applicants must also have the ability to challenge the Department's buy-out offer.

We recommend that the Department's proposed Hardship Unit be set-up as soon as possible. We are concerned that the Unit may not be able to offer financial assistance to participants and the Unit should have a role in informing how any buy-out offers are calculated. Hardship should not be defined on narrow grounds and the criteria should be developed with input from participants. We recommend the Department also share the draft criteria with the Northern Ireland Affairs Committee.

Conclusion

A sad outcome of the RHI saga in Northern Ireland is the erosion of trust in Government-backed schemes. Northern Ireland is currently ahead of the rest of the UK in respect of renewable electricity generation and nobody wishes to see businesses return to fossil fuels. The Department must track any trend that may emerge for participants to revert to fossil fuels due to the cost of maintaining biomass boilers.

We have concluded this inquiry, and published our report, with a view to recommending changes that can be implemented swiftly. Our inquiry has inevitably touched upon areas that are properly within the remit of the independent inquiry, and so we reserved comment on these matters. We look forward to reading that report once it is published.

1 Introduction

1. The non-domestic Northern Ireland Renewable Heat Incentive scheme (the NI RHI scheme) was set-up by the Department for Enterprise, Trade and Investment in November 2012. This followed the introduction of a similar scheme in Great Britain in 2011 (the GB scheme). The aim of the scheme was to help businesses, the public sector, and other non-domestic organisations in Northern Ireland to meet the cost of installing renewable heat technologies. In turn, this was intended to help the Northern Ireland Executive meet the targets set in its Programme for Government 2011–2015; 4% of heat consumption from renewable sources by 2015, and 10% by 2020.

2. The NI RHI scheme incentivised uptake by offering participants a subsidy for each unit of heat produced, for a period of 20 years. The rate of subsidy for the NI RHI scheme differed from the GB scheme in two crucial ways:

- The NI scheme did not introduce ‘tiering’ of payments as operated in Great Britain where a reduced rate was applied after the equipment had been operating for 15 per cent of hours in a year. The NI scheme had only one rate, no matter how much energy was used.
- The scheme in Great Britain used ‘degression’ which allowed the amount of subsidy paid to change quarterly in response to changes in demand. The NI RHI scheme did not, which meant that the relatively high tariff rates available for early adopters were paid to all participants when they joined the scheme.¹

3. The initial uptake of the NI scheme was low and so the Department for Enterprise, Trade and Investment (the Department)² focused on increasing uptake. By early 2015, however, demand of the scheme was increasing, and the Department decided the tariff would need to be lowered. This had to be done via legislation due to the lack of degression as a cost control. Demand increased sharply in the second half of 2015 once it was known the subsidy rates would be cut but before the changes took effect. Further legislative changes were made at Westminster following the collapse of the Northern Ireland Executive in January 2017, see Box 1.

1 Report by the NI Audit Office, [Department of Enterprise, Trade and Investment, Resource and Accounts 2015–16](#)

2 The Department for Enterprise, Trade and Investment was renamed in 2016 and is now called the Department for the Economy

Box 1: Legislative changes to the NI RHI scheme***Introduction***

The Renewable Heat Incentive Scheme was introduced in Northern Ireland through the [Renewable Heat Incentive Scheme Regulations \(Northern Ireland\) 2012](#) (the Principal Regulations) under powers from Section 113 of the Energy Act 2011.

First change (NI Executive)

Before the closure of the scheme in February 2016, the Executive in Northern Ireland amended the 2012 Principal Regulations to implement a tiered tariff and an annual cap for certain installations through the [Renewable Heat Incentive Scheme \(Amendment\) Regulations \(Northern Ireland\) 2015](#). However, the amendments only applied to installations which joined the scheme after 18 November 2015 and there was a spike in applications for the scheme before the new controls came into force.

Second change (NI Executive)

As a result of concerns regarding the impact on public expenditure, in 2017 the Northern Ireland Executive again amended the 2012 Regulations to introduce cost-control measures via an extension of the tiered tariff and annual cap. The extension applied to installations accredited before 18 November 2015 and was implemented through the [Renewable Heat Incentive Scheme \(Amendment\) Regulations \(Northern Ireland\) 2017](#) by the Northern Ireland Assembly. Those regulations expired on 31 March 2018.

Third change (UK Government)

The [Northern Ireland \(Regional Rates and Energy\) Act 2018](#), made in Westminster following the collapse of the NI Assembly, further amended the 2012 Regulations to extend the tiered tariff and annual cap for another year, until 31 March 2019. The EU Commission approved this year-long extension to allow development of the long-term tariffs.

Fourth change (UK Government)

The fourth and most recent change was the passage of the [Northern Ireland \(Regional Rates and Energy\) \(No. 2\) Act 2019](#), (April 2019 changes), which replaces the provisions of the [Northern Ireland \(Regional Rates and Energy\) Act 2018](#) to provide a long-term tariff structure for biomass installations accredited under the RHI Scheme. This legislation is the main subject of this report and is described in more detail in Chapter 2.

Source: House of Commons Library

4. Immediately before the introduction of the new Regulations made in January 2017, the projected cost of the NI scheme was £1.15 billion.³ This far exceeded the £405 million originally projected in 2012, and the Annually Managed Expenditure set aside for the scheme.⁴ The mismanagement of the scheme was largely blamed for the collapse of devolution in Northern Ireland, and the closure of the scheme meant there was no renewable energy scheme available in Northern Ireland. As noted by Lord McCrea of

3 [Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019](#)

4 [Ibid](#)

Magherafelt and Cookstown in a House of Lords debate in on 19 March, “No one in the political establishment in Northern Ireland comes out with any glory whatever from the RHI scheme”.⁵

5. Once the 2017 changes were introduced (see Box 1), the Comptroller and Auditor General estimates that the costs would have been brought down to a projected £465 million, assuming the April 2019 changes had not been made.⁶ The Department for the Economy estimates that the cost would have been much higher—£613m—and it is unclear why these projections differ.⁷ The Northern Ireland Audit Office has estimated that the total cost for the scheme, since the April 2019 changes, will be brought down to £195 million. The Department for the Economy estimates it will be £211m. In either case, the figure represents a significant underspend compared to the initial projected cost.⁸

Rationale for this inquiry

6. We announced our decision to conduct an inquiry into the April 2019 changes to RHI payments on 15 March. This followed the passage of the Northern Ireland (Regional Rates and Energy) (No 2) Bill through the House of Commons on 6 March.

7. It was widely argued in the Commons, and later in the House of Lords, that insufficient time had been given to scrutinise the Bill and its implications. We discuss this in more detail in Chapter 2. The then Chair of our Committee, Dr Andrew Murrison MP, challenged the decision to take such important legislation through the Commons in the space of one day. In response, the Secretary of State for Northern Ireland, Karen Bradley MP said:

The Chair of the Northern Ireland Affairs Committee, is right that full and proper scrutiny is what we need, and he is right to challenge us. He is also right to say that we must get this right [...] My hon. Friend’s suggestion that there may be a role for further scrutiny in either his Committee or another Committee in the House is very welcome and I certainly would appreciate that.⁹

Our focus

8. This inquiry has not sought to replicate the work of the independent public inquiry into the Non-domestic Renewable Heat Incentive Scheme, chaired by the Rt Hon Sir Patrick Coghlin. That inquiry has sought to examine the design, governance, implementation and operation of the scheme. We wrote to Sir Patrick to set out our remit: those changes Parliament was asked to agree; the rationale for the tariff structure, comparison with payments in Great Britain; the impact on businesses; and what other options were available.¹⁰

5 [House of Lords Official Report, Column 1401, 19 March 2019](#)

6 [Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019](#)

7 [Letter from the Department for the Economy relating to NI Audit Office letter, May 2019](#)

8 [Ibid](#)

9 [6 March, Column 1064, Karen Bradley MP](#)

10 [Letter to Rt Hon Sir Patrick Coghlin, 13 March](#)

9. To understand why the April 2019 changes were introduced, it has been necessary to examine parts of the scheme's history and to take stock of what has happened. We have not, however, sought to assign blame for the shortcomings of the scheme. Our focus has been on the future for scheme participants and we have left the past to the independent inquiry. Our report looks firstly at the way this legislation was taken through Parliament. We then examine the April 2019 changes and look at comparisons with other schemes. Finally, we look at the options the Government has proposed for participants going forward and the future of renewables in Northern Ireland.

10. We have sought to report in a timely fashion as this inquiry has been, by its nature, backward looking. It is the scrutiny that should have been conducted prior to these changes coming into effect. In addition, we were told that during the passage of the Northern Ireland (Regional Rates and Energy) (No. 2) Bill, the Department for the Economy was asked to defer bringing forward detail of buy-out provisions in the Bill until after we had concluded our inquiry (see Chapter 4). We were made aware of this part way through our inquiry and is another reason we have sought to report promptly.¹¹

11. We would like to thank everyone who assisted with this inquiry. Many participants wished their submissions to us to remain anonymous. Some said this was due to the shame they now felt at being associated with the NI RHI scheme. Others said they were embarrassed about the financial difficulty they faced, and even that they did not wish friends and family members to know of the problems. We received many submissions where respondents asked their evidence not to be published, even anonymously. This evidence is therefore not referenced in this report.

Legal challenges to the changes

12. In 2017, members of the Renewable Heat Association Northern Ireland Limited challenged the changes to tariffs brought in by the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017. In December 2017, the High Court ruled that there was a compelling case for the reduced payments.¹² That determination is reportedly due to be considered by the Northern Ireland Court of Appeal some time in 2019 and leave has recently been granted to challenge the effects of the 2019 Act.¹³ While the House of Commons Resolution relating to matters sub judice does not apply to cases where a ministerial decision is in question, we respect the principle of comity between Parliament and the courts and so have made no comment on the case itself or what the court might find.

11 [Q496](#) (Jamie Warnock)

12 [The High Court Of Justice In Northern Ireland, In The Matter Of An Application By The Renewable Heat Association Northern Ireland Limited And Another For Judicial Review, December 2017](#)

13 [Letter to the Chair from Noel Lavery, Permanent Secretary for the Department for the Economy, April 2019](#)

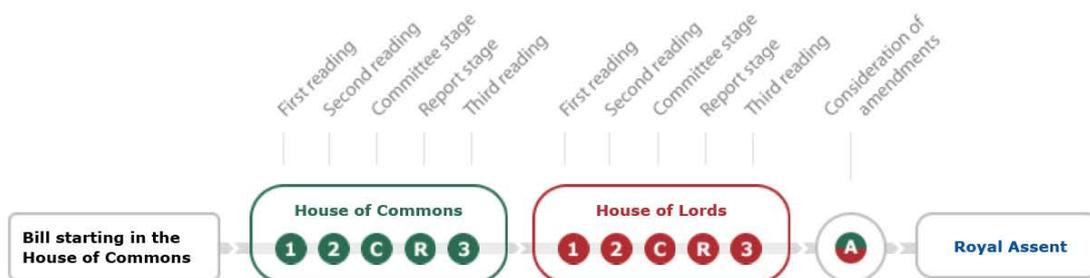
2 The Legislative process

13. This chapter looks at the process the Northern Ireland Office used to pass the legislation necessary to implement the April 2019 changes. We start by looking at the usual legislative process and the scrutiny this affords. We then examine the process usually adopted for Northern Ireland related legislation and its shortcomings. Finally, we assess the justification for this process in this case.

The legislative process

14. A Bill must pass through both Houses of Parliament and then receive Royal Assent before it becomes law (see Figure 1).¹⁴ This process can take many weeks or months, with gaps between each stage. The number of days spent in Public Bill Committee and on Report stage are usually determined by the length and complexity of a Bill, and public interest in a piece of legislation. The purpose of this lengthy process is to give MPs and Peers time to scrutinise the proposals in a bill, to put forward amendments and, if necessary, to vote on these proposals.

Figure 1: Process for a bill in Westminster



15. Legislation relating to Northern Ireland is often dealt with differently. The bill must still pass through all stages and both Houses. However, it is not usually sent to a Public Bill Committee for Committee stage and instead goes to Committee stage on the floor of the House. This allows the bill to pass through all substantive stages (Second Reading, Committee, Report stage and Third Reading) in one day.¹⁵

16. This method of passing legislation, sometimes referred to as emergency procedures or fast-tracked bills, has a significant impact on Parliament's opportunity for scrutiny. Not only is there greatly reduced time for each stage but there is also no time between stages for MPs to consider further amendments they may wish to make. As there is no Public Bill Committee stage in the Commons, there is no opportunity to hear from experts and other stakeholders outside of Parliament in the course of the legislative process.

17. During the passage of the Northern Ireland (Regional Rates and Energy) (No. 2) Bill, the decision to fast-track the Bill was heavily criticised. Several members of this

14 Royal Assent is the Monarch's agreement to make the Bill into an Act and is a formality. For detailed information on the passage of legislation you can read more here: [How does a bill become law?](#)

15 Bills taken in this way do not have separate Committee and Report stages as it all takes place on the floor of the House.

Committee suggested that more detailed scrutiny of the Bill was required. Tony Lloyd MP, Shadow Secretary of State for Northern Ireland, referred to the decision as “an abuse of the processes of the House”.¹⁶ He went on to say:

I hope that we will not see again an attempt to bludgeon legislation like this through the House in such a short space of time. This should have been taken in Committee; there should have been the opportunity in Committee for a much more leisurely but much more intense form of exchange between the Secretary of State, the Minister and interested Members. That is the right and proper way of doing something of this import.¹⁷

18. Members of both the House of Commons and the House of Lords also had concerns that the Bill covered two very different issues: regional rates and the Renewable Heat Incentive payments. Lord Empy said that they were “entirely separate matters, and they should not be in the same piece of legislation”.¹⁸

19. In 2009, the House of Lords Constitution Committee produced a report on the impact of fast-tracking legislation. A section of this report was dedicated to the “one outstanding trend—the statistical preponderance of legislation relating to Northern Ireland”.¹⁹ The Committee found that, whilst there was justification for fast-tracking some pieces of Northern Ireland related legislation, fast-tracking should not be ‘the norm’.²⁰

Justification for fast-tracking

20. The main justification for fast-tracking the Northern Ireland (Regional Rates and Energy) (No. 2) Bill, was that from 1 April, there would be no legal basis on which to pay participants. The Secretary of State explained:

The payments that are currently being made have been found to breach state aid rules, so there is no legal basis on which to continue to make payments. The payments with the cost-capping involved expire on 31 March. The Department cannot go back to the original payments, because they would be illegal payments, and we will not have any other mechanism by which legal payments can be made after 31 March. I recognise that this is far from ideal, but the facts of the situation have meant that an expedited process is required.²¹

At this point, the NI RHI scheme had, apparently, been in breach of state aid rules since 2012. However, the evidence we received from the Department suggests that the significance of state aid was not fully appreciated within the Department until 2017, when the tariffs were changed as an “interim measure” to bring the cost of the scheme within budget.²²

16 *Ibid*, [Column, 1015](#)

17 *Ibid*

18 [House of Lords Official Report, Column 987, 12 March](#)

19 House of Lords Select Committee on the Constitution, [Fast-track Legislation: Constitutional Implications and Safeguards](#), July 2009

20 *Ibid*

21 [House of Commons Official Report, Column 1055, 6 March](#)

22 See [Q346](#) and [Q437 - 439](#) (Noel Lavery)

21. From January 2017, then, when Simon Hamilton (the then Economy Minister) commissioned a review of the tariffs, it was known that the payments would change again. Noel Lavery, Permanent Secretary at the Department for the Economy, told us that the review of the tariffs, public consultation and engagement with the EU Commission took until December 2018.²³ This then left three months for approval from the NI Department of Finance and for the Secretary of State for Northern Ireland to take the necessary legislation through Parliament. The Secretary of State told us she was “notified in February [2019] that changes would need to be made”.²⁴ Had the Secretary of State been notified in December 2018, when it was beyond doubt that legislation was required, the need for emergency procedures might have been avoided.

22. The Bill passed through the House of Commons in one day. Yet even under the timescale adopted in this case, further scrutiny might have been allowed for. In the week commencing 18 March, there were two days where the main business in the House of Commons was statutory instrument approval. On 19 March the House even rose early. It is therefore not clear to us why the Bill could not have gone to a Public Bill Committee for further scrutiny, and returned to the Floor of the House on 18 or 19 March for its final stages. This would have allayed some of the concerns in the House of Lords about sufficient scrutiny. Despite the still limited time for scrutiny in the House of Lords, the Bill could still have been passed by the end of March ahead of Royal Assent and in time for 1 April.

23. **There were many opportunities to avoid the use of emergency procedures for this Bill. For two years, it was clear to the Department for the Economy that the tariffs for the NI RHI scheme would need to change again. As there was no other mechanism for achieving this, it was also apparent that legislation would be required. We are concerned that officials did not notify the Secretary of State of the urgent need for legislative change until February 2019. Earlier notification could have allowed the Secretary of State to secure more time in Parliament for the Bill. Moreover, the EU Commission had approved a year-long extension of the 2017 scheme in order to allow development of the new tariffs. If payments were due to end on 1 April, then the Department should have asked for a short extension of 3–6 months to pass the necessary legislation. We have no reason to believe the Commission would have denied the Government the chance to legislate in a full and proper manner.**

24. **Even under the constrained timeframe, however, more time could have been given to this Bill. It is evident that rushing Northern Ireland related legislation through Parliament has become the norm. This is unacceptable. It does not allow us to properly perform our role as parliamentarians and it is not good enough for the people of Northern Ireland. *The Secretary of State must commit to ending the practice of passing Northern Ireland related legislation under emergency procedures as a matter of course. Until the Assembly and Executive are restored, Westminster must be able to offer a reasonable level of scrutiny and accountability. If the Northern Ireland Office considers there is sufficient urgency to warrant emergency procedures, this Committee should be informed so that we can assess the rationale and offer our view.***

23 [Q382](#) (Noel Lavery)

24 Work of the Secretary of State, [Q492](#) (Karen Bradley) HC 498

3 The 2019 tariffs

25. This Chapter sets out the April 2019 tariff changes and the implications of state aid. Concerns with the new tariffs fall into two broad areas: the way in which the Department has calculated the new tariffs and how this compares with other schemes; and the indirect costs to participants. We look at each of these areas below. Finally, we consider the impact of these changes on participants and potential distortions on the market.

Change in tariffs

26. The Northern Ireland (Regional Rates and Energy) Act 2019 (2019 Act) implemented a dramatic reduction in the payments NI RHI participants could receive. The Act introduced a new tariff, see Figure 2.

Figure 2: 1 April 2019 tariffs

TARIFFS FOR SMALL AND MEDIUM BIOMASS INSTALLATIONS (WHENEVER ACCREDITED)

<i>Tariff name</i>	<i>Sources of energy or Technology</i>	<i>Installation capacity</i>	<i>Tariff Pence/kWh</i>
Small Biomass	Solid biomass including solid biomass contained in municipal solid waste	Less than 20kWth	Tier 1: 7.4
			Tier 2: 1.8
Medium Biomass (lower capacity)	As above	20kWth and above up to but not including 100kWth	1.7
Medium Biomass (upper capacity)	As above	100kWth and above up to but not including 200kWth	1.2 ²⁵

Prior to this, participants had been on a rate set by the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017, see Box 1. These regulations gave a tariff rate for Medium biomass 20kWth and above up to but not including 200kWth of 6.5p per kWh for Tier 1 and 1.5p per kWh for Tier 2.²⁵ In practice, this has meant that hundreds of scheme participants will see their RHI payments reduced from approximately £18,000 per year²⁶ to a maximum of £2,200 per year.²⁷

State Aid

27. The Department told us that the reason the April 2019 changes had to be made was in order to bring payments into line with state aid rules. The Department explained that the prospective rate of return permitted under state aid rules was 12%.²⁸ On calculations done by Ricardo on behalf of the Department, the scheme had seen some participants paid in excess of this. This was due to continue if payments were not changed.²⁹ The Permanent Secretary referred to state aid and the rate of return as “limiting factors”.³⁰

25 Tariff 1 is the for the initial heat generated by the installation in any 12 month period commencing with, or with the anniversary of, the date of accreditation and the tariff for further heat generated in that same 12 month period up to a maximum of 400,000 kWhth is the relevant tier 2 tariff.

26 Ulster Farmers Union ([RHI0007](#))

27 [Q361](#) (Richard Rodgers)

28 Department for the Economy (DfE) ([RHI0006](#))

29 See [Q490](#) (Noel Lavery) and

30 [Q346](#) (Noel Lavery)

28. The Department told us that one of its key concerns was that if payments were not brought within the 12% rate of return, that the EU Commission would insist the Department claim back any overcompensation to participants. In 2018, the Department sent a pre-notification to the Commission proposing a rate of return of 19% for the NI RHI scheme. In response, the Commission suggested that the Department could look at “recovering past overpayments made to beneficiaries” before implementing new tariffs.³¹ Mr Lavery said of choosing not to claw-back overcompensation and making further payments:

There is a risk there; the Commission could still do an investigation into the scheme, because of the overcompensation of the past, or close the scheme [...] I was looking at the constraints the Commission would have on us. For closing the scheme, it would have been in relation to the total return to date and the risk of further Commission action. We have taken the view that we will not deal with the overcompensation of the past, but we will take 12% going forward, as a fair and balanced return.³²

29. The Department was satisfied that the original approval for the scheme by the Commission in 2012 was based on a 12% rate of return. The 2012 EU Commission decision document includes several pages of information relating to the scheme. This includes proposed tariffs and the paragraph:

As regards the discount rate of 12% applied in the calculations of levelised production costs for biomass, biogas and ground source heat production, the Commission notes that this is the same rate used in the mainland UK scheme. Under the assessment of that scheme, the UK authorities submitted a detailed report from an independent consultant which concluded that the necessary rate of return to incentivise renewable heat production ranges between 8 and 22%. The chosen rate of 12% is at the lower end of that range and it can be considered reasonable. The so-called barrier costs represent a minimal part of the overall cost and their inclusion or exclusion from the discount calculation does not alter the final tariff—or, conversely, considering the non-financial costs as part of the profit, the rate of return becomes only slightly higher than 12%.³³

The document states that “In the light of the above, the Commission considers that the discount rates applied in the calculations are reasonable.”³⁴

30. We took evidence from George Peretz QC, Monckton Chambers, who said that it was arguable that the Commission had not merely approved a rate of return but also the original set of tariffs:

As I read the original decision and as the Commission itself seems to have read the 2012 decision when it was looking at amendments [in 2015 and

31 Department for the Economy (DfE) ([RHI0006](#))

32 [Q443](#) (Noel Lavery)

33 European Commission, [State aid SA.34140 \(2012/N\) – United Kingdom Renewable Heat Incentive \(RHI\) scheme \(Northern Ireland\)](#), 12 June 2012

34 *Ibid*

2017], it approved a decision setting out certain tariff rates, which the Commission knew about, looked at and decided for itself were compatible with a 12% rate of return.³⁵

31. Jamie Warnock, of the Department for the Economy, acknowledged that there was a “point to be debated” about the initial approval but went on to say:

We had that debate directly with the Commission and, particularly in the correspondence leading up to the revised tariffs, the Commission could not have been clearer at that point that 12% rate of return was the approval limit and not higher.³⁶

An email from the European Commission from 30 November 2018 stated, “we consider that there is insufficient evidence **at this stage** to approve a higher rate of return than the 12% authorised in the 2012, 2017 and 2018 decisions.”³⁷

32. Mr Peretz, however, explained that it was not a matter for the Commission to decide what it had approved in 2012 but “for the courts, first a national court and, ultimately, the Court of Justice of the European Union.”³⁸ He posited that the Department for the Economy and the Secretary of State may be taking a “sensible and prudent course”, and that to accept the Commission’s current view “avoids having to have an argument with them, and it avoids having litigation.”³⁹

33. The matter of what the European Commission approved in 2012 is a crucial one. The Department has maintained that its hands were tied and that it had to reduce payments in order to comply with the Commission’s state aid approval. We acknowledge that the Department has had to balance the reduction in payments with the risk of further detrimental action by the Commission. The EU Commission stated, in December 2018, that there was insufficient evidence at that stage to approve a higher rate of return. If there is now scope to challenge the Commission on its interpretation and offer further evidence then we encourage the Department to do so.

Tariff calculations and comparisons with other schemes

34. Participants who join a Renewable Heat Incentive scheme receive regular payments. The amount they receive is based on a set of tariffs and on the amount of eligible heat they generate. The tariff is set by taking into account a number of different factors, such as the initial capital cost of the new installation, any increase in fuel costs and maintaining costs. Tariff rates also use counterfactuals, which are the costs of using an alternative form of heat generation. Where it would have been cheaper for participants to use the alternative form of fuel, the additional cost of the incentivised fuel is accounted for in the tariff rate. Eligible kilowatt hours are multiplied by the tariff rates to give participants their payment amount.

35. A major concern for scheme participants has been that the Department’s methodology for calculating the new NI RHI tariffs is incorrect. So that, whilst a 12% rate of return

35 [Q294](#) (George Peretz)

36 [Q352](#) (Jamie Warnock)

37 Department for the Economy (DfE) ([RHI0006](#)) (emphasis added)

38 [Q293](#) (George Peretz)

39 *ibid*

might be unavoidable, the Department are taking 12% of an unreasonably low amount. Some stakeholders have suggested flaws in the Department's calculation of costs in installing and maintaining biomass boilers.⁴⁰ In evidence to us, Alan Hagan, Director of Hegan Biomass, highlighted several areas where he was concerned that the Department had miscalculated:

- In using oil (kerosene) instead of LPG as a counterfactual for Northern Ireland;
- That the spot price used for the cost of wood pellets is not accurate and taken from a “dip” point of the market;
- That important costs, such as planning permission, had been stripped out of the calculation.

In his written evidence, Mr Hagan said that the “price of fuel and for biomass boilers selected for the Ricardo document are not representative”.⁴¹

36. The Department told us that the basis for the Ricardo calculations was actual costs to participants.⁴² Richard Rodgers, Head of Energy at Department for the Economy said that, in calculating the rate of return, the basis was invoices for boiler installation. This included the boiler and some associated works, such as the “fuel store, hopper and the auger to get the fuel from the fuel store to the boiler”.⁴³

37. There are also concerns about how those costs compare with those for schemes in Great Britain and the Republic of Ireland.⁴⁴ The GB scheme operates under a target of a 12% rate of return and the RoI scheme an 8% rate of return.⁴⁵

38. The GB scheme was set up in 2011. It operated under different rules and included some of the key cost controls that the Northern Ireland scheme omitted. In calculating the rate of return for the GB scheme, different counterfactuals are used, such as the cost of alternative fuels. In GB, the counterfactual is natural gas, which is cheaper than kerosene. The price differential between that and biomass wood pellets is therefore higher, and this is reflected in the tariffs. In the NI scheme, kerosene is the counterfactual used. The Department told us that 67% of the market use this and around 30% use natural gas.⁴⁶

39. The Department also said that capital costs in the GB scheme were higher, which might be explained by the timing of joining the schemes. Richard Rodgers said that most of the GB boilers came online before the end of 2014, when the capital cost was higher whereas many of the NI boilers came online in 2015. We have heard, however, that it is more expensive to install boilers in Northern Ireland than in GB. One installer told us that they fitted boilers in both GB and NI and that they:

Installed the same size shed, the same infrastructure, two x 45 kilowatt boilers and exactly the same ancillaries... the designs were in fact absolutely

40 For example, see Hegan Biomass Ltd ([RHI0031](#)) and Colin Newell ([RHI0032](#))

41 Hegan Biomass Ltd ([RHI0031](#))

42 [Q412](#) (Noel Lavery)

43 [Q367](#) (Richard Rodgers)

44 Mr Mark Lewis ([RHI0017](#)), Thomas Douglas ([RHI0003](#))

45 Department for the Economy (DfE) ([RHI0006](#)) and [Q372](#) (Noel Lavery)

46 [Q389](#) (Richard Rodgers)

identical only the output of the boilers was less in [Northern] Ireland so to meet the [Northern Ireland] regulations ... but the Irish systems all cost more to install.⁴⁷

40. Noel Lavery told us that, due to the number of cost revisions in GB, the amount that participants would be receiving had reduced. He said that someone with a 99-kilowatt boiler in GB would receive £5,300 per annum today. Evidence we received from the Comptroller and Auditor General for Northern Ireland suggested the figure is around £8,800 for a 99-kilowatt boiler.⁴⁸ The difference is much greater for 199-kilowatt boilers, where GB scheme participants could receive £17,700 per year and NI scheme participants just £4,100 per year. However, even under the Department's more conservative estimates, participants in the GB scheme still receive well over double what a participant in Northern Ireland will receive under the April 2019 tariff structure.

41. The calculations for the lifetime payments for each scheme also reveal sharp differences. For participants using 99-kilowatt boilers for 20% of the available hours in the year, those in GB will receive over £122,000 and those in NI £67,000.⁴⁹ The greatest difference can be seen in the 199-kilowatt boilers, seeing a usage for 50% of the year. Here, NI RHI scheme participants will receive £241,500 less than their GB counterparts:

Figure 3: Comparison 199-kilowatt boiler payments in GB and NI

On the same assumptions of operating 12 hours per day, 7 days per week (i.e. 50% of the available hours in a year) but instead using a 199kW boiler and joining the scheme on 1 December 2015:

- a participant in NI would receive approx £130,000 RHI subsidy over the life of the scheme;
- a participant in GB would receive approx £372,000 RHI subsidy over the life of the scheme.

199kw boiler	Term	NI			GB		
		Tier 1	Tier 2*	Total NI	Tier 1	Tier 2	Total GB
Period				£			£
1/12/15 – 31/3/16	4 mths	6.5p	1.4p	6,000	4.52p	1.2p	5,933
1/4/16 – 31/3/17	1 yr	6.5p	1.4p	18,000	4.52p	1.2p	17,801
1/4/17 – 31/3/18	1 yr	6.7p	1.5p	18,645	4.60p	1.25p	18,279
1/4/18 – 31/3/19	1 yr	6.7p	1.5p	18,645	4.60p	1.25p	18,279
1/4/19 – until end of scheme	16yrs, 8 mths	1.7p	0	68,900	4.65p	1.30p	311,406
Total RHI subsidy				£130,190			£371,698

*In Northern Ireland tier 2 payments only apply up to a maximum of 400,000 kwh

Source: Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019

The Department told us that the Northern Ireland Audit Office had calculated based on a 50% load factor, which it said was 'exceptionally high'. The Department added that the

47 Anonymous (RHI0037)

48 Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019

49 Ibid

actual average load factor for a 99-kilowatt boiler had been 37% (including a period of untiered tariff rates), and suggested a 15% load factor.⁵⁰ In fact, the Northern Ireland Audit Office provided us with calculations based on both 20% and 50% load factor calculations.⁵¹

42. It is important to note that these dramatic differences in payments take into account the years before the NI scheme costs were brought back under control. It is the period from 1 April 2019 until the end of each scheme where the huge differences in payments are seen. Sean Ennis, Director at the Centre for Competition Policy and Professor of Competition Policy at Norwich Business School, told us that it was important to understand the facts behind the payments for the GB and NI schemes. He added, however, that:

It seems, with all the changes that have occurred over the last years, at least one set of rates has to be incorrect between the different geographic areas. Without further information, it is difficult to say which one and whether there has been a convergence towards a fair point with higher levels of equity or away from that.⁵²

43. The NI scheme also appears to compare unfavourably to the scheme in the Republic of Ireland, which received state aid approval in April this year. As this scheme is not yet making payments, it is not possible to do a direct comparison. However, the Department said that, on preliminary analysis, the RoI scheme appeared due to pay just over £5,000 for 99-kilowatt boilers.⁵³ This was because the RoI scheme calculated more for capital and fuel costs. Richard Rodgers told us:

On the capital costs, they have assumed a higher figure for the cost of the boiler installation. We expect them to publish guidance, as we have done. That capital cost is £550 per kilowatt, which equates to £54,000 for a 99-kilowatt boiler. That is a differential between the £54,000 RoI assumption and £38,000 for what we have seen in Northern Ireland. [...] On the fuel costs, the assumption in the RoI tariff is 4.8 pence per kilowatt hour. The current price of biomass wood pellets in Northern Ireland is 3.8 pence per kilowatt hour based on £180 per tonne.⁵⁴

He acknowledged that the Department did not know why there was a price differential and said that they were due to meet with their counterparts in the Republic to discuss this.

44. Although it remains to be seen how the RoI scheme operates, it may also be the case that it calculates tariffs based on a range of counterfactual fuels, as opposed to solely one, as with the NI scheme. A report for the Irish Department of Communications, Climate Action & Environment, noted that whilst it “may be more cost-effective to target replacement of the most costly counterfactual heating systems (typically electric or oil heating)”, to maximise uptake it may be beneficial to incentivise “replacement of all counterfactual technologies”.⁵⁵ If this method was used for Northern Ireland, where a significant minority of the market uses natural gas, then this would increase tariff rates.

50 [Letter from the Department for the Economy relating to NI Audit Office letter, May 2019](#)

51 [Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019](#)

52 [Q316](#) (Sean Ennis)

53 [Q361](#) (Richard Rodgers)

54 [Q361](#) and [Q366](#) (Richard Rodgers)

55 Element Energy Limited, [Economic analysis for the Renewable Heat Incentive for Ireland](#), December 2017

Investment decisions by participants

45. The scheme set up in 2012 omitted the key cost controls that would have regulated the amount participants received in payments from the outset (see paragraph 2). This meant that those joining the scheme could receive a very favourable rate of return on their investment. This was not in breach of any rules of the scheme. Participants had been sent Accreditation letters stating the initial tariffs and advice that these would be subject to change based on Retail Price Index adjustments. The letter also stated that participants would receive these payments for 20 years from the date of accreditation.

46. We heard that participants therefore assumed that these payments were guaranteed and that they could rely on these payments for the next 20 years. Chris Osborne, Senior Policy Officer at the Ulster Farmers Union told us:

When they went to get a loan from a bank or finance house, they were told by the Government that it was going to be a 20-year scheme. They were lent the money on the basis of a 20-year payment, and for that rug to be pulled from underneath them has left them in a very dangerous financial situation.⁵⁶

The Comptroller and Auditor General for Northern Ireland told us that the amount of subsidy paid, and to be paid, should cover participants' costs. However, he added:

It is possible that real hardship may have arisen because some participants in the scheme used the income from the scheme as part of the support for additional loans to expand their business.⁵⁷

47. The Department is aware that loans may have been taken out on this basis and Mr Lavery said there was a question around what those loans were for.⁵⁸ However, participants received payments based on usage of the boilers, not merely the initial investment. Many participants may have felt they could reasonably rely on those payments in order to make other investments to their business. Sean Ennis explained:

The situation now is that many growers have made investments based on an expectation of what payments they will receive in the future. It could be argued that is a legitimate expectation, and so they have made investments. As the aid is not based on the purchase of the machine but a payment based on usage, in a sense, it puts them in an exposed position. Now these payments have been retroactively altered on two occasions and yet the initial decisions to invest were based on a prior expectation.⁵⁹

48. The issue of expectation of the original payment or the “grandfathering principle”, is one that the Department were reluctant to explore in depth as it took them into matters that are before the courts. We have therefore not explored it in great detail here. It is however critical in terms of understanding the financial difficulty many participants now find themselves in. We explore alternative options for these costs in Chapter 4.

56 [Q106](#) (Chris Osborne)

57 [Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019](#)

58 See [Q373](#) (Noel Lavery)

59 [Q313](#) (Sean Ennis)

49. In calculating the new tariffs, the Department for the Economy has focused on a narrow range of costs to participants, such as the cost of a boiler and some associated costs. The Department has also used kerosene as the only counterfactual for fuel costs. The NI RHI scheme was, from the outset, different to the GB scheme and to the proposed RoI scheme. However, we are deeply concerned about the stark difference in payments over the lifetime of the GB and NI schemes. The matter of legitimate expectation of payment is one that forms part of an appeal case, which must run its course. Regardless of what the courts may decide is legally owed, we believe there is a moral imperative for the Department to look at any reasonable wider investment decisions participants have made. *We recommend that the Department revisit the tariffs to determine if they should include:*

- *Parity with the Great Britain scheme or the Republic of Ireland scheme where costs are comparable;*
- *Parity with the Great Britain scheme or the Republic of Ireland scheme on any additional costs that are included;*
- *Counterfactuals in different circumstances are considered, rather than just kerosene;*
- *That investment decisions made by participants be considered.*

The Department should report back to the Committee in response to this report any evidence in relation to the above points.

The impact of differing payments

50. Many respondents said that the April 2019 tariffs would have a negative impact on their business and livelihoods. Mr and Mrs Gordon, poultry farmers, described the “extreme financial burden” they were under due to repayments on their bank loan.⁶⁰ Another participant, Colin Newell, said there had been “threats towards me and my business due to the lack of cash flow”, and that he was worried his family would be made homeless.⁶¹

51. Moy Park, one of Europe’s leading poultry producers and a major employer in Northern Ireland, has a contractor-grower relationship with their farmers, where Moy Park provides technical services, feed and chicks, and knowledge and skills for growers.⁶² Approximately 800 out of the 2,100 applicants to the NI RHI scheme are poultry producers. Justin Coleman, Agri Business and Live Production Services Director at Moy Park told us that the changes in tariffs would be “devastating” for the small farmers who had signed up to the RHI scheme.⁶³

52. Mr Coleman explained that the difference in RHI payments between Northern Ireland, GB and the Republic of Ireland would create a “two-tier system”.⁶⁴ He said it put NI farmers at a “distinct disadvantage for producing broiler meat and hatching eggs”,⁶⁵

60 Mr and Mrs Gordon (RHANI members) ([RHI0025](#))

61 Colin Newell ([RHI0032](#))

62 [Q2](#) (Justin Coleman)

63 [Q45](#) (Justin Coleman)

64 [Q16](#) (Justin Coleman)

65 [Q60](#) (Justin Coleman)

and that it would create “unequal competition”.⁶⁶ Thomas Douglas, a poultry farmer and member of the Ulster Farmers Union, told us that he feared Moy Park would move more of their operations to England or to the Republic of Ireland as Northern Ireland would no longer offer a competitive advantage.⁶⁷ This concern was echoed by written evidence respondents. Mr and Mrs Gordon questioned how they could possibly “compete to expand and be as profitable as other neighbouring competitors”.⁶⁸ Mr Philip Swaile, a chicken supplier, said Northern Ireland farmers would lose their “competitive edge” over GB counterparts.⁶⁹

53. We took evidence from state aid experts on the potential impact of the differing payments between Northern Ireland and the Republic of Ireland. George Peretz QC said that the effect of State Aid on the island of Ireland had a “very low threshold in practice” as even small variances could have an impact on cross-border trade.⁷⁰ Sean Ennis told us that the Commission would have been careful in approving State Aid for the Republic of Ireland scheme as it would have been aware of the scheme in Northern Ireland and the potential for an appeal against the decision.⁷¹ Both experts cautioned that the discrepancy in payments between the two schemes could be explained by different factors and was “dependent on the detail”.⁷² George Peretz QC said there was a “danger of comparing apples and oranges”.⁷³

54. Mr Peretz said that there was a “strict two-month time limit from the date of the publication of the decision” for a state to challenge a state aid approval decision.⁷⁴ Officials from the Department for the Economy said that their understanding was that they could challenge another member state’s scheme at any time, and that the two-month window was for a challenge on “relatively narrow grounds”.⁷⁵

55. We are deeply concerned by the differing payments between GB, NI and RoI Renewable Heat schemes. The contrast between the Northern Ireland and Republic of Ireland schemes may prove to be the most damaging. A farmer in Northern Ireland will receive a maximum of £2,200 per year, whilst a farmer only a mile away across the border could receive over £5,000. This is not insignificant and could affect the competitiveness of Northern Ireland’s farms. *The Department for the Economy, and ultimately the UK Government must look at the tariff structure and underlying calculations for the Republic of Ireland scheme. If there is cause for complaint, then there may be a very short window in which the initial decision must be challenged by the UK Government. If there is unfairness, then harm could be prevented. It may be, however, that the costs involved in the Irish scheme are correct, which would suggest that there are costs within the Northern Ireland scheme that need revisiting. In any event, this must be investigated as a matter of urgency.*

66 [Q89](#) (Justin Coleman)

67 [Q89](#) (Thomas Douglas)

68 Mr and Mrs Gordon (RHANI members) ([RHI0025](#))

69 Mr Philip Swaile ([RHI0008](#))

70 [Q311](#) (George Peretz)

71 [Q317](#) (Sean Ennis)

72 [Q297](#) (George Peretz)

73 Ibid

74 [Q319](#) (George Peretz)

75 [Q398](#) (Jamie Warnock) and [Q401](#) (Richard Rodgers)

4 Ongoing impact

56. In this final chapter, we examine the proposals the Department has put forward for assisting participants of the NI RHI scheme. These are the buy-out scheme proposed by the Department in the 2019 Act and a hardship unit that the Department has committed to set up. Finally, we consider the future of renewables in Northern Ireland and the impact this scheme may have on public trust.

The buyout scheme

57. The 2019 Act includes provisions for voluntary buyout arrangements. These arrangements are intended to assist those participants who will not see a 12% rate of return over the lifetime of the scheme. This may be because they paid too much for their boiler, do not use it often or for other reasons.⁷⁶ The Department estimates this will be around 10% of participants.⁷⁷ Under these arrangements, participants will receive a payment equivalent to a 12% rate of return after which their installation will be withdrawn from the NI RHI scheme and they will receive no further payments. We understand that there is an expectation that our report would cover the voluntary buyout arrangements and the Department is awaiting publication before opening the scheme.⁷⁸

58. The 2019 Act permits the Department to prepare the scheme and to calculate what applicants are paid.⁷⁹ The Act also states that any calculation “must be such as to take into account the amount of periodic support payments previously received by the participant in respect of the accredited RHI installation”, and as a result, “may accordingly be such that the participant does not qualify for a buy-out payment”.⁸⁰ We heard that this means that the vast majority of participants would receive little or nothing from the buyout option.⁸¹

59. Chris Osborne told us that the calculation could be improved by “taking into consideration the level of debt that has been incurred by such businesses”.⁸² He referred to this debt as due to both direct and indirect costs.⁸³ We asked state aid experts whether the rate of return might be a barrier to reimbursing participants for these kinds of costs. George Peretz QC said that there would be problems with continuing to make payments to people if those payments represented the aid they should not have received.⁸⁴ However, he also suggested that there might be other incidental costs that participants had paid out, and that there could be grounds for compensating participants for this:

If somebody has been given money that they should never have had, and then has to hand it back, they may also have been exposed to additional costs simply as a result of all of that having happened. They may have had legal costs. They may have incurred obligations that they would never have incurred, which also have costs.⁸⁵

76 [Q495](#) (Jamie Warnock)

77 [Ibid](#)

78 [Q500](#) (Jamie Warnock)

79 [Northern Ireland \(Regional Rates and Energy\) Act 2019](#), Section 4

80 [Ibid](#), (3)(a)

81 [Q200 and 201](#) (Thomas Douglas and Chris Osborne)

82 [Q183](#) (Chris Osborne)

83 [Q184](#) (Chris Osborne)

84 [Q341](#) (George Peretz)

85 [Q329](#) (George Peretz)

He went on to say that incidental costs might include:

Legal costs as well as the costs of drawing up a business plan and making investments based on that, on the assumption that you were going to get what you, in fact, did not get, because that has caused you real loss. You may have made an investment or bought something that you simply would never have bought had you realised that you were going to have to hand this money back.⁸⁶

60. Mr Peretz said compensating individuals for these costs was speculative and “at the cutting edge of state aid law”.⁸⁷ He added, however, that there was support for such an idea from a former judge and that, as a matter of principle, it was “very plausible” that participants would have that right.⁸⁸ There may, therefore, be a case for drawing a distinction between aid that should not have been received and the sorts of investments participants made (referred to in paragraph 47) in expectation of the original tariff payments. This could be taken forward as part of the buyout offer, or through the Hardship Unit, which we explore below.

61. We also heard that the calculation for the buyout amount could be flawed. Andrew Trimble, Chair of the Renewable Heat Association Northern Ireland, told us that the Department proposed to pay the additional actual cost of the boiler minus the list price of a fossil fuel boiler.⁸⁹ He said the list price was significantly higher than in “practical terms”.⁹⁰ He also told us that participants would be trading the promised 20 years of payments for a buyout whilst still retaining their liability for debt. For many participants, other comparisons might be more appropriate, such as the actual cost of the system they no longer use. For example, Thomas Douglas, who installed a 199-kilowatt boiler, told us that before the NI RHI scheme, boiler breeders like himself did not use heating at all but opted to install it as it was shown to increase productivity.⁹¹ His alternative option was to install a gas boiler, which would have been significantly cheaper.⁹² It may therefore be appropriate for any buyout calculation for farmers in this position to compare the RHI boiler cost with the prevailing market price for a comparator boiler rather than just the list price.

62. The 2019 Act itself does not state what calculation method must be used for the buyout scheme. The 2019 Act also omits any mention of the right of participants to challenge any calculation the Department puts forward. It merely enables them to serve a notice on the Department accepting or rejecting the offer. Finally, the budget set aside for the buyout scheme is £4m per year and the Ulster Farmers Union raised concerns that this money could quickly run out.⁹³

63. There is little detail regarding the buyout offer and we hope that this offers an opportunity to assist some participants. Currently, the vast majority of participants, including those who have submitted evidence to us, are not eligible for the scheme. We do not wish to prolong any delay in opening the scheme, but it is clear some changes

86 [Q342](#) (George Peretz)

87 [Ibid](#)

88 [Ibid](#)

89 [Q220](#) (Andrew Trimble)

90 [Ibid](#)

91 [Q191 and 193](#) (Thomas Douglas)

92 [Q195](#) (Thomas Douglas)

93 [Q207](#) (Chris Osborne)

are required to include more people. Our recommendations are not exhaustive, and we would welcome any additional changes that would allow more people to be brought within the ambit of the scheme. *We recommend that the buyout scheme be made available as soon as possible. In calculating any offer, the Department should look at:*

- *the costs in each individual case so as to make the correct comparisons for that participant. There must not be a one-size-fits-all calculation in terms of costs;*
- *the wider costs to participants, including indirect costs. A distinction should be drawn between indirect costs, and any overcompensation on the rate of return for the narrow scheme costs;*
- *participants should have the option to challenge the Department's calculation and submit their own cost analysis before accepting or rejecting an offer. The Independent Panel in charge of the Hardship Unit should review all evidence where there is a dispute; and*
- *The buy-out scheme must be adequately funded to cover payments to participants that includes indirect costs.*

If any of these recommendations require legislative change, we recommend the Northern Ireland Office secure time at Westminster at the first opportunity.

The Hardship Unit

64. The proposed Hardship Unit differs from the voluntary buyout scheme. The buyout is available on the basis set out in the 2019 Act and does not require proof of financial hardship. However, during the Committee stage of the House of Lords debate on the Northern Ireland (Regional Rates and Energy) (No. 2) Bill, Lord Duncan of Springbank Parliamentary Under-Secretary for Northern Ireland, suggested that a Hardship Unit and our inquiry might together inform the buyout arrangements. The idea of the Hardship Unit was put forward to help the Bill's progress:

My proposal is that the Department for the Economy in Northern Ireland—not on our instruction but because it believes it to be the right course of action—sets up a unit within the department, under independent chairmanship, that will be responsible for examining the case of every individual who has received funds from the RHI initiative and believes that they have experienced hardship. I propose that each element of their case is considered in thorough detail and with their participation, in order to understand exactly what that hardship looks like.

As a consequence of that, and with the Northern Ireland Affairs Committee inquiry running alongside that, those two elements should together help inform the part of the Bill that covers the issue of the voluntary buy-out. Currently, the voluntary buy-out is more or less a statement that lacks mechanical details. If we construct the buy-out to adequately and appropriately meet the needs of the farmers who rest within it, it could be adjusted in accordance with these elements.⁹⁴

65. The buyout scheme can best address the needs of individual participants by calculating offers along the lines we set out in paragraph 63; by looking at individual circumstances and taking account of both direct and indirect costs to participants. We are concerned, however, this is not the Department’s intention. Mr Lavery suggested to us that the scope of the Hardship Unit would be limited:

It is a unit to look at hardship. You again referenced “scheme”. I am not sitting here with a scheme. I am sitting here with a unit to look at individual cases to see what options there are for those individual cases. We need to look at the support that is already available within Government and if it is applicable. I carefully used the phrase as to what Government could or should do for individual cases. Any new scheme would be a matter for a Minister. That is my position.⁹⁵

In response to a question about hardship payment, Mr Lavery said “as of today, I am not in a position to provide additional finance. That is exactly where we are today.”⁹⁶

66. We were also concerned about the timescale for setting up the Unit. The Department intends to set up an independent panel with the right skill set to assess cases.⁹⁷ We have been assured that the panel will meet “before the end of summer”, however there are no firm dates.⁹⁸ The first item of business must be to agree the criteria for hardship, which the Department will write, in draft, and present to the panel.⁹⁹ It is only after this that the panel will be able to assess cases. This means that, in a best-case scenario, cases will be looked at in early autumn, months after the new tariffs have been implemented. On 17 June, the Department issued a call for evidence on the nature of hardship and possible outcomes to help inform the design and function of the unit. The consultation closes on 10 July.

67. Finally, we require assurance that the criteria presented to the panel will take into account the circumstances of individual participants. As described earlier in this report, many are in financial difficulty due to the indirect costs of the NI RHI scheme. Richard Rodgers suggested that this was not a matter for the Department:

The poultry industry is in a unique part of this; it is 800 out of the 2,000 and there are wider issues, such as the contractual relationship with Moy Park. The loan may have been raised to invest in the wider business, but that is a matter between the farmer and Moy Park. Moy Park makes payments, for example for new poultry houses, over a 10-year period.¹⁰⁰

It may well be that Moy Park must bear some responsibility and that is a matter for the independent inquiry. In any case, it would not absolve the Department of its responsibility to participants for these indirect costs.

95 [Q481](#) (Noel Lavery)

96 [Q485](#) (Noel Lavery)

97 [Q455](#) (Jamie Warnock)

98 [Q456](#) (Noel Lavery)

99 [Q481](#) (Noel Lavery)

100 [Q485](#) (Richard Rodgers)

68. We consider that the financial needs of participants can best be met by revisiting the tariffs and subsequently adjusting, as set out in paragraph 49, and by improving the buy-out option, as set out in paragraph 63. The Hardship Unit should be progressed with the following principles:

- *Assessing financial hardship must include looking at a participants' costs in the round. The Department must take into account the fact that people have made investment decisions;*
- *The Unit must inform the calculation of buyout payments and any decisions must be challengeable;*
- *Hardship should not be defined on narrow grounds. Criteria should be developed with input from participants. We recommend the Department share the draft criteria with the Northern Ireland Affairs Committee.*

We further recommend that in response to this report, the Department set out, specifically, additional ways in which the Hardship Unit will assist those assessed as suffering hardship.

The future of renewables in Northern Ireland

69. In this final section, we examine the impact that the ramifications of the NI RHI scheme might have on the use of renewable energy schemes. The RHI schemes in both Northern Ireland and Great Britain were created to encourage businesses to convert to cleaner forms of fuel. Several participants of the NI RHI scheme told us that environmental consideration was a key motivation for applying to the scheme. Avril Robson, a hotelier and poultry farmer, told us:

We all bought into biomass for the renewable side of it, for our carbon footprint, for the future sustainability of our country, of our future, and to set up something that is going to be tangible for the next generation.¹⁰¹

Sandy Carney, a small business owner in NI said switching to RHI was “a good decision” for the environment.¹⁰² Mr Thomas Hill, a poultry farmer, said he felt it could improve animal welfare as the lower humidity would mean fewer respiratory problems for his chickens.¹⁰³

70. We heard that many of these participants are now considering reverting to fossil fuels.¹⁰⁴ Ms Robson said she would continue with biomass for the hotel unless oil prices became lower.¹⁰⁵ On the poultry side of her business, however, they would switch back to gas as biomass involved more work and higher maintenance costs.¹⁰⁶ The owners of Creative Gardens NI Limited said their system suppliers had offered to evaluate the affordability of reverting to gas.¹⁰⁷ We asked Moy Park for an estimate of the number of its contracted farmers considering reverting to fossil fuels. We were told that the organisation

101 [Q221](#) (Avril Robson)

102 Sandy Carney ([RHI0027](#))

103 Mr Thomas Hill ([RHI0041](#))

104 The Renewable Heat Association for Northern Ireland ([RHI0028](#))

105 [Q221](#) (Avril Robson)

106 *Ibid*

107 Creative Gardens NI Limited ([RHI0024](#))

might expect to see 609 sheds using LPG rather than wood pellet by the end of the year, with more converting in early 2020.¹⁰⁸ Thomas Douglas told us participants would not be forced to take the decision immediately from 1 April but within the next six months to a year.¹⁰⁹

71. The Department was aware that lowering payments could result in participants reverting to fossil fuels and it formed part of the Department’s pre-notification to the European Commission last year.¹¹⁰ In response, the European Commission said it understood the concerns about the incentives to continue using renewables rather than “reverting or switching to fossil fuel based heating”.¹¹¹ Mr Lavery acknowledged that some participants were now considering reverting to fossil fuel but that his advice was not to do so.¹¹² Officials told us that biomass was the cheapest fuel and that, in reverting back, participants would be giving up approximately £2,500 of fuel saving benefits.¹¹³

72. One written evidence respondent told us they would not be able to afford any repairs to their biomass boiler and that if it broke down they would revert to gas.¹¹⁴ The NI RHI tariffs allow £700 per year in servicing and breakdown costs, whereas the RoI scheme assumes £2,000 per year.¹¹⁵ Richard Rodgers said the lower NI RHI figure was based on receipts examined during the Ricardo review. However, this was based on the first four years of the scheme, when breakdown costs would have been low. The RoI scheme cost covers the lifetime of the scheme. Mr Rodgers said the Department would “keep the tariff under review for costs like this”.¹¹⁶ A concern would be that, by the time the tariffs respond to any such changes, many participants will have already reverted to fossil fuels rather than pay the upfront cost of repairs.

73. The consequences of these new tariffs, and the NI RHI scheme’s wider problems, may be much broader than individual participants reverting to fossil fuel. Mr Lavery acknowledged that the Government miscalculated the tariffs twice in the NI RHI scheme. He added that he had heard comments that people did not have faith in Government schemes and that such comments were “perfectly understandable”.¹¹⁷ One respondent told us:

The actions of the N.I. Department for the Economy have now undermined funding of renewable energy projects globally because if you can’t trust a Government to stand behind their contracts then who can you trust?¹¹⁸

Another told us they would will “never trust any (local) government pledge again.”¹¹⁹

108 [Letter from Moy Park relating to follow-up questions on the Changes to NI Renewable Heat Incentive payments, May 2019](#)

109 [Q180](#) (Thomas Douglas)

110 Department for the Economy (DfE) ([RHI0006](#)) (Annex A)

111 Department for the Economy (DfE) ([RHI0006](#)) (Annex B)

112 [Q349](#) (Noel Lavery)

113 [Q421](#) (Richard Rodgers)

114 Anonymous ([RHI0040](#))

115 [Q361](#) (Richard Rodgers)

116 [Q362](#) (Richard Rodgers)

117 [Q376](#) (Noel Lavery)

118 Anonymous ([RHI0037](#))

119 Hegan Biomass Ltd ([RHI0031](#))

74. Mr Lavery told us that he would like to see a new renewable heat scheme for Northern Ireland that had a “strong reputation”.¹²⁰ Any such scheme would, of course, require ministerial approval. The Comptroller and Auditor General for Northern Ireland said that, until the NI RHI scheme, it had always been the case that payments under Government backed schemes did not change from what was promised at the start.¹²¹ He said that if there was less confidence of this in the future, it could impact on uptake of other such schemes.

75. A sad outcome of the RHI saga in Northern Ireland is the erosion of trust in Government-backed schemes. Northern Ireland is currently ahead of the rest of the UK in respect of renewable electricity generation and nobody wishes to see businesses return to fossil fuels. We call upon Moy Park to supply the Committee with figures of participants reverting to fossil fuels. Participants will be considering their options over the next year, and some may revert when there is expensive repair work due on their boiler. The Department could and should do more to incentivise NI RHI participants to stick with biomass. *We recommend that the tariff calculation be amended to allow a more realistic cost for servicing and repairs of biomass boilers. This could help prevent participants reverting to fossil fuels if their boiler breaks down and they are faced with upfront costs they cannot afford. We further recommend that the Department track rates of reversion to fossil fuels amongst participants and report any trends to this Committee.*

120 Q347 (Noel Lavery)

121 [Letter from the Comptroller and Auditor General for Northern Ireland relating to the NI Renewable Heat Incentive scheme, May 2019](#)

Conclusion

76. We have concluded this inquiry, and published our report, with a view to recommending changes that can be implemented swiftly. Our key concern has been the comparison of tariffs across Northern Ireland, Great Britain and the Republic of Ireland. The Department has offered some explanation for this and we accept there will be some price differentials across jurisdictions. Where this amounts to tens of thousands, even hundreds of thousands of pounds, however, it is a cause for deep concern. This could see Northern Ireland farmers at a distinct disadvantage and needs to be rectified. We are also deeply concerned that we have only been able to examine these issues after the 2019 Act was passed. The practice of fast-tracking all Northern Ireland related legislation as a matter of course must end.

77. In this report, we have tried to focus on the April 2019 tariff changes and the legislation that enacted them. Our inquiry has, inevitably, touched upon areas that fall outside this remit but that are subjects of investigation in the independent inquiry. For this reason, we have not looked in detail at some of the issues we received evidence on. This included evidence on how participants were encouraged towards the NI RHI scheme. It included people's views on how the system may have been abused and where people may have been unfairly criticised. And it included the oversight of the scheme, or lack thereof, and the role played by Ofgem. It could be argued that the wider narrative of the NI RHI scheme is crucial in understanding the April 2019 changes. The task of examining that narrative rests with Sir Patrick Coghlin's independent public inquiry, and we look forward to reading that report in due course.

Conclusions and recommendations

The Legislative process

1. There were many opportunities to avoid the use of emergency procedures for this Bill. For two years, it was clear to the Department for the Economy that the tariffs for the NI RHI scheme would need to change again. As there was no other mechanism for achieving this, it was also apparent that legislation would be required. We are concerned that officials did not notify the Secretary of State of the urgent need for legislative change until February 2019. Earlier notification could have allowed the Secretary of State to secure more time in Parliament for the Bill. Moreover, the EU Commission had approved a year-long extension of the 2017 scheme in order to allow development of the new tariffs. If payments were due to end on 1 April, then the Department should have asked for a short extension of 3–6 months to pass the necessary legislation. We have no reason to believe the Commission would have denied the Government the chance to legislate in a full and proper manner. (Paragraph 23)
2. Even under the constrained timeframe, however, more time could have been given to this Bill. It is evident that rushing Northern Ireland related legislation through Parliament has become the norm. This is unacceptable. It does not allow us to properly perform our role as parliamentarians and it is not good enough for the people of Northern Ireland. *The Secretary of State must commit to ending the practice of passing Northern Ireland related legislation under emergency procedures as a matter of course. Until the Assembly and Executive are restored, Westminster must be able to offer a reasonable level of scrutiny and accountability. If the Northern Ireland Office considers there is sufficient urgency to warrant emergency procedures, this Committee should be informed so that we can assess the rationale and offer our view.* (Paragraph 24)

The 2019 tariffs

3. The matter of what the European Commission approved in 2012 is a crucial one. The Department has maintained that its hands were tied and that it had to reduce payments in order to comply with the Commission's state aid approval. We acknowledge that the Department has had to balance the reduction in payments with the risk of further detrimental action by the Commission. The EU Commission stated, in December 2018, that there was insufficient evidence at that stage to approve a higher rate of return. If there is now scope to challenge the Commission on its interpretation and offer further evidence then we encourage the Department to do so. (Paragraph 33)
4. In calculating the new tariffs, the Department for the Economy has focused on a narrow range of costs to participants, such as the cost of a boiler and some associated costs. The Department has also used kerosene as the only counterfactual for fuel costs. The NI RHI scheme was, from the outset, different to the GB scheme and to the proposed ROI scheme. However, we are deeply concerned about the stark difference in payments over the lifetime of the GB and NI schemes. The matter of legitimate

expectation of payment is one that forms part of an appeal case, which must run its course. Regardless of what the courts may decide is legally owed, we believe there is a moral imperative for the Department to look at any reasonable wider investment decisions participants have made. *We recommend that the Department revisit the tariffs to determine if they should include:*

- *Parity with the Great Britain scheme or the Republic of Ireland scheme where costs are comparable;*
- *Parity with the Great Britain scheme or the Republic of Ireland scheme on any additional costs that are included;*
- *Counterfactuals in different circumstances are considered, rather than just kerosene;*
- *That investment decisions made by participants be considered.*

The Department should report back to the Committee in response to this report any evidence in relation to the above points. (Paragraph 49)

5. We are deeply concerned by the differing payments between GB, NI and RoI Renewable Heat schemes. The contrast between the Northern Ireland and Republic of Ireland schemes may prove to be the most damaging. A farmer in Northern Ireland will receive a maximum of £2,200 per year, whilst a farmer only a mile away across the border could receive over £5,000. This is not insignificant and could affect the competitiveness of Northern Ireland's farms. *The Department for the Economy, and ultimately the UK Government must look at the tariff structure and underlying calculations for the Republic of Ireland scheme. If there is cause for complaint, then there may be a very short window in which the initial decision must be challenged by the UK Government. If there is unfairness, then harm could be prevented. It may be, however, that the costs involved in the Irish scheme are correct, which would suggest that there are costs within the Northern Ireland scheme that need revisiting. In any event, this must be investigated as a matter of urgency. (Paragraph 55)*

Ongoing impact

6. There is little detail regarding the buyout offer and we hope that this offers an opportunity to assist some participants. Currently, the vast majority of participants, including those who have submitted evidence to us, are not eligible for the scheme. We do not wish to prolong any delay in opening the scheme, but it is clear some changes are required to include more people. Our recommendations are not exhaustive, and we would welcome any additional changes that would allow more people to be brought within the ambit of the scheme. *We recommend that the buyout scheme be made available as soon as possible. In calculating any offer, the Department should look at:*
 - *the costs in each individual case so as to make the correct comparisons for that participant. There must not be a one-size-fits-all calculation in terms of costs;*

- *the wider costs to participants, including indirect costs. A distinction should be drawn between indirect costs, and any overcompensation on the rate of return for the narrow scheme costs;*
- *participants should have the option to challenge the Department's calculation and submit their own cost analysis before accepting or rejecting an offer. The Independent panel in charge of the Hardship Unit should review all evidence where there is a dispute; and*
- *The buy-out scheme must be adequately funded to cover payments to participants that includes indirect costs*

If any of these recommendations require legislative change, we recommend the Northern Ireland Office secure time at Westminster at the first opportunity. (Paragraph 63)

7. We consider that the financial needs of participants can best be met by revisiting the tariffs and subsequently adjusting, as set out in paragraph 49, and by improving the buy-out option, as set out in paragraph 63. The Hardship Unit should be progressed with the following principles:
 - *Assessing financial hardship must include looking at a participants' costs in the round. The Department must take into account the fact that people have made investment decisions;*
 - *The Unit must inform the calculation of buyout payments and any decisions must be challengeable;*
 - *Hardship should not be defined on narrow grounds. Criteria should be developed with input from participants. We recommend the Department share the draft criteria with the Northern Ireland Affairs Committee.*

We further recommend that in response to this report, the Department set out, specifically, additional ways in which the Hardship Unit will assist those assessed as suffering hardship. (Paragraph 68)

8. A sad outcome of the RHI saga in Northern Ireland is the erosion of trust in Government-backed schemes. Northern Ireland is currently ahead of the rest of the UK in respect of renewable electricity generation and nobody wishes to see businesses return to fossil fuels. We call upon Moy Park to supply the Committee with figures of participants reverting to fossil fuels. Participants will be considering their options over the next year, and some may revert when there is expensive repair work due on their boiler. The Department could and should do more to incentivise NI RHI participants to stick with biomass. *We recommend that the tariff calculation be amended to allow a more realistic cost for servicing and repairs of biomass boilers. This could help prevent participants reverting to fossil fuels if their boiler breaks down and they are faced with upfront costs they cannot afford. We further recommend that the Department track rates of reversion to fossil fuels amongst participants and report any trends to this Committee. (Paragraph 75)*

Formal minutes

Tuesday 25 June 2019

Members present:

Simon Hoare, in the Chair

Maria Caulfield	Nigel Mills
John Grogan	Ian Paisley
Lady Hermon	Jim Shannon
Kate Hoey	Sir Desmond Swayne

Draft Report (*Changes to the Northern Ireland Renewable Heat Incentive scheme payments*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 77 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 26 June 2019 at 9.15am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 24 April 2019

Justin Coleman, Agri Business and Live Production Services Director, Moy Park [Q1–91](#)

Monday 29 April 2019

Thomas Douglas, Ulster Farmer's Union, **Chris Osborne**, Ulster Farmer's Union [Q92–217](#)

Alan Hegan, Director, **Hegan Biomass**, **Robert Carmichael**, **Avril Robson**, **Andrew Trimble**, Chair, Renewable Heat Association Northern Ireland [Q218–291](#)

Tuesday 7 May 2019

George Peretz QC, Monckton Chambers, **Sean Ennis**, Director at Centre for Competition Policy, Professor of Competition Policy at Norwich Business School [Q292–345](#)

Wednesday 8 May 2019

Noel Lavery, Permanent Secretary, **Richard Rodgers**, Head of Energy, **Jamie Warnock**, Renewable Heat Incentive Task Force, Department for the Economy [Q346–500](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

RHI numbers are generated by the evidence processing system and so may not be complete.

- 1 Andrew Trimble, RHANI Ltd ([RHI0046](#))
- 2 Anonymous ([RHI0049](#))
- 3 Anonymous ([RHI0001](#))
- 4 Anonymous ([RHI0021](#))
- 5 Anonymous ([RHI0034](#))
- 6 Anonymous ([RHI0037](#))
- 7 Anonymous ([RHI0040](#))
- 8 Anonymous ([RHI0050](#))
- 9 Anonymous ([RHI0051](#))
- 10 BS Holdings Ltd ([RHI0004](#))
- 11 Carney, Sandy ([RHI0027](#))
- 12 Charles Hurst Motor Group ([RHI0023](#))
- 13 Christian Family Centre (NI) and Ballyards Charitable Trust ([RHI0045](#))
- 14 Colin Newell ([RHI0032](#))
- 15 Creative Gardens NI Limited ([RHI0024](#))
- 16 Dennison Commercials Limited ([RHI0043](#))
- 17 Department for the Economy (DfE) ([RHI0006](#))
- 18 Douglas, Thomas ([RHI0003](#))
- 19 Fleck, John ([RHI0012](#))
- 20 Glenhoy Farms ([RHI0044](#))
- 21 Hegan Biomass Ltd ([RHI0031](#))
- 22 Hempton, Mr Thomas ([RHI0002](#))
- 23 Hill, Mr Thomas ([RHI0041](#))
- 24 Mr and Mrs Gordon (RHANI members) ([RHI0025](#))
- 25 Mr Mark Lewis ([RHI0017](#))
- 26 Newtownstewart Parts Centre ([RHI0015](#))
- 27 The Renewable Heat Association for Northern Ireland ([RHI0028](#))
- 28 Renewable Heat Association Ltd ([RHI0036](#))
- 29 Sneyd, Mr Bill ([RHI0033](#))
- 30 Swaile, Mr Philip ([RHI0008](#))
- 31 Tom Forgrave ([RHI0042](#))
- 32 Ulster Farmers Union ([RHI0007](#))
- 33 William Bell (Tractors) Ltd. ([RHI0014](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Bombardier	HC 533 (HC 960)
Second Report	The land border between Northern Ireland and Ireland	HC 329 (HC 1198)
Third Report	Devolution and democracy in Northern Ireland – dealing with the deficit	HC 613 (HC 1589)
Fourth Report	Brexit and Northern Ireland: fisheries	HC 878 HC 1812
Fifth Report	Brexit and Agriculture in Northern Ireland	HC 939 HC 1847
Sixth Report	The Northern Ireland backstop and the border: interim report	HC 1850
Seventh Report	HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons: follow-up	HC 1723 (HC 2352)
First Special Report	HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons: Government Response to the Committee's Fourth Report of Session 2016–17	HC 331
Second Special Report	Electricity sector in Northern Ireland: Government Response to the Committee's Third Report of Session 2016–17	HC 921
Third Special Report	Bombardier: Government Response to the Committee's First Report	HC 960
Fourth Special Report	The land border between Northern Ireland and Ireland: Government Response to the Committee's Second Report	HC 1198
Fifth Special Report	Devolution and democracy in Northern Ireland – dealing with the deficit: Government Response to the Committee's Third Report	HC 1589
Sixth Special Report	Brexit and Northern Ireland: fisheries: Government Response to the Committee's Fourth Report	HC 1812
Seventh Special Report	Brexit and Agriculture in Northern Ireland: Government Response to the Committee's Fifth Report	HC 1847
Eighth Special Report	HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons: follow-up: Government Response to the Committee's seventh Report	HC 2352