

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

49th Report of Session 2017–19

**Northern Ireland Budget (Anticipation
and Adjustments) (No. 2) Bill**

**Northern Ireland (Regional Rates and
Energy) (No. 2) Bill**

Animal Welfare (Service Animals) Bill

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Forty Ninth Report

NORTHERN IRELAND BUDGET (ANTICIPATION AND ADJUSTMENTS) (NO. 2) BILL

1. This Bill contains no delegated powers.

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

2. This Bill was introduced into the House of Lords on 6 March, and second reading and remaining stages are scheduled to take place on 12 March. A delegated powers memorandum (“the memorandum”) has been provided by the Northern Ireland Office (NIO).¹
3. The Bill deals with three matters:
 - It sets the amounts of regional domestic and non-domestic rates in Northern Ireland for the financial year ending on 31 March 2020.
 - It implements a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) scheme for small and medium biomass installations.
 - It confers power on the Northern Ireland Department for the Economy to establish voluntary buy-out arrangements under which participants in the RHI scheme can apply to receive a one-off payment in respect of an accredited RHI installation, after which the installation will be withdrawn from the scheme.
4. While we make no recommendation as respects the powers in the Bill, we wish to explain to the House our reasons in relation to the powers conferred by clause 4.

Clause 4—Voluntary buy-out arrangements for RHI scheme installations

5. Clause 4 inserts a provision into the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 which will confer a power on the Department for the Economy to prepare and publish arrangements under which a participant in the RHI scheme would be able to apply for a buy-out payment. Where a buy-out payment is made, the participant’s installation then ceases to be part of the scheme.
6. The NIO sets out in the memorandum the reasons for having the buy-out arrangements.² The changes to the tariffs brought about by clause 3 are intended to achieve a prospective, long-term rate of return of 12% for small and medium biomass boilers (which type of installations account for the vast majority of installations under the scheme). Whilst the vast majority of small

1 Northern Ireland Office, [Northern Ireland \(Regional Rates and Energy\) \(No. 2\) Bill delegated powers memorandum](#)

2 Northern Ireland Office, [Northern Ireland \(Regional Rates and Energy\) \(No. 2\) Bill delegated powers memorandum](#), paras 31 and 32

or medium sized installations might be expected to achieve a return of 12% under the revised tariffs, there will be a small group that have higher capital costs or lower ongoing usage. Since those participants may receive a very low return in comparison to the initial intent of the scheme, the new provision will allow the Department to offer to buy-out these installations. The buy-out will be entirely voluntary.

7. The power to prepare, publish and operate the buy-out arrangements applies for each of three consecutive financial years with the first year beginning on 1 April 2019. There is a further limitation in that the powers may only be exercised for so long as there is no Executive in Northern Ireland.
8. There is no provision for Parliamentary scrutiny of the buy-out arrangements prepared by the Department for the Economy. It is acknowledged in paragraph 34 of the memorandum that in normal circumstances the Department would introduce the arrangements through making subordinate legislation laid before the Northern Ireland Assembly.
9. In the absence of the Assembly to scrutinise regulations made by the Department for the Economy, the only options for legislation are UK primary legislation or regulations made by the Secretary of State.
10. The NIO argues,³ and we accept, that it would be impracticable to establish the arrangements in primary legislation because it would make it far more difficult for the Department to make changes to the arrangements in response to concerns expressed and representations made by those affected by them.
11. We also consider the NIO makes a strong case for it not being appropriate to confer a regulation-making power on the Secretary of State.⁴ Matters relating to the RHI scheme are devolved and therefore the power to make regulations under the Energy Act 2011 relating to the RHI scheme is generally exercisable by the Department for the Economy with scrutiny by the Assembly. Although the Government have intervened in devolved matters (through introducing Bills such as this one), the approach has been to limit that intervention as far as practicable. In particular, the Government have adopted the approach of not conferring functions on UK Ministers unless absolutely necessary. The only instance has been allowing the Secretary of State and Lord Chancellor to exercise public appointment functions in limited cases. Those are however functions of Northern Ireland Ministers. There are no cases in which functions of Northern Ireland Departments have been transferred to a UK Minister, and doing so in this case is liable to set a precedent which might lead to calls for the transfer of functions in other areas.
12. This leaves the question of whether a non-legislative solution is appropriate given the nature of the powers being conferred. The NIO makes two points which we consider justify this approach. The first is the fact that the buy-out arrangements will be completely voluntary, and therefore

3 Northern Ireland Office, [Northern Ireland \(Regional Rates and Energy\) \(No. 2\) Bill delegated powers memorandum](#), para 35

4 See supplementary information from the Northern Ireland Office set out in Appendix 1 to this Report.

the arrangements will not affect a participant's rights or obligations under the RHI scheme unless the participant wants to engage with the buy-out arrangements. The second is the fact that the arrangements are time limited and will only continue in place for a period of three years, or less if the Executive in Northern Ireland is re-established before the end of that period.

13. For the reasons set out above, we have concluded clause 4 does not confer an inappropriate delegation of power.

ANIMAL WELFARE (SERVICE ANIMALS) BILL

14. There is nothing in this Bill which we would wish to draw to the attention of the House.

APPENDIX 1: NORTHERN IRELAND (REGIONAL RATES AND ENERGY) (NO. 2) BILL

Supplementary information provided by the Northern Ireland Office

In reply to your query powers to make delegated legislation under the Energy Act 2011 are conferred, in relation to Northern Ireland, on the Department for the Economy. The Principal Regulations (see paragraph 8 of the NIO's memo) were made under that Act. This Bill, of course, seeks to amend those Regulations. The Principal Regulations also confer powers on the Department (see for example regulation 23A). The enabling powers would not permit a conferral of functions on the Secretary of State, so even if to do that would be consistent with the Secretary of State's policy on intervention into devolved matters in Northern Ireland, it would be odd to amend the Regulations so as to confer such a power. Consistent with the Regulations and the powers under which normally they would have been amended, the power to establish the buy-out arrangements, has been conferred on the Department.

This is also consistent with the scheme of the devolution settlement more generally in Northern Ireland. In relation to transferred matters, powers may be conferred on a Northern Ireland Minister or department—see section 22 of the Northern Ireland Act 1998. They are not conferred on the Secretary of State.

Exceptionally, the Secretary of State for Northern Ireland has, since 2017 intervened in relation to devolved matters. Introducing this Bill is one such intervention. She has done so where necessary, and to the extent necessary, to ensure delivery of public services, provide good governance and political stability in Northern Ireland

Where the Secretary of State has sought to exercise devolved functions in Northern Ireland this is only where they are otherwise conferred on Northern Ireland Ministers and only where it is essential for her to do so—see for example section 5 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (“2018 Act”) whereby she or the Lord Chancellor may exercise the appointment functions of NI Ministers in respect of a limited number of critical public appointments. She has not intervened so as to enable herself to exercise the functions of NI Departments and to do so now would run counter to that approach and the devolution settlement more generally.

The inclusion of the power here to establish voluntary buy-out arrangements from the RHI Scheme is necessary if the Department for the Economy is to mitigate exposure to high risk litigation and its related impact on NI funding. The nature and implementation of such arrangements is a policy decision for the Department, which as the memo notes, it will make consistent with the 2018 Act. To confer powers on herself to establish these arrangements would, as far as the Secretary of State is concerned, lower the high threshold for intervention and attract calls for her to take powers over numerous policy areas which are properly the responsibility of NI departments. This also risks reducing the pressure on political parties to engage in talks and restore devolution, which is the Secretary of State's highest priority.

1 March 2019

APPENDIX 2: MEMBERS AND DECLARATIONS OF INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 6 March 2019, Members declared no interests.

Attendance

The meeting on the 6 March 2019 was attended by Lord Blencathra, Lord Jones, Lord Lisvane, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.