HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 08512, 1 March 2019

Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19

By David Torrance
Suzanna Hinson

Contents:

Contents

Summary

The *Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19* was introduced to the House of Commons on 28 February 2019. The text of the Bill and Explanatory Notes are provided on the Bill pages on the Parliamentary website.

The Bill would provide authority for the UK Government to take three actions arising from the ongoing absence of a fully-functioning Northern Ireland Executive:

a. setting the level of regional domestic and non-domestic rates for the financial year ending 31 March 2020;

b. implementing a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme; and

c. introducing voluntary "buy-out" arrangements under which participants can apply to receive a one-off payment enabling them to withdraw from the Scheme.

1. Regional rates and energy

The *Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19* was introduced to the House of Commons on 28 February 2019. The text of the Bill and Explanatory Notes are provided on the Bill pages on the Parliamentary website.

The Bill would provide authority for the UK Government to take three actions arising from the ongoing absence of a fully-functioning Northern Ireland Executive; these are:

a. setting the level of regional domestic and non-domestic rates for the assessment of rates and the billing of ratepayers in Northern Ireland for the financial year ending 31 March 2020;

b. implementing a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme to replace the current interim arrangements for small and medium biomass installations introduced on 1 April 2018; and

c. introducing voluntary "buy-out" arrangements in three consecutive financial years beginning on 1 April 2019. Under these, participants can apply to receive a one-off payment in respect of an accredited RHI installation, upon receipt of which they are withdrawn from the Scheme, receiving no further periodic support payments. The voluntary buy-out provision is limited to a three-year period after the Act is introduced.[1]

The buy-out scheme would only operate in the absence of a Northern Ireland Executive. If the devolved institutions are restored, then the Assembly and Executive would need to pass new legislation for future financial years.

1.1 Northern Ireland public administration

There has been neither an Executive nor a fully-functioning Assembly in Northern Ireland since January 2017. The Assembly elected on 2 March 2017 has not been formally suspended, as in the past, and nor has Westminster introduced "direct rule", but several rounds of talks have failed to reach agreement on restoration of the devolved institutions.

The UK Parliament has, since early 2017, pursued a policy of only legislating on behalf of Northern Ireland when necessary, usually on budgetary measures.[2]

On 5 March 2019, the Commons is due to consider the *Northern Ireland Budget (Anticipation and Adjustments) (No. 2) Bill 2017-19*, for which a Library briefing is also available.

1 *Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19*, Explanatory Notes, para. 1.
2 See Commons Library briefing paper CBP 08439, *Devolution in Northern Ireland, 1998-2018*, 19 November 2018.

1.2 Fast-track procedure

The Government's intention is for all stages of the *Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19* to be taken on 6 March 2019, subject to a Business of the House motion to be debated the same day.

The Explanatory Notes state that fast-tracking is necessary to "provide financial certainty and stability in the absence of the devolved administration" by setting the regional rate and ensuring the continued delivery of the RHI Scheme.[3]

Legislation is required to ensure that regional rates can be paid in 10 instalments, and to extend existing cost-control regulations governing the RHI Scheme, which expire on 31 March 2019.

Previous examples of bills that had all their Commons stages on the same day (including First Reading in some cases) can be found in the Commons Library briefing paper *Expedited legislation: Government Bills receiving their Second and Third Reading on the same day in the House of Commons*.

---

3 Explanatory Notes, para. 17.

2. Regional rates

Background

The Northern Ireland Assembly, and the eleven local authorities in Northern Ireland, are jointly responsible for domestic and non-domestic rating in Northern Ireland. The rating system is the equivalent of council tax (for domestic properties) and the National Non-Domestic Rate (for non-domestic properties) in Great Britain. The rating system which operated across the UK until 1990 was never changed in Northern Ireland.

The Northern Ireland Assembly's power to set a regional rate can be found in article 7 of the *Rates (Northern Ireland) Order 1977* (SI 1977/2157). This Order gives the power to the Department of Finance. Thus, if the Northern Ireland Executive has not been appointed, it is not possible for a regional rate to be set under this Order.

Following the collapse of the Executive in early 2017, the *Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017* set a regional rate for 2017-18, while the *Northern Ireland (Regional Rates and Energy) Act 2018* set a regional rate for 2018-19. Clause 1 of this Bill will do the same for 2019-20.

In Northern Ireland, two rates or "poundages" are set: one by the eleven local authorities (the "district rate") and one by the Northern Ireland Executive (the "regional rate"). These are rolled into a single rating demand to domestic and non-domestic ratepayers. The district and regional rates for 2018-19 can be viewed on the website of the Department of Finance.[4]

Regional and district rates are collected, and property valuations for rating carried out, by Land and Property Services Northern Ireland (a public body responsible to the Department of Finance). Revenue from the district rate is passed to the relevant local council, and revenue from the regional rate is retained by the Northern Ireland Executive.

In a Written Ministerial Statement on Northern Ireland Finances on 28 February 2019, the Secretary of State for Northern Ireland said the budget position had:

> been constructed on the basis of a 3% (plus inflation) increase on the domestic regional rate, and 0% plus inflation on business rates. I consider that this is a necessary and important step to continue to support public services, particularly in health and education. I can also confirm that this budget settlement would provide the basis for the small business rate relief to continue.[5]

4 See Department of Finance, *Poundages 2018-2019*.
5 Northern Ireland Finances: Written statement – HCWS1370, 28 February 2019.

2.1 The Bill

Commentary on the provisions of the Bill

Clause 1 sets the levels of the regional domestic and regional non-domestic rates that are to be used in the assessment of rates and the billing of ratepayers in Northern Ireland for the year ending 31 March 2020. **Clause 1** (2) sets the domestic regional rates, expressed in terms of "pence per pound of rateable value", at 0.4574 pence and clause 1 (3) sets the non-domestic regional rate at 34.01 pence.

Clause 1 (4) and (5) clarify that the Department of Finance may, once Ministerial offices have been filled, vary the rates set by this Bill, using the established procedure of an order under the *Rates (Northern Ireland) Order 1977* and that it may set the rates for the whole of the year in which an order is made.

3. Renewable Heat Incentive (RHI)

Background

The Renewable Heat Incentive (RHI) is a Government scheme to encourage the uptake of renewable heating technologies. The scheme provides payments to domestic and non-domestic users who install a qualifying renewable heat technology. Qualifying technologies include biomass boilers and stoves, air source heat pumps, ground source heat pumps, flat plate and evacuated tube solar thermal panels. For more general information, see the Commons Library briefing on the Renewable Heat Incentive (this note does not cover the Northern Ireland scheme).

A version of the RHI operates across the UK, but the scheme in Northern Ireland was different. In its Programme for Government 2011-2015, The Northern Ireland Executive set a target of achieving 4% of heat consumption from renewable sources by 2015, and 10% by 2020.[6] In Northern Ireland the non-domestic RHI was set up in November 2012 and the domestic RHI was introduced in 2014.[7]

Problems with the RHI in Northern Ireland

By 2016, the RHI Scheme in Northern Ireland had overspent the budget, resulting in the need to support the Scheme from the Northern Ireland block grant in present and future years. As a result, the domestic and non-domestic RHI schemes were closed to new applicants in February 2016. Further information is available in a BBC article from November 2017: 'Need-to-know guide: Renewable Heat Incentive (RHI) scheme'.

The Northern Ireland Audit Office produced a report in July 2016 on the accounts of the Department of Enterprise, Trade and Investment (now Department for the Economy), which administered the RHI Scheme. The report concluded the overspend was in part due to two differences with the non-domestic scheme operating in Great Britain:

> The design of the scheme crucially did not introduce 'tiering' of payments as operated in Great Britain where a reduced rate was applied after the equipment had been operated for 15 per cent of hours in a year. This tiering would have helped prevent potential abuse of the scheme by operating the equipment simply to increase the grant received.
>
> The scheme in Great Britain also used 'degression' which allowed the amount of subsidy paid to change quarterly in response to changes in demand. From 2012 to 2016 the rates paid in Great Britain fell by 50% while the rates in Northern Ireland increased.[8]

As the contracts for payments last 20 years, the non-domestic RHI Scheme will result in ongoing expenditure for the Northern Ireland budget. Overspending in the RHI Scheme was a contributing factor to the collapse of power sharing in Northern Ireland. More information is available from

6 Northern Ireland Executive, *Programme for Government 2011-2015*, 12 March 2012.
7 Department for the Economy, "Renewable Heat Incentive". However, the issues with the RHI overspend addressed in this Bill relate to the non-domestic scheme.
8 Northern Ireland Audit Office, *Report by the Comptroller and Auditor General for Northern Ireland, Department for Enterprise, Trade and Investment*, Resource Accounts 2015-16, July 2016.

the Commons Library briefing *Northern Ireland: resignation of Deputy First Minister*.

RHI inquiry and consultation

A public inquiry into the RHI Scheme was established in early 2017, just before the collapse of the Executive. Hearings were held from November 2017 until December 2018. Transcripts of hearings, plus other relevant documentation, can be found on the inquiry website.

The inquiry was chaired by Sir Patrick Coghlin. In December 2018, Sir Patrick said it was not possible to give a date when the report would be published, but that it would be published as soon as reasonably possible.[9]

Legislative changes to RHI

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 under Section 113 of the *Energy Act 2011*.

Before the closure of the Scheme in February 2016, the Northern Ireland Executive 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 accredited after 18 November 2015, and there was a spike in applications for the Scheme before the new controls came into force.

As a result of concerns regarding the impact on public expenditure, the Northern Ireland Executive again amended the 2012 Principle 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*. Those regulations expired on 31 March 2018.

The *Northern Ireland (Regional Rates and Energy) Act 2018* further amended the 2012 Regulations to extend the tiered tariff and annual cap for another year, until 31 March 2019, beyond which there will be no legal basis for making payments for approximately 1,800 small and medium biomass installations, as the provisions of the 2018 Act revoked and replaced the provisions in the Principal Regulations for authorising payments to installations accredited before 18 November 2015. Further legislation is therefore necessary.

9 Renewable Heat Incentive Inquiry, "Chairman's remarks on preparation of inquiry report", 14 December 2018.

Box 1: Renewable Heat Association NI legal challenge

More than 500 members of the Renewable Heat Association NI (RHANI) have challenged the Department for the Economy's decision to reduce their tariff rates. They claim it was unlawful given the 20-year guaranteed rate of return on their investments. The RHANI also disputes the estimated overspend, arguing it could be as low as £60 million.

In December 2017, a High Court judge ruled that there was a compelling case for the reduced payments. That determination is reportedly due to be considered by the Northern Ireland Court of Appeal in 2019, with proceedings "widened out to all areas of dispute about the potential bill for a 20-year period".[10]

Current proposals

A Department for the Economy consultation on The future of the Northern Ireland Non-Domestic Renewable Heat Incentive Scheme also ran from June-September 2018. It published a consultation report on 31 January 2019, which identified "a preferred option for the long-term payment structure" to be taken forward via UK Parliament legislation.[11]

The *Northern Ireland (Regional Rates and Energy) (No. 2) Bill 2017-19* replaces the provisions of the *Northern Ireland (Regional Rates and Energy) Act 2018 Act* to provide a long-term tariff structure for biomass installations accredited under the RHI Scheme. According to the Bill's Explanatory Notes "these installations previously had the capacity to generate costs far beyond projected levels, placing public finances at risk".[12]

The Bill also provides a voluntary "buy-out" option where recipients of RHI support can choose to receive a one-off payment equivalent to a 12% rate of return over the lifetime of the contract, and then have their installation withdrawn from the Scheme. A budget of £4 million a year for three years is available for this option. This proposal is in line with the rate of return permitted under EU state aid rules, as the Explanatory Notes explain:

> 5. Engagement with the European Commission has clarified that its State aid decisions adopted for the Scheme to date provided approval for an average 12% rate of return. The long-term tariff structure has been developed with independent, expert advice to achieve a prospective rate of return of 12% for typical installations and is considered compliant with the extant State aid decisions for the Scheme.
>
> 6. Recognising that the new tariffs may mean participants with lower usage needs could see returns far below 12%, the Bill also makes provision for the introduction of voluntary "buy-out" arrangements in respect of the financial year beginning on 1 April 2019 and each of the two financial years immediately following. These arrangements allow participants to receive a payment equivalent to a 12% rate of return after which the installation is withdrawn from the Scheme.[13]

---

10 Alan Erwin, "Appeal over reduced RHI boiler payments to be heard next year", *Belfast Telegraph*, 19 October 2018.

11 Department for the Economy, "The future of the Northern Ireland Non-Domestic Renewable Heat Incentive Scheme".

12 Explanatory Notes, para. 4.

13 Explanatory Notes, para. 5.

The Bill requires a report on the number of participants who withdraw from the Scheme as part of the buy-out arrangements, from either the Department of Economy to lay before the NI Assembly or, in the absence of an Executive, the Secretary of State for laying before Parliament. The buy-out arrangements can only be exercised for three financial years commencing in 2019, and only in the absence of a Northern Ireland Executive.

The arrangements have reportedly been criticised for reducing the payments to farmers.[14]

3.1 The Bill

Commentary on the provisions of the Bill

Clauses 2 to 5 and the Schedule relate to the long-term provisions for the Renewable Heat Incentive Scheme.

Clause 2 provides for the *Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012* (the "Principal Regulations") to be amended in accordance with Clauses 3 and 4.

Clause 3 makes provision for amending the principal regulations to introduce a long-term tariff structure for the small and medium installations accredited under the Northern Irish RHI. The new structure will begin from 1 April 2019 and could be amended each year in line with the consumer price index. Subsection 12 inserts a new Schedule (which sets out the tariffs) and Subsection 11 provides for entries relating to small and medium installations in the existing schedules of the Principal Regulations to be omitted.

Clause 4 makes provision for a voluntary "buy-out" arrangement. Subsection 1 states that the powers to create this arrangement can only apply in a period when there is no Northern Ireland Executive (meaning the time between commencement of the Act and ending on the next occasion when the offices of all the Northern Ireland Ministers are filled).

Subsection 2 sets out that the Department of the Economy must publish arrangements which allow participants to apply and demonstrate the method by which the Department will determine whether they qualify for a payment and the amount of that payment. The Department must notify participants either if they don't qualify, setting out their reasons or, if they do qualify, with a "buy-out" offer with their payment amount, calculation, and notice of withdrawal from the Scheme from the date of payment (subsection 5), which the participant can accept or reject.

Subsection 3 and 4 provide more detail on the proposed buy-out method. Subsection 3 states that the proposed payment should consider the amount of previous RHI support payments received (meaning some participants may not qualify for a payment as the amount of previous support payments is such that the installation may already have generated the target rate of return). Subsection 4 sets out some elements which the Department may include in the buy-out arrangements, including

[14] Alan Preston, "RHI proposals are 'crushing blow' for farmers, says UFU", *Belfast Telegraph*, 28 February 2019.

administrative elements such as preventing a buy-out for participants whose periodic payments have been withheld, reduced or suspended, and suspending periodic payments to installations while a buy-out application is being dealt with.

Subsection 5 provides that where a participant has accepted and been paid the buy-out amount, the relevant installation ceases to be an accredited installation.

Clause 5 relates to the duty to report on the operation of buy-out arrangements. The Clause states that after each financial year when buy-out arrangements have been used, the Department of the Economy must prepare a report on the operation of the arrangements in that year. The report should include the number of participants who have received a buyout and the total amount of buy-out payments for that year. Subsection 3 and 4 state that when there is no Executive, the report must be sent to the Secretary of State to lay before Parliament, and when there is an Executive, it should be laid before the Assembly.

Commencement

Clauses 2 and 3 and the Schedule, relating to the RHI tariffs, are due to come into force on 1 April 2019.

Clauses 4 and 5, relating to the buy-out option and the duty to report on buy-out arrangements, will come into force two months after the day the Act is passed.

Clause 1, relating to regional rates, and 7 (extent and short title) are due to come into force on the day the Act is passed.

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

BRIEFING PAPER
Number
1 March 2019