

# NORTHERN IRELAND (REGIONAL RATES AND ENERGY) ACT 2018

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Regional Rates and Energy) Act 2018 (c. 6) which received Royal Assent on 28 March 2018.

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

## Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>3</b>
<b>Policy background</b>	<b>3</b>
Regional rates	3
Renewable Heat Incentive scheme	4
<b>Legal background</b>	<b>4</b>
Section 1 - Regional rates	4
Section 2 and Schedule - Renewable heat incentive scheme	4
<b>Territorial extent and application</b>	<b>5</b>
<b>Commentary on provisions of Act</b>	<b>5</b>
Section 1 - Regional rates	5
Section 2 and Schedule - Renewable heat incentive scheme	5
<b>Commencement</b>	<b>6</b>
<b>Annex A - Territorial extent and application in the United Kingdom</b>	<b>7</b>
Subject matter and legislative competence of devolved legislatures	7
<b>Annex B – Hansard References</b>	<b>8</b>

*These Explanatory Notes relate to the Northern Ireland (Regional Rates and Energy) Act 2018 (c. 6) which received Royal Assent on 28 March 2018*

## Overview of the Act

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

## Policy background

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

## Regional rates

- 4 The Act sets regional rates for domestic and non-domestic property for the 2018-19 rating year. It did so by stipulating a regional rate for domestic and non-domestic property, expressed in terms of "pence per pound of rateable value". The figures in the Act represent an inflationary increase in the non-domestic regional rate (based on a 1.5% GDP deflator) and an increase of inflation plus 3% in the domestic regional rate (i.e. a 4.5% increase). These were set out in the Secretary of State's Written Statement to Parliament on *Northern Ireland finances* on 8 March 2018,<sup>1</sup> and represented an important source of revenue underpinning the 2018-19 budget in Northern Ireland.

---

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

- 5 Regional rates are normally set by an order subject to the affirmative resolution procedure in the Assembly and made under Article 7 of the Rates (Northern Ireland) Order 1977. It was necessary to proceed by means of primary legislation at Westminster because, in the continued absence of an Executive, these rates could not otherwise be set. The regional rates for 2017-18 were set in the same manner by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017.

## Renewable Heat Incentive scheme

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

## Legal background

### Section 1 - Regional rates

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

### Section 2 and Schedule - Renewable heat incentive scheme

- 8 The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (the "Principal Regulations") established a Renewable Heat Incentive Scheme for non-domestic use, made under the powers conferred by section 113 of the Energy Act 2011. The Scheme is sponsored by the Department for the Economy (DfE) and the Principal Regulations also confer functions on DfE with regard to the general administration of the Scheme. The aim was to promote the use of renewable heat and it does that by providing for periodic payments to be made to accredited installations.

- 9 The Principal Regulations have been amended on several occasions to address concerns about the operation of the scheme. The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015 introduced a tiered tariff and an annual cap of 400,000kWhth for certain installations accredited after 18 November 2015. Installations accredited before that date were able to receive untiered and uncapped payments, a situation which created unacceptable pressures on public expenditure. Accordingly, the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 (the “2017 Regulations”) introduced the same tiered tariff and annual cap set out in the 2015 Regulations to installations accredited before 18 November 2015. The relevant provisions of the 2017 Regulations revoked and replaced the provisions in the Principal Regulations authorising payments to installations accredited before 18 November 2015. This meant that, when the 2017 Regulations ceased to have effect, there would no longer have been a legal basis for payments in respect of those installations.
- 10 The 2017 Regulations expire on 31 March 2018. In the absence of a sitting Assembly and Executive, they could not be extended other than by primary legislation at Westminster. As such, corresponding provision for 2018-19 (with an inflationary uplift) is set out in this Act to enable the continued protection of public finances while there is further work undertaken to develop and implement long-term cost control measures. State aid approval for such provision had been granted.

## Territorial extent and application

- 11 The Act extends to and applies in Northern Ireland only.

## Commentary on provisions of Act

### Section 1 - Regional rates

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

### Section 2 and Schedule - Renewable heat incentive scheme

- 14 This section provides for the continuation of the cost control measures introduced by the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 (“the 2017 Regulations”) to provide the Department for the Economy with sufficient time to fully develop and introduce long-term cost control measures by 1 April 2019.
- 15 Subsections (2)-(10) amend Regulation 36 of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (“the Principal Regulations”) to continue the tiered tariffs and usage caps introduced for small and medium biomass installations accredited before 18 November 2015. The controls were introduced by the 2017 Regulations and, if corresponding provision had not been put in place, would have ceased to have effect 31 March 2018.

*These Explanatory Notes relate to the Northern Ireland (Regional Rates and Energy) Act 2018 (c. 6) which received Royal Assent on 28 March 2018*

- 16 Subsection (12) inserts a new Schedule 3A to the Principal Regulations. The new Schedule set out the tiered tariffs for small and medium biomass installations accredited before 18 November 2015.
- 17 Subsection (14) ensures the correct tariffs are attributed for heat generated during the periods 1 April 2017 to 31 March 2019.
- 18 Subsection (15) provides that the Department for the Economy in Northern Ireland may subsequently make regulations under section 113 of the Energy Act 2011 to amend or revoke any provision amended or inserted by this section. This ensures that the power to make regulations under that section is not restricted by the amendments made by this section.

## Commencement

- 19 Section 1 came into force on Royal Assent; section 2 and the Schedule came into force on 1 April 2018.

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

20 The Act extends to and applies in Northern Ireland only.<sup>2</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Northern Ireland Assembly?
Section 1	No	No	No	Yes	Yes
Section 2	No	No	No	Yes	Yes
Section 3	No	No	No	Yes	Yes
Schedule	No	No	No	Yes	Yes

## Subject matter and legislative competence of devolved legislatures

21 All Sections and the Schedule affect matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Parliament will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, and given the pressing need for the regional rates level to be set, there was neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We were satisfied that the circumstances in which the Bill was introduced come within the terms of the Convention.

---

<sup>2</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

## Annex B – Hansard References

22 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	21 March 2018	<a href="#">Vol. 638 Col. 299</a>
Second Reading	21 March 2018	<a href="#">Vol. 638 Col. 306</a>
Committee of the whole House	21 March 2018	<a href="#">Vol. 638 Col. 331</a>
Report and Third Reading	21 March 2018	<a href="#">Vol. 638 Col. 331</a>
<i>House of Lords</i>		
Introduction	21 March 2018	<a href="#">Vol. 790 Vo. 419</a>
Second Reading	27 March 2018	<a href="#">Vol. 790 Col. 729</a>
Grand Committee	N/A	N/A
Report	N/A	N/A
Third Reading	27 March 2018	<a href="#">Vol. 790 Col. 761</a>
Commons Consideration of Lords Amendments	N/A	N/A
Royal Assent	27 March 2018	House of Commons <a href="#">Vol. 638 Col. 737</a>
		House of Lords <a href="#">Vol. 790 Col. 785</a>

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.









Published by TSO (The Stationery Office), part of Williams Lea Tag, and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

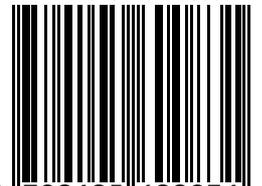
E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0333 202 5077

**TSO@Blackwell and other Accredited Agents**

£6.00

ISBN 978-0-10-560083-1



9 780105 600831