NORTHERN IRELAND (REGIONAL RATES AND ENERGY) ACT 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Regional Rates And Energy) Act 2019 (c. 13) which received Royal Assent on 26 March 2019.

- These Explanatory Notes have been prepared by the Northern Ireland Office (NIO) in order to assist the reader in understanding 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 will affect 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.

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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 billing of ratepayers in Northern Ireland for the financial year ending on 31 March 2020;
- implements a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme to replace the current interim arrangements for small and medium biomass installations introduced on 1 April 2018; and
- introduces a power to prepare and publish voluntary "buy-out" arrangements, in each of three consecutive financial years, beginning with 1 April 2019, under which participants can apply to receive a one-off payment in respect of an accredited RHI installation, upon receipt of which they are withdrawn from the Scheme, receiving no further periodic support payments. The voluntary buy-out provision is limited to a three year period after the Act is introduced and the power to establish arrangements in respect of a particular financial year may only be exercised by the Department in the current period while there is no Executive.

Policy background

Regional rates

2 The Act sets regional rates for domestic and non-domestic property for the 2019/20 rating year. It does so by stipulating a regional rate for domestic and non-domestic property, expressed in terms of "pence per pound of rateable value". The figures in the Act represent an increase of 0% (plus inflation) in the non-domestic regional rate and 3% (plus inflation) in the domestic regional rate. These were set out in the Secretary of State's Written Statement to Parliament on *Northern Ireland finances* on Thursday 27 February 2019, and represent an important source of revenue underpinning the 2019/20 budget in Northern Ireland.

3 Regional rates are normally set by an order subject to the affirmative resolution procedure in the Assembly and made under Article 7 of the Rates (Northern Ireland) Order 1977. However, there has been no Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. The Northern Ireland Assembly has not met since its first post-election meeting in March 2017. Without a sitting Assembly to legislate on these matters, it falls to Parliament to legislate to provide authority for expenditure in Northern Ireland.

4 It is necessary to proceed by means of primary legislation at Westminster because, in the continued absence of an Executive and a functioning Assembly, these rates could not otherwise be set. The regional rates for 2017-18 and 2018-19 were set in the same manner by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 and the Northern Ireland (Regional Rates and Energy) Act 2018 respectively.

Renewable Heat Incentive Scheme

5 These sections provide for a long-term tariff structure for all small and medium biomass installations accredited under the Non-Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland. These installations previously had the capacity to generate costs far beyond projected levels, placing public finances at risk. Interim cost control measures were introduced on 1 April 2017 for one year, to allow for the development of the long-term solution. These interim measures were then extended for a further year and are due to expire on 31 March 2019 beyond which there will be no legal basis for making payments for approximately 1,800 small and medium biomass installations. The long-term tariff structure ensures that costs are controlled for the remainder of the Scheme's life and protects the Northern Ireland budget from potentially very significant overspends.

6 A further key consideration in the development of the long-term tariff has been compliance with State aid rules. Engagement with the European Commission has clarified that its State aid decisions adopted for the Scheme to date provided approval for an average 12% rate of return. The long-term tariff structure has been developed with independent, expert advice to achieve a prospective rate of return of 12% for typical installations and is considered compliant with the extant State aid decisions for the Scheme.

7 Recognising that the new tariffs may mean participants with lower usage needs could see returns below 12%, the Act also makes provision for the Department to prepare and publish voluntary "buy-out" arrangements in respect of the financial year beginning on 1 April 2019 and each of the two financial years immediately following. These arrangements allow participants to receive a payment equivalent to a 12% rate of return after which the installation is withdrawn from the Scheme.

8 The voluntary buy-out provision is exercisable only in the absence of a Northern Ireland Executive. When an Executive is formed, it will have the ability to legislate for any future voluntary buy-out arrangements.

9 On completion of each financial year's voluntary buy-out arrangements, the Department for the Economy (DfE) is required to report on the number of participants who have withdrawn from the Scheme under those arrangements, and the total cost of the payments made to those participants by DfE. In the absence of a Northern Ireland Executive, this report will be provided to the Secretary of State for laying before Parliament. When an Executive is formed, any subsequent reports will be provided to the Economy Minister for laying before the NI Assembly.

Legal background

Section 1 – Regional rates

10 Article 6 of the Rates (Northern Ireland) Order 1977 requires a regional rate to be set for each rating year by the Department of Finance. Pursuant to Article 7 of that Order, it must be set by an order made by the Department and subject to affirmative resolution in the Assembly. This is not possible in the absence of a sitting Assembly so the rate for the 2019/20 rating year is set by this Act. The regional rate implemented by this Act is set without prejudice to the Department's powers to vary it by order in the usual way – and for the whole year - once Northern Ireland Ministerial offices are filled (see section 1(4) and (5)).

Sections 2 to 5 and Schedule - Renewable Heat Incentive Scheme

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

12 The Principal Regulations have been amended on several occasions to address concerns about the operation of the scheme. The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015 (the "2015 Regulations") introduced a tiered tariff and an annual cap of 400,000kWhth 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. As the 2017 Regulations were time limited, ceasing to have effect on 31 March 2018, a corresponding provision was introduced on 1 April 2018 as part of the Northern Ireland (Regional Rates and Energy) Act 2018 to enable the continued protection of public finances while further work was undertaken to develop and implement long-term cost control measures.

13 The relevant provisions of the 2018 Act revoked and replaced the provisions in the Principal Regulations authorising payments to installations accredited before 18 November 2015. This meant that, when the provisions in the 2018 Act ceased to have effect, there would no longer have been a legal basis for payments in respect of those installations. The relevant provisions in the 2018 Act expire on 31 March 2019. In the absence of a sitting Assembly and an Executive, they could not be extended other than by primary legislation at Westminster. As such, corresponding provision for tariffs from 2019/20 and for the remainder of the Scheme is set out in this Act.

14 The powers provided for the Department for the Economy (DfE) to introduce voluntary buy-out arrangements, under section 4, are limited to a three year period after the Act is introduced and can only be exercised during the period while there is no Northern Ireland Executive. The "period while there is no Northern Ireland Executive" is defined as the period beginning on the date of commencement of section 4 of this Act, and ending on the next occasion when the offices of all of the Northern Ireland Ministers are filled.

Territorial extent and application

15 The Act extends to Northern Ireland only.

16 All of the content of this Act affects matters within the devolved (transferred) competence of the Northern Ireland Assembly.

Commentary on provisions of Act

Section 1: Regional Rates

17 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 billing of ratepayers in Northern Ireland for the year ending 31 March 2020. Section 1(2) sets the domestic regional rates, expressed in terms of 'pence per pound of rateable value', at 0.4574 pence and Section 1(3) sets the non-domestic regional rate at 34.01 pence.

18 Section 1(4) and (5) clarify that the Department of Finance may, once Ministerial offices have been filled, 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.

Sections 2 to 5 and Schedule: Renewable Heat Incentive Scheme

19 Section 2 provides for the implementation of a long-term tariff structure for the Northern Ireland Non-Domestic Renewable Heat Incentive (RHI) Scheme to replace the current interim arrangements for small and medium biomass installations introduced on 1 April 2018.

20 Subsections (1)-(10) of Section 3 amend Regulation 36 of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ("the Principal Regulations") to introduce a long-term tariff structure for all small and medium biomass installations accredited under the RHI Scheme in Northern Ireland. The new long-term tariffs will apply from 1 April 2019 and will be linked to the Consumer Prices Index.

21 Subsection (11) amends Schedules 3 and 4 of the Principle Regulations to clarify that the small and medium biomass tariffs referenced in those Schedules no longer apply from 1 April 2019.

22 Subsection (12) inserts a new Schedule 5 to the Principal Regulations. The new Schedule sets out the tiered tariffs for all small and medium biomass installations from 1 April 2019.

23 Section 4 makes provision for the Department to prepare and publish voluntary buy-out arrangements in respect of the financial year beginning on 1 April 2019 and each of the two financial years immediately following, under which participants can apply to receive a payment in respect of an accredited RHI installation, and to be withdrawn from the Scheme.

24 Subsection (1) makes clear that the power provided for the Department to introduce voluntary buy-out arrangements can only be exercised during the period while there is no Northern Ireland Executive.

25 Subsection (2) sets out that the Department must publish the arrangements which allow participants to apply, and demonstrate the method by which the Department will determine whether they qualify for a payment and the amount of that payment. The Department is required to provide notice to applicants that do not qualify for payment, setting out how the Department came to that determination. For participants that do qualify for payment, the Department is required to inform them of the proposed amount and how it has been calculated. The qualifying participant then has the option to accept or reject the offer. Should the offer be accepted, the Department is required to make the payment.

26 Subsection (3) makes clear that in calculating the proposed payment amount the Department must take account the amount of previous RHI support payments received; after taking this into account, participants may not qualify for a payment as the amount of previous support payments is such that the installation may already have generated the target rate of return.

27 Subsection (4) sets out some elements which the Department may include in the buy-out arrangements including administrative elements and that for instance, where a participant has payments withheld or reduced under Part 7 of the Principle Regulations, they may not be eligible to receive a buy-out payment.

28 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.

29 Subsection (6) sets out the definition of "the period while there is no Executive" as meaning the period beginning on the date of commencement of Section 4 of this Act, and ending on the next occasion when the offices of all of the Northern Ireland Ministers are filled.

30 Section 5 introduces a duty on the Department, on completion of each financial year's voluntary buy-out arrangements, to report on the number of participants who have withdrawn from the Scheme under those arrangements, and the total cost of the payments made to those participants.

31 Subsections (3) and (4) make clear that, in the absence of a Northern Ireland Executive, this report must be provided to the Secretary of State for laying before Parliament and, at all other times, such reports must be laid before the NI Assembly.

Commencement

32 Sections 1, 6 and 7 come into force on the day on which it the Act received Royal Assent.

33 Sections 2 and 3, and the Schedule, will be commenced on 1 April 2018.

34 Sections 4 and 5 come into force at the end of the period of 2 months beginning with the day on which the Act received Royal Assent.

Annex A - Hansard References

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

Stage	Date	Hansard Reference
House of Commons		
Introduction	28 Month 2019	Vol. 655 Col. 554
Second Reading	6 March 2019	Vol. 655 Col. 1009
Public Bill Committee	6 March 2019	Vol. 655 Col. 1051
Report and Third Reading	6 March 2019	Vol. 655 Col. 1056
House of Lords		
First Reading	6 March 2019	Vol. 796 Col.697
Second Reading	12 March 2019	Vol. 796 Col. 979
Committee	19 March 2019	Vol. 796 Col.1392
Report Stage	19 March 2019	Vol. 796 Col.1392
Third Reading	19 March 2019	Vol. 796 Col. 1421
Royal Assent	26 March 2019	House of Commons Vol. 657 Col. 256
		House of Lords Vol. 796

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