LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Enterprise, Trade and Investment is:

   "That this Assembly endorses the principle of the extension to Northern Ireland of the provisions in Part 1 of the Energy Bill, as introduced in the House of Commons on 29 November 2012, dealing with Electricity Market Reform."

Background

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A(2). The Energy Bill was introduced in the House of Commons on 29 November 2012 . The latest version of the Bill can be found at:

   http://services.parliament.uk/bills/2012-13/energy.html

Summary of the Bill and its policy objectives

3. The Energy Bill will make provisions;

   - For the statutory framework and enabling powers for the Electricity Market Reform (EMR) Programme to encourage low carbon electricity generation or ensuring security of supply;
   - For the establishment and functions of the Office of Nuclear Regulation. and
   - About the government pipe-line and storage system and rights exercisable in relation to it;
   - About the designation of a strategy and policy statement;
   - For the making of orders requiring regulated persons to provide redress to consumers of gas or electricity;

- About offshore transmission of electricity during a commissioning period;

- For imposing further fees in respect of nuclear decommissioning costs; and for connected purposes.

It is the first of these, the Electricity Market Reform (EMR) Programme which will relate to Northern Ireland. Provisions about offshore transmission of electricity during a commissioning period will be taken through the Northern Ireland Offshore Energy Bill.

4. Electricity Market Reform (EMR) is aimed at addressing the challenges facing the UK which will require far reaching reforms to the electricity market to ensure the supply of reliable, low carbon and affordable electricity. In July 2011 DECC's White Paper entitled "Secure, affordable, Low-Carbon Electricity: a White paper for Electricity Market Reform" set out a commitment to transform the UK's electricity system to ensure that future electricity supply is secure, sustainable and affordable. EMR is the biggest change to the electricity markets since privatisation and will transform the UK's electricity network. It also demonstrated a continued commitment to renewable electricity generation, driving progress to meet 2020 renewables target.

5. The White Paper confirmed:

   - A move to a Feed-In Tariff with Contracts for Difference (FIT CfD) for large scale renewables (i.e. above 5MW);

   - The closure of the Renewables Obligation to new generation from 1 April 2017;

   - The introduction of an Emissions Performance Standard and a Capacity Mechanism; and

   - A new institutional framework to administer the FIT CfD and Capacity Mechanism.

6. Together, these measures will provide the necessary support and stable revenues to decarbonise electricity generation at least cost to the consumer. In time, it is hoped that EMR will enable different technologies with similar characteristics to compete against each other on a level playing field for their appropriate role in the energy mix.

7. Importantly, the White Paper included a commitment by the Coalition Government to work with the Devolved Administrations to design and deliver relevant elements of the policy package and ensure that reform is consistent with the devolution settlements and takes account of existing market arrangements.

Feed-in Tariff with Contracts for Difference

8. A contract for difference is a long term contract that provides stable revenues for low carbon energy projects at a affixed level known as a strike price. These contracts will help developers to secure the large upfront amounts of capital investment required for low carbon infrastructure. By providing a fixed price they will help lower the cost of capital. They will protect consumers from high bills by clawing back money from generators if the market price of electricity rises above the strike price.

UK Wide Adminsitration

9. Under the proposed UK wide Institutional Framework for the FIT CfD, Government will establish a new UK wide body to act as a single counterparty to the CfDs with new generators. The counterparty body will have levy raising powers to enable it to raise funds from suppliers to meet its costs, including payments to generators. This new body will make recommendations to Ministers in relation to strike and reference prices. This is not only regarded as the best solution for obtaining State Aid approval but also offers a holistic, consistent UK wide administration scheme for the FIT CfD.

10. It is likely that the number of Northern Ireland accreditations under a FIT CfD will be very low, probably no more than 10-15 per year, therefore the ability to access one UK wide administration system offers a cost effective and more streamlined solution than setting up a separate administration system here.

11. The UK Government in conjunction with the Devolved Administrations will continue to set objectives and take decisions on key rules and parameters. It is proposed that this will be by way of a UK-wide delivery plan which National Grid will have to report against and which will include a separate Northern Ireland section approved by the DETI Minister. This does not exclude the possibility that strike prices in Northern Ireland could be different to those in GB, while the costs are still socialised across the UK customer base.

Emissions Performance Standard

12. The Emissions Performance Standard (EPS) is part of the wider EMR package of measures. The objective of the EPS is to ensure that while fossil fuel-fired electricity generation continues to make an important contribution to security of supply, it does so in a manner consistent with decarbonisation objectives.

13. The EPS mechanism will provide further clarity on the regulatory environment for fossil fuel power stations, building on the requirement that new coal-fired power stations must be constructed with Carbon Capture and Storage (CCS). The EPS will complement the economic signals provided by the FIT CfD.

14. The Energy Bill will provide powers to allow the introduction of an EPS for fossil fuel plant to be set at an annual limit of CO2 equivalent to 450g/kWh (at baseload). This will provide a clearer regulatory signal on the need to reduce emissions, and means that typical coal-fired power stations subject to the requirement must limit their emissions by 40% compared to what they could otherwise emit. It is intended that EPS will only apply to plant at or over 50MW declared net capacity. The Minister for Enterprise, Trade and Investment will have the power to suspend EPS in Northern Ireland where security of supply becomes an issue.

15. Secondary legislation may be required and any separate Northern Ireland regulations will be subject to a statutory consultation before they are made. The Northern Ireland Environment Agency will be responsible for monitoring and enforcing the EPS in Northern Ireland.

RO Transition

16. As well as establishing a full system of feed-in tariffs in electricity it will be essential to maintain the banded Renewables Obligation (RO) Certificates. It is proposed to keep the RO open to new generating capacity for a transition period. During this transition period, some generating stations will have a choice between obtaining support under the RO or under the new FIT CfD scheme.

17. The Renewables Obligation for England and Wales will close to new generation from 1 April 2017. Keeping the Northern Ireland Renewables Obligation (NIRO) open to new generation on a standalone basis would not be financially viable and it was proposed, through a recent NIRO consultation, to also close the NIRO (to new generation) in 2017 and extend the end date of the NIRO from 2033 to 2037. This brings Northern Ireland

into line with the obligations in the rest of the UK and also give greater certainty to generators investing up to 2017.

18. Generating capacity is eligible for up to 20 years support under the NIRO. Therefore, if the NIRO is closed to new generating capacity on 1 April 2017, the NIRO will still continue to operate until 31 March 2037, allowing all generating capacity supported by it to receive 20 years of support.

19. The Energy Bill also makes provisions to implement a Fixed ROC scheme (some aspects of which will not come into force until 2027). Secondary legislation for all of the RO transition proposals will be required and consulted on in due course.

Provisions which deal with a Devolution Matter

20. The following provisions extend to Northern Ireland and deal with a transferred matter (which, under standing order 42A(10) falls within the definition of a "devolution matter", triggering the requirement for a Legislation Consent Motion):

- General Considerations (Part 1, Chapter 1);
- Contracts for Difference (Part 1, Chapter 2);
- Investment Contracts (Part 1, Chapter 5);
- The Renewables Obligation: transitional arrangements (Part1, Chapter 7);
- Emissions Performance Standard (Part 1, Chapter 8);

Exemption from Liability in Damages (clause 43, in Part 1);

Reasons for making the Provisions

21. The Energy Bill provides powers for DETI to implement Electricity Market Reform in Northern Ireland for the purpose of encouraging low carbon electricity generation or ensuring security of supply. at a lower overall cost than would be the case if Northern Ireland continues with the current Northern Ireland Renewables Obligation Scheme (NIRO) alone.

22. A key factor in the success of the Northern Ireland Renewables Obligation lies in the fact that it works within a UK-wide context. As such, the costs of both administering and incentivising the NIRO are spread across all UK

consumers. Diverging from a UK-wide position would impact on our ability to meet the 2020 target and would also mean higher costs to the NI consumer as the costs of a stand alone scheme would be borne solely by NI consumers

Reasons for utilising the Bill rather than an Act of the Assembly

23. These provisions off er, on this occasion, a more cost effective and timely solution to extend powers for electricity market reform to Northern Ireland via the DECC 2012 Energy Bill. It also make sit easier to maintain parity in relation to the support for renewable generation across the UK.

24. Extending the Energy Bill to Northern Ireland ensures that Northern Ireland can move forward at the same time as GB and avoids the need to introduce separate regimes and institutions at greater cost to the consumer in the future.

Consultation

25. The Coalition Government published a UK-wide White Paper in July 2011 setting out its proposals for Electricity Market Reform, including the introduction of a Feed-In Tariff with Contracts for Difference in place of the Renewables Obligation.

26. DETI has hosted three Northern Ireland events on EMR offering Northern Ireland stakeholders the opportunity to hear more about the proposals from DECC and DETI officials. All three events were well-attended and allowed for extensive discussion on how EMR could work in Northern Ireland.

27. DETI issued a public consultation in October 2011 on proposed amendments to the Northern Ireland Renewables Obligation and the EMR proposals. This consultation posed a number of questions to consultees on the reform including moving from the Northern Ireland Renewables Obligation to a FIT CfD, and administration on a UK-wide basis.

28. The overwhelming majority of responses on the EMR proposals agreed that the NIRO could not remain open to new generation after 2017 (when the ROs in Great Britain are also due to close) and that Northern Ireland should move to a UK-wide Feed-In Tariff with Contracts for Difference for large scale generation.

29. The majority of stakeholders also agreed with the proposal that the institution which will administer the FIT CfD should operate on a UK-wide basis and that powers for a large scale FIT and Northern Ireland's role in the institution should be introduced through the Westminster Bill.

Human Rights and Equality

30. The issues addressed in the Northern Ireland elements of the Bill relate mainly to those generating and supplying renewable electricity in NI. As such, it is felt the any policy changes will not have any differential impact on any of the equality groups.

31. There are not considered to be any human rights or any differential equality implications from the introduction of Electricity Market Reform in Northern Ireland.

Financial Implications

32. Initial set up costs for the UK-wide institution will be met by DECC, thereby incurring no costs to DETI. Ongoing administration costs are expected to be recovered from consumers via a modification to the System Operator's licence. There will be no cost to DETI, and the ongoing administration costs will be scrutinised by the Utility Regulator through the normal regulatory price control process.

Summary of Regulatory Impact

33. DECC completed a UK-wide Policy Impact Assessment of EMR proposals prior to publishing the White Paper "Secure, affordable, Low-Carbon Electricity: a White paper for Electricity Market Reform", which concluded that a suitable way forward included the measures outlined above.

34. DETI and the Utility Regulator also commissioned a study during 2011 to examine the implications and options for Northern Ireland arising from the EMR proposals. This study concluded that the type of large scale FIT CfD proposed for the GB energy market could work in Northern Ireland under the Single Electricity Market, albeit with some differences. The study also concluded that introducing a Northern Ireland-only mechanism would place too high a financial burden on electricity consumers and could impact on meeting the 40% renewable electricity target by 2020.

35. DETI has secured agreement from DECC that the costs associated with introducing and administering a FIT CfD in NI will continue to be spread a cross all UK consumers as currently happens with the NIRO (socialised costs). It has been agreed that if the market prices in Northern Ireland, which are set through the Single Electricity Market, were to fall below the

market prices in GB then Northern Ireland customers should not have to subsidise GB consumers as this would have major costs for the former and no benefits to the latter. Therefore socialisation is not two-way, minimising the burden to the Northern Ireland consumer.

Engagement to date with the Committee for Enterprise, Trade and Investment

36. The Committee for Enterprise, Trade and Investment has received a number of written briefings on EMR and has also taken evidence from a number of external contributors on the matter. . To date no formal comments have been received from the ETI Committee however minutes of their meetings indicated broad support for EMR and the concept of a UK wide FIT CfD.

Conclusion

37. The view of the Minister of Enterprise, Trade and Investment is that in the interests of providing DETI with the enabling powers for Electricity Market Reform in Northern Ireland, the Assembly should support a Legislative Consent Motion in the terms of the draft set out in paragraph one of this Memorandum.

Department of Enterprise, Trade and Investment
13 December 2012