

2nd 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 of the Energy Bill dealing with Power Sector Decarbonisation, as contained in Part 1 of the Bill as amended at Committee Stage in the House of Lords.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A (2). It is the second memorandum laid before the Assembly in relation to the Energy Bill which was introduced in the House of Commons on 29 November 2012.
3. The Energy and Climate Change (ECC) Select Committee in their pre-legislative scrutiny report of the Energy Bill recommended that the final Energy Bill should include a power to set a decarbonisation target in secondary legislation. It was at Commons Committee Stage in February 2013 that the Government brought forward the decarbonisation clauses that are now included as Part I of the Bill that enable the Secretary of State to set in secondary legislation a statutory 2030 decarbonisation target for the electricity generation sector . The extension of this provision to cover Northern Ireland, will allow a UK wide 2030 power sector decarbonisation target to be set in secondary legislation. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2013-14/energy/documents.html>

Summary of the Bill and its policy objectives

4. The Energy Bill generally makes 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;

- the amendments agreed at Committee Stage in the House of Lords extends to Northern Ireland the power of the Secretary of State at the Department of Energy and Climate Change to set a 2030 power sector decarbonisation target for the electricity sector in secondary legislation .
5. 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. The aim of setting a power sector decarbonisation target is to reduce the carbon intensity of the electricity generation sector. The costs of reducing carbon intensity in the power sector are generally lower than doing so in other sectors

Power Sector Decarbonisation

6. Committing to a 2030 decarbonisation target is principally to give an investment signal to the renewables industry beyond 2020. A decarbonisation target will also contribute to the broader climate change agenda. The intended effect of any decarbonisation target range would be to prompt a change in investment behaviour, principally in relation to generation but which would have knock-on effects for other elements of the system (such as transmission, supply chain and resulting costs for consumers), with no immediate effect on emissions from individual electricity generation plants.
7. A statutory decarbonisation target range would be a sector-wide target, placing a legal limit on the carbon intensity of the electricity sector in 2030, and not one which places a limit on the emissions of individual generators. A target would not increase or change the UK's existing statutory carbon targets, or impose additional requirements in respect of emissions. It would be to support the most cost-effective way of reaching these existing targets.
8. Sole responsibility to achieve any target range would be placed on the Secretary of State— these provisions do not impose any specific actions or any obligations on individual generators or on the System Operator.
9. A target would not be set until the Committee on Climate Change has provided advice on the 5th Carbon Budget which covers the corresponding period (i.e. 2028-32) and when the UK Government has set the level of the fifth carbon budget in law, which is due to take place in 2016. This is to allow, the decarbonisation target range to be considered alongside the overall pathway of the economy towards 2050, and the interaction between the power sector and other parts of the economy such as heat and transport.

Provisions which deal with a Devolution Matter

10. 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):

Decarbonisation (Part 1);

Reasons for making the Provisions

11. These amendments to the Energy Bill provide powers to allow the setting of a 2030 UK wide power sector decarbonisation target, once the fifth carbon budget has been set in 2016. This will provide a consistent investment signal for renewable generators across the UK that renewable generation is needed as part of the long term energy mix.
12. The absence of a target in Northern Ireland would mean that renewable investors in Northern Ireland would not have the same certainty that GB investors did and could therefore result in Northern Ireland renewable investment being negatively impacted.
13. Diverging from a UK-wide position on a power sector decarbonisation target may impact on our ability to meet the 2020 target. If a power was not taken now and instead delayed, an appropriate primary legislative vehicle may not be readily available, which would significantly delay the establishment of any legally-binding target and hence may impact on rates of investment in low-carbon generation.

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

14. Extending this provision to Northern Ireland will allow Northern Ireland to contribute to a wider non aggregated UK wide 2030 target, without placing any specific responsibility on Northern Ireland.
15. These provisions offer, on this occasion, the ability to be part of a UK wide target and an investment signal that extends equally across the UK, hence maintaining parity for investors in renewable generation across the UK

Consultation

16. The Energy and Climate Change (ECC) Select Committee in their pre-legislative scrutiny report of the Energy Bill recommended that the final Energy Bill should include a power to set a decarbonisation target in

secondary legislation. It was at Commons Committee Stage that the Government brought forward the decarbonisation clauses that are now included as Part I of the Bill.

17. In bringing forward the recommendation the ECC committee took into account the view of industry and investors that a target is needed as a clear and unambiguous signal to encourage more renewable generation. Not having a long term commitment to decarbonisation fails to set a clear vision for the future energy mix and could create uncertainty for investors. It could also adversely impact on supply chain investment and development of projects to come on line after 2020.
18. Responsibility to set and achieve the target will rest with the DECC Secretary of State, but Northern Ireland in line with the other Devolved Administrations will be offered a consultative role. This will involve:-
 - Consultation when setting or amending the level of the target range;
 - Consultation when developing secondary legislation dealing with the calculation of carbon intensity;
 - Consultation before reporting to Parliament on the policies and proposals for meeting a target range (and sending a copy of the report to Devolved Administration Ministers)
 - Sending a copy of the annual reports of carbon intensity to Devolved Administration Ministers
19. In addition, the differences in circumstances between GB and Northern Ireland must also be taken into account by the Secretary of State when setting or amending a decarbonisation target range. Furthermore, the new clauses put in place a monitoring and reporting framework that mirrors the framework already in place for achieving statutory carbon targets, as introduced by the Climate Change Act 2008.

Human Rights and Equality

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

21. There are not considered to be any human rights or any differential equality implications from the introduction of a power sector decarbonisation target within the Electricity Market Reform programme in Northern Ireland.

Financial Implications

22. Taking a power to set a decarbonisation target range through secondary legislation will not, of itself, impose any additional obligations or costs to business.
23. Since the level of the target range has not been set it is not possible to calculate the associated financial impacts. However, given that the UK is already committed to decarbonising the UK's economy, it could only be a good thing to give additional long term certainty to investors. This in turn will help to bring down the costs that capital investors face, and reduce the costs that will be passed on to consumers through their energy bills.

Summary of Regulatory Impact

24. Part 1 of the Energy Bill establishes a paving power to enable a decarbonisation target range for the power sector to be set in 2030 through secondary legislation. A decision to exercise this power will be taken once the Committee on Climate Change has provided advice on the level of the 5th Carbon Budget and when the government has set this budget in law, which is due to take place in 2016.
25. This UK wide policy measures qualified for a fast-track Impact Assessment because it is categorised as a low-cost regulatory measure (as it imposes no direct costs on business). A fast track assessment was produced and then approved by the Regulatory Policy Committee in Westminster prior to tabling the decarbonisation amendments to the Energy Bill earlier this year.
26. The Impact Assessment concluded that the policy as designed offers benefits both in terms of flexibility and timing.
 - a. In terms of flexibility, taking a power in primary legislation and setting the level of the target in secondary legislation allows a degree of flexibility to be retained. It allows for the target to be reviewed and amended in the event of certain circumstances being met (these are clearly defined in primary legislation) thereby ensuring that additional costs are not imposed on the economy in order to meet the target

range. This helps to ensure that a target range is set at the right level to encourage investment in low-carbon technologies without adding unnecessary costs to the economy to achieve this (which would be primarily transferred onto consumer energy bills). If a target was incorporated directly into primary legislation it would offer much less flexibility to respond to unforeseen circumstances.

- b.** In terms of timing, obtaining the legal authority now for setting a target at a later date would prevent any delay in the establishment of a legally-binding target which could impact on rates of investment in low-carbon generation.
- 27. If and when the power is exercised to set a decarbonisation target range, in line with the regulatory requirements a full UK wide Impact Assessment (including consultation) would be undertaken. This would consider the costs and benefits to businesses, consumers and the wider economy across a number of scenarios representing different decarbonisation levels in 2030. The results of this analysis and any consultation would then inform the level of the target range that is set through secondary legislation.

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

- 28. The Committee for Enterprise, Trade and Investment received a written briefing on the need for a LCM on power sector decarbonisation on 12th June. To date no formal comments have been received from the ETI Committee however minutes of their meeting on 20 June indicated they were content to support Electricity Market Reform and the setting of a 2030 decarbonisation target for the power sector.

Conclusion

- 29. The view of the Minister of Enterprise, Trade and Investment is that in the interests of extending a power sector decarbonisation target to 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
6 September 2013