

# **RHI (CLOSURE OF THE NON-DOMESTIC SCHEME)**

## **BILL**

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### **EXPLANATORY AND FINANCIAL MEMORANDUM**

#### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department for the Economy (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause does not seem to require an explanation or comment, none is given.

#### **BACKGROUND AND POLICY OBJECTIVES**

3. The New Decade, New Approach (NDNA) deal, published in January 2020, stated that: “RHI will be closed down and replaced by a scheme that effectively cuts carbon emissions”.
4. The Executive confirmed, in July 2024, its preferred option to close the Non-Domestic RHI Scheme (<https://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-for-the-economy-wms-30-july-2024/>).
5. The Department is progressing legislation to close the Scheme in line with these agreements.

#### **CONSULTATION**

6. A public consultation has not been undertaken on the text of the Bill, as it is technical in nature and has no direct impact on Scheme participants.
7. A public consultation will be carried out on the draft Regulations to be made under the new powers contained in the Bill.

#### **OPTIONS CONSIDERED**

8. Option 1 – Do nothing
9. Option 2 – Progress primary legislation to empower the Department to make regulations to close the Non-Domestic RHI Scheme.

10. Option 1 is ruled out on the basis that it is not consistent with the Executive's preferred option to close the Scheme.

## **OVERVIEW**

11. The Bill will provide the Department with the powers to bring forward regulations to close the Non-Domestic Renewable Heat Incentive Scheme.

## **COMMENTARY ON CLAUSES**

Clause 1(1) sets the scene by stating that certain legislation is subject to the Bill: section 113 of the Energy Act 2011 ("section 113"), which sets out the Department's current powers in relation to the RHI Scheme, and the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ("the 2012 regulations"), which established and provide for the Non-domestic RHI Scheme. The Department of Enterprise, Trade and Investment was renamed the Department for the Economy under section 1(3) of the Departments Act (NI) 2016 (c.5).

Clause 1(2) confirms that the operation meanwhile of section 114 of the Energy Act 2011 (Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113) is not affected, albeit that this section will eventually become redundant given the impact of clause 1 on what is currently done under section 113.

Clause 1(3) to (5) provides the Department with the power, by regulations, to partially or completely close the Non-domestic Renewable Heat Incentive Scheme, including provisions in relation to the arrangements, administration and financing of scheme closure (and as to conferring functions).

Clause 1(6) expressly allows regulations to be made from time to time to (i) alter the Scheme until the Scheme is completely closed, and (ii) amend or revoke part or all of the 2012 regulations (or other regulations made under section 113) in pursuance of closure of the Scheme.

Clause 1(7) clarifies that, in the context of closure of the Scheme (i) references to payments in subsection (2) of section 113 may include one-off, periodical or instalment payments, and (ii) provision may be made that payments may be calculated on the basis of deemed or notional generation of heat.

Clause 1(8) to (13) is technical and definitional, for the sake of accuracy and completeness (and to avoid doubt as to intent).

Clause 1(8) and (9) addresses the interaction of particular aspects of clause 1 with relevant statutory provisions which generally govern the making of regulations. For example (in connection with powers conferred by Assembly Acts), see section 17(1), (2) and (5) of the Interpretation Act (Northern Ireland) 1954 (<https://www.legislation.gov.uk/apni/1954/33/data.pdf>).

Clause 1(10) ensures that regulations may make provision concerning events that have occurred prior to the coming into operation of the Act. This is to facilitate the transition of participants from the current Scheme to the closure arrangements.

Clause 1(11) provides that regulations made under the new powers in the Bill are subject to the draft affirmative procedure just as the powers in section 113 are.

Clause 1(12) makes it clear what amounts to partial or complete closure of the Scheme.

Clause 1(13) sets out further key definitions for the section.

Clause 2 provides for the Act to come into operation on the day after receiving Royal Assent, and sets out the title of the Act.

## **FINANCIAL EFFECTS OF THE BILL**

12. The Bill itself has no direct financial effects. The financial effects of the regulations made under the powers set out in the Bill will be assessed separately.

## **HUMAN RIGHTS ISSUES**

13. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

## **EQUALITY IMPACT ASSESSMENT**

14. An Equality Impact Assessment on the new powers in the Bill has not been carried out, as there is no direct impact on equality; equality impacts of the subordinate legislation to be made under the new powers will be assessed separately.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

15. A Regulatory Impact Assessment on the new powers in the Bill has not been carried out, as there is no direct impact on businesses; regulatory impacts of the subordinate legislation to be made under the new powers will be assessed separately.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

16. A Data Protection Impact Assessment on the new powers in the Bill has not been carried out, as there is no direct impact on data protection; data protection impacts of the subordinate legislation to be made under the new powers will be assessed separately.

## **RURAL NEEDS IMPACT ASSESSMENT**

17. A Rural Needs Impact Assessment on the new powers in the Bill has not been carried out, as there is no direct impact on rural needs; rural needs impacts of the subordinate legislation to be made under the new powers will be assessed separately.

## **LEGISLATIVE COMPETENCE**

At Introduction the Minister for the Economy had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the RHI (Closure of the Non-Domestic Scheme) Bill would be within the legislative competence of the Northern Ireland Assembly.”*









**Northern Ireland  
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