

## Energy



From: Jenny Pyper  
Energy Division  
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1. Andrew Crawford
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### **ENERGY BILL – POTENTIAL LORDS AMENDMENTS AND IMPLICATIONS FOR NORTHERN IRELAND**

<b>Issue:</b>	To inform you of Northern Ireland implications of <u>potential and confidential</u> Government amendments to the Energy Bill on microgeneration feed-in-tariff (FIT) and renewable heat incentive.
<b>Timing:</b>	Energy Bill must receive Royal Assent in December. BERR needs an answer from Northern Ireland by end September – clauses unlikely to be introduced to Lords before October.
<b>Need for referral to the Executive:</b>	Timing would prevent an LCM (and associated Executive referral stage) even if it is decided that Northern Ireland <u>should</u> be covered by potential amendments. Whatever you decide, the ETI Committee will need to be briefed if the clauses are introduced.
<b>Presentational Issues:</b>	If the clauses on microgeneration FIT are brought forward in the Lords, Northern Ireland could end up as the only part of the UK with a Renewables Obligation (RO) for microgeneration.
<b>Freedom of Information:</b>	Exempted under Section 35 of the Fol Act.
<b>Programme for Government /PSA Implications:</b>	Not Applicable.
<b>Financial Implications:</b>	None at present.
<b>Legislation Implications:</b>	If microgeneration FIT and renewable heat incentive legislated for in the Lords this

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autumn, we will need a timetable for similar Northern Ireland legislation.

**Statutory Equality Obligations:**

No equality implications identified.

**Recommendation:**

That the Minister:  
 (i) agrees that we should not seek to be included in these potential amendments to the Energy Bill;  
 (ii) agrees that NI should not be covered by a UK heat strategy and that DETI should provide BERR with a form of words to cover Northern Ireland; and  
 (iii) notes that we may need to reflect any Energy Bill amendments following analysis of the implications for Northern Ireland in legislation here.

**Background***Parliamentary*

1. You may recall that a Legislative Consent Motion was taken through the Assembly early this year to agree that, through the Energy Bill, Westminster would take on responsibility for licensing offshore gas storage etc. in NI waters.
2. It was expected that the Energy Bill would reach Royal Assent before the summer 2008 break, but this did not happen. Now the Bill must reach the end of its passage through Parliament before the end of this Parliamentary session (the new one starts 3 December) or it will fall. There is increasing concern in BERR that the Lords will bring forward a number of amendments which might result in “ping-pong” between Lords and Commons, putting the timetable of the Bill in jeopardy.
3. BERR officials are preparing potential Government concessions to the Lords in case they might be needed late in October at Lords Report stage. Those concessions are likely to be around introduction of a Feed-in Tariff (FIT) for electricity microgeneration and some form of incentivisation for renewable heat. We have had regular dialogue with BERR but it seems to us that much of the thinking around such measures has been very rushed and without detailed consultation on how such measures would operate or their impact.
4. It is important to stress that no decision has been made by GB Ministers on introduction of concessions and that any work is being done on a contingency basis – it is highly confidential. BERR officials have nonetheless been frank about the depth (or lack of it) in the analysis and scoping and we have recently had sight of the draft clauses.

*Devolution aspects*

5. We had some initial concern that Treasury wished to view both these measures as taxes and therefore excepted matters, but, while their lawyers have stated that they are taxes for administrative purposes, they have agreed that for

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devolution purposes the matters are transferred for Northern Ireland, and OLC here agrees.

6. This means that, if Northern Ireland wanted to be included, a legislative consent motion (LCM) would be required. LCMs have been done in short time-frame: DSD got one through in less than a month. The issue would, however, probably need to be uncontroversial in order to squeeze the 26-stage process of an LCM through the Assembly before third reading in the Lords. This would be the very last point at which any NI specific clauses could be pulled out if the LCM were not approved. Getting an LCM through would also depend on the exact timing of the tabling of Lords amendments relative to ETI and Executive Committee meetings. The provisional information received from BERR would simply not allow for an LCM, particularly given the Assembly recess at the end of October.

*Policy aspects – electricity microgeneration FIT*

7. NI has followed BERR policy in proposals to reform the Renewables Obligation (RO) and consulted on banding (see submission of 10 September from Malachy McKernan on this issue) which would give microgenerators the additional incentive of two Renewable Obligation Certificates (ROCs) per mega-watt hour (MWh) instead of one. BERR has made it clear in the UK Renewable Energy Strategy currently out for consultation that it will stick with the RO for large-scale renewables at least until 2020 to provide certainty for investors. We could not do otherwise without causing the same potential issues for investors.
8. The majority (over 90%) of grants given out by DETI under the Reconnect scheme were for heat technologies – of these, most were for solar hot water – since most households do not have much capacity for electricity generation through micro-wind or photovoltaics. We do not know at this stage whether the Reconnect programme might be continued – that will be subject to the outcome of an evaluation this autumn. However, the provision of 2 ROCs for microgeneration (or indeed a generous electricity FIT) might provide a limited (limited because heat is the main form of domestic microgeneration) form of incentive in the absence of a grant scheme.
9. If powers for a microgeneration FIT were to be introduced for GB through the Energy Bill, we would have to consider how to handle the NI position – but it would undoubtedly be difficult to maintain the RO for microgeneration when the rest of the UK and ROI had a microgeneration FIT. Having said that, we would be heavily criticised for agreeing to have BERR legislate for NI without an evidence-based consultation or impact analysis here.
10. However, the option of a FIT for microgeneration provides another opening for those who believe we should harmonise incentives with the Republic for all levels of electricity generation.

*Policy aspects – renewable heat incentivisation*

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11. If concessions are required in the Lords, BERR may also offer amendments to introduce broad powers on what will probably be a Renewable Heat Incentive (rather than a Renewable Heat Obligation). We are not in a position to advise you on what form of heat incentivisation might be best for Northern Ireland: our feeling is that, since, for example, NI's domestic heat market is so different from GB's (eg 70% oil supplied in the main by small local companies as opposed to 80% gas there provided by a handful of large companies) there are likely to be very different issues for legislation here, but we cannot be certain without further work. We have not, as yet, been in a position to devote resources to this area of work.
12. If powers for a renewable heat incentive are brought forward in the Energy Bill, we will come under pressure to explain what we are doing in this area and to legislate similarly. This is not an area where we have a strong evidence base either – we had planned to do some work on it in late 2009 but the BERR pressure has moved it up the agenda.
13. When you announced in June that Northern Ireland would be covered by the UK Renewable Energy Strategy consultation, the press release stated that there would be a seminar on the RES in Northern Ireland. In light of BERR developments we decided that the most useful focus of such a seminar would be on renewable heat and held that seminar on 8 September with a significant input from the Director of Heat Policy in BERR. It was well attended and received so we hope that the contact list will be useful in creating a stakeholder group on the issue.
14. Since we would wish to develop the amount of renewable heat in Northern Ireland we will want to incentivise it in some way. We will need a study to determine what is required here and, if necessary, to legislate. There is a Gas Bill planned for later in 2009/10 and it may be that we could use that opportunity to legislate for a renewable heat incentive if we are to follow BERR and perhaps also make provision for a microgeneration feed-in tariff. If we decide that NI requires a different policy, then it may take longer to develop.

*Heat as a policy area – GB and NI*

15. Heat and renewable heat are new policy areas for the UK, the latter driven mainly by the proposed Directive on renewable energy, but also by other factors such as climate change targets e.g. through low-carbon heat. BERR plans to launch a heat strategy (renewable heat is only a sub-set of heat policy) later in the autumn, probably mid-November, in conjunction with an Energy Savings (the new name for energy efficiency) plan from DEFRA. BERR has prioritised this area and deployed an additional 20 staff. BERR has asked if NI wishes the heat strategy to cover us as well – they need a response by the end of September.
16. Heat does not currently exist in NI statute nor as a discrete policy area in DETI. BERR's outline heat strategy is very much an early draft but at this stage we see no reason why Northern Ireland could not be included. It would be useful to

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use the greater resource that BERR has to enable NI to be able to claim some form of "heat strategy".

17. However, there are cross-cutting implications in the draft strategy for NIAUR, DSD on fuel poverty, DOE on planning, and DFP on subsidies/grants (though it looks at this stage as though grants for e.g. district heating networks are not envisaged). Inclusion in the BERR heat strategy might: (a) raise expectations on heat policy in NI which we would be unable, at this stage, to satisfy; and (b) would require us to resource a paper to the ETI Committee and Executive which would jeopardise other workstreams this autumn. I cannot see how we could develop a credible position in the timeframe so instead I propose that we give BERR a positive form of words for a short section on Northern Ireland which would allow us to be included in general terms but spell out areas of policy difference which will require a tailored NI plan.

*Recommendations*

18. I am sorry that this is such a lengthy submission but in the circumstances I wanted to set out as full an understanding as possible of the situation and our limited options. I recommend therefore that you:
- agree that we should not seek to be included in these potential amendments to the Energy Bill (para 6);
  - agree that NI should not be covered by a UK heat strategy and that DETI should provide BERR with a form of words to cover Northern Ireland (para 17); and
  - note that we may need to reflect any Energy Bill amendments following analysis of the implications for Northern Ireland in legislation here.
19. The resource implications of the accelerated BERR work programme for Energy Division are currently being scoped and prioritised.



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