



Department for the
Economy
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NON-DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME

FUTURE OF THE SCHEME

CONSULTATION DOCUMENT

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1. MINISTER'S FOREWORD

In January 2020 the New Decade, New Approach (NDNA) document, published by the UK and Irish Governments, provided the basis for restoration of devolution in Northern Ireland. NDNA included a commitment for reform to take account of the findings of the Independent Public Inquiry into the Non-Domestic Renewable Heat Incentive (RHI) Scheme and, in relation to the Executive's potential Programme for Government strategic priority of addressing climate change, a specific commitment to closure of RHI itself and replacement with a scheme which effectively cuts carbon emissions. This consultation seeks views on options for the future of the Non-Domestic RHI Scheme.

While public attention on the Non-Domestic Scheme has focused on small and medium sized biomass installations, which account for 98% of accredited installations on the Scheme, the consultation considers the future for all of the renewable technologies that operate on the Non-Domestic Scheme.

RHI comprises two Schemes – the 20 year Non-Domestic RHI Scheme, which was the focus of the Public Inquiry led by Sir Patrick Coghlin and the seven year Domestic RHI Scheme. The two are separate and the Domestic Scheme, which supports private individuals heating their homes with renewables, was outside the scope of the Public Inquiry. The Domestic Scheme is closed to new applications and will continue to provide support to participants until its natural conclusion in 2023.

The Non-Domestic RHI Scheme was established in 2012 to encourage use of renewable heat by businesses. As has been widely reported, the tariff support introduced at the outset was set higher than the actual cost of producing the heat, meaning that the Scheme became financially unsustainable. This led to significant funding of £33.8m from the NI block grant being diverted from other essential public services to sustain RHI tariff payments.

The subsequent legislative changes – suspension of the Scheme to new applicants, introduction of tiering and usage caps for small and medium biomass installations and adjustments to the small and medium biomass tariffs – were critical to bring costs under control and realign the Scheme with its original intentions and approvals, including State aid.

While essential, the impact of these changes on legitimate participants has also been significant. Independent research into hardship, undertaken by Andrew Buglass and published by my Department in April 2020, confirmed that some have found the revised tariffs and reduced cash flow challenging, with significant negative impacts on their businesses. Furthermore, the public attention and scrutiny of the Scheme, with negative perceptions of those participating, has for some brought its own challenges.

It is important to also recognise that the Scheme has failed to effectively reduce carbon emissions by incentivising the efficient use of renewable heat whilst providing value for money to the taxpayer. It is not possible to measure its outcomes in respect of mitigation of climate change.

The status quo is not sustainable and this is reflected in the NDNA commitment. The changes to the Scheme's tariffs are subject to ongoing legal action and with the Scheme at present scheduled to operate until 2036 such action could be protracted. My Department will robustly defend such cases, but the legal uncertainty has its own impact on participants and on the public finances.

The final decision on the future of the Non-Domestic RHI Scheme will be taken by the Executive collectively and the outcome of this consultation will assist the Executive in making its determination. I have been clear since my appointment as Minister for the Economy that in considering the future of RHI I intended to be fair both to those participants who joined the Scheme legitimately and acted in good faith and to the taxpayers who fund it. I have a duty to ensure that the next steps represent value for money and are affordable.

The proposal for a compensated closure of Non-Domestic RHI seeks to meet these objectives and enable the introduction of effective and new renewable support in due course. It has been endorsed by the Executive and is in line with the New Decade, New Approach commitment.

I understand that some hold the view that no further money should be spent on RHI. However, for many businesses, who made significant investments to participate, the Scheme has as many as 15 years remaining. Therefore, I firmly believe that if it is to be closed, compensation for that early closure should be paid to its legitimate participants, who invested in the Scheme in good faith.

The Executive's preferred option for Scheme closure seeks to deliver appropriate and reasonable compensation, in a fair and equitable manner. It acknowledges the challenges experienced by some participants as a result of previous tariff changes, incorporates the principle of fair and equal treatment for those who have participated legitimately as recommended within the Buglass report on hardship and it takes account of the views expressed in responses to the public consultation on Cornwall Insight's recommended medium biomass tariffs.

My Department has acknowledged the mistakes made in establishing the Non-Domestic RHI Scheme. The Scheme's closure would make way for replacement support to be brought forward, which would more effectively reduce carbon emissions in generation of heat. Steps have already been taken to reduce the opportunity for such errors to occur again, but when mistakes have had the impacts on citizens and businesses we have seen as a consequence of RHI, I believe steps must be taken to seek an appropriate remedy.

I would welcome your views and evidence by the consultation closing date of Friday 9 April 2021.

Diane Dodds MLA
Minister for the Economy

2. INTRODUCTION

WHY WE ARE CONSULTING

- 2.1. The Northern Ireland Renewable Heat Incentive Scheme (NIRHI) for non-domestic use was introduced in 2012 to incentivise generation of heat from renewable sources rather than fossil fuels with the objective of reducing carbon emissions. Installations accredited to the Scheme receive periodic payments for eligible heat generated from renewable sources, calculated based on tariffs which are dependent upon the renewable technology being used to generate heat and the size of the installation. Participation on the Scheme was to last for a period of 20 years from the initial date of an installation's accreditation.
- 2.2. The report of the RHI Public Inquiry¹ documented the critical flaws in the Scheme's original tariffs. These, coupled with significant uptake from participants, resulted in an overspend and long term budgetary concerns. As a result, the Non-Domestic Scheme was suspended to new applicants with effect from 29 February 2016. The Scheme remains operational for accredited installations, with regulations providing for tariff payments for generation of eligible heat for a period of 20 years from the date of accreditation. The final payments under the Scheme would be expected in 2036.
- 2.3. In January 2020 publication of the New Decade, New Approach² document provided the basis for restoration of devolution and the formation of a new Northern Ireland Executive. Annex 1 of New Decade, New Approach, in relation to proposed Programme for Government actions on climate change, stated the following on RHI: *"RHI will be closed down and replaced by a scheme that effectively cuts carbon emissions."*
- 2.4. NIRHI incorporates both Domestic and Non-Domestic schemes. The Domestic Scheme is entirely separate to the Non-Domestic Scheme, but was also suspended to new applicants on 29 February 2016.
- 2.5. The Domestic Scheme has not been subject to the same issues as the Non-Domestic Scheme. It provides for payments for a period of seven years rather than the 20 years of the Non-Domestic Scheme, and has annual expenditure of approximately £3m.
- 2.6. This consultation does not affect the Domestic NIRHI Scheme, which will remain operational until its natural conclusion in 2023. Further references to 'the Scheme' or 'NIRHI' relate solely to the Non-Domestic NIRHI Scheme.

¹ [The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive \(RHI\) Scheme](#)

² [The New Decade, New Approach document](#)

WHAT WE ARE CONSULTING ON

- 2.7. This consultation seeks views on the future of the Non-Domestic NIRHI Scheme, in light of the commitment within New Decade, New Approach.
- 2.8. The focus of scrutiny on the Non-Domestic NIRHI Scheme, and all amendments to its tariffs, has been the small and medium biomass technologies (those with capacities of up to 199kW) which account for 98% of the Scheme's accredited installations. The remaining 2% of the Scheme's accredited installations comprises large biomass installations and a number of other technologies – small and medium heat pumps and solar collectors. This consultation considers all technologies accredited under the Scheme.
- 2.9. It is the view of the Department for the Economy that the final option progressed for the future of the Scheme should be guided by the following objectives:
- be consistent with the political agreement of the main political parties in Northern Ireland, as expressed within the New Decade, New Approach document;
 - be fair to legitimate participants of the Scheme who entered and participated in good faith;
 - consider the findings of the 'Buglass report'³ on hardship, and the outworking of the public consultation on Cornwall Insight's recommended medium biomass tariffs⁴;
 - be fair to wider taxpayers, delivering value for money and being affordable within existing budgets;
 - address the systemic weakness in the design and operation of the Scheme, including long term financial uncertainty for both participants and taxpayers arising from the necessary tariff changes to the Scheme to date; the likelihood of future tariff reviews should the Scheme remain open, and ongoing risk of associated legal challenges; and
 - facilitate the most efficient use of available resources to achieve the strategic environmental objectives of cutting carbon emissions and addressing the challenges of climate change.
- 2.10. This consultation considers four potential options for the future of the Scheme:
- Option 1: Scheme remains operational for current participants with present tariffs for all technologies (status quo);
- Option 2: Scheme remains operational for current participants with all tariffs subject to review and adjustment as necessary;
- Option 3: Scheme closure with no further payments made to participants; or

3 [NI Non-Domestic RHI - Buglass Energy Advisory - Research into Hardship - Report of Findings](#)

4 [NI Renewable Heat Incentive Scheme - 2020 Tariff Review](#)

Option 4: Scheme closure with compensation paid to legitimate current participants.

2.11. The options are discussed in detail in Section 4 of this document.

2.12. It may not ultimately prove possible for the option selected at the conclusion of this process to achieve all of the objectives outlined above.

2.13. The Northern Ireland Executive's preferred approach is Option 4: Scheme closure with compensation paid to legitimate current participants. Given the cross-cutting nature of RHI, it will be for the Executive to take the final decision on the future of the Scheme, informed by the outcome of this consultation. Closure of the Scheme, or amendment of its tariffs should it remain operational, will also require passage of legislation through the Northern Ireland Assembly.

HOW TO RESPOND

2.14. This public consultation is open until 5pm on Friday 9 April 2021. Please respond using the question and answer template provided. Your response will be most useful if it is framed in direct response to the question posed. You will also have the opportunity to submit any additional observations or relevant information which you consider may be of assistance.

2.15. We encourage respondents to respond to this consultation online wherever possible as this is the preferred method of receiving responses. This can be done at <https://consultations.nidirect.gov.uk/dfe-rhi-task-force/nirhi-consultation-2021>

2.16. Responses submitted in writing or by email will also be accepted. Should you choose to respond online, you may submit any supplementary material that you consider may be relevant and of assistance in writing or by email. Email responses to this consultation should be sent to RHIConsultation2021@economy-ni.gov.uk. Alternatively you may post your response to the Department for the Economy at:

Non-Domestic RHI Scheme Consultation
Energy Group
Department for the Economy
Netherleigh
Massey Avenue
Belfast
BT4 2JP

2.17. If you require an alternative format (Braille, audio, CD, etc.), please contact the Department on 0300 200 7835 and appropriate arrangements will be made as soon as possible.

- 2.18. Following the end of the consultation, the Department may publish anonymised quotes from your consultation response but these will not identify you as an individual. Further detail on this, and how it relates to access to information legislation, can be found at Section 9.

IMPACT ASSESSMENTS

- 2.19. The impact of the options has been analysed for equality of opportunity and it was determined that an Equality Impact Assessment (EQIA) was not required.
- 2.20. At this point it is not envisaged that implementation of any of the options would result in a change to the current method of processing or handling data. A draft Data Protection Impact Assessment Report has been prepared.
- 2.21. A draft Rural Needs Impact Assessment (RNIA) and a draft Regulatory Impact Assessment (RIA) have been completed.
- 2.22. Copies of the equality screening form and draft impact assessments are available on the Department's website. These will be revisited to ensure all relevant issues have been taken into account and finalised prior to the introduction of any new legislation.

3. CONTEXT AND SCHEME BACKGROUND

CONTEXT

- 3.1. On 1 November 2012, the former Department of Enterprise, Trade and Investment (DETI)⁵ launched the Non-Domestic NIRHI Scheme. It was established to contribute to the 2009 Renewable Energy Directive (2009/28/EC) UK target of increasing the UK share of renewable energy to 15% by 2020 and the NI Executive Programme for Government (PfG) target of achieving 4% of renewable heat by 2015. The PfG target was an interim milestone towards achieving the target of 10% renewable heat by 2020 set out in the Executive's Strategic Energy Framework.
- 3.2. The Scheme aimed to increase the uptake of renewable heating technologies and to reduce carbon emissions in Northern Ireland by providing ongoing tariff-based payments to compensate for the projected difference in cost between renewable heating systems and less environmentally-friendly fossil fuels.
- 3.3. The tariffs were calculated with the intention of compensating for the additional costs of renewable heat compared to a fossil fuel alternative. They aimed to contribute towards any difference in fuel and maintenance costs, and additional administrative "hassle" associated with the renewable technology. It was also intended that they would provide a typical installation on the Scheme with a specified annual internal rate of return, over 20 years, on the additional capital investment in the renewable technology in comparison with the costs of an equivalent oil boiler.
- 3.4. The Scheme's internal rates of return relate to the additional capital costs associated with provision of heating from renewable sources as defined in Scheme guidance⁶. Capital investment or other costs that are beyond the scope of eligible renewable heating systems are not included within the calculation of its internal rates of return.

5 On 8 May 2016, DETI merged with the Department of Employment and Learning to form the Department for the Economy (DfE)

6 [Guidance for non-domestic RHI applicants \(Volume 1 Table 3\)](#)

- 3.5. As the beneficiaries of the Non-Domestic Scheme engage in economic activities, the Scheme has to comply with European Union's State aid rules and, in particular, the 2008 Community Guidelines on State Aid for Environmental Protection (OJ C 82, 1.4.2008, p. 1.). In 2012, the Scheme was notified and approved by the European Commission and the State aid reference number is SA.34140. Importantly, the Scheme was approved on the basis that the European Commission considered reasonable the intended typical annual internal rates of return of 12% for all technologies other than solar thermal, for which 6% was intended. It transpired that the original tariffs for small and medium biomass installations delivered internal rates of return significantly in excess of that intended.

BUDGETARY ISSUES AND LEGISLATIVE CHANGES 2015-2019

- 3.6. The Northern Ireland Non-Domestic Scheme was an adaptation of a Scheme already operational in Great Britain, however, as documented in the report of the RHI Public Inquiry, aspects of the design of the NI Scheme were critically flawed. The flaws included the absence of cost control measures such as tariff tiering and degression, together with incorrect assumptions underpinning the tariffs for small and medium biomass. These gave rise to a financial incentive to produce more heat than was required for the purposes of the relevant business. When combined with the popularity of the Scheme, these flaws led to serious adverse budgetary consequences and the overcompensation of many participants, beyond the intended internal rate of return on additional capital investment which had been anticipated when State aid approval was originally granted.
- 3.7. This 'perverse' incentive not only undermined the Scheme's environmental objectives, but also necessitated expenditure being committed substantially in excess of its available budget – Northern Ireland's share of the UK's Annually Managed Expenditure (AME) budget for renewable heat. Overspends of £4.7m in 2015-16, £26.9m in 2016-17, and £2.2m in 2017-18, led to a total of £33.8m of DEL funding being diverted from the NI block grant in order to sustain RHI tariff payments.
- 3.8. In order to return costs within budget, and to realign the Scheme with the principles upon which State aid had originally been granted, it was necessary to amend the Regulations under which the Scheme operated.
- 3.9. The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015 introduced both tariff tiering and an annual cap on the level of heat generated that would attract RHI payments for those small and medium biomass installations accredited after 18 November 2015. There was an unprecedented spike in applications immediately prior to the introduction of the new regulations which resulted in a further increase in the projected cost of the Scheme.

- 3.10. The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016 gave the Department the power to suspend the Scheme to new applicants. This step was taken on 29 February 2016.
- 3.11. All installations accredited before 18 November 2015 continued to receive untiered and uncapped payments, creating ongoing unacceptable pressures on public expenditure within Northern Ireland. Additionally, many small and medium biomass installations continued to receive internal rates of return significantly above the 12% target.
- 3.12. Without further intervention in 2017 and 2018, the projected cost of incentive payments in the Non-Domestic Scheme was forecast to be approximately £55⁷ million per annum by 2020-21 against a forecast AME budget of £29 million per annum. This represented an estimated ongoing net cost to the NI block grant of £26 million per annum.
- 3.13. The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017 subsequently applied the same tiered tariff and annual cap set out in the 2015 Regulations to installations accredited before 18 November 2015. The provisions of the 2017 Regulations were to cease to have effect on 31 March 2018, but were extended to 31 March 2019 in accordance with the Northern Ireland (Regional Rates and Energy) Act 2018. The Department recognised that these changes represented only an interim solution to fundamental errors in the assumptions underpinning the original tariffs.
- 3.14. In 2018 the Department estimated that total Scheme expenditure would have been over £1.3 billion, (allowing for annual inflationary adjustment of tariffs based on the Retail Price Index (RPI)), representing a lifetime cost to the NI block grant of approximately £0.7 billion. The methodology underpinning this calculation was detailed within the Department's 2018 consultation document on the future of the Scheme⁸.
- 3.15. In order to inform a longer term solution the energy consultancy firm Ricardo Energy & Environment ("Ricardo") was commissioned to undertake a review of the costs involved in installing and operating a small or medium sized biomass installation (up to 199kW) in comparison with a fossil fuel alternative, and the tariff structure applicable to those technologies. Ricardo reported in May 2018.
- 3.16. Following a public consultation, the Northern Ireland (Regional Rates and Energy Act) 2019 ("the 2019 Act") introduced new tariffs for small and medium biomass boilers from 1 April 2019. The tariffs were based on Ricardo's evidence and set at a level to provide a typical 12% prospective annual internal rate of return over the remainder of the Scheme.

7 The payment projections were based on the actual heat generated on the Scheme up to 2016-17

8 [The Department's 2018 Consultation Document on the Future of the Scheme](#)

3.17. The Department for the Economy acknowledged that under the new tariffs there would be a small group of participants who would see a return lower than the target 12%. For this reason, the 2019 Act also made provision for the Department to prepare and publish voluntary buy-out arrangements in respect of 2019-20 and each of the two financial years immediately following. A call for applications under 2019-20 VBO arrangements was launched on 14 October 2019.

IMPACT OF TARIFF CHANGES

3.18. Table 1 below sets out the expenditure on the Scheme from launch in 2012-13 until 2019-20, along with its annual AME allocation, and the impact of overspends on the block grant. The Non-Domestic Scheme and the Domestic Scheme receive funding from the same AME allocation, therefore expenditure on the Domestic Scheme is also shown. As described in paragraph 3.7 above, the overspend between the years 2015-16 and 2017-18 amounted to £33.8m.

	2012-13 £m	2013-14 £m	2014-15 £m	2015-16 £m	2016-17 £m	2017-18 £m	2018-19 £m	2019-20 £m
NI Non-Domestic Scheme Expenditure	0	0.7	6.5	30.5	42.3	21.7	21.1	3.8
NI Domestic Scheme Expenditure	0.5	1.0	1.4	4.6	2.9	2.8	2.7	2.9
Total Spend	0.5	1.7	7.9	35.1	45.2	24.5	23.8	6.7
AME Budget*	4.0	7.0	12.0	30.4	18.3	22.3	25.7	28.9
DEL budget diverted from other public services to fund ND NIRHI				(4.7)	(26.9)	(2.2)		

Table 1: Expenditure on the Non-Domestic and Domestic NIRHI Schemes

*The budget refers to the allocation of funds from HMT, which is based on the Barnett formula and set at approximately 3 per cent of the funding available to the GB RHI scheme. The allocation is made available irrespective of forecast spend in NI.

LEGAL CHALLENGES

- 3.19. The changes to the Scheme to date have been essential to protect the public purse. Over the Scheme's lifetime, had tariffs not been amended, and had the level of heat generation remained at the levels observed at the outset, it may have been necessary to divert funding of up to £700m from the NI Block grant and essential public services to maintain RHI tariff payments. The changes were also necessary to realign the Scheme with the principles upon which State aid approval had been granted. Failure to do so could ultimately have resulted in the European Commission adopting a decision requiring the Department to claw back from participants any overcompensation made in the first five years of the Scheme, plus interest.
- 3.20. The primary changes to the Scheme have been subject to legal challenge. The 2017 Regulations are currently before the Court of Appeal after the High Court Judgment of 21 December 2017 found that the interim tariff changes introduced by the 2017 Regulations were not beyond the Department's legal power or contrary to the ECHR property rights of participants.
- 3.21. The 2019 Act is also subject to a separate legal challenge. A hearing is scheduled to commence on 19 April 2021.
- 3.22. Irrespective of the initial outcomes of these judicial reviews, they are likely to involve lengthy appeals processes resulting in a protracted period before any final outcome. The ongoing challenges pose not only a significant risk to the public purse due to budgetary uncertainty on the final outcomes and ongoing legal fees, but they also introduce significant financial uncertainty for participants on the Scheme.

HARDSHIP ARISING FROM CHANGES TO THE SCHEME

- 3.23. The Department has been made aware that some participating businesses financed their installations, and participation in the Scheme, using debt. Some took on additional debt to finance wider business investments on the basis of the anticipated tariff income. As a consequence of the changes in the small and medium biomass tariffs, participants began to raise concerns that the significant impact on cash flow would result in financial hardship.
- 3.24. During passage of the 2019 legislation in the House of Lords, the Department for the Economy committed to establish a unit, under an independent chair, to consider the individual circumstances of any participant who believed they faced financial hardship as a result of participating in the Scheme.

- 3.25. In summer 2019, the Department for the Economy launched a call for evidence⁹ on the nature of the hardship experienced and its direct relationship to participation on the Scheme, along with the views of participants on the Department's proposed approach. Respondents expressed significant discontent with the proposed establishment of the hardship unit given the limited powers of redress that would be available, and many declined to provide evidence due to the Department's perceived lack of independence and concerns about data security. As a consequence, the Department appointed independent energy expert Andrew Buglass of Buglass Energy Advisory to research the issue through direct engagement with participants, and to make recommendations to the Department.
- 3.26. The 'Buglass report' which had been commissioned prior to New Decade, New Approach, was published by the Department in April 2020. The report concluded that many of those who engaged with Mr Buglass had suffered one or more forms of economic hardship as a result of the reduced cash flow following the changes in tariffs. The nature of the impacts varied significantly, depending on the individual circumstances of each business. Mr Buglass suggested that potential remedies might involve tariff changes, buy-out schemes, or other non-financial action.
- 3.27. Responding to the report¹⁰, the Minister for the Economy accepted that the tariff changes, while necessary to protect the public purse, had significantly impacted on cash flow for participating businesses. The Minister welcomed the report's conclusion that the most important principle to be adopted was that of fair and equitable treatment for all those who have participated legitimately, and stated that she, and the wider Executive, would give the research close consideration when examining options for the future of the Scheme in the context of New Decade, New Approach.
- 3.28. The Buglass report was published by the Department in April 2020, shortly after commencement of the public consultation on the Cornwall report.

CORNWALL INSIGHT TARIFF REVIEW

- 3.29. Following the enactment of the 2019 Act, the Northern Ireland Affairs Committee (NIAC) conducted an inquiry into the 2019 changes to the Scheme. NIAC published its report¹¹ on 30 June 2019. The Committee requested that the tariffs be reviewed again in light of a number of factors including comparison with renewable heat schemes in GB and Ireland. NIAC also made recommendations about the operation of the voluntary buy-out arrangements and the proposed Hardship Unit.

9 [RHI Hardship Unit Call for Evidence](#)

10 [NI Non-Domestic RHI scheme - Buglass research on hardship - Ministerial response](#)

11 [NIAC inquiry report 30 June 2019](#)

- 3.30. The Department provided a response to NIAC which was published on 4 September 2019¹². The response recognised that there are costs in the operation of renewable heat installations which change over time, most notably the price of biomass relative to the counterfactual fuel. The Department committed to carrying out a further independent review of the variables that underpinned the medium biomass tariffs and confirmed that this work would include consideration of the assumptions within the GB and Rol schemes.
- 3.31. On this basis, Cornwall Insight was appointed to undertake this independent, comprehensive assessment. The Cornwall Insight Report was provided to the Department in late February 2020. It contained a recommendation for revised tariffs and a detailed comparison between NI, GB and Rol Schemes. On 28 April 2020, the Department published the Cornwall Insight Report in full and launched a public consultation on the tariffs recommended within it. The consultation closed on 26 May 2020.
- 3.32. In June 2020 the Department entered into a formal legal mediation process with the Applicants in the 2017 and 2019 legal proceedings, including the Renewable Heat Association for Northern Ireland (RHANI). Following a request from those parties, work to implement revised tariffs was suspended pending the outcome of the mediation process. Mediation concluded in December 2020.
- 3.33. Since the Cornwall Insight tariff review there have been major fluctuations in global oil prices, impacting on the appropriate tariff to incentivise generation of heat from biomass fuel. This was observed by many who responded to the consultation. The Department's response to the public consultation on the medium biomass tariffs is included as Annex B to this consultation document.
- 3.34. The outworking of the public consultation on Cornwall Insight's tariff recommendations, incorporating analysis of subsequent fuel price movements, is reflected in Option 2 and has also been taken into account when developing the compensated approach to Scheme closure proposed at Option 4.

NEW DECADE, NEW APPROACH

- 3.35. The New Decade, New Approach document, which underpinned the restoration of the devolved institutions in Northern Ireland in January 2020, states, "*The parties recognise the need for a coordinated and strategic approach to the challenge of climate change within the Programme for Government. Actions and interventions will be required across a wide range of areas in order to address both the immediate and longer term impacts of climate change in a fair and just way.*" To this end, the document makes a number of commitments including, "RHI will be closed down and replaced by a scheme that effectively cuts carbon emissions."

12 [Government Response to NIAC inquiry report 4 September 2019](#)

- 3.36. Following publication of New Decade, New Approach, the Non-Domestic Scheme's voluntary buy-out arrangements were halted on 23 March 2020. This was essential to enable equitable treatment of all participants as options for the future of the Scheme were developed.

FUTURE RENEWABLE HEAT SCHEMES WITHIN CONTEXT OF UK CLIMATE COMMITMENTS

- 3.37. In June 2019, Parliament passed legislation requiring the government to reduce the UK's net emissions of greenhouse gases by 100%, relative to 1990 levels by 2050. In December 2020, the Climate Change Committee, an independent, statutory body responsible for advising the UK and devolved governments in emissions targets published 'The Sixth Carbon Budget – The UK's path to Net Zero'. The Committee recommended that any climate legislation for Northern Ireland must include a target to reduce greenhouse gases by at least 82%, underpinned by a 100% decarbonisation of energy by 2050.
- 3.38. The Department for the Economy is currently developing an Energy Strategy for Northern Ireland which will include policy to support the achievement of net zero carbon by 2050. Possible incentives for green energy, including renewable heat, are under consideration in the process of developing the new Energy Strategy. Closure of the Non-Domestic RHI Scheme, in line with the New Decade, New Approach document, would make way for the Department to bring forward proposals for replacement support that would more effectively reduce carbon emissions resulting from the generation of heat and contribute to the reduction in greenhouse gases.

INSPECTION AND COMPLIANCE

- 3.39. In 2016, due to concerns around potential abuse of the Scheme and cost overruns, the then Minister for the Economy, Simon Hamilton MLA, requested that inspections should be carried out of all sites on the Non-Domestic Scheme. This process was designed to provide assurance to the Department and public that the Scheme was operating as intended and, if this was not the case, appropriate action was being taken to address any issues identified. All installations are subject to a process to verify compliance with the requirements and ongoing obligations laid out in the regulations underpinning the Scheme.

- 3.40. To date, almost every site has had at least one compliance observation to address. While the majority of these are minor issues such as inaccuracies in information or poor record keeping, the inspections programme has identified instances of more serious non-compliance such as overproduction of heat. Of those installations for which compliance activity has been completed, 95% have ultimately been closed as compliant, most after the participant has taken remedial action. The remaining 5% have been subject to some form of enforcement activity, such as a condition being applied to the accreditation or revocation from the Scheme. The most common reasons for revocation have included past overproduction of heat (i.e. prior to the extension of the tiered tariff to all small and medium biomass installations in April 2017) and failure to provide accurate information regarding the heat use.
- 3.41. The compliance process has identified more than £300,000 to be recovered as a result of identified non-compliance or abuse. This amount relates to enforcement activity for some 39 installations. For participants deemed eligible to remain on the Scheme, sums identified for recoupment are offset against future payments being made to that participant. In relation to installations revoked from the Scheme, the Department is pursuing recoupment of the sum identified as a civil debt.

4. OPTIONS FOR THE FUTURE OF THE SCHEME

4.1. This consultation puts forward four options for the future of the Non-Domestic NIRHI Scheme:

Option 1: Scheme remains operational for current participants with present tariffs for all technologies (status quo);

Option 2: Scheme remains operational for current participants with all tariffs subject to review and adjustment as necessary;

Option 3: Scheme closure with no further payments made to participants; or

Option 4: Scheme closure with compensation paid to legitimate current participants.

4.2. The Northern Ireland Executive's preferred approach is Option 4: Scheme closure with compensation paid to legitimate current participants. This Section considers the four options in detail.

4.3. The costs presented in respect of each option relate only to current estimates of the tariff or compensation payments proposed. It is acknowledged that all amendments to the Scheme have associated legal risk which could result in additional cost to the taxpayer.

OPTION 1 – SCHEME REMAINS OPERATIONAL FOR CURRENT PARTICIPANTS WITH CURRENT TARIFFS REMAINING IN PLACE (STATUS QUO)

4.4. Option 1 represents the status quo. The Non-Domestic RHI Scheme operates by paying periodic support payments to participants on the basis of quarterly meter readings and tariffs set in legislation. Under Option 1, participants would continue to receive payments for the production of eligible heat for the remaining period of their accreditations. Installations have approximately 12 to 15 years remaining on the Scheme, subject to the date of their initial accreditation, with final payments expected in 2036.

4.5. Should the Scheme remain operational, participants would remain subject to all ongoing obligations under its regulations for the remaining period of their installation's accreditation, including submission of meter readings and retention of fuel records. All installations would be subject to potential future inspection to ensure ongoing compliance with the regulations.

- 4.6. Under Option 1, tariffs for all technologies would remain at present levels subject to annual inflationary adjustments based on the Consumer Price Index (CPI) for small and medium biomass or the Retail Price Index (RPI) for all other technologies.
- 4.7. Under Option 1, no action would be taken to implement tariff changes emanating from Cornwall Insight's review of medium biomass tariffs. The Department's response to that consultation is at Annex B.
- 4.8. The Department has previously committed to amending the medium biomass tariffs if sustained and significant changes in the variable costs associated with generation of heat were observed. Option 1, in which tariffs are not amended following Cornwall Insight's recommendations, would be a departure from the Department's prior commitments. Cornwall's work, coupled with the outcome of the April-May 2020 public consultation, has demonstrated that under Option 1 participants would not be appropriately incentivised to generate renewable heat in the context of present economic conditions. Additionally, the status quo would not take account of the findings of the Buglass report which detailed financial and economic hardships experienced by participating businesses as a consequence of the tariff changes to date.
- 4.9. Based on the present tariffs for all technologies, and current levels of heat production, the cost of this option until the conclusion of the Scheme in 2036 is presently estimated as £43.1m¹³.
- 4.10. The Scheme's continued operation will also require significant expenditure on administrative costs until 2036.

OPTION 2 – SCHEME REMAINS OPERATIONAL FOR CURRENT PARTICIPANTS WITH ALL TARIFFS SUBJECT TO REVIEW AND ADJUSTMENT AS NECESSARY

- 4.11. Under Option 2 the Scheme would continue to operate for current participants as per Option 1. Installations have approximately 12 to 15 years remaining on the Scheme, subject to the date of their initial accreditation, with final payments expected in 2036.
- 4.12. As per Option 1, participants would remain subject to all ongoing obligations under the Scheme's regulations for the remaining period of their installation's accreditation, including submission of meter readings and retention of fuel records. All installations would be subject to potential future inspection to ensure ongoing compliance with the regulations.

¹³ Estimated cost includes annual tariff adjustments based on CPI and RPI inflation of 0.9% and 1.6% respectively with total cost discounted over the life of the Scheme.

- 4.13. Under Option 2 the proposal would be to implement revised medium biomass tariffs based on Cornwall Insight's work and taking account of subsequent movements in fuel prices during 2020, in line with the outcome of the April-May 2020 public consultation. Full detail on the outcome of the public consultation on Cornwall Insight's recommendations, including proposed tariffs, is set out at Annex B.
- 4.14. Under Option 2 the variable costs associated with generation of heat would be subject to ongoing monitoring, with all tariffs, including those applicable to large biomass and non-biomass technologies, reviewed as necessary. Those which have not been subject to review to date, i.e. all those with the exception of small and medium biomass, may be subject to more fundamental tariff reviews. Based on the outcome of such reviews, tariffs could be subject to future adjustment downwards, as well as upwards.
- 4.15. As a consequence of the need for further tariff reviews, with their outcome being heavily dependent upon the underlying variable costs underpinning the tariff, including unpredictable future fuel price movements, it is not possible to forecast accurately the final cost of continued operation of the Scheme under Option 2. This uncertainty impacts not only upon the public finances, but on participants who are unable to reliably predict future tariff levels and income under the Scheme.
- 4.16. The Scheme's continued operation will also require significant expenditure on administrative and consultancy costs until 2036 which will be greater than those incurred with Option 1.

OPTION 3 – SCHEME CLOSURE WITH NO FURTHER PAYMENTS MADE TO PARTICIPANTS

- 4.17. Option 3 involves closure of the Scheme to all current participants, in line with the commitment within the New Decade New Approach document. Participants would no longer be subject to the Scheme's obligations, including submission of meter readings and retention of fuel records, and no further inspections of installations would take place. Upon closure, periodic RHI payments for generation of eligible heat from renewable sources using accredited equipment would cease, and no compensation for early closure would be paid.
- 4.18. The Non-Domestic NIRHI Scheme was designed to enable participants to access tariff payments for generation of eligible heat over a 20 year period from the date of an installation's accreditation. This is set in legislation and participants have an expectation of access to tariff payments for approximately a further 12-15 years, subject to the date of accreditation.

- 4.19. Closure of the Scheme 12-15 years early, without compensation, would have a significant adverse impact on participants. Some participating businesses entered into financial commitments to fund participation in the Scheme on the basis of anticipated RHI tariff income, and the Buglass report has indicated that some have reported financial or economic hardship as a result of the changes in the tariffs to date. It may also result in operators ceasing to use accredited boilers, with the possibility of reversion to fossil fuel based heat sources.
- 4.20. While Option 3 would meet the commitment to closure within the New Decade, New Approach document, and the immediate cost to the taxpayer would be effectively nil, the impact on businesses participating on the Scheme would be severe.
- 4.21. Option 3 carries a particularly high legal risk and would be likely to result in significant and unquantifiable future financial liabilities to the taxpayer in the medium term, impacting on wider public services.

OPTION 4 – SCHEME CLOSURE WITH COMPENSATION FOR LEGITIMATE CURRENT PARTICIPANTS

- 4.22. Option 4 is the Northern Ireland Executive's preferred option for the future of the Scheme.
- 4.23. Under Option 4, the Scheme would be closed in line with the New Decade, New Approach document. Participants would no longer be subject to the Scheme's obligations, including submission of meter readings and retention of fuel records, and no further inspections of installations would take place. Following closure, periodic RHI payments for generation of eligible heat from renewable sources using accredited equipment would cease. Under this option, compensation for early closure of the Scheme would be paid to current participants, subject to proposed eligibility criteria set out in Section 6 of this consultation document.
- 4.24. In developing a proposed approach to closure, the Department for the Economy has sought to balance the impact on participants who entered the Scheme and participated in good faith – considering the findings in the Buglass report and taking account of the outworking of the Cornwall Insight tariff review – with the requirement to deliver value for money for the taxpayer and compliance with the EC's State aid decisions. The proposed approach involves payment of appropriate compensation for early closure of the Scheme, aiming to deliver a fair and equitable outcome to all those participating legitimately.
- 4.25. Compensation recognises the expectation of participants, set in legislation, for access to tariff payments for the generation of eligible heat for approximately a further 12-15 years. It would also provide support to those who have reported facing financial hardship as a result of the impact on cash flow of the past changes to the Scheme's tariffs.

4.26. The Scheme comprises a diverse range of installations of differing technologies and capacities. Each installation and participating business will have unique circumstances which it is not possible to address on an individual basis. The proposed approach aims to deliver fair and equitable outcomes across the Scheme, based on the following principles:

- Larger installations are likely to have incurred greater capital costs at the outset and to have greater capacity to generate eligible heat from renewable sources. It is therefore proposed that significantly larger installations receive higher levels of compensation than smaller installations.
- Compensation payments should take account of the differing tariffs applicable across the Scheme and typical levels of heat generation appropriate to each technology type and tariff.
- Compensation payments should take account of the different periods of time remaining on the Scheme for each installation. Those installations with the longest periods remaining should receive higher levels of compensation than those with fewer years remaining.

4.27. Proposed compensation payments are based on the future tariff potential for the time remaining on the Scheme. They are based on installations with specific reference capacities, taking account of appropriate load factors and tariffs specific to each technology, allowance for inflation, and are discounted in line with recognised economic principles to take account of the payment being received earlier than would otherwise have been expected.

4.28. Table 2 below sets out indicative payments based on the principles and parameters as set out in Annex A, as well as the number of years currently remaining on the Scheme.

Technology	Capacity	Payment based on accreditation year				
		2012/13	2013/14	2014/15	2015/16	2016/17 [#]
Small biomass	0-19kW	-	£12,500	-	£13,000	-
Medium biomass (lower capacity)	20-59kW	£19,500	£20,000	£20,500	£21,000	-
	60-79kW	£26,000	£27,000	£27,500	£28,500	-
	80-99kW	£33,000	£34,000	£35,000	£35,500	-
Medium biomass (upper capacity)	100-199kW	-	-	-	£40,500	-
Large biomass	200-630kW	-	£106,000	£109,000	£111,500	-
	631-999kW	-	£168,000	-	£177,000	£180,500
Solar collectors	0-9kW	-	-	£3,000	£3,000	-
Small heat pumps	0-19kW	-	-	£43,000	£44,000	-
Medium heat pumps	20-99kW	-	-	£47,000	£48,500	-

Table 2: Proposed closure compensation payments

[#] Installations with ‘preliminary accreditation’ prior to the Scheme’s suspension on 29 February 2016 were eligible to apply for full accreditation at a later date.

Note: No payments are shown in respect of accreditation years in which no installations of a particular technology type were accredited and/or remain live.

4.29. The amount payable in respect of each individual installation would be subject to the outcome of the compliance assessment, as part of the Department’s 100% programme of inspections. Any monies identified for recoupment due to non-compliance with the requirements in the Scheme regulations, would be deducted from the applicable closure payment. Further detail is provided in Section 6 of this consultation document.

4.30. The estimated cost of Scheme closure under Option 4 is £68.4m. This is based on the numbers of accredited installations potentially eligible for payment, as detailed in Table 3 below. The final cost will, however, be subject to the conclusion of compliance activity and any associated adjustment of closure payments to individual installations in respect of identified non-compliance with the Scheme’s regulations.

Technology	Capacity	Number of Installations					Total
		2012/13	2013/14	2014/15	2015/16	2016/17	
Small biomass	0-19kW	-	2	-	8	-	10
Medium biomass (lower capacity)	20-59kW	1	8	38	176	-	223
	60-79kW	1	10	17	71	-	99
	80-99kW	4	85	351	999	-	1,439
Medium biomass (upper capacity)	100-199kW	-	-	-	187	-	187
Large biomass	200-630kW	-	5	1	6	-	12
	631-999kW	-	1	-	1	1	3
Solar collectors	0-9kW	-	-	1	3	-	4
Small heat pumps	0-19kW	-	-	2	8	-	10
Medium heat pumps	20-99kW	-	-	2	2	-	4
Total		6	111	412	1,461	1	1,991

Table 3: Accredited installations potentially eligible for closure payment.

Note: Table is based on live data held by the Department for the Economy on 16 December 2020. The accreditation status of all installations will be subject to verification by the Department for the Economy and Ofgem prior to closure.

4.31. Under Option 4 the Department would be in a position to plan to bring forward replacement support to encourage decarbonisation of heat, in the context of development of the new Energy Strategy, and supported by the totality of the AME budget for renewable heat.

5. PUBLIC INTEREST CONSIDERATIONS ASSOCIATED WITH CONSULTATION OPTIONS

5.1. Under two of the options considered within this consultation, the Scheme would remain operational for current participants. Under the remaining two options, including the Executive's preferred option, the Scheme would be closed to all current participants. This Section describes the main factors in the rationale for departures from the original 2012 regulations, including the public interest in Scheme closure.

ONGOING TARIFF ARRANGEMENTS UNDER OPTION 1 AND OPTION 2

5.2. The Scheme's original 2012 regulations committed to tariff based payments for generation of eligible renewable heat at the published tariff levels (with RPI adjustments) for 20 years. The flaws in the original design of the Scheme, including incorrect cost and usage assumptions underpinning the original tariffs together with the absence of cost controls, resulted in a financial incentive to operators to produce excess heat, higher than expected uptake of the Scheme and significantly higher operating costs than anticipated. All of these factors led to the overcompensation of many participants, when compared with the internal rate of return agreed in the Scheme's 2012 State aid approval, and an overspend of £33.8m between the years 2015-16 and 2017-18 against the available AME budget allocation. These issues necessitated changes to the tariffs for small and medium biomass installations which constitute 98% of the Scheme's accreditations, including the introduction of tiering and an annual cap on the level of heat generated which would be eligible for tariff payments. The public interest for those changes was described in the Department's 2018 consultation document on the future of the Scheme. In summary three factors were discussed:

- **Affordability:** For the duration of the Scheme it was estimated that the cost of payments could have been, depending upon a number of variable factors, more than £0.7 billion higher than the available AME budget if action had not been taken through the 2017 Regulations. This estimate was based on the actual operation of the Scheme to date and reasonable assumptions in respect of future heat generation, and would have had serious consequences for the delivery of key public services in Northern Ireland.
- **State aid:** NIRHI is a notifiable scheme in respect of State aid. The flaws in the Scheme's original design resulted in provision of compensation typically significantly in excess of that approved by the European Commission.
- **Sustainability and useful heat:** As the original tariffs provided an incentive payment for generation of heat that exceeded the cost of heat production, there was a risk that additional heat would be generated which would not have been produced if using an alternative fossil fuel source. Therefore, this heat would not be displacing heat that would have been produced by fossil fuel, compromising its objective of reducing carbon emissions.

- 5.3. Under Options 1 and 2 in this paper, which would see continued operation of the Scheme under either the status quo or with updated tariffs for medium biomass and future reviews, the Scheme would be forecast to continue to operate within its budgetary limits. In respect of State aid, the European Commission has made clear to the Department that its approval decisions adopted on the Scheme authorised an average internal rate of return of 12% for medium biomass. Pursuant to the Withdrawal Agreement between the UK and EU, decisions of the EU Commission made prior to the end of the transition period on 31 December 2020, continue to bind the UK and the EU Commission retains enforcement powers for a period of 4 years from that date.¹⁴
- 5.4. The tariffs for medium biomass under Option 1 target the 12% internal rate of return on a prospective basis, informed by Ricardo's report in May 2018. The medium biomass tariffs proposed under Option 2, which are based on Cornwall Insight's work but updated by the Department, target the same 12% prospective internal rate of return but based on updated data.
- 5.5. Under Option 1 tariffs would remain at present levels, providing certainty of future income for participants but risking fluctuations in the underlying costs of heat production affecting the prospective internal rates of return received by typical installations.
- 5.6. Under Option 2 the variable costs underpinning tariffs would be subject to ongoing monitoring, with tariffs reviewed as necessary. This would ensure the Scheme continues to target its intended prospective internal rates of return in line with the 2012 State aid approval, providing an appropriate incentive for use of renewables in line with the Scheme's objectives, while taking account of emerging evidence of any changes in the underlying variable costs associated with generation of heat.

PUBLIC INTEREST IN SCHEME CLOSURE

- 5.7. Scheme closure, considered in Options 3 and 4, would bring an end to the Scheme and the rights of participants to receive ongoing tariff payments in respect of eligible heat generated by accredited installations under all technologies would cease. Closure would therefore involve significant departure from the principle of the 2012 Regulations, from the 2019 Act (under which the current small and medium biomass tariffs are set) and from the expectations of participants under these legislative provisions. Scheme closure would also represent the first legislative change to apply to the large biomass, solar thermal, and small and medium heat pump installations accredited to the Scheme.

¹⁴ [Articles 87 and 95 - Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#)

PREVIOUS CONSIDERATION OF SCHEME CLOSURE

- 5.8. Closure in the form of a compulsory buy-out was considered during the 2018 public consultation on the future of the Scheme. This means of closure would have ensured that all participants received the target internal rate of return over 20 years on their additional capital investment. Upon closure, one-off payments would have been equivalent to the outstanding sum of annual payments required to deliver the Scheme's target internal rate of return on the net capital investment over twenty years, taking account of payments that had been received to date.
- 5.9. Due to the extent of overcompensation in the first years of the Scheme, a significant proportion of installations would have already achieved the target internal rate of return and would not have received payment under the compulsory buy-out proposed.
- 5.10. The Department's 2018 consultation document included an indicative example of a compulsory buy-out payment of £40,750¹⁵ for a 99kW installation which had been accredited to the Scheme for three years and generated approximately 130,000kWh of heat each year. The consultation report noted that in order to ensure payments made under a buy-out were consistent with a 12% internal rate of return over 20 years, a discount factor would have to be applied to account for payment being received earlier than if payments were made every quarter. An appropriate downward adjustment would also have been needed to be applied to any previous overcompensation when calculating buy-out payments as well as including only the capital element of previous payments. The net effect of this would have been to reduce the level of one-off payment compared with the example set out in the 2018 consultation document. Additionally, compulsory buy-out payments would have been calculated based on the individual capital costs and reduced by an element of past payments associated with each installation. The example put forward in the 2018 public consultation document is not directly comparable with the payments proposed under Option 4 in the present consultation.
- 5.11. The Department's response¹⁶ to the consultation noted the most common views expressed on the compulsory buy-out were that it must take account of all costs and benefits relating to installation, maintenance and financing of boilers, that compensation should be calculated using the original 2012 tariff, and that reaching agreement on an equitable buy-out would be complex and expensive. The next most common response was rejection of compulsory buy-out as it departed from the original tariff structure and agreement with the Department, and it was suggested that buy-out would encourage a return to use of fossil fuels, risking achievement of the Scheme's environmental objectives.

15 [The Department's 2018 Consultation Document on the Future of the Scheme \(Para. 7.16 Box 1\)](#)

16 [The Future of the NI Non-Domestic RHI Scheme - consultation report](#)

- 5.12. Following analysis of consultation responses, the decision was taken not to proceed with a compulsory buy-out. The 2019 Act introduced a long term tariff structure for medium biomass installations based on a prospective 12% internal rate of return and incorporated a voluntary buy-out as referenced within Section 3 of this document. The changes introduced by the 2019 Act took account of the Department's engagements with the European Commission during 2018 and 2019.
- 5.13. Since 2019 there have been a number of significant strategic developments in terms of political agreement and restoration of the devolved institutions in Northern Ireland and the publication of the report of the RHI Public Inquiry, alongside climate change commitments enshrined in UK legislation. These have a material impact on public interest considerations.

POLITICAL PRIORITY: EXECUTIVE MANDATE AND NEW DECADE, NEW APPROACH

- 5.14. The Assembly election on 2 March 2017 resulted in the formation of a new five party Executive Committee on 11 January 2020. The new Executive is entitled to form its own view on appropriate policy priorities. Restoration of the devolved institutions was underpinned by New Decade, New Approach, which documented the urgent need to take steps to address climate change.
- 5.15. New Decade, New Approach states: *"The parties recognise the need for a coordinated and strategic approach to the challenge of climate change within the Programme for Government. Actions and interventions will be required across a wide range of areas in order to address both the immediate and longer term impacts of climate change in a fair and just way."* To this end, the document makes a number of commitments including, *"RHI will be closed down and replaced by a scheme that effectively cuts carbon emissions."*
- 5.16. The option of closure would therefore be supported by the change in the political priorities of the main Northern Ireland parties and the two governments to address the pressing problem of climate change and reduction in carbon emissions by means of a replacement scheme. The Executive's preferred approach is Option 4 presented within this consultation document, i.e. a compensated closure of the Scheme.

FUNDAMENTALLY FLAWED SCHEME

- 5.17. The Non-Domestic RHI Scheme was the subject of a Public Inquiry. As was clear from the narrative and findings of the Public Inquiry report there were many errors and omissions during the design, approval, management, operation and administration of the Scheme throughout its life. What exacerbated the effect of the flaws was that they were unidentified and uncorrected for an unacceptable amount of time, resulting in huge cost to the public purse. Responsibility for what went wrong lies with a broad range of persons and organisations across a variety of areas.

- 5.18. The RHI Inquiry report noted that *“The main reservation about revenue support mechanisms for heat is that there could be an incentive to produce the heat simply for the purpose of receiving the payments and to ‘open the windows’ to get rid of the excess heat, there being no ready means of transporting it to others or any market for it. The risk of this perverse incentive could arise at any time if the payments exceed the costs of producing heat. There is an added risk with heat systems that rely on fuel, as opposed to solar power, geothermal or air and ground-sourced heat, since the price of fuel may change at any time, potentially impacting on this perverse effect, even if initial tariffs are calculated correctly.”*¹⁷
- 5.19. It is important to recognise that there were multiple failings in the design and administration of the Scheme. The original Non-Domestic RHI tariffs lacked cost controls, were based on flawed assumptions in respect of the size of a typical biomass installation accredited to the Scheme, its load factor, and the underlying costs associated with generation of heat. Section 3 of this consultation document describes the consequences of those errors in respect of the public finances, the Scheme’s environmental objectives, and its operation in the context of its 2012 State aid approval.
- 5.20. While it has been possible to address these issues through the legislative amendments to date, the continued operation of the Scheme will require ongoing intensive administration and continuing legislative intervention on each occasion, most likely annually, that a scheme review is required. The Scheme therefore has recurring and resource intensive administration requirements and the need for ongoing political oversight, in order to meet its original objectives, thus illustrating the following serious weaknesses in its design.
- 5.21. Firstly, the changes to the Scheme have resulted in significant reductions in cash flow received by participants in respect of eligible renewable heat generated by accredited equipment, as documented within the Buglass report on hardship. Since the Scheme is predicated upon the need for continuing market analysis and review, the likelihood of further changes during its lifetime is high. Operators therefore have less certainty about the size of future tariff payments, which can have adverse effects upon their ability to plan for the future of their business.

17 [The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive \(RHI\) Scheme \(para 48.74\)](#)

- 5.22. Secondly, there are uncertainties and disadvantages from the public perspective. Any amendments to tariffs will require empirical research by the Department, with a likely requirement to engage professional external consultants. Implementation of revised tariffs will also require political engagement at both Executive and Assembly level with legislative action. It may also require regulatory approval by competition authorities, which can be time consuming and resource intensive. These necessary procedures also contain inherent uncertainties. To date, each review which has resulted in a reduction in tariffs has also led to the legal challenges highlighted in Section 3, all of which currently remain ongoing. The potential for a continuing future cycle of challenges and possible public debate illustrates systemic weakness in the Scheme and undermines its long term sustainability. It also gives rise to uncertain consequences for the public purse.
- 5.23. A third weakness relates to the Scheme's uncertain and potentially limited achievements against its original environmental objectives. In consequence, the value for money offered to the taxpayer and the environmental benefits from its continued operation are unclear and are not verifiable against any reliable parameter. The inability to demonstrate with sufficient certainty the Scheme's contribution to environmental and climate change objectives is out of step with the UK's commitments to achieving verifiable reductions in carbon emissions. With approximately 15 years remaining, continuation of the Scheme represents an opportunity cost to the Executive and the public in Northern Ireland. The development of the new Energy Strategy is expected to bring forward more effective, efficient and quantifiable means of utilising the AME budget for renewable heat to reduce carbon emissions.
- 5.24. Should the Scheme remain operational with tariffs subject to regular review, as described in Option 2 of this consultation, it is likely that tariffs will need to be altered on an annual basis via further legislation. Notwithstanding the substantial resourcing implications of this work over the remaining years of the Scheme, this would result in continued uncertainty for both participants and the public finances.
- 5.25. The flaws identified in the operation of the Scheme have resulted in enormous amounts of media coverage. The general public's perception of the Scheme could be described as overwhelmingly negative, with the view that it has been a failure that has already cost the taxpayer more money than it should. The Department is aware from the Buglass report that some participants indicated that they had suffered reputational damage from association with the Scheme.

- 5.26. While the Scheme is presently operating within its budgetary envelope and in alignment with obligations on State aid, its continuation cannot readily address the adverse impacts on participants resulting from its original flaws, the uncertainty for the public finances, or the need to make significant and measurable progress in decarbonisation of heat in a manner that offers value for money.
- 5.27. These factors are discussed in more detail throughout the remainder of Section 5.

HARDSHIP AND IMPACT ON PARTICIPANTS OF CONTINUED OPERATION

- 5.28. The Non-Domestic RHI Scheme must operate within its budgetary envelope, and comply with the internal rate of return in its 2012 State aid approval. The Buglass report made clear that the changes to the Scheme have significantly impacted on cash flow for participating businesses. The Department for the Economy has previously acknowledged¹⁸ the impact of the changes, and that many participating businesses have made wider investment decisions and have ongoing financial obligations beyond the scope of the Scheme's tariff.
- 5.29. The Buglass report noted that the economic consequences for businesses have been varied and dependent on individual circumstances, but included reductions in operating cash flow, costs associated with debt refinancing, asset sales or diversion of personal funds to support business cash flow, and switching to fossil fuels. Drawing on anecdotal evidence, the report also highlighted closure of part or all of businesses, staff redundancies, the impact of opportunity costs on businesses and personal stress arising from both financial and reputational consequences of participation on the Scheme. Given the varied range of manifestations of economic impact, the Buglass report cautioned against any "piecemeal" attempt to compensate only a subset of participants.
- 5.30. Due to the budgetary and State aid conditions outlined within Section 3 it is not possible to address the economic impact of the legislative changes experienced by participants through measures taken as part of continued operation of the Scheme.
- 5.31. In addition, in light of the requirement to amend the Scheme in order to realign it with its original objectives, intentions and State aid approvals, it has developed into one in which tariffs are susceptible to future change in line with underlying variables. This introduces uncertainty for participants as it is not possible to predict the level of income under the Scheme on a long term basis.

18 [NI Non-Domestic RHI scheme - Buglass research on hardship - Ministerial response](#)

- 5.32. Scheme closure, with compensation that is appropriate, reasonable, fair and equitable (taking account of likely future tariff potential) would provide participants with financial certainty. Payment of upfront compensation based on future tariff potential would also assist with the consequences of immediate shortfalls in cash flow resulting from previous tariff changes.

UNCERTAINTY ASSOCIATED WITH SCHEME AMENDMENTS AND LITIGATION

- 5.33. The Department for the Economy and Northern Ireland Executive acknowledge that there is a risk of legal challenge associated with each option proposed within this consultation, including the status quo, which is currently subject to judicial review of the 2019 Act. The estimated costs set out against each option in Section 4 relate only to future tariff payments or indicative closure compensation payments. While the Department will robustly defend the past legislative changes and any future steps taken following this consultation, there is a risk that legal challenge in respect of any option could result in a higher final cost to the taxpayer.
- 5.34. It is likely that Option 3 (closure of the Scheme without compensation) would carry a particularly high legal risk and would be likely to result in significant and unquantifiable future financial liabilities to the taxpayer in the medium term, impacting on wider public services.
- 5.35. The Executive's preferred approach of compensated closure as set out in Option 4 seeks to take account of the impact of closure on legitimate participants, and deliver a fair, reasonable and equitable outcome. Provision of reasonable and appropriate compensation is considered to reduce the risk of significant additional costs to the taxpayer in the longer term as a result of potential legal action.

ENVIRONMENTAL OBJECTIVES ON DECARBONISATION OF HEAT

- 5.36. The NIRHI Scheme was intended to incentivise replacement of fossil fuel heating with a renewable heat alternative in order to reduce the level of carbon emissions.
- 5.37. At present, in Northern Ireland, the total heating load of all heat producing installations is not measured. This was acknowledged in the Department's December 2019 Call for Evidence on a future Energy Strategy, which sought views on appropriate ways of measuring the progress of decarbonising heat.

- 5.38. There is no current means by which to verify the extent to which the Scheme has contributed to the substitution of heat produced by fossil fuels with heat produced from renewable sources. Data within applications for accreditation to the Scheme suggested that a significant proportion of new installations were in furtherance of new heat requirements as opposed to replacing existing fossil fuel based heating installations. Whilst it may have been the case that renewable heat installations were being used as part of a new economic activity, where it was being used instead of a fossil fuel boiler rather than as a replacement, there is no available or reliable evidence of the extent to which this was the case. The potential cannot therefore be excluded that the Scheme may have actually led to an increase in the amount of heat generated in NI, over and above that which would have been generated in its absence, potentially increasing the net level of carbon emissions. The available evidence on this issue is ultimately incomplete and inconclusive. However, there is no clear evidence that the operation of the Scheme has actually resulted in a meaningful shift away from fossil fuel based heat production and replacement with renewable fuels.
- 5.39. The environmental benefits of the Scheme are therefore at best uncertain and appear to be limited, thus indicating that greater environmental benefits and greater value for money may be achieved through an alternative policy approach and alternative means of support for decarbonisation of heat. The possibility that the Scheme may actually have led to an overall increase in heat production and thus contributed to an increase in carbon emissions indicates that the Scheme's continuation is contrary to the public interest insofar as it is unlikely to result in verifiable reductions in carbon emissions and thus assist in achieving the binding UK Government's objective of a net zero carbon economy by 2050.
- 5.40. As outlined within Section 3, the Department for the Economy is developing an Energy Strategy for Northern Ireland to support achievement of net zero carbon by 2050. Under Option 2, the Scheme would continue to operate with tariffs reviewed as necessary to take account of significant changes in underlying variables, including global oil prices. Due to the need for future reviews, the Department for the Economy would be unable to forecast the cost of the Scheme on a long term basis, reducing the Department's ability to make efficient use of the AME budget available to Northern Ireland to support renewable heat.

- 5.41. Closure of the Non-Domestic RHI Scheme would make way for the Department to bring forward proposals for replacement support for the decarbonisation of heat. Following the natural closure of the Domestic Scheme in 2023, the totality of the AME budget for renewable heat could be allocated to such support, enabling more effective action to be taken to address present challenges associated with decarbonisation of heat and thus contributing to the achievement of environmental objectives in a manner which offers better value for money. Continued operation of the Scheme, particularly under Option 2 in which its annual costs would be subject to future tariff reviews and therefore unpredictable, would have a constraining effect upon the Department's ability to make full use of the available AME budget to support generation of heat in a manner that effectively cuts carbon emissions.

IMPACT OF PUBLIC INQUIRY REPORT

- 5.42. One of the purposes of a Public Inquiry is restoration of public confidence in the workings of government. Given the extensive coverage both by the Inquiry and the media of the extremely problematic history of the Scheme, it is not clear how full public confidence in the workings of Government could be restored while the Scheme is in existence in any form. Additionally, the reputational damage reported by participants is unlikely to ease with any ongoing association with the Scheme.
- 5.43. Closure of the scheme, with replacement by an alternative and more effective scheme is likely to assist in restoring public confidence in the workings of government and mitigate any further perceived reputational damage of Scheme participants. This would allow resources to be deployed to deliver a successful Scheme and participants to move on from any adverse effects of their association with Non-Domestic RHI.

6. CONDITIONS ASSOCIATED WITH CLOSURE COMPENSATION UNDER OPTION 4

- 6.1. Under Option 4, the Department for the Economy proposes that certain eligibility criteria for receipt of closure compensation would apply. The current eligibility proposals are based upon the following:
- Installations should be fully accredited to the Non-Domestic NIRHI Scheme. Those installations whose applications have been rejected or cancelled, or accreditations which have been terminated, excluded or withdrawn from the Scheme, including those voluntarily withdrawn, would not be eligible for payment.
 - Work to assess the compliance of an installation with the Scheme's regulations must have concluded, with no outstanding material issues of non-compliance. It is the Department for the Economy's intent that this work will be concluded by 31 March 2021. Achievement of this target will be subject to the full participation of, and co-operation from, participants. Any monies identified for recoupment due to non-compliance with the requirements in the Scheme regulations would be deducted from any closure compensation payment.
- 6.2. Closure compensation payments would be on a 'per installation' basis rather than 'per participant'. This recognises that individual installations are uniquely accredited to the Scheme and would be expected to generate eligible heat and receive periodic payments were the Scheme to remain open. Participants with multiple accredited installations would therefore receive payment in respect of each eligible installation.
- 6.3. Applications with 'preliminary accreditation' would not be eligible for payment. Prior to suspension of the Scheme in February 2016, potential participants had the option to apply for 'preliminary accreditation' for large biomass installations with an option to later seek full accreditation. It is proposed that installations with preliminary accreditation, where full accreditation had not been obtained by 31 December 2020, would not be eligible for closure payment. It is the Department's view that it would not reflect a fair balance between the public and private interests in those cases if it was to pay compensation in respect of equipment that (i) may not have been installed; (ii) has not been fully accredited; and (iii) has never generated eligible heat in line with the Scheme's objectives.
- 6.4. Payment would be made to the registered owner of the installation. In cases where an installation has transferred ownership during its lifetime, payment would only be made to the current registered owner.

7. IMPLEMENTATION OF FINAL POLICY

- 7.1. The final decision on future of the Non-Domestic NIRHI Scheme will be taken by the Northern Ireland Executive, informed by the responses and evidence submitted through this consultation process.
- 7.2. Any option other than the status quo would require passage of legislation through the Northern Ireland Assembly.
- 7.3. In the event that the final policy decision is for a compensated closure of the Scheme, implementation will be subject to a final decision on budget affordability. Following enactment of legislation on Scheme closure, payment of compensation would be made as early as administratively possible.
- 7.4. Although the United Kingdom has now left the European Union, the State aid rules continue to apply to the Scheme. Therefore, although it is not anticipated, if the European Commission concludes the closure compensation payments are not reasonable, it may adopt a negative decision regarding the closure compensation payments.

8. CONSULTATION QUESTIONS

- 8.1. Respondents are asked to respond to the six questions below using the Question and Answer template provided. If you wish to do so, please explain your answers providing reasons and any evidence or information you believe is relevant within the space provided on the template.

Question 1: Do you agree that the Non-Domestic NIRHI Scheme should be closed, as set out within the New Decade, New Approach document?

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant within the space provided on the template.

Question 2: Do you agree that if the Non-Domestic NIRHI Scheme is closed, compensation for its early closure should be paid to legitimate participants?

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant in support of your answer to this question within the space provided on the template.

Question 3: Do you agree that if the Non-Domestic NIRHI Scheme is closed with compensation paid for its early closure, the proposed approach defined in Option 4 and Annex A, in terms of rationale, assumptions and quantum of payments, would be appropriate?

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant in support of your answer to this question within the space provided on the template.

Question 4: Do you agree with the proposed criteria associated with receipt of any closure compensation payment, as set out in Section 6?

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant in support of your answer to this question within the space provided on the template.

Question 5: If the Non-Domestic NIRHI Scheme remains operational for current participants, do you believe it should operate on the basis of present tariffs (Option 1), or informed by future reviews of tariffs to ensure that the Scheme continues to appropriately incentivise generation of heat from renewable sources (Option 2)?

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant in support of your answer to this question within the space provided on the template.

Question 6: Which of the options set out in this consultation document would be your preferred option for the future of the Non-Domestic NIRHI Scheme? Please select one of the following four options:

- Option 1: Scheme remains operational for current participants with present tariffs for all technologies (status quo);
- Option 2: Scheme remains operational for current participants with all tariffs subject to review as necessary;
- Option 3: Scheme closure with no further payments made to participants; or
- Option 4: Scheme closure with compensation paid to legitimate current participants.

Please respond using the Question and Answer template provided.

If you wish to do so, please provide comments and any evidence or information you believe is relevant in support of your answer to this question within the space provided on the template.

9. CONFIDENTIALITY

Freedom of information, environmental information and data protection

- 9.1. Following the end of the consultation, the Department will publish a consultation report summarising responses received in an aggregated format. This report may include anonymised direct quotes from your response. Personal information that you provide in your response will not be published in the consultation report.
- 9.2. Any information provided in responses, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the Data Protection Act 2018 if the Department receives such a request for information.
- 9.3. For further information about how we process your personal data, please see the Privacy Notice included within the Question and Answer template.

With your response, please identify any information which you do not wish to be disclosed and explain why you regard that information as confidential. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Please respond using the Question and Answer template provided.

**ANNEX A:
CALCULATION OF NON-DOMESTIC RHI SCHEME EARLY
CLOSURE COMPENSATION PAYMENTS – PROPOSED
APPROACH**

Appended separately.

ANNEX B: RHI TARIFF REVIEW 2020 CONSULTATION REPORT

Appended separately.