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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Renewable Heat Incentive Regulations 2011**

**PART 1**

**Introductory provisions**

**Citation and commencement**

1. These Regulations may be cited as the Renewable Heat Incentive Regulations 2011 and come into force on the day after the day on which they are made.

**Interpretation**

2. In these Regulations—

“accreditation” means accreditation of an eligible installation by the Authority following an application under regulation 22;

“accredited RHI installation” means an eligible installation which has been given accreditation;

“the Act” means the Energy Act 2008;

“anaerobic digestion” means the bacterial fermentation of biomass in the absence of oxygen;

“biogas production plant” means a plant which produces biogas by anaerobic digestion, gasification or pyrolysis;

“building” means any permanent or long-lasting building or structure of whatever kind and whether fixed or moveable which, except for doors and windows, is wholly enclosed on all sides with a roof or ceiling and walls;

“CHP” means combined heat and power;

“class 2 heat meter” means a heat meter which—

- (a) complies with the relevant requirements set out in Annex 1 to the Measuring Instruments Directive,
- (b) complies with the specific requirements listed in Annex MI-004 to that Directive, and
- (c) falls within accuracy class 2 as defined in Annex MI-004 to that Directive;

“coefficient of performance” means the ratio of the amount of heating or cooling in kilowatts provided by a heat pump to the kilowatts of power consumed by the heat pump;

“commissioned” means, in relation to an eligible installation, the completion of such procedures and tests as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of eligible installation in order to demonstrate that it is capable of operating and delivering heat to the premises or process for which it was installed;

“date of accreditation”, in relation to an accredited RHI installation, means the later of—

- (a) the first day falling on or after the date of receipt by the Authority of the application for accreditation on which the Authority is satisfied both that the application was properly made and that the plant meets the eligibility criteria, and

- (b) the day on which the plant was first commissioned;
- “date of registration”, in relation to a producer of biomethane for injection, means the first day falling on or after the date of receipt by the Authority of the application for registration on which the Authority is satisfied that the application was properly made;
- “eligibility criteria” has the meaning given by regulation 4;
- “eligible installation” means a plant which meets the eligibility criteria;
- “eligible purpose” means a purpose specified in regulation 3(2);
- “gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;
- “gas transporter” means the holder of a licence granted under section 7 of the Gas Act 1986(1);
- “heat meter” has the same meaning as that given in Annex MI-004 of the Measuring Instruments Directive;
- “ineligible purpose” means a purpose which is not an eligible purpose;
- “injection” means the introduction of gas into a pipe-line system operated by a gas transporter;
- “installation capacity”, in relation to a plant, means the total installed peak heat output capacity of the plant;
- “kWh” means kilowatt hours;
- “kWhth” means kilowatt hours thermal;
- “kWth” means kilowatt thermal;
- “MCS” means the Microgeneration Certification Scheme(2) or an equivalent scheme accredited under EN 45011(3) which certifies microgeneration products and installers in accordance with consistent standards;
- “Measuring Instruments Directive” means Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments(4);
- “municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003(5);
- “MWhth” means megawatt hours thermal;
- “MWth” means megawatt thermal;
- “ongoing obligations” means the obligations specified in Part 4;
- “participant” means—
- (a) the owner of an accredited RHI installation or, where there is more than one such owner, the owner with authority to act on behalf of all owners in accordance with regulation 22(3); or
- (b) a producer of biomethane who has been registered under regulation 25;
- “periodic support payments” have the meaning given in regulation 3;
- “pipe-line system” has the same meaning as in section 5(10) of the Gas Act 1986(6);

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(1) 1986 c.44; section 7 was amended by the Utilities Act 2000 (c.27), section 3(2), section 76, section 108, Schedule 6, Part I, paragraphs 1 and 4 and Schedule 8 and the Energy Act 2004 (c.20), section 149, subsections (1) and (5), section 197(9) and Schedule 23, Part I.

(2) Details of which are available at [www.microgenerationcertification.org](http://www.microgenerationcertification.org).

(3) ISBN 0580294153. Copies can be obtained from the British Standards Institution at [www.bsigroup.com](http://www.bsigroup.com).

(4) OJ L 135, 30.4.2004, p. 1, amended by Commission Directive 2009/137/EC (OJ L 294, 11.11.2009, p. 7).

(5) 2003 c.33.

(6) Section 5(6) to (10) was inserted by section 149(1) and (3) of the Energy Act 2004 (c.20).

“process” means any process other than the generation of electricity;

“pyrolysis” means the thermal degradation of a substance in the absence of an oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

“quarterly period” means, except where otherwise specified, the first, second, third or fourth quarter of any year commencing with, or with the anniversary of, a participant’s tariff start date;

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office of National Statistics; or
- (b) where the index is not published for a year, any substituted index or figures published by that Office;

“scheme” (except in this regulation) means the incentive scheme established by these Regulations;

“solar collector” means a liquid filled flat plate or evacuated tube solar collector;

“statement of eligibility” has the meaning given by regulation 22(6)(f);

“steam measuring equipment” means all the equipment needed to measure to the Authority’s satisfaction the mass flow rate and energy of steam, including at least the following components—

- (a) a flow meter,
- (b) a pressure sensor,
- (c) a temperature sensor, and
- (d) a digital integrator or calculator able to determine the cumulative energy in MWhth which has passed a specific point;

“tariff” means the payment rate per kWhth in respect of an accredited RHI installation and per kWh in respect of biomethane injection;

“tariff end date” means the last day of the tariff lifetime;

“tariff lifetime” means—

- (a) in relation to an accredited RHI installation, the period for which periodic support payments are payable for that installation, or
- (b) in relation to a participant who is a producer of biomethane, the period for which that person is eligible to receive periodic support payments;

“tariff start date” means the date of accreditation of an eligible installation or, in relation to a producer of biomethane, the date of registration.

### **Renewable heat incentive scheme**

3.—(1) These Regulations establish an incentive scheme to facilitate and encourage the renewable generation of heat and make provision regarding its administration.

(2) Subject to Part 7 and regulation 24, the Authority must pay participants who are owners of accredited RHI installations payments, referred to in these Regulations as “periodic support payments”, for generating heat that is used in a building for any of the following purposes—

- (a) heating a space,
- (b) heating water,
- (c) for carrying out a process.

(3) Subject to Part 7, the Authority must pay participants who are producers of biomethane for injection periodic support payments.

## PART 2

### Eligibility and matters relating to eligibility

#### CHAPTER 1

##### Eligible installations

##### **Eligible installations**

- 4.—(1) A plant meets the criteria for being an eligible installation (“the eligibility criteria”) if—
- (a) regulation 5, 6, 7, 8, 9, 10 or 11 applies;
  - (b) the plant satisfies the requirements set out in regulation 12(1);
  - (c) regulation 15 does not apply; and
  - (d) the plant satisfies the requirements set out in Chapter 3.
- (2) But this regulation is subject to regulation 14.

#### CHAPTER 2

##### Eligibility criteria for technologies

##### **Eligible installations generating heat from solid biomass**

5. This regulation applies if the plant complies with all of the following requirements—
- (a) it generates heat from solid biomass;
  - (b) the heat from the solid biomass is generated using equipment specifically designed and installed to use solid biomass as its only primary fuel source;
  - (c) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies.

##### **Eligible installations generating heat from solid biomass contained in municipal waste**

6. This regulation applies if the plant generates heat from solid biomass contained in municipal waste.

##### **Eligible installations generating heat using solar collectors**

7. This regulation applies if the plant complies with all of the following requirements—
- (a) it generates heat using a solar collector;
  - (b) it has an installation capacity of less than 200kWth;
  - (c) in the case of a plant with an installation capacity of 45kWth or less, regulation 13 applies.

##### **Eligible installations generating heat using heat pumps**

8. This regulation applies if the plant is a heat pump and complies with all of the following requirements—

- (a) it generates heat using naturally occurring energy stored in the form of heat from one of the following sources of energy—

- (i) the ground other than naturally occurring energy located and extracted from at least 500 metres below the surface of solid earth;
- (ii) surface water;
- (b) in the case of a heat pump with an installation capacity of 45kWth or less, regulation 13 applies;
- (c) it has a coefficient of performance of at least 2.9.

#### **Eligible installations which are CHP systems**

9.—(1) Subject to paragraph (2), this regulation applies if the plant is a CHP system which complies with one of the following requirements—

- (a) it generates heat and electricity from solid biomass and either regulation 6 applies or the plant complies with the requirement in regulation 5(b);
  - (b) it generates heat and electricity from biogas and complies with regulation 11(b) and (c);
  - (c) it generates heat and electricity utilising naturally occurring energy located and extracted from at least 500 metres beneath the surface of solid earth.
- (2) This regulation does not apply if the plant—
- (a) uses solid biomass to generate heat and electricity;
  - (b) is accredited under the Renewables Obligation Order 2009(7) or the Renewables Obligation (Scotland) Order 2009(8); and
  - (c) is, or at any time since it was accredited in accordance with sub-paragraph (b), has been a qualifying CHP generating station within the meaning of article 2 of either of those Orders.

#### **Eligible installations generating heat using geothermal sources**

10. This regulation applies if the plant generates heat using naturally occurring energy located and extracted from at least 500 metres beneath the surface of solid earth.

#### **Eligible installations generating heat using biogas**

11. This regulation applies if the plant complies with all of the following requirements—
- (a) it generates heat from biogas;
  - (b) it has an installation capacity of less than 200kWth;
  - (c) it does not generate heat from solid biomass.

#### **Other eligibility requirements for technologies**

- 12.—(1) The requirements referred to in regulation 4(b) are—
- (a) installation of the plant was completed and the plant was first commissioned on or after 15th July 2009;
  - (b) the plant was new at the time of installation;
  - (c) the plant uses liquid or steam as a medium for delivering heat to the space, water or process;
  - (d) heat generated by the plant is used for an eligible purpose.

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(7) S.I. 2009/785, amended by S.I. 2010/1107 and S.I. 2011/984.

(8) S.S.I. 2009/140, amended by S.S.I. 2010/147 and S.S.I. 2011/225.

(2) The requirements of paragraph (1)(a) and (b) are deemed to be satisfied where the plant was previously generating electricity only, using solid biomass or biogas, and was first commissioned as a CHP system on or after 15th July 2009.

(3) But the requirements of paragraph (1)(a) and (b) are not satisfied where the plant was previously generating heat only and was first commissioned as a CHP system on or after 15th July 2009.

### **MCS certification for microgeneration heating equipment**

**13.** This regulation applies where the plant for which accreditation is being sought is certified under the MCS and its installer was certified under the MCS at the time of installation.

### **Plants comprised of more than one plant**

**14.—**(1) Subject to paragraph (2), and without prejudice to regulation 43(5)(b), the eligibility criteria are not met if the plant is comprised of more than one plant.

(2) Where two or more plants—

- (a) use the same source of energy and technology,
- (b) form part of the same heating system, and
- (c) are not accredited RHI installations,

those plants (the “component plants”) are to be regarded as a single plant for the purposes of paragraph (1) provided that paragraph (3) applies.

(3) This paragraph applies where each component plant meets the eligibility criteria; and for that purpose a component plant can be taken to meet the eligibility criteria notwithstanding that regulation 13 does not apply.

### **Excluded plants**

**15.—**(1) This regulation applies where the plant—

- (a) is generating heat solely for the use of one domestic premises;
- (b) is, in the Authority’s opinion, generating heat solely for an ineligible purpose; or
- (c) is a plant which—
  - (i) is additional RHI capacity within the meaning of regulation 43(2) and was first commissioned more than 12 months after the original installation was first commissioned;
  - (ii) generates heat from biogas or using a solar collector; and
  - (iii) has an installation capacity which, together with the installation capacities of all related plants, is 200kWth or above.

(2) For the purposes of this regulation—

“domestic premises” means single, self contained premises used wholly or mainly as a private residential dwelling where the fabric of the building has not been significantly adapted for non-residential use;

“related plant” means any plant for which an application for accreditation has been made (whether or not it has been accredited) which uses the same source of energy and technology and forms part of the same heating system as the plant referred to in paragraph (1)(c).

## CHAPTER 3

### Eligibility criteria in relation to metering and steam measuring

#### **Metering of plants in simple systems**

**16.**—(1) This regulation applies where—

- (a) the plant is generating and supplying heat solely for one or more eligible purposes within one building;
- (b) no heat generated by the plant is delivered by steam; and
- (c) the plant is not a CHP system.

(2) Where this regulation applies, a class 2 heat meter must be installed to measure the heat in kWhth generated by the plant.

#### **Metering of plants in complex systems**

**17.**—(1) This regulation applies where regulation 16(1) does not apply.

(2) Subject to regulation 19—

- (a) where heat generated by the plant is delivered by liquid, class 2 heat meters must be installed to measure both the kWhth of heat generated by that plant and the kWhth of heat used for eligible purposes by the heating system of which that plant forms part; and
- (b) where heat generated by the plant is delivered by steam, the following must be installed—
  - (i) steam measuring equipment to measure both the heat generated in the form of steam by the plant and the heat in the form of steam used for eligible purposes; and
  - (ii) a class 2 heat meter or steam measuring equipment to measure any condensate or steam which returns to the plant.

(3) Where this regulation applies, and more than one plant is supplying heat to the heating system supplied by the plant, steam measuring equipment or class 2 heat meters must be installed, as appropriate, to measure the heat generated in kWhth by all plants supplying heat to that heating system.

#### **Shared meters**

**18.**—(1) Subject to paragraph (2), the heat generated by the plant must be individually metered.

(2) Subject to regulation 43(8), the heat generated by two or more plants may be metered using one meter provided that—

- (a) the plants use the same source of energy and technology;
- (b) the plants will, once given accreditation, be eligible to receive the same tariff;
- (c) the plants will then share the same tariff start date and tariff end date; and
- (d) it is the Authority's opinion that a single meter is capable of metering the heat generated by all of those plants.

#### **Metering of CHP systems generating electricity only before 15th July 2009**

**19.**—(1) This regulation applies where the plant is a CHP system and the requirements of regulation 12(1)(a) and (b) are deemed to be satisfied in accordance with regulation 12(2).

(2) Where this regulation applies, any existing heat meter or steam measuring equipment installed before the date of commencement of these Regulations may continue to be used by a participant

to measure the heat generated by the CHP system and used for eligible purposes, provided that the CHP system was registered under the CHPQA before that date.

(3) For the purpose of this regulation, “the CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009, as published by the Department of Energy and Climate Change<sup>(9)</sup>.

#### **Matters relating to all heat meters and steam measuring equipment**

**20.**—(1) All heat meters installed or used in accordance with these Regulations must, where applicable—

- (a) be calibrated prior to use;
- (b) be calibrated correctly for any water/ethylene glycol mixture; and
- (c) be (or have been) properly installed in accordance with manufacturer’s instructions.

(2) All steam measuring equipment installed or used in accordance with these Regulations must be—

- (a) calibrated prior to use;
- (b) capable of displaying measured steam pressure and temperature;
- (c) capable of displaying the current steam mass flow rate and the cumulative mass of steam which has passed through it since it was installed; and
- (d) properly installed in accordance with manufacturer’s instructions.

#### **Additional metering requirements for plants generating heat from biogas**

**21.**—(1) This regulation sets out additional requirements in relation to metering where a plant is generating heat from biogas.

(2) In that case—

- (a) a class 2 heat meter must be installed to meter any heat directed from the plant combusting the biogas to the biogas production plant; and
- (b) a class 2 heat meter must be installed to meter any heat supplied to the biogas production plant from any source other than—
  - (i) the plant combusting the biogas; and
  - (ii) where the biogas has been produced by anaerobic digestion, the feedstock from which it was produced.

## **PART 3**

### **Accreditation and registration**

#### **Applications for accreditation**

**22.**—(1) An owner of an eligible installation may apply for that installation to be accredited.

(2) All applications for accreditation must be made in writing to the Authority and must be supported by—

- (a) such of the information specified in Schedule 1 as the Authority may require;

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(9) A copy is available on [www.chpqa.decc.gov.uk](http://www.chpqa.decc.gov.uk).

- (b) a declaration that the information provided by the applicant is accurate to the best of the applicant's knowledge and belief;
  - (c) a declaration that the applicant is the owner, or one of the owners, of the eligible installation for which accreditation is being sought.
- (3) The Authority may, where an eligible installation is owned by more than one person, require that—
- (a) an application submitted under this regulation is made by only one of those owners;
  - (b) the applicant has the authority from all other owners to be the participant for the purposes of the scheme; and
  - (c) the applicant provides to the Authority, in such manner and form as the Authority may request, evidence of that authority.
- (4) Before accrediting an eligible installation, the Authority may arrange for a site inspection to be carried out in order to satisfy itself that a plant should be accredited.
- (5) The Authority may, in granting accreditation, attach such conditions as it considers to be appropriate.
- (6) Where an application for accreditation has, in the Authority's opinion, been properly made in accordance with paragraphs (2) and (3) and the Authority is satisfied that the plant is an eligible installation the Authority must (subject to regulation 23 and regulation 47(3))—
- (a) accredit the eligible installation;
  - (b) notify the applicant in writing that the application has been successful;
  - (c) enter on a central register maintained by the Authority the applicant's name and such other information as the Authority considers necessary for the proper administration of the scheme;
  - (d) notify the applicant of any conditions attached to the accreditation;
  - (e) in relation to an applicant who is or will be generating heat from solid biomass, having regard to the information provided by the applicant, specify by notice to the applicant which of regulation 28, 29 or 30 applies;
  - (f) provide the applicant with a written statement ("statement of eligibility") including the following information—
    - (i) the date of accreditation;
    - (ii) the applicable tariff;
    - (iii) the process and timing for providing meter readings;
    - (iv) details of the frequency and timetable for payments; and
    - (v) the tariff lifetime and tariff end date.
- (7) Where the Authority does not accredit a plant it must notify the applicant in writing that the application for accreditation has been rejected, giving reasons.
- (8) Once a specification made in accordance with paragraph (6)(e) has been notified to an applicant, it cannot be changed except where the Authority considers that an error has been made or on the receipt of new information by the Authority which demonstrates that the specification should be changed.

### **Exceptions to duty to accredit**

**23.**—(1) The Authority must not accredit an eligible installation unless the applicant has given notice (which the Authority has no reason to believe is incorrect) that, as applicable—

- (a) no grant from public funds has been paid or will be paid in respect of any of the costs of purchasing or installing the eligible installation; or
- (b) such a grant was paid in respect of an eligible installation which was completed and first commissioned between 15th July 2009 and the date on which these Regulations come into force, and has been repaid to the person or authority who made it.

(2) In this regulation, “grant from public funds” means a grant made by a public authority or by any person distributing funds on behalf of a public authority.

(3) The Authority must not accredit an eligible installation if it has not been commissioned.

(4) The Authority may refuse to accredit an eligible installation if its owner has indicated that one of the applicable ongoing obligations will not be complied with.

(5) The Authority may refuse to accredit a plant which is a component plant within the meaning of regulation 14(2).

### **Changes in ownership**

**24.**—(1) This regulation applies where ownership of all or part of an accredited RHI installation is transferred to another person.

(2) No periodic support payment may be made to a new owner until—

- (a) that owner has notified the Authority of the change in ownership; and
- (b) the steps set out in paragraph (3) have been completed.

(3) On receipt of a notification under paragraph (2), the Authority—

- (a) may require the new owner to provide such of the information specified in Schedule 1 as the Authority considers necessary for the proper administration of the scheme;
- (b) may review the accreditation of the accredited RHI installation to ensure that it continues to meet the eligibility criteria and should remain an accredited RHI installation.

(4) Where the Authority has received the information required under paragraph (3)(a) and is satisfied as to the matters specified in paragraph (3)(b) it must—

- (a) update the central register referred to in regulation 22(6)(c);
- (b) where the new owner is the participant, send the new owner a statement of eligibility setting out the information specified in regulation 22(6)(f); and
- (c) where applicable, send the new owner (if the new owner is the participant) a notice in accordance with regulation 22(6)(e).

(5) If, within a period of 12 months from the transfer of ownership of the accredited RHI installation, no notification is made in accordance with paragraph (2) or paragraph (4) does not apply, the installation will on the expiry of that period cease to be accredited and accordingly no further periodic support payments will be paid in respect of the heat it generates.

(6) The period specified in paragraph (5) may be extended by the Authority where the Authority considers it is just and equitable to do so.

(7) Subject to paragraph (8), following the successful completion of the steps required under paragraphs (3) and (4), the new owner of an accredited RHI installation will receive periodic support payments calculated from the date of completion of those steps for the remainder of the tariff lifetime of that accredited RHI installation.

(8) Where a transfer of ownership of all or part of an accredited RHI installation takes place and results in that accredited RHI installation being owned by more than one person, the Authority may require that only one of those owners is the participant for the purposes of the scheme and require that owner to comply with sub-paragraphs (b) and (c) of regulation 22(3).

### **Producers of biomethane**

**25.**—(1) A producer of biomethane for injection may apply to the Authority to be registered as a participant.

(2) Applications for registration must be in writing and supported by—

- (a) such of the information specified in Schedule 1 as the Authority may require;
- (b) a declaration that the information provided by the applicant is accurate to the best of the applicant's knowledge and belief;
- (c) details of the process by which the applicant proposes to produce biomethane and arrange for its injection; and
- (d) a notice given in accordance with paragraph (6).

(3) The Authority may in registering an applicant attach such conditions as it considers appropriate.

(4) Where the application for registration is properly made in accordance with paragraph (2), the Authority must (subject to paragraphs (5), (6) and (7))—

- (a) notify the applicant in writing that registration has been successfully completed and the applicant is a participant;
- (b) enter on a central register maintained by the Authority the date of registration and the applicant's name;
- (c) notify the applicant of any conditions attached to their registration as a participant; and
- (d) send the applicant a statement of eligibility including such of the information specified in regulation 22(6)(f) as the Authority considers applicable.

(5) The Authority may refuse to register an applicant if the applicant has indicated that one or more of the applicable ongoing obligations will not be complied with.

(6) The Authority must not register an applicant unless that applicant has given notice (which the Authority has no reason to believe is incorrect) that no grant from public funds has been paid or will be paid in respect of any of the equipment used to produce the biomethane for which the applicant is intending to claim periodic support payments.

(7) The Authority must not register an applicant if it would result in periodic support payments being made to more than one participant for the same biomethane.

### **Preliminary accreditation**

**26.**—(1) The Authority may, upon the application by a person who proposes to construct or operate an eligible installation which has not yet been commissioned, grant preliminary accreditation in respect of that eligible installation provided—

- (a) any necessary planning permission has been granted; or
- (b) such planning permission is not required and appropriate evidence of this is provided to the Authority from the relevant planning authority.

(2) The Authority must not grant preliminary accreditation to any plant under this regulation if, in its opinion, that plant is unlikely to generate heat for which periodic support payments may be paid.

(3) An application for preliminary accreditation must be in writing and supported by such of the information specified in Schedule 1 as the Authority may require.

(4) The Authority may attach such conditions as it considers appropriate in granting preliminary accreditation under this regulation.

(5) Where a plant has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for accreditation is made under this Part, the Authority must, subject to regulation 23, grant that application unless it is satisfied that—

- (a) there has been a material change in circumstances since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused;
- (b) any condition attached to the preliminary accreditation has not been complied with;
- (c) the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular such that, had the Authority known the true position when the application for preliminary accreditation was made, it would have been refused; or
- (d) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused.

(6) Where any of the circumstances mentioned in paragraph (7) apply in relation to a preliminary accreditation which the Authority has granted and having regard to those circumstances the Authority considers it appropriate to do so, the Authority may—

- (a) withdraw the preliminary accreditation;
- (b) amend the conditions attached to the preliminary accreditation;
- (c) attach conditions to the preliminary accreditation.

(7) The circumstances referred to in paragraph (6) are as follows—

- (a) in the Authority's view there has been a material change in circumstances since the preliminary accreditation was granted;
- (b) any condition attached to the preliminary accreditation has not been complied with;
- (c) the Authority considers that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular;
- (d) there has been change in the applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused.

(8) The Authority must send the applicant a notice setting out—

- (a) its decision on an application for preliminary accreditation of a plant or on the withdrawal of any preliminary accreditation;
- (b) any condition attached to the preliminary accreditation or any amendment to those conditions.

(9) The notice sent pursuant to paragraph (8) must specify the date on which the grant or withdrawal of preliminary accreditation is to take effect and, where applicable, the date on which any conditions (or amendments to those conditions) attached to the preliminary accreditation are to take effect.

(10) In paragraph (1), the reference to the person who proposes to construct an eligible installation includes a person who arranges for the construction of the eligible installation.

(11) This regulation does not apply to a plant which will generate heat using—

- (a) a solar collector;
- (b) a heat pump which complies with the requirements of regulation 8(a); or
- (c) solid biomass, provided that the plant will have an installation capacity below 200kWth.

## PART 4

### Ongoing obligations for participants

#### CHAPTER 1

##### Ongoing obligations relating to the use of solid biomass to generate heat

#### Interpretation

**27.** In this Part—

“allocating authority” has the same meaning as in section 24 of the Waste and Emissions Trading Act 2003<sup>(10)</sup>;

“energy content” means the energy contained within a substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid and gaseous fuels (including definitions) published by the British Standards Institute on 28th June 1991<sup>(11)</sup>);

“landfill gas” means gas formed by the digestion of material in a landfill;

“standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the accredited RHI installation;

“waste” has the same meaning as in section 75(2) of the Environmental Protection Act 1990<sup>(12)</sup>;

“waste collection authority” has the same meaning as in section 30(3) of the Environmental Protection Act 1990<sup>(13)</sup>;

“waste disposal authority” has the same meaning as in section 30(2) of the Environmental Protection Act 1990<sup>(14)</sup>.

#### Participants using solid biomass contained in municipal waste

**28.**—(1) This regulation applies to participants generating heat in an accredited RHI installation from solid biomass contained in municipal waste.

(2) The proportion of solid biomass contained in the municipal waste must be a minimum of 50 per cent.

(3) For the purposes of paragraph (2)—

(a) the proportion of solid biomass contained in the municipal waste is to be determined by the Authority for every quarterly period;

(b) it is for the participant to provide, in such form as the Authority may require, evidence to demonstrate to the Authority’s satisfaction the proportion of the energy content of the municipal waste used in any quarterly period which is composed of fossil fuel, to

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<sup>(10)</sup> 2003 c.33. Section 24 was amended by section 209(1)(a) and (b) of the Local Government and Public Involvement in Health Act 2007 (c.28).

<sup>(11)</sup> ISBN 0580194825. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

<sup>(12)</sup> 1990 c.43. Section 75(2) was substituted by section 120(1) of and paragraph 88(1) and (2) of Schedule 22 to the Environment Act 1995 (c.25) and a Schedule 2B (Categories of Waste) was inserted by paragraph 95 of that Schedule.

<sup>(13)</sup> Section 30(3) was amended by the Local Government (Wales) Act 1994 (c.19), section 66(8), paragraph 17(3) of Schedule 9 and Schedule 18 and subsection (3)(c) was substituted by section 180(1) of and paragraph 167(3) of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

<sup>(14)</sup> Paragraph (f) of section 30(2) was substituted by paragraph 17(2) of Schedule 9 to the Local Government (Wales) Act 1994 (c.19) and paragraph (g) was amended by section 180(1) of and paragraph 167(3) of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

enable the Authority to determine the proportion of solid biomass in accordance with sub-paragraph (c);

- (c) the proportion of solid biomass is the energy content of the municipal waste used in any quarterly period to generate heat less the energy content of any fossil fuel of which that municipal waste is in part composed, expressed as a percentage of the energy content of that municipal waste.

(4) The participant may use fossil fuel (other than fossil fuel mentioned in paragraph (3)(c)) in an accredited RHI installation for the following permitted ancillary purposes only—

- (a) cleansing other fuels from the accredited RHI installation's combustion system prior to using fossil fuel to heat the combustion system to its normal temperature;
- (b) the heating of the accredited RHI installation's combustion system to its normal operating temperature or the maintenance of that temperature;
- (c) the ignition of fuels of low or variable calorific value;
- (d) emission control;
- (e) in relation to accredited RHI installations which are CHP systems, standby generation or the testing of standby generation capacity.

(5) The energy content of the fossil fuel used during any quarterly period for the permitted ancillary purposes specified in paragraph (4) must not exceed 10 per cent of the energy content of all the fuel used by that accredited RHI installation to generate heat during that quarterly period.

(6) Without prejudice to paragraph (3)(b), when determining the proportion of solid biomass contained in municipal waste, the Authority may have regard to any information (whether or not produced to it by the participant) if, in its opinion, that information indicates what proportion of the energy content of the municipal waste is composed of fossil fuel.

(7) Subject to paragraph (8), where the participant produces to the Authority—

- (a) data published by an allocating authority, a waste disposal authority or a waste collection authority, demonstrating that the proportion of municipal waste used by that participant which is composed of fossil fuel is unlikely to exceed 50 per cent, and
- (b) evidence that the municipal waste used has not been subject to any process before being used that is likely to have materially increased that proportion,

the Authority may accept this as sufficient evidence for the purposes of paragraph (3)(b) of the fact that the proportion of the municipal waste used which is composed of fossil fuel is no more than 50 per cent.

(8) Where the Authority so requests, the participant must arrange for samples of the municipal waste used (or to be used) in the accredited RHI installation, or of any gas or other substance produced as the result of the use of such municipal waste, to be taken by a person (and analysed in a manner) specified by the Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.

(9) The participant may not generate heat using solid biomass contained in any waste other than municipal waste.

### **Participants using solid biomass in accredited RHI installations with an installation capacity of 1MWth or above**

**29.**—(1) This regulation applies to participants generating heat from solid biomass, not being solid biomass contained in municipal waste, in an accredited RHI installation with an installation capacity of 1MWth or above.

(2) The participant may use solid biomass contaminated with fossil fuel only where the proportion of fossil fuel contamination does not exceed 10 per cent.

- (3) Such contaminated biomass may not be used unless the fossil fuel is present because—
- (a) the solid biomass has been subject to a process, the undertaking of which has caused the fossil fuel to be present in, on or with the biomass even though that was not the object of the process; or
  - (b) the fossil fuel is waste and was not added to the solid biomass with a view to its being used as a fuel.
- (4) For the purposes of paragraph (2)—
- (a) the proportion of fossil fuel contamination is to be determined by the Authority for every quarterly period;
  - (b) it is for the participant to provide, in such form as the Authority may require, evidence to demonstrate to the Authority's satisfaction the proportion of fossil fuel contamination; and
  - (c) the proportion of fossil fuel contamination is the energy content of the fossil fuel with which the solid biomass used in any quarterly period is contaminated expressed as a percentage of the energy content of all solid biomass (contaminated or otherwise) used in that quarterly period to generate heat other than fossil fuel used in accordance with paragraphs (5) and (6).
- (5) The participant may use fossil fuel (other than fossil fuel mentioned in paragraph (2)) in an accredited RHI installation for the following permitted ancillary purposes only—
- (a) cleansing other fuels from the accredited RHI installation's combustion system prior to using fossil fuel to heat the combustion system to its normal temperature;
  - (b) the heating of the accredited RHI installation's combustion system to its normal operating temperature or the maintenance of that temperature;
  - (c) the ignition of fuels of low or variable calorific value;
  - (d) emission control;
  - (e) in relation to accredited RHI installations which are CHP systems, standby generation or the testing of standby generation capacity.
- (6) The energy content of the fossil fuel used during a quarterly period for the permitted ancillary purposes specified in paragraph (5) must not exceed 10 per cent of the energy content of all the fuel used by that accredited RHI installation to generate heat during that quarterly period.
- (7) Without prejudice to paragraph (4)(b), in determining the proportion of solid biomass composed of fossil fuel the Authority may have regard to any information (whether or not produced to it by the participant) if, in its opinion, that information indicates what proportion of the contaminated solid biomass is composed of fossil fuel.
- (8) Where the Authority so requests, the participant must arrange for samples of the fuel used (or to be used) in the accredited RHI installation, or of any gas or other substance produced as the result of the use of such fuel, to be taken by a person (and analysed in a manner) specified by the Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.
- (9) The participant must provide sustainability information in accordance with Schedule 2.

**Participants using solid biomass in accredited RHI installations with an installation capacity of between 45kWth and 1MWth**

**30.—**(1) This regulation applies to participants generating heat from solid biomass, not being solid biomass contained in municipal waste, in an accredited RHI installation with an installation capacity of between 45kWth and 1MWth.

(2) The participant may use solid biomass contaminated with fossil fuel provided the participant complies with paragraphs (2), (3) (5) and (6) of regulation 29 as well as the requirements of this regulation.

(3) Where solid biomass contaminated with fossil fuel is used in an accredited RHI installation, the participant must keep and provide upon request written evidence including invoices, receipts and such other documentation as the Authority may specify relating to fuel use and fossil fuel used for the permitted ancillary purposes specified in regulation 29(5) and provide this information upon request to the Authority, in such form as the Authority may require, to demonstrate compliance with this regulation.

(4) Without prejudice to paragraph (3), the Authority may have regard to any information (whether or not produced to it by the participant) if, in its opinion, that information indicates what proportion of the contaminated solid biomass is composed of fossil fuel.

(5) Where—

- (a) the Authority is not satisfied that the proportion of fossil fuel contamination (within the meaning of regulation 29(4)(c)) does not exceed 10 per cent; or
- (b) the Authority is not satisfied as to the matters specified in paragraphs (5) and (6) of regulation 29,

the Authority may require the participant to arrange for samples of the fuel used (or to be used) in the accredited RHI installation, or of any gas or other substance produced as the result of the use of such fuel, to be taken by a person (and analysed in a manner) specified by the Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.

## CHAPTER 2

### Ongoing obligations relating to the use of biogas to generate heat and the production of biomethane for injection

#### **Biogas produced from gasification or pyrolysis**

**31.**—(1) This regulation applies to participants producing biogas using gasification or pyrolysis and generating heat from that biogas in an accredited RHI installation.

(2) The participant may only use solid biomass or municipal waste as feedstock to produce the biogas.

(3) Where the participant uses municipal waste as feedstock—

- (a) paragraphs (2), (3), (6) and (7) of regulation 28 apply to the proportion of solid biomass contained in the municipal waste used for feedstock in the same way as for the proportion of solid biomass contained in municipal waste used to generate heat; and
- (b) paragraphs (4) and (5) of regulation 28 apply.

(4) Where the participant uses solid biomass (not being solid biomass contained in municipal waste) as feedstock—

- (a) paragraphs (2), (3), (4) and (7) of regulation 29 apply to the contamination of solid biomass used for feedstock in the same way as for solid biomass contaminated with fossil fuel used to generate heat; and
- (b) paragraphs (5) and (6) of regulation 29 apply.

(5) Where the Authority so requests, the participant must arrange for samples of the municipal waste or solid biomass used (or to be used) as feedstock in the biogas production plant, or of any gas or other substance produced as a result of the use of such municipal waste or solid biomass, to be taken by a person (and analysed in a manner) specified by the Authority, and for the results of that analysis to be made available to the Authority in such form as the Authority may require.

### **Participants generating heat from biogas**

**32.**—(1) This regulation applies to participants generating heat from biogas in an accredited RHI installation where regulation 31 does not apply.

(2) A participant using biogas produced by anaerobic digestion may only use biogas which—

(a) was produced from one or more of the following feedstocks—

(i) solid biomass,

(ii) solid waste,

(iii) liquid waste; and

(b) is not landfill gas.

(3) The participant may use fossil fuel in the accredited RHI installation only in accordance with paragraphs (5) and (6) of regulation 29.

### **Biomethane producers**

**33.**—(1) This regulation applies to participants producing biomethane for injection.

(2) A participant producing biomethane for injection from biogas made by gasification or pyrolysis may only use biogas made using solid biomass or municipal waste as feedstock.

(3) Where municipal waste is used as feedstock, paragraphs (2) and (3)(c) of regulation 28 apply to the proportion of solid biomass contained in municipal waste used as feedstock in the same way as for the proportion of solid biomass contained in municipal waste used to generate heat.

(4) Where solid biomass is used as feedstock, paragraphs (2), (3), and (4)(c) of regulation 29 apply to the contamination of solid biomass used for feedstock in the same way as for solid biomass contaminated with fossil fuel used by participants to generate heat.

(5) A participant producing biomethane for injection from biogas made by anaerobic digestion must comply with regulation 32(2).

(6) The participant must provide measurements in such format as the Authority may request which satisfies the Authority of all of the following—

(a) the gross calorific value and volume of biomethane injected;

(b) the gross calorific value and volume of any propane contained in the biomethane;

(c) the kWh of biomethane injected together with supporting meter readings and calculations;

(d) the kWhth of heat supplied to the biogas production plant (other than heat contained in feedstock to produce biogas by anaerobic digestion) which made the biogas used in any quarterly period to produce biomethane for injection;

(e) any heat supplied to the biomethane production process.

(7) The participant must keep and provide upon request copies or details of agreements with third parties with whom the participant contracts to carry out any of the processes undertaken to turn the biogas into biomethane and to arrange for its injection.

(8) The participant must keep and provide upon request written evidence including invoices, receipts, contracts and such other information as the Authority may specify in relation to biogas purchased and feedstock used in the production of the biogas used to produce biomethane.

(9) The participant must provide sustainability information in accordance with Schedule 2.

## CHAPTER 3

### Ongoing obligations relating to other matters

#### **Ongoing obligations: general**

- 34.** Participants must comply with the following ongoing obligations, as applicable—
- (a) they must keep and provide upon request by the Authority records of type of fuel used and fuel purchased for the duration of their participation in the scheme;
  - (b) they must keep and provide upon request by the Authority written records of fossil fuel used for the permitted ancillary purposes specified in Chapters 1 and 2;
  - (c) they must submit an annual declaration as requested by the Authority confirming, as appropriate, that they are using their accredited RHI installations in accordance with the eligibility criteria and are complying with the relevant ongoing obligations;
  - (d) they must notify the Authority if any of the information provided in support of their application for accreditation or registration was incorrect;
  - (e) they must ensure that their accredited RHI installation continues to meet the eligibility criteria;
  - (f) they must comply with any condition attached to their accreditation or registration;
  - (g) they must keep their accredited RHI installation maintained to the Authority's satisfaction and keep evidence of this including service and maintenance documents;
  - (h) participants combusting biogas must not deliver heat by air from their accredited RHI installation to the biogas production plant producing the biogas used for combustion;
  - (i) they must allow the Authority or its authorised agent reasonable access in accordance with Part 9;
  - (j) participants generating heat from solid biomass must comply with the regulation specified by the Authority in accordance with regulation 22(6)(e);
  - (k) they must notify the Authority within 28 days where they have ceased to comply with an ongoing obligation or have become aware that they will not be able so to comply, or where there has been any change in circumstances which may affect their eligibility to receive periodic support payments;
  - (l) they must notify the Authority within 28 days of the addition or removal of a plant supplying heat to a heating system of which their accredited RHI installation forms part;
  - (m) they must notify the Authority within 28 days of a change in ownership of all or part of their accredited RHI installation;
  - (n) they must repay any overpayment in accordance with any notice served under regulation 48;
  - (o) they must, if requested, provide evidence that the heat for which periodic support payments are made is used for an eligible purpose;
  - (p) they must not generate heat for the predominant purpose of increasing their periodic support payments;
  - (q) they must comply with such other administrative requirements that the Authority may specify in relation to the effective administration of the scheme.

#### **Ongoing obligations in relation to metering**

**35.—(1)** Participants must keep all meters and steam measuring equipment required to be used in accordance with these Regulations—

- (a) continuously operating,
- (b) properly maintained and periodically checked for errors, and
- (c) re-calibrated every 10 years or within such period of time as may be specified in accordance with manufacturers' instructions where available, whichever is the sooner,

and must retain evidence of this, including service and maintenance invoices, receipts or certificates for the duration of their participation in the scheme.

(2) The Authority may, by the date (if any) specified by it, or at such regular intervals as it may require to enable it to carry out its functions under these Regulations, require participants to provide the following information—

- (a) meter readings and other data collected in accordance with these Regulations from all steam measuring equipment, class 2 heat meters and other heat meters used in accordance with these Regulations in such format as the Authority may reasonably require;
- (b) in relation to participants using steam measuring equipment, a kWh figure of both the heat generated and the heat used for eligible purposes together with supporting data and calculations; and
- (c) the evidence and service and maintenance documentation specified in paragraph (1).

(3) Participants using heat pumps to provide both heating and cooling must ensure that their meters for those pumps enable them to—

- (a) measure heat used for eligible purposes only, and
- (b) where appropriate, measure (in order to discount) any cooling generated by the reverse operation of the heat pump,

and must provide upon request an explanation of how their metering arrangements have enabled the cooling in sub-paragraph (b) to be discounted.

(4) The data referred to in paragraph (2)(a) and (b) may be estimated in exceptional circumstances if the Authority has agreed in writing to an estimate being provided and to the way in which those estimates are to be calculated.

(5) Nothing in this regulation prevents the Authority from accepting further data from a participant, if the Authority considers it appropriate to do so.

### **Ongoing obligations in relation to the provision of information**

**36.**—(1) A participant must provide to the Authority on request any information which the participant holds and which the Authority requires in order to discharge its functions under these Regulations.

(2) Participants must retain the information referred to in Schedule 1, including such information as may reasonably be required by the Authority under paragraph 1(2)(e), (f), (h), (k), (n), (v) or (w) and whether or not copies of that documentation have been supplied to the Authority, for the duration of their participation in the scheme.

(3) Information requested under paragraph (1) must be provided within 7 days of the request or such later date as the Authority may specify.

(4) Information provided to the Authority under these Regulations must be accurate to the best of the participant's knowledge and belief.

(5) Sub-paragraphs (3) and (4) of paragraph 1 of Schedule 1 have effect.

## PART 5

### Periodic support payments

#### **Payment of periodic support payments to participants**

**37.**—(1) Periodic support payments shall accrue from the tariff start date and shall be payable for 20 years.

(2) Periodic support payments shall be calculated and paid by the Authority.

(3) Subject to regulation 43(5) and paragraphs (7) and (9) of this regulation, the tariff for an accredited RHI installation shall be fixed when that installation is accredited.

(4) Subject to paragraph (7), the tariff for a participant who is a producer of biomethane is the biomethane and biogas combustion tariff set out in Schedule 3.

(5) Subject to paragraphs (6), (7) and (9), the tariff for an accredited RHI installation is the tariff set out in Schedule 3 in relation to its source of energy or technology and installation capacity.

(6) For the purposes of paragraph (5), where the accredited RHI installation is one of a number of plants forming part of the same heating system its installation capacity is to be taken to be the sum of the installation capacities of that accredited RHI installation and all plants for which an application for accreditation has been made (whether or not they have been accredited) which—

- (a) use the same source of energy and technology as that accredited RHI installation; and
- (b) form part of the same heating system as that accredited RHI installation.

(7) The tariffs—

- (a) for the period beginning with the commencement of these Regulations and ending with 31st March 2012, are the tariffs set out in Schedule 3; and
- (b) for each subsequent year commencing with 1st April and ending with 31st March, are the tariffs applicable on the immediately preceding 31st March adjusted by the percentage increase or decrease in the retail prices index for the previous calendar year (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards).

(8) The Authority must calculate the tariff rates each year in accordance with paragraph (7) and publish on or before 1st April of each year a table of tariffs for the period commencing with 1st April of that year and ending with 31st March of the following year.

(9) Where an accredited RHI installation receives the small commercial biomass tariff or the medium commercial biomass tariff as set out in Schedule 3—

- (a) the tariff for the initial heat generated by the installation in any 12 month period commencing with, or with the anniversary of, the date of accreditation is the relevant tier 1 tariff specified in Schedule 3; and
- (b) the tariff for all further heat generated in that same 12 month period is the relevant tier 2 tariff.

(10) For the purposes of paragraph (9), “the initial heat” means the heat in kWhth generated by an accredited RHI installation running at its installation capacity for 1,314 hours.

#### **Periodic support payments for accredited RHI installations in simple systems**

**38.**—(1) This regulation applies to participants who own an accredited RHI installation (“the installation”) which—

- (a) is generating and supplying heat solely for one or more eligible purposes used in one building;

- (b) does not deliver heat by steam; and
- (c) is not a CHP system.

(2) Subject to regulations 40 and 41, participants shall be paid a periodic support payment for the installation in respect of each quarterly period calculated in accordance with one of the following formulae, as applicable—

- (a)  $A \times B$ ; or
- (b) where the installation is generating heat from the combustion of biogas,  $A \times (B - C)$ ,

where—

A is the tariff for the installation determined in accordance with regulation 37;

B is the heat in kWhth generated by the installation during the relevant quarterly period; and

C is the heat in kWhth directed from the installation or delivered by any other source to the biogas production plant which produced the biogas combusted in the relevant quarterly period (other than heat contained in feedstock used to produce biogas by anaerobic digestion).

#### **Periodic support payments accredited RHI installations for complex systems**

**39.**—(1) This regulation applies to participants who own an accredited RHI installation (“the installation”) which does not fall within regulation 38.

(2) Subject to regulations 40 and 41, participants shall be paid a periodic support payment for the installation in respect of each quarterly period calculated in accordance with one of the following formulae, as applicable—

- (a)  $A \times B \times \frac{D}{E}$ ; or
- (b) where the accredited RHI installation is generating heat from the combustion of biogas,

$$A \times (B - C) \times \frac{D}{E},$$

where—

A is the tariff for the installation determined in accordance with regulation 37;

B is the heat in kWhth used by the heating system of which the installation forms part during the relevant quarterly period for eligible purposes;

C is the heat in kWhth directed from the installation or delivered from any other source to the biogas production plant which produced the biogas combusted in the relevant quarterly period (other than heat contained in feedstock to produce biogas by anaerobic digestion) or, where there is no such heat, zero;

D is the heat in kWhth generated by the installation during the relevant quarterly period; and

E is the heat in kWhth generated by all plants supplying heat to the same heating system of which the installation forms part in the relevant quarterly period.

#### **Fossil fuel contamination of solid biomass and fossil fuel used for permitted ancillary purposes**

**40.**—(1) This regulation applies to participants generating heat in an accredited RHI installation—

- (a) where the heat is generated from solid biomass contained in municipal waste (“Case A”);  
or

(b) where the heat is generated from solid biomass, not being solid biomass contained in municipal waste, and the capacity of the installation is 1MWth or above (“Case B”).

(2) In Case A, the periodic support payment calculated in accordance with regulation 38 or 39 shall be reduced pro rata to reflect the proportion of the energy content of the municipal waste used in the relevant quarterly period which was composed of fossil fuel and, where fossil fuel has been used for permitted ancillary purposes in accordance with regulation 28, to reflect the proportion of fossil fuel so used which resulted in the generation of heat.

(3) In Case B, the periodic support payment calculated in accordance with regulation 38 or 39 shall be reduced pro rata to reflect the proportion of fossil fuel contamination in the relevant quarterly period determined in accordance with regulation 29 and, where fossil fuel has been used for permitted ancillary purposes during the relevant quarterly period in accordance with regulation 29, to reflect the proportion of fossil fuel so used which resulted in the generation of heat.

### **Fossil fuel contamination adjustment to periodic support payments for producers and combusters of biogas produced from gasification and pyrolysis**

**41.**—(1) This regulation applies to participants producing biogas from gasification or pyrolysis and generating heat from that biogas in an accredited RHI installation.

(2) Where, in accordance with regulation 31, a participant uses feedstock contaminated with fossil fuel, the periodic support payment calculated in accordance with regulation 38 or 39 shall be reduced pro rata to reflect the proportion of fossil fuel contamination in the feedstock used by the participant in the relevant quarterly period.

### **Periodic support payments to producers of biomethane**

**42.** Participants producing biomethane for injection shall be paid a periodic support payment in respect of each quarterly period calculated in accordance with the following formula—

$$A \times (B - (C + D + E)) \times F,$$

where—

A is the biomethane and biogas combustion tariff determined in accordance with regulation 37;

B is the kWh of biomethane injected in any quarterly period;

C is the kWh of propane contained in B;

D is the kWhth of heat supplied to the biogas production plant (other than heat contained in feedstock to produce biogas by anaerobic digestion) which produced the biogas from which the biomethane was made, from any heat source other than heat generated from the combustion of that biogas;

E is the kWhth of heat supplied to the biomethane production process; and

F applies only in relation to biomethane made using biogas produced from gasification or pyrolysis, and is the proportion of biomass contained in the feedstock used in the relevant quarterly period to produce the biogas.

## PART 6

### Additional RHI capacity

#### **Treatment of additional RHI capacity**

- 43.**—(1) This regulation applies where a participant installs additional RHI capacity.
- (2) In this regulation “additional RHI capacity” means a plant which is—
- (a) first commissioned after the date on which an accredited RHI installation (“the original installation”) was first commissioned;
  - (b) uses the same source of energy and technology as the original installation; and
  - (c) supplies heat to the same heating system as that of which the original installation forms part.
- (3) A participant must inform the Authority within 28 days of the additional RHI capacity being first commissioned.
- (4) Paragraph (5) applies where the additional RHI capacity is first commissioned within 12 months of the date on which the original installation was first commissioned.
- (5) Where this paragraph applies—
- (a) the Authority may review the accreditation of any accredited RHI installation using the same source of energy and technology and supplying heat to the same heating system as the additional RHI capacity;
  - (b) upon an application for accreditation of the additional RHI capacity, the Authority must—
    - (i) treat the additional RHI capacity as if it were part of the original installation, and
    - (ii) decide whether or not to accredit the additional RHI capacity and original installation as one eligible installation in accordance with Part 3;
  - (c) subject to sub-paragraph (d), a refusal of accreditation under sub-paragraph (b)(ii) does not affect the accreditation of the original installation;
  - (d) if a review undertaken in accordance with sub-paragraph (a) results in a finding that a relevant ongoing obligation is no longer being complied with, the Authority may take appropriate action under Part 7; and
  - (e) where the Authority grants accreditation in accordance with sub-paragraph (b), from the date of that accreditation a participant’s periodic support payments in respect of the original installation will be replaced by periodic support payments calculated using the applicable tariff determined in accordance with paragraphs (7) and (9) of regulation 37 in relation to the source of energy and technology concerned based on the sum of the installation capacities of the additional RHI capacity and the original installation, and will terminate with the tariff end date of the original accredited RHI installation.
- (6) Paragraph (7) applies where the additional RHI capacity is first commissioned more than 12 months after the original installation was first commissioned.
- (7) Where this paragraph applies, the Authority may review the accreditation of any accredited RHI installation using the same source of energy and technology and supplying heat to the same heating system as the additional RHI capacity; and if a review results in a finding that a relevant ongoing obligation is no longer being complied with, the Authority may take appropriate action under Part 7.
- (8) All additional RHI capacity must be individually metered.

## PART 7

### Enforcement

#### **Power to temporarily withhold periodic support payments to investigate alleged non-compliance**

44.—(1) Where the Authority has reasonable grounds to suspect that a participant has failed or is failing to comply with an ongoing obligation and the Authority requires time to investigate, it may temporarily withhold all or part of that participant's periodic support payments.

(2) Within 21 days of a decision to withhold periodic support payments, the Authority must send a notice to the participant specifying—

- (a) the respect in which the Authority suspects the participant has failed or is failing so to comply;
- (b) the reason why periodic support payments are being withheld;
- (c) the date from which periodic support payments will be withheld;
- (d) the next steps in the investigation; and
- (e) details of the participant's right of review including any relevant time-limits.

(3) The Authority's investigation must be commenced and completed as soon as is reasonably practicable.

(4) The Authority may withhold a participant's periodic support payments for a maximum period of 6 months commencing with the date specified in accordance with the notice required by paragraph (2)(c).

(5) The Authority must review its decision to withhold a participant's periodic support payments every 30 days commencing 30 days after the date of the notice required by paragraph (2).

(6) Following a review pursuant to paragraph (5), the Authority must send a notice to the participant providing an update on—

- (a) the progress of any investigation to date; and
- (b) whether the Authority intends to continue to withhold periodic support payments.

(7) For the purposes of calculating the time-limit specified in paragraph (4), no account is to be taken of any period attributable to the participant's delay in providing any information reasonably requested by the Authority.

(8) For the purposes of paragraph (7), a participant is not to be deemed to have delayed in providing information if that participant responds within 2 weeks of a request from the Authority.

(9) On expiry of the period referred to in paragraph (4) or, if earlier, the conclusion of the investigation, the Authority must—

- (a) send the participant a notice specifying the outcome of the investigation or, where the investigation is not concluded, inform the participant accordingly; and
- (b) pay within 28 days of the date of that notice all periodic support payments temporarily withheld under this regulation, subject to any permanent withholding or reduction of any such payments under regulation 46.

(10) If, on conclusion of the investigation, the Authority is satisfied that a participant is failing or has failed to comply with an ongoing obligation it may impose one or more of the other sanctions set out in this Part.

### **Power to suspend periodic support payments where ongoing failure to comply**

**45.**—(1) Where the Authority is satisfied that a participant is failing to comply with an ongoing obligation it may suspend that participant’s periodic support payments.

(2) Within 21 days of a decision to suspend periodic support payments the Authority must send a notice to the participant specifying—

- (a) the respect in which the Authority is satisfied that the participant is failing so to comply;
- (b) the reason why periodic support payments are being suspended;
- (c) the date from which the suspension is effective;
- (d) the steps that the participant must take to satisfy the Authority that it is complying with the ongoing obligation;
- (e) the consequences of the participant failing to take the steps required pursuant to subparagraph (d) including potential sanctions; and
- (f) details of the participant’s right of review including any relevant time-limits.

(3) Within 21 days of being satisfied that the participant is complying with the ongoing obligation the Authority must remove the suspension.

(4) If, within 6 months, the Authority is satisfied that the participant has taken the steps specified by notice under paragraph (2), the Authority may pay within 28 days of being so satisfied all periodic support payments withheld under this regulation.

(5) The maximum period for which the Authority may suspend a participant’s periodic support payments is 1 year.

(6) Subject to paragraph (4), a participant may not recover any periodic support payments suspended in accordance with this regulation.

### **Power to permanently withhold or reduce a participant’s periodic support payments**

**46.**—(1) Where the Authority is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing obligation during any quarterly period and the periodic support payment for that quarterly period has not been paid, the Authority may take one or more of the following actions—

- (a) permanently withhold a proportion of the participant’s periodic support payment which corresponds to the proportion of that quarterly period during which the participant failed so to comply;
- (b) reduce a participant’s periodic support payment for that quarterly period or for the quarterly period immediately following.

(2) Within 21 days of a decision to permanently withhold or to reduce a periodic support payment, the Authority must send a notice to the participant specifying, as applicable—

- (a) the respect in which the participant has failed so to comply;
- (b) the reason why a periodic support payment is being withheld or reduced;
- (c) the period in respect of which any periodic support payment is to be withheld or reduced;
- (d) the level of any reduction; and
- (e) details of the participant’s right of review including any relevant time-limits.

(3) Where reducing a periodic support payment in accordance with paragraph (1)(b), the Authority may determine the level of the reduction (taking into consideration all factors which it considers relevant) up to a maximum reduction of 10 per cent of the periodic support payment in question.

**Revocation of accreditation or registration**

**47.**—(1) Where the Authority is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing obligation it may take one or more of the following actions—

- (a) revoke accreditation for the accredited RHI installation in respect of which there has been a material or repeated failure;
- (b) revoke accreditation for any other accredited RHI installations owned by that participant; or
- (c) in relation to a participant who is a producer of biomethane for injection, revoke that participant's registration.

(2) Within 21 days of a decision to revoke accreditation or registration the Authority must send a notice to the participant specifying—

- (a) the reason for the revocation of accreditation or registration including, where applicable, details of the respect in which the participant has failed so to comply;
- (b) an explanation of the effect of the revocation; and
- (c) details of the participant's right of review including any relevant time limits.

(3) Where accreditation of an accredited RHI installation has been revoked, or a participant's registration has been revoked, the Authority may refuse to accredit any eligible installations owned by the same person or refuse to register that person as a producer of biomethane for injection at any future date.

**Overpayment notices and offsetting**

**48.**—(1) Where the Authority is satisfied that a participant has received a periodic support payment which exceeds that participant's entitlement or has received a periodic support payment whilst failing to comply with an ongoing obligation it may—

- (a) require the participant to repay the periodic support payment as a civil debt owed to the Authority; or
- (b) offset the periodic support payment against any future periodic support payments.

(2) Within 21 days of a decision to offset or require the participant to repay any periodic support payment the Authority must send the participant a notice specifying—

- (a) the periodic support payment which the Authority believes has been overpaid and the sum which it is seeking to recover from the participant;
- (b) whether the sum specified in sub-paragraph (a) will be recovered in accordance with paragraph (1)(a) or (1)(b);
- (c) where applicable, a date by which the sum specified in sub-paragraph (a) must be repaid;
- (d) the consequences of failing to make any repayments requested including potential sanctions or civil action; and
- (e) details of the participant's right of review including any relevant time limits.

## PART 8

### Revocation of sanctions

#### **Revocation of Part 7 sanctions**

**49.**—(1) The Authority may at any time revoke a sanction imposed in accordance with Part 7 if it is satisfied that—

- (a) there was an error involved in the original imposition of the sanction; or
- (b) it is just and equitable in the particular circumstances of the case to do so.

(2) Within 21 days of a decision to revoke a sanction, the Authority must send a notice to the participant specifying—

- (a) the sanction which has been revoked;
- (b) the reason for the revocation;
- (c) what action if any the Authority proposes to take in relation to any loss incurred by the participant as a result of the imposition of the sanction including the time within which any action will be taken; and
- (d) details of someone within the Authority whom the participant may contact if they are not satisfied with the proposals made by the Authority under sub-paragraph (c).

## PART 9

### Inspection

#### **Power to inspect accredited RHI installations**

**50.**—(1) The Authority or its authorised agent may request entry at any reasonable hour to inspect an accredited RHI installation and its associated infrastructure to undertake any one or more of the following—

- (a) verify that the participant is complying with all applicable ongoing obligations;
- (b) verify meter readings;
- (c) take samples and remove them from the premises for analysis;
- (d) take photographs, measurements or video or audio recordings;
- (e) ensure that there is no other contravention of these Regulations.

(2) Within 21 days of a request made under paragraph (1) being (in its opinion) unreasonably refused the Authority must send a notice to the participant specifying—

- (a) the reason why the Authority considers the refusal to be unreasonable;
- (b) the consequences of the refusal, including potential sanctions for failing to comply with the ongoing obligation imposed by regulation 34(i); and
- (c) details of the participant's right of review including any relevant time-limits.

## PART 10

### Reviews

#### Right of review

**51.**—(1) Any prospective, current or former participant affected by a decision made by the Authority in exercise of its functions under these Regulations (other than a decision made in accordance with this regulation) may have that decision reviewed by the Authority.

(2) An application for review must be made by notice in such format as the Authority may require and must—

- (a) be received by the Authority within 28 days of the date of receipt of notification of the decision being reviewed;
- (b) specify the decision which that person wishes to be reviewed;
- (c) specify the grounds upon which the application is made; and
- (d) be signed by or on behalf of the person making the application.

(3) A person who has made an application in accordance with paragraph (2) must provide the Authority with such information and such declarations as the Authority may reasonably request in order to discharge its functions under this regulation, provided any information requested is in that person's possession.

(4) On review the Authority may—

- (a) revoke or vary its decision;
- (b) confirm its decision;
- (c) vary any sanction or condition it has imposed; or
- (d) replace any sanction or condition it has imposed with one or more alternative sanctions or conditions.

(5) Within 21 days of the Authority's decision on a review, it must send the applicant and any other person who is in the Authority's opinion affected by its decision a notice setting out its decision with reasons.

## PART 11

### Administrative Functions of the Authority and notices

#### Publication of guidance and tariffs

**52.** The Authority must publish procedural guidance to participants and prospective participants in connection with the administration of the scheme.

#### Reporting obligations

**53.**—(1) The Authority must provide to the Secretary of State monthly reports in such manner and form as the Secretary of State may request containing the following information, as applicable—

- (a) in respect of each accredited RHI installation accredited during the period covered by the report—
  - (i) such of the information specified in Schedule 1 as the Authority may hold and the Secretary of State may require regarding the accredited RHI installation,

- (ii) details of the plant it has replaced, if any,
    - (iii) the total amount of periodic support payments made in respect of the accredited RHI installation during the period covered by the report,
    - (iv) the total amount of heat in kWh for which periodic support payments were made and the eligible purposes and the industry sector for which it was used,
    - (v) sustainability information provided in accordance with Schedule 2;
  - (b) in respect of each participant registered as a producer of biomethane during the period covered by the report—
    - (i) the total amount of periodic support payments made to each participant,
    - (ii) the volume of biomethane produced for injection by each participant, and
    - (iii) sustainability information provided in accordance with Schedule 2;
  - (c) such other information as the Authority may hold in relation to its functions under these Regulations as the Secretary of State may require.
- (2) The first monthly report must cover the period from the commencement of these Regulations and ending with 31st October 2011 and each subsequent monthly report must cover each subsequent month and must be sent to the Secretary of State within 10 working days of the end of that month.
- (3) The Authority must provide to the Secretary of State quarterly and annual reports in such manner and form as the Secretary of State may request containing the information specified in paragraph (1) in aggregate form both for the period covered by the report and since the date of commencement of the scheme.
- (4) The first annual report must be published by 31st July 2012 and must cover the period from the commencement of these Regulations and ending with 31st March 2012, and in each subsequent year the annual report must be published by 31st July in respect of the 12 month period ending with 31st March of that year.
- (5) The first quarterly report must be published by 31st January 2012 and must cover the period from the commencement of these Regulations and ending with 31st December 2011, and each subsequent quarterly report must cover each quarterly period and must be published within one month of the end of the relevant quarterly period.
- (6) The Authority must publish the following information on its website—
- (a) the quarterly and annual reports provided in accordance with this regulation;
  - (b) current information in aggregate form as to—
    - (i) the number of accredited RHI installations,
    - (ii) their technology and installation capacity,
    - (iii) the amount of heat they have generated,
    - (iv) the total amount of periodic support payments made under each tariff; and
  - (c) current information in aggregate form as to—
    - (i) the number of participants who are producers of biomethane,
    - (ii) the volume of biomethane produced for injection by those participants, and
    - (iii) the total amount of periodic support payments made in respect of that biomethane.
- (7) For the purposes of this regulation “quarterly period” means the first, second, third or fourth quarter of any year commencing on 1st January.
- (8) For the purposes of this regulation “current information” means information which is no more than five days out of date.

**Additional information**

**54.** On request from the Secretary of State, the Authority must provide to the Secretary of State in such manner and form and by such date as the Secretary of State may request such additional information as the Authority may hold in relation to the performance of its functions under these Regulations.

**Notices**

- 55.** A notice under these Regulations—
- (a) must be in writing; and
  - (b) may be transmitted by electronic means.

Date

*Name*  
Minister of State  
Department of Energy and Climate Change