

**EXPLANATORY MEMORANDUM TO
THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) (NO. 2)
REGULATIONS 2013**

2013 No. XXXX

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) on 10 June 2013 and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. This instrument amends the Renewable Heat Incentive Scheme Regulations 2011 (S.I. 2011/2860) (“the RHI Regulations”). They introduce a requirement that plants seeking to join the non-domestic Renewable Heat Incentive Scheme (“the RHI Scheme”) which generate heat from solid biomass (including CHP plants) comply with emission limits to protect air quality.

2.2. This instrument also modifies the eligibility requirements regarding metering and provides flexibility in the way in which heat loss in a heating system can be calculated.

2.3. This instrument also makes a number of small amendments which include:

- allowing accredited installations to be moved to different locations;
- clarifying that water in the ground may be used as an energy source by a ground source heat pump;
- making outdoor commercial cleaning and drying processes eligible for the scheme; and
- allowing RHI installations to be used as the assessment installation for installers to join the Microgeneration Certification Scheme (MCS).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative context

4.1. The Secretary of State makes this instrument in exercise of powers conferred by sections 100 and 104 of the Energy Act 2008 (“the Act”).

4.2. The RHI Regulations established the RHI scheme to facilitate and encourage the renewable generation of heat by giving subsidy payments to eligible generators of renewable heat and producers of biomethane. Currently the RHI scheme supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane.

5. Territorial Extent and Application

5.1. This instrument applies to Great Britain

5.2. In accordance with section 100(7)(a) of the Act, the Secretary of State has obtained the Scottish Minister's consent to the making of the Renewable Heat Incentive Scheme (Amendment) Regulations 2013.

6. European Convention on Human Rights

6.1. Gregory Barker, Minister of State for the Department of Energy and Climate Change, has made the following statement regarding Human Rights:

In my view the provisions of the Renewable Heat Incentive Scheme (Amendment) Regulations 2013 are compatible with the Convention on Human Rights.

7. Policy background

7.1. The Secretary of State for the Department of Energy and Climate Change has principal ministerial responsibility. The Secretary of State for the Department for Environment, Food and Rural Affairs also has an interest.

7.2. The RHI scheme was introduced primarily to help meet the UK's target under Directive 2009/28/EC (the "Renewables Directive") that 15% of energy consumption is to come from renewable sources by 2020. The UK intends that renewable heat will contribute approximately a third of this overall energy target, and, in order to make that contribution, around 12% of our total heat demand in 2020 will come from renewables, increasing from less than 2% currently. The RHI scheme is in line with the Government's longer-term energy and climate change goals (e.g. security of supply and carbon budgets).

7.3. The RHI Regulations established an RHI scheme to facilitate and encourage the renewable generation of heat by giving subsidy payments to eligible generators of renewable heat and producers of biomethane. The RHI Regulations provide for the scheme to be administered by the Gas and Electricity Markets Authority: in practice most functions are carried out by its executive arm, the Office of the Gas and Electricity Markets ("Ofgem").

- 7.4. The RHI provides a long-term tariff scheme and opened for applications on 28 November 2011. It currently supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane.
- 7.5. In March 2011 DECC committed to introducing limits on emissions of particulate matter (PM) and oxides of nitrogen (NO_x) from plants generating heat from solid biomass. Good air quality is vital to human health and we are committed to controlling emissions throughout the UK.
- 7.6. The emission limits to be introduced were published in the 2011 RHI policy statement at 30 grams per gigajoule (g/GJ) net thermal input for PM and 150g/GJ for NO_x. The emission limits have not changed since this publication.
- 7.7. All payments made under the RHI scheme for the non-domestic sector are made on the basis of metered heat. The RHI Regulations set out where meters need to be placed and what needs to be metered, covering both eligible and ineligible heat uses. This was to ensure that only eligible renewable heat was paid for, ensuring value for money from the scheme.
- 7.8. Since the scheme was launched it has become apparent that the current metering requirements are overly burdensome and disproportionately expensive for some participants.
- 7.9. Metering requirements have consistently been highlighted as a disincentive for joining the scheme. Due to this we have reviewed the requirements and are simplifying them with a view to making them less burdensome whilst still ensuring protection for the public purse.
- 7.10 The changes being introduced include the use of heat loss calculations where it is not appropriate to install meters. Participants will also be able to disregard heat loss from external pipes that are less than 10 meters in combined length providing they are insulated to the specified standards. Equivalent pipes over 10m in length will be able to use heat loss calculations in place of metering.
- 7.11 The elements of the Air Quality and metering regulations which refer to technical standards have been successfully notified to the European Commission without comment.

8. Consultation outcome

- 8.1. The consultation 'Providing certainty, improving performance' was open for 8 weeks from 20 July – 14 September 2012. The document was supplemented by external

events hosted between DECC and stakeholders which helped inform the final policy. The consultation set out proposals for the introduction of air quality control limits for solid biomass, changes to metering requirements, biomass sustainability and longer-term framework for budget management.

8.2. The consultation was published on the former DECC website alongside impact assessments to explain the economic rationale for the proposals. An impact assessment was not included on the metering proposals and the minor amendments as they were considered changes to the administration of the scheme.

8.3. The consultation received 100 formal responses. Responses were supportive of the policy proposals on the introduction of air quality limits and the changes to simplifying metering requirements. Government announced on 27 February 2013 that it would proceed with the introduction of the air quality limits, simplification of metering requirements along with a number of other minor amendments to the scheme no later than the autumn.

8.4. On the air quality proposals consulted on:

- Respondents were largely in support of the introduction of emission limits and considered the proposed limits to be appropriate, with 26 out of 36 responses agreeing.
- There were some concerns that these limits would lead to the exclusion of some fuels such as logs or low quality fuel with high moisture content being eligible under RHI. However, these concerns were only raised by 6 out of 36 respondents.

8.5. On the metering proposals consulted on:

- 60 out of 67 respondents were explicitly in favour of the need to revise the metering requirements.
- 49 out of 56 respondents expressed their support for the use of a heat loss calculation where installing a meter would be unduly burdensome either practically or financially.
- The introduction of permitting heat losses from correctly insulated external piping was met with some reservation but respondents did agree that the use of the standard BS5422 was acceptable for over ground pipes.
- 42 out of 44 respondents felt that using proxy measurements for gas and electric heat sources was a sensible and helpful proposal.

8.6. The four additional improvements proposed to the scheme were received positively by the small number of respondents that commented on these points.

- 8.7. The long term budget management proposals were laid before Parliament on 4 March 2013 and came into force on the 29 April 2013.
- 8.8. The introduction of biomass sustainability requirements for the RHI will come in to place when they are introduced to the Renewables Obligation (RO). The proposed date for full implementation of this requirement is autumn 2014.
- 8.9. Further details on the above responses are contained in the Government response to the consultation, available on the Gov.uk website.

9. Guidance

- 9.1. Ofgem will provide further guidance for potential participants in the RHI scheme in a variety of formats and place this on their website – www.ofgem.gov.uk

10. Impact

- 10.1. The RHI is a voluntary subsidy scheme. There is no impact on industrial, commercial, and not-for-profit organisations unless they are owners of eligible renewable heat installations and choose to apply for the RHI or they manufacture renewable heat installations specifically for use in conjunction with the RHI scheme.
- 10.2. The introduction of air quality limits will only impact on those who own or manufacture biomass boilers with the view to participating in the RHI scheme as they will be required to meet the emissions limits following the introduction of this instrument. Existing participants will not be affected by the air quality limits. The current tariffs for biomass boilers already include a 10% uplift to cover the cost of abatement equipment, so additional expenditure has already been accounted for.
- 10.3. As the changes to metering requirements and the additional amendments are considered administrative changes, no impact assessment has been prepared in relation to these amendments. However these changes are planned to improve the system and reduce the number of heat meters required overall which is intended to reduce the cost to participants and a potential barrier to uptake.
- 10.4. The impact on the public sector is limited. The changes introduced by this instrument and the subsequent impact on Ofgem are considered to be proportionate. There is a requirement for changes to Ofgem IT systems which will introduce some additional accreditation processes. There will also be a small increase in auditing requirements but this is not considered to be disproportionate.

11. Regulating small business

- 11.1. The legislation applies to small businesses who operate in the renewable heat market or use renewable heat, however it does not add regulatory burden to their operations.

12. Monitoring and review

- 12.1. The introduction of controls on emissions to protect air quality and changes to metering requirements will be monitored by Ofgem who have in place an audit programme for carrying out random site visits and desk top audits of all plants accredited to the RHI scheme.
- 12.2. DECC will conduct periodic reviews of the scheme in 2014 and 2017 and make further amendments to the RHI Regulations 2011 thereafter if necessary. Reviews will involve a broader examination of the design and impact of the scheme overall.
- 12.3. An impact assessment for the new requirements in relation to emission limits is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Gov.uk website.

13. Contact

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