
DRAFT STATUTORY INSTRUMENTS

2017 No.

The Renewable Heat Incentive Scheme Regulations 2017

PART 5

Sustainable solid biomass etc

Interpretation

47. In this Part—

“greenhouse gas criteria” means the criteria set out in Schedule 3;

“land criteria” means, except in regulation 48(3)(a)—

- (a) the criteria set out in Part 2 of Schedule 4 in relation to solid biomass which is wood or wholly derived from wood, except energy crops; or
- (b) the criteria set out in Part 3 of Schedule 4 in relation to other solid biomass including energy crops;

“permitted location” means a place—

- (a) in respect of which the participant has a right to harvest the solid biomass; and
- (b) which is no more than 50 miles from the plant in which the solid biomass is used;

“self-supplied” means—

- (a) obtained by or on behalf of the participant from a permitted location; or
- (b) waste wood which is obtained by or on behalf of the participant from the place where it first becomes waste;

“sustainable biogas” means—

- (a) biogas which—
 - (i) meets the greenhouse gas criteria, and
 - (ii) is made wholly from feedstock which is solid biomass which meets the land criteria;
- (b) biogas which is made wholly from feedstock which is waste;
- (c) biogas which consists of a combination of any of the biogas listed in paragraphs (a) and (b);

“sustainable biomethane” means biomethane which, save for ingredients which are added as part of the biomethane production process—

- (a) is made wholly from feedstock which is waste;
- (b) meets the greenhouse gas criteria and is made wholly from feedstock which is solid biomass which meets the land criteria; or
- (c) consists of a combination of any of the biomethane listed in paragraphs (a) and (b);

“sustainable solid biomass” means—

- (a) solid biomass which meets the greenhouse gas criteria and the land criteria;

- (b) solid biomass which is—
 - (i) self-supplied;
 - (ii) used in an accredited RHI installation with an installation capacity of less than 1MWth; and
 - (iii) either—
 - (aa) an approved sustainable fuel; or
 - (bb) a fuel in respect of which the Secretary of State has made a declaration under regulation 51(5);
- (c) solid biomass which is waste, or is wholly derived from waste;
- (d) solid biomass which consists of a combination of any of the solid biomass listed in paragraphs (a) to (c).

Ongoing obligation to use sustainable solid biomass or biogas or to produce sustainable biomethane

48.—(1) A participant who generates heat or heat and power from solid biomass or biogas in an accredited RHI installation on or after 5th October 2015 must use only sustainable solid biomass or sustainable biogas.

(2) A participant who produces biomethane for injection on or after 5th October 2015 must produce for injection only sustainable biomethane.

(3) Paragraph (1) is deemed to be complied with in respect of—

- (a) any biogas or solid biomass used in an accredited RHI installation—
 - (i) which is a generating station which is accredited under the Renewables Obligation Order 2009⁽¹⁾, the Renewables Obligation Order 2015⁽²⁾ or the Renewables Obligation (Scotland) Order 2009⁽³⁾;
 - (ii) where the capacity of that generating station is 1MW or above; and
 - (iii) where—
 - (aa) in the case of solid biomass used before 24th March 2016, information about that solid biomass is provided to the Authority in accordance with article 54 of either the Renewables Obligation Order 2009⁽⁴⁾ or the Renewables Obligation (Scotland) Order 2009⁽⁵⁾;
 - (bb) in the case of biogas or solid biomass used on or after 24th March 2016 in a generating station in Scotland, the biogas or solid biomass meets the greenhouse gas emission criteria in paragraph 2 of Part 1 of Schedule A1A to the Renewables Obligation (Scotland) Order 2009⁽⁶⁾ and the relevant land criteria in Schedule A2 to that Order⁽⁷⁾; or
 - (cc) in the case of biogas or solid biomass used on or after 24th March 2016 in a generating station in England or Wales, the biogas or solid biomass meets the greenhouse gas criteria in paragraph 2 of Part 1 of Schedule 2

(1) S.I. 2009/785; relevant amending instruments are S.I. 2010/1107, S.I. 2011/984, S.I. 2013/768, and S.I. 2014/ 893.

(2) S.I. 2015/1947.

(3) S.S.I. 2009/140; relevant amending instruments are S.S.I. 2010/147, S.S.I. 2011/225, S.S.I. 2013/116, S.S.I. 2014/94, and S.S.I. 2015/384.

(4) S.I. 2009/785; relevant amending instruments are S.I. 2010/1107, S.I. 2011/984, S.I. 2013/768, and S.I. 2014/ 893.

(5) S.S.I. 2009/140; relevant amending instruments are S.S.I. 2010/147, S.S.I. 2011/225, S.S.I. 2013/116, and S.S.I. 2014/94.

(6) Schedule A1A was inserted by S.S.I. 2015/384.

(7) Schedule A2 was substituted by S.S.I. 2015/384.

to the Renewables Obligation Order 2015 and the relevant land criteria in Schedule 3 to that Order; or

- (b) any solid biomass used in an accredited RHI installation to generate heat (but not heat and power) which—
 - (i) at the time when it is received by the participant, is an approved sustainable fuel; or
 - (ii) is a fuel in respect of which the Secretary of State has made a declaration under regulation 51(5).

Information to be provided to the Authority in relation to the use of sustainable solid biomass etc

49.—(1) This regulation applies to participants who—

- (a) generate heat or heat and power from solid biomass or biogas in an accredited RHI installation; or
- (b) produce biomethane for injection,

on or after 5th October 2015.

(2) A participant to whom this regulation applies must—

- (a) in relation to each consignment of solid biomass used, provide the Authority with a declaration in accordance with paragraph (3);
- (b) in relation to each consignment of solid biomass (except solid biomass to which regulation 48(3)(a) or (b) applies) or biogas used or biomethane produced, provide the Authority with a declaration in accordance with paragraphs (4) and (5); and
- (c) provide the information specified in paragraph (7).

(3) In respect of solid biomass used to generate heat (but not heat and power) a declaration must state—

- (a) whether or not that solid biomass was—
 - (i) an approved sustainable fuel; or
 - (ii) a fuel in respect of which the Secretary of State has made a declaration under regulation 51(5); and
- (b) where paragraph (a)(i) or (ii) applies, the authorisation number or other means of identification allocated to that fuel by the scheme under which that fuel was listed.

(4) A declaration must state whether or not—

- (a) solid biomass used was waste or wholly derived from waste;
- (b) biogas used or biomethane produced was made from feedstock which was waste;
- (c) solid biomass or biogas used or biomethane produced met the greenhouse gas criteria;
- (d) solid biomass used met the land criteria; or
- (e) biogas used or biomethane produced was made from feedstock which was solid biomass which met the land criteria.

(5) Where a participant declares in accordance with paragraph (4)(c) that solid biomass, biogas or biomethane met the greenhouse gas criteria, the declaration must specify the lifecycle greenhouse gas emissions for that solid biomass, biogas or biomethane calculated in accordance with paragraph 2 of Schedule 3.

(6) Except where the Authority specifies otherwise, participants must provide declarations and information in accordance with this regulation in respect of the solid biomass or biogas used or

biomethane produced in every quarterly period which commences on or after 5th October 2015 within 28 days from the end of each such period.

(7) Where in the relevant quarterly period a participant—

- (a) uses solid biomass (except solid biomass to which regulation 48(3)(a) or (b) applies) to generate heat or heat and power in an accredited RHI installation with an installation capacity of 1MWth or above; or
- (b) produces biomethane for injection,

the participant must provide the information in Schedule 5 in relation to that solid biomass or biomethane.

(8) In addition to the declarations in accordance with paragraphs (3) to (5) and information in accordance with paragraph (7), the Authority may from time to time require such further declarations or information in relation to sustainable solid biomass, biogas or biomethane as it thinks fit.

Sustainability audit reports

50.—(1) Subject to paragraph (3) participants to whom regulation 49 applies must submit a report which is prepared in accordance with the requirements in paragraph (4).

(2) In this regulation, “sustainability information” means the information specified in regulation 49(4) and (5).

(3) No report is required in relation to—

- (a) any biogas or solid biomass in respect of which regulation 48(1) is deemed to be complied with by virtue of regulation 48(3)(a);
- (b) any solid biomass or biogas used to generate heat in an accredited RHI installation with a capacity less than 1MWth;
- (c) any solid biomass used in an accredited RHI installation to generate heat (but not heat and power) which—
 - (i) at the time it was received by the participant, was an approved sustainable fuel; or
 - (ii) in respect of which a declaration has been made under regulation 51(5).

(4) The requirements in this paragraph are that the report must—

- (a) be prepared by a person who is not—
 - (i) the participant, or
 - (ii) a connected person;
- (b) be prepared in accordance with the International Standard on Assurance Engagements 3000 (Revised): Assurance engagements other than audits or reviews of historical financial information dated 9th December 2013⁽⁸⁾ or an equivalent standard;
- (c) state whether anything has come to the attention of the person preparing the report to indicate that the sustainability information is not accurate; and
- (d) consider, in relation to each consignment of solid biomass or biogas used to generate heat or heat and power, or biomethane produced for injection—
 - (i) whether the systems used to produce the sustainability information are likely to produce information which is reasonably accurate and reliable;

⁽⁸⁾ International Standard on Assurance Engagements (ISAE) 3000 (Revised): Assurance Engagements other than Audits or Reviews of Historical Financial Information, published on 9th December 2013 by the International Federation of Accountants. Copies are available at www.ifac.org.

- (ii) whether there are controls in place to help protect the sustainability information against material misstatements due to fraud or error;
 - (iii) the frequency and methodology of any sampling carried out for the purpose of obtaining or checking the data on which the participant relied in preparing the sustainability information; and
 - (iv) the robustness of the data on which the participant relied in preparing the sustainability information.
- (5) Subject to paragraph (6), participants must submit reports under this regulation annually and within 3 months after—
 - (i) each anniversary of the tariff start date; or
 - (ii) in the case of participants who are registered as producers of biomethane for injection, each anniversary of the date on which that participant was first registered as a producer of that biomethane.
- (6) Where the anniversary of the tariff start date fell on or after 5th October 2015 but before 6th April 2016—
 - (a) the first annual report submitted in accordance with this regulation must be submitted within 3 months after the next anniversary of the tariff start date which follows 5th October 2016; and
 - (b) the first annual report must consider and report on each consignment of solid biomass or biogas used, or biomethane produced, in the period between 5th October 2015 and the anniversary of the tariff start date mentioned in paragraph (6)(a).
- (7) Except where paragraph (6) applies, the report must consider and report on each consignment of solid biomass or biogas used, or biomethane produced, within the 12 month period preceding—
 - (a) each anniversary of the tariff start date; or
 - (b) in the case of participants who are registered as producers of biomethane for injection, each anniversary of the date on which that participant was first registered as a producer of that biomethane.
- (8) In this regulation, “connected person” means any person connected to the participant within the meaning of section 1122 of the Corporation Tax Act 2010⁽⁹⁾.

Schemes for listing approved sustainable fuels

- 51.**—(1) Where the Secretary of State is satisfied that a scheme complies with the requirements in paragraph (2), the Secretary of State may approve that scheme for the purpose of these Regulations.
- (2) The requirements in this paragraph are that appropriate procedures have been adopted to ensure that the person administering the scheme (“the scheme administrator”)—
- (a) establishes and maintains an accurate and up to date list of fuels which—
 - (i) are solid biomass;
 - (ii) comply with the requirements in paragraph (3) or (4); and
 - (iii) are available to be supplied to participants;
 - (b) includes on the list all those fuels in respect of which—
 - (i) an application has been made to the scheme administrator for that fuel to be included in the list; and

⁽⁹⁾ 2010 c.4; section 1122 was amended by section 136(6) of the Finance Act 2013 (c. 29) and section 939H(2) of the Corporation Tax Act 2010.

- (ii) the supplier is able to demonstrate compliance with the requirements in paragraph (3) or (4);
 - (c) processes applications by suppliers of solid biomass fuel for the inclusion of fuel in the list promptly and fairly;
 - (d) ensures that application procedures are clear, proportionate and accessible to suppliers;
 - (e) ensures that each fuel which is included in the list is allocated an authorisation number or other means of identification which is specific to that fuel;
 - (f) requires suppliers of listed fuels to—
 - (i) store listed fuel separately from other fuels supplied by them which are not so listed; and
 - (ii) provide documentary evidence of the authorisation number or other means of identification when supplying an approved sustainable fuel;
 - (g) carries out reasonable checks to ensure that fuels which are listed continue to comply with the requirements in sub-paragraph (f) and paragraph (3) or (4);
 - (h) takes reasonable steps to identify and remove from the list—
 - (i) any fuel which no longer complies with the requirements in paragraph (3) or (4), or
 - (ii) any fuel which has ceased (other than temporarily) to be available;
 - (i) where appropriate, removes from the list those fuels which are supplied by a supplier who breaches the requirements of the scheme; and
 - (j) deals with complaints by suppliers in relation to the operation of the scheme in a fair and transparent manner.
- (3) The requirements in this paragraph are—
- (a) that the fuel would, if used in a plant with an efficiency of at least 0.7, meet the greenhouse gas criteria;
 - (b) that any fuel which is included in the list on or after 6th July 2015 meets the land criteria.
- (4) The requirements in this paragraph are that the fuel—
- (a) is, or is wholly derived from waste; or
 - (b) is self-supplied for use in a plant with an installation capacity of less than 1MWth.
- (5) Where the Secretary of State approves a scheme under paragraph (1), the Secretary of State may declare that any fuel—
- (a) listed under that scheme before the date on which the scheme is approved; and
 - (b) received by a participant before that date,
- shall be deemed to meet the requirement in paragraph (3)(a) and the land criteria.
- (6) Where the Secretary of State is no longer satisfied that an approved scheme complies with the requirements in paragraph (2), the Secretary of State may by notice in writing to the scheme administrator, revoke approval with effect from a specified date.
- (7) Where approval is revoked in accordance with paragraph (6), any fuel listed under the scheme which has been supplied to a final consumer before the date on which the approval is revoked will be treated as sustainable for the purposes of these Regulations.
- (8) In this regulation “efficiency” means
- $$\frac{H}{F}$$
- where—

H is the heat produced by the plant in the form of liquid or steam, and
F is the energy content of all the fuels used by the plant.