

ENERGY ACT 2008

EXPLANATORY NOTES

Part 5: Miscellaneous

Renewable Heat Incentives Commentary on Sections

Section 100 Renewable Heat Incentives

567. This section gives the Secretary of State power to make regulations to establish a financial support mechanism for renewable heat which will be known as the Renewable Heat Incentive (the “RHI”).
568. *Subsection (1)* gives powers to the Secretary of State to make regulations:
- To establish a scheme to provide financial incentives to encourage and facilitate the development of renewable heat.
 - about the administrative and financial arrangements for a RHI scheme.
569. *Subsection (2)* provides further details about the scope of the Secretary of State’s regulation making power. It also contains provisions relating to the administration of the RHI concerning the making of payments and the collection of levies.
570. *Subsection (2)(a)* specifically enables the Secretary of State or the Authority to make payments (or require designated fossil fuel heat suppliers to make payments) to three listed categories of recipient in specified circumstances.
571. *Subsection (2)(a)(i)* provides that owners of plant used for the generation of renewable heat will be eligible to receive RHI payments. The section permits an owner to qualify for the RHI payment even in the event that they are not actually operating the plant themselves. This flexibility allows for third parties to operate in the renewable heat market: for example, a landlord who owns plant will be eligible for a payment even if the plant is actually operated by the tenant of the property. “Owner” is defined in *subsection (3)* to include a person who has acquired plant under a hire purchase agreement, a conditional sale agreement or any similar arrangement where title to the plant does not pass immediately.
572. *Subsection (2)(a)(ii)* provides that producers of biogas or biomethane will also be eligible to receive RHI payments. This provision therefore allows the RHI regulations to reward the production of renewable fuels as well as the generation of renewable heat itself. This would allow the Secretary of State to encourage and facilitate the development of the biogas/biomethane sectors
573. *Subsection (2)(a)(iii)* provides that producers of biofuels for the purpose of generating heat will be eligible to receive RHI payments.
574. *Subsection (2)(b)* provides that the regulations can make provision about the calculation of the RHI payments described in *subsection 2(a)*. This is a broad and flexible provision

allowing the Secretary of State to take account of different circumstances in setting the level of payments to various parties.

575. *Subsection (2)(c)* provides that the regulations can make provision about the circumstances in which payments might be recovered. For example, this would enable the Secretary of State or the Authority to make provision to recover funds that may have been paid out by mistake. .
576. *Subsection (2)(d)* provides that the regulations may make provision requiring that specified information from designated fossil fuel suppliers be provided to the Secretary of State or the Authority.
577. *Subsection (2)(e)* provides that the regulations can require designated fossil fuel suppliers to pay a levy to the Secretary of State or the Authority.
578. *Subsection (2)(f)* provides that the Secretary of State may make regulations to calculate the level of the levy.
579. *Subsection (2)(g)* provides that the regulations can allow payments to be made to fossil fuel suppliers in specified circumstances. For example, this could allow the Secretary of State or the Authority to redistribute funds collected via levies to fossil fuel suppliers, or to return funds to them.
580. *Subsection (2)(h)* provides that the regulations can make provisions about the enforcement of obligations under the RHI. These may include a power allowing the Secretary of State or the Authority to impose financial penalties, which could be used, for example, to ensure that levy payments are made in accordance with the regulations.
581. *Subsection (2)(i)* provides that the regulations may confer functions on the Secretary of State or the Authority (or both) relating to the establishment, administration or financing of the RHI scheme.
582. *Subsection (3)* sets out the definitions of specific terms referred to in this section of the Act and which are central to the RHI. In particular, the definitions provide as follows:
- they specify that the administrative Authority for the RHI, will be the Gas and Electricity Markets Authority;
 - they explain what is meant by the terms: biogas, biofuel, and biomethane. Subsection (3) also provides a definition of one of the underlying constituent materials; biomass. ;
 - they provide a definition of “designated fossil fuel supplier”. These are the suppliers who, under the RHI may be required, amongst other things, to make payments to owners of plant used to generate renewable heat and pay a levy. The definition provides that they are a specified class of fossil fuel suppliers (as provided by regulations) and, in any other case, (i.e. if not provided by regulations) all fossil fuel suppliers.
 - they define “fossil fuel” by means of a list of fuels, including, for example, coal and petroleum products
 - they define “fossil fuel supplier” as a person who supplies fossil fuel to consumers for the purpose of generating heat. This will therefore exclude electricity suppliers or suppliers of renewable fuels. It will also exclude those who are supplying fossil fuels for purposes other than generating heat.
 - they define the ‘owner’ of plant (see above). As mentioned above, in some cases third parties, for example large energy companies. may wish to finance the deployment of such heat plant in customers’ properties;
 - “plant” is defined as including any equipment, apparatus or appliance.

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

- the definition of “renewable generation of heat” provides that renewable heat is heat generated by means of a source of energy or technology listed at subsection (4).
603. *Subsection (4)* sets out the sources of energy and technologies referred to above in the definition of renewable generation of heat. These are: biomass, biofuels, fuel cells, water (including waves and tides), solar power, geothermal sources, heat from air, water or the ground and combined heat and power systems – but only if the system’s energy source is from a renewable energy source as defined by section 32M of the [Electricity Act 1989 \(c.29\)](#) (this has the effect of excluding combined heat and power systems which are powered by fossil fuels). None of the sources of energy or technology are limited by capacity, meaning that all scales of plant which generate renewable heat from such a source or technology may be eligible to receive a RHI payment.
604. *Subsection (5)(a)* allows for the list of energy sources as defined in *subsection (4)* to be modified by regulations. The Government’s intention is to modify the list as technological developments bring forward new technologies capable of making a contribution to the renewable heat sector. In this Act, by virtue of section 106, the power to modify includes the concepts of amending, adding to, revoking or repealing.
605. *Subsection (5)(b)* allows for the definitions of biogas and biomass as listed in *subsection 3* to be modified by regulations.
606. *Subsection (6)* allows for regulations to specify that particular activities do or do not constitute the generation of heat for the purposes of defining the generation of heat from biofuels in *subsection (2)(a)(iii)* and the definition of “fossil fuel heat supplier” generally.
607. *Subsection (7)* requires the Secretary of State to secure the agreement of Scottish Ministers before making regulations in relation to Scotland which are within the legislative competence of the Scottish Parliament. It also requires the Secretary of State to consult Scottish Ministers on all other aspects of any regulations which apply to Scotland before they can be made.
607. Regulations made under the RHI power are subject to affirmative resolution by virtue of section 105 of the Act.