

# ENERGY ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Measures for Reducing Carbon Emissions**

##### **Northern Ireland: renewable heat incentives**

##### *Section 113: Renewable heat incentives in Northern Ireland*

319. This section gives the Department of Enterprise, Trade and Investment powers to make regulations to establish a financial support mechanism for renewable heat in Northern Ireland which will be known as the Northern Ireland Renewable Heat Incentive (the NIRHI).
320. *Subsection (1)* gives powers to the Department to make regulations:
- to establish a scheme to provide financial incentives to encourage and facilitate the development of renewable heat; and
  - about the administrative and financial arrangements for a RHI scheme.
321. *Subsection (2)* provides further details about the scope of the Department's regulation making power. It also contains provisions relating to the administration of the scheme and concerning the making of payments.
322. *Subsection (2)(a)* specifically enables the Department or NIAUR to make payments (or require designated fossil fuel heat suppliers to make payments) to three listed categories of recipient in specified circumstances.
323. *Subsection (2)(a)(i)* provides that owners of plant used for the generation of renewable heat will be eligible to receive NIRHI payments. The section permits an owner to qualify for the NIRHI 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.
324. *Subsection (2)(a)(ii)* provides that producers of biogas or biomethane will also be eligible to receive payments. This provision therefore allows the regulations to reward the production of renewable fuels as well as the generation of renewable heat itself. This would allow the Department to encourage and facilitate the development of the biogas/biomethane sectors
325. *Subsection (2)(a)(iii)* provides that producers of biofuels for the purpose of generating heat will be eligible to receive payments.

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326. *Subsection (2)(b)* provides that the regulations can make provision about the calculation of the NIRHI payments described in subsection 2(a). This is a broad and flexible provision allowing the Department to take account of different circumstances in setting the level of payments to various parties.
327. *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 Department or NIAUR to make provision to recover funds that may have been paid out by mistake.
328. *Subsection (2)(d)* provides that the regulations may make provision requiring that specified information from designated fossil fuel suppliers be provided to the Department or NIAUR.
329. *Subsection (2)(e)* provides that the regulations can allow payments to be made to fossil fuel suppliers in specified circumstances.
330. *Subsection (2)(f)* provides that the regulations can make provisions about the enforcement of obligations under the NIRHI. These may include a power allowing the Department or NIAUR to impose financial penalties.
331. *Subsection (2)(g)* provides that the regulations may confer functions on the Department or NIAUR (or both) relating to the establishment, administration or financing of the NIRHI scheme.
332. *Subsection (3)* sets out the definitions of specific terms referred to in this section of the Act and which are central to the NIRHI. In particular, the definitions provide as follows:
- they specify that the administrative Authority will be the NIAUR;
  - 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”. 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; and
  - 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).
333. *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 Article 55F of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)) (this has the effect of excluding combined heat and power systems which are powered by fossil fuels). None of the

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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 NIRHI payments.

334. *Subsection (5)(a)* allows for the list of energy sources as defined in subsection (4) to be modified by regulations. The Department's intention is to modify the list as technological developments bring forward new technologies capable of making a contribution to the renewable heat sector.
335. *Subsection (5)(b)* allows for the definitions of biofuel, biogas or biomass as listed in subsection (4) to be modified by regulations.
336. *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.
337. Regulations made under this section will be in line with requirements set out in the Statutory Rules (Northern Ireland) Order 1979 by virtue of *subsection (7)*.
338. Regulations made under this section are subject to affirmative resolution by virtue of *subsection (8)*.
339. *Subsection (9)* provides that regulations made under this section may include incidental, supplementary and consequential provision and make transitory or transitional provisions and savings.

***Section 114: Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113***

340. This section enables the Department of Enterprise, Trade and Investment or the Northern Ireland Authority for Utility Regulation to enter into arrangements with the Gas and Electricity Markets Authority to carry out any of the functions conferred by regulations made under section 113.