

**EXPLANATORY MEMORANDUM TO**  
**THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS**  
**2015**

**2015 No. 197**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty. These regulations are being laid alongside two other Statutory Instruments; these are the Domestic Renewable Heat Incentive (Amendment) Regulations 2015 and the Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015, both of which are accompanied by separate explanatory memoranda.
2. **Purpose of the instrument**
  - 2.1 This instrument amends the scheme established by the Renewable Heat Incentive Scheme Regulations 2011 (S.I. 2011/2860) (as amended, see section 4) (“the Non-domestic RHI scheme”) in order to improve the administration of the scheme and increase deployment of renewable heating technologies in the non-domestic sector.
  - 2.2 The main changes introduced by these regulations are:
    - Change to the biomethane injection to grid tariff. The introduction of a tiered biomethane injection to grid tariff under the Non-domestic RHI scheme.
    - Changes to rules regarding CHP systems. The introduction of more flexibility into the scheme rules regarding CHP systems.
    - Changes to rules regarding Heat Loss calculations. The introduction of more flexibility into heat loss calculations for biomethane and biogas plants.
    - Updating of the Microgeneration Certification Scheme (MCS) standards. Following amendments to the MCS standards it has been necessary to update the references to the standards in the regulations.
    - Sanctions. Changes which clarify how and when the scheme administrator may take against non-compliance.
    - Scheme Improvements. Changes which provide the scheme administrator with greater flexibility when carrying out its assessment of whether scheme eligibility criteria have been met. The removal of a requirement relating to biomass boiler design which has since been superseded by other changes. A change to the requirements for metering to make it more flexible if they don't exactly meet manufacturers' instructions, but which would make no material difference to their payments.
    - Amendments to the financial control mechanism for the Non-domestic RHI scheme to reflect changes affecting biomethane plants, together with some minor improvements.

### **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 (c. 32)(“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 injected into the gas grid. The Renewable Heat Incentive is designed to support both domestic and non-domestic properties. The Non-domestic RHI scheme supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane. The Domestic Renewable Heat Incentive Scheme regulations 2014 (SI 2014/928) were made on 9 April 2014 and introduce support for the generation of renewable heat in domestic dwellings.

4.3 Since their introduction, S.I. 2011/2860 has been amended as follows:

- The Renewable Heat Incentive (Amendment) Regulations 2014 (S.I. 2014/1413) introduced new tariffs and technologies into the Non-domestic RHI scheme. It also introduced changes to the budget management mechanism. Changes clarified eligibility rules and rules regarding public grants to give greater flexibility.
- The Renewable Heat Incentive (Amendment) Regulations 2013 (S.I. 2013/1033) introduce a long-term budget control mechanism until the end of the Spending Review period (31st March 2015).
- The Renewable Heat Incentive (Amendment) (No.2) Regulations 2013 (S.I. 2013/2410) introduced air quality emission limits to all biomass boilers seeking accreditation under the Non-domestic RHI scheme; introduced a new streamlined approach to metering along with a number of minor changes.
- The Renewable Heat Incentive (Amendment) (No.3) Regulations 2013 (S.I. 2013/3179) amended the RHI Regulations to correct two points relating to the operation of Non-domestic RHI scheme.
- The Renewable Heat Incentive (Amendment) Regulations 2012 (S.I. 2012/1999) introduced an interim cost control mechanism for the Non-domestic RHI scheme.
- The Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928) prevent installations being supported under both schemes.

- 4.7 The above amendments to the Non-domestic RHI scheme, together with those set out below are necessary to ensure the scheme continues to run smoothly and deliver value for money for the taxpayer. The further amendments being introduced here are part of a planned programme of scheme improvements to drive uptake and deliver value for money.
- 4.8 The Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928) which were made on 9 April 2014, introduce support for owners of eligible plants that generate heat from renewable sources for domestic properties.
- 4.9 Technical standards contained within the amendments are being notified as a fiscal measure under the Technical Standards Directive.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends 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 these Regulations.

## **6. European Convention on Human Rights**

- 6.1 Amber Rudd, Under Secretary 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 2015 are compatible with the Convention rights.

## **7. Policy background**

What is being done and why

- 7.1 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 make a significant contribution to this overall energy target. The RHI scheme is in line with the Government's longer-term energy and climate change goals. It provides a long-term tariff scheme and opened for non-domestic applications on 28 November 2011. The scheme opened for domestic applications on 9 April 2014.

### Tiered biomethane injection to grid tariff

- 7.2 When the RHI scheme was first introduced a single tariff for biomethane injection to grid was set based on a 1MW plant. We are now seeing a much wider range of plant coming forward in terms of scale and it has been necessary to review and amend the biomethane injection to grid tariff so that the tariff provides an

appropriate level of support across the capacity range of biomethane plants. This is to ensure the Non-domestic RHI scheme remains compliant with its state aid approval and delivers value for money for the taxpayer.

- 7.3 These amendments will introduce the following legislative changes required to amend the biomethane injection to grid tariff:
- A tiered tariff structure to the biomethane injection to grid tariff based around three tiers. We intend to pay 7.5p for the first 40,000 Megawatt hours (MWh) of biomethane injected into the grid by an eligible installation (the ‘tier 1 tariff), 4.4p for the next 40,000 MWh (the ‘tier 2 tariff) and 3.4p for any subsequent biomethane injected over a period of 12 months from the date of registration.
  - In order to provide a period of tariff stability, the new tiered biomethane tariff will have temporary protection from the Non-domestic RHI scheme budget management mechanism (degression) between the introduction of the tariff and the end of June 2015. No degression will apply to the new tariffs on 1 April 2015.
  - Any additional capacity that is added to existing plant registered to the scheme will receive the prevailing tariff at the time the additional capacity is registered i.e. if additional capacity is registered after the tiered tariffs have been introduced, it will receive the tiered tariff, or a degressed tiered tariff. Any installation in receipt of a grant in respect of its additional capacity must repay that grant in full before being registered to the scheme.

#### Clarifying the Eligibility Rules for CHP

- 7.4 The Renewable Heat Incentive (Amendment) (No.3) Regulations 2013 (S.I. 2013/3179) introduced greater flexibility in the eligibility rules for biomass and biogas CHP to allow a CHP engine that has a biomass/biogas combustion unit feeding the CHP to receive the relevant RHI tariff on the heat output of the CHP engine as a proportion of renewable input.

- 7.5 These new amendments provide for the participant to determine the capacity of each combustion unit so that the tariff which should be paid on each combustion unit can be determined.

#### Heat Loss Calculations for Biomethane/Biogas plants

- 7.6 Currently biomethane and biogas plants must deduct all of the heat originally consumed by the plant regardless of whether or not all of the heat produced is used for an eligible RHI heat purpose. These amendments will allow participants to make a calculation so that they can deduct a proportion of this heat equivalent to the amount of heat which is used for an eligible RHI purpose, all of the heat, or an amount in between.

### Clarification of Eligibility Rules/Updating of Microgeneration Certification Scheme (MCS) standards

- 7.7 The use of MCS standards is a key part of the Non-Domestic RHI scheme for installations under 45kW. We use these standards to provide assurance to the consumers that both the installer and the installation meet clear standards of competence.

#### Sanctions

- 7.8 The scheme administrator, Ofgem, has existing powers to apply sanctions in cases where it is suspected or proven that an applicant has failed to comply with the scheme requirements. The changes we are now making clarify when sanctions may be applied, and also ensure that the scheme administrator has sufficient flexibility to determine when and what course of enforcement action is proportionate.
- 7.9 Sanctions may now be applied where it is demonstrated that an applicant has provided incorrect information, and to those who have subsequently left the scheme, where it is shown that they had breached one or more of the scheme requirements. To support these changes participants must retain a copy of all documents or information relating to accreditation or registration or which evidences how their installation met all of the eligibility criteria and continues to meet their on-going obligations. We have also taken this opportunity to make minor amendments designed to improve the wording, and therefore meaning, of the relevant sanctions regulations.

#### Scheme improvements

- 7.10 DECC has reviewed the performance and operation of the scheme to identify where improvements can be made to achieve greater efficiencies, whilst improving the application experience for consumers. We are making improvements in three areas:
- (i) Ofgem will no longer need to confirm that biomass boilers applying to the scheme are designed to burn biomass as their primary fuel source. The introduction of air quality tests ensuring that boilers must only burn biomass within our emissions limits, and on-going obligations relating to air quality, strengthened by incoming biomass sustainability regulations (see above), provides sufficient certainty that biomass is being used.
  - (ii) Ofgem will be able to rely more on declarations provided by the applicant in determining whether the scheme's eligibility requirements are met. This will reduce scheme complexity and improve the accreditation process experience for applicants. Declarations will only be relied upon where it is reasonable to do so, to be defined in Ofgem guidance.

(iii) We are introducing greater flexibility meaning that Ofgem will no longer need to classify installations as having non-compliant metering arrangements where it is determined that incorrect installation is having minimal impact on RHI payments made. This will be tightly controlled and monitored so as to limit any impact on the scheme budget.

#### Financial control mechanism

- 7.11 Since April 2013, a long-term financial control mechanism for the Non-domestic RHI scheme has been in place. We have amended the regulations which determine how this mechanism works to reflect the changes being made to the biomethane tariffs and to accommodate additional capacity in biomethane. We have made some minor changes to clarify how the Secretary of State determines scheme expenditure dependent on whether plants are receiving payments based on their actual meter readings, or on estimates. We have also removed some provisions that are no longer needed, and a change has been made to ensure the correct policy can be applied for excluding plants from forecasts when applications are considered dormant.

#### Consolidation

- 7.12 We intend to start work consolidating the Non-domestic RHI regulations next year.

### **8. Consultation outcome**

- 8.1 We published a consultation on the biomethane injection to grid tariff review on 30 May 2014 which ran for four weeks. Tiering of the tariff was supported by consultation respondents, particularly a three tier approach. Tiering is less prone to unintended consequences such as gaming than other options considered such as a banding solution which could encourage clustering around the upper limit of bands and inefficient sizing of plants.

We have not formally consulted on the other amendments. These are not considered to be material changes to the scheme itself. The changes deliver improvements and efficiencies to the delivery of the Non-domestic RHI scheme. That is, the changes will reduce the administrative burden for Ofgem, and also reduce the burden for applicants.

### **9. Guidance**

- 9.1 Ofgem will provide further updated guidance for potential participants in the Non-Domestic RHI scheme in a variety of formats and place this on their website - [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

## **10. Impact**

- 10.1 The RHI is a voluntary subsidy scheme. The impact on industrial, commercial, public sector and not-for-profit organisations is only applicable if they are owners of eligible renewable heat installations and choose to apply for the RHI.
- 10.2 A signed copy of the Impact Assessment for the introduction of the biomethane injection to grid tariff accompanies these regulations. An IA is not needed for the other changes identified in paragraph 2.2 as these are designed to improve the administration of the scheme and are not a change in policy.

## **11. Regulating small business**

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

## **12. Monitoring & review**

- 12.1 DECC is monitoring the performance and operation of the Non-domestic RHI scheme.

## **13. Contact**

Nicholas Brooks at the Department of Energy and Climate Change, Tel: 0300 068 5628 or email [nicholas.brooks@decc.gsi.gov.uk](mailto:nicholas.brooks@decc.gsi.gov.uk)