

EXPLANATORY MEMORANDUM TO
THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) (No. 2)
REGULATIONS 2016

2016 No. 1197

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) 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 “2011 Regulations”) in order to revise downward the minimum power efficiency threshold requirement for new solid biomass Combined Heat and Power (“CHP”) plant (CHP systems using solid biomass which meet the requirements set out in regulation 9A of the 2011 Regulations) participating in the non-domestic Renewable Heat Incentive (“RHI”) scheme.
- 2.2 A 20% power efficiency requirement for new solid biomass-CHP plant was first introduced into the non-domestic RHI scheme by S.I. 2016/718 to address a specific problem which is explained in the policy background section below.
- 2.3 This instrument reduces the 20% power efficiency requirement to 10% for all new solid biomass-CHP plant with a tariff start date after this instrument comes into force. On and after the coming into force date of 1st January 2017 solid biomass-CHP plant will need to achieve 10% power efficiency or above to be able to claim the biomass CHP tariff for all of the eligible heat produced from that solid biomass. If the power efficiency is lower than 10%, a proportion of the heat will receive the biomass CHP-tariff, with the remainder receiving the tariff which applies to standard (non-CHP) biomass plant of the same capacity.
- 2.4 The instrument also includes a provision for participants with a tariff start date between 1st August 2016 and 1st January 2017 to choose, before 1st February 2017, to remain on the 20% power efficiency requirement, should they decide that they would be negatively impacted by the reduced power efficiency requirement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This Statutory Instrument amends changes which addressed a loophole in the RHI scheme rules, which represented a financial and value for money risk to the scheme.

4.2 Since its introduction, S.I. 2011/2860 has been amended as follows:

- The Renewable Heat Incentive Scheme (Amendment) Regulations 2012 (S.I. 2012/1999) introduced an interim cost control mechanism for the non-domestic RHI scheme.
- The Renewable Heat Incentive Scheme (Amendment) Regulations 2013 (S.I. 2013/1033) introduced a long-term budget control mechanism until the end of March 2015.
- The Renewable Heat Incentive Scheme (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 and introduced a new streamlined approach to metering along with a number of minor changes.
- The Renewable Heat Incentive Scheme (Amendment) (No.3) Regulations 2013 (S.I. 2013/3179) amended the RHI Regulations to correct two points relating to the operation of the non-domestic RHI scheme.
- The Renewable Heat Incentive Scheme (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 Scheme (Amendment) Regulations 2015 (S.I. 2015/197) introduced apportioning to CHP to add additional flexibility, as well as simplification to the requirements of underground piping and manufacturer's instructions. Changes also clarified when Ofgem can apply sanctions.
- The Renewable Heat Incentive Scheme (Amendment) Regulations 2015 and The Domestic Renewable Heat Incentive (Amendment) Regulations 2015 (S.I. 2015/145) introduced biomass sustainability criteria to both RHI schemes, including setting up a Biomass Suppliers List.
- The Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2015 (S.I. 2015/477) corrected an error in the regulations relating to heat being produced from the combustion of biogas from the biogas production plant.
- The Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2016 (S.I. 2016/257) introduced new triggers for each quarter up to 31st January 2017, provided for future annual tariff uplifts to be calculated in line with the consumer prices index rather than the retail prices index, updated the land criteria to mirror provisions under the Renewables Obligation, and provided clarity regarding the requirements that must be met for schemes to demonstrate equivalence to the Microgeneration Certification Scheme.
- The Renewable Heat Incentive Scheme (Amendment) Regulations 2016 (S.I. 2016/718) introduced a minimum power efficiency threshold requirement for new solid biomass CHP plant (CHP systems using solid biomass which meet

the requirements set out in regulation 9A of the 2011 Regulations) participating in the non-domestic Renewable Heat Incentive scheme. The introduction of a 20% power efficiency requirement was introduced to prevent some biomass-CHP plant with lower power efficiencies (those that have installed turbines not considered to be sufficiently efficient in terms of their power output) from being eligible for the biomass-CHP tariff for all of their heat output.

- 4.3 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 delivers value for money for the taxpayer.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The RHI scheme was introduced to facilitate and encourage the renewable generation of heat, as set out in section 100 Energy Act 2008. In the impact assessment which accompanied the consultation “The Renewable Heat Incentive: A reformed and refocused scheme” (published 3 March 2016) we estimated that by 2020 across all sectors, a contribution of 23.7TWh of renewable heat is expected as a result of the RHI scheme. The domestic and non-domestic RHI schemes align with the Government’s longer-term energy and climate change goals. The non-domestic RHI scheme opened for applications on 28 November 2011.
- 7.2 Installing a CHP plant can lead to significant fuel and emissions savings over conventional, separate forms of power generation and heat-only boilers. However, capital costs are high and payback periods can be long. Due to the higher cost of a CHP plant compared to a biomass only plant, the Government introduced a dedicated tariff for biomass-CHP into the non-domestic RHI scheme in May 2014 which is roughly double the tariff for large biomass heat only plants. This tariff in part reflects the higher capital costs of CHP plant and in part reflects the efficiency benefits that biomass-CHP can deliver over separate heat and power generation. It also takes the place of the additional half Renewables Obligation Certificate uplift which had hitherto been designed to compensate the extra costs of CHP over power generation alone. To be eligible for this biomass-CHP tariff, systems must be certified under the Combined Heat and Power Quality Assurance (“CHPQA”) scheme.
- 7.3 There are a range of CHP technologies incorporating different designs and turbine types which can currently qualify for the CHPQA scheme. These technologies vary in terms of the efficiency of the power production and the overall efficiency of the system.

- 7.4 Some types of CHP plant deliver only low levels power output and/or poor overall efficiency. S.I. 2016/718 introduced a 20% power efficiency requirement for new solid biomass-CHP plant to prevent some biomass-CHP plant with lower power efficiencies (those that have installed turbines not considered to be sufficiently efficient in terms of their power output), from being eligible for the biomass-CHP tariff for all of their heat output. We introduced the power efficiency requirement as we were concerned that some plant coming forward only had low power efficiencies and did not necessarily face the significantly higher capital costs and/or deliver the comparatively more efficient use of biomass the CHP tariff reflects.
- 7.5 Following the introduction of S.I. 2016/718, the Government listened to the views of stakeholders who felt they had been affected by the introduction of S.I. 2016/718. Having examined the further information provided by stakeholders, the Government still feels that the principle behind the policy is the right one: the biomass CHP tariff is in place in recognition of the higher capital costs and the additional efficiency benefits biomass CHP can deliver compared to separate generation of power and heat. It is therefore important to ensure plants gaining the biomass CHP tariff are indeed delivering meaningful efficiency benefits. However, the Government also recognises the change may have an impact on projects under development.
- 7.6 The Government therefore announced in mid-October that it would introduce amending legislation to reduce the 20% power threshold to 10% for a transition period, to be applied to all plant which have qualified for the scheme since 1 August 2016. The 10% threshold will operate on a tapered basis so that projects with a power efficiency threshold near 10% will get more heat paid on the higher biomass CHP tariff than those with lower power efficiency.
- 7.7 The Government recognises that this revised approach will not remove all the impacts of the change from all projects. However, the Government feels it achieves the right balance between delivering value for money and ensuring the efficiency benefits that CHP is supposed to deliver are indeed delivered, whilst also reducing the impact on projects underway. In particular it reduces impacts on those projects which are aiming to deliver higher rather than lower power efficiencies.
- 7.8 The Government also recognises that it is theoretically possible that a small subset of biomass-CHP plant would be better off under the 20% power efficiency arrangements than under the 10% arrangements. As such, the Government will allow participants with a tariff start date between 1st August 2016 and 1st January 2017 to choose, before 1st February 2017, to remain on the 20% power efficiency requirement, should they decide that they would be negatively impacted by the reduced power efficiency requirement.

Consolidation

- 7.9 The Government introduced a number of amendments to the RHI schemes in Spring 2016 (as outlined above) and we expect to implement a second package of reforms in 2017. Those regulatory changes were proposed as part of a consultation on reforms to the RHI schemes earlier this year. The government response to that consultation will be published in due course. One of the aims of this second package of reforms is to consolidate the 2011 Regulations and work has already begun on this.

8. Consultation outcome

- 8.1 There is no statutory duty to consult on changes to the RHI.
- 8.2 A question relating to the biomass-CHP tariff was posed through the consultation on the reform of the RHI schemes which launched on 3 March 2016 and closed on 27 April 2016. This question did not ask for views on the policy change introduced by S.I. 2016/718 but did seek general views on whether any types of biomass-CHP plant would be overcompensated by the current tariff structure. The consultation received over 370 responses, with 68 respondents giving an answer to the relevant question. These included responses which support the policy change made by S.I. 2016/718.
- 8.3 A decision was taken not to consult on the 20% power efficiency requirement, introduced by S.I. 2016/718 given the potentially significant financial risk to the scheme which could arise should a rush of applications for the relevant types of CHP plant emerge. It was judged that further consultation would increase the risk of such a rush. The issue was, however, discussed informally with industry stakeholders who were supportive of action to ensure RHI support is focussed on value for money installations.
- 8.4 The Government recognised that the introduction of a power efficiency requirement would impact on projects already under way. Once the regulatory changes were public we therefore encouraged potential applicants to the RHI to provide us with further information about the impacts of the change. We wanted to use this information to determine whether any further action was required to ensure the policy intent was delivered.
- 8.5 The Government listened to the views of stakeholders who felt they had been affected by the introduction of S.I. 2016/718. In response the Government announced in mid-October that it would introduce amending legislation to reduce the 20% power threshold to 10%. This statutory instrument gives effect to that commitment.

9. Guidance

- 9.1 Ofgem will provide further updated 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 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 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 have chosen to apply for the RHI.
- 10.4 An Impact Assessment has not been prepared for this instrument

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 BEIS is monitoring the performance and operation of the non-domestic and domestic RHI schemes.

13. Contact

- 13.1 Andrew Cowdrill at the Department for Business Energy and Industrial Strategy (Telephone: 0300 068 6608 or email: Andrew.Cowdrill@beis.gov.uk) can answer any queries regarding the instrument.