

## EXPLANATORY MEMORANDUM TO

### THE RENEWABLE HEAT INCENTIVE SCHEME AND DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2016

2016 No. 257

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) on 3 March 2016 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 Non-Domestic RHI”) and Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928) to introduce a number of amendments applying to both schemes or that apply to each scheme separately:

##### Both Schemes

- Change the annual tariff uplift from RPI to CPI for all plants on either scheme with a tariff start date on or after 1<sup>st</sup> April 2016;
- Set the depression triggers for all technologies for depressions for the financial year 2016/17;
- Amending the land criteria to mirror similar provisions in the Renewables Obligations Order 2015 and Renewables Obligation (Scotland) Order 2009, in particular setting out what is meant by biomass being obtained from a “sustainable source”;
- Provide clarity on the criteria which schemes must satisfy in order to demonstrate equivalence to the Microgeneration Certification Scheme (MCS);
- Provide clarity on what is meant when a tariff is required to be rounded to a specified number of decimal places;

##### Domestic Scheme Only

- Provide clarity on Ofgem’s ability to request a new Energy Performance Certificate (EPC), and amend payments in line with new information;
- Remove the need for a Green Deal Assessment report as an eligibility requirement for all future Domestic Renewable Heat Incentive (RHI) scheme applicants;
- Remove the requirement that eligible new self-build properties must be occupied for 183 days prior to application to the Domestic RHI scheme to allow scheme payments to be deemed not metered.
- Provide clarity that solar thermal collectors must not have been used before the plant’s first commissioning date.

### Non-domestic Scheme Only

- Insert cross-references to the Renewables Obligations (RO) Order 2015 as applicable

Allow biogas plants to be deemed to meet the RHI's sustainable biogas criteria where it is used in an RO accredited installation with a capacity of 1MW or above and complies with the RO's greenhouse gas and land criteria. This mirrors the current arrangements for biomass plants with a capacity of 1MW or above.

## **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 negative resolution 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 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 Renewable Heat Incentive Scheme Regulations 2011(SI 2011/2860) 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 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) came into force 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 and S.I. 2014/928 have 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 31st 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 additional flexibility for Combined Heat and Power, 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 of a Biomass Suppliers List.
- The Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015 (S.I. 2015/143) introduced updates to MCS standards, scheme clarification including providing clarity on eligible technologies.
- 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) (No. 2) Regulations 2015 (S.I. 2015/1459) updated references to the Microgeneration Certification Scheme standards. It also introduced the Seasonal Coefficient of Performance calculator, minor changes to the biomass sustainability requirements, and changes to the budget management forecasting methodology for biomethane. It also introduced a power for Ofgem to reject applications to the Non-domestic RHI scheme.

4.4 The above amendments to the Non-domestic and Domestic RHI schemes, together with those set out below, are necessary to ensure the schemes continue to run smoothly and deliver 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**

7.1 The RHI scheme was introduced primarily to help meet the UK’s target under Directive 2009/28/EC (the “Renewable Energy 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 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. The Domestic RHI scheme opened for applications on 9 April 2014.

## *Amendments to both Non-domestic and Domestic Renewable Heat Incentive Schemes*

### Change from Retail Price Index (RPI) to Consumer Price Index (CPI)

- 7.2 Tariffs in the RHI for new deployment and for those already accredited to both the Domestic or Non-domestic schemes are adjusted annually in line with inflation. The measure of indexation which has been used to date is the Retail Prices Index (RPI). This value, which is still published by the Office for National Statistics, was de-designated as a National Statistic in 2013.
- 7.3 An independent review published by the Institute for Fiscal Studies (IFS) on 8<sup>th</sup> January 2015, emphasised the statistical flaws in the construction of RPI which led to its de-designation as a National Statistic and recommended Government and regulators move towards ending the use of the index to adjust prices.
- 7.4 The alternative measure of inflation which does have National Statistic status, the Consumer Prices Index (CPI) is now widely used across Government, including in the uprating of wages, pensions and benefits. CPI is currently lower than RPI and, should this continue, uplifting tariffs by CPI would lead to savings to the taxpayer over the lifetime of the RHI.
- 7.5 These Regulations change the measure of indexation from RPI to CPI for tariff adjustments for any deployment which comes forward after 1<sup>st</sup> April 2016 only. Any deployment currently on the scheme, or which is accredited in advance of April 2016, will continue to see annual-tariff adjustments linked to RPI in line with current regulations. From April 2016, the tariffs for new deployment will be adjusted in line with CPI rather than RPI. The first of these tariff adjustments will take place in April 2017.

### Degression Triggers

- 7.6 Spending is controlled in the RHI scheme through the degression mechanism, where the tariffs available for new deployment are reduced if existing levels of deployment exceed expected levels. This delivers benefits including:
- Improving value for money for the taxpayer, by reducing tariffs where technologies have seen high levels of growth;
  - Controlling spending and ensuring the scheme remains affordable; and
  - Providing transparency to the market through setting out the rules and trigger points for tariff reduction in regulations.
- 7.7 Both the Non-domestic and the Domestic RHI schemes have pre-determined triggers set out in regulations based on projected expenditure and growth rates across the different technologies at the time the policy was introduced up to the final assessment date of 31<sup>st</sup> January 2016 (which determines any tariff reduction which will occur on 1<sup>st</sup> April 2016).
- 7.8 The triggers need to be in place for the cost control mechanism to continue operating and, without any amendment to the current regulations the triggers for each quarterly degression assessment would remain unchanged from the triggers for the assessment date of 31<sup>st</sup> January 2016.
- 7.9 These Regulations introduce new triggers for each quarter up to 31<sup>st</sup> January 2017 (which determines any tariff reduction which will occur on 1<sup>st</sup> April 2017), increasing the projected deployment quarter on quarter on a consistent trajectory with the current

triggers. In advance of the Government's consultation in spring 2016 and the refocussing of the scheme in 2017, the purpose of the extended degression triggers is to roll forward the current cost control mechanism to enable continued budget management before wider changes are introduced.

#### Changes to the land criteria requirements

- 7.10 The requirement for RHI participants to only use sustainable solid biomass came into effect on 5<sup>th</sup> October 2015. Domestic RHI participants are required to use fuels approved as meeting the sustainability requirements and listed on the Biomass Suppliers List (or any other approved sustainable fuel lists that may be set up), including where they have registered as a 'self-supplier'. Non-domestic RHI participants may also use fuel from an approved list or choose to separately demonstrate to Ofgem how they meet the RHI sustainability requirements.
- 7.11 To be sustainable, solid biomass and biogas must meet the greenhouse gas and land criteria. For solid biomass that is, or is derived from, wood, the source of that wood must be sustainably managed. The UK Government has previously confirmed that the land criteria in the RHI regulations would be consistent with those set out under the Renewables Obligation.
- 7.12 In 2015, DECC consulted on the content of a revised Renewables Obligation Order ('RO Order'). The revised RO Order contained land criteria similar to those in the RHI Regulations. Minor changes were made to the RO Order requirements following consultation, and before the Renewables Obligation Order 2015 was laid before Parliament in July 2015.
- 7.13 The main changes to the land criteria within the RO Order were:
- To remove the requirement that a 'management plan' must be in place for an area of forest or other land that is being used to grow biomass. This reference was removed to allow producers of biomass to demonstrate compliance with sustainability criteria through credible evidence, such as regional risk based approaches, other than approved certification schemes, as set out in the Government's *Timber Standard*.
  - To replace a reference to 'natural pest control' so that the land criteria instead refers to 'integrated pest management', a recognised term within the forestry industry that is defined within an EC Directive (Directive 2009/128/EC) on the sustainable use of pesticide.
- 7.14 These changes are mirrored in the amendments to the Renewables Obligation (Scotland) Order 2009 which came into force at the same time as the Renewables Obligations Order 2015 on 1<sup>st</sup> December 2015.
- 7.15 The relevant amendments described in this explanatory memorandum aim to align the land criteria requirements of the RHI Regulations with those in the RO Order 2015 and RO (Scotland) Order 2009 (as amended) namely by:
- removing the requirement for a 'management plan' and setting out the definition of what is meant by biomass being obtained from a "sustainable source";
  - allowing solid biomass which is wood or wholly derived from wood (except energy crops) to be capable of meeting the land criteria if it was certified under an environmental quality assurance scheme that ensures at least 70% of the biomass was obtained from a sustainable source;

- replacing the sustainability requirement to minimise harm to an ecosystem by using ‘natural pest control’ where possible with one to use ‘integrated pest control’; and;
- requiring that in respect of residue from arboriculture, the arboriculture be carried out in an area which was not a forest.

7.16 The amended land criteria requirements will apply to fuels approved on the Biomass Suppliers List (and to any future lists of RHI approved sustainable fuels) and are therefore relevant to both Domestic and Non-domestic RHI participants.

Clarification of Microgeneration Certification Scheme equivalence

7.17 It is a requirement of the RHI that for renewable heating systems to be eligible for the Non-domestic or Domestic RHI, it must be installed by an MCS (or equivalent) installer in line with the appropriate MCS (or equivalent) standards, as set out in the Regulations. This applies to systems up to 45kW for Non-domestic RHI and all systems for Domestic RHI.

7.18 Currently the Regulations require that certification schemes are accredited under EN 45011 or EN ISO/IEC 17065:2012. However, it is not possible for a certification scheme to be accredited by these standards as these standards are used to accredit Certification Bodies who in turn assess and certify installers against scheme standards.

7.19 Therefore, we are amending the Regulations to provide clarity that it is the certification body that needs to be accredited against either EN 45011 or EN ISO/IEC 17065:2012; and that the certification scheme must be equivalent to MCS and provide installation standards which are equivalent to the relevant installation standards specified in the Regulations.

Tariff rounding to two decimal places

7.20 Currently there is some ambiguity in the Regulations about the rounding of tariffs; this amendment provides clarity of what is meant when a tariff is to be rounded to a specified number of decimal places.

Solar thermal collectors new at first commissioning

7.21 Currently the regulations state that all heat generating parts of a plant must not have been used before the first commissioning date with limited exceptions. One of these exceptions is components which solely generate heat for the purpose of heating domestic hot water. As solar thermal plants are only eligible for the domestic RHI for the purpose of producing domestic hot water we need to clarify that the exception does not cover solar collectors, which must be new at the point of commissioning.

***Amendments to Domestic Renewable Heat Incentive Scheme only***

Ability for Ofgem to request a new EPC and amend RHI payments

7.22 Under the Domestic RHI payments are calculated based on the ‘deemed annual heat generation’, which is defined as the heat demand for space heating and/or water heating specified in the EPC for the individual domestic dwelling.

7.23 Currently the Regulations enable Ofgem to request a new EPC in situations where they believe the original is incorrect but not to amend the scheme payments to match the new EPC. These Regulations allow subsequent RHI payments to be amended in line with the new EPC.

### Green Deal Assessment

- 7.24 The requirement for a Green Deal Assessment (GDA) was designed to encourage more energy efficient homes across the UK, beyond the minimum measures of loft and cavity wall insulation required under the Domestic RHI.
- 7.25 In February 2015 we removed the GDA requirement for eligible new build properties and registered social landlords (RSLs). This decision was made on the basis that eligible new build properties would already be energy efficient since they were built to current building regulations, and RSLs' properties are regulated and must meet minimum energy efficiency requirements.
- 7.26 We are now removing the requirement for a GDA report for all applicants as this requirement has become unnecessary and potentially burdensome following the announcement in July 2015 that there would be no further funding for the Green Deal Finance Company.
- 7.27 The scheme will retain the minimum energy efficiency measures of loft and cavity wall insulation which will be evidenced through the EPC that is still required as part of eligibility for the scheme.

### Exemption for eligible new build properties from the 183 days occupancy requirement

- 7.28 The Domestic RHI Regulations require that heat generated from a renewable heating plant located in a single domestic dwelling occupied for less than 183 days in the 12 months before the full application is submitted must be metered so that payments are based on meter readings rather than a deemed value based on the property's annual heat demand.
- 7.29 This requirement is particularly burdensome and unnecessary for eligible new builds as, once applicants have moved into the property, they must either install heat meters at additional cost or wait 183 days before applying to the RHI, in which time tariffs could have been reduced by up to two degressions. Therefore this amendment will remove the 183 days occupancy requirement for eligible new-self build properties.
- 7.30 The 183 days occupancy requirement will remain an ongoing obligation for subsequent years of scheme participation. As such, when a participant submits their annual declaration for subsequent year, they are required to declare that the property is occupied for a minimum of 183 days, and if this has changed heat meters will need to be installed to continue receiving RHI payments.

### ***Amendments to Non-domestic Renewable Heat Incentive Scheme only***

#### Biogas deemed to meet sustainability criteria

- 7.31 The Non-domestic RHI regulations allow certain participants to be deemed to be using sustainable solid biomass for RHI purposes where they meet specified criteria under the RO Order 2009, RO Order 2015 or RO (Scotland) Order 2009. This principally relates to CHP plants. Where those criteria are met, the regulations also excuse participants from the requirement to produce separate sustainability audit reports for both the RHI and RO.
- 7.32 This provision is to minimise the burden on participants by removing duplicate reporting. The provision has been expanded to include biogas, as well as solid biomass going forward, so that biogas plants with a capacity or 1MW or greater do

not have to report separately on how they meet the aligned RO and RHI sustainability criteria.

- 7.33 Participants are now required to comply with the greenhouse gas and land criteria in the RO Order 2015 or RO (Scotland) Order 2009 where they wish to be deemed to meet the RHI sustainability criteria. Previously, they were required only to report on the biomass used.

#### ***Consolidation***

- 7.34 Work has already started on consolidating the Non-domestic RHI regulations. It is expected that consolidated regulations will be laid in early 2017.

### **8. Consultation outcome**

- 8.1 These regulatory changes are being announced as part of a wider consultation on reforms to the RHI schemes. The change in indexation is being consulted on to ask respondents if there is any compelling evidence as to why CPI should not be used in place of RPI in a Government consultation due to be published alongside the laying of the Regulations.
- 8.2 Additionally, and in relation to the amendments made to the RHI land criteria requirements, the Government held a technical consultation on the content of the Renewables Obligation Order 2015 in March and April 2015. The changes made to the RHI land criteria requirements therefore reflect those made to the RO Order following the outcome of that consultation.

### **9. Guidance**

- 9.1 Ofgem will provide further updated guidance for potential participants in the Domestic and Non-domestic RHI schemes and place this on their website, accessible at [www.ofgem.gov.uk](http://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. The RHI is a voluntary subsidy scheme. There is no regulatory impact on domestic consumers as well as industrial, commercial, public sector and not-for-profit organisations, unless they are owners of eligible renewable heat installations and choose to apply for the RHI.
- 10.3 The degression triggers allow some growth while maintaining budget control consistent with the new budget.
- 10.4 Any impact on deployment is challenging to estimate, but, the consultation on the longer term reforms to the RHI schemes will be seeking views on the estimated levels of deployment resulting from these proposals.
- 10.5 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 DECC is monitoring the performance and operation of the Non-domestic and Domestic RHI Schemes.'

**13. Contact**

- 13.1 Katy Read at the Department of Energy and Climate Change can answer queries regarding the instrument. Telephone 0300 068 6010 or email: [katy.read@decc.gsi.gov.uk](mailto:katy.read@decc.gsi.gov.uk)