

2018 No. 635

ENERGY

**The Renewable Heat Incentive Scheme and Domestic
Renewable Heat Incentive Scheme (Amendment) Regulations
2018**

Made - - - - *24th May 2018*

Laid before Parliament *29th May 2018*

Coming into force in accordance with regulation 1(2) to (4)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 100(1), 100(2)(a), (b), (ba) and (d) and 104(2) of the Energy Act 2008(a).

In accordance with section 100(7) of that Act, the Secretary of State has obtained the consent of the Scottish Ministers to the making of these Regulations.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2018.

(2) This Part, and regulations 9(a), 14(a) and (c), and 15, come into force on 20th June 2018.

(3) Part 2 comes into force on 27th June 2018.

(4) The remainder of these Regulations comes into force on 1st October 2018.

(a) 2008 c.32. Section 100 is amended by section 51 of the Infrastructure Act 2015 (c.7) and S.I. 2011/2195. Section 51 also amended section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation) and inserted subsections (3A) to (3I) concerning provisions which attract the affirmative resolution procedure. By virtue of subsections (3A) to (3I), these Regulations do not attract the affirmative procedure.

PART 2

Amendments to the Domestic Renewable Heat Incentive Scheme Regulations 2014

Amendments to the Domestic Renewable Heat Incentive Scheme Regulations 2014

2. The Domestic Renewable Heat Incentive Scheme Regulations 2014^(a) are amended in accordance with this Part.

Amendments to regulation 2 (interpretation)

3. In regulation 2(1), for the definition of “investor” substitute—

““investor” means a person who provides funding in relation to any of the cost of the purchase or installation of a plant in return for RHI payments and enters into a contract with an applicant or participant in respect of such arrangement, or a person who intends to do so;”.

Amendments to regulation 22A (investor applications)

4. For regulation 22A(1) substitute—

“(1) An investor may apply to the Authority, on or after 27th June 2018, to be registered as an RI for the purposes of these Regulations.”.

New regulation 26A (investors and RHI payments)

5. After regulation 26 insert—

“Investors and RHI payments

26A. In relation to an accredited domestic plant with a tariff start date on or after 27th June 2018, an investor may only receive RHI payments, directly or indirectly, if they are an NRI.”.

Amendments to regulation 39 (ongoing obligations: general)

6. In regulation 39—

(a) after paragraph (l) omit “and”,

(b) after paragraph (m) insert—

“; and

(n) in relation to an accredited domestic plant with a tariff start date on or after 27th June 2018, P must ensure that RHI payments are not made to an investor, directly or indirectly, unless the investor is an NRI”.

Amendment to Schedule 4 (information required for accreditation)

7. In paragraph 1(g) of Schedule 4, after “RHI payments” insert “or MM payments”.

(a) S.I. 2014/928 amended by S.I. 2015/143, 2015/145, 2015/1459, 2016/257, 2017/727, 2017/857 and 2018/610.

PART 3

Amendments to the Renewable Heat Incentive Scheme Regulations 2018

Amendments to the Renewable Heat Incentive Scheme Regulations 2018

8. The Renewable Heat Incentive Scheme Regulations 2018(a) are amended in accordance with this Part.

Amendments to regulation 2 (interpretation)

9. In regulation 2(1)—

- (a) in the definition of “commissioned”—
 - (i) after “in relation to an eligible installation”, insert “or equipment used to produce biomethane for injection”,
 - (ii) after “that type of eligible installation”, insert “or equipment used to produce biomethane for injection”, and
 - (iii) after “installed”, insert “, or producing biomethane for injection”,
- (b) for the definition of “date of accreditation” substitute—

““date of accreditation” means in relation to an accredited RHI installation which is—

 - (a) not a replacement plant, the later of—
 - (i) the first day which falls on or after the date of receipt by the Authority of the application for accreditation on which, in the Authority’s opinion, both—
 - (aa) the application was properly made, and
 - (bb) the plant met the eligibility criteria; and
 - (ii) the day on which the plant was first commissioned; or
 - (b) a replacement plant, the date of accreditation of the original plant;”,
- (c) after the definition of “large installation” insert—

““local and national laws” means laws applying in the locality in which the site is situated, whether made at a local or national level;”,
- (d) after the definition of “original biomethane” insert—

““original plant” means an accredited RHI installation which is replaced by a replacement plant;”,
- (e) after the definition of “relevant tariff” insert—

““replacement plant” means a plant which is installed in place of an original plant and uses the same source of energy and technology as the original plant;”.

Amendments to regulation 3 (renewable heat incentive scheme)

10.—(1) In regulation 3(5)(b)—

- (a) in paragraph (i) for “(7) or (8)” substitute “(7), (8), (8A) or (8B)”,
- (b) in paragraph (ii), at the end insert “, except where the heat is generated by an installation to which paragraph (8B) applies”,
- (c) in paragraph (iii), at the end insert “, except where the heat is generated by an installation to which paragraph (8B) applies”.

(2) After regulation 3(8) insert—

(a) S.I. 2018/611.

“(8A) This paragraph applies to a replacement plant where paragraph (7) or (8) applied to the original plant.

(8B) This paragraph applies to a replacement plant where paragraph (6) did not apply to the original plant.”.

Amendments to regulation 4 (eligible installations)

11.—(1) In regulation 4(1)(b)—

- (a) at the end of paragraph (ii) omit “and”,
- (b) for paragraph (iii) substitute—
 - “(iii) regulation 17A; and
 - (iv) Chapter 3”.

(2) In regulation 4(2) for “and 20” substitute “, 20 and 55A(5)”.

Amendment to regulation 17 (planning permission)

12. In regulation 17, for “4(b)(ii)” substitute “4(1)(b)(ii)”.

New regulation 17A (environmental permits and declaration of compliance)

13. After regulation 17 insert—

“Environmental permits and declaration of compliance

17A. The requirements referred to in regulation 4(1)(b)(iii) are that, where an application for accreditation is made on or after 1st October 2018—

- (a) any necessary environmental permits are held in relation to the plant; and
- (b) a declaration is made that the plant complies, and will continue to comply, with all local and national laws including those relating to the protection of the environment.”.

Amendments to regulation 32 (producers of biomethane)

14. In regulation 32—

(a) after paragraph (4) insert—

“(4A) Where a producer of biomethane for injection makes an application for registration on or after 20th June 2018, the Authority must not register an applicant unless—

- (a) the applicant has specified the biogas production plant to be used for the purposes of its registration; and
- (b) the equipment used to produce biomethane has been commissioned.”,

(b) after paragraph (12) insert—

“(12A) Where an application for registration is made on or after 1st October 2018, the Authority must not register an applicant unless—

- (a) any necessary environmental permits have been granted in respect of the processes by which the biogas which is used to produce the biomethane is produced, the biogas is converted into biomethane, or the biomethane is injected; and
- (b) a declaration is made that the processes by which the biogas which is used to produce the biomethane is produced, the biogas is converted into biomethane, or the biomethane is injected comply, and will continue to comply, with all local and national laws including those relating to the protection of the environment.”,

(c) after paragraph (13)(c) insert—

“(d) in the case of an application for registration made on or after 20th June 2018, may refuse to register an applicant where the Authority is satisfied that the biogas production plant specified in accordance with paragraph (4A)(a) has been used for the purposes of the registration of any other participant”.

Amendment to regulation 34 (preliminary registration of biomethane producers)

15. In regulation 34(9) after “32(4)” insert “, (4A),”.

Amendments to regulation 43 (ongoing obligations: general)

16. In regulation 43—

(a) after paragraph (x) insert—

“(xa) where regulation 32(12A) applied to their application for registration, participants must ensure that any necessary environmental permits and local and national laws including those relating to the protection of the environment continue to be complied with in respect of the processes by which the biogas which is used to produce the biomethane is produced, the biogas is converted into biomethane, and the biomethane is injected;”

(b) after paragraph (y) insert—

“(z) they must notify the Authority within 28 days of the installation of a replacement plant; and

(z1) they must ensure that any necessary environmental permits, and local and national laws including those relating to the protection of the environment, continue to be complied with by the plant”.

Amendments to regulation 45 (ongoing obligations in relation to metering)

17. In regulation 45—

(a) at the beginning of paragraph (4) insert “Subject to paragraph (4A), ”,

(b) after paragraph (4) insert—

“(4A) On or after 1st October 2018, estimated data may only be used in accordance with paragraph (4)—

(a) in a maximum of eight quarterly periods in relation to each installation; and

(b) where it would not lead to periodic support payments already made being revised.”.

Amendment to regulation 52 (review of accreditation or registration following notification of a change in circumstances)

18. In regulation 52(1)(b) for “54 and 55” substitute “54, 55 and 55A”.

New regulation 55A (replacement plants)

19. After regulation 55 insert—

“Replacement plants

55A.—(1) Where a replacement plant is installed—

(a) an accreditation application for that plant may be made by the owner of the replacement plant if that person is a participant in relation to the original plant; and

(b) no periodic support payments are payable for the period commencing with the date on which the original plant ceased to provide heat and ending with the day before

the date on which the Authority received the accreditation application for the replacement plant.

(2) Where a replacement plant has a greater capacity than the original plant, no periodic support payments may be made in respect of any capacity above that of the original plant.

(3) The tariff to be used for the purpose of calculating periodic support payments for a replacement plant is the tariff which would have applied to the original plant, had it not been replaced.

(4) Where a replacement plant has a lower capacity than the original plant and regulation 63 applies, initial heat (within the meaning given in regulation 63(3), (4) or (5)) is to be calculated using the installation capacity of the replacement plant.

(5) A replacement plant meets the criteria for being an eligible installation if it meets the eligibility criteria applicable as at the date of accreditation of the original plant except that, in the case of a replacement plant which is an installation generating heat from solid biomass, regulation 5 must apply to the replacement plant itself.”.

Amendment to regulation 59 (calculation and payment of periodic support payments to participants)

20. In regulation 59(1), for “55” substitute “55A”.

Amendment to regulation 89 (reporting obligations)

21. At the beginning of regulation 89(1)(a)(ii), insert “except in the case of a replacement plant,”.

Amendments to Schedule 2 (information required for accreditation or registration)

22. In paragraph 1(2) of Schedule 2—

- (a) in paragraph (i), at the beginning insert “in the case of a plant which is not a replacement plant,”,
- (b) after paragraph (i) insert—
 - “(ia) in the case of a replacement plant, evidence that any equipment that did not form part of the original plant was new at the time of installation”,
- (c) in paragraph (j) after “eligible installation” insert “which is not a replacement plant”,
- (d) after paragraph (cc) insert—
 - “(dd) evidence which demonstrates to the satisfaction of the Authority that—
 - (i) any necessary environmental permit has been granted; or
 - (ii) an environmental permit is not required.”.

Amendment to Schedule 4 (land criteria)

23. In paragraph 2 of Schedule 4, omit the definition of “local and national laws”.

Claire Perry

Minister of State for Climate Change and Industry

Department for Business, Energy and Industrial Strategy

24th May 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Domestic Renewable Heat Incentive Scheme Regulations 2014 (the “2014 Regulations”) established the domestic renewable heat incentive scheme, under which owners of certain plant which generate heat, from specified renewable sources for domestic properties, may receive payments at prescribed rates (“tariffs”). The Renewable Heat Incentive Scheme Regulations 2018 (the “2018 Regulations”) revoke and replace the Renewable Heat Incentive Scheme Regulations

2011 which set out the non-domestic renewable heat incentive scheme, under which owners of plants which generate heat from specified renewable sources, and biomethane producers who produce biomethane for injection, receive payments for heat used for eligible purposes. Both sets of Regulations confer functions on the Gas and Electricity Markets Authority (“the Authority”) in connection with the administration of their respective schemes.

These Regulations amend the 2014 Regulations and the 2018 Regulations.

Amendments to the 2014 Regulations

The 2014 Regulations provide that, from 27 June 2018, a participant in the domestic RHI scheme may assign their right to receive RHI payments to a third party investor. The investor must be registered with the Authority and nominated by the participant, as set out in the 2014 Regulations, and may then receive RHI payments direct from the Authority. This instrument amends the 2014 Regulations to clarify what is meant by an ‘investor’, and to ensure that, from 27 June 2018, an investor who is not registered and nominated may not receive RHI payments, either directly or indirectly.

Amendments to the 2018 Regulations

This instrument amends the 2018 Regulations to make a number of changes to the non-domestic RHI scheme.

It amends the registration process for biomethane producers with effect from 20 June 2018, in particular to require that biomethane producers must specify the biogas production plant that will be used to make biomethane for the purposes of the RHI scheme and confirm that the equipment used to produce biomethane has been commissioned, and may only use a biogas production plant for the purposes of one registration.

The following changes to the 2018 Regulations have effect from 1 October 2018.

This instrument requires that a person who makes an application to become a participant in the scheme makes a declaration that any necessary environmental permits have either been granted or that no permits are required, and that their plant and its operation comply with all relevant environmental legislation.

The 2018 Regulations allow participants to submit estimated data to the Authority in exceptional circumstances when meter readings cannot be provided. This instrument limits the permitted reliance on estimated data to no more than eight quarterly periodic data submissions within a 20 year tariff lifetime, from the date this instrument comes into force. The instrument also makes a change to prevent estimated data being used where it would lead to a revision of periodic support payments that have already been made.

This instrument also makes changes to the 2018 Regulations to enable participants whose plant breaks down to replace it with new plant, and stay on the same tariff for the remainder of their participation in the scheme. Any capacity beyond that of the original RHI accreditation will not be eligible for periodic support payments.

The Explanatory Memorandum will be published alongside the instrument on www.legislation.gov.uk.

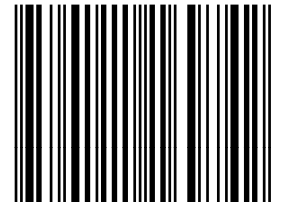
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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