

EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEME AND DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2018

2018 No. 635

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes changes to the Renewable Heat Incentive Scheme Regulations 2018 which set out the Non-domestic Renewable Heat Incentive Scheme (“Non-domestic RHI”), and the Domestic Renewable Heat Incentive Scheme Regulations 2014 which set out the Domestic Renewable Heat Incentive (“Domestic RHI”). This follows consultation on further reforms to the Non-domestic RHI. A number of amendments are made to the Non-domestic RHI, including to: the registration requirements for biomethane producers; evidence requirements relating to compliance with environmental legislation; the use of estimated data to calculate periodic support payments; and the introduction of provisions for replacement plant. On the Domestic RHI, changes are made to eligible third party finance routes to accompany the introduction of assignment of rights. These amendments are made as part of further reforms to the RHI in line with the Department’s objectives to address areas of gaming and ensure it offers better value for money.

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 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 This instrument introduces amendments to the Domestic and Non-domestic RHI schemes in line with the Government’s response to the consultation: [The Non Domestic Renewable Heat Incentive – Further Proposed Amendments](https://www.gov.uk/government/consultations/the-non-domestic-renewable-heat-incentive-further-proposed-amendments)¹, published on 5th September 2017.
- 4.2 The RHI aims to facilitate and encourage the transition from conventional forms of heating to low-carbon alternatives. The RHI provides financial incentives to households and non-domestic consumers, including public bodies and charities, to

¹ <https://www.gov.uk/government/consultations/the-non-domestic-renewable-heat-incentive-further-proposed-amendments>

help bridge the gap between the cost of renewable heating systems and the conventional alternatives. The Non-domestic RHI was introduced in November 2011 and is open to producers of biomethane for injection into the gas grid and to renewable heat installations that provide heat to buildings and for purposes other than heating a single domestic property. This includes, for example, systems providing renewable heating to public buildings or commercial properties, for industrial or agricultural uses, or for heating a block of flats. The introduction of the Domestic RHI followed in April 2014 and is open to renewable heat installations that provide heat to single domestic properties. The Non-domestic and Domestic RHI schemes are administered by The Office of Gas and Electricity Markets (Ofgem).

- 4.3 The Autumn Statement in November 2015 confirmed the budget for the RHI to the end of the Spending Review period in 2020/21. The reforms to the RHI are made to extract best value for money from this budget.

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 under the powers afforded to the Secretary of State by the Energy Act 2008. It was introduced to deliver carbon emissions reductions to help the UK meet its obligations under the Climate Change Act 2008 and the Carbon Budgets established under this Act, and to help the UK meet its target under Directive 2009/28/EC (the “Renewable Energy Directive”) that 15% of energy consumption is to come from renewable sources by 2020. The Government intends that the renewable heat generated under the RHI will make a significant contribution to these obligations.
- 7.2 Section 100 of the Energy Act 2008 makes provision for the Secretary of State to make regulations which establish a scheme to facilitate and encourage the renewable generation of heat and govern the administration of the scheme and the calculation of payments to participants. As set out in the Impact Assessment published in February 2018, the Government estimates the scheme will deliver 21.4 terawatt hours (TWh) of renewable heat in 2020/21, with 5.7TWh from deployment following the RHI reforms. Furthermore, the Government estimates the scheme (the Non-domestic and Domestic RHI combined) will deliver over 35 megatonnes of carbon abatement during each of the periods of the fourth and fifth Carbon Budgets, with over 11 megatonnes of abatement delivered by deployment following the reforms to the RHI.
- 7.3 The RHI operates by making subsidy payments to owners of eligible renewable heat technologies and producers of biomethane (in the Non-domestic scheme only) for the renewable heat generated or biomethane injected into the grid.

- 7.4 These Regulations make a number of changes to the existing Domestic and Non-domestic RHI schemes, in line with the Department's objectives to ensure the RHI offers better value for money and addresses areas of gaming.
- 7.5 On the Non-domestic RHI, these regulations make changes to the registration process for biomethane producers. In order to register for the RHI, biomethane producers will need to specify the biogas production plant that will be used to make biomethane and confirm that the equipment used to produce biomethane has been commissioned. One biogas production plant will only be able to be used for the purposes of one RHI registration. These changes will remove a practice known as 'staggered commissioning' which can complicate scheme budget management. The changes will also remove the risk of biogas produced at a single site being used for multiple RHI registrations.
- 7.6 The regulations clarify the scheme requirements relating to compliance with environmental legislation. Applicants will be required to make a declaration on applying to the scheme that the necessary environmental permits have either been granted or that no permits are required and that the plant and its operation comply with all relevant environmental legislation. This will strengthen the current scheme requirements and ensure that plant not operated in compliance with environmental legislation and without the necessary environmental permits are not supported by the RHI, safeguarding the environment and the proper use of public funds.
- 7.7 There is currently a provision within the Non-domestic RHI regulations for estimated data to be used in exceptional circumstances when meter readings cannot be provided. There are currently no limits to the amount of estimated data claims that can be submitted, which places a high administrative burden on Ofgem. Changes are being made such that claims for estimated data may be submitted to Ofgem for no more than eight quarterly periodic data submissions within a 20-year tariff lifetime, from the date when the amendments to the Non-domestic RHI come into force. Estimated data will also not be able to be submitted where it will lead to a revision to payments that have already been made. These changes will reduce the financial risk to the Government and administrative burden on Ofgem.
- 7.8 The regulations will enable participants whose plant may break down to replace it and stay on the same tariff for the remainder of their participation on the scheme, provided certain criteria are met. Any capacity beyond that of the original RHI accreditation will not be eligible to receive periodic support payments.
- 7.9 The Domestic RHI allows a participant to assign the right to RHI payments to a third party investor who has financed their renewable heating technology. These regulations make changes, which come into force on 27th June 2018, to clarify who may be an investor and receive RHI payments. These changes accompany the introduction of assignment of rights and help deliver the policy intent.

Consolidation

- 7.10 The Renewable Heat Incentive Scheme Regulations 2018 are a consolidation of earlier sets of regulations. The Department does not consider it is necessary to consolidate the Domestic Renewable Heat Incentive Scheme Regulations 2014 at this point. The original scheme Regulations and subsequent amendments for both schemes are available through the legislation.gov.uk website.

8. Consultation outcome

- 8.1 The changes outlined in sections 7.5 to 7.8 were informed by a consultation which set out proposals relating to the Non-domestic RHI scheme: [The Non-Domestic Renewable Heat Incentive – Further Proposed Amendments](#). The consultation ran from 5 September to 31 October 2017 and received 108 responses from individuals, businesses, trade bodies and other organisations. The Government Response to the consultation can be found here: [RHI Further Proposed Amendments: Government response](#).² The relevant points for the content of this instrument are summarised below.
- 8.2 In response to questions relating to biomethane registration, 64% agreed that steps should be taken to restrict staggered commissioning. 83% of respondents agreed that biomethane producers should be required to register the biogas production and/or upgrading facilities they intend to use. There was strong overall support for transparency in the registration process.
- 8.3 78% of respondents agreed that it is appropriate to require RHI participants to provide evidence to demonstrate that they hold relevant environmental permits. The Government has always been clear that RHI participants should comply with any relevant environmental permitting legislation. The consultation proposals clarify this requirement and make clear that where the relevant authority undertakes enforcement actions or environmental permits are suspended, withdrawn or revoked, Ofgem will be able to take appropriate action in the form of suspending, withholding or recovering payments.
- 8.4 Regarding the proposed changes to the submission of estimated data, 65% of respondents were in agreement. The changes will limit the use of estimated data to a maximum of two years of RHI payments per installation and confirm that estimated data will not be permitted where it would lead to a revision of payments that have already been made.
- 8.5 Of those who responded, 94% agreed that participants should be allowed to replace broken plant and remain on their current RHI accreditation. Many responses to this question highlighted how the expected lifetime of most installations is less than the 20-year Non-domestic RHI support and that it is therefore reasonable to expect some replacement of equipment during this period.
- 8.6 In 2015 the RHI held a call for evidence to seek information and evidence to inform the development of policy to allow additional financing options into the Domestic RHI. The changes to third party finance routes outlined in section 7.9 are intended to ensure positive consumer outcomes and that the policy intent behind assignment of rights can be delivered.

9. Guidance

- 9.1 The Government Response to the consultation explains the amendments in detail. Ofgem will also publish supporting guidance that will provide further information for scheme applicants, participants, installers and investors.

²<https://www.gov.uk/government/consultations/the-non-domestic-renewable-heat-incentive-further-proposed-amendments>

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies, given the RHI is a voluntary scheme.
- 10.2 There is no impact on the public sector, given the RHI is a voluntary scheme.
- 10.3 An Impact Assessment has not been prepared for this instrument. An [Impact Assessment](#)³ was recently published alongside the draft Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2018 and the draft Renewable Heat Incentive Scheme Regulations 2018.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses, given the RHI is a voluntary scheme.

12. Monitoring & review

- 12.1 The Department is currently undertaking an evaluation of the reformed RHI scheme. The evaluation will assess the impact of the scheme and identify lessons for future policy development. The evaluation will include assessment of the reformed RHI's impact on renewable heat generation, carbon abatement and contribution towards the development of a sustainable market. Regular monitoring data and evidence review reports are expected throughout the evaluation (2017-2021), with a published report after scheme close. The full details of the evaluation will be confirmed following the full implementation of the reforms intended to be introduced in 2018.

13. Contact

- 13.1 Tommy Moody at the Department for Business, Energy and Industrial Strategy, Telephone: 0207 215 0821 or email: tommy.moody@beis.gov.uk, can answer any queries regarding the instrument.

³ http://www.legislation.gov.uk/ukia/2018/46/pdfs/ukia_20180046_en.pdf