



Infrastructure Act 2015

2015 CHAPTER 7

PART 6

ENERGY

Renewable heat incentives

51 Renewable heat incentives

- (1) Section 100 of the Energy Act 2008 (renewable heat incentives) is amended in accordance with subsections (2) to (4).
- (2) After subsection (1) insert—
 - “(1A) Regulations under this section may confer any function on any person.
 - (1B) Regulations under this section may provide for a function conferred on a person to be exercisable on behalf of another person.”
- (3) In subsection (2)—
 - (a) in paragraph (a), for the words before sub-paragraph (i) substitute—
 - “(a) make provision giving any of the following persons entitlements to payments (“RHI payments”) in specified circumstances—”;
 - (b) in paragraph (b), for “such payments” substitute “RHI payments”;
 - (c) after paragraph (b) insert—
 - “(ba) make provision about the circumstances in which, and descriptions of persons to whom, the whole or a part of an entitlement to an RHI payment may be assigned (whether the person has the entitlement by virtue of regulations under paragraph (a) or regulations under this paragraph);
 - (bb) authorise or require the Secretary of State, the Authority, designated fossil fuel suppliers, or any person with any other administration function, to make an RHI payment—

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- (i) to the person who is entitled to the payment by virtue of regulations under paragraph (a), or
 - (ii) where that entitlement has been wholly or partly assigned in accordance with regulations under this section, to the person or persons for the time being enjoying the entitlement or any part of it;”;
 - (d) in paragraph (c), for “such payments” substitute “RHI payments”;
 - (e) for paragraph (d) substitute—
 - “(d) authorise or require a person to provide specified information;”;
 - (f) in paragraph (e), omit “to the Secretary of State or the Authority”;
 - (g) in paragraph (h), omit “for the Secretary of State or the Authority”;
 - (h) omit paragraph (i);
 - (i) at the end insert—
 - “(j) authorise the Secretary of State to make payments to a person in respect of the exercise by the person of functions under regulations under this section;
 - (k) make provision about the resolution of disputes relating to the exercise of functions under regulations under this section, including provision about arbitration or appeals (which may, in particular, provide for the person conducting an arbitration or determining an appeal to order the payment of costs or compensation).”
- (4) In subsection (3), after the definition of “fossil fuel supplier” insert—
- ““other administration function” means a function relating to the administration of a scheme established under this section, other than a function conferred by regulations under subsection (2)(bb);”.
- (5) Section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation) is amended in accordance with subsections (6) to (8).
- (6) In subsection (2)—
- (a) in paragraph (a), omit sub-paragraph (vi);
 - (b) after paragraph (aa) insert—
 - “(ab) regulations which contain (whether alone or together with other provision) affirmative resolution provision made under section 100 (renewable heat incentives);”.
- (7) In subsection (3), after “(2)(a)” insert “, (ab)”
- (8) After subsection (3) insert—
- “(3A) Provision made under section 100 is affirmative resolution provision if—
- (a) the provision is made under any of the powers which always attract the affirmative resolution procedure, or
 - (b) the provision—
 - (i) is not made under any of those powers, and
 - (ii) meets condition A, B, C or D.
- (3B) The powers which always attract the affirmative resolution procedure are the powers conferred by—

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- (a) section 100(2)(c), (e), (f), (g), (h) and (k),
 - (b) section 100(5), and
 - (c) section 100(6).
- (3C) Provision meets condition A if—
 - (a) it is made under the power conferred by section 100(2)(bb), and
 - (b) it requires a designated fossil fuel supplier to make a payment under an RHI scheme.
- (3D) Provision meets condition B if—
 - (a) it confers an administration function on a person who is not the Secretary of State or the Authority, and
 - (b) the time when the provision comes into force will be the first time that an administration function under the RHI scheme concerned is exercisable by a person who is not the Secretary of State or the Authority.
- (3E) Provision meets condition C if—
 - (a) it is made under a power conferred by paragraph (ba) or (bb)(ii) of section 100(2),
 - (b) it is made in relation to an RHI scheme that was in existence immediately before the coming into force of this subsection, and
 - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3F) Provision meets condition D if—
 - (a) it is made under a power conferred by paragraph (a), (b), (ba), (bb), (d) or (j) of section 100(2),
 - (b) it is made in relation to an RHI scheme that was not in existence immediately before the coming into force of this subsection, and
 - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3G) In deciding whether provision meets condition B, the following matters must be ignored—
 - (a) for the purposes of subsection (3D)(a): any provision which confers a payment function on designated fossil fuel suppliers;
 - (b) for the purposes of subsection (3D)(b): any payment function under the RHI scheme concerned which (before the time when the provision comes into force) is, or has been, exercisable by designated fossil fuel suppliers.
- (3H) The fact that provision is to some extent made under a power conferred by section 100(1), (1A) or (1B) does not prevent that provision from being taken (for the purposes of subsections (3A) to (3F)) as being made under any other power conferred by section 100.
- (3I) In subsections (3B) to (3H) and this subsection—
 - “administration function” means a function relating to the administration of an RHI scheme;
 - “designated fossil fuel suppliers” has the same meaning as in section 100;

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“payment function” means a function of making a payment under an RHI scheme (whether the function authorises or requires the making of the payment);

“RHI scheme” means a scheme under section 100 to facilitate and encourage renewable generation of heat.”

- (9) In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information), in subsection (3)—
- (a) in paragraph (a), omit “or section 100”;
 - (b) after paragraph (a) insert—
 - “(aa) it is made for the purpose of facilitating any functions of any person under section 100 of the Energy Act 2008;”.