EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) (No.3) REGULATIONS 2013

2013 No. xxxx

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) 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 RHI Regulations") in order to:

- Correct a point relating to the operation of the financial control mechanism for the non-domestic Renewable Heat Incentive scheme to ensure that the growth tests which are used to determine when tariffs are reduced in certain situations reflects the policy intent as published by Government in February this year.

- Correct a small error in the non-domestic Renewable Heat Incentive regulations within Schedule A1 "Content of RHI emission certificates", which sets the requirements for testing emissions from biomass boilers so as to show that a biomass boiler meets emissions limits relating to air quality. The correction will allow the correct testing standards to be applied.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 ("the Act").

4.2 The RHI Regulations 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. Currently the RHI scheme supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane.

4.3 The Renewable Heat Incentive (Amendment) Regulations 2013 (S.I. 2013/1033) amended the RHI Regulations to introduce a long-term budget control mechanism until the end of the Spending Review period (31st March 2015).

4.4 The Renewable Heat Incentive (Amendment) (No.2) Regulations 2013 (S.I. 2013/2410) amended the RHI Regulations to introduce air quality emission limits to all biomass boilers for which accreditation under the non-domestic RHI scheme is being sought, introduced a new streamlined approach to metering and a number of minor changes.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 In accordance with section 100(7)(a) of the Act, the Secretary of State has obtained the Scottish Minister's consent to the making of the Renewable Heat Incentive Scheme (Amendment) (No.3) Regulations 2013.

6. European Convention on Human Rights

6.1 Gregory Barker, Minister of State for the Department of Energy and Climate Change, has made the following statement regarding Human Rights:

In my view the provisions of the Renewable Heat Incentive Scheme (Amendment) (No.3) Regulations 2013 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The RHI scheme was introduced primarily to help meet the UK's target under Directive 2009/28/EC (the "Renewables 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 scheme is in line with the Government's longer-term energy and climate change goals.

7.2 The RHI provides a long-term tariff scheme and opened for applications on 28 November 2011. It currently supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane.

7.3 Good air quality is vital to human health and the Government is committed to controlling emissions throughout the UK. The Government also has to ensure that it meets legally binding targets for air quality and national emissions of certain pollutants.

7.4 It is important that Government takes measures so that budgets are not exceeded. In adopting measures to control spend Government is aware that the renewables market is immature and there is a degree of uncertainty about how the market will

respond over time, and its budget management controls are designed to provide transparent plans to deal with any future unexpected surges in uptake.

Degression (Budget Control Mechanism)

7.5 The 2013 Regulations introduced a degression-based mechanism to control long-term spending for the non-domestic scheme until the end of March 2015. The mechanism is designed to ensure that the scheme remains within fixed annual budgets.

7.6 Degression is a responsive cost-control mechanism which operates to reduce tariffs at quarterly intervals when certain tests are met, to ensure that financial returns are kept at a reasonable rate and the overall scheme budget is kept under control. This is important as the RHI is funded by the taxpayer. Reductions only take effect where the level of estimated expenditure under the scheme exceeds the thresholds set out in the regulations, which are considered to reflect when the expenditure is more than is affordable.

7.7 The degression mechanism is also designed to ensure that tariffs are not reduced more than is necessary as this may undermine the renewable heat market. The rules which determine whether a degression, or tariff reduction, is needed are set out in the regulations. The question of whether a tariff is reduced, and to what extent, will depend on the expenditure for an individual technology, the scheme as a whole, whether there have been any previous tariff reductions and the growth in the market since any previous tariff reduction.

7.8 This amendment is required as the Renewable Heat Incentive (Amendment) Regulations 2013 (S.I. 2013/1033) do not provide for tariffs to reduce as rapidly as intended in certain circumstances. The Government intention was set out in the Government response to the July 2012 consultation on "Providing Certainty, Improving Performance" in February. It is therefore necessary to amend the growth tests so as to lower the thresholds that govern when those tests are met. If the amendment is not made:

- degression rates may not be as responsive to deployment as planned;
- it may not be possible to apply consecutive tariff reductions under some moderate growth rate scenarios;
- some technologies may be overcompensated.

7.9 The circumstances in which the growth tests are relevant to any tariff reduction have not yet arisen and it is not possible for those circumstances to arise before the 1 March 2014 degression announcement. If the change were made after that date, the concerns outlined in the previous paragraph could materialise.

Air quality

7.10 In March 2011 DECC committed to introducing limits on emissions of particulate matter (PM) and oxides of nitrogen (NO_x) from plants generating heat from solid biomass.

7.11 The emission limits to be introduced were published in the March 2011 RHI policy statement at 30grams per gigajoule (g/GJ) net thermal input for PM and 150g/GJ for NO_x. The emission limits have not changed since this publication.

7.12 S.I. 2013/2410 sets out what emissions limits have to be met and contains a schedule (Schedule A1) which details what must be provided on the RHI emissions certificate to ensure that testing has been carried out in the correct way and the emissions limits will not be exceeded.

7.13 Schedule A1 contains an error that does not reflect Government policy and is not capable of being implemented in practice. The regulations currently require all systems to meet standards which cannot be applied to the majority of biomass boilers with a capacity of 500kW or less. Therefore these systems are not able to provide a valid RHI emissions certificate and are unable to be accredited to the RHI.

7.14 DECC has worked with Ofgem (who administer the scheme) to ensure that these applicants are not rejected on these grounds alone; applications will be processed as far as possible then put on hold until the regulations are amended. Any existing RHI emissions certificates consistent with the intended policy, will become valid and the application will then be able to become accredited (providing all other eligibility requirements have been met).

7.15 The resulting impact is that applicants for biomass below 500kW may experience a small delay in becoming accredited. However if these amending regulations do not come into force before the end of the year there is a risk that applications could be affected by a tariff reduction being announced by DECC in the intervening period, which would not have applied if this error had not occurred.

7.16 To address this issue, ensure this does not occur, the amendment includes provisions that will protect applicants from receiving a lower tariff should degression be triggered, where their accreditation has been delayed due to the error within the air quality regulations.

7.17 These provisions will ensure that if an applicant has made an application on or after 24 September, which is the date the air quality regulations came into force, and before 1 January 2014, which is the date from which any reduced tariff would start to apply, and has met the following requirements, they will not be subject to any reduced tariff:

- the application is properly made in all respects other than in relation to the air quality emissions certificate;

- all other eligibility criteria were met;
- the plant has an installation capacity of 500kW or less;
- the plant is commissioned before 1st January 2014; and
- the accreditation date falls on or after 1st January.

8. Consultation outcome

8.1 These amendments are designed to ensure that the regulations reflect the outcome of the consultation 'Providing certainty, improving performance' which was open for 8 weeks from 20 July – 14 September 2012. That document was supplemented by external events hosted between DECC and stakeholders which helped inform the final policy. The consultation set out proposals for a longer-term framework for budget management and also included proposals aimed at simplifying and improving the RHI scheme in particular with respect to biomass sustainability and air quality control, and on changes to metering requirements. Further details on the above responses are contained in the February 2013 Government response to the July consultation, available on the Gov.uk website.

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 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 choose to apply for the RHI.

10.2 An additional impact assessment has not been prepared to accompany these minor corrections. The impact assessments which were published alongside the original Explanatory Memorandums on the Gov.uk website contained details as to the impact of the policy changes and these remain unchanged.

10.3 The changes to the regulations outlined will bring the implementation of the policy into line with the intent published by the Government in February 2013, so will have no additional impacts compared to the original impact assessments.

10.4 The provision that is intended to protect applicants whose accreditation has been delayed solely due to the error within the air quality regulations from receiving a lower tariff announced by DECC between October and when these regulations are made, may have a very small impact on expenditure. The applicants who could benefit are those who have fully made their application with the exception of the air quality certificate for reasons other than the air quality regulations error. This would mean that some installations may receive a higher tariff payment then they

would have received without this protection. This scenario is deemed to be highly unlikely to occur and the effects on business and expenditure are judged to be negligible.

11. Regulating small business

11.1 The legislation applies to small business that operate in the renewable heat market or use renewable heat, however it does not add regulatory burden to their operations.

12. Monitoring & review

12.1 DECC will conduct periodic reviews of the non-domestic scheme in 2014 and 2017 and make further amendments to the RHI Regulations 2011 thereafter if necessary. Reviews will involve a broader examination of the design and impact of the scheme overall.

13. Contact

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