Draft Regulations laid before Parliament under sections 105(2(a) and (3) of the Energy Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

ENERGY

The Renewable Heat Incentive Scheme (Amendment) Regulations 2012

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 100 and 104 of the Energy Act 2008(**a**).

In accordance with sections 105(2)(a) and (3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

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.

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Scheme (Amendment) Regulations 2012 and come into force on the day after the day on which they are made.

Amendments to the Renewable Heat Incentive Scheme Regulations 2011

2. The Renewable Heat Incentive Scheme Regulations 2011(**b**) are amended as follows.

Amendments to regulation 2

3.—(1) In regulation 2, in the definition of "date of accreditation" for the words "the Authority is satisfied both that the application was properly made and that the plant meets the eligibility criteria" substitute "both the application was properly made and the plant met the eligibility criteria".

(2) In the definition of "date of registration", omit "the Authority is satisfied that".

(**a**) 2008 c.32. Section 100 is amended by S.I. 2011/2195.
(**b**) S.I. 2011/2860.

Amendment to regulation 22

4. In paragraph (1) of regulation 22 (applications for accreditation), for "An owner" substitute "Subject to regulation 51A(10), an owner".

Amendments to regulation 23

5. After paragraph (5) of regulation 23 (exceptions to duty to accredit) insert—

"(6) Subject to paragraph (7), the Authority must not accredit an eligible installation if the application for accreditation is received during a period of restriction unless—

(a) at the time of receipt of the application, the eligible installation has been commissioned; and

(b) the date of accreditation will be a date prior to the commencement of the period of suspension.

(7) Paragraph (6) does not apply where—

(a) an application for preliminary accreditation pursuant to regulation 26 was made in respect of the eligible installation before the relevant date;

(b) the eligible installation has been granted preliminary accreditation; and

(c) that accreditation has not been withdrawn.

(8) In this regulation—

"period of restriction" and "period of suspension" have the meanings given in regulation 51B;

"relevant date" means the date of coming into force of the Renewable Heat Incentive Scheme (Amendment) Regulations 2012."

Amendments to regulation 25

6. In regulation 25 (producers of biomethane)—

(a) in paragraph (1), for "A producer" substitute "Subject to regulation 51A(10), a producer";

(b) in paragraph (4), for "(5), (6) and (7)" substitute "(5) to (9)"; and

(c) after paragraph (7) insert—

"(8) Where an application for registration is made after the relevant date, the Authority must not register an applicant unless at the time of making the application, injection of biomethane produced by that applicant has commenced.

(9) The Authority must not register an applicant if the application for registration is received during a period of restriction unless the date of registration will be a date prior to the commencement of the period of suspension.

(10) In this regulation—

"period of restriction" and "period of suspension" have the meanings given in regulation 51B;

"relevant date" has the meaning given in regulation 23."

Amendments to regulation 26

7. In paragraph (1) of regulation 26 (preliminary accreditation), for "The Authority" substitute "Subject to regulation 51A(12), the Authority".

Amendment to regulation 43

8. For paragraph (1) of regulation 43 (treatment of additional RHI capacity) substitute—

"(1) This regulation—

(a) applies where a participant installs additional RHI capacity, but

(b) is subject to regulation 51A(10).”

Restriction of entry to the scheme

9. After regulation 51 insert—

“PART 10A

Restriction of entry to the scheme

Circumstances in which entry to the scheme is restricted

51A.—(1) Subject to paragraph (5), the Secretary of State must determine the forecast for total expenditure and publish that forecast on the website for the Department of Energy and Climate Change in accordance with paragraphs (2) and (3).

(2) The forecast must be published for the first time within the period of a week commencing on the relevant date.

(3) Subject to paragraph (5), the Secretary of State must revise the forecast each week with each revised forecast being published within the period of a week commencing from the date on which the previous forecast was published.

(4) The Secretary of State must notify the Authority in writing when the forecast for total expenditure reaches £67.9 million.

(5) Paragraphs (1) and (3) cease to have effect once the notification required by paragraph (4) has been made.

(6) On receipt of such a notification, the Authority must, as soon as is reasonably practicable, publish a notice (“notice of restriction”) on its website.

(7) The notice of restriction must—

(a) be first published on a working day;

(b) specify the date on which it is first published;

(c) specify the dates with which the period of suspension will commence and end;

(d) explain that entry to the scheme will be suspended in accordance with paragraphs (10) to (12);

(e) specify the dates with which the period of restriction will commence and end;

(f) explain that during the period of restriction, the restrictions on accreditation and registration set out in paragraphs (6) and (7) of regulation 23 and paragraphs (8) and (9) of regulation 25 will apply; and

(g) explain the effect of the periods of suspension and restriction.

(8) On the first day of the period of suspension, the Authority must publish a notice (“notice of suspension”) on its website.

(9) The notice of suspension must—

(a) specify the date on which it is first published;

(b) include the information specified in paragraph (7)(c) and (d); and

(c) explain the effect of the period of suspension.

(10) Subject to paragraph (11), no applications for accreditation (including applications for accreditation of additional RHI capacity pursuant to regulation 43(5)) or applications for registration pursuant to regulation 25 may be made during the period of suspension.

(11) Paragraph (10) does not apply in relation to an application for accreditation of an eligible installation where—

(a) an application for preliminary accreditation pursuant to regulation 26 was made in respect of the eligible installation before the relevant date;

(b) the eligible installation has been granted preliminary accreditation; and

(c) that accreditation has not been withdrawn.

(12) No applications for preliminary accreditation may be made during the period of suspension.

(13) The Secretary of State must publish the detailed methodology used to calculate the forecasts published in accordance with paragraphs (1) to (3).

Interpretation

51B. For the purposes of this Part—

"average load factor" means—

(a) in respect of a relevant installation (except a relevant installation within paragraph (c)) which is or is expected to be—

(i) receiving the medium commercial or large commercial biomass tariff; and

(ii) generating heat for the purposes of carrying out a process,

the average of the estimated hours of operation per week for eligible purposes of all such installations divided by the total number of hours in a week;

(b) in respect of a relevant installation (except a relevant installation within paragraph (a)) receiving or expected to receive a tariff which fewer than 20 accredited RHI installations providing metering data are receiving, the average load factor of all accredited RHI installations;

(c) in respect of a relevant installation receiving or expected to receive a tariff which 20 or more accredited RHI installations providing metering data are receiving, the average load factor of those accredited RHI installations;

"biomethane forecast" means the sum of estimated periodic support payments payable to each participant producing biomethane for injection in the relevant period, taking into account a participant's current or expected flow rate, the expected date of commencement of injection (if this is not already taking place) and other relevant information provided on registration;

"estimated heat" means in relation to a relevant installation—

$LF \times T \times C$, where—

LF is the average load factor for the tariff which that installation is receiving or is expected to receive having taken into account seasonality variations for heating a space and heating water,

T (in respect of an accredited RHI installation) is the number of hours between the last quarter in respect of which a periodic support payment has been paid and the end of the relevant period, or (in respect of all other relevant installations) is the number of hours between the expected date of accreditation and the end of the relevant period,

C is the installation capacity of that relevant installation;

"estimated spend", in relation to a relevant installation, means the estimated heat for that installation multiplied by the relevant tariff;

"forecast for total expenditure" means the sum of the estimated spend for each relevant installation, the spend to date and the biomethane forecast;

"load factor" in respect of an accredited RHI installation means—

$\frac{M}{C \times H}$, where—

M is, the average amount of heat in kWhth generated by an installation in a quarterly period which is eligible to receive periodic support payments,

C is the capacity of that accredited installation,

H is the average number of hours in a quarterly period;

"period of restriction" means the week commencing with the date on which a notice of restriction is first published;

"period of suspension" means the period commencing with the first day after the period of restriction has ended, and ending with 31st March 2013;

"relevant date" has the meaning given in regulation 23(8);

"relevant installation" means an accredited RHI installation or an installation for which an application for accreditation or preliminary accreditation has been made;

"relevant period" means the period commencing with 1st April 2012 and ending with 31st March 2013;

"seasonality" means the assumed impact on the load factor of seasonal temperatures, calculated from the UK's non-domestic gas consumption in a quarterly period divided by the UK non-domestic gas consumption for the year in which that quarterly period falls averaged for each quarterly period using data from the previous 14 years;

"spend to date", in relation to the date on which the calculation of a forecast published under paragraphs (1) to (3) of regulation 51A is made, means the sum of periodic support payments paid prior that date to participants in the relevant period;

"working day" means any day other than—

(a) a Saturday, Sunday, Good Friday, or Christmas Day; or

(b) a day which is a bank holiday in England, Wales or Scotland."

Amendment to Schedule 1

10. In paragraph 1(2)(p) of Schedule 1 (information required for accreditation and registration), after "estimate of how much heat will be used" insert ", together with an estimate of the number of hours of operation per week in which heat will be generated for an eligible purpose".

Name
Minister of State
Department of Energy and Climate Change

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Great Britain, amend the Renewable Heat Incentive Scheme Regulations 2011 ("the RHI Regulations") by introducing a mechanism which restricts access to the renewable heat incentive scheme if the forecast for total expenditure reaches a certain point.

Regulation 3 amends the definitions of date of accreditation and date of registration.

Regulation 4 amends regulation 22 of the RHI Regulations to prevent applications for accreditation being made during the period of suspension (as defined in regulation 51B of the RHI Regulations inserted by regulation 9).

Regulation 5 amends regulation 23 of the RHI Regulations by specifying the conditions which must be met in order for the Authority to accredit an eligible installation where the application for accreditation is received during a period of restriction (as defined in regulation 51B of the RHI Regulations inserted by regulation 9).

Regulation 6 amends regulation 25 by specifying further circumstances in which the Authority may not register a producer of biomethane for injection and the conditions which must be met where the application for registration is received during a period of restriction.

Regulation 7 amends regulation 26 to prevent applications for preliminary accreditation being made during the period of suspension.

Regulation 8 amends regulation 43 to prevent applications for additional RHI capacity being made during the period of suspension.

Regulation 9 amends the RHI Regulations by inserting a new Part 10A and a two new regulations (51A and 51B). It confers duties on the Secretary of State and the Authority and sets out the effect of a period of suspension. It imposes a duty on the Secretary of State to publish forecasts for total expenditure and specifies how those forecasts are to be calculated. It also requires the Secretary of State to notify the Authority when the forecast for total expenditure reaches a certain point and imposes a duty on the Authority to publish information notices on its website explaining the restrictions which apply during the periods of restriction and suspension.

Regulation 11 amends Schedule 1 of the RHI Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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