EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEME AND DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2015

2015 No. 145

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. These regulations are being laid alongside two other Statutory Instruments; these are the Domestic Renewable Heat Incentive (Amendment) Regulations 2015 and the Renewable Heat Incentive Scheme (Amendment) Regulations 2015, both of which are accompanied by separate explanatory memoranda.

2. Purpose of the instrument

2.1 This instrument amends the Renewable Heat Incentive Scheme Regulations 2011 (S.I. 2011/2860) and the Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928), in order to introduce new sustainability requirements for both domestic and non-domestic schemes for participants who are using biomass (organic matter used as a fuel), biogas (produced from the anaerobic digestion, gasification or pyrolysis of biomass) or biomethane (produced by upgrading biogas so that it is suitable for injection into the gas grid).

2.2 The main requirements introduced by these regulations are:

- Greenhouse Gas (GHG) emissions limits. These ensure that participants in the domestic and non-domestic schemes use biomass, biogas or biomethane which is associated with limited total greenhouse gas emissions.
- Land Use criteria. These ensure that participants in the domestic and non-domestic schemes use biomass which comes from sources other than those which are protected and in the case of wood, sources which are properly managed.

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 (c. 32)("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 injected into the gas grid. The

Renewable Heat Incentive is designed to support both domestic and non-domestic properties. The Non-domestic RHI scheme supports the generation of renewable heat in non-domestic sectors (industrial, commercial, public sector and not-for-profit) and producers of biomethane. The Domestic Renewable Heat Incentive Scheme regulations 2014 (SI 2014/928) were made on 9 April 2014 and introduce support for the generation of renewable heat in domestic dwellings.

4.3 Since their introduction, S.I. 2011/2860 has been amended as follows:

- The Renewable Heat Incentive (Amendment) Regulations 2014 (S.I. 2014/1413) introduced new tariffs and technologies into the Non-domestic RHI scheme. It also introduced changes to the budget management mechanism. Changes clarified eligibility rules and rules regarding public grants to give greater flexibility.

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

- The Renewable Heat Incentive (Amendment) (No.2) Regulations 2013 (S.I. 2013/2410) introduced air quality emission limits to all biomass boilers seeking accreditation under the Non-domestic RHI scheme; introduced a new streamlined approach to metering along with a number of minor changes.

- The Renewable Heat Incentive (Amendment) (No.3) Regulations 2013 (S.I. 2013/3179) amended the RHI Regulations to correct two points relating to the operation of Non-domestic RHI scheme.

- The Renewable Heat Incentive (Amendment) Regulations 2012 (S.I. 2012/1999) introduced an interim cost control mechanism for the Non-domestic RHI scheme.

- The Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928) prevent installations being supported under both schemes.

4.7 The above amendments to the Non-domestic RHI scheme ensure the scheme continues to run smoothly and deliver value for money for the taxpayer.

4.8 The Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928) which were made on 9 April 2014, introduce support for owners of eligible plants that generate heat from renewable sources for domestic properties.

4.9 Technical standards contained within the amendments are being notified as a fiscal measure under the Technical Standards Directive.

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 these Regulations.

6. European Convention on Human Rights

6.1 Amber Rudd, Under Secretary 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 and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015 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. It provides a long-term tariff scheme and opened for non-domestic applications on 28 November 2011.

7.2 As of December 2013, 95% of scheme applications and 99% of the heat generated by the non-domestic scheme has been in relation to bioenergy (biomass, biogas and biomethane) technologies.

7.3 Since 9 April 2014 the RHI has also provided financial support for the renewable generation of heat in domestic properties. The Domestic RHI scheme is a key policy designed to increase take up of renewable heating by householders. It pays financial support at a set rate per unit of renewable heat produced for seven years, to the owner of the heating system. As of December 2014, 22% of scheme applications and 48% of the heat generated by the domestic scheme has been in relation to solid biomass, the bioenergy technology supported under the domestic scheme.

Biomass Sustainability

7.4 For the RHI schemes to deliver the full range of potential benefits, it is essential that the bioenergy it incentivises is sustainable in terms of GHG savings and broader land-use impacts.

7.5 These amendments will introduce the following requirements for biomass supported under both RHI schemes:

- A minimum saving relative to the EU fossil fuel heat average of 34.8 grams (g) of CO_2 equivalent per Mega Joule (MJ) of heat; and
- Land criteria which correspond to meeting the UK Timber Procurement Policy for woody biomass and the EU Renewable Energy Directive for other types of biomass.

7.6 These requirements will not become mandatory until October 2015

The Biomass Suppliers List

7.7 To help enable participants to comply with biomass sustainability criteria, the regulations provide for lists of approved sustainable fuels, that is, fuels which are capable of complying with the requirements in the regulations. A list for woodfuel, known as the Biomass Suppliers List (BSL) has already been launched. The BSL will provide an easy, light touch method for participants to comply with the sustainability criteria, through the provision of a publically available online list of woodfuel traders selling fuel that meets the sustainability criteria.

7.8 The BSL was launched to applications from producers and traders of woodfuel and Short Rotation Coppice, as well as self-suppliers (those who obtain their biomass from a local permitted location, usually their own land) on 30 April 2014. On 24th September 2014, the list was made publically available, so that scheme participants or those who are thinking of joining the RHI can search for suppliers of sustainable woodfuel. Traders of solid biomass who wish to sell fuel to RHI participants through the BSL must ensure that the proof of purchase provided to participants is clearly labeled as meeting the RHI sustainability requirements, and that they differentiate any fuel that does not meet the requirements.

7.9 This timetable gives biomass producers and traders the time they need to prepare for the mandatory implementation of the criteria in October 2015, and allows participants to start sourcing from the BSL well ahead of the criteria coming into force.

Provision for an alternative Approved Biomass Supplier Lists

7.10 We want to encourage the industry to take responsibility for demonstrating the sustainability of their feedstocks. Therefore these regulations allow for alternative lists to be setup by the industry for other solid biomass fuels, provided they have appropriate measures and procedures in place and are subsequently approved by the Secretary of State. For example, if suppliers of a particular feedstock think there is market demand for an alternative list they could fund and develop their own list, which demonstrates the sustainability of that feedstock, for approval by the Secretary of State.

Domestic Participants

7.11 The regulations state that domestic consumers will be required to purchase biomass fuel from a BSL. They will also need to provide an annual declaration to the scheme administrator, the Office of Gas and Electricity Markets, (Ofgem) that they are using only BSL-approved sustainable fuel in their installation. An 'approved sustainable fuel' is one which meets the criteria, and has been listed on a BSL.

7.12 Domestic consumers also have the option of self-supplying. To do this they must have the right to harvest solid biomass, whether from tenancy ownership or otherwise, and the land is no more than 50 miles away from where the biomass is used. They will still need to register on a BSL as a 'self-supplier'.

Non-domestic Participants

7.13 Non-domestic participants can demonstrate they meet the criteria by buying from a BSL, but also have the option of self reporting. This requires the completion of quarterly calculations of the life-cycle GHG emissions in the preceding quarter, and a declaration that the fuel meets the land use criteria. Participants may also need to obtain an annual independent audit report in relation to the biomass they have used throughout the year. The audit report must be prepared by an independent party in accordance with the International Standard on Assurance Engagements 3000 or an equivalent. The report must consider a wide number of factors, such as the calculation methodology used, the robustness of data, the procedures in place and the frequency of sampling.

7.14 Combined Heat and Power (CHP) plants, who can claim both the RHI and the Renewables Obligation (RO) (a scheme to promote the generation electricity), will be deemed to meet the RHI biomass sustainability criteria provided they meet the equivalent requirements in the RO.

8. Consultation outcome

8.1 The biomass sustainability requirements were consulted on in the July 2012 consultation 'Providing Certainty, Improving Performance' and in the September 2012 consultation 'Proposals for a domestic scheme'.

8.2 Respondents were supportive of the proposals to introduce GHG emission standards and land use criteria for the biomass supported through RHI schemes. There were outliers at both ends of opinion, ranging from those saying that there should be no sustainability criteria to those saying that biomass should not be supported; these opinions were in the small minority however.

8.3 We formally responded to the consultations in February 2013 and July 2013 for the non-domestic and domestic schemes respectively. In these responses we committed to introducing biomass sustainability criteria for both schemes, announcing that we would be implementing the GHG and land use criteria as proposed. We also confirmed we would be introducing the BSL to ensure there was a simple way for small scale scheme participants to demonstrate they meet the sustainability criteria.

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 A signed copy of the Impact Assessment for the introduction of the biomass sustainability criteria accompanies these regulations. The Impact Assessment was published alongside the Government Response and policy paper on 27 February 2013. An update from the December 2013 Government Response is annexed to the original Impact Assessment.

11. Regulation small business

11.1 The legislation applies to small businesses 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 is monitoring the performance and operation of the non-domestic scheme and will seek further amendments to the RHI Regulations 2011 if necessary.

13 Contact

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Documents which can be obtained from www.ifac.org can also be obtained from the International Federation of Accountants, 529 5th Avenue, 6th Floor, New York, New York 10017, USA

Documents which can be obtained from www.foresteurope.org can also be obtained from the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW