

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No. 0000

ENERGY

**The Renewable Heat Incentive Scheme and Domestic
Renewable Heat Incentive Scheme (Amendment)
Regulations 2015**

Made - - - - 2015

Coming into force in accordance with regulation 1(1) and(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 100(1) and(2) and 104(2) of the Energy Act 2008(a).

In accordance with section 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.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015 and, except as provided in paragraph (2), come into force on the day after the day on which they are made.

(2) Regulations 4 to 6 come into force on 5th October 2015.

(3) In these Regulations—

- (a) “the 2011 Regulations” means the Renewable Heat Incentive Scheme Regulations 2011(b), and
- (b) “the 2014 Regulations” means the Domestic Renewable Heat Incentive Scheme Regulations 2014(c).

(a) 2008 c. 32. Section 100 was amended by S.I.2011/2195.

(b) S.I. 2011/2860, amended by S.I. 2012/1999, S.I.2013/1033, 2410 and 3179, S.I.2014/928 and 1413 and S.I.2015/[].

(c) S.I. 2014/928, amended by S.I. 2015/[].

PART 2

Amendments to the 2011 Regulations

Amendments to the 2011 Regulations

2. The 2011 Regulations are amended in accordance with regulations 3 to 9.

Amendment to regulation 2 (interpretation)

3. In regulation 2 insert the following definitions in the appropriate places—

““approved sustainable fuel” means solid biomass which is listed under a scheme approved by the Secretary of State in accordance with regulation 36E;”;

““energy crop” means—

- (a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than 20 years and which is one of the following—
 - (i) *Acer pseudoplatanus* (also known as sycamore);
 - (ii) *Alnus* (also known as alder);
 - (iii) *Betula* (also known as birch);
 - (iv) *Castanea sativa* (also known as sweet chestnut);
 - (v) *Corylus avellana* (also known as hazel);
 - (vi) *Fraxinus excelsior* (also known as ash);
 - (vii) *Populus* (also known as poplar);
 - (viii) *Salix* (also known as willow);
 - (ix) *Tilia cordata* (also known as small-leaved lime); or
- (b) a perennial crop which is one of the following—
 - (i) *Arundo donax* (also known as giant reed);
 - (ii) *Bambuseae*, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as fuel;
 - (iii) *Miscanthus*;
 - (iv) *Panicum*;
 - (v) *Pennisetum*, other than *Pennisetum setaceum* (also known as fountain grass), *Pennisetum clandestinum* (also known as kikuyu grass) and *Pennisetum villosum* (also known as feathertop grass);
 - (vi) *Phalaris*”.

Amendment to regulation 29 (participants using solid biomass in accredited RHI installations with an installation capacity of 1MWth or above)

4. In regulation 29, omit paragraph (9).

Amendment to regulation 33 (biomethane producers)

5. In regulation 33, omit paragraph (9).

Amendment to regulation 34 (ongoing obligations: general)

6. In regulation 34, after paragraph (a) insert—

“(aa) where they have used solid biomass which is an approved sustainable fuel at the time when it is received by the participant or in respect of which the Secretary of State had made a declaration under regulation 36E(5), they must keep and provide

upon request by the Authority the authorisation number or other means of identification allocated to that fuel by the scheme under which that fuel is listed;”.

Sustainable solid biomass etc

7. After regulation 36 insert—

“CHAPTER 4 Sustainable solid biomass etc

Interpretation

36A. In this Part—

“greenhouse gas criteria” means the criteria set out in Schedule 2A;

“land criteria” means—

- (a) the criteria set out in Part 2 of Schedule 2B in relation to solid biomass which is wood or wholly derived from wood, except energy crops, or
- (b) the criteria set out in Part 3 of Schedule 2B in relation to other solid biomass including energy crops;

“permitted location” means a place—

- (a) in respect of which the participant has a right to harvest the solid biomass, whether by virtue of ownership, tenancy or otherwise; and
- (b) which is no more than 50 miles from the plant in which the solid biomass is used;

“self-supplied” means—

- (a) obtained by or on behalf of the participant from a permitted location; or
- (b) waste wood which is obtained by or on behalf of the participant from the place where it first becomes waste;

“sustainable biogas” means—

- (a) biogas which—
 - (i) meets the greenhouse gas criteria, and
 - (ii) is made wholly from feedstock which is solid biomass which meets the land criteria;
- (b) biogas which is made wholly from feedstock which is waste;
- (c) biogas which consists of a combination of any of the biogas listed in paragraphs (a) and (b);

“sustainable biomethane” means biomethane which, save for ingredients which are added as part of the biomethane production process—

- (a) meets the greenhouse gas criteria; and
- (b) is made wholly from feedstock which—
 - (i) is solid biomass which meets the land criteria;
 - (ii) is waste; or
 - (iii) is a combination of the feedstocks mentioned in sub-paragraphs (i) and (ii);

“sustainable solid biomass” means—

- (a) solid biomass which meets the greenhouse gas criteria and the land criteria;
- (b) solid biomass which is—
 - (i) self-supplied;
 - (ii) used in an accredited RHI installation with an installation capacity of less than 1MWth; and

- (iii) either—
 - (aa) an approved sustainable fuel; or
 - (bb) a fuel in respect of which the Secretary of State has made a declaration under regulation 36E(5);
- (c) solid biomass which is waste, or is wholly derived from waste;
- (d) solid biomass which consists of a combination of any of the solid biomass listed in paragraphs (a) to (c).

Ongoing obligation to use sustainable solid biomass or biogas or to produce sustainable biomethane

36B.—(1) A participant who generates heat or heat and power from solid biomass or biogas in an accredited RHI installation on or after 5th October 2015 must use only sustainable solid biomass or sustainable biogas.

(2) A participant who produces biomethane for injection on or after 5th October 2015 must produce for injection only sustainable biomethane.

(3) Paragraph (1) is deemed to be complied with in respect of—

- (a) any solid biomass used in an accredited RHI installation—
 - (i) which is a generating station which is accredited under the Renewables Obligation Order 2009(a) or the Renewables Obligation (Scotland) Order 2009(b);
 - (ii) where the capacity of that generating station is 1MW or above; and
 - (iii) where information about that solid biomass is provided to the Authority in accordance with article 54 of either Order; or
- (b) any solid biomass used in an accredited RHI installation to generate heat (but not heat and power) which—
 - (i) at the time when it is received by the participant, is an approved sustainable fuel; or
 - (ii) is a fuel in respect of which the Secretary of State has made a declaration under regulation 36E(5).

Information to be provided to the Authority in relation to the use of sustainable solid biomass etc

36C.—(1) This regulation applies to participants who—

- (a) generate heat or heat and power from solid biomass or biogas in an accredited RHI installation; or
- (b) produce biomethane for injection,

on or after 5th October 2015.

(2) A participant to whom this regulation applies must—

- (a) in relation to each consignment of solid biomass used, provide the Authority with a declaration in accordance with paragraph (3);
- (b) in relation to each consignment of solid biomass (except solid biomass to which regulation 36B(3)(b) applies) or biogas used or biomethane produced, provide the Authority with a declaration in accordance with paragraphs (4) and (5); and
- (c) provide the information specified in paragraph (7).

(a) S.I. 2009/785 amended by S.I. 2011/984, S.I. 2011/988, S.I. 2013/768 and S.I. 2014/893.
 (b) S.S.I. 2009 No. 140 as amended by S.S.I. 2013/116.

(3) In respect of solid biomass used to generate heat (but not heat and power) a declaration must state—

- (a) whether or not that solid biomass was—
 - (i) an approved sustainable fuel; or
 - (ii) a fuel in respect of which the Secretary of State has made a declaration under regulation 36E(5); and
- (b) where paragraph (a)(i) or (ii) applies, the authorisation number or other means of identification allocated to that fuel by the scheme under which that fuel was listed.

(4) A declaration must state whether or not—

- (a) solid biomass used was waste or wholly derived from waste;
- (b) biogas used, or biomethane produced was made from feedstock which was waste;
- (c) solid biomass or biogas used or biomethane produced met the greenhouse gas criteria;
- (d) solid biomass used met the land criteria; or
- (e) biogas used or biomethane produced was made from feedstock which was solid biomass which met the land criteria.

(5) Where a participant declares in accordance with paragraph (4)(c) that solid biomass, biogas or biomethane met the greenhouse gas criteria, the declaration must specify the lifecycle greenhouse gas emissions for that solid biomass, biogas or biomethane calculated in accordance with paragraph 2 of Schedule 2A.

(6) Except where the Authority specifies otherwise, participants must provide declarations and information in accordance with this regulation in respect of the solid biomass or biogas used or biomethane produced in every quarterly period which commences on or after 5th October 2015 within 28 days from the end of each such period.

(7) Where in the relevant quarterly period a participant—

- (a) uses solid biomass (other than an approved sustainable fuel or a fuel in respect of which the Secretary of State has made a declaration under regulation 36E(5)) to generate heat or heat and power in an accredited RHI installation with an installation capacity of 1MWth or above; or
- (b) produces biomethane for injection,

the participant must provide the information in Schedule 2 in relation to that solid biomass or biomethane.

(8) In addition to the declarations in accordance with paragraphs (3) to (5) and information in accordance with paragraph (7), the Authority may from time to time require such further declarations or information in relation to sustainable solid biomass, biogas or biomethane as it thinks fit.

Sustainability audit reports

36D.—(1) Subject to paragraph (3) participants to whom regulation 36C applies must submit a report which is prepared in accordance with the requirements in paragraph (4).

(2) In this regulation, “sustainability information” means the information specified in regulation 36C(4) and (5).

(3) No report is required in relation to—

- (a) any solid biomass used in an accredited RHI installation—
 - (i) which is a generating station which is accredited under the Renewables Obligation Order 2009 or the Renewables Obligation (Scotland) Order 2009;
 - (ii) where the capacity of that generating station is 1MW or above; and
 - (iii) where information about that solid biomass is provided to the Authority in accordance with article 54 of either Order;

- (b) any solid biomass or biogas used to generate heat in an accredited RHI installation with a capacity less than 1MWth;
 - (c) any solid biomass used in an accredited RHI installation to generate heat (but not heat and power) which—
 - (i) at the time it was received by the participant, was an approved sustainable fuel; or
 - (ii) in respect of which a declaration has been made under regulation 36E(5).
- (4) The requirements in this paragraph are that the report must—
- (a) be prepared by a person who is not—
 - (i) the participant, or
 - (ii) a connected person;
 - (b) be prepared in accordance with the International Standard on Assurance Engagements 3000 (Revised): Assurance engagements other than audits or reviews of historical financial information dated 9th December 2013^(a) or an equivalent standard;
 - (c) state whether anything has come to the attention of the person preparing the report to indicate that the sustainability information is not accurate; and
 - (d) consider, in relation to each consignment of solid biomass or biogas used to generate heat or heat and power, or biomethane produced for injection—
 - (i) whether the systems used to produce the sustainability information are likely to produce information which is reasonably accurate and reliable;
 - (ii) whether there are controls in place to help protect the sustainability information against material misstatements due to fraud or error;
 - (iii) the frequency and methodology of any sampling carried out for the purpose of obtaining or checking the data on which the participant relied in preparing the sustainability information; and
 - (iv) the robustness of the data on which the participant relied in preparing the sustainability information.
- (5) Subject to paragraph (6), participants must submit reports under this regulation—
- (a) annually; and
 - (b) within 3 months after—
 - (i) each anniversary of the tariff start date; or
 - (ii) in the case of participants who are registered as producers of biomethane for injection, each anniversary of the date on which that participant was first registered as a producer of that biomethane.
- (6) Where the anniversary of the tariff start date falls on or after 5th October 2015 but before 6th April 2016—
- (a) the first annual report submitted in accordance with this regulation must be submitted within 3 months after the next anniversary of the tariff start date which follows 5th October 2016; and
 - (b) the first annual report must consider and report on each consignment of solid biomass or biogas used, or biomethane produced, in the period between 5th October 2015 and the anniversary of the tariff start date mentioned in paragraph (6)(a).

(a) International Standard on Assurance Engagements (ISAE) 3000 (Revised): Assurance Engagements Other than Audits or Reviews of Historical Financial Information, 9 December 2013, available at <http://www.ifac.org>.

(7) Except where paragraph (6) applies, the report must consider and report on each consignment of solid biomass or biogas used, or biomethane produced, within the 12 month period preceding—

- (a) each anniversary of the tariff start date; or
- (b) in the case of participants who are registered as producers of biomethane for injection, each anniversary of the date on which that participant was first registered as a producer of that biomethane.

(8) In this regulation, “connected person” means any person connected to the participant within the meaning of section 1122 of the Corporation Tax Act 2010(a).

Schemes for listing approved sustainable fuels

36E.—(1) Where the Secretary of State is satisfied that a scheme complies with the requirements in paragraph (2), the Secretary of State may approve that scheme for the purpose of these Regulations.

(2) The requirements in this paragraph are that appropriate procedures have been adopted to ensure that the person administering the scheme (“the scheme administrator”)—

- (a) establishes and maintains an accurate and up to date list of fuels which—
 - (i) are solid biomass;
 - (ii) comply with the requirements in paragraph (3) or (4); and
 - (iii) are available to be supplied to participants;
- (b) includes on the list all those fuels in respect of which—
 - (i) an application has been made to the scheme administrator for that fuel to be included in the list; and
 - (ii) the supplier is able to demonstrate compliance with the requirements in paragraph (3) or (4);
- (c) processes applications by suppliers of solid biomass fuel for the inclusion of fuel in the list promptly and fairly;
- (d) ensures that application procedures are clear, proportionate and accessible to suppliers;
- (e) ensures that each fuel which is included in the list is allocated an authorisation number or other means of identification which is specific to that fuel;
- (f) requires suppliers of listed fuels to—
 - (i) store listed fuel separately from other fuels supplied by them which are not so listed, and
 - (ii) provide documentary evidence of the authorisation number or other means of identification when supplying an approved sustainable fuel;
- (g) carries out reasonable checks to ensure that fuels which are listed continue to comply with the requirements in sub-paragraph (f) and paragraph (3) or (4);
- (h) takes reasonable steps to identify and remove from the list—
 - (i) any fuel which no longer complies with the requirements in paragraph (3) or (4), or
 - (ii) any fuel which has ceased (other than temporarily) to be available;
- (i) where appropriate, removes from the list those fuels which are supplied by a supplier who breaches the requirements of the scheme; and
- (j) deals with complaints by suppliers in relation to the operation of the scheme in a fair and transparent manner.

(a) 2010 c. 4.

- (3) The requirements in this paragraph are—
- (a) that the fuel would, if used in a plant with an efficiency of at least 0.7, meet the greenhouse gas criteria;
 - (b) that any fuel which is included in the list on or after 6th July 2015 meets the land criteria.
- (4) The requirements in this paragraph are that the fuel—
- (a) is, or is wholly derived from waste; or
 - (b) is self-supplied for use in a plant with an installation capacity of less than 1MWth.
- (5) Where the Secretary of State approves a scheme under paragraph (1), the Secretary of State may declare that any fuel—
- (a) listed under that scheme before the date on which the scheme is approved; and
 - (b) received by a participant before that date,
- shall be deemed to meet the requirement in paragraph (3)(a) and the land criteria.
- (6) In this regulation “efficiency” means $\frac{H}{F}$ where—
- (a) H is the heat produced by the plant in the form of liquid or steam, and
 - (b) F is the energy content of all the fuels used by the plant.”.

Amendment to Schedule 2

8. In Schedule 2—

- (a) in the reference, for “regulations 29(9) and 33(9)” substitute “regulation 36C(7);
- (b) in paragraph 1, for “regulation 29(9) and 33(9) substitute “regulation 36C(7)”;
- (c) omit paragraph 4;
- (d) in paragraph 5, omit the definition of “energy crop”.

Sustainability criteria

9. After Schedule 2 insert—

“SCHEDULE 2A Regulation 36A
Greenhouse gas criteria

1. Solid biomass, biogas or biomethane meets the greenhouse gas criteria if the lifecycle greenhouse gas emissions associated with each consignment of that solid biomass, biogas or biomethane are less than or equal to 34.8g of CO₂ eq per MJ of heat generated (in the case of solid biomass or biogas) or biomethane injected.

2. Lifecycle greenhouse gas emissions shall be calculated as follows—

- (a) where heat and power is generated from solid biomass or biogas, the following formula shall be used—

$$\frac{E}{\eta_h} \left(\frac{C_h \times \eta_h}{\eta_{el} + C_h \times \eta_h} \right)$$

- (b) where heat is generated from solid biomass or biogas, the following formula shall be used—

$$\frac{E}{\eta_h}$$

- (c) where biomethane is produced from biogas, lifecycle greenhouse gas emissions shall be E.

3. For the purposes of paragraph 2—

- (a) η_h is the efficiency of the plant in which the heat is generated, calculated as $\frac{H}{F}$

where—

- (i) H is the heat produced by the plant in the form of liquid or steam from all fuels used in that plant, and
(ii) F is the energy content of all those fuels;

- (b) η_{el} is the efficiency of the plant in which electricity is generated, calculated as $\frac{A}{F}$

where—

- (i) A is the total amount of electricity generated by the plant from all the fuels used by that plant, and
(ii) F is the energy content of all those fuels;

- (c) C_h is equal to—

- (i) where the temperature (T) is less than 423 kelvin, 0.3546, and

- (ii) in any other case, $\frac{T - 273}{T}$ where T is temperature measured in kelvin of the heat produced by the plant in the form of liquid or steam;

- (d) E is the greenhouse gas emissions expressed in grammes of CO₂ eq per MJ of heat produced, from the production of the biomass, biogas or biomethane and calculated—

- (i) using the actual value method in the case of participants producing biomethane for injection or using heat for a process in an accredited RHI installation with an installation capacity of 1MWth or above; or
(ii) in all other cases, using the actual value method or the default value method.

4. In this Schedule—

- (a) “actual value method” means the method set out in Part C of Annex 5 of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC^(a) but with the following modifications to that part—

- (i) in paragraph 1—

- (aa) for “and use of transport fuels, biofuels and bioliquids” substitute “of solid biomass, biogas or biomethane”;
(bb) for “E=total emissions from the use of the fuel” substitute “E=greenhouse gas emissions from the production of the solid biomass, biogas or biomethane”; and
(cc) for “ e_{it} =emission from the fuel in use” substitute “ e_{it} =zero”;

(a) O.J. L 140 5.6.2009 p.16.

- (ii) in paragraph 2, for “fuels” and “fuel” substitute “solid biomass, biogas or biomethane”;
- (iii) omit paragraphs 3 and 4;
- (iv) in paragraph 7—
 - (aa) for each reference to “biofuel” substitute “solid biomass, biogas or biomethane”, and
 - (bb) omit the words “or bioliquid” in each place in which they occur;
- (v) in paragraph 11—
 - (aa) at the end of the first sentence add “and in the case of biomethane shall include emissions from processing biogas into biomethane”;
 - (bb) for “fuel” substitute “solid biomass, biogas or biomethane”;
- (vi) in paragraph 12, after “storage and distribution of finished materials” insert “, except in the case of biomethane”;
- (vii) omit paragraph 13;
- (viii) in paragraph 14, for “fuel” substitute “solid biomass, biogas or biomethane”;
- (ix) in paragraph 16, for each reference to “fuel” substitute “solid biomass or biogas”;
- (x) in paragraph 17, for each reference to “fuel” substitute “solid biomass or biogas”;
- (xi) in paragraph 18—
 - (aa) for “fuel” and “fuels” substitute “solid biomass or biogas”;
 - (bb) omit the words “In the case of biofuels and bioliquids,”;
 - (cc) before “and residues from processing” insert “residues from forestry, arboriculture, aquaculture and fisheries”;
- (xii) for paragraph 19 substitute—

“**19.** Where material is added to the solid biomass to act as a binding agent or to reduce the emissions of dust, carbon dioxide, methane or nitrous oxide from the use of the biomass, the material so added shall be considered to have zero greenhouse gas emissions provided that the material so added does not exceed 2% by weight of the solid biomass.”;

- (b) “default value method” means the use of the figures set out in the second column of the following table headed “Default values for solid biomass and biogas” to represent ‘E’ in relation to the corresponding type of fuel set out in the first column of that table;
- (c) “energy content” means the energy contained within a substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s net calorific value within the meaning of BS 7420:1991 (Guide for the determination of calorific values of solid, liquid and gaseous fuels (including definitions))(a).

(a) ISBN 0 580 19482 5.

Default values for solid biomass or biogas

<i>Primary solid biomass or biogas</i>	<i>Default value for greenhouse gas emissions (in grams of CO₂ eq per MJ of heat produced)</i>
Wood chips from forest residues (European temperate continental forest)	1
Wood chips from forest residues (tropical and sub-tropical forest)	25
Wood chips from short rotation forestry (European temperate continental forest)	4
Wood chips from short rotation forestry (tropical and sub-tropical, for example, eucalyptus)	28
Wood briquettes or pellets made from European temperate continental forest residues where the production process uses wood as fuel	2
Wood briquettes or pellets made from tropical or sub-tropical forest residues where the production process uses natural gas as fuel	20
Wood briquettes or pellets made from tropical or sub-tropical forest residues where the production process uses wood as fuel	17
Wood briquettes or pellets made from the product of short rotation forestry in European temperate continental forest where the production process uses wood as fuel	4
Wood briquettes or pellets made from the product of short rotation forestry in European temperate continental forest where the production process uses natural gas as fuel	22
Wood briquettes or pellets made from the produce of short rotation forestry in tropical and sub-tropical forest, for example eucalyptus, where the production process uses wood as fuel	22
Wheat straw	2
Bagasse briquettes using wood as process fuel	17
Bagasse bales	20
Palm kernel	27
Rice husk briquettes	28
Miscanthus bales	7
Biogas from wheat and straw (wheat whole plant)	21
Biogas from organic maize as a whole plant (maize as main crop)	19

SCHEDULE 2B

Regulation 36A

Land criteria

PART 1

Interpretation

1. In this Schedule, material is added to solid biomass for an exempt purpose if—
 - (a) it is added for the purpose of the use of that solid biomass as a fuel, in order to—
 - (i) act as a binding agent, or

- (ii) reduce emissions of dust, carbon dioxide, methane or nitrous oxide from the use of the fuel, and
- (b) it does not exceed 2% of the weight of the fuel.

2. In this Schedule—

“continuously forested area” means land of an area of more than one hectare which includes—

- (a) trees more than five metres tall providing a tree canopy cover of more than 30%; or
- (b) trees collectively having the capacity to provide a tree canopy cover of more than 30% which—
 - (i) are more than five metres tall; or
 - (ii) have the capacity to grow to a height of more than five metres;

“designated for nature protection purposes” means designated pursuant to the law of the United Kingdom or of any part of the United Kingdom or pursuant to the law of any country or territory outside the United Kingdom, for the purpose of protecting the natural environment;

“highly biodiverse grassland” is to be construed in accordance with Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC(a);

“lightly forested area” means land of an area of more than one hectare which includes—

- (a) trees more than five metres tall providing a tree canopy cover of between 10% and 30%, or
- (b) trees collectively having the capacity to provide a tree canopy cover of between 10% and 30% which—
 - (i) are more than five metres tall; or
 - (ii) have the capacity to grow to a height of more than five metres;

“local and national laws” means laws applying in the locality in which the site is situated, whether made at a local or national level;

“primary forest” means woodland of native species, where there is no clearly visible indication of human activity and ecological processes are not significantly disturbed; and

“wetland area” means land that is covered with or saturated by water—

- (a) permanently; or
- (b) for a significant part of the year.

3. For the purposes of this Schedule—

- (a) solid biomass was obtained from a former continuously forested area if the land—
 - (i) was a continuously forested area at any time during January 2008; and
 - (ii) was not a continuously forested area when the solid biomass was obtained from it;
- (b) solid biomass was obtained from a former lightly forested area if the land—
 - (i) was a lightly forested area at any time during January 2008; and
 - (ii) was not a lightly forested area or a continuously forested area when the solid biomass was obtained from it; and

(a) OJ L No 140, 5.6.2009, p 16.

- (c) solid biomass was obtained from a former wetland area if the land—
 - (i) was a wetland area at any time during January 2008; and
 - (ii) was not a wetland area when the solid biomass was obtained from it.

PART 2

Land criteria for solid biomass which is wood or wholly derived from wood, excluding energy crops

4. Solid biomass which is wood or wholly derived from wood (except energy crops) meets the land criteria if—

- (a) at least 70% of each consignment; or
- (b) where more than one consignment is used in a quarterly period, at least 70% of the solid biomass used

meets one or more of the requirements in paragraph 5.

5. The requirements in this paragraph are that the solid biomass—

- (a) was grown within an area of forest or other land which is managed in accordance with a management plan that meets the requirements specified in paragraph 7;
- (b) was residue from arboriculture; or
- (c) was removed for the purpose of restoring or maintaining the ecosystem of an area which was not a forest.

6. Material added to solid biomass for an exempt purpose shall be disregarded for the purposes of paragraph 4.

7. A management plan meets the requirements specified in this paragraph if it—

- (a) requires the area to be managed in a way that ensures harm to ecosystems is minimised, in particular by—
 - (i) assessing the impacts of the extraction of wood from the area and adopting plans to minimise any negative impacts,
 - (ii) protecting soil, water and biodiversity,
 - (iii) controlling the use of chemicals and ensuring that chemicals are used in an appropriate way,
 - (iv) wherever possible, encouraging natural pest control mechanisms and using methods of pest control that cause the least disruption to ecosystems, and
 - (v) disposing of waste in a manner that minimises any negative impacts;
- (b) requires—
 - (i) the area to be managed in a way that ensures its productivity is maintained, in particular by—
 - (aa) adopting plans to avoid significant negative impacts on productivity,
 - (bb) adopting procedures for the extraction of wood that minimise the impact on other uses of the area,
 - (cc) ensuring all of the contractors and workers who are working in the area of forest or other land are adequately trained in relation to the maintenance of productivity, and
 - (dd) maintaining an adequate inventory of the trees in the area (including data on the growth of the trees and on the extraction of wood) so as to ensure that wood is extracted from the area at a rate which does not exceed its long-term capacity to produce wood; and

- (ii) monitoring of compliance with the requirement in paragraph (i), reviewing the results of that monitoring and updating the management plan accordingly;
- (c) requires the area to be managed in a way that ensures health and vitality of ecosystems is maintained, in particular by—
 - (i) adopting plans to maintain or increase the health and vitality of ecosystems,
 - (ii) adopting plans to deal with natural events such as fires, pests and diseases, and
 - (iii) taking adequate measures to protect the area from unauthorised activities such as illegal logging, mining and encroachment;
- (d) requires the area to be managed in a way that ensures biodiversity is maintained, in particular by—
 - (i) implementing safeguards to protect rare, threatened and endangered species,
 - (ii) conserving key ecosystems in their natural state, and
 - (iii) protecting features and species of outstanding or exceptional value;
- (e) requires those responsible for management of the area (and any contractors engaged by them) to comply with the local and national laws relating to health and safety and the welfare of workers at the site;
- (f) requires those responsible for the management of the area to have regard to—
 - (i) legal, customary and traditional rights of tenure and land use,
 - (ii) mechanisms for resolving grievances and disputes relating to tenure and land use rights, site management practices and working conditions,
 - (iii) safeguarding the health and safety and rights of workers at the site;
- (g) requires the regular assessment of the extent to which those responsible for the management of the area have met the requirements set by the management plan in accordance with sub-paragraphs (a) to (f);
- (h) has been adopted following a process—
 - (i) which sought to obtain a balanced representation of the views of interest groupings in relation to the forest or other location where the wood was grown,
 - (ii) which sought to ensure that no single interest grouping could dominate the process for setting the management plan,
 - (iii) which sought to ensure that no decision on the contents of the management plan could be made in the absence of agreement from a majority of each interest grouping in relation to the forest or other location where the wood was grown;
- (i) sets out a process for making changes to the management plan—
 - (i) which seeks to ensure that no single interest grouping can dominate the process, and
 - (ii) which seeks to ensure that no decision on changes to the management plan can be made in the absence of agreement from a majority of each interest grouping in relation to the forest or other location where the wood was grown; and
- (j) subject to paragraphs (a) to (i), is consistent with the Forest Europe Sustainable Forest Management Criteria^(a) or an equivalent set of international principles for the sustainable management of land.

(a) published at http://www.foresteurope.org/sfm_criteria/criteria.

8. For the purposes of paragraph 7(h) and (i), each of the following is an interest grouping in relation to a forest or other location where the wood was grown—

- (a) persons with interests in the location which are predominantly economic in nature,
- (b) persons with interests in the location which are predominantly environmental in nature, and
- (c) persons with interests in the location which are predominantly social in nature.

9. In this Part, “Forest Europe Sustainable Forest Management Criteria” means the criteria for sustainable forest management in Lisbon Resolution L2 of the third Ministerial conference on the Protection of Forests in Europe held in June 1998(a).

PART 3

Land criteria for other solid biomass including energy crops

10. Solid biomass which is not wood or derived wholly from wood, or which is an energy crop, meets the land criteria if it—

- (a) was not obtained from a protected source;
- (b) was an energy crop in respect of which financial assistance was paid under the Energy Crops Regulations 2000(b) or under an equivalent financial assistance scheme;
- (c) was residue (other than residue from agriculture, aquaculture, fisheries or forestry).

11. Material added to solid biomass for an exempt purpose shall be disregarded for the purposes of paragraph 10.

12. Solid biomass is obtained from a protected source if it is obtained from—

- (a) land which at any time during or after January 2008 was primary forest;
- (b) except where paragraph 13 applies, land which at any time during or after January 2008 was designated for nature protection purposes;
- (c) highly biodiverse grassland;
- (d) except where paragraph 14 applies, land which at any time during January 2008 was peatland;
- (e) a former continuously forested area;
- (f) a former lightly forested area; or
- (g) a former wetland area.

13. This paragraph applies if the production of the solid biomass did not interfere with the nature protection purposes for which the land was designated.

14. This paragraph applies if the cultivation and harvesting of the solid biomass did not involve the drainage of previously undrained soil.”.

(a) Lisbon Resolution L2 is entitled “Pan-European Criteria, Indicators and Operational Level Guidelines for Sustainable Forest Management”. Copies are available at http://www.foresteurope.org/ministerial_conferences/lisbon1998. Copies can also be obtained from the Department of Energy and Climate Change.

(b) S.I. 2000/3042.

PART 3

Amendments to the 2014 Regulations

Amendment to the 2014 Regulations

10. The 2014 Regulations are amended in accordance with regulations 11 to 13.

Amendment to regulation 2 (interpretation)

11. In regulation 2 of the 2014 Regulations, after the definition of “applicant” insert—

““approved sustainable fuel” means solid biomass which is listed under a scheme approved by the Secretary of State in accordance with regulation 36E of the Renewable Heat Incentive Scheme Regulations 2011;”.

Amendment to regulation 41 (ongoing obligations: annual declarations)

12. In regulation 41, after paragraph (f) insert—

“(g) where the accredited domestic plant is a biomass plant—

- (i) that all solid biomass used in that plant on or after 5th October 2015 was an approved sustainable fuel, or a fuel in respect of which the Secretary of State has made a declaration under regulation 36E(5) of the Renewable Heat Incentive Scheme Regulations 2011, and
- (ii) the authorisation number or other means of identification allocated to that fuel by the scheme under which, at the time it was received by the participant, that fuel was listed.”.

Sustainable solid biomass

13. After regulation 42 insert—

“**42A.**—(1) A participant who uses solid biomass in an accredited domestic plant on or after 5th October 2015 must only use solid biomass which meets the requirement in paragraph (2) in that plant.

(2) The requirement in this paragraph is that—

- (a) the solid biomass was, at the time when it was received by the participant, an approved sustainable fuel; or
- (b) the Secretary of State has made a declaration under regulation 36E(5) of the Renewable Heat Incentive Scheme Regulations 2011 in respect of that solid biomass.”.

Date

Name
Parliamentary Under Secretary of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, amend the Renewable Heat Incentive Scheme Regulations 2011 (“the 2011 Regulations”) and the Domestic Renewable Heat Incentive Scheme Regulations 2014 (“the 2014 Regulations”), to impose requirements on solid biomass or biogas used to generate heat and on biomethane which is injected. These requirements will, from 5th October 2015, require

compliance with lifecycle greenhouse gas emission limits and restrict the place from which solid biomass or feedstock for biogas or biomethane can be sourced.

Regulation 3 inserts definitions of approved sustainable fuel and energy crops into regulation 2 of the 2011 Regulations.

Regulation 6 amends the ongoing obligations in regulation 34 of the 2011 Regulations to require record keeping in relation to approved sustainable fuel.

Regulation 7 inserts a new Chapter 4 into the 2011 Regulations comprising new regulations 36A to E.

The new regulation 36A provides for further definitions which are specific to the new chapter 4, in particular definitions of greenhouse gas criteria, land criteria and sustainable solid biomass, biogas and biomethane.

The new regulation 36B provides for a new ongoing obligation to use sustainable solid biomass or biogas or to produce sustainable biomethane.

The new regulation 36C requires participants to provide declarations and information to the Authority relating to sustainable solid biomass, biogas and biomethane.

The new regulation 36D requires sustainability audit reports subject to certain exceptions.

The new regulation 36E gives power for the Secretary of State to approve schemes for the listing of approved sustainable fuels for the purposes of these Regulations, and to deem certain fuels compliant with the requirements in regulation 36B.

Regulation 9 inserts a new Schedule 2A relating to greenhouse gas criteria and a new Schedule 2B relating to land criteria for sustainable biomass.

Regulation 12 amends regulation 41 of the 2014 Regulations to introduce a requirement for annual declarations in relation to sustainability.

Regulation 13 provides for a new ongoing obligation in the 2014 Regulations to use only sustainable solid biomass which is an approved sustainable fuel in an accredited domestic plant.

Documents which can be obtained from the British Standards Institution at www.bsigroup.com can also be obtained from the British Standards Institution customer services at 389 Chiswick High Road, London, W4 4AL upon payment of a fee.

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

A draft of these Regulations was notified to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998 p. 37) as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

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