EXPLANATORY MEMORANDUM TO

THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2012

2012 No. 1999

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (the Department) 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 to restrict access to the scheme to new applicants for the remainder of financial year 2012/13 if estimated expenditure shows that the scheme is likely to go beyond its available budget.

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

3.1 None

4. Legislative Context

4.1 The instrument is necessary to ensure that the Renewable Heat Incentive (RHI) remains within budget in the current financial year and the following year without a detrimental impact on the renewable heat supply chain. The RHI stand-by mechanism for budget control is an interim measure and longer term measures are planned for introduction in spring 2013.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State, Greg Barker, has made the following statement regarding Human Rights:

“In my view the provisions of the Renewable Heat Incentive Scheme (Amendment) Regulations 2012 are compatible with the Convention rights.”

7. Policy background

7.1 The RHI is a long-term tariff scheme to encourage the replacement of fossil fuel heating with renewable alternatives. It opened for applications in November 2011 and currently supports renewable heat installations in business, industry and the public sector as well as district heating schemes. The RHI was introduced primarily to help meet the UK's target of 15% of energy coming from renewables by 2020 and renewable heat will contribute approximately a third of this overall energy target. This means around 12% of our total heat demand in 2020 will need to come from renewables.

7.2 Since 28 November 2011 the application rate has been relatively steady. The level of current applications to the RHI is low relative to the available budget. However this is an immature market and it is still early in the scheme. There is therefore a high degree of uncertainty about how the market will respond over time. Cost control provides transparent plans to deal with any future unexpected and rapid surges in uptake.

7.3 The stand-by measure for budget management would restrict access to the scheme to new applications for the remainder of the financial year if estimated expenditure shows that the scheme is likely to go beyond its available budget. This will not affect installations which have already been accredited nor will it affect registered producers of biomethane; their eligibility and tariff rate will remain as before.

7.4 The suspension would be triggered at 97% of budget and one week's notice of the suspension would be provided. Weekly updates of forecast expenditure will be published on the DECC website. Informal notice will also be provided on the website approximately one month before it is expected that the scheme would need to close.

7.5 Applications received prior to the notice period will be processed, provided the installation meets the eligibility criteria and application requirements. Those received during the notice period will only be accredited if the installation has been commissioned and the date of accreditation will be prior to the start of the suspension period. Applications received after the notice period (the period of suspension) will not be processed. This applies to applications for additional capacity as well as for new installations.

7.6 Biomethane is different to other RHI technologies, as it generates heat indirectly once it has been injected into the grid. So that the impact of biomethane production on budgets can be forecast accurately, biomethane producers will need to have begun injecting into the grid before they are able to register for the RHI, making its treatment more consistent with other RHI technologies. This requirement will not affect biomethane producers already registered before the regulations come into force.

7.7 Preliminary accreditation to the RHI is available for medium and large biomass, energy from waste installations, biogas and deep geothermal plants. It provides certainty to those undertaking large projects that the installation will be eligible to receive the RHI. New applications for preliminary accreditation may not be made during the period of suspension. However, installation owners who applied for preliminary accreditation prior to the regulations coming into force and were granted it would be able to convert to full accreditation during the period of suspension.

8. Consultation outcome

8.1 The consultation, “The Renewable Heat Incentive: consultation on interim cost control” was open between 26 March and 23 April 2012. The consultation set out the principles of the stand-by budget suspension mechanism and asked for views on the length of notice period and level of budget trigger. This is because a longer notice period would require a more conservative trigger. There were 53 responses. The consultation was shorter than the standard 12 weeks as to be effective this policy must be in place before summer recess, which would not have been possible with a 12 week consultation.

8.2 Just under a third (30%) of respondents (16) preferred a one month notice period while 19% of respondents (10) preferred a one week notice period. A further 6% (3) preferred no notice. Some respondents argued for a longer period than offered in the consultation (as long as three or six months) to allow time to complete a project within the notice period. Not all respondents answered the question.

8.3 Since the consultation the department has identified that to ensure that the available RHI subsidy in 2013/14 of £251m is able to support the supply chain for the deployment of renewable heat it is not possible to spend all of the available budget of £108m in 2012/13. The supply chain that would need to be built up to spend £70m in 2012/13 could be maintained the following year within the available budget for 2013/14.

8.4 Therefore the budget limit for £2012/13 will be £70m and the department has decided to go with the option of a trigger at 97% of budget (£67.9m) with one week’s notice. This is to reduce the risk of premature or unnecessary suspension at 80% of budget (£56m) and also to reduce the risk overspend, as there is uncertainty about what would happen during the month of notice. Having a higher trigger with a shorter notice period reduces that risk and is more appropriate when considered alongside a reduced budget.

8.5 Many of the respondents were supportive of interim cost control measures while also confirming the view that renewable heat is unlikely to experience the same kind of surges in uptake as solar PV. Others questioned the need for cost control, given that uptake of the RHI is currently low, and suggested that underspend was a greater risk. Key concerns included that scheme suspension could lead to a stop-start market and have a negative impact on market confidence, at a time when deployment is already low.

8.6 Respondents asked for clear uptake information that was transparent, up-to-date and easily accessible, so that industry would be able to predict a likely suspension and act accordingly. They asked for assurance that once longer-term cost control measures come into force the power to suspend the scheme will end. The Department has responded to these comments: clear uptake data will be available on the department’s website and the budget limit for the interim measure is only for this financial year.

8.7 Many respondents suggested that a reserve system or extension to preliminary accreditation should be considered to provide certainty for investors and support growth in an environment of cost control. This will be considered as part of the longer term cost control measures that the Department will be consulting on over the summer.

9. Guidance

9.1 A fact sheet will be available with the RHI guidance on the Ofgem website and the RHI Frequently Asked Questions document on the Department website will be updated.

10. Impact

10.1 This instrument will impact on new or potential applicants to the non-domestic RHI from all sectors (business, charities or voluntary bodies, public sector) as if the suspension is triggered they will not be able to apply to the RHI. Depending on the technology cost and project size, they may delay installing their renewable heat installation until the scheme reopens. It will also, therefore, impact on businesses who manufacture, supply and install renewable heat systems.

10.2 This mechanism provides certainty for applicants about what the Department will do if demand rises unexpectedly and rapidly. It confirms that there will not be retrospective action or short notice tariff reductions. It also confirms that uptake data will be available so applicants can be informed of the likelihood of a future suspension. A such, it should increase market confidence in the RHI when deployment is low, but give a helpful warning of the possibility of scheme suspension if deployment is very high. The possibility of a suspension could impact on market confidence in renewable heat and if the scheme was suspended there could be damage to future investment in supply chain growth. There may also be increased administrative burden for applicants to the scheme as they assess the risk of the suspension being triggered using the published DECC/Ofgem expenditure forecasts.

10.3 The main benefit is that in the case of very high deployment (and hence the existence of very high returns driving this growth) the Department will suspend the scheme and have a chance to address tariff levels such that the Department can ensure value for money.

10.4 This is considered to be of minimal burden to the scheme administrator as providing the deployment information used to forecast expenditure should be relatively simple and routine, using and publishing data that is already collected.

10.5 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Office of Public Sector Information website.

11. Regulating small business

11.1 The legislation applies to small business who 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 This instrument will be successful if the RHI remains financially sustainable for the remainder of financial year 2012/13 and leading into 2013/14 budgets are not breached and the renewable heat supply chain can continue to be supported by the RHI. No review of this cost control measure is planned as it will be repealed when the longer term cost control regulations are put in place. A further amendment to the regulations will be made to introduce longer term measures.

13. Contact

Geraldine Treacher at the Department of Energy and Climate Change Tel: 0300 068 6858 or email: Geraldine.treacher@decc.gsi.gov.uk can answer any queries regarding the instrument.