

EXPLANATORY MEMORANDUM TO
THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) (No. 2)
REGULATIONS 2015

2015 No. 477

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 scheme established by the Renewable Heat Incentive Scheme Regulations 2011 (S.I. 2011/2860) (as amended, see section 4) (“the Non-domestic RHI Regulations”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 These Regulations correct a defect in regulation 42 of the Non-domestic RHI Regulations which was inadvertently introduced by regulation 22 of the Renewable Heat Incentive Scheme (Amendment) Regulations 2015 (S.I. 2015/197). A new regulation 42 was substituted by regulation 22 of those regulations. In paragraph (i) of the definition of “E” (which concerns the equivalent amount of heat which is deducted in calculating the amount of “eligible biomethane” on which a tariff is payable), the heat produced from the combustion of biogas which is used to produce the biomethane was not included as a source of heat which is to be disregarded. That disregard was contained in the previous version of regulation 42. No change was intended to be introduced by the new regulation 42. The error is corrected by these Regulations.
 - 3.2 The department regrets the error and these Regulations will be issued free of charge to known recipients of S.I. 2015/197. In order that the error is corrected as soon as possible to ensure that no pending applications for accreditation are affected by the defective provision, these Regulations are being brought into force earlier than 21 days after laying. Details of the reasons for doing so are set out further in section 7.
 - 3.3 These Regulations are the first to be made under section 105 of the Energy Act 2008 (c. 32) which use the negative procedure. That procedure applies by virtue of the amendments made to section 105 by section 51 of the Infrastructure Act 2015 (c. 7), see section 105(3A) to (3I).
4. **Legislative Context**
 - 4.1 The Secretary of State makes this instrument in exercise of powers conferred by section 100(1) and (2)(b) of the Energy Act 2008 (c. 32)(“the Act”).

4.2 Non-domestic 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.

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 Renewable Heat Incentive (Amendment) Regulations 2015 (S.I. 2015/197) introduced apportioning to CHP to add additional flexibility, as well as simplification to the requirements of underground piping and manufacturer's instructions. Changes also clarified when Ofgem can apply sanctions.
- The Renewable Heat Incentive (Amendment) Regulations 2015 and The Domestic Renewable Heat Incentive (Amendment) Regulations 2015 (S.I.2015/145) introduced Biomass sustainability criteria to both RHI schemes, including setting up of a Biomass Suppliers List.

5. Territorial Extent and Application

5.1 This instrument extends 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 Not applicable

7. Policy background

What is being done and why

- 7.1 In the recent amendments to the regulations introduced on 12 February, we introduced additional flexibility for when one AD plant is providing biogas for a number of purposes. The previous regulations had required that, where applicable, all of the heat applied to the anaerobic digester be deducted from payments, even if only a small proportion was used for RHI purposes and eligible for payment. This additional flexibility allows participants to prove to Ofgem that a smaller deduction would be appropriate. This principle applied to the biogas combustion and biomethane injection tariffs equally and has been successfully implemented in the regulations.
- 7.2 However, when we applied this provision to the wording of the regulations, we lost text which specified that, in the case of biomethane, the renewable heat generated from biogas applied to the anaerobic digester does not need to be deducted. Therefore there is a need to correct this error at the earliest opportunity, as to not do so will result in a material change to biomethane participants' RHI payments which was not the policy intent or consulted upon.
- 7.3 No one will be prejudiced by the correction and no one will be prejudiced if the correction is done quickly. For this reason we will not be observing the 21 days between laying the regulations and them coming into force, the department apologies for this. Delivery partners Ofgem have agreed to hold pending applications while the matter is resolved to avoid any participants losing out as a result of this error. This is not a case of retrospective provision.
- 7.4 Consolidation – we intend to start work consolidating the Non-domestic RHI regulations this year.

8. Consultation outcome

- 8.1 This error correction would bring the regulations back in line with the policy intent and what we have consulted on with industry.

9. Guidance

- 9.1 Ofgem will provide further updated guidance for potential participants in the Non-Domestic 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.

11. Regulating 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 RHI scheme.

13. Contact

Nicholas Brooks at the Department of Energy and Climate Change, Tel: 0300 068 5628 or email nicholas.brooks@decc.gsi.gov.uk