

EXPLANATORY MEMORANDUM TO

THE DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME AND RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2021

2021 No. 76

1. Introduction

- 1.1 This instrument has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes changes to the legislation concerning both the Domestic and Non-Domestic Renewable Heat Incentive (RHI) schemes.
- 2.2 Domestic RHI amendments relax the requirement to apply for accreditation to the scheme within 12 months of the installation being commissioned (provided the installation commissioning date is on or after 1st March 2019), update the reference to the code of practice of the Home Insulation & Energy Systems (HIES) Quality Assured Contractors Scheme, and revise the degression triggers.
- 2.3 Non-Domestic RHI amendments provide for the closure of the scheme, future-proof across a range of technologies including heat pumps, biomass and biomethane, and provide a 12-month extension to smaller projects impacted by COVID-19 delays.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The amendments within this instrument build on the reforms achieved by the Renewable Heat Incentive Scheme Regulations 2018 (S.I. 2018/611), the Renewable Heat Incentive and Domestic Renewable Heat Incentive Scheme Regulations 2019 (S.I. 2019/1052) and the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2020 (S.I. 2020/650).
- 3.2 The provisions for closure of the Non-Domestic RHI scheme (“Scheme closure”) inserted by regulation 9 of this instrument are to be read with the tariff guarantee amendments made by S.I. 2020/650. The Scheme closure does not prevent an applicant with a tariff guarantee from successfully applying for accreditation after Scheme closure up until midnight at the end of 31st March 2022, while retaining the benefit of the guaranteed tariff. See regulation 35(11B)(c) of S.I. 2018/611.
- 3.3 An applicant with a tariff guarantee who applies for accreditation on 31st March 2022 will have a tariff start date of 31st March 2022 if the application for accreditation is received by the Authority at any time on that day up until midnight, the Authority is of the opinion that on that day the application was properly made and the plant met the eligibility criteria, and the plant was commissioned on or before that day. See the definitions of “tariff start date”, “date of accreditation” and “properly made” in regulation 2(1) of S.I. 2018/611. See also regulation 30(12)(a) of that SI.

- 3.4 Similarly, an applicant who has been granted an extension of time under regulation 3B (inserted by regulation 9 of this instrument) may successfully apply for accreditation on 31st March 2022 at any time up until midnight.
- 3.5 Apart from these two exceptions, the Non-Domestic RHI scheme is closed to all applications from midnight at the end of 31st March 2021. If the criteria set out in paragraph 3.3 are met, an applicant can successfully apply for accreditation on 31st March 2021 up until midnight, and have a tariff start date falling on that day.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.6 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 100 of the Energy Act 2008 enables the Secretary of State to make regulations establishing a scheme to encourage the renewable generation of heat and to provide for the administration of the scheme. In particular, the Secretary of State may make regulations about a person's entitlement to payments under the scheme and the calculation and making of those payments. The Secretary of State may also make regulations requiring a person to provide specified information.
- 6.2 Both RHI schemes aim to encourage the transition from fossil fuel based forms of heating to renewable, low-carbon alternatives. The RHI schemes were intended to deliver carbon emissions reductions to help the UK meet its obligations under the Climate Change Act 2008 and the Carbon Budgets established under that Act. They also aimed to help the UK meet its target under Directive 2009/28/EC (the "Renewable Energy Directive") that 15% of energy consumption is to come from renewable sources by 2020.
- 6.3 The Domestic RHI scheme is set out in the Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928). It is open to renewable heat installations that provide heat to domestic properties.
- 6.4 The Non-Domestic RHI scheme is set out in the Renewable Heat Incentive Scheme Regulations 2018 (S.I. 2018/611). It is open to producers of biomethane for injection into the gas grid and to renewable heat installations that provide heat to buildings and for purposes other than heating a single domestic property. This includes systems providing renewable heating to public buildings or commercial properties, for industrial or agricultural uses, or for heating a block of flats.

6.5 On 11th March 2020, the Chancellor of the Exchequer announced as part of the Budget that the Government intends to extend the Domestic RHI scheme for an additional year until 31st March 2022, and introduce a third flexible allocation of Tariff Guarantees on the Non-Domestic RHI scheme.

7. Policy background

What is being done and why?

- 7.1 The Domestic RHI amendments relax the requirement that accreditation applications for the scheme must be made within 12 months of the renewable heating system being commissioned. The amendment is being made in response to the COVID-19 pandemic, which is preventing some applicants from being able to comply with this requirement. The amendment will enable applicants whose installation was commissioned on or after 1st March 2019 to apply for the Domestic RHI until the scheme closes to new applications on 31st March 2022. Applicants with an installation commissioning date on or after 1st March 2019, whose applications had previously been rejected due to this rule, will be able to re-apply for accreditation to the scheme.
- 7.2 The Domestic RHI amendments revise the thresholds at which degressions are triggered. This revision removes installations that reach the end of their 7-year RHI payment tariff lifetime on the scheme during the 2021-2022 extension period from the calculations used to assess whether degeneration will take place. The amendment is being made so that Domestic RHI forecasting and reporting more accurately reflect RHI payments to these installations ending as their tariff end dates are reached. However, the gap between our forecasts of committed spend and the degeneration triggers will remain unchanged. The Domestic RHI amendments also update the reference to the Home Insulation & Energy Systems Quality Assured Contractors Scheme's code of practice to the new version of that code.
- 7.3 The Non-Domestic RHI amendments make provision to close the scheme to new applications at midnight at the end of 31st March 2021. They introduce a mechanism for the modification of capacity for Shared Ground Loops (SGLs) providing space and water heating through two or more ground source heat pumps installed in separate or the same premises. Amendments that relate to registered producers of biomethane are made in relation to fossil-fuel contamination, the transfer of registration and dual participation with the Department for Transport's Renewable Transport Fuel Obligation scheme. Amendments that relate to biomass introduce a new requirement for Non-Domestic RHI participants to adhere to mandatory fuel quality criteria. Amendments remove additional capacity for existing participants, which also affects additional biomethane capacity regulations. Amendments remove the need for installation meters to be replaced when there is no material impact on RHI payments. Amendments are also made to end unnecessary reporting requirements.
- 7.4 Non-Domestic RHI amendments also introduce 'extension applications' to mitigate COVID-19 impacts. These extend commissioning deadlines by 12 months for projects ineligible for Tariff Guarantees that can evidence that they had invested significant resource prior to the announcement of this support measure on 17th August 2020. This is to ensure support is targeted only to existing projects that are most in need due to COVID-19 delays.

7.5 The majority of these amendments are coming into force on 1st April 2021, since this follows the Non-Domestic RHI scheme closure to new applicants. Amendments relating to Non-Domestic RHI extension applications come into force on 1st March 2021, to provide a window in which extension applications can be made. Biomass amendments come into force on 1st April 2022, to give industry the time necessary to adjust to requirements.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 In accordance with section 100(7) of the Energy Act 2008, the Secretary of State has obtained the consent of the Scottish Ministers to the making of these Regulations.

10.2 In accordance with section 148A(1) of the Government of Wales Act 2006, the Secretary of State has engaged with the Welsh Ministers in relation to the making of these Regulations.

10.3 For the Domestic RHI, on 2nd November 2020, the Department published a Stakeholder Notice titled 'Changes to the Domestic RHI Regulations'. Interested parties were given a 2-week window to respond with thoughts and comments on the proposals outlined. The Department received two responses relating to the '12 month rule', both from members of the public who had been caught out by this rule as a result of COVID-19 restrictions. The Department did not receive any responses relating to the revised degression triggers or the update to the HIES code of practice.

10.4 For the Non-Domestic RHI, on 28th April 2020, the Department published a Consultation titled 'Non-Domestic Renewable Heat Incentive: ensuring a sustainable scheme'. Interested parties were given a 70-day window to respond with thoughts and comments on the proposals outlined. The Department received 132 responses from a range of stakeholders including industry, public bodies, and businesses. The majority of these approved of the consultation proposals, but not with the planned closure of the Non-Domestic RHI scheme.

10.5 On 17th August 2020, the Department published a Government response proposing further changes to aid non-Tariff Guarantee eligible projects impacted by COVID-19 related delays. This was in response to concerns raised by stakeholders that a significant number of existing projects would fail to meet the scheme closure application deadline of 31st March 2021. On 5th November 2020, the Government confirmed that affected projects would be able to submit an extension application.

11. Guidance

11.1 Ofgem, the Administrator for both RHI schemes, is developing guidance to explain these regulations in further detail for stakeholders.

12. Impact

- 12.1 The impact will be positive for business. There will be continued support for low carbon heat, which will help secure jobs and businesses in the low carbon heat sector and create market conditions for expansion. However, this needs to be balanced against changes in the fossil fuel heating sector, therefore the overall economic impact on the heating market is uncertain. This will have no impact on charities or voluntary bodies.
- 12.2 There is or no significant impact on the public sector.
- 12.3 A full impact assessment for the Non-Domestic RHI will be published with this Explanatory Memorandum alongside the instrument on legislation.gov.uk. This impact assessment was previously published alongside S.I. 2020/650 on legislation.gov.uk. An impact assessment has not been produced for the amendments to the Domestic RHI, because they were judged not to have a budget or finance impact. The amendment to relax the requirement to apply for accreditation to the scheme within 12 months of commissioning the installation, will allow installations that normally would have applied within 12 months to be accredited. These installations are already budgeted for. The amendment to the degression triggers is a change to how the triggers are reported. However, the gap between anticipated deployment figure and the degression triggers has not changed. Therefore, there is no budgetary impact.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is for several measures to further incentivise renewable heat producers, reduce their reporting requirements and allow them to diversify their revenue streams through interaction with other government support schemes.

14. Monitoring & review

- 14.1 The Department is undertaking an evaluation of the reformed Domestic and Non-Domestic RHI schemes following the introduction of the 2018 reforms. This evaluation will assess the impact of the scheme and identify lessons for future policy development. The evaluation will include assessment of the reformed RHI's impact on renewable heat generation, carbon abatement and contribution towards the development of a sustainable market. Regular monitoring data and evidence review reports are expected throughout the evaluation (2017-2021), with a published report after scheme close.

15. Contact

- 15.1 Chris Avgherinos on Domestic RHI (chris.avgherinos@beis.gov.uk), and Tunde Ojetola (tunde.ojetola@beis.gov.uk) / Oliver Robinson (oliver.robinson@beis.gov.uk) on Non-Domestic RHI, all at the Department for Business, Energy and Industrial Strategy, can be contacted with any queries regarding the instrument.
- 15.2 Rebecca Vallance, Deputy Director for the Renewable Heat Incentive and Future Funding, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan, Minister for Climate Change and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.