

**EXPLANATORY MEMORANDUM TO**  
**THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT)**  
**REGULATIONS 2022**

**2022 No. 1096**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument makes amendments to the Renewable Heat Incentive Scheme Regulations 2018 (2018 RHI Regulations), which provide the legislative framework for the non-domestic Renewable Heat Incentive (NDRHI). The Domestic Renewable Heat Incentive Scheme Regulations 2014, which established the Domestic Renewable Heat Incentive (DRHI), reference certain provisions in the 2018 Regulations and will also be affected by certain of the amendments.
- 2.2 The Russian invasion of Ukraine led to the ban on the importation of Russian and Belarusian pellets by the UK (S.I. 2022/689). This created a shortage of ENplus A1 pellets in the UK for RHI participants. The instrument will temporarily suspend for 12 months the fuel quality requirements for scheme participants using wood pellets. This temporary suspension to the fuel quality requirement aims to increase the availability of pellets in Great Britain, mitigating risks of energy shortages and higher prices for RHI participants using wood pellets.
- 2.3 The instrument also gives the Secretary of State the power to temporarily suspend, for up to 12 months, the fuel quality requirements for wood pellets in the event of a future disruption of wood pellets to Great Britain. These changes apply to both the domestic and non-domestic RHI Schemes.
- 2.4 The instrument also amends the ownership requirements for participants applying to modify the capacity of their shared ground loop. In addition, the amendment will also allow in certain circumstances for applicants whose RHI installations have not yet been certified to submit a plan to modify the capacity of an installation by the deadline of 31 March 2023. These changes only apply to the non-domestic RHI Scheme.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument contains provisions which correct errors in the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme Regulations 2022. Having consulted the Statutory Instrument Registrar in accordance with paragraph 4.7.6 of the Statutory Instrument Practice, the Department will apply the free issue procedure.

#### **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.
- 6.2 The RHI schemes aim to encourage the transition from fossil fuel-based forms of heating to renewable, low-carbon alternatives. They were designed 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. In addition, they aimed to help the UK meet its target under Directive 2009/28/EC (the “Renewable Energy Directive”) that 15% of energy consumption was 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 was open to renewable heat installations that supply 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). The scheme was open to producers of biomethane for injection into the gas grid and to renewable heat installations that generate heat for buildings and purposes other than heating a single domestic property. This included systems providing renewable heating to public buildings or commercial properties, for industrial or agricultural uses, or for heating a block of flats.
- 6.5 The non-domestic RHI scheme closed to new applicants at midnight on 31 March 2021. The domestic RHI scheme closed to new applicants at midnight on 31 March 2022.
- 6.6 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 Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2019 (S.I. 2019/1052), the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021 (S.I. 2021/76) and the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2022 (S.I. 2022/159).

#### **7. Policy background**

##### *What is being done and why?*

##### *Temporary suspension of fuel quality requirements for wood pellets*

- 7.1 Under Schedule 4A of the 2018 RHI Regulations participants who use wood pellets as fuel for their biomass boilers are required to use ENplus A1 pellets. Schedule 4A came into force on 1 April 2022 and was intended to improve fuel efficiency and reduce emissions of harmful air pollutants (nitrogen oxides and particulate matter).

- 7.2 The Russian invasion of Ukraine led to the EU and UK suspending the importation of Russian and Belarusian pellets in April 2022. The importation of wood products from either country to the UK has been banned under S.I. 2022/689 which came into force on 23 June 2022. This has contributed to a shortage of pellets in the UK market. The 12-month suspension of the fuel quality requirements will permit additional supplies of wood pellets to be used in accredited RHI installations this winter.
- 7.3 The instrument also corrects an incorrect reference to a European Standard which was inserted into the 2018 Regulations by the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme Regulations 2022.

*New power for the Secretary of State*

- 7.4 The temporary suspension of ENPlus A1 pellets mentioned in paragraph 7.1 above will apply for 12 months after which the fuel quality requirements for wood pellets will automatically be reinstated. This instrument grants the Secretary of State the power to temporarily suspend for a maximum of 12 months the requirement for domestic and non-domestic RHI participants to use ENplus A1 certified pellets in the future. This power can only be used: (i) when there is a significant disruption or a threat of a significant disruption to the supply of wood pellets to Great Britain; (ii) with the consent of the Scottish Ministers; and (iii) after the Secretary of State has consulted the Welsh Ministers.

*Modified capacity of shared ground loops*

- 7.5 The 2018 RHI Regulations allow participants to modify the capacity of certain RHI accredited installations by adding one or more additional ground source heat pumps. A participant can only modify the installation capacity of an installation twice. Under the existing regulations, a participant applying to modify the capacity of an installation must provide the Authority (Ofgem) with a declaration that they will be the owner, or one of the owners, of each additional heat pump.
- 7.6 This instrument modifies the ownership requirement so that a participant who is not the owner, or one of the owners, of an additional heat pump may nonetheless make a capacity modification application provided that the participant provides Ofgem with evidence that the participant has the authority from the heat pump owner to do so and has the authority to act as the scheme participant in respect of that heat pump.

*Modified capacity of shared ground loops for Tariff Guarantee (TG2 and TG3) and Covid extensions*

- 7.7 Government has recognised the difficulty that some renewable heat projects have faced in meeting their commissioning deadlines, due to a range of factors including the ongoing COVID-19 pandemic. The Government has previously legislated for a 12-month extension to the commissioning deadlines for all non-domestic RHI technologies with eligible TG2, TG3 and extension applications, except for biomethane Tariff Guarantee applicants that are able to apply to the successor Green Gas Support Scheme. The deadline for commissioning was extended from 31 March 2022 to 31 March 2023.
- 7.8 Under the existing regulations, these applicants are unable to file a plan to modify capacity until their RHI plants have been accredited by Ofgem.
- 7.9 This instrument makes amendments to allow a TG2, TG3 or extension applicant to file a plan to modify capacity on or before 31 March 2023 notwithstanding that their plant has not yet been accredited. Ofgem will review the plan once the plant has been

accredited. Any plan submitted will not be reviewed if the applicant's TG2, TG3 or extension application is rejected.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **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 consulted the Welsh Ministers in relation to the making of these Regulations.
- 10.3 On 22 August 2022 the Department consulted on the temporary suspension of fuel quality and on granting a new power to the Secretary of State, 52 responses were received. Most respondents were supportive of the temporary suspension. The consultation and government response are available here:  
<https://www.gov.uk/government/consultations/renewable-heat-incentive-temporary-changes-to-wood-pellets-quality-requirement>.

## **11. Guidance**

- 11.1 The Authority is developing guidance to explain these regulations in further detail for stakeholders.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An impact assessment has not been produced to accompany this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The Department is undertaking an evaluation of the reformed domestic and non-domestic RHI. Reports evaluating each scheme will be published following the closure of both schemes. The evaluation will assess the impact of the RHI and identify lessons for future policy development.
- 14.2 The instrument does not include a statutory review clause. The requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015 to make provision for review does not apply to this instrument as it falls within an exception in section 28(3) of that Act.

## **15. Contact**

- 15.1 Tunde Ojetola ([tunde.ojetola@beis.gov.uk](mailto:tunde.ojetola@beis.gov.uk)) at the Department for Business, Energy and Industrial Strategy, can be contacted with any queries regarding the instrument.
- 15.2 Lowri Gilbert, Deputy Director for the Electrification, Products, Buildings & Delivery, 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 Business, Energy and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.