

EXPLANATORY MEMORANDUM TO

THE DOMESTIC RENEWABLE HEAT INCENTIVE SCHEME AND RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) REGULATIONS 2022

2022 No. 159

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 Her Majesty.

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 legislate for the closure of new applications to the main domestic RHI scheme (accreditation applications), and to new Metering and Monitoring Service Package applications (MMSP registration applications) at midnight at the end of 31 March 2022. This legislation also introduces a series of technical and administrative amendments to the domestic RHI at scheme closure, which will make the scheme easier to both administer and participate in, until final payments are made in 2029. This includes dates in 2028 for closing the scheme to investor and authorisation applications, and accreditation and registration applications for a replacement plant.
- 2.3 Non-Domestic RHI amendments will extend by 12 months commissioning deadlines for all existing tariff guarantee and extension applications, except those that would be eligible for the Green Gas Support Scheme (GGSS). It will also improve budget management for shared ground loop heat pumps which modify their capacity, align change of ownership and change of registration regulations, and require annual maintenance checks for biomass boilers in line with a new maintenance standard.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 give specified information.

- 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 is 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 On 11 March 2020, the Chancellor of the Exchequer announced as part of the Budget that the Government would extend the domestic RHI scheme for an additional year until 31 March 2022, and introduce a third flexible allocation of Tariff Guarantees (TG) on the non-domestic RHI scheme. The non-domestic RHI scheme closed to new applicants at midnight on 31 March 2021.
- 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 2020 (S.I. 2020/650) and the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021 (S.I. 2021/76).

7. Policy background

What is being done and why?

Domestic RHI

Closing the scheme to new accreditation and registration applications

- 7.1 In the domestic RHI scheme, four types of application can be made. This instrument closes the scheme to new accreditation applications to join the main scheme, and to new registration applications (for MMSP) at midnight on 31 March 2022. The amendments allow for investor applications (to become a registered investor), and authorisation applications (for metering from payment), to continue to be made until 30 June 2028 and 31 December 2028 respectively, when they will also close. The amendments also close accreditation and registration applications for replacement plants on 31 December 2028. The replacement plant process frequently takes longer

than the three months that would be remaining on the scheme, and we intend to sequence the final closure of the domestic RHI in an orderly manner.

Scheme administration

- 7.2 Domestic RHI payments are made for 7 years. Therefore, although the reforms close the domestic RHI to new applications, the scheme will continue to operate until final RHI payments are made in 2029. The instrument therefore makes a number of amendments to the regulations which are designed to improve scheme administration until the scheme finally closes. The reforms introduce a requirement for participants to inform the Authority (i.e., the Gas and Electricity Markets Authority) when any part of a plant is repaired or replaced. This will enable the Authority to obtain the information it requires to determine if the replacement plant process or replacement product process should be followed. The reforms will also enable the Authority to ask additional questions as part of the annual declaration procedure, where this relates to the participant's compliance with an ongoing obligation. A further amendment will allow the Authority to backdate RHI payments to the date that it is notified by the new owner when there is a change of ownership of an installation.
- 7.3 The closure of the domestic RHI scheme provides the Microgeneration Certification Scheme (MCS) and the consumer codes (Renewable Energy Consumer Code and the Home Insulation and Energy Systems Quality Assured Contractors Scheme) with an opportunity to update the installation standards, calculators and codes of practice that are referenced in the regulations. The title, version, and date of publication of these documents are listed in the regulations, which requires the regulations to be updated with the new versions of these documents to be used in the operation of the scheme. This instrument updates the references to:
- the MIS 3005 Heat Pump Installation Standard;
 - the MIS 3001 Solar Thermal Installation Standard;
 - the MCS 024 Solar Domestic Hot Water Calculation;
 - the Home Insulation & Energy Systems Quality Assured Contractors Scheme Code of Practice; and
 - the Renewable Energy Consumer Code.
- 7.4 To future-proof the scheme, this instrument amends the regulations to enable the Secretary of State to approve a subsequent version of an installation standard, calculator, or code of practice to replace the version specified in the regulations. This amendment will allow for MCS and the consumer codes to update their standards, calculators, and codes of practice without requiring a regulatory change once the scheme has closed.

Metering

- 7.5 This instrument also introduces some amendments to the requirements for metering. The reforms will allow the Authority to exercise a level of discretion when considering whether a plant should be metered for payment if the participant notifies them that the property has not been occupied for 183 days in the previous 12-month period due to exceptional circumstances. The Authority will be required to publish guidance specifying the scenarios that constitute exceptional circumstances.

- 7.6 Another amendment introduces an exemption so that a secondary plant which is located within a partition wall and directly radiates heat to two rooms would not be required to be metered for payment.

Metering and Monitoring Service Packages (MMSP)

- 7.7 This instrument makes some operational changes to improve the administration of MMSP. The deadline for providing further information on registration applications is altered to 12 weeks from the date that it was first requested, instead of 12 weeks from the date of the last request for that information. The amendments also simplify the process of transferring MMSP registration if the installer exits the market, or if there is a change of ownership.
- 7.8 The amendments made to the MMSP provisions by this instrument will also allow for the Secretary of State, the Authority, or an agent nominated by either the Secretary of State or the Authority, to access MMSP data from wherever it is stored once the participant has given their consent. This is administratively more efficient and will reduce the burden on installers and participants, who are currently required to provide the MMSP data themselves. The Authority will have the ability to suspend MMSP payments and withdraw MMSP registration if the participant does not provide consent for their MMSP data to be transferred to BEIS.

Reports and Publications

- 7.9 After the domestic RHI closes to new applications, the reports that are currently published about the scheme will not be required as frequently, or at all. This instrument reduces the amount of reporting that the Secretary of State and the Authority are required to publish once the scheme has closed. The requirement for the Secretary of State to publish degression forecasts, and for the Authority to produce initial tariff tables and monthly and quarterly reports, will be removed. The Authority will instead be required to produce reports at such intervals as the Secretary of State may request.

References and standards

- 7.10 The domestic RHI regulations make various references to specific clauses in the non-domestic RHI regulations. However, the non-domestic RHI regulations have been revised several times, and many of the references in the domestic regulations no longer refer to the relevant clauses in the non-domestic RHI regulations. Similarly, many of the standards for low-carbon heat installations referenced in Schedule 1 of the domestic RHI regulations have been revised or replaced since the scheme launched in 2014. This instrument updates the references in the domestic RHI regulations to refer to the relevant clauses in the non-domestic RHI regulations, and updates the versions of the standards referred in Schedule 1.
- 7.11 The regulatory changes that define ‘scheme closure,’ that close the domestic RHI to applications, and that allow the Secretary of State to approve subsequent versions of consumer codes, or MCS installation standards and calculators, come into force on 15 March 2022. The remaining provisions come into force on 1 April 2022.

Non-Domestic RHI

- 7.12 Government has recognised the difficulty some renewable heat projects have continued to face in meeting their existing commissioning deadlines, due to a range of factors including the ongoing COVID-19 pandemic. Therefore, this instrument

provides a 12-month extension to these deadlines for all non-domestic RHI technologies with eligible TG2, TG3 and extension applications, except biomethane Tariff Guarantee applicants that are able to apply to the successor Green Gas Support Scheme.

- 7.13 The instrument amends the budget management provisions for shared ground loops that modify capacity. This amends the payment formula to more accurately reflect estimated spend. It also splits the budget caps for FY22/23 and FY23/24 into one for heating a space or water, or heating both a space and water in domestic premises and one for other heat uses. This is to ensure housing-related projects are not crowded out of fair access to the budget by larger installations.
- 7.14 The instrument brings the change of ownership regulations into line with the change of registration regulations implemented within the 2021 non-domestic RHI amendments (S.I. 2021/76). This is to ensure that payments to participants are accurately backdated when ownership of RHI installations is transferred, without any risk of the Authority making double payments.
- 7.15 This instrument also introduces a new requirement for participants to carry out mandatory annual maintenance checks on their biomass boilers to an approved maintenance standard. This will improve the air quality emitted from biomass boilers and ensure that only the most efficient boilers are used on the scheme. The instrument also updates the references in the Regulations to various standards. This will ensure that the standards referred to are extant.

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 engaged with the Welsh Ministers in relation to the making of these Regulations.
- 10.3 On 26 February 2021, the Department published the consultation “Domestic Renewable Heat Incentive: ensuring a stable scheme”. Interested parties were given a 70-day window to respond with thoughts and comments on the proposals outlined. The Department received 20 responses from a range of stakeholders including businesses, trade bodies, and other organisations. The responses generally supported the consultation proposals; however, some concerns were raised regarding the level of support available for industry after the domestic RHI closes to new accreditation applications. The Department has subsequently announced the launch of the Boiler Upgrade Scheme in 2022, and published the Heat and Buildings Strategy, which should mitigate a majority of these concerns.
- 10.4 On 29 October 2021, the Department published a [government response](#) confirming its intention to proceed with the majority of amendments proposed in the closure

consultation. The government response also included a proposal for a further change to the regulations, which was received as a suggestion during the consultation. The amendment would enable the Authority to backdate RHI payments to the point of notification of a change of ownership by the new owner, instead of resuming payments once the change of registration process is complete. Interested parties were given a 32-day window to respond to the proposal, but no comments were received. Given the amendment will benefit scheme participants, this reform was included in the regulatory package.

- 10.5 For the non-domestic RHI, the Department consulted on the extension to commissioning deadlines on 29 November 2021 and received 35 responses. All of these were supportive of the extension. The Department consulted on shared ground loops' modified capacity on 31 August 2021, the one response that was received was supportive of the measures. The Department consulted on the Change of Ownership/Registration regulations on 28 April 2020, 96% of responses approved of our proposal. The Department consulted on the introduction of regular maintenance checks in October 2018, 100% of responses agreed with the proposals.

11. Guidance

- 11.1 The Authority is developing guidance to explain these regulations in further detail for stakeholders. It will consult on the guidance ahead of their implementation.

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 was published alongside the consultation on closing the domestic Renewable Heat Incentive scheme. It provided a qualitative assessment of the marginal impacts of the proposed changes. A further impact assessment has not been produced to accompany Part 2 of this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen, beyond those marginal impacts set out in the consultation stage impact assessment. The domestic Renewable Heat Incentive scheme is being replaced by the Boiler Upgrade Scheme. An impact assessment for the Boiler Upgrade Scheme will be published in advance of the launch of that scheme. A full impact assessment has not been produced to accompany Part 3 of 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.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken on the non-domestic RHI is to further incentivise renewable heat producers and increase their opportunities for accessing RHI funding. This will benefit small businesses while putting minimum burden on applicants to provide further information.
- 13.3 The basis for the final decision on what action to take to assist small businesses was through our consultations on each of the policy changes, conversations with key stakeholders, and sessions with the Authority to ensure our amendments create as little regulatory and administrative burden as possible.

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 Chris Avgherinos on domestic RHI (chris.avgherinos@beis.gov.uk), and Tunde Ojetola (tunde.ojetola@beis.gov.uk) on non-domestic RHI, both 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 team, 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.