Draft Regulations laid before Parliament under section 105(2)(a) and (3) of the Energy Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

ENERGY

The Renewable Heat Incentive Scheme (Amendment) Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 100 and 104 of the Energy Act 2008(**1**).

In accordance with sections 105(2)(a) and (3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

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

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Scheme (Amendment) Regulations 2013 and come into force on the day after the day on which they are made.

Amendments to the Renewable Heat Incentive Scheme Regulations 2011

2. The Renewable Heat Incentive Scheme Regulations 2011(**2**) are amended as follows.

Amendments to regulation 2

3. In regulation 2 (interpretation) insert the following definitions at the appropriate places—

"assessment date" means 31st January, 30th April, 31st July or 31st October in any year;

"average load factor"—

(a) in respect of a relevant installation (except a relevant installation within paragraph (c)) which—

(**1**) 2008 c.32. Section 100 is amended by S.I. 2011/2195.
(**2**) S.I. 2011/2860, amended by S.I. 2012/1999.

(i) falls or is expected to fall within the tariff category "medium commercial biomass" or "large commercial biomass"; and

(ii) generates or is expected to generate heat for the purposes of carrying out a process,

means the average of the estimated hours of operation per week for eligible purposes of all such installations divided by 168;

(b) in respect of a relevant installation (except a relevant installation within paragraph (a)) which falls or is expected to fall within a tariff category which fewer than 20 accredited RHI installations providing metering data fall within, means the average of the load factors of all accredited RHI installations;

(c) in respect of a relevant installation which falls or is expected to fall within a tariff category which 20 or more accredited RHI installations providing metering data fall within ("sister installations") means—

(i) if the relevant installation uses or is expected to use heat for the same eligible purposes as 20 or more of the sister installations ("twin installations"), the average of the load factors of all twin installations;

(ii) if the relevant installation does not use or is not expected to use heat for the same eligible purposes as 20 or more of the sister installations, the average of the load factors of all sister installations;

"estimated energy from biomethane", in relation to a participant who produces biomethane for injection as expressed in kWh means—

$$FR \times T \times 10$$

where—

(a) FR is the flow rate; and

(b) T is the number of hours in the year commencing with the assessment date;

"estimated heat", in relation to a relevant installation as expressed in kWhth means—

$$LF \times T \times C$$

where—

(a) LF is—

(i) if the installation has provided metering data, the load factor; or

(ii) in any other case, the average load factor applicable in respect of that installation;

(b) T is the number of hours in the year commencing with the assessment date; and

(c) C is the installation capacity of that relevant installation;

"estimated spend", in relation to—

(a) a relevant installation, means the estimated heat in relation to that installation multiplied by the relevant initial tariff or subsequent tariff calculated in accordance with regulations 37 to 37D;

(b) a participant who produces biomethane for injection, means the estimated energy from biomethane in relation to that participant multiplied by the relevant initial tariff or subsequent tariff calculated in accordance with regulations 37 to 37D;

"expenditure forecast statement" means a statement published by the Secretary of State in accordance with regulation 37E;

"flow rate", in relation to a participant who is a producer of biomethane for injection, means—

$$\frac{B}{H}$$

where—

(a) B is the volume in cubic metres of biomethane injected during all quarterly periods in respect of which the participant has received a periodic support payment; and

(b) H is the total number of hours in those quarterly periods;

"forecast for expenditure"—

(a) in relation to an assessment date and a relevant installation which falls or is expected to fall within any tariff category other than "biomethane and biogas combustion", means the sum as at that assessment date of the estimated spend for each relevant installation which falls within that tariff category;

(b) in relation to an assessment date and a relevant installation which generates or is expected to generate heat from biogas or a participant who produces biomethane for injection, means the sum as at that assessment date of—

(i) the estimated spend for each relevant installation which generates or is expected to generate heat from biogas; and

(ii) the estimated spend for each participant who produces biomethane for injection;

"forecast for total expenditure", in relation to an assessment date, means the sum as at that assessment date of—

(a) the estimated spend for each relevant installation; and

(b) the estimated spend for each participant who produces biomethane for injection;

"increase in expenditure forecast" has the meaning given in regulation 37E(1)(d);

"initial tariff" has the meaning given in regulation 37(7)(a);

"load factor" in respect of an accredited RHI installation means—

$$\frac{M}{C \times H}$$

where—

(a) M is the amount of heat in kWhth generated by that installation during all quarterly periods in respect of which it has received a periodic support payment;

(b) C is the installation capacity of that installation; and

(c) H is the total number of hours in those quarterly periods;

"relevant date" means the date of coming into force of the Renewable Heat Incentive Scheme (Amendment) Regulations 2013;

"relevant installation" means—

(a) an accredited RHI installation; or

(b) an installation for which an application for accreditation or preliminary accreditation has been made;

"subsequent tariff" has the meaning given in regulation 37(7)(b);

"tariff category" means a category of plant which is described in the second and third columns of Schedule 3 and identified by a tariff name in the first column of that Schedule;

"tariff period" is a three month period commencing with 1st January, 1st April, 1st July or 1st October in any year;

"working day" means any day other than—

(a) a Saturday, Sunday, Good Friday, or Christmas Day; or

(b) a day which is a bank holiday in England, Wales or Scotland under the Banking and Financial Dealings Act 1971(**3**).

Amendments to regulation 37

4.—(1) Regulation 37 (payment of periodic support payments to participants) is amended as follows.

(2) n paragraph (3), for "regulation 43(5)" insert "regulation 43(5) and (5B)".

(3) For paragraph (7), substitute—

"(7) The tariff for an accredited RHI installation or a participant who is a producer of biomethane—

(a) for the period commencing with the tariff start date and ending with the following 31st March ("the initial period"), is the tariff specified in paragraph (7A) ("the initial tariff");

(b) for each year following the initial period commencing with 1st April and ending with the following 31st March (a "subsequent year"), is the tariff specified in paragraph (7B) for the relevant subsequent year (a "subsequent tariff").

(7A) For the purposes of paragraph (7)(a), the initial tariff is—

(a) if the tariff start date is later than 27th November 2011 but earlier than 1st April 2012, the tariff set out in Schedule 3;

(b) if the tariff start date is later than 31st March 2012 but earlier than 1st April 2013, the tariff set out in Schedule 3 adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending 31st December 2011 (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards);

(c) if the tariff start date is later than 31st March 2013 but earlier than the relevant date, the tariff set out in Schedule 3—

(i) adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending 31st December 2011 (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards); and

(ii) further adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending 31st December 2012 (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards).

(d) if the tariff start date is on or after the relevant date, the tariff calculated in accordance with regulations 37A to 37D.

(7B) For the purposes of paragraph (7)(b), the subsequent tariff for a particular subsequent year is the tariff applicable in relation to the installation or participant on the 31st March immediately preceding the commencement of the subsequent year, adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending on the 31st December immediately preceding the commencement of that subsequent year (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards)."

(**3**) 1971 c.80.

(4) In paragraph (8)—

(a) for "tariff rates" substitute "subsequent tariffs";

(b) for "paragraph (7)" substitute "paragraphs (7) and (7B)".

(5) After paragraph (8), insert—

"(8A) The Authority must by 15th June 2013, 15th September 2013, 15th December 2013, and subsequently by 15th March, 15th June, 15th September and 15th December in each year ("the tariff publication date") publish in a table on its website the initial tariffs applicable where a tariff start date falls within the tariff period immediately following the tariff publication date."

(6) For paragraph (9), substitute—

"(9) For the purposes of paragraphs (5), (7) and (7A), and regulation 37B, where an accredited RHI installation fits within the tariff category "small commercial biomass" or "medium commercial biomass", a reference to the tariff set out in Schedule 3 is—

(a) in relation to the initial heat generated by the installation in any 12 month period commencing with, or with the anniversary of, the date of accreditation, a reference to the relevant tier 1 tariff specified in Schedule 3; and

(b) in relation to all further heat generated in that same 12 month period, a reference to the relevant tier 2 tariff so specified."

Calculation of tariffs

5. After regulation 37 insert—

"**Calculation of initial tariffs on or after the relevant date**

37A.—(1) This regulation applies for the purposes of calculating the initial tariff if the tariff start date is on or after the relevant date.

(2) Where this regulation applies, the initial tariff is calculated in accordance with the formula—

$$A \times (1 - B - C)$$

where—

(a) A is calculated in accordance with regulation 37B;

(b) B is calculated in accordance with regulation 37C; and

(c) C is calculated in accordance with regulation 37D.

Calculation of A

37B.—(1) For the purposes of regulation 37A, A is calculated as follows.

(2) If the tariff start date falls within the period commencing with the relevant date and ending with 30th June 2013, A is the tariff set out in Schedule 3—

(a) adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending 31st December 2011 (the resulting figure being rounded to the nearest tenth of a penny, with any twentieth of a penny being rounded upwards);

(b) further adjusted by the percentage increase or decrease in the retail prices index for the calendar year ending 31st December 2012 (the resulting figure being rounded