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Departmental Solicitor's Office



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Seamus Hughes
Department of Enterprise
Trade and Investment
Netherleigh
Massey Avenue
BELFAST
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19th August 2015

Our Ref:

Dear Seamus

RENEWABLE HEAT INCENTIVE (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015

Thank you for your minute of 22nd July and for sending me a draft of these Regulations. I have a number of comments.

1. I think that the title is somewhat cumbersome and I would instead favour something along the lines of "Domestic and Non-domestic Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015".
2. In Regulation 4, the amendment to Regulation 2 of the 2012 Regulations does not, I think, strictly speaking involve the insertion of a definition. Rather, it is a clarification that different eligible plants in a given building still form a heating system even if they are not hydraulically linked: I would, therefore, insert this as a new paragraph (1A). I have also made some drafting changes.
3. I have made some drafting changes to the amendments made by Regulations 5 – 7.
4. I have also amended Regulation 8. More particularly, however, I have made some changes to the amendments that this provision effects. My comments on these are as follows



INVESTOR IN PEOPLE

Received from DSO on 26.07.2017

Annotated by RHI Inquiry

- (a) in the amendment to Regulation 36(7) of the 2012 Regulations, should the reference not be to installations accredited before 5th October 2015?
- (b) Regulation 36(4) provides for the tariff in relation to biomethane and biogas combustion. These are also covered in new Schedule 3A. Will it not, therefore, be necessary also to amend paragraph (4) so that the tariff set out in Schedule 3 also only applies in relation to installations accredited before 5th October 2015?
- (c) I am not sure that I understand the provision relating to rounding up. Do you mean something along the following lines

“the resulting figure being rounded to the nearest 10th of a penny or the nearest 20th of a penny whichever calculation produces the greatest value”?

- (d) New paragraph (9) does not override paragraph (7A)(a). Rather, the latter gives effect to a schedule which, in relation to medium biomass can produce two different tariffs. Paragraph (9) effectively sets out which tariff is to apply. I would, therefore, omit from paragraph (7A) the words “subject to paragraph (9)”.
5. In relation to Schedule 1, it is not sufficient to simply insert a reference to Regulation 24A. Indeed, I do not think that that is appropriate to do so. Rather, I think you are going to have to replace paragraph 1(1) with something along the following lines

“(1) This Schedule specifies the information that may be required of

—

- (a) a prospective participant in the scheme; or
 (b) the owner of an accredited RHI installation who moves it to a new location during its tariff lifetime”.

6. The proposal to amend “seasonal performance factor” at the moment does not go far enough. Instead of a fixed amount of 2.5, there will be a reference to a ratio fixed at a “minimum of 2.5”. This obviously is intended to leave a discretion as to what the ratio in question is to be. However, the Regulations do not provide for who is to fix that. Is this intended to be the Department?

I would be grateful if I could see a further draft of the Regulations.

Yours sincerely

Paul McGinn

PAUL MCGINN
Director Division 2

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2015 No. 000

ENERGY

The Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015

Laid before the Assembly in draft

Made - - - - 2015
Coming into operation - 2015

The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred on it by section 113 of the Energy Act 2011(a).

Citation and commencement

1. These Regulations may be cited as the Renewable Heat Incentive Scheme and Domestic Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015 and come into operation on the day after the day on which they are made.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012

3. The Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012(c) are amended in accordance with regulations 4 to 10.

Amendment of regulation 2 (interpretation)

4. In regulation 2 after the definition of "biogas production plant" insert paragraph (1A) insert
(1A) "heating system" for the purposes of the non-domestic Renewable Heat Incentive Scheme all eligible plant in a given building providing heat forms part of the heating system regardless of whether or not hydraulically linked or stand alone;"
a particular plant is to others or is a single

(a) 2011 c. 16
(b) 1954 c.33 (N.I.)
(c) SR. 2012 No.396

Amendment of regulation 3 (renewable heat incentive scheme)

5. In Regulation 3(2) –

(a) at the end of sub-paragraph (b) remove “or”;

(b) at the end of sub-paragraph (c), for the full-stop substitute “; or” and thereafter insert –

“(d) used otherwise than in a building on a commercial basis for either cleaning or drying”.

where use is not on commercial basis

Amendment of regulation 8 (eligible installations generating heat using heat pumps)

6. In regulation 8(a)(ii) before “or” insert “or ground liquid”.

“or ground liquid”

Changes in location of accredited RHI installations

7. After regulation 24 insert –

“Changes in location of accredited RHI installations

24A.—(1) This regulation applies where an accredited RHI installation is moved to a new location during its tariff lifetime.

(2) No periodic support payment may be made in respect of the accredited RHI installation after the date on which it is moved to a new location until—

(a) the owner has notified the Department of the change in location; and

(b) the Department has concluded that the accredited RHI installation should continue to be accredited.

(3) On receipt of a notification under paragraph (2) the Department —

(a) may require the owner to provide such of the information specified in Schedule 1 as the Department considers necessary for the proper administration of the scheme; and

(b) must review the accreditation of the accredited RHI installation to determine whether it continues to meet the eligibility criteria in the new location (except the requirement in regulation 12(1)(b)) and accordingly whether it should continue to be accredited.

(4) Where the Department concludes that the accredited RHI installation should continue to be accredited it must update the central register referred to in regulation 22(6)(c) if appropriate.

(5) Where the Department concludes that the accredited RHI installation should continue to be accredited, periodic support payments calculated from the date of that decision and for the remainder of the tariff lifetime of that accredited RHI installation shall be payable.”.

Amendment of regulation 36 (payment of periodic support payments to participants)

8. In regulation 36 in Regulation 36 is amended as follows.

(1)

sub-paragraph (7) after “tariffs” insert “for installations before 5 October 2015”;

(2) after sub-paragraph (7) insert –

“(7A) The tariffs for installations accredited from 5th October 2015 without preliminary approval from the Department—

(a) for the period beginning with 5 October 2015 and ending with 31st March 2016, are the tariffs set out in Schedule 3A, subject to paragraph 9; and

(b) for each subsequent year commencing with 1st April and ending with 31st March, are the tariffs applicable on the immediately preceding 31st March adjusted by the percentage increase or decrease in the retail prices index for the previous calendar year (the resulting figure being rounded to the nearest tenth of a penny, and the nearest twentieth of a penny with the tariff adjusted to whichever is the greatest value).

the next following

(7B) The tariffs for proposed installations accredited from 5th October 2015 with preliminary approval by the Department—

(a) for the period beginning with 5 October 2015 and ending with 31st March 2016, are the tariffs set out in Schedule 3; and

(b) for each subsequent year commencing with 1st April and ending with 31st March, are the tariffs applicable on the immediately preceding 31st March adjusted by the percentage increase or decrease in the retail prices index for the

1?

para (4) limited to installations before 5 Oct 2015 ?

Department of Enterprise, Trade and Investment

SCHEDULE 1

“ SCHEDULE 3A - Tariffs

Regulation 36

Table 1

<i>Tariff name</i>	<i>Sources of energy or Technology</i>	<i>Installation capacity</i>	<i>Tariff Pence/kWh</i>
Small Biomass	Solid biomass including solid biomass contained in municipal solid waste. and CHP	Less than 20kWth	6.7
Medium Biomass	As above	20kWth and above up to but not including 200kWth	Tier 1: 6.4 Tier 2: 1.5
Large Biomass	As above	200kWth and above up to but not including 1000kWth	1.5
Combined Heat and Power	Biomass and bioliquid combined heat and power	New systems all sizes	3.5
		Conversion from fossil fuels all sizes	1.7
Small heat pumps	Ground source heat pump, water source heat pump	Less than 20kWth	9.0
Medium heat pumps	As above	20kWth and above up to but not including 100kWth	4.6
Large heat pumps	As above	100kWth and above	1.3
All Solar collectors	Solar collectors	Below 200kWth	9.1
Biomethane and biogas combustion	Biomethane and biogas combustion	All biomethane and biogas combustion below 200kWth	3.3

“

previous calendar year (the resulting figure being rounded to the nearest tenth of a penny, and nearest twentieth of a penny with the tariff adjusted to whichever is the greatest value).”

(3) after paragraph (8) insert -

“(9) Where an accredited RHI installation ^{falls within} ~~receives~~ the medium biomass tariff as set out in Schedule 3A—

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

(b) the tariff for all further heat generated in that same 12 month period is the ~~relevant~~ tier 2 tariff.

(10) For the purposes of paragraph (9), “the initial heat” means the heat in kWh generated by an accredited RHI installation running at its installation capacity for 1,314 hours and “further heat generated” means the heat in kWh generated by an accredited RHI installation running at its installation capacity after the initial heat period of 1,314 hours.

(11) For the purposes of paragraphs (7A) and (7B), “preliminary approval by the Department” means ~~proposed~~ installations that have received a preliminary approval certificate issued by the Department confirming that an installation is at an advanced stage and therefore eligible for payments under Schedule 3.”

in relation to any installation

Amendment of Schedule 1 (information required for accreditation and registration)

[9. In Schedule 1 after “Regulations 22, 24,” insert “24A,”.] - see redraft

Tariffs

10. After Schedule 3 (Tariffs) ^{insert} substitute the Schedule ^{set out} contained in the Schedule to these Regulations.

Amendment of the Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014

11. The Domestic Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2014^a are amended in accordance with regulation 12 and 13.

Amendment of regulation 2 (Interpretation)

12. In regulation 2 in the definition of “Seasonal Performance Factor” for “and will be fixed at 2.5;” substitute “minimum of 2.5;”

see comment

Amendment of regulation 13 (Plants where heat generation must be metered)

13. In regulation 13-

- (a) ~~(1)~~ paragraph ~~13~~(9) omit “or a public tenancy.”;
- (b) ~~(2)~~ paragraph ~~13~~(10) omit the definition of “public tenancy”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on

John Mills
A senior officer of the

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Northern Ireland, amend the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 (the "2012 Regulations") and the Domestic Renewable Heat Incentive Scheme (Northern Ireland) 2014 (the "2014 Regulations"). The 2012 Regulations established a renewable heat incentive scheme for non-domestic and the 2014 Regulations a renewable heat incentive scheme for domestic, under which owners of plants which generate heat from specified renewable sources and meet specified criteria may receive payments at prescribed tariffs for the heat used for eligible purposes. The 2012 Regulations and 2014 Regulations confer functions on the Department in connection with matters relating to the general administration of the schemes.

Regulation 4 amends a number of the definitions in the 2012 Regulations.

Regulation 5 amends regulation 3 in the principal Regulations to extend the scheme to cleaning and drying carried on otherwise than in a building.

Regulation 6 expands the sources of energy in regulation 8.

Regulation 7 inserts a new regulation 24A allowing accredited RHI installations to be moved to a new location.

Regulation 8 amends regulation 36 of the 2012 Regulations to introduce a tiered tariff for the medium commercial biomass tariff.

Regulation 9 updates reference in Schedule 1 in the 2012 Regulations to reflect insertion of new 24A.

Regulation 10 inserts Schedule 3A in the 2012 Regulations introducing a tiered tariff structure for medium biomass and a new CHP tariff from 5 October 2015.

Regulation 12 amends the definition of "Seasonal Performance Factor" in the 2014 Regulations.

Regulation 13 amends regulation 13 to remove the reference to "public tenancy" and its definition.

From: [Clarke, Helen \(DFP\)](#) on behalf of [McGinn, Paul](#)
To: [Hughes, Seamus](#)
Subject: RENEWABLE HEAT INCENTIVE (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015
Date: 19 August 2015 16:15:06
Attachments: [Seamus Hughes \(2\).docx](#)
[2406_001.pdf](#)

Seamus,

Please see attached from Mr Paul McGinn, DSO.

Many thanks,

Helen

Helen Clarke

PS/Claire Archbold/Paul McGinn

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