

New RHI Scheme Regulations laid before Parliament



The draft Renewable Heat Incentive Scheme Regulations were laid before Parliament on 8 February 2018. The proposed changes include resetting tariffs for biomethane injection and heat generated from biogas to levels that will stimulate deployment in the AD sector.

Draft Regulations

The draft Renewable Heat Incentive Scheme Regulations 2018 (the "**Draft Regulations**") were laid before Parliament on 8 February 2018. This follows a significant delay caused in part as a result of the outcome of the Brexit referendum and the subsequent general election. The Draft Regulations will implement proposed changes set out in the Government's response published in December 2016 to its consultation on the future of the Renewable Heat Incentive Scheme (the "**RHI Scheme**"). There will now be a period of six to eight weeks for debate and subsequent parliamentary approval following which the Draft Regulations will become law.

The Draft Regulations make several important changes to the RHI Scheme. We have set out some of the key points relevant to the AD sector below.

Tariff Levels

The tariffs for biomethane injection and biogas have been reset to stimulate the development of new plants in recognition that the current tariffs have fallen too low as a result of depressions. The proposed tariffs are slightly different to those proposed in the Government's consultation response. However, they are at levels where deployment has been seen so should provide the required stimulus.

Category	Current Tariff (p/kWh)	Reset Tariff (p/kWh)
Biomethane tier 1, first 40,000 MWh	3.20	5.60
Biomethane tier 2, next 40,000 MWh	1.89	3.29

Biomethane tier 3, remaining MWh	1.45	2.53
Biogas, less than 200 kWth	2.88	4.64
Biogas, 200 kWth – 600 kWth	2.26	3.64
Biogas, over 600 kWth	0.86	1.36

Importantly, the Draft Regulations confirm that participants that have registered / received accreditation after 14 December 2016 (the date of the consultation response) and who subsequently register / accredit before the Draft Regulations come into force may receive the reset tariffs, provided that they comply with the new feedstock rules and restrictions on drying (see below).¹

Tariff Guarantees²

The Draft Regulations provides for the ability for certain plants to apply for a tariff guarantee on and from the date they come into force. All biomethane projects may apply for a tariff guarantee together with all biogas heat projects above 600 kWth. To be eligible for a tariff guarantee, a project must have been granted planning permission (or evidence can show planning permission is not required). For biomethane projects, a network entry agreement must also have been entered into.

The application for a tariff guarantee is a three stage process. The first stage is to submit an application to Ofgem for a provisional tariff guarantee demonstrating the minimum eligibility requirements and providing the information required by Ofgem. As part of this, an applicant must declare an expected commissioning date for the plant (the "**Commissioning Date**"). If this is approved, Ofgem will award a "provisional" tariff guarantee which will be the tariff that was applicable on the date that the valid application was received (the "**Guaranteed Tariff**"). The second stage is to apply for a "full" tariff guarantee by submitting proof that financial close has been achieved for the project within three weeks of the provisional tariff guarantee being awarded. If financial close is not achieved within three weeks, an applicant will lose its Guaranteed Tariff and have to re-apply for the provisional tariff guarantee. The final stage is to apply for full accreditation or registration on the RHI scheme once the relevant plant has been commissioned, which must be within 6 months of the Commissioning Date and in any event on or before 31 January 2020. Provided that the plant that is commissioned is the same as the one in respect of which the Guaranteed Tariff was awarded and there have been no material changes, then the RHI tariff awarded to the plant will be the Guaranteed Tariff.



¹ See draft regulation 62

² See draft regulation 35

Feedstock Restrictions

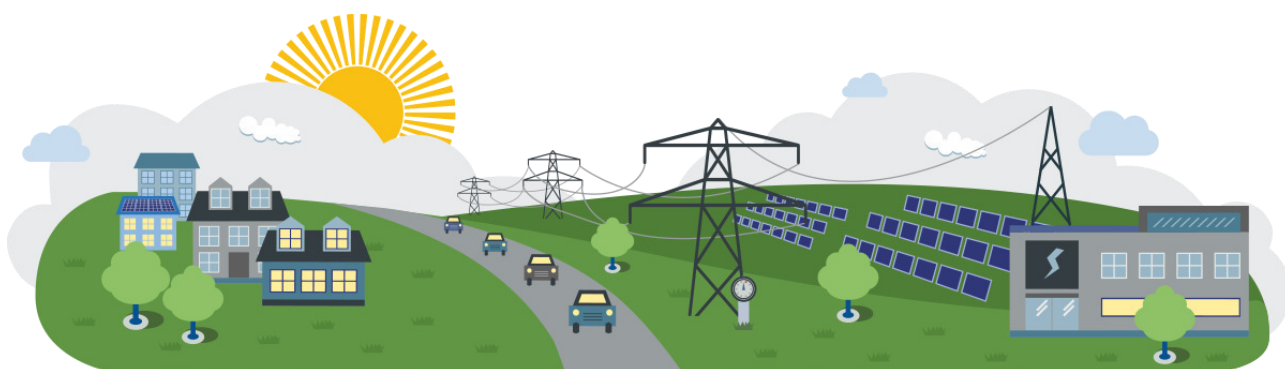
The Draft Regulations require new plants for biomethane injection or the generation of heat from biogas to produce at least 50% of their biogas from waste or residue in order for all of the biogas or biomethane that is produced to be eligible for RHI support payments. If the amount of biogas or biomethane produced from non-waste or residue feedstocks (e.g. energy crops) is in excess of 50% of the total biogas production, then the amount of biogas / biomethane generated from such excess is not eligible for RHI support.³ As such, if 100% of a plant's biogas was generated from non-waste or residue feedstocks in a single year, then only 50% of the total heat generated from such biogas would be eligible for RHI support. This feedstock restriction will be calculated on an annual basis. At the end of each year a reconciliation will be carried out. Any reductions in support that are calculated as a result of such reconciliation will be offset against future support payments in the following year.

Digestate Drying

The Draft Regulations confirm that all forms of drying digestate are an excluded heat use and so will not be eligible for any RHI support. The drying of woodfuel is also an excluded heat use and so ineligible for support unless the relevant heat (i) replaces a fossil fuel source which has been used to dry woodfuel in two out of the last three preceding years; (ii) will meet a heat demand for woodfuel drying that has existed previously in two out of the three preceding years; and (iii) output is not more than 10% above that of the fossil fuel source it replaces.⁴

Degression

The Draft Regulations also make a change to the degression mechanism for tariffs.⁵ A degression for a particular tariff category will now only occur if, at the time of assessment, that tariff category's actual forecast for increase in expenditure is at least 50% higher than the forecasted figure set out in Schedule 7 of the Draft Regulations for that category. This applies even where there would otherwise be a scheme wide degression because the total scheme expenditure at the relevant date has exceeded the forecasted total expenditure in Schedule 7. However, where a degression for a tariff category is triggered, the minimum level of degression will be 10% of the relevant tariff, as opposed to the previous minimum of 5%.



³ See draft regulation 74

⁴ See draft regulation 3(5)

⁵ See Schedule 7

Contacts

Levent Gürdenli

Senior Associate

Tel: +44 207 415 6612

levent.gurdenli@twobirds.com



Matt Bonass

Partner

Tel: +44 207 4156 731

Matt.Bonass@twobirds.com



Michael Rudd

Partner

Tel: + +44 207 415 6174

Michael.Rudd@twobirds.com



Elizabeth Reid

Partner

Tel: +44 207 9056 226

Elizabeth.Reid@twobirds.com



twobirds.com

Aarhus & Abu Dhabi & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Stockholm & Sydney & Warsaw

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

35058271.1