

EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION (AMENDMENT) ORDER (NORTHERN IRELAND) 2011

2011 NO 169

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Assembly.
- 1.2 The powers under section 2(2) of the European Communities Act 1972 (as read with paragraph 1A of Schedule 2 to that Act) are used to make the following provisions of this Statutory Rule: Article 3, that part of Article 4(2) which inserts a definition of “Renewables Directive”, and Article 14. The remainder of the Rule is made using powers conferred by Articles 52 to 55F and 66(3) of the Energy (Northern Ireland) Order 2003 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1 This Statutory Rule amends the Energy (Northern Ireland) Order 2003 and the Renewables Obligation Order (Northern Ireland) 2009 (the “2009 Order”) to transpose some of the requirements of Directive 2009/28/EC (the “Renewables Directive”). This Statutory Rule also makes a number of other amendments to the 2009 Order: to increase the Renewable Obligation Certificates (ROC) levels for electricity generated from the gas formed by anaerobic digestion (AD) and for existing generating stations which add more capacity; to introduce Microgeneration Certification Scheme requirements; and to require certain generators using solid biomass or biogas to report against greenhouse gas emission and land use sustainability criteria.

3. Background

- 3.1 Articles 52 to 55 of the 2003 Energy Order provide the framework for the introduction of an obligation (a ‘renewables obligation’) on electricity suppliers requiring them demonstrate the supply of electricity from renewable energy sources to consumers. The current detail of that obligation (the ‘NIRO’) which was introduced in 2005 is contained in the Renewables Obligation Order (Northern Ireland) 2009.
- 3.2 The proposed Rule will amend the 2009 Order by:

- Increasing the Renewable Obligation Certificates (ROC) levels for electricity generated from the gas formed by anaerobic digestion (AD) of material which is neither sewage nor landfill;
- Providing additional support by increasing the ROC levels to existing generators who add more capacity to incentivise more renewables generation;
- Introducing a regulatory requirement for all microgenerators to use Microgeneration Certification Scheme (MCS) approved technology and installers; and
- Introducing mandatory sustainability criteria for Biomass and Bioliquids sustainability reporting to meet the Renewable Energy Directive.

The effect of these proposed amendments is described in more detail below.

Policy Objectives of the Statutory Rule

- 3.3 The proposed Renewables Obligation (Amendment) Order (Northern Ireland) 2011 has a number of objectives some of which are UK-wide and others are specific to Northern Ireland. The objectives are:

Anaerobic Digestion

- a) To increase the ROC levels for electricity generated from the gas formed by anaerobic digestion (AD) of material which is neither sewage nor landfill from the current 2 ROCs/MWh for all capacities to those detailed in the table below:

Capacity	ROCs/MWh
Up to 500kW	4
Above 500kW	3

The Rule will increase the ROC levels for Anaerobic Digestion for all new generating stations seeking accreditation under the NIRO from 1 April 2011. This proposal is unique to the NIRO. State aid approval has been received for this proposal.

Additional generating capacity

- b) To provide additional support for existing generators who install additional capacity. Generating stations accredited before 1 April 2010 who install additional capacity after this date will receive the appropriate ROC level available to new generating stations for the additional capacity only, subject to the relevant banding thresholds. The relevant banding thresholds will also

apply to generators accredited from 1 April 2010 who add additional capacity. State Aid approval has been received for this proposal.

Microgeneration Certification Scheme requirements

- c) To introduce a regulatory requirement for microgenerators to use Microgeneration Certification Scheme (MCS) certified installers or equipment when seeking accreditation under the NIRO. Microgenerators seeking first time accreditation under the NIRO using onshore wind or solar photovoltaic panels must use MCS or an equivalent certification scheme accredited under EN 45011, the European Standard for Product Certification.

Solid Biomass and Biogas Sustainability Criteria

- d) To introduce mandatory sustainability criteria for solid biomass and biogas to meet the requirements of the Renewable Energy Directive (RED). The Renewables Directive does not impose sustainability criteria on solid biomass or biogas. In the “Report from the Commission on sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling” (COM (2010)11) the European Commission recommended that where Member States impose sustainability criteria, they should be in almost all respects the same as the sustainability criteria imposed by the Renewables Directive for bioliquids.

The method for calculating greenhouse gas emissions for biomass set out in Schedule 3A to the 2009 Order as inserted by the Rule follows the recommendations of the Commission Report by adopting the methodology set out in the Renewables Directive but with the modifications to that methodology recommended by the Commission Report (pages 8 and 9 and Annex 1 to the Commission Report). Part 2 of Schedule 3B to the 2009 Order as inserted by the Rule adopts the default greenhouse gas emissions for the production of biomass contained in Annex 2 to the Commission Report. The Commission Report is published at http://ec.europa.eu/energy/renewables/bioenergy/sustainability_criteria_en.htm

All generators over 50kW using solid biomass or biogas will be required to report against greenhouse gas emissions criteria and land use sustainability criteria. Generators using waste, biomass wholly derived from waste, landfill gas or sewage gas will be exempt from providing this information (and the other information required under Article 46 of the 2009 Order).

It is intended that generators over 1MW will need to comply with the greenhouse gas emissions criteria and the land use sustainability criteria from 1st April 2013 in order to be eligible for ROCs for electricity generated from solid biomass or biogas. This requirement has not been included in the Rule at this time so that we can take into account experience gained from reporting

against the sustainability criteria and any developments at EU level, before amending the RO in 2013 to include this requirement.

Bioliqid Sustainability Criteria

- e) The Renewables Directive requires that bioliquids used to generate electricity must meet the sustainability criteria set by the directive in order to be eligible for financial support or to count towards compliance with renewable energy obligations. Eligibility for receipt of ROCs for electricity generated from bioliquids is therefore to be dependent upon demonstrating that the sustainability criteria, as set out in the Renewables Directive, have been met. Generators are required to have an independent audit to verify that their data and systems for demonstrating compliance with the sustainability criteria are accurate, reliable and protected against fraud.

The sustainability criteria set by the Renewables Directive are a maximum harmonisation measure. The Renewables Directive prevents the refusal, on other sustainability grounds, to take in account bioliquids which comply with the sustainability criteria set out in the directive. This Rule amends the definition of “fossil fuel” in Article 55F(1) of the Energy Order (Northern Ireland) 2003, to remove bioliquids produced directly or indirectly from fossil fuel from the scope of the definition.

As a consequence bioliquids produced directly or indirectly from fossil fuel will fall within the definition of renewable sources set out in that section. This is in line with the Renewables Directive which treats all bioliquids as a renewable source of energy.

A further consequence is that bioliquids produced directly or indirectly from fossil fuel will become eligible for receipt of ROCs. A new definition, “fossil derived bioliqid”, is inserted into the 2009 Order, and changes are made to ensure that fossil derived bioliquids are generally eligible for support in the same circumstances as other bioliquids. However, the level of support will vary depending upon which band (if any) in Schedule 2 of the 2009 Order the generating station using the fossil derived bioliqid falls into.

Recognising that part of the energy content of a fossil derived bioliqid will have come from fossil fuel, provision is made for determining what proportion of the fossil derived bioliqid is to be regarded as being derived from or composed of fossil fuel. By virtue of Part 5 of the 2009 Order, ROCs will be issued in respect of a proportion only of the electricity generated from the fossil derived bioliqid.

4. Consultation

- 4.1 A 12 week statutory consultation on the proposals was carried out and concluded on 21 October 2010. Over 40 responses were received. Some of the proposals mirrored those set out in the consultation document on the Renewables Obligation

for England and Wales published by DECC and the Scottish Renewables Obligation published by the Scottish Government. UK-wide proposals focused on sustainability criteria for biomass and bioliquids in order to meet the requirements of the Renewable Energy Directive.

- 4.2 The consultation also asked some Northern Ireland specific questions, primarily on increased support for Anaerobic Digestion, support for refurbishment/repowering of generating stations and the Microgeneration Certification Scheme – all detailed above. Although the responsibility for allocating ROC levels for offshore generating stations currently sits within the Renewables Obligation for England and Wales, NI views were sought on DECC proposals for the phasing of offshore wind. A number of respondents did offer comments on the proposals for offshore wind phasing and these were passed to DECC for consideration. Work is underway to transfer the legislative powers for incentivising renewable electricity generation in Northern Ireland territorial waters back to the NI Executive and a consultation on proposals for marine incentivisation issued on 16 December 2010.

5. Equality Impact

- 5.1 The Renewables Obligation is a market-based mechanism whose rules apply in a non-discriminatory way to its participants. The proposed changes will not alter this position.

6. Regulatory Impact

- 6.1 The proposal to introduce MCS requirements for new microgenerators was well received in the consultation. There are sufficient numbers of installers in Northern Ireland (and across the UK) to ensure that consumers are properly protected and have access to certified installer and equipment.
- 6.2 Compliance with the new reporting requirements for generators using solid biomass or biogas is estimated to lead to additional costs on the operators of generating stations depending on the level of generation and size of installation. However, to minimise the burden for small generators, this will not apply to those with generating capacity below 1MWe. For generators using bioliquid and for suppliers of bioliquid, the total annual administrative costs of meeting the sustainability standards imposed on bioliquids would be in the range of £15,000 to £120,000.

7. Financial Implications

- 7.1 The NIRO is a market-led support mechanism through which the cost of providing support to renewable generators is borne by electricity consumers. There are no financial implications for DETI.

8. Section 24 of the NI Act 1998

- 8.1 This Rule does not contravene section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 The proposals linked to the sustainability criteria for biomass and bioliquids are necessary to transpose the Renewable Energy Directive (EC 2009/28).
- 9.2 It is also important to note that the amendments to the NIRO, on AD ROCs and additional capacity were subject to state aid clearance by the European Commission, which has been received.. It is anticipated that approval will be received before the Rule is made.

10. Parity or Replicatory Measure

- 10.1 Similar legislation is being introduced simultaneously in Great Britain in respect of the Obligations in Scotland and in England & Wales. As the three Obligations operate in tandem it is critical that all three pieces of legislation are in place to allow the banded Obligations to come into operation with effect from 1 April 2011. It is proposed that the rule will be laid before the NI Assembly in February with the intention that it will come into operation with effect from 1 April 2011 in tandem with the corresponding arrangements in GB.
- 10.2 This Rule maintains parity on the proposals linked to the sustainability criteria for biomass and bioliquids which are necessary to transpose the Renewable Energy Directive (EC 2009/28). The main difference between the GB and NI legislation is around the proposed increase in ROC levels for electricity generated from Anaerobic Digestion and for existing generating stations adding more capacity and the MCS requirements, all of which are unique to Northern Ireland.

11. Additional information

- 11.1 Not applicable.

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