

**EXPLANATORY MEMORANDUM TO  
THE RENEWABLES OBLIGATION (AMENDMENT) ORDER 2014**

**2014 No.**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument amends the Renewables Obligation Order 2009 (“the 2009 Order”) in order to:

- prevent duplication of support between the renewables obligation and the new electricity market reform arrangements under Part 2 of the Energy Act 2013
- provide for a choice of support under the renewables obligation or under the new electricity market reform arrangements in some circumstances;
- improve the reporting requirements on the use of biomass under the renewables obligation; and
- refer to the latest Combined Heat and Power Quality Assurance Standard and Guidance Notes.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The instrument refers to the International Standard on Assurance Engagements 3000 which is published by, and copyright of, the International Federation of Accountants. Electronic copies can be obtained from [www.ifac.org](http://www.ifac.org). There is a charge for hard copies. The International Federation of Accountants can be contacted at 529 5th Avenue, 6th Floor, New York 10017, United States.

4. **Legislative Context**

- 4.1 The instrument is being made to implement some of the decisions made following a number of consultations related to the renewables obligation.

- 4.2 Decisions made following the July 2013 *consultation on the Transition from the Renewables Obligation to Contracts for Difference*<sup>1</sup> are implemented by articles 4 to 12, 16(2) and 17 to 21 of the instrument (together with the definitions of CFD, excluded capacity, investment contract, national system operator, RO capacity, RO eligible renewable output, total input electricity and total output electricity in article 2(2) of the

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<sup>1</sup> <https://www.gov.uk/government/consultations/transition-from-the-renewables-obligation-to-contracts-for-difference>

instrument). These provisions relate to the transition from the renewables obligation to the new electricity market reform arrangements (“the RO transition”). The Government Response to the July 2013 consultation will be published shortly, combined with a Government Response to the November 2013 *RO Grace Periods Consultation*,<sup>2</sup> given the close linkages in subject matter.

4.3 Decisions set out chapters 4, 5 and 7 and in pages 20, 40, 45 and 47 of the August 2013 *Government Response to the consultation on proposals to enhance the sustainability criteria for the use of biomass feedstocks under the Renewables Obligation (RO)*<sup>3</sup> are implemented by articles 3, 13 to 15, 16(3), 22 and 23 of the instrument, together with the definitions of ISAE 3000 and municipal waste in article 2(2) of the instrument.

4.4 Article 2(3) of the instrument updates the definition of CHPQA in the 2009 Order to refer to the latest versions of the Combined Heat and Power Quality Assurance Standard and Guidance Note 44.

4.5 Further amendments will need to be made to the renewables obligation to implement the outcome of other elements of the July 2013 *consultation on the Transition from the Renewables Obligation to Contracts for Difference* to coincide with some of the secondary legislation to be made under Part 2 of the Energy Act 2013. Further amendments will also be needed to implement the outcome of the November 2013 *RO Grace Periods Consultation*. A draft order making all of these changes is expected to be laid later in 2014.

4.6 Further amendments will need to be made to the renewables obligation to make compliance with the sustainability criteria mandatory for generating stations of 1MW and above which use solid biomass or biogas, and to bring in the tightening greenhouse gas emission targets for 2020 and 2025. A draft order making these changes is expected to be laid in January 2015 following notification under the Technical Standards Directive.

4.7 Article 14 of the instrument amends article 54A of the 2009 Order which implements, in relation to the renewables obligation, the first two sub-paragraphs of Article 18(3) of Directive 2009/28/EC and Commission Decision 2011/13/EU. A transposition note for article 18(3) of Directive 2009/28/EC was attached to the explanatory memorandum to the Renewables Obligation (Amendment) Order 2011. A transposition note for Commission Decision 2011/13/EU was attached to the explanatory memorandum to the Renewables Obligation (Amendment) Order 2013.

4.8 State Aid approval for the RO was given in 2009 (case N414/2008) and most recently in 2013 (case SA.35565 (2013/N)). This instrument does not make any changes that affect the state aid approval.

## **5. Territorial Extent and Application**

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<sup>2</sup> <https://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods>

<sup>3</sup> <https://www.gov.uk/government/consultations/ensuring-biomass-affordability-and-value-for-money-under-the-renewables-obligation>

5.1 This instrument applies to England and Wales. There are complementary renewables obligation orders in Scotland and Northern Ireland which together in effect create a UK wide renewables obligation.

5.2 Under section 32 of the Electricity Act 1989, Scottish Ministers make any renewables obligation order for Scotland. A similar Order to this instrument is expected to be laid before the Scottish Parliament to come into force on the same date as this instrument.

5.3 Under Articles 52-55 of the Energy (Northern Ireland) Order 2003,<sup>4</sup> the Department of Enterprise, Trade and Investment make any renewables obligation order for Northern Ireland. An order amending the renewables obligation for Northern Ireland is expected to be laid before the Northern Ireland Assembly to come into force on the same date as this instrument.

5.4 The Order for Northern Ireland will not include amendments relating to the RO transition because the new arrangements for supporting renewables under Chapter 2 of Part 2 the Energy Act 2013 (contracts for difference) are not expected to be available in Northern Ireland before 2016 and the capacity market provided for under Chapter 3 of Part 2 of the Energy Act 2013 does not extend to Northern Ireland.

## **6. European Convention on Human Rights**

Michael Fallon, Minister of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Renewables Obligation (Amendment) Order 2014 are compatible with the Convention rights.

## **7. Policy background**

- What is being done and why

### RO transition

7.1 As set out in the July 2011 White Paper entitled *Planning our electricity future*, the Department is introducing a new financial support mechanism for large-scale low carbon electricity generation. This support mechanism, the Contract for Difference (CFD), will be open to nuclear, carbon capture and storage, and renewable electricity generators. It is expected to be open to applications from eligible renewable generators from the second half of 2014.

7.2 There will be a transition period during which both the RO and the CFD are open for applications for support from new renewable generating capacity. The RO is being

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<sup>4</sup> 2003 No 419, NI 6, as substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009 No. 35).

amended to take account of the existence of the CFD (and its precursor, investment contracts). The 2009 Order is being amended in the following ways:

- To prevent duplication of support where stations have some generating capacity within the RO and some generating capacity outside of the RO (“dual scheme plants”). In particular, by imposing requirements for the separate measurement of either the electricity supported under the RO or of the electricity generated outside of the RO. Also by setting out rules for the calculation of input electricity and output electricity (articles 4 to 12 of the instrument).
- To prevent preliminary accreditation or accreditation of a new station under the RO or registration of new phases of offshore wind turbines where the operator of the station has exercised their choice of scheme by opting for an investment contract or CFD (articles 17 to 19 of the instrument).
- To create a new process for the registration of additional capacity, by which the operator of the station exercises their choice of scheme by opting for the RO on that additional capacity. And to prevent the registration of further additional capacity where the operator of the station opts for an investment contract or CFD in respect of any part of the generating station (article 20 of the instrument).

7.3 The renewables industry has a significant interest in the RO transition provisions. There is limited wider interest.

#### Biomass sustainability

7.4 The RO is currently the Government’s main policy measure to incentivise the deployment of large-scale renewable electricity generation, including using biomass. The RO plays a major role in helping the UK meet its target under the Renewables Directive to obtain 15% of our energy from renewable sources by 2020.

7.5 There is a wide interest in biomass sustainability. Changes to the reporting and audit requirements for biomass under the RO will contribute to the delivery of the UK’s energy goals by encouraging the use of biomass that delivers genuine greenhouse gas emissions savings compared to fossil fuel use and that is sourced from land that is sustainably managed, and is not obtained from land with high value biodiversity or carbon stocks. The reporting and audit requirements will enable generators to become familiar with the sustainability criteria before the Department intends to amend the RO in 2015 to make compliance with the sustainability criteria mandatory for generating stations of 1MW and above.

7.6 The changes to the reporting requirements for biomass made by article 13 of the instrument include:

- standardising the reporting units;
- information on the forest from where woodfuel was sourced;

- reporting on whether woodfuel meets standards for sustainable forest management (“the timber standard”);
- reporting on whether solid or gaseous biomass used by new dedicated biomass generating stations meets a tighter target of 66.7 grams greenhouse gas emissions. This tighter target reflects the higher cost of carbon savings for dedicated biomass relative to biomass conversions and co-firing.

7.7 Article 14 of the instrument brings the bioliquid sustainability audit report requirements under the renewables obligation more closely into line with similar audit requirements under article 16A of the Renewable Transport Fuel Obligations Order 2007.<sup>5</sup>

7.8 Article 15 of the instrument brings in a requirement for generating stations of 1MW and above to provide an independent sustainability audit report for solid and gaseous biomass used and sets out the penalty for non-compliance. This will give greater public confidence in the accuracy of the reports provided by generators. In the case of biomass that is waste or made wholly from waste, the audit report requirement primarily addresses the assessment of the biomass as being waste or made wholly from waste (and therefore not required to report against the greenhouse gas emissions criteria and the land criteria, as waste is associated with low sustainability risks).

7.9 Article 22 of the instrument allows energy crops that were planted under the Energy Crops Scheme (England) or equivalent to be deemed as meeting the land criteria. This takes account of the sustainability assessment that was included within applications to the Energy Crops Scheme.

7.10 Articles 22 and 23 of the instrument allows additives used to improve the stability of the solid or gaseous biomass (or for certain other purposes) to be deemed as meeting the land criteria and the greenhouse gas emissions criteria, as long as the additive does not exceed 2% of the biomass. Pellet stability improves performance, reduces financial and carbon costs of transport and handling and significantly reduces fire risk.

#### CHPQA definition

7.11 The qualification criteria for biomass, bioliquid, biogas and waste combined heat and power schemes in the CHPQA standard and accompanying Guidance Note 44 have been tightened to reflect improvements in the efficiency of such schemes since the criteria were first developed.

- Consolidation

7.12 This is the fifth instrument to make amendments to the 2009 Order. An informal consolidated version of the Renewables Obligation Order will be made available at the following location: <https://www.gov.uk/government/publications>

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<sup>5</sup> S.I. 2007/3072.

7.13 As set out in the explanatory memorandum to the Renewables Obligation (Amendment) Order 2013, the Department intended to carry out a consolidation. However, a number of further amendments to implement the outcome of the July 2013 *consultation on the Transition from the Renewables Obligation to Contracts for Difference* and to implement the outcome of the November 2013 *RO Grace Periods Consultation* will need to be made this year. Therefore, the Department now intends to consolidate the Renewables Obligation Order as part of those amendments.

## **8. Consultation outcome**

### RO transition

8.1 The Department published a *Consultation on the Transition from the Renewables Obligation to Contracts for Difference* on 17 July 2013. This consultation ran for 10 weeks, until 25 September 2013. The consultation focused on the detailed RO transition arrangements, following on from the December 2010 Electricity Market Reform consultation on the high level principles and the July 2011 White Paper entitled *Planning our electricity future*.

8.2 46 responses were received to the July 2013 consultation, from renewable electricity generators, suppliers and trade associations, and from financial institutions. The majority of respondents supported the policy intent which will be implemented via this instrument. Respondents also suggested some adjustments to the detailed arrangements, to make these more efficient and less burdensome. Some changes were made as a result. Further details will be set out in a Government Response to the July 2013 *consultation on the Transition from the Renewables Obligation to Contracts for Difference*, due to be published shortly.

### Biomass sustainability

8.3 The Department published a *Consultation on proposals to enhance the sustainability criteria and to ensure affordability for the use of biomass feedstocks under the Renewables Obligation (RO)* on 9th September 2012. The consultation closed on 30th November 2012 (12 weeks).

8.4 73 responses were received that provided evidence and feedback in response to the 14 specific questions asked. These were drawn from across the biomass industry including trade associations, power station developers, manufacturers, supply-chains and financiers. Responses were also received from certification bodies, non-government organisations (NGOs), a local authority and two individuals.

8.5 We also received a large number of responses, around 2,000, as part of the Friends of the Earth campaign that highlighted concerns regarding biomass power and carbon emissions. 540 responses were received in response to the Renewable Energy Association's 'Back Biomass campaign' that highlighted benefits from bioenergy. In addition there were a large number of meetings with stakeholders and a significant

amount of evidence was provided and considered. Further details are set out in the 22nd August 2013 *Government Response to the consultation on proposals to enhance the sustainability criteria for the use of biomass feedstocks under the Renewables Obligation (RO)*.

#### CHPQA definition

8.6 The Department published a *Consultation on proposals to amend the calculation of CHP Quality Index for renewable CHP schemes* on 21st December 2012. The Department published some supplementary questions on 21st January 2013. The consultation closed on 8th March 2013. 47 responses were received. Further details are set out in the July 2013 *Government Response to the consultation on reviewing the qualification criteria for renewable Combined Heat and Power schemes*.<sup>6</sup>

### **9. Guidance**

9.1 Ofgem, who administer the renewables obligation, publish guidance documents for different categories of generator wishing to benefit from the renewables obligation. Ofgem will update their guidance to reflect the changes made by this instrument. Drafts of the updated guidance were published on 20th January 2014 and are available at <https://www.ofgem.gov.uk/environmental-programmes/renewables-obligation-ro>.

9.2 DECC, Ofgem and the Environment Agency have developed a tool that can be used to calculate the greenhouse gas emissions from the use of biomass to generate electricity.

### **10. Impact**

#### RO transition

10.1 The additional administrative processes will impose costs on the Authority, and on generators applying to accredit under the RO or adding additional capacity to accredited generating stations. However, this is considered justified in order to enable generators to have a choice between schemes. Generating stations opting to have some capacity supported under each scheme will face the costs of complying with the rules of each scheme, including fuel input and electricity output metering and measurement requirements. Further detail about the impact is set out in annex 4 to the July 2013 *Consultation on the Transition from the Renewables Obligation to Contracts for Difference*.

#### Biomass sustainability

10.2 The requirement to provide information on the biomass used, and to provide a sustainability audit report, will impose costs on generators using biomass. The Authority

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<sup>6</sup> <https://www.gov.uk/government/consultations/revising-certification-criteria-for-renewable-combined-heat-and-power-schemes>

will incur costs in monitoring and enforcing the new information and audit requirements. The Authority is able to recover its costs from the buyout fund, which reduces the amount that is recycled back to electricity suppliers. Further detail is set out in the Impact Assessment for the RO Biomass Sustainability Criteria published on 22nd August 2013.<sup>7</sup>

### CHPQA

10.3 The tighter qualification criteria under the CHPQA Standard and Guidance Note 44 will impact on operators and developers of new renewable combined heat and power schemes. They may receive fewer ROCs under the RO where they do not fully meet the new qualification criteria.

## **11. Regulating small business**

11.1 The legislation applies to small business. The renewables obligation does not apply to unlicensed electricity suppliers.

11.2 Generating stations below 1MW are not required to provide a sustainability audit report on the solid biomass or biogas that they use. For the purpose of reporting on the greenhouse gas emissions from the solid biomass or biogas that they use, generating stations below 1MW may be able to use the default values set out in Schedule 3B to the 2009 Order. Microgenerators are not required to report on the sustainability of the solid biomass or biogas that they use.

11.3 Microgenerators, and anaerobic digestion, solar pv, wind or hydro generating stations at or below 5MW will not be eligible for CFDs or investment contracts and are therefore not required to provide declarations relating to these matters with their application for RO accreditation.

## **12. Monitoring & review**

12.1 The Authority carries out monitoring to ensure compliance by electricity generators and suppliers with their obligations under the RO. The Authority publishes an annual report into the operation of the RO in the preceding obligation year (as required by article 57(1)(f) of the 2009 Order). The Authority also publishes an annual report on the biomass used by generators in the preceding obligation year.

## **13. Contact**

Caroline Season at the Department of Energy and Climate Change Tel: 0300 068 6192 or email: [caroline.season@decc.gsi.gov.uk](mailto:caroline.season@decc.gsi.gov.uk) can answer any queries regarding the biomass sustainability provisions of the instrument.

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<sup>7</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230482/RO\\_Biomass\\_Sustainability\\_Govt\\_Response\\_-\\_Impact\\_Assessment\\_-\\_19-August-2013\\_FINAL\\_for\\_pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230482/RO_Biomass_Sustainability_Govt_Response_-_Impact_Assessment_-_19-August-2013_FINAL_for_pdf.pdf)



Emma McGuire at the Department of Energy and Climate Change Tel: 0300 068 5284 or email: [emma.mcguire@decc.gsi.gov.uk](mailto:emma.mcguire@decc.gsi.gov.uk) can answer any queries regarding the RO transition provisions of the instrument.

Chris Parkin at the Department of Energy and Climate Change Tel: 0300 068 6494 or email: [chris.parkin@decc.gsi.gov.uk](mailto:chris.parkin@decc.gsi.gov.uk) can answer any queries regarding the CHPQA definition in the instrument.