

**EXPLANATORY MEMORANDUM TO**  
**THE RENEWABLES OBLIGATION ORDER 2015**

**2015 No. 1947**

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

2. **Purpose of the instrument**

2.1 This instrument revokes, consolidates and re-enacts the Renewables Obligation Order 2009 (S.I. 2009/785) (“the 2009 Order”), which has been subject to five separate amendments since it came into force on 1 April 2009, and revokes the renewables obligation orders that have amended the 2009 Order.

2.2 This instrument also:

- implements outstanding policy decisions in relation to the reporting requirements and sustainability criteria for stations using solid biomass and biogas feedstocks to generate electricity;
- implements outstanding policy decisions relating to the transition from the renewables obligation to the Contract for Difference and Capacity Market mechanisms introduced as part of the Electricity Market Reform; and
- makes consequential amendments to the Renewables Obligation Closure Order (S.I. 2014/2388) as amended by the Renewables Obligation Closure (Amendment) Order (S.I. 2015/920).

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

3.1 This instrument simplifies the language and the structure of the 2009 Order as amended. A derivation table which cross-references the articles and schedules of this instrument with those in the 2009 Order is attached.

This instrument refers to:

- British Standards (BS EN 15359:2011, BS EN 15402:2011, BS EN 15415-1:2011 and BS EN 15590:2011) which are published by the British Standards Institution (BSI). Copies can be obtained from any of the sales outlets operated by the BSI, by post from the BSI at Milton Keynes or from <http://shop.bsigroup.com/>. There is a charge for copies.
- the International Standard on Assurance Engagements 3000 Revised, Assurance Engagements other than Audits or Reviews of Historical Financial Information 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.

3.2 We consider that the exception in section 28(3) (a) of the Small Business, Enterprise and Employment Act 2015 applies to this instrument. This is because Article 7 of the instrument imposes a requirement on suppliers in England and Wales to provide a certain number of renewables obligation certificates (“ROCs”) to the Gas and Electricity Markets Authority (“the Authority”) or make a payment by 1st September following the obligation period. This is in effect a requirement to make a payment or to pay a premium for renewable electricity. The cost this imposes on suppliers is passed onto bill payers who do not have a choice as to whether they make this payment – it is compulsory. The remainder of the Order makes related provision. On this basis the renewables obligation has been classified as a notional or imputed tax by the Office of National Statistics and as a result, it is subject to the levy control framework.

3.3 For practical reasons (arising from monthly renewables obligation certificate issue) the provisions of this instrument need to come into force on the 1<sup>st</sup> day of a month. It is important to bring the instrument into force as soon as possible whilst recognising that this could mean the instrument coming into force less than 21 day after it is made. This is because:

- Articles 2(1) (the definition of permitted termination event), 45(4)(e) and (5) and 50 of the Order implement outstanding policy decisions in relation to the transition from the renewables obligation to support under the Contract for Difference and investment contract scheme. These articles do not impose new obligations on individuals nor diminish their legal rights, rather they confer a benefit on the operators of stations or combustion units that co-fire biomass. They provide for biomass conversion stations or units which have been awarded an investment contract under the Financial Investment Decision Enabling for Renewables (FIDeR) process to terminate their contract and seek support instead under the RO if the contract is terminated for a permitted termination event. Until Article 50 of the Order comes into force there is no legal basis for projects to switch to the RO in the case of a permitted termination event.
- Articles 28(3), 63 and the majority of changes to Schedules 2 and 3 require generating stations of 1MW or above which use solid biomass and biogas to comply with sustainability criteria and tighten the greenhouse gas emissions targets from 2020 and 2025. Generators and biomass suppliers are familiar with the criteria that they will need to comply with, as are the “Authority” who will monitor and enforce the new requirements. Delaying implementation of these provisions would mean that up to two extra months of potentially unsustainable biomass could be supplied after the Order is made.
- Articles 2(1), 45(4)(e) and 50 interact with other articles in the Order which consolidate and re-enact the provisions of the Renewables Obligation Order 2009. The consolidating provisions (the majority of the Order) do not impose new duties on, or diminish the rights of, individuals. The Department did not receive any comments during consultation on the draft Order that raised concerns about new obligations or a diminution of rights as a result of the consolidating articles.

#### 4. Legislative Context

4.1 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 articles 2, 3, 4, 5, 61(1), 62, 78, 80, 83 and 86(2), Schedule 1 and paragraphs 1, 2(a), 5(1),(4),(5) and (6) of Schedule 3. The power in section 32LA of the Electricity Act 1989 (the “1989 Act”) is used to make consequential amendments to the Renewables Obligation Closure Order through Article 97. Section 32LA was inserted by section 55(1) of the Energy Act 2013. Section 156(3) (f) of the Energy Act 2013 commenced section 55 on Royal Assent (18 December 2013).

4.2 The remainder of this instrument is made using many of the powers conferred by sections 32 to 32L and 32M of the 1989 Act. Section 37 of the Energy Act 2008 substituted section 32 to 32C of the Electricity Act 1989 with new sections 32 to 32M. Section 110(1) (a) of the Energy Act 2008 commenced the Energy Act 2008 for order making purposes only on Royal Assent (26<sup>th</sup> November 2008). Section 37 was commenced for all remaining purposes on 1<sup>st</sup> April 2009 by article 3(a) of the Energy Act (Commencement and Savings) Order 2009 (S.I. 2009/45). Section 32M (1) was amended by article 2 of the Renewables Obligation (Amendment) Order 2011 (S.I. 2011/984) and section 55(2) of the Energy Act 2013.

4.3 The renewables obligation is an obligation imposed on licensed electricity suppliers. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates in respect of each megawatt hour of electricity that each supplies to customers in Great Britain during a specified period known as an obligation period. The renewables obligation is administered by the Gas and Electricity Markets Authority (“the Authority”) who issue renewable obligation certificates to renewable electricity generators in respect of their eligible renewable output.

4.4 The instrument is being made to consolidate the Renewables Obligation Order 2009 as amended and to implement the outstanding decisions made following a number of consultations related to the renewables obligation. These are:

4.5 Outstanding policy decisions in relation to making compliance with the sustainability criteria mandatory for generating stations of 1MW or above which use for solid biomass and biogas and tightening the greenhouse gas emissions targets for 2020 and 2025 as set out in Chapter 2, pages 13 – 14 and Chapter 3, pages 17 – 21 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* (the “August 2013 Government response”)<sup>1</sup> and pages 28 – 31 of the August 2014 *Government response to the consultation on adjustments to sustainability and reporting provisions for biomass* (the “August 2014 Government response”)<sup>2</sup> are implemented by articles 28(3) and 63 and Schedules 2 and 3. The

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/231102/RO\\_Biomass\\_Sustainability\\_consultation\\_-\\_Government\\_Response\\_22\\_August\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/231102/RO_Biomass_Sustainability_consultation_-_Government_Response_22_August_2013.pdf).

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/343005/Response\\_to\\_Biomass\\_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343005/Response_to_Biomass_Consultation.pdf).

August 2013 consultation recommended the introduction of mandatory sustainable forest management criteria, based on the UK's Timber Procurement Policy (UK-TPP). In 2014 the Timber Standard for Heat and Electricity<sup>3</sup> was developed and published following stakeholder discussion. Based on the UK-TPP, the "Timber Standard" set out a definition of sustainable which included ten sustainability criteria (S1 – S10), as well as demanding that all wood used must be legal, as per the EU Timber Regulation (EUTR)<sup>4</sup>. These legality and sustainability requirements are intended to work together to prevent illegally deforested wood from being used in UK biomass heat and power stations. The Timber Standard also clarified the types of evidence that could be used to demonstrate compliance with these criteria, i.e. Category A evidence (from approved certification schemes), as well as Category B bespoke evidence (including permitting a risk based regional approach)

4.6 Outstanding policy decisions regarding technical adjustments to the reporting requirements and sustainability criteria for solid biomass and biogas set out in pages 11 – 28 of the August 2014 Government response are implemented by articles 2(1), 82 and Schedule 3.

4.7 The outstanding policy decision relating to the transition from the renewables obligation to support under the Contract for Difference as set out in pages 52 – 58 of the March 2014 *Government Response to the consultation on the Transition from the Renewables Obligation and Grace Periods*<sup>5</sup> is implemented by Articles 2(1), 45 and 50. The outstanding decision relating to the transition from the renewables obligation to the capacity market as set out in pages 55 – 56 of the March 2014 *Government Response to the consultation on the Transition from the Renewables Obligation and Grace periods*<sup>6</sup> is implemented by articles 1, 45 and 48.

4.8 This instrument consolidates and updates the Renewables Obligation Order 2009 as amended by the Renewables Obligation (Amendment) Order 2010 (S.I. 2010/1107) (the "2010 Order"), the Renewables Obligation (Amendment) Order 2011 (S.I. 2011/984) (the "2011 Order"), the Waste (England and Wales) Regulations (S.I. 2011/988), the Renewables Obligation (Amendment) Order 2013 (S.I. 2013/768) (the "2013 Order") and the Renewables Obligation (Amendment) Order 2014 (S.I. 2014/893) (the "2014 Order"). It revokes the 2010, 2011, 2013 and 2014 Orders and the Renewables Obligation (Amendment) Order 2010 (S.I. 2010/829) (which was superseded by the 2010 Order). It also makes consequential amendments to the Renewables Obligation Closure Order (as amended) through article 97.

4.9 The provisions relating to sustainability criteria and reporting for biomass have been notified under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in

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<sup>3</sup> <https://www.gov.uk/government/publications/timber-standard-for-heat-electricity>

<sup>4</sup> Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p.23).

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289078/Transition\\_and\\_Grace\\_Periods\\_Government\\_Response\\_-\\_12\\_Mar\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289078/Transition_and_Grace_Periods_Government_Response_-_12_Mar_2014.pdf), Chapter 9, paragraphs 9.5-9.19 and 9.35- 9.41 (pages 52-58 )

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289078/Transition\\_and\\_Grace\\_Periods\\_Government\\_Response\\_-\\_12\\_Mar\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289078/Transition_and_Grace_Periods_Government_Response_-_12_Mar_2014.pdf), Chapter 9, paragraphs 9.26 – 9.28 (pages 55-56)

the field of technical standards and regulations (the Technical Standards Directive). No comments or detailed opinions were received.

4.10 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**

5.1 This instrument applies to England and Wales, except for article 97 (amendments to the Renewables Obligation Closure Order) which also applies in Scotland. 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. An order amending the renewables obligation for Scotland is expected to be laid before the Scottish Parliament to come into force on 1 December 2015.

5.3 Under articles 52-55 of the Energy (Northern Ireland) Order 2003, 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 1 December 2015.

5.4 The order for Northern Ireland will not include amendments relating to the transition from the renewables obligation to the new electricity market reform arrangements 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**

6.1 Andrea Leadsom, 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 Order 2015 are compatible with the Convention rights”.

## **7. Policy background**

### Biomass sustainability

7.1 The renewables obligation plays a major role in helping the UK meet its target under the Renewables Directive to obtain 15% of energy from renewable sources by 2020. Since 2002 the renewables obligation has been Government’s main policy

measure to incentivise the deployment of large-scale renewable electricity generation, including using biomass as a fuel.

7.2 There is a wide interest in biomass sustainability. The 2009 Order introduced requirements on generators with capacity above 50kW to provide information to the Authority regarding the sustainability of the biomass used. The 2011 Order introduced mandatory sustainability criteria (land and greenhouse gas criteria) for bioliquids and required provision of an annual independent sustainability audit report in order to transpose certain requirements from the Renewables Directive. Since April 2014, generating stations of 1MW and above have been required to report on whether woodfuel meets a standard for sustainable forest management (land criteria) and a greenhouse gas emissions saving target (greenhouse gas criteria) and provide an independent sustainability audit report for solid biomass and biogas used.

7.3. As set out in section 4 above, the introduction of mandatory sustainability criteria have been reached following consultation and is a recognition across government, industry and NGOs of the importance of ensuring sustainability of biomass. It also follows discussion in both Houses in March 2014.

7.4 Making compliance with land and greenhouse gas emissions criteria mandatory for generating stations of 1MW and above using solid biomass or biogas, and implementing some minor technical changes will ensure that renewable generation from solid biomass and biogas only receives financial support where that biomass delivers genuine greenhouse gas emissions savings compared to fossil fuel, and that biomass is either sourced from land that is sustainably managed (where the biomass is woodfuel), or sourced from “protected sources” (other solid biomass and biogas). To ensure that there is suitable oversight, plants using biomass which have a capacity greater than or equal to one megawatt, must prepare an annual sustainability report which is compiled by a third party auditor/verifier in accordance with ISAE 3000 or equivalent standard requirements.

7.5 Use of feedstocks that are biomass waste, made wholly from waste, animal manure or slurry are exempt from the scope of the sustainability criteria, reflecting the lower sustainability risks and that energy from waste is identified as a priority pathway in the UK Bioenergy Strategy.<sup>7</sup> However users of waste feedstocks will still be required to provide profiling information to enable Government to monitor the role of these feedstocks in biomass power generation. Use of feedstocks that are landfill gas and sewage gas are exempt from the scope of the sustainability criteria for practical reasons.

7.6 For the purpose of the greenhouse gas criteria, greenhouse gas savings must be calculated using a lifecycle methodology as set out under the 2009 EU Renewable Energy Directive, reflecting the recommendations made in the European Commission’s 2010 report on requirements for sustainability criteria for solid biomass and biogas used for heat, electricity and cooling. This methodology considers the emissions from the cultivation, harvesting, processing and transport of the biomass feedstocks. It also includes direct land use change where the land use has changed category since 2008. It does not include indirect impacts such as displacement effects.

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<sup>7</sup> <https://www.gov.uk/government/publications/uk-bioenergy-strategy>

A biomass and biogas carbon calculator has been developed for generators to easily comply with this methodology.<sup>8</sup>

7.7 New dedicated biomass power generation will be subject to a tougher target to 2020 reflecting the relatively higher cost of carbon savings compared to the replacement of coal with biomass in existing stations. Before this date existing biomass power generation will remain on the target of a 60% greenhouse gas emissions saving compared to the EU fossil electricity average to reflect that long-term contracts will be in place and these plants will need time to transition to the tighter target.

7.8 The land criteria for woodfuel have been designed to protect certain habitats from exploitation and take into account a range of social, economic and environmental issues including protecting biodiversity, land use rights, sustainable harvesting and regeneration rates. These criteria have been developed following engagement with interest groups and were consulted upon in August 2013 and 2014. These criteria go beyond those currently recommended or required in the EU and internationally and aim to support the development of sustainable biomass supply-chains. All woodfuel used to generate electricity must also comply with the EU Timber Regulations (EUTR),<sup>9</sup> which makes it illegal to place illegally logged wood on the European market. The land criteria for non-woodfuel solid biomass and biogas corresponds to the land criteria for bioliquids and biofuels set out in the Renewables Directive.

7.9 The August 2013 Government response also set out the Government's intention that Contracts for Difference (CfD) awarded under the first Delivery Plan period for bioenergy will follow the same approach as the land and greenhouse gas criteria set under the renewables obligation. The August 2013 Government response also set out the Government's intention that Contracts for Difference (CfD) awarded under the first Delivery Plan period for bioenergy will follow the same approach as the land and greenhouse gas criteria set under the renewables obligation. It is expected that the CfD contracts will include the same land and greenhouse gas requirements

7.10 In February 2013 the Government announced<sup>10</sup> its intention that the biomass sustainability measures under the Renewable Heat Incentive should be broadly comparable to the renewables obligation (with some differences to account for the smaller scale nature of the heat market the fact that most biomass supported under the RHI is expected to come from the UK sources). The Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015 (S.I. 2015/145) which came into force on 5 February 2015 amended the Renewable Heat Incentive Scheme Regulations (S.I. 2011/2860) accordingly

7.11 Article 63 of this instrument requires that renewables obligation certificates must not be issued in respect of electricity generated from solid or gaseous biomass by a generating station of 1MW capacity or above (apart from waste, biomass wholly

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<sup>8</sup> UK Solid and Gaseous Biomass Carbon Calculator at : <https://www.ofgem.gov.uk/publications-and-updates/uk-solid-and-gaseous-biomass-carbon-calculator>

<sup>9</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010. The Regulation is enforced in the UK through the Timber and Timber Products (Placing on the Market) Regulations 2013.

<sup>10</sup> <https://www.gov.uk/government/consultations/renewable-heat-incentive-providing-certainty-and-improving-performance>

derived from waste, animal excreta, landfill gas or sewage gas) unless the greenhouse gas and land criteria are met.

7.12 The methodology for calculating the greenhouse gas emissions for solid or gaseous biomass are set out in Schedule 2 (parts 1- 4). Paragraph 1 includes new definitions of “relevant ceiling” and “relevant target” which introduce a tightened greenhouse gas target trajectory for 2020 and 2025.

7.13 Paragraph 2(b) of Schedule 2, together with the new definition of “relevant biomass” in paragraph 1 of that Schedule, introduces a methodology for calculating an annual average greenhouse gas emissions figure for all biomass used by a generating station other than animal excreta, bioliquid, landfill gas, sewage gas or waste. The purpose of this calculation is to ensure that generators are not penalised where an individual biomass consignments exceeds the greenhouse gas target due to circumstances beyond their control (for example due to inclement weather extending transport times). This is subject to the provision that each consignment of biomass must not exceed an overall ceiling, which prevents mixing consignments of extremely high emissions with lower emission consignments as a means of meeting the target. Article 28(3) defers the issue of renewables obligation certificates in respect of biomass that exceeds the greenhouse gas target but is below the overall ceiling until two months after the reporting year.

7.14 Paragraph 7 of Schedule 2 includes a minor change to the methodology for calculating the greenhouse gas emissions from the use of biomass to enable this calculation to be made on a monthly basis.

7.15 The land criteria for solid and gaseous biomass are set out in Schedule 3. Paragraph 6, together with the new definition of “woody biomass” in paragraph 1, sets out the land criteria for woodfuel which set out the standard for sustainable forest management practice from the UK Timber Standard for Heat and Electricity (the “Timber Standard”).<sup>11</sup> This standard was published in 2014 following development and thorough engagement with interested and relevant parties. Further information on how to comply with the woodfuel land criteria is set out in published guidance in the Woodfuel Guidance.<sup>12</sup>

7.16 Paragraph 6(1)(b)&(d), together with the definition of “forest” in article 2(1) provides exemptions from the land criteria for certain low risk categories of wood such as arboricultural residues and material removed from non-forest land for ecological reasons. In the absence of a viable outlet in the energy market, these residues and materials would be disposed of by burning in situ or in land fill, and Government considered that enabling a market for this material was a more sustainable option. This was consulted on in 2014<sup>13</sup> and a majority of respondents agreed with the proposal.

7.17 Commission Regulation 1307/2014/EU establishes criteria and geographical ranges to determine which grassland qualifies as highly biodiverse grassland for the

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<sup>11</sup> DECC (2014) Timber Standard for Heat and Electricity <https://www.gov.uk/government/publications/timber-standard-for-heat-electricity>

<sup>12</sup> <https://www.gov.uk/government/publications/woodfuel-guidance>

<sup>13</sup> August 2014 Government response, pages 17 – 26.



purposes of Article 17(3)(c) of Directive 2009/28/EC (the “Renewables Directive”). Paragraph 5(1)(c) together with the definition of “highly biodiverse grassland” in paragraph 1 implements Article 17(3)(c) in relation to the Renewables Obligation, by adding ‘highly biodiverse grasslands’ to the list of protected land types in the land criteria for non-wood solid and gaseous biomass. The introduction of the provision should avoid biomass being sourced from such grasslands. This was also consulted on in 2014.<sup>14</sup>

7.18 This instrument makes technical adjustments to the reporting requirements for solid and gaseous biomass. Articles 82(4)(e)(iv) and 82(6) amend the definition of ‘saw logs’ to match the local specifications for ‘saw logs’ in the place where the closest sawmill operates and to reference details of the local specification used. This will ensure that where logs are taken to a sawmill for processing, that the relevant definition is used and, if logs are sent to a processor other than a sawmill, that the most appropriate definition for that locality is used. Article 82(4)(e)(v) simplifies the scope of information required on tree species.<sup>15</sup> These changes were consulted on in 2014<sup>16</sup> and take into account stakeholder feedback. They aim to enable Government to more effectively monitor the use of different types of wood by the bioenergy sector as well as making the reporting provisions more workable for industry.

#### RO Transition measures

7.19 As set out in the July 2011 *White Paper entitled “Planning our electricity future”*, the Department has introduced a new financial support mechanism for large-scale low carbon electricity generation. This support mechanism, the Contract for Difference, is open to nuclear, carbon capture and storage, and renewable electricity generators. The White Paper also announced the establishment of a capacity market mechanism. The purpose of the capacity market is to ensure there is sufficient investment in the overall level of reliable capacity (both supply and demand side) to ensure secure electricity supplies. It will bring forward investment at least cost to consumers by allowing the market to set a price for capacity competitive.

7.20 To ensure a smooth shift from the renewables obligation to the Contract for Difference or capacity market for renewable generators, suppliers and consumers alike, Government set out in the March 2014 *Government Response to the consultation on the renewables obligation transition and grace periods*, a number of transitional measures. These aim to provide the renewables industry the assurance and comfort needed to encourage ongoing investment, safeguarding security of electricity supply and ensuring value for money for consumers. Many of the transition policy measures were implemented through the 2014 Order. This instrument implements the outstanding transition policy measures.

7.21 Articles 48 and 45(4)(d) and (5) of this instrument provide for biomass co-firing and full biomass conversion stations and units to bid into the capacity market and leave the renewables obligation if successful in that bid. Plants or units which are being transferred into the capacity market will be able to claim support under the

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<sup>14</sup> August 2014 Government response, pages 26 – 28.

<sup>15</sup> August 2014 Government response, pages 14 – 16.

<sup>16</sup> August 2014 Government response, page 11 – 14.

renewables obligation until the last day prior to the first day of the delivery year under the capacity agreement as long as they have given a capacity market transfer notice to the Authority. This will ensure that all stations which are primarily coal-firers but have at some point claimed low levels of co-firing renewable obligation certificates, and remain accredited under the renewables obligation, have a chance to enter the capacity market. In addition, a biomass co-firing unit or station can withdraw from the capacity market to fully convert under the renewables obligation prior to the first day of the delivery year under the capacity agreement or before closure of the renewables obligation to new generating capacity from 1 April 2017, whichever is earlier. Article 48 and related provisions come into effect 1 month after the rest of this instrument to allow time for generators who have already signed a capacity market agreement to complete and present to the Authority the required capacity market transfer notice. Further details are set out in paragraphs 9.26 - 9.28 of the March 2014 *Government Response to the consultation on the Renewables Obligation transition and Grace periods*.

7.22 Articles 50(1) and (4) and 45(4)(e)(ii) and (5) and the definition of “permitted termination event” in Article 2(1) of this instrument provide for a combustion unit which has previously entered into an investment contract to regain entry to the renewables obligation if the investment contract is terminated for a ‘permitted termination event’, e.g. if the European Commission refuses to approve the investment contract. The definition of permitted termination event in Article 2(1) of this instrument does not include the circumstance where “an amendment to the investment contract that is made, or proposed, by the Secretary of State in the light of any standard terms and conditions of contracts for difference issued under section 11 of the Energy Act 2013.” This reflects the fact that the mechanism for amendment to the investment contract under section 11 of the Energy Act 2013 is now spent.

### Consolidation

7.23 The renewables obligation will close to new capacity from 1 April 2017 (through the Renewables Obligation Closure Order 2014). From 2027 it will be replaced by a Fixed-Price Certificate scheme which will in GB oblige the Secretary of State or the Contact for Difference (CfD) counterparty body to purchase certificates at a fixed price, and the Northern Ireland Authority for Utility Regulation or the Contact for Difference (CfD) counterparty body to do so in Northern Ireland. The instrument consolidates and updates the Renewables Obligation Order 2009 (“the 2009 Order”) which had been subject to five separate amendments since it came into force on 1 April 2009.

7.24 In particular, the instrument re-enacts the provisions of the 2009 Order which implement articles 17 to 19 of the Renewables Directive, and Commission Decision 2011/13/EU on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States, in England and Wales in relation to bioliquids. Save for the implementation of Article 17(3)(c) of the Renewables Directive as explained above, the implementation of articles 17 to 19 of the Renewables Directive and the Commission Decision is unchanged. An updated transposition note is annexed.

## 8. Consultation outcomes

### Biomass sustainability

8.1 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)*<sup>17</sup> on 9 September 2012. The consultation closed on 30 November 2012 (12 weeks).

8.2 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.

8.3 Around 2000 responses were also received, as part of the Friends of the Earth campaign that highlighted concerns regarding biomass power and carbon GHG 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.

8.4 74 % of respondents agreed that the sustainability criteria should be made mandatory for generating stations of 1MW and above. Further details are set out in the August 2013 Government Response.

8.5 On 16 June 2014 the Department published a *Consultation on adjustments to sustainability and reporting provisions for biomass*<sup>18</sup>. The consultation ran for four weeks until 14 July 2014. The consultation sought views on 5 specific aspects of the sustainability and reporting, where minor technical adjustments and clarification were needed to ensure the effective operation of the sustainability criteria in the RO. These related to:

- the reporting provisions for 'saw logs' and 'tree species'
- possible exemptions from the Timber Standard for certain types of wood and wood residues
- the list of protected land types for non-wood solid and gaseous biomass
- the detailed GHG annual averaging methodology under the RO

8.6 The Department received a total of 43 responses from a wide range of stakeholders representing UK and international biomass producers and suppliers, UK generators, the forest industries, trade associations, Government agencies and environmental NGOs. The majority of respondents supported the proposals, apart from the one relating to exemption from the land criteria in the Timber Standard,

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/320567/biomass\\_sustainability\\_consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320567/biomass_sustainability_consultation.pdf)

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/343005/Response\\_to\\_Biomass\\_Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343005/Response_to_Biomass_Consultation.pdf)

where a number of respondents suggested that the exemption should be applied to a wider range of wood and wood residues. Government considered the points raised but decided that it should not extend the exemption to diseased wood, wood removed from forests for ecological reasons, or saw mill residues because of potential serious unintended consequences on wider sustainable forest management practices. Further information is set out in the August 2014 Government response.

### RO transition

8.7 The Department published a *Consultation on the Transition from the Renewables Obligation to Contracts for Difference*<sup>19</sup> 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*.

8.8 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. 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 are set out in the March 2014 *Government Response to the consultation on the Transition from the Renewables Obligation to Contracts for Difference and Grace periods*.<sup>20</sup>

### Consolidation

8.9 A draft of this instrument was published for a three week technical consultation on 24 March. We received 18 responses mainly from biomass generators and participants in the biomass supply chain. None of the responses referred to the consolidation aspects of the draft Order. The majority of responses focused on the way in which the biomass sustainability land criteria as set out in the Timber Standard has been incorporated in the draft Order. Some responses also sought clarification on the process and documentary requirement for biomass co-firing and conversion projects moving from the RO to the capacity market. Some changes were made as a result. Further details are set out in the *Summary of responses received to the technical consultation on the draft Renewables Obligation Order 2015 Outcomes to the consultation on the draft Renewables Obligation Order* published on 21 July.

## **9. Guidance**

9.1 The Authority, who administer the renewables obligation, publish guidance documents for different categories of generator wishing to benefit from the

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223489/ROtransitionconsultation17July2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223489/ROtransitionconsultation17July2013.pdf)

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289078/Transition\\_and\\_Grace\\_Periods\\_Government\\_Response\\_-\\_12\\_Mar\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289078/Transition_and_Grace_Periods_Government_Response_-_12_Mar_2014.pdf),

renewables obligation, including guidance on the sustainability criteria. The Authority will update their guidance to reflect the changes made by this instrument.

9.2 The Department consulted on three guidance notes<sup>21</sup> to generators and the biomass supply chain on the application of the Timber Standard and final versions were published on 22<sup>nd</sup> December 2014. This guidance explains how the land criteria for woodfuel can be complied with and in particular the forms of evidence that can be used to demonstrate compliance. The Department intends to update references to the sustainability criteria in this guidance to reflect that the land criteria for woodfuel are now set out in Schedule 3 of this instrument.

## **10. Impact**

### Biomass sustainability

10.1 The requirement to provide information on the biomass used, and to provide a sustainability audit report, imposed costs on generators using biomass as well as biomass supply chain participants. Making compliance with the sustainability criteria compulsory for generators using solid biomass and biogas and the tightening of the greenhouse gas emissions targets should not increase costs for generators or biomass suppliers as generators are already required to report against these standards. They may impose an indirect cost on generators in the form of lost income from renewable obligation certificates if they fail to meet the sustainability criteria. An impact assessment of the costs of this proposal was carried out in 2013 and is annexed. It included a consideration of the impact of the introduction of mandatory sustainability criteria on the price and availability of feedstock and concluded it is likely the scale of these costs to be minimal in the central scenario, where the impact on resource costs is relatively small. DECC continues to monitor and update its bioenergy evidence base.

10.2 The Authority will incur costs in monitoring and enforcing the new information and audit requirements. The Authority is able to recover its costs from the RO buyout fund, which reduces the amount that is recycled back to electricity suppliers.

### RO transition

10.3 The additional administrative processes will impose costs on the Authority, and on generators who choose to terminate an investment contract or capacity market agreement under permitted circumstances and apply instead to accredit under the RO. However, these are considered justified in order to enable generators to have a choice between schemes.

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<sup>21</sup> The Woodfuel Advice Note provides an overview of the Timber Standard and where to find further information. The Mass Balance document sets out how suppliers may operate a mass balance system which complies with the sustainability requirements. The Checklist for Regional Supply Base Evaluation suggests the kinds of bespoke evidence that would be acceptable in meeting sustainability requirements. Copies of all 3 notes are at <https://www.gov.uk/government/publications/woodfuel-guidance>

10.4 Further details about the impacts are set out in the analytical analysis at Annex E of the March 2014 *Government Response to the Consultation on the Transition from the Renewables Obligation to Contracts for Difference and on Grace Periods*.<sup>22</sup>

## **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 have used. 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 of the instrument. Micro generators (less than 50kW) are not required to report on the sustainability of the solid biomass or biogas that they use in order to receive ROCs. It was estimated in 2014 that less than 1% of the quantity of biomass used to produce electricity would be from generators below 1MW, and may amount to a maximum amount of 150,000 oven dried tonnes per annum in 2016/17.

11.3 Micro generators, and anaerobic digestion, solar PV, wind or hydro generating stations at or below 5MW are not be eligible for CFDs or investment contracts or capacity market agreements and so will not be affected by the measures relating to the RO transition.

## **12. Monitoring & review**

12.1 As explained in paragraph 3.3 we consider that the exception in section 28(3) (a) of the Small Business, Enterprise and Employment Act 2015 applies to this instrument.

12.2 Article 22(1) of the Renewables Directive requires the UK to submit a report to the European Commission on progress in the promotion and use of energy from renewable sources by 31 December 2011, and every two years thereafter (up to 31 December 2021).

12.3 Article 42(1) enables a review of support levels under the renewables obligation to be commenced at four yearly intervals. Article 42 (2) enables the Secretary of State to carry out a review of all or any of the support levels if satisfied that one or more of the conditions in that paragraph are satisfied.

12.4 The Authority carries out monitoring to ensure compliance by electricity generators and suppliers with their obligations under the renewables obligation. The Authority publishes an annual report into the operation of the renewables obligation in the preceding obligation year. The Authority also publishes an annual report on the biomass used by generators in the preceding obligation year.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289078/Transition\\_and\\_Grace\\_Periods\\_Government\\_Response\\_-\\_12\\_Mar\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289078/Transition_and_Grace_Periods_Government_Response_-_12_Mar_2014.pdf),

12.5 DECC monitors the sustainability information reported to the Authority, which contributes to the ongoing development of the bioenergy evidence base.

### **13. Contact**

Matthew Ford at the Department of Energy and Climate Change Tel: 0300 068 8360  
email: matthew.ford@[decc.gsi.gov.uk](mailto:matthew.ford@decc.gsi.gov.uk) can answer any queries regarding the biomass sustainability provisions of the instrument.

Julie Whiting at the Department of Energy and Climate Change Tel: 0300 068 6194  
email: [julie.whiting@decc.gsi.gov.uk](mailto:julie.whiting@decc.gsi.gov.uk) can answer any queries regarding this instrument.