POLICY NOTE

THE RENEWABLES OBLIGATION (SCOTLAND) AMENDMENT ORDER 2015

SSI 2015/XXX

The Renewables Obligation (Scotland) Amendment Order 2015 ("the amending Order") was made in exercise of the powers conferred by sections 32(1), 32B(1), 32C(1) to (6), 32D(1) and (2), 32J(3) and 32K(1) and (3) of the Electricity Act 1989 and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. The instrument is subject to affirmative procedure.

Introduction

1. Scottish Ministers are committed to the promotion of renewable energy in Scotland; as part of this, they have set a target that the equivalent of 100% of the electricity generated in Scotland (as a proportion of gross consumption) should come from renewable sources by 2020, with an interim target of 50% by 2015. This commitment is an important part of a package of initiatives aimed at tackling climate change. The Renewables Obligation (Scotland) Order 2009 ("the ROS"), is a key measure in terms of increasing the amount of renewable electricity generating capacity in Scotland.

Enabling powers

2. Most of the provisions in the amending Order are made under powers in the Electricity Act 1989 ("the 1989 Act"). However, some of the provisions of the amending Order amend provisions in the Renewables Obligation (Scotland) Order 2009 which relate to implementation of Articles 17 and 19 of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources[1] ("the Renewables Directive"). Articles 7 and 14 and paragraphs 1, 2(a) and 5(1) and (4) to (6) of Schedule 2 of the amending Order implement Articles 17(1) and (3) to (5) and those provisions are made under section 2(2) of the European Communities Act. For some other aspects of the amending Order, there might be a doubt about whether the powers in the 1989 Act are sufficient to fully implement obligations imposed by Articles 17 and 19 of the Renewables Directive and section 2(2) is also cited to ensure that no difficulty arises in relation to the sufficiency of Ministers' powers under the 1989 Act.

The Renewables Obligation

3. A Renewables Obligation (Scotland) Order was first made by the Scottish Ministers in 2002 under powers in the Electricity Act 1989. It was replaced in 2009 by the ROS. The ROS works in tandem with similar legislation covering the rest of the UK and creates an obligation on electricity suppliers to produce a certain number of certificates – known as SROC's – as a proportion of the amount of electricity which they supply to customers in Scotland.

4. In line with the wishes of the energy sector and others affected by the provisions of the ROS it was introduced in almost identical terms to the Renewables Obligation Order 2002

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1 OJ L 140, 5.6.2009, p.16.

(the ROO), which applied in England and Wales and which also came into force on April 1 2002. Following reviews of its operation and to accommodate the introduction of a number of changes, the ROS has been amended each April from 2004 to 2014 (with the exception of 2012).

5. The Renewables Obligation works by giving generators of electricity from eligible renewable sources a number of Renewable Obligation Certificates ("SROCs") for each MWh of electricity they generate. "Banding" of support, allowing different technologies to receive different levels of support, was introduced in April 2009 to drive greater and more rapid deployment of renewable electricity generation. This means that support levels vary depending on the way in which the renewable electricity has been generated (wind, solar PV etc) and depending on when the generating station was accredited under the ROS, or when additional generating capacity was added to the station.

6. The market for SROCs is created by imposing an annual and increasing obligation on licensed electricity suppliers to provide a number of SROCs. Suppliers can demonstrate compliance with their Obligation by providing Ofgem (who administer the renewables obligation scheme) with either the requisite number of SROCs, or by paying the buyout price, or by a combination of the two methods. The buy-out price is a fixed sum payable to Ofgem in lieu of providing SROCs; payments thus made constitute the buy-out fund. The monies paid into the buy-out fund are shared between those suppliers who have provided SROCs, and in proportion to the number of certificates they produce. This means that those suppliers who are unable to produce SROCs effectively reward their competitors, driving the market value of SROCs and thus providing income for renewable generators.

7. The ROS also provides for reporting requirements and sustainability criteria for generators using biomass for electricity generation. Generators are required to submit information on the sustainability of their biomass fuels to Ofgem. This includes information regarding land use and greenhouse gas emissions.

The Renewables Obligation (Scotland) Amendment Order 2015

Purpose

8. The amending Order implements policy decisions in relation to the reporting requirements and sustainability criteria for stations using solid biomass and biogas feedstocks to generate electricity. These amendments include the following:

> (1) Making compliance with the sustainability criteria mandatory for generating stations of 1MW or above which use solid biomass and biogas, as set out in the November 2013[2] Scottish Government response to consultation on biomass sustainability criteria (article 6 inserts new article 22ZA into the ROS).
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> (2) Tightening the greenhouse gas emissions targets for 2020 and 2025 and averaging greenhouse gas emissions across the year, as set out in the November 2013[3] Scottish Government response to consultation on biomass sustainability criteria and the

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2 http://www.gov.scot/Topics/Business-Industry/Energy/Obligation-12-13/BiomassSustainabilityConsultation
3 See Footnote 2

February 2015[4] Scottish Government response to technical adjustments to sustainability provisions for solid and gaseous biomass (article 8 amends article 24 of the ROS, article 13 inserts new Schedule A1A and article 14 substitutes Schedule A2)

(3) Technical adjustments to the reporting requirements and sustainability criteria for solid biomass and biogas as set out in the February 2015[5] Scottish Government response to technical adjustments to sustainability provisions for solid and gaseous biomass (article 3(1) amends article 2(1) of the ROS, article 11 substitutes article 54 and article 14 substitutes Schedule A2). These include:

- Replacing the definition of "sawlog" in the ROS with a requirement to use a definition for saw logs which matches the local specification for saw logs in place where the sawmill operates and to reference details of the local specification used.

- Replacing the current requirement to report on tree species with a requirement for generators to report on the proportion of wood used which is hardwood and the proportion which is softwood.

- Requiring a report on whether any wood used was likely to have come from protected or threatened species.

- Providing exemptions from the timber standard for:
  - arboricultural residues (urban areas)
  - material removed from non-forest land for ecological reasons

- Adding 'highly biodiverse grasslands' to the list of protected land types in the land criteria.

9. The amending Order also:

- Corrects a defect in article 21B by amending the date by which a CfD transfer notice cannot be changed from "21st March 2027" to "31st March 2027".

- Amends article 30D to include – as part of the current requirement for the operator to make a declaration to Ofgem – a requirement for the developer to confirm that it has an appropriate demonstration lease from The Crown Estate. This has been amended to facilitate Ofgem's administration of the RO scheme.

Consultation

10. A number of consultations took place on the changes contained in the amending Order .

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4 http://www.gov.scot/Topics/Business-Industry/Energy/Obligation-12-13/BiomassResponse2015
5 See Footnote 4

- Biomass sustainability criteria were consulted on between 5 October 2012 and 11 January 2013[6]. The Scottish Government's response was published on 7 November 2013[7].

- Technical adjustments to sustainability provisions for solid and gaseous biomass were consulted on between 13 August and 5 November 2014[8]. The Scottish Government's response was published on 5 February 2015[9].

European Directive

11. The ROS, in tandem with the other UK Renewable Obligations, forms an important part of the UK's compliance with the Renewables Directive.

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

State Aid

13. All UK Renewables Obligation Orders require State Aid clearance as the recycling buyout funds to compliant suppliers is deemed by the Commission to constitute State Aid.

14. The amending Order does not make any changes that affect the state aid approval.

Financial Impacts

15. The requirement to provide information on the biomass used, and to provide a sustainability audit report, will impose costs on generators using biomass. Ofgem will incur costs in monitoring and enforcing the new information and audit requirements. Ofgem is able to recover its costs from the buyout fund, which reduces the amount that is recycled back to electricity suppliers.

Scottish Government
Energy Division
September 2015

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6 http://www.gov.scot/Topics/Business-Industry/Energy/Obligation-12-13/ROConsultationOct2010
7 See Footnote 2
8 http://www.gov.scot/Topics/Business-Industry/Energy/Obligation-12-13/BiomassConsult2014
9 See Footnote 4