STATUTORY INSTRUMENTS

2010 No. 829

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation (Amendment) Order 2010

Made - - - -	*16th March 2010*
Coming into force - -	*1st April 2010*

This Order is made by the Secretary of State in exercise of the powers conferred by sections 32(1) and (2), 32A(1) and (2), 32C(1), (2), (7) and (8), 32D(1) and (2), 32G, 32J(3) and 32K(1) and (3) of the Electricity Act 1989(**a**).

The Secretary of State has had regard to those matters stated in section 32D(4) of that Act.

The Secretary of State has consulted the Gas and Electricity Markets Authority, the National Consumer Council(**b**), electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as considered appropriate in accordance with section 32L(1) of that Act.

In accordance with section 32L(2) of that Act a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly the Secretary of State makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation (Amendment) Order 2010 and comes into force on 1st April 2010.

(2) This Order extends to England and Wales only.

Amendments

2. The Renewables Obligation Order 2009(**c**) ("the 2009 Order") is amended by articles 3 to 18.

The renewables obligation

3. In article 5(3) of the 2009 Order (the renewables obligation) for "calculations A, B and C" substitute "calculations A and B".

(**a**) 1989 c.29, as substituted by section 37 of the Energy Act 2008 (c.32).
(**b**) Section 32L(1) refers to "the Council", this is defined in section 111(1) as substituted by section 30(4)(b) of the Consumers, Estate Agents and Redress Act 2007 (c.17).
(**c**) S.I. 2009/785.

Calculation B

4. In article 9 of the 2009 Order (calculation B) for paragraph (3) substitute—

"(3) The figure representing the number of renewables obligation certificates likely to be so issued, increased by—

(a) in relation to the obligation period ending on 31st March 2011, 8 per cent, and

(b) in relation to any other obligation period, 10 per cent,

is calculation B for that obligation period.".

Omission of Calculation C

5. Omit article 10 of the 2009 Order (calculation C).

Determining the total number of renewables obligation certificates to be produced in an obligation period

6.—(1) Article 11 of the 2009 Order (determining the total number of renewables obligation certificates to be produced in an obligation period) is amended as follows.

(2) In paragraph (1) for "calculations A, B and C" substitute "calculations A and B".

(3) In paragraph (2) after the words "calculation A is" insert "equal to or".

(4) In paragraph (3) at the beginning omit "Subject to paragraph (4),".

(5) Omit paragraph (4).

Determining the number of renewables obligation certificates to be produced by a designated electricity supplier in order to discharge its renewables obligation

7. In article 12 of the 2009 Order (determining the number of renewables obligation certificates to be produced by a designated electricity supplier in order to discharge its renewables obligation) omit paragraph (3).

Cases and circumstances when a ROC must not be issued

8. After article 17 of the 2009 Order (excluded generating stations) insert—

"**Generating stations accredited for longer than 20 years**

17A.—(1) Subject to paragraphs (2) and (3), ROCs are not to be issued in respect of any electricity generated—

(a) by an existing generating station, after 31st March 2027;

(b) by a new generating station, on or after the 20th anniversary of the date on which it was accredited or 31st March 2037 (whichever is the earlier).

(2) Where, at the time it generates electricity, a generating station's total installed capacity is greater than its original capacity, paragraph (1) applies only in relation to ROCs which are to be issued in respect of electricity generated using the station's original capacity.

(3) In relation to the remainder of the electricity generated by the generating station, ROCs are not to be issued on or after the 20th anniversary of the date on which, in the Authority's view, the additional capacity first formed part of the station or 31st March 2037 (whichever is the earlier).

(4) Where electricity generated by a generating station using additional capacity added at a particular time ("relevant additional capacity") is not measured separately from—

(a) electricity generated by it using additional capacity (if any) which was added to it at a different time, or

(b) electricity generated by it using its original capacity,

the electricity generated by it which is to be treated (for the purposes of paragraph (3)) as having been generated using the relevant additional capacity is the relevant percentage (the relevant percentage for these purposes being the relevant additional capacity at the date of generation of the electricity expressed as a percentage of the station's total installed capacity at that date).

(5) In this article—

"existing generating station" means a generating station which was accredited as at 25th June 2008;

"new generating station" means a generating station which was accredited after 25th June 2008;

"original capacity", in relation to a generating station, means—

(a) in the case of an existing generating station, the capacity of the station as accredited and any additional capacity which (in the Authority's view) formed part of the station on 25th June 2008;

(b) in the case of a new generating station, the capacity of the station as accredited.

Microgenerators in respect of which feed-in tariffs may be available

17B. ROCs are not to be issued in respect of any electricity generated on or after 1st April 2010 by a microgenerator—

(a) if that microgenerator is a hydro generating station, or

(b) if that electricity is generated from—

(i) gas formed by the anaerobic digestion of material which is neither sewage nor material in a landfill;

(ii) the direct conversion of sunlight into electricity; or

(iii) wind.

Generating stations (other than microgenerators) accredited before feed-in tariffs become available

17C.—(1) This article applies to a generating station (other than a microgenerator or a generating station whose electricity is sold pursuant to a NFFO arrangement) which is accredited on or after 15th July 2009 and at a time when no relevant financial scheme is in force.

(2) Where a relevant financial scheme ("the scheme") comes into force in relation to a generating station to which this article applies ("the station"), the operator of the station ("A") (or, where A is not entitled to receive financial incentives in respect of the station under the scheme, the person who is so entitled ("B")), must (if they have not done so beforehand) notify the Authority in writing within 5 months of the date on which the scheme comes into force whether support for electricity generated by the station should be given in the form of ROCs or in the form of financial incentives under the scheme.

(3) Where A or (as the case may be) B—

(a) notifies the Authority in writing that support should be given in the form of financial incentives under the scheme, and

(b) that notification is received by the Authority before or within 5 months of the date on which the scheme comes into force,

the notification (once it has been accepted by the Authority in writing) cannot be withdrawn and paragraph (4) or (as the case may be) (5) applies.

(4) Where the notification was received by the Authority before 1st April 2010 and the scheme comes into force on that date, ROCs are not to be issued in respect of any electricity generated by the station to which the notification relates on or after that date.

(5) In any other case ROCs are not to be issued in respect of any electricity generated by the station to which the notification relates on or after 1st April in the obligation period immediately following the obligation period in which the notification was received by the Authority.

(6) Where written notification in relation to the station is not received by the Authority before or within 5 months of the date on which the scheme comes into force, support (if any) for electricity generated by the station will be given in the form of ROCs.

(7) In this article, "relevant financial scheme", in relation to a generating station, means a scheme of financial incentives—

(a) which the Secretary of State establishes, or for the administration of which the Secretary of State makes arrangements, in exercise of the power in section 41(1) of the Energy Act 2008, and

(b) under which support may be given to encourage the generation of electricity by the station.

Generating stations (other than microgenerators) accredited after feed-in tariffs become available

17D.—(1) This article applies to a generating station (other than a microgenerator or a generating station whose electricity is sold pursuant to a NFFO arrangement) in respect of which an application for accreditation is determined at a time when a relevant financial scheme ("the scheme") is in force.

(2) The operator of a generating station to which this article applies ("A") (or, where A is not entitled to receive financial incentives in respect of that station under the scheme, the person who is so entitled ("B")), must notify the Authority in writing, before the application for accreditation is determined, whether support for electricity generated by that station should be given in the form of ROCs or in the form of financial incentives under the scheme.

(3) Where, before the application for accreditation is determined, A or (as the case may be) B notifies the Authority in writing that support for electricity generated by the generating station should be given in the form of financial incentives under the scheme, that notification (if the application for accreditation has been approved) cannot be withdrawn and ROCs must not be issued in respect of any electricity generated by that station.

(4) In this article, "relevant financial scheme" has the same meaning as in article 17C.

Articles 17C and 17D: supplemental

17E.—(1) This article applies to a generating station—

(a) to which article 17C applies; or

(b) to which article 17D has applied.

(2) Nothing in article 17C or 17D prevents the issue of ROCs in respect of electricity generated by a generating station to which this article applies if support which was formerly available under a financial scheme to encourage the generation of electricity by that station is no longer available by virtue of the size of that station's total installed capacity.

(3) In this article, "financial scheme" means a scheme of financial incentives which the Secretary of State establishes, or for the administration of which the Secretary of State makes arrangements, in exercise of the power in section 41(1) of the Energy Act 2008.".

Banding

9. After article 30 of the 2009 Order (generating stations which were accredited as at 11th July 2006) insert—

"**Offshore wind generating stations using relevant wind turbines**

30A.—(1) This article applies to a generating station—

(a) which is offshore,

(b) which generates electricity from wind, and

(c) which generates electricity in whole or in part using relevant wind turbines.

(2) Subject to paragraphs (3) to (5), the amount of electricity to be stated in each ROC issued in respect of electricity generated by a generating station to which this article applies is to be determined in accordance with article 27(4).

(3) Subject to paragraphs (4) and (5), the amount of electricity to be stated in each ROC issued in respect of electricity generated by a generating station to which both this article and article 30 apply is to be determined in accordance with article 30.

(4) Where electricity generated by a generating station to which this article applies is generated using relevant wind turbines, the amount of electricity to be stated in each ROC issued in respect of that electricity is 0.5 megawatt hours.

(5) Where the electricity generated by a generating station to which this article applies is generated in part using relevant wind turbines, but the amount of electricity so generated is not measured separately from electricity generated otherwise than by using those turbines, the percentage of the electricity which is to be treated (for the purposes of paragraph (4)) as having been generated using those turbines is the total installed capacity of those turbines at the date of generation of the electricity expressed as a percentage of the total installed capacity of the station at that date.

(6) For the purposes of this article a generating station is offshore if—

(a) its turbines are situated wholly in offshore waters, and

(b) it is not connected to dry land by means of a permanent structure which provides access to land above the mean low water mark.

(7) In this article—

"relevant wind turbine", in relation to a generating station, means a wind turbine which, in the Authority's view, forms part of the station from a date no earlier than 1st April 2010 and no later than 31st March 2014;

"total installed capacity", in relation to a generating station, has the meaning given by article 2 (interpretation) and, in relation to a relevant wind turbine, means the maximum capacity at which the turbine could be operated for a sustained period without causing damage to it (assuming there was no interruption to the wind powering it).

(8) This article is subject to article 32.".

Refusing to issue and revoking ROCs

10.—(1) Article 41 of the 2009 Order (refusing to issue and revoking ROCs) is amended as follows.

(2) In paragraph (2) for "must" substitute "may".

(3) For paragraph (3) substitute—

"(3) The Authority must revoke any ROC which it has issued where the ROC certifies the matters within section 32B(4) or (6) of the Act and the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in respect of which the ROC was issued has been supplied to customers in Northern Ireland.".

(4) In paragraph (4)(a) after "ROC" insert "is accurate or".

(5) After paragraph (6) insert—

"(7) This article is subject to article 41A(2) to (4).".

Refusing to issue and revoking ROCs: supplemental

11. After article 41 of the 2009 Order insert—

"**Where ROCs cannot be revoked**

41A.—(1) A ROC cannot be revoked where it has been produced to the Authority under article 5 (the renewables obligation).

(2) Nor can a ROC be revoked by the Authority under article 41(2) or (4) more than six years after it has been issued.

(3) Where the Authority would have revoked a ROC ("the original ROC") under article 41(2) or (4) but for the fact that it has already been produced to it under article 5, the Authority must, subject to paragraph (4), refuse to issue a further ROC ("the further ROC") in respect of electricity generated by the generating station in relation to which the original ROC was issued.

(4) The Authority shall refuse to issue the further ROC under paragraph (3) only if the original ROC was—

(a) issued no more than six years previously; and

(b) not issued to an electricity supplier under article 34(2) to (4).".

Late payments to discharge the renewables obligation

12. In article 44 of the 2009 Order (late payments to discharge the renewables obligation) after paragraph (6) insert—

"(6A) If, by the end of the late payment period, the designated electricity supplier has not paid to the Authority the amount referred to in paragraph (2) and all interest required to be paid on that amount under paragraph (3), the supplier will not have discharged its renewables obligation for the relevant period.".

Information to be provided to the Authority where electricity is generated from biomass

13. In article 54(1)(a) of the 2009 Order (information to be provided to the Authority where electricity is generated from biomass) after "biomass" insert "(other than landfill gas or sewage gas)".

Preliminary accreditation and accreditation of generating stations

14. In article 58(2)(a) of the 2009 Order (preliminary accreditation and accreditation of generating stations) for "article 17 (excluded generating stations)" substitute "article 17 (excluded generating stations) or article 17B (microgenerators in respect of which feed-in tariffs may be available)".

The 2009 Order: Schedule 1

15. In Schedule 1 to the 2009 Order (calculation of the ROC obligation) in the first column of the table (obligation period) for "2027" substitute "2037".

The 2009 Order: Schedule 2

16. In Part 1 (interpretation) of Schedule 2 to the 2009 Order (electricity to be stated in ROCs), at the appropriate place insert—

""dedicated biomass with CHP" means electricity generated from regular biomass by a qualifying combined heat and power generating station in a month in which the generating station generates electricity only from regular biomass or only from biomass;"; and

""dedicated energy crops with CHP" means electricity generated from energy crops by a qualifying combined heat and power generating station in a month in which the generating station generates electricity only from energy crops or only from biomass;".

The 2009 Order: Schedule 3

17. In Schedule 3 to the 2009 Order (amount of relevant shortfall for the relevant obligation period) in the first column of the table (obligation period) for "2027" substitute "2037".

The 2009 Order: Schedule 4

18.—(1) Paragraph 3 of Schedule 4 to the 2009 Order (the ROC register) is amended as follows.

(2) In sub-paragraph (b) omit "or, in the case of Northern Ireland certificates, the Northern Ireland authority".

(3) In sub-paragraph (b)(v) omit "or, as the case may be, the Northern Ireland authority".

Transitionals

19. Nothing in this Order is to affect—

(a) the issue and revocation of a renewables obligation certificate in respect of electricity generated before 1st April 2010, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to such issue or revocation, under the 2009 Order;

(b) any obligations or requirements imposed on an operator of a generating station or some other person in respect of the obligation period ending on 31st March 2010, and anything which falls to be done or determined (whether by the generator or some other person) in relation to any such obligations and requirements, under the 2009 Order;

(c) any obligations and functions of the Authority in respect of that obligation period, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to it, under the 2009 Order.

Hunt of Kings Heath
Minister of State,
Department of Energy and Climate Change

16th March 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Renewables Obligation Order 2009 ("the 2009 Order") and makes transitional provision.

The 2009 Order imposes an obligation ("the renewables obligation") on all electricity suppliers which supply electricity in England and Wales. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates (ROCs) in respect of each megawatt hour of electricity that each supplies during a specified period known as an obligation period (article 5 of the 2009 Order). The renewables obligation is administered by the Gas and Electricity Markets Authority ("the Authority") who issue ROCs to renewable electricity generators in respect of their renewable output. These certificates are sold to electricity suppliers with or without the associated renewable electricity.

The number of ROCs to be produced by a supplier (per megawatt hour of electricity supplied) is determined by the Secretary of State by reference to three calculations as set out in Part 2 of the 2009 Order. Articles 3 to 7 of this Order remove one of those calculations (calculation C) and amend calculation B.

Article 8 inserts provisions specifying additional situations in which ROCs are not to be issued by the Authority. New article 17A introduces a 20 year limit on support. Articles 17B to 17E specify when ROCs are not to be issued in light of the Secretary of State exercising the power in section 41(1) of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs) to make a financial scheme.

Article 9 inserts new article 30A into the 2009 Order which gives an increase in support where an offshore wind generating station uses relevant wind turbines.

Articles 10 and 11 amend article 41 and insert new article 41A into the 2009 Order. Article 41A requires the Authority, in certain circumstances, to refuse to issue further ROCs to a generator.

Article 12 inserts new paragraph (6A) into article 44 of the 2009 Order which clarifies the existing legal position in relation to the late payment period (defined in Article 42 of the 2009 Order).

Article 13 modifies article 54(1)(a) of the 2009 Order to exclude landfill gas and sewage gas from the sustainability reporting requirements in article 54 of the 2009 Order.

Article 14 is a consequential amendment to article 58(2)(a) of the 2009 Order to reflect the insertion of new article 17B into the 2009 Order by article 8 of this Order.

Article 15 amends Schedule 1 to the 2009 Order to extend the renewables obligation to 31st March 2037. Article 17 similarly extends the operation of Schedule 3 to the 2009 Order.

Article 16 inserts definitions into Part 1 of Schedule 2 to the 2009 Order for "dedicated biomass with CHP" and "dedicated energy crops with CHP". Article 18 removes the references to the Northern Ireland Authority in Schedule 4 to the 2009 Order.

Article 19 makes transitional provision in respect of the obligation period ending on 31st March 2010.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Renewables Obligation Team, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and is annexed to the Explanatory Memorandum which is available alongside this Order on the OPSI website.

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