EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION (AMENDMENT) ORDER 2013

2013 No. 768

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 implements the outcome of the review of support levels for renewable electricity under the Renewables Obligation (RO). The instrument implements the decisions set out in the Government Responses to the banding review published on 25th July 2012 and on 18th December 2012 (with the exception of a notification process for new dedicated biomass stations, which is to be implemented later by a separate instrument for 1st October 2013).

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

3.1 The Joint Committee should note that while the amendments made by this instrument to the Renewables Obligation Order 2009 ("the 2009 Order") apply to England and Wales only, there are complementary Orders in Scotland and Northern Ireland which together in effect create a UK wide renewables obligation.

3.2 The European Commission are in the process of assessing the changes made by this instrument for the purpose of providing state aids approval. We anticipate that we will receive this approval before this instrument is made.

4. Legislative Context

4.1 The instrument is being made to implement the outcome of a review of the levels of support under the 2009 Order (except in respect of a notification process for new dedicated biomass stations which is to be implemented later by a separate instrument). The review was commenced in October 2010 in accordance with article 33(2) of the 2009 Order. The instrument is also being made to implement Commission Decision 2011/13/EU on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States ("the Commission Decision").

4.2 The powers under section 2(2) of the European Communities Act 1972 (as read with paragraph 1A of Schedule 2 to that Act) are used to make articles 2(9) and 21 of the

instrument. The remainder of the instrument is made using many of the powers conferred by sections 32 to 32K of the Electricity Act 1989.

4.3 Under section 32 of the Electricity Act 1989, Scottish Ministers make any Renewables Obligation Order for Scotland. To date this has been made in terms virtually identical to the England and Wales Order. It is intended that a Renewables Obligation (Scotland) Amendment Order 2013 will come into force on the same date as this instrument.

4.4 Articles 52-55 of the Energy (Northern Ireland) Order 2003 (2003 No 419, NI 6) substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009 No. 35) replicate the provisions of sections 32 to 32M of the Electricity Act 1989. A Northern Ireland Renewables Obligation Order was made using these powers. It is intended that a Renewables Obligation (Amendment) Order (Northern Ireland) 2013 will come into force on the same date as this instrument.

4.5 The Commission Decision is implemented by article 21 of the instrument. The Commission Decision was made under the third paragraph of article 18(3) of Directive 2009/28/EC (the “Renewables Directive”) and sets out certain information that operators of generating stations using bioliquids must provide when demonstrating compliance with the sustainability criteria set by the Renewables Directive for bioliquids.

4.6 Article 54(3)(j) of the 2009 Order currently requires the operator of a generating station using biomass (including bioliquids) to provide information identifying whether the biomass was certified under an environmental quality assurance scheme, and if so, the name of the scheme. The Commission Decision contains a similar requirement, but only in relation to bioliquids supplied under a voluntary scheme recognised by the Commission. By continuing to require this information in respect of solid and gaseous biomass, and in respect of bioliquids supplied under any environmental quality assurance scheme, the instrument does more than is necessary to implement the Commission Decision.

4.7 Article 21 of the instrument follows the same approach as the Commission Decision in cross referring to Annex 5 to the Renewables Directive. This will also ensure that future Commission measures amending that Annex, as envisaged by the Renewables Directive, can be automatically taken into account.

4.8 The Scotland and Northern Ireland Orders will implement the Commission Decision for the renewables obligations in Scotland and Northern Ireland. Articles 8 and 14 of the Renewable Transport Fuels Obligation (Amendment) Order 2011 implemented the Commission Decision for the Renewable Transport Fuel Obligation.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 Similar Orders will be laid before the Scottish Parliament and the Northern Ireland Assembly.

6. European Convention on Human Rights

John Hayes, 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 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 This instrument sets the support levels for renewable electricity under the RO from 1 April 2013. The RO is currently the Government's main policy measure to incentivise the deployment of large-scale renewable electricity generation. It 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.

7.2 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. It is estimated that the banding changes introduced through this measure will deliver 79 Terrawatt Hours (TWh) of generation per annum by 2017 - 11TWh more per year than if we were to leave the current RO support levels as they are - and keep the UK on track in the most cost effective way to deliver our ambition of 108 TWh a year of large-scale renewable electricity generation in 2020 consistent with achieving our target under the Renewables Directive.

7.3 This new renewables generation will also contribute to the UK's energy security by reducing our reliance on imported energy and extending the lives of some existing coal generating plants, which had been expected to close due to new climate change requirements, by providing support to enable them to convert to cleaner biomass generation. In addition, the changes will help secure substantial capital and supply chain investment, estimated to be in the region of £20-25 billion over the next four years.

7.4 The banding changes set out in the instrument are designed to deliver good value for money for consumers, who bear the cost of the scheme through their energy bills. Overall, the proposals increase the efficiency of the RO by delivering lower average subsidy cost per MWh of renewables by around 11%.

7.5 Under the RO, 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 accredited under the RO, or when additional generating capacity was added to the station. In most cases, the support levels for each way of generating can be found using

the table in Part 2 of Schedule 2 to the 2009 Order. Article 25 of the instrument replaces that table with a new table which sets out the support levels applying to generating capacity accredited before 1 April 2013, and additional capacity added before that date.

Article 26 of the instrument inserts a new table, as Part 2A of Schedule 2 to the 2009 Order, which sets out the support levels applying to generating capacity accredited on or after 1 April 2013, and additional capacity added after that date.

Part 1 of Schedule 2 to the 2009 Order contains definitions for all the different ways of generating listed in the tables. Article 24 of the instrument makes a number of changes to these definitions. In particular:

- new bands are created for “ground mounted solar PV” and “building mounted solar PV”. This will enable different levels of support to be given, depending on whether the solar PV equipment is installed on the ground.

- electricity generated from landfill gas will cease to be eligible for support under the RO because the banding review concluded it was now economically viable without further subsidy. But there are a number of exceptions, including for:
    - electricity generated by capacity accredited, or additional capacity added, before 1st April 2013. This is in accordance with our grandfathering policy;
    - microgenerators;
    - electricity generated under new bands called “closed landfill gas” and “landfill gas heat recovery”. Supporting the “closed landfill gas” band at 0.2 ROCs/MWh will enable methane from closed sites to be exploited for electricity generation. Supporting the “landfill gas heat recovery” band at 0.1 ROC/MWh will incentivise the cost-effective capture of waste heat for electricity generation from open or closed landfill sites.

- the existing “co-firing” bands are replaced by new bands for “co-firing of regular bioliquid”, “low-range co-firing”, “mid-range co-firing”, “high-range co-firing” and “unit conversion”. These bands will enable the support levels to increase as the proportion of biomass or energy crops burned in a combustion unit increases. The policy objective is to encourage the increased use of biomass in place of fossil fuel.

- a new band is created for “station conversion”. This is for certain stations which used to burn fossil fuel and which have converted so that they are able to generate electricity only from biomass or only from energy crops. The existing “dedicated biomass” bands are amended to exclude these stations because they do not face the same costs as a new build dedicated biomass station.

Part 6 of the 2009 Order, as amended by this instrument, contains a number of exceptions to the support levels set out in the tables in Part 2 and Part 2A of the Order. In particular:

- article 11 of the instrument inserts a number of temporary exceptions to the usual support levels for co-firing. In order to keep within the RO budget, the support level for

“high-range co-firing” is lower in the 2013/14 obligation period. The support levels for “co-firing of regular bioliquid” and “low-range co-firing” are also lower in the 2013/14 and 2014/15 obligation periods.

- article 28 of the 2009 Order provides a CHP uplift on all or part of the renewable electricity generated by qualifying combined heat and power stations when co-firing or generating in the way described as “dedicated biomass”. Article 10 of the instrument replaces article 28 of the 2009 Order. It retains the CHP uplift for generating capacity accredited, and additional capacity added, before 1st April 2013.

For stations accredited on or after 1st April 2013, and additional capacity added on or after that date, the operator of the generating station must make a declaration in order to be eligible for the CHP uplift. The declaration is the means by which the operator informs the Authority that they have opted for the CHP uplift in place of the Renewable Heat Incentive. It is intended to change the Renewable Heat Incentive (“RHI”) legislation in due course, so that operators which have not chosen to get the CHP uplift on electricity generated using generating capacity accredited, or additional capacity added, on or after 1 April 2013, may be able to get the RHI for heat produced using that generating capacity.

- the energy crop uplift that is currently available for co-firing will end from 1st April 2013. This is to control possible new spend on large scale energy crops. Article 11 of the instrument inserts new articles 28D and 28E into the 2009 Order which retain an energy crop uplift for low-range co-firing until 31 March 2019 for electricity generated using energy crops supplied under certain agreements made before 7th September 2012. This recognises the impact that withdrawal of the energy crop uplift for co-firing could have on investment in the energy crop supply chain.

- article 12 of the instrument reduces the support levels in article 29 of the 2009 Order for microgenerators accredited, or additional capacity added, on or after 1 April 2015. The reduction is in line with the reductions in support for offshore wind.

- article 15 of the instrument inserts a new article 30B into the 2009 Order, which increases the support level to 5 ROCs per MWh for certain wave and tidal generating capacity, up to a 30MW limit at each station. The higher level of support recognises the considerable potential of the marine energy sector in the UK while the 30MW limit is intended to ensure expenditure on marine developments remain within the RO budget.

The instrument also makes a number of other changes to the 2009 Order, including:

- the definition of energy crops is replaced by article 2(5) of the instrument, so that it only includes the types of crops that are listed. The policy objective is to prevent the energy crop uplift from being available for food crops.

- article 3 of the instrument expands the definition of biomass to include all fossil derived bioliquids. This will enable fossil derived bioliquids to receive the same level of support as other bioliquids.

- article 4 of the instrument removes the co-firing cap in article 13(3) to (5) of the 2009 Order and replaces it with a 4% cap on the proportion of their renewables obligation that suppliers can meet using renewables obligation certificates issued in respect of electricity generated from bioliquid ("a bioliquid cap"). The co-firing cap is removed in order to encourage the increased use of biomass in place of fossil fuel. The bioliquid cap is created in order to prevent a significant diversion of bioliquids away from other uses, such as for transport.

- article 5 of the instrument expands the list of permitted ancillary purposes in article 22(3) of the 2009 Order to include corrosion control and fouling reduction as the burning of small amounts of fossil fuel in a converted or co-firing biomass boiler may prevent significant corrosion or fouling effects.

- article 22 of the instrument inserts a new article 58ZA into the 2009 Order, which enables certain generating stations to be registered as grace period generating stations. The capacity of these stations as accredited will be able to obtain the levels of support available to generating stations accredited on 31st March 2013, and so avoid the cuts in support that will apply to some of the bands for stations accredited on or after 1st April 2013 (such as onshore wind and hydro).

The policy recognises that generating stations may face delays in their commissioning for reasons outside of their control. Accreditation under the RO cannot take place until the station has commissioned. The ability to register as a grace period generating station is strictly limited to certain delays in grid connection or radar works, and specified evidence must be provided.

- Definitions for the five different types of generating capacity are inserted into article 2 of the 2009 Order by article 2(2), (6) and (11) of the instrument. Definitions are created for "pre-2013 capacity", "2013/14 capacity", "2014/15 capacity", "2015/16 capacity" and "post-2016 capacity" because generating capacity accredited, or additional capacity added in each of these periods may be entitled to different levels of support.

- Article 25 of the 2009 Order sets out the rules for apportioning the renewable output of a generating station between the different ways in which it generates electricity. Article 7 of the instrument adds rules for apportioning the renewable output of a generating station between the different types of generating capacity that it uses. These rules determine the proportion of the renewable output generated in each way, by each type of generating capacity.

- Consolidation

7.6 This is the fourth instrument to make amendments to the 2009 Order. An informal consolidated text will be made available at the following location: https://www.gov.uk/government/organisations/department-of-energy-climate-change.

7.7 The Government has consulted on further changes to the RO concerning the sustainability criteria for solid and gaseous biomass. Subject to the outcome of that consultation, the Government intends to carry out a consolidation at the same time as making those changes.

8. Consultation outcome

8.1 The Government publicly consulted on the banding review (and on the implementation, in relation to the RO, of the Commission Decision) from 20th October 2011 to 12th January 2012 (12 weeks). The Government response to that consultation was published on 25th July 2012 and can be found at the following location: https://www.gov.uk/government/consultations/supporting-large-scale-renewable-electricity-generation

8.2 Further consultations on the levels of support for solar PV and on proposals to ensure affordability for the use of biomass under the RO were carried out from 7th September 2012 to 19th October 2012. Six week consultations were considered sufficient in these cases because they addressed issues which followed on from the outcome of the main RO banding review consultation. By a letter published on 16th November 2012, views were also sought by 30th November 2012 on retaining a minimum gross calorific value requirement under the RO for gaseous fuels produced by means of gasification or pyrolysis. A short focused consultation lasting two weeks was considered appropriate as the issue under consideration was technical in nature and of interest to a limited number of stakeholders. The written exercise was complemented by focused discussions with key stakeholders. The Government Response addressing the results on these further consultations was published on 18th December 2012 and can be found at the following locations:

- https://www.gov.uk/government/consultations/solar-pv-banded-support-levels
- https://www.gov.uk/government/consultations/proposals-to-ensure-sustainability-and-affordability-for-the-use-of-biomass-under-the-renewables-obligation.

8.3 A total of 3,824 responses were received to the main banding review consultation, which ended 12 January 2012. Of these, 281 were from organisations with the remainder submitted by individuals, of which 3,413 were in response to specific campaigns. The solar PV consultation attracted 45 responses, the biomass affordability consultation received 49 responses, while 24 responses were submitted for the consultation on the gross calorific value requirement of gaseous fuels. Detailed Summaries of the responses to the consultations are included in the Government response documents.

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 December 2012 and are available at www.ofgem.gov.uk/ro .

10. Impact

10.1 The RO applies to:

- businesses which are licensed suppliers of electricity;
- businesses which generate eligible renewable electricity;
- charities, voluntary bodies, or the public sector to the extent they act as either generators of eligible renewable electricity or as licensed suppliers.

10.2 While there is some cost to individual businesses of producing their certificates to Ofgem, or of claiming their certificates we believe that it is commensurate with the reward achieved, and no more than is proportionate and appropriate.

10.3 The Renewables Obligation is administered by Ofgem and therefore imposes a number of duties on the Authority with associated costs. The additional deployment incentivised by the banding changes will increase Ofgem's costs. There is existing provision in the Renewables Obligation Order 2009 to allow for these costs to be met from monies paid into the buyout fund.

10.4 We assume that energy suppliers pass the cost of compliance with the RO on to energy bill payers. The new subsidy levels in the draft Order have been determined with a view to minimising impacts on consumer bills and deliver the best possible value for money for bill payers in terms of the average subsidy cost of the resulting additional renewable electricity generation.

10.5 Impact Assessments are attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website. The Impact Assessments have already been published on the Department's internet page.

11. Regulating small business

11.1 The legislation applies to small business. The renewables obligation does not apply to unlicensed electricity suppliers. Hydro, Anaerobic Digestion, solar PV and wind generating stations at or below 50kw are not eligible for support under the RO. The bioliquids cap does not apply to electricity generated by combined heat and power generating stations below 1MW in size or microgenerators of 50kw or less declared net capacity.

12. Monitoring & review

12.1 Article 33(2) of the 2009 Order enables a review of the support levels under the RO to be commenced at four yearly intervals. However, no such further reviews of the support levels under the RO are planned in advance of the proposed closure of the RO to

new generating capacity on 31st March 2017. Meanwhile, reviews of all or any of the support levels under the RO can be carried out at any time if the Secretary of State is satisfied that one or more of the conditions in article 33(3) of the 2009 Order are satisfied.

12.2 The Authority carries out monitoring to ensure compliance by electricity generators and suppliers with their obligations. The Authority publishes an annual report into the operation of the obligation in the preceding obligation year.

13. Contact

Kieran Power at the Department of Energy and Climate Change Tel: 0300 068 6189 or email: kieran.power@decc.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

This transposition note sets out the way in which the Commission Decision of 12th January 2011 on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States ("the Commission Decision") is to be implemented in relation to bioliquids through instruments made by the Secretary of State in relation to England and Wales.

Separate implementation action for the Commission Decision has been taken by the Secretary of State for Transport in relation to biofuels through articles 8 and 14 of the Renewable Transport Fuel Obligations (Amendment) Order 2011.

Scotland and Northern Ireland are also taking separate implementation action for the Commission Decision in relation to bioliquids.

This Order does more than is necessary to implement the Commission Decision in the following respects:
(a) it retains the requirement for the operator of a generating station using solid or gaseous biomass to provide information identifying whether the biomass was certified under an environmental quality assurance scheme, and if so, the name of the scheme; and
(b) it retains the requirement for the operator of a generating station using bioliquids to provide the information in respect of any environmental quality assurance scheme (not just those schemes recognised by the European Commission).

Article	**Objective**	**Implementation**	**Responsibility**
1(a)	Identify whether the bioliquid used by the generating station was certified under a voluntary scheme recognised by the European Commission.	Article 54A(3)(f)(ii) of the Renewables Obligation Order 2009 ("the 2009 Order") as amended by article 21(3) of the Renewables Obligation (Amendment) Order 2013 ("the 2013 Order").	Operators of generating stations using bioliquids under the renewables obligation must include this information in their bioliquid sustainability audit report.
1(b)	Identify the name of the voluntary scheme.	Article 54A(3)(f)(i) and (8) of the 2009 Order as amended by article 21(3) and (4) of the 2013 Order.	As above.
1(c)	Identify whether a restored degraded land bonus was claimed as part of the greenhouse gas emissions savings from the use of the bioliquid.	Article 54A(3)(g)(i) and (8) of the 2009 Order as amended by article 21(3) and (4) of the 2013 Order.	As above.
1(d)	Identify whether an emission saving from soil carbon accumulation via improved agricultural management was	Article 54A(3)(g)(ii) and (8) of the 2009 Order as amended by article 21(3) and (4) of the 2013 Order.	As above.

	claimed for the use of the bioliquid.		
2	Preserves the Commission's ability to maintain a dialogue and exchange information concerning sustainability criteria for bioliquids	None required	European Commission