EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION CLOSURE ORDER 2014

2014 No. 2388

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.

2. Purpose of the instrument

2.1 The instrument provides for the closure of the renewables obligation by preventing the issue of renewables obligation certificates after 31 March 2017 for the generation of electricity by new generating capacity. The instrument makes a number of exceptions to the closure, which are sometimes also known as grace periods, for new generating capacity meeting the criteria set out in the instrument.

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

3.1 None.

4. Legislative Context

4.1 The renewables obligation ("RO") is an obligation imposed on licensed electricity suppliers. 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 to customers in Great Britain during a specified period known as an obligation period. The RO is administered by the Gas and Electricity Markets Authority ("the Authority") who issue ROCs to renewable electricity generators in respect of their eligible renewable output.

4.2 The RO is provided for in relation to England & Wales by the Renewables Obligation Order 2009[1] which is made by the Secretary of State, and in relation to Scotland by the Renewables Obligation (Scotland) Order 2009[2] which is made by the Scottish Ministers. There is also a renewables obligation in Northern Ireland, which is provided by the Renewables Obligation Order (Northern Ireland) 2009[3] made by the Northern Ireland Department of Enterprise, Trade & Investment. These complementary renewables obligation orders together in effect create a UK wide renewables obligation.

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[1] S.I. 2009/785 as amended by S.I. 2010/1107, S.I. 2011/984, paragraph 29 of Schedule 4 to S.I. 2011/988, S.I. 2013/768 and S.I. 2014/893.

[2] S.S.I. 2009/140, as amended by S.S.I. 2009/276, S.S.I. 2010/147, S.S.I. 2011/225, paragraph 22 of the Schedule to S.S.I. 2011/226, S.S.I. 2013/116 and S.S.I. 2014/94.

[3] S.R. 2009/154, as amended by S.R. 2010/134, S.R. 2011/169, S.R. 2013/116, S.R. 2013/174 and S.R. 2014/146.

4.3 This instrument is the first exercise of the power provided in section 32LA of the Electricity Act 1989, inserted by section 55 of the Energy Act 2013, enabling the Secretary of State to make an order for the closure of the RO across Great Britain.

4.4 Article 3 of the instrument prevents ROCs from being issued in respect of electricity generated after 31 March 2017. There are a number of exceptions in article 4 (for existing generating capacity) and in articles 5 to 12 (so called 'grace periods' for new generating capacity). It is possible that more than one of the exceptions may apply, in which case any one of them may be satisfied.

4.5 The instrument does not set the final end date of the RO after which no ROCs may be issued even to existing stations. Although it is intended to transition all generating capacity supported by the RO into a certificate purchase scheme (provided for in sections 32N to 32Z2 of the Electricity Act 1989, as inserted by section 56 of the Energy Act 2013) on 31 March 2027, this date has not been included in the instrument. Instead, it is intended to set the date for the transition in legislation at the same time as all of the detailed legislation is made for the certificate purchase scheme.

4.6 As a result of article 17A(1) of the Renewables Obligation Order 2009 (as inserted by article 8 of S.I. 2010/1107), it is already the case that in England & Wales, no ROCs can be issued in respect of electricity generated after 31 March 2037. Article 17A of the Renewables Obligation (Scotland) Order 2009 (as inserted by S.S.I. 2010/147) makes similar provision for Scotland.

4.7 Article 7 of the instrument provides a grace period for generating stations in respect of which an investment contract has been terminated for certain specified reasons, as listed in article 7(3) of the instrument. Investment contracts are provided for under Schedule 2 to the Energy Act 2013 and some investment contracts contain contractual provisions (relating to biomass sustainability) which enable the Secretary of State to propose and make certain amendments to the contract to align it with any standard terms that are issued under s.11 of the Energy Act 2013 for contracts for difference (CfDs). These investment contracts also contain contractual provisions which enable the contract to be terminated by the developer in certain circumstances if they are not content with the amendments made or proposed by the Secretary of State to align with the standard terms for CfDs.

4.8 On 13 May 2014 the Government published a consultation on changes to financial support for solar pv. The consultation closes on 7 July 2014. Part A of the consultation proposes to close the RO across Great Britain to new solar pv capacity above 5MW from 1 April 2015. If adopted, this proposal would be implemented by means of another renewables obligation closure order. This instrument is laid in advance of the outcome of the consultation on solar pv, as this instrument relates to the closure arrangements in 2017 and associated grace periods, and in order to allow applications to be made as soon as possible under the 'enabling financial decisions' grace period for gasification, pyrolysis, offshore wind and dedicated biomass combined heat and power projects (articles 11 to 13 of the instrument).

4.9 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 Great Britain.

5.2 Contracts for Difference (CfDs) are the new main support mechanism for large-scale low-carbon electricity generation, including renewable electricity generation, provided for by the Energy Act 2013. In Great Britain, the CfD is intended to open for applications in autumn 2014. Due to reforms to the Single Electricity Market in Northern Ireland, the Northern Ireland Executive does not plan to open its market to CfDs for projects commissioning before 2016 at the earliest. The transition period in Northern Ireland will therefore be shorter than in Great Britain and any legislation for closure of the RO in Northern Ireland would be made by the Northern Ireland Department of Enterprise, Trade & Investment.

6. European Convention on Human Rights

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

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

7. Policy background

- What is being done and why

7.1 In Great Britain, the CfD is intended to open for applications in autumn 2014. After a two and a half year 'transition period' in which new renewable electricity projects will be able to apply for either the CfD or the RO (which is the current main support mechanism for large-scale renewable electricity generation), Government intends to close the RO to new renewable capacity on 31 March 2017. The closure date is set out in article 3 of this instrument, and article 4 ensures that the closure does not affect generating capacity that entered the RO before the closure date.

7.2 Renewables projects supported under the RO are for the most part large infrastructure projects which take several years to develop and construct. Developers and investors preparing such projects are therefore taking financial decisions in relation to those projects several years before the projects are complete and able to generate electricity. Any infrastructure project can be subject to construction delays, and some types of renewable electricity project, which use new and developing technology or which

are constructed in difficult environments, can be at much greater than average risk of delay.

7.3 For this reason, a two and a half year transition period is not long enough to prevent a hiatus in investment in certain projects, where financial decisions are being taken before the CfD has become available, and where the project is due to be completed close to the RO closure date. This instrument therefore also introduces a number of 'grace periods' to cover projects against certain types of delay risk. A 'grace period' is a set period of time after the closure date in which projects that are delayed will still be able to enter the RO. The grace periods are as follows:

(a) Articles 5 and 6 of the instrument provide a 12 month grace period for projects of any technology that are delayed due to certain grid connection delays or due to delays to works on radar stations or radar equipment.

(b) Article 7 of the instrument provides a 12 month grace period for signatories of Investment Contracts if the contract is later terminated due to reasons relating to State Aid or the introduction of standard terms for the CfD. Investment Contracts are provided for in Schedule 2 to the Energy Act 2013, as a forerunner of the CfD.

(c) Article 11 provides a 12 month 'enabling financial decisions' grace period for gasification, pyrolysis (sometimes known as advanced conversion technologies) and offshore wind projects that give notice to the Authority by 31 October 2014 (or, if later, within 2 months of the instrument coming into force). Article 13 requires the notice to be accompanied by an offer to carry out grid works, planning consents, a declaration of land use rights (or copy of the Crown Estate lease in the case of offshore wind) and a declaration as to sufficiency of resources and expected commissioning of the station. These documents are designed to demonstrate that the project has made good progress in its arrangements for construction and commissioning.

(d) Article 8 provides an 18 month grace period for projects that have been allocated a place within the 400MW dedicated biomass cap. The cap is a Government policy to limit the amount of new build generating capacity that receives support for the generation of electricity wholly from biomass. A notification process is used to allocate places within the cap. The cap does not apply to combined heat and power generating stations, or to stations that do not use any solid or gaseous biomass.

(e) Article 12 provides an 18 month grace period for dedicated biomass combined heat and power projects (which might otherwise drop their heat production in order to access the grace period in article 8 for power-only dedicated biomass). Similar evidence requirements apply as under the 'enabling financial decisions' grace period.

(f) Articles 9 and 10 provide an 18 month grace period for certain Scottish offshore wind generating stations using test and demonstration wind turbines or floating wind turbines.

7.4 There is substantial interest in this policy by developers of renewable electricity projects, as the policy is important to the progress of those renewable electricity projects due to complete construction in late 2016/early 2017 that intend to seek support under the RO. There is limited interest among the wider public.

7.5 Most powers for the RO in Scotland are executively devolved to Scottish Ministers, therefore previous statutory instruments relating to the RO laid before the UK Parliament have covered England and Wales only. However, the closure of the RO to new capacity is the result of the introduction of CfDs as part of Electricity Market Reform, which is a fundamental change to the reserved area of energy policy. The power to make a Renewables Obligation Closure Order is not executively devolved and the Government considers it is appropriate for the closure and grace period arrangements for the RO to be implemented on a consistent basis across Great Britain as a whole.

- Consolidation

7.6 This instrument is the first Renewables Obligation Closure Order.

8. Consultation outcome

8.1 Overarching policy on RO transition, including the 31 March 2017 closure date, was consulted upon within the December 2010 Electricity Market Reform consultation,[4] and details on the position taken as a result of that consultation were set out in the July 2011 White Paper entitled Planning our electric future.[5]

8.2 The Government subsequently carried out two consultations on the grace periods provided by this instrument. Firstly, the Consultation on the Transition from the RO to the Contracts for Difference,[6] which ran for ten weeks from 17 July 2013 to 25 September 2013, and which sought views on the overall policy for grace periods at the RO closure date. Secondly, the RO Grace Periods Consultation,[7] which ran for three weeks from 7 November 2013 to 28 November 2013, and which set out detailed proposals for grace periods on the basis of analysis of the responses to the first consultation. The second consultation also sought any further views on the closure arrangements more generally.

8.3 The second consultation ran for a short period for two reasons. Firstly, it was in follow up to the ten-week consultation to confirm and build upon our assessment of the responses provided to that consultation. Secondly, the renewables industry was pressing for urgent confirmation of the grace period arrangements, and was keen to participate in a briefer consultation in order to progress policy decisions as quickly as possible.

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[4] https://www.gov.uk/government/consultations/electricity-market-reform. The consultation ran from 16 December 2010 to 10 March 2011.
[5] https://www.gov.uk/government/publications/planning-our-electric-future-a-white-paper-for-secure-affordable-and-low-carbon-energy
[6] https://www.gov.uk/government/consultations/transition-from-the-renewables-obligation-to-contracts-for-difference
[7] https://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods

8.4 Government received 46 responses to the first consultation, and 49 responses to the second consultation. As the proposals within the second consultation were more specific, the breakdown of responses and Government's policy decisions on the basis of those responses focusses here on that second consultation. Over 80% of those respondents who commented on the proposals for grace periods (a) and (b) (as described in paragraph 7.3 above) supported these grace periods, and Government maintained the proposals on that basis.

8.5 Similar percentages supported grace periods (c) and (d) as well; however, respondents also sought substantive changes to the detailed requirements associated with these two grace periods. On the basis of our analysis of responses to the consultation, Government decided to:

- amend the eligibility and evidence requirements for grace period (c) to simplify the proposed forms of financial evidence, to require a grid connection offer rather than a full grid connection agreement, and to target the grace period more specifically at the technologies and projects at greatest risk of and from delay, and
- provide grace period (e) to cover dedicated biomass stations producing heat and electricity in addition to grace period (d) for dedicated biomass stations producing electricity only.[8]

8.6 Full details are set out in the combined Government response to both consultations, which was published on 12 March 2014.[9]

9. Guidance

9.1 The Authority, as administrators of the RO, intend to publish draft guidance on the grace periods for informal consultation. A final version of the guidance will then be made available once this instrument comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is in relation to investment decisions on renewable electricity projects. In some cases where there is uncertainty as to whether the project will be able to commission before the closure date, the closure of the RO to new generating capacity may lead the project to seek alternative means of support or not proceed. In other cases, the grace periods will give greater confidence that the project will be able to accredit under the RO even if it commissions after the closure date, thereby enabling the project to proceed.

10.2 The impact on the public sector will consist of a small additional burden on the Authority, in administering the grace periods. The Authority is able to recover its costs of administering the RO from the buy-out fund, which is a fund made up of payments by electricity suppliers for any shortfall in the number of ROCs they submit.

[8] Dedicated biomass refers to a station that uses 100% biomass, although up to 10% fossil fuel or waste may be used for certain ancillary purposes.
[9] https://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods

10.3 An Impact Assessment has not been prepared for this instrument. An Analytical Annex was published on 12 March 2014 as Annex E to the Government Response to the consultations on the RO Transition and on Grace Periods.[10]

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the criteria for the grace periods have been set in a way which should be straightforward for small renewables projects to meet, as long as the project has reached the required level of maturity.

11.3 The basis for the final decision on what action to take to assist small business was examination of the relevant consultation responses.

12. Monitoring & review

12.1 The Government will monitor the operation of the grace periods to inform the development of any other similar arrangements in future. Success measures will include: straightforward, low-cost operation and administration for both those projects seeking to benefit from a grace period and the Authority, and ongoing investment throughout 2014/15 in renewable electricity projects due to complete construction in 2016/17.

13. Contact

Tom Luff at the Department of Energy and Climate Change Tel: 0300 068 6606 or email: tom.luff@decc.gsi.gov.uk can answer any queries regarding the instrument.

[10] https://www.gov.uk/government/consultations/transition-from-the-renewables-obligation-to-contracts-for-difference