EXPLANATORY MEMORANDUM TO

THE SALE OF ELECTRICITY BY LOCAL AUTHORITIES (SCOTLAND) REGULATIONS 2010

2010 No.1908 (S.4)

1. This explanatory memorandum has been prepared by the Department for 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 This instrument prescribes a power to allow local authorities in Scotland to sell electricity generated from renewable as well as combined heat and power sources.

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

3.1 None.

4. Legislative Context

4.1 Section 170A(3) of the Local Government (Scotland) Act 1973 as amended by the Electricity Act 1989 and Schedule 15, paragraph 13 of the Environmental Protection Act 1990 prevents local authorities in Scotland from selling electricity which is produced otherwise than in association with heat and waste unless regulations provide otherwise. This instrument prescribes a power to allow local authorities to sell electricity generated from renewable as well as waste and combined heat and power sources.

5. Territorial Extent and Application

5.1 This instrument extends to Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government believes that local authorities should be given the opportunity to play a full part in the development of renewable heat and electricity and many local authorities are planning to take forward renewables projects.

7.2 However, Section 170A(3) of the Local Government (Scotland) Act 1973 as amended by the Electricity Act 1989 and Schedule 15, paragraph 13 of the Environmental Protection Act 1990 allows Scottish local authorities to sell electricity produced in association with heat and waste only.

7.3 The provision was introduced at the time of electricity privatisation and was designed to ensure the transfer of the electricity industry to the private sector, whilst recognising that local authorities did have a limited role to play in smaller-scale generation, in particular combined heat and power stations.

7.4 DECC issued a consultation in March of this year seeking views on a proposal to prescribe a power to allow local authorities to sell electricity generated from renewable as well as combined heat and power sources. The consultation closed on 2 June and attracted a very positive response from stakeholders.

8. Consultation outcome

8.1 DECC consulted publically on the instrument, attracting over 70 consultation responses. Responses were overwhelmingly in favour of local authorities being allowed to sell electricity they generate from renewables with a small number of responses suggesting that some limit should be placed on the size and nature of any generation allowed. A Government response summarising the comments received will be published on the DECC website.

9. Guidance

9.1 General guidance on the generation and sale of electricity is readily available on Ofgem and National Grid web pages.

10. Impact

10.1 These regulations have no direct impact on the private or voluntary sector except for a possible negligible increase at the margins of the electricity supply. We will undertake work to establish what these costs are by the coming into force date of 18 August.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 DECC will monitor this instrument and review it in light of any stakeholder concerns.

13. Contact

Chris Chown at the Department for Energy and Climate Change Tel: 0300 068 6085 or email: chris.chown@decc.gsi.gov.uk can answer any queries regarding the instrument.