

*Illustrative draft order to accompany the consultation on the transition from the Renewables Obligation to Contracts for Difference.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2014 No.**

**ELECTRICITY, ENGLAND AND WALES**

**The Renewables Obligation Order 2014**

*Made* - - - - \*\*

*Coming into force* - - \*\*

This Order is made by the Secretary of State in exercise of the powers conferred by sections 32 to 32M of the Electricity Act 1989 (“the 1989 Act”).

The Secretary of State has consulted the Gas and Electricity Markets Authority, the National Consumer Council, electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as the Secretary of State considered appropriate in accordance with section 32L(1) of the 1989 Act.

In accordance with section 32L(2) of the 1989 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, extent and interpretation**

**1.**—(1) This Order may be cited as the Renewables Obligation (Amendment) Order 2014 and comes into force on 1st April 2014.

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

(3) In this Order, “the 2009 Order” means the Renewables Obligation Order 2009.

**Amendment to article 2 of the 2009 Order**

**2.**—(1) Article 2 of the 2009 Order is amended as follows.

(2) In paragraph (1), at the appropriate place insert—

““capacity agreement” is to be construed in accordance with clause 22 of the Energy Bill(a);”;

““capacity market transfer notice” has the meaning given in article 58D(3);”;

““CFD” has the meaning given in clause 6(2) of the Energy Bill;”;

““gross output”, in relation to a generating station, means the total amount of electricity generated by that station;”;

““investment contract” has the meaning given in paragraph 1 of Schedule 2 to the Energy Bill;”;

““low carbon electricity generation” has the meaning given in clause 6(3) of the Energy Bill;”;

““national system operator” has the meaning given in clause 8 of the Energy Bill;”;

““opted-out capacity” means—

(a) generating capacity which in the Authority’s view—

- (i) formed part of a generating station from a date no earlier than 1st April 2014,
- (ii) does not form part of the capacity of the station as accredited, and
- (iii) is not registered under article 58B,

(b) generating capacity which generates electricity using an opted-out combustion unit, and

(c) generating capacity which generates electricity using an opted-out wind turbine;”;

““opted-out combustion unit” means a combustion unit in respect of which a capacity market transfer notice or a CFD transfer notice has come into force, and for the purposes of this definition—

(a) the date on which a capacity market transfer notice or a CFD transfer notice comes into force is to be determined in accordance with article 58D(9) and article 58E(9) respectively, and

(b) CFD transfer notice has the meaning given in article 58E(3);”;

““opted-out wind turbine” means a wind turbine which in the Authority’s view—

(a) forms part of a generating station where a CFD has been made at any time in respect of any part of the generating station,

(b) is not registered under article 58A, and

(c) where the generating station was accredited as at 31st March 2011, is a registrable additional turbine;”;

““RO capacity”, in relation to a generating station, means the generating capacity of the station other than opted-out capacity;”;

““RO eligible renewable output” is to be construed in accordance with articles 25 and 26;”;

““total input electricity”, in relation to a generating station, means—

(a) the total amount of electricity used by the station for purposes directly related to its operation (including for fuel handling, fuel preparation, maintenance and the pumping of water) whether or not that electricity is generated by the station or used while the station is generating electricity, and

(b) where the station generates electricity wholly or partly from hydrogen (other than hydrogen that constitutes fossil fuel), any electricity—

- (i) in respect of which ROCs are or have been issued,
  - (ii) in respect of which ROCs cannot be issued by virtue of any provision of Part 4 (cases and circumstances when a ROC must not be issued), or
  - (iii) which was not generated from renewable sources,
- and which is used in the production of that hydrogen (regardless of where or by whom the hydrogen is produced);”;

““unconverted combustion unit” means a combustion unit which—

(a) forms part of a generating station which has, in any month after March 2009, generated electricity—

- (i) from regular biomass and from fossil fuel, and
    - (ii) in respect of which ROCs were issued for part of the electricity so generated during that month, and
  - (b) has not, in any month after March 2009, been used to generate electricity only from biomass
- and for the purposes of this definition, no account is to be taken of any fossil fuel or waste which is used in the combustion unit for permitted ancillary purposes;”
- (3) In paragraph (1), for the definition of “permitted ancillary purposes” substitute—
  - ““permitted ancillary purposes” means—
  - (a) in references to fossil fuel or waste used in a combustion unit, fossil fuel or waste which is used—
    - (i) in that combustion unit for an ancillary purpose specified in paragraph (1A), and
    - (ii) in a month in which the energy content of the fossil fuel or waste so used (or, where both fossil fuel and waste are so used during that month, their combined energy content) does not exceed 10% of the energy content of all of the energy sources used in that combustion unit during that month;
  - (b) in references to fossil fuel or waste used in a generating station, fossil fuel or waste which is used—
    - (i) in the generating station for an ancillary purpose specified in paragraph (1A), and
    - (ii) in a month in which the energy content of the fossil fuel or waste so used (or, where both fossil fuel and waste are so used during that month, their combined energy content) does not exceed 10% of the energy content of all of the energy sources used in the generating station during that month;”.
- (4) In paragraph (1), omit the definition of “renewable output”.
- (5) In paragraph (1), for the definition of “total installed capacity” substitute—
  - ““total installed capacity” means—
  - (a) in relation to generating capacity, the maximum capacity at which that generating capacity could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);
  - (b) in relation to a generating station, the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);”.
- (6) After paragraph (1) insert—
  - “(1A) For the purposes of the definition of “permitted ancillary purposes” in paragraph (1), fossil fuel or waste is used for an ancillary purpose if it is used for—
  - (a) cleansing other fuels from a generating station’s combustion system prior to using fossil fuel or waste to heat the combustion system to its normal operating temperature,
  - (b) the heating of a generating station’s combustion system to its normal operating temperature or the maintenance of that temperature,
  - (c) the ignition of fuels of low or variable calorific value,
  - (d) corrosion control,
  - (e) fouling reduction,
  - (f) emission control, or

- (g) standby generation or the testing of standby generation capacity (and for the purposes of this sub-paragraph, “standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station).”.

(7) For paragraph (7) substitute—

“(7) Any reference in this Order to a “type of generating capacity” is to be construed in accordance with article 25.”.

#### **Amendment to article 12 of the 2009 Order**

3. In paragraph (4) of article 12 of the 2009 Order, for “1st October” substitute “1st February”.

#### **Generating stations with opted-out capacity**

4. After article 17AB of the 2009 Order insert—

##### **“Generating stations with opted-out capacity**

**17AC.**—(1) This article applies to a generating station where opted-out capacity forms all or part of the total installed capacity of the station.

(2) ROCs are not to be issued in respect of any electricity generated using opted-out capacity.

(3) No ROCs are to be issued in respect of any electricity generated in any month by a generating station to which this article applies unless during that month—

- (a) all of the electricity generated by the station using the opted-out capacity is measured separately from the remainder of the electricity generated by the station during that month, or
- (b) all of the electricity generated by the station using the RO capacity is measured separately from the remainder of the electricity generated by the station during that month.”.

#### **Electricity in respect of which a capacity agreement, CFD or investment contract applies and restrictions on movement between bands after 31st March 2017**

5. After article 21 of the 2009 Order insert—

##### **“Electricity in respect of which a capacity agreement, CFD or investment contract applies**

**21A.** ROCs are not to be issued in respect of any electricity in respect of which a capacity agreement, CFD or investment contract applies.

##### **Restrictions on movement between co-firing and conversion bands after 31st March 2017**

**21B.**—(1) No ROCs are to be issued in respect of any electricity generated—

- (a) by an unregistered combustion unit,
- (b) on or after 1st April 2017, and
- (c) in the way described in Schedule 2 as—
  - (i) low-range co-firing,
  - (ii) mid-range co-firing,
  - (iii) high-range co-firing,

- (iv) unit conversion, or
- (v) station conversion.

(2) No ROCs are to be issued in respect of any electricity generated on or after 1st April 2017 by a registered low-range co-firing unit unless the electricity is generated in the way described in Schedule 2 as—

- (a) low-range co-firing, or
- (b) mid-range co-firing.

(3) No ROCs are to be issued in respect of any electricity generated on or after 1st April 2017 by a registered mid-range co-firing unit unless the electricity is generated in the way described in Schedule 2 as—

- (a) low-range co-firing,
- (b) mid-range co-firing, or
- (c) high-range co-firing.

(4) No ROCs are to be issued in respect of any electricity generated on or after 1st April 2017 by a registered high-range co-firing unit unless the electricity is generated in the way described in Schedule 2 as—

- (a) mid-range co-firing,
- (b) high-range co-firing,
- (c) unit conversion, or
- (d) station conversion.

(5) No ROCs are to be issued in respect of any electricity generated on or after 1st April 2017 by a registered conversion unit unless the electricity is generated in the way described in Schedule 2 as—

- (a) high-range co-firing,
- (b) unit conversion, or
- (c) station conversion.

(6) Paragraphs (a), (b) and (d) of paragraph 1(2) of Part 1 of Schedule 2 apply for the purposes of this article as they apply for the purposes of that Schedule.

(7) In this article—

“registered conversion unit” means a combustion unit which has been registered by the Authority under article 58C as a conversion unit;

“registered high-range co-firing unit” means a combustion unit which has been registered by the Authority under article 58C as a high-range co-firing unit;

“registered low-range co-firing unit” means a combustion unit which has been registered by the Authority under article 58C as a low-range co-firing unit;

“registered mid-range co-firing unit” means a combustion unit which has been registered by the Authority under article 58C as a mid-range co-firing unit; and

“unregistered combustion unit” means a combustion unit which has not been registered by the Authority under article 58C.

### **Combustion units in respect of which a capacity market transfer notice has been accepted**

**21C.**—(1) This article applies to a combustion unit in respect of which a capacity market transfer notice has been accepted by the Authority.

- (2) Subject to paragraph (3), no ROCs are to be issued in respect of any electricity—
- (a) generated by a combustion unit to which this article applies, and

(b) generated after the capacity market participation date stated in the capacity market transfer notice.

(3) Paragraph (2) does not apply if the electricity is generated in the way described in Schedule 2 as—

- (i) unit conversion, or
- (ii) station conversion.

(4) Paragraphs (a) and (b) of paragraph 1(2) of Part 1 of Schedule 2 apply for the purposes of this article as they apply for the purposes of that Schedule.”.

#### **Amendment to article 22 of the 2009 Order**

6.—(1) Article 22 of the 2009 Order is amended as follows.

(2) For paragraph (3) substitute—

“(3) For the purposes of paragraph 2(c), waste includes anything derived directly or indirectly from waste.”.

(3) Omit paragraph (4).

#### **Substitution of Part 5 of the 2009 Order**

7. For Part 5 of the 2009 Order substitute—

### **“PART 5**

ROCs to be issued by Authority in respect of RO eligible renewable output

#### **Interpretation of Part 5**

23A.—(1) This article applies for the purposes of this Part.

(2) In any month where the total installed capacity of a generating station does not include any opted-out capacity, “RO input electricity” means the total input electricity of the station during that month.

(3) Subject to paragraphs (4) and (5), in any month where the total installed capacity of a generating station includes opted-out capacity, “RO input electricity” means  $A - \left( A \times \frac{B}{C} \right)$

where—

- (a) A is the total input electricity of the station during that month,
- (b) B is the total installed capacity of the opted-out capacity, and
- (c) C is the total installed capacity of the station.

(4) Subject to paragraph (5), in any month where the total installed capacity of a generating station includes opted-out capacity and electricity which is used by the station solely for purposes directly related to the operation of the opted-out capacity is measured separately from the remainder of the electricity used by the station, “RO input electricity” means  $A - D$  where—

- (a) A is the total input electricity of the station during that month, and
- (b) D is the total amount of electricity measured as being used by the station solely for purposes directly related to the operation of the opted-out capacity during that month.

(5) In any month where the total installed capacity of a generating station includes opted-out capacity and all of the electricity which is used by the station for purposes directly related to the operation of the RO capacity is measured separately from the remainder of the

electricity used by the station, “RO input electricity” means the total amount of electricity measured as being used by the station for purposes directly related to the operation of the RO capacity during that month.

(6) In any month where the total installed capacity of a generating station does not include any opted-out capacity, “RO output electricity” means the total amount of electricity generated by that station during that month.

(7) Subject to paragraph (8), in any month where the total installed capacity of a generating station includes opted-out capacity and all of the electricity generated by the opted-out capacity is measured separately from the remainder of the electricity generated by the station, “RO output electricity” means  $E - F$  where—

- (a) E is the total amount of electricity generated by the station during that month, and
- (b) F is the total amount of electricity measured as being generated by the opted-out capacity during that month.

(8) In any month where the total installed capacity of a generating station includes opted-out capacity and all of the electricity generated by the station using the RO capacity is measured separately from the remainder of the electricity generated by the station, “RO output electricity” means  $E - G$  where—

- (a) E is the total amount of electricity generated by the station during that month, and
- (a) G is the total amount of electricity measured as being generated by the RO capacity during that month.

(9) In this article, references to “operation” include fuel handling, fuel preparation, maintenance and the pumping of water.

#### **ROCs to be issued by Authority in respect of a generating station’s RO eligible renewable output**

**24.**—(1) The Authority is to issue ROCs.

(2) Subject to paragraph (3) and article 60 (modifications of this Order in relation to microgenerators in certain circumstances), ROCs—

- (a) are to be issued in respect of a generating station’s RO eligible renewable output in a month, and
- (b) must not be issued before the end of the second month following that month.

(3) When issuing ROCs in respect of electricity generated in a month by a generating station or, in the case of ROCs certifying the matters within section 32B(5), (6) or (8) of the Act, two or more generating stations, the Authority must—

- (a) determine the RO eligible renewable output of that generating station or, as the case may be, those generating stations in that month in accordance with article 25 or 26 (whichever is applicable), and
- (b) issue ROCs in respect of that station’s or those stations’ RO eligible renewable output, the amount of electricity to be stated in each ROC being determined in accordance with articles 27 to 32 (banding and grandfathering).

(4) This means that, in a month in which a generating station generates electricity—

- (a) wholly from renewable sources a proportion of which is composed of fossil fuel,
- (b) wholly from renewable sources and the RO input electricity used by the generating station in generating that electricity exceeds 0.5% of the RO output electricity,
- (c) partly from renewable sources and partly from fossil fuel,
- (d) partly using opted-out capacity, or
- (e) partly from an ineligible renewable source (as construed in accordance with article 25),

ROCs are to be issued in respect of a proportion only of the electricity generated by the station.

(5) Where the number of megawatt hours of RO eligible renewable output in respect of which ROCs are to be issued does not equate to a whole number of ROCs, the number of megawatt hours is to be rounded to the nearest figure which does so equate (and where there are two such figures, the number of megawatt hours is to be rounded upwards).

### Calculating a generating station's RO eligible renewable output

**25.**—(1) Subject to article 26, the RO eligible renewable output of a generating station in any month is equal to—

- (a) where the RO input electricity used by the generating station during that month does not exceed 0.5% of the RO output electricity of that station during that month,  $A - U$ ;
- (b) in any other case,  $\left(A \times \frac{B}{C}\right) - U$ .

(2) In paragraph (1)—

- (a) A is equal to  $C \times \frac{D}{E}$  where—
  - (i) C is the RO output electricity of the generating station during the month in question;
  - (ii) D is the energy content of all of the renewable sources used in generating that station's RO output electricity during that month, less the energy content of—
    - (aa) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of sub-paragraph (bb) or (cc) is in part composed);
    - (bb) any of those renewable sources which is Solid Recovered Fuel (other than Solid Recovered Fuel which constitutes biomass);
    - (cc) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed;
  - (iii) E is the energy content of all of the fuels used in generating that station's RO output electricity during that month;
- (b) B is the RO output electricity of that station during that month less the RO input electricity it uses during that month;
- (c) C has the same meaning as in sub-paragraph (a)(i); and
- (d) U is any electricity generated by that station from an ineligible renewable source during that month.

(3) Paragraphs (4) and (6) apply for the purposes of this Part and Part 6.

(4) Where during any month the RO eligible renewable output of a generating station is generated in two or more ways, the proportion of the station's RO eligible renewable output which is generated in each of those ways is—

- (a) in the case of electricity generated in the way described as "landfill gas heat recovery" in Schedule 2,  $M \div N$ ;



- (b) in the case of electricity generated using mixed gas in the way described as “AD” in Schedule 2,  $\frac{H}{I} \times \frac{J}{L}$ ;
  - (c) in the case of electricity generated using mixed gas in the way described as “electricity from sewage gas” in Schedule 2,  $\frac{H}{I} \times \frac{K}{L}$ ;
  - (d) in the case of electricity generated in a way not falling within sub-paragraph (a), (b) or (c),  $F \div G$ .
- (5) In paragraph (4)—
- (a) F is the energy content of the renewable sources used when generating the station’s RO output electricity in that way during that month less the energy content of—
    - (i) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of paragraph (ii) or (iii) is in part composed);
    - (ii) any of those renewable sources which is Solid Recovered Fuel (other than Solid Recovered Fuel which constitutes biomass);
    - (iii) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed;
  - (b) G is the energy content of all of the renewable sources used in generating the station’s RO output electricity during that month less the energy content of—
    - (i) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of paragraph (ii) or (iii) is in part composed);
    - (ii) any of those renewable sources which is a Solid Recovered Fuel (other than Solid Recovered Fuel which constitutes biomass);
    - (iii) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed;
  - (c) H is the energy content of the mixed gas used when generating the station’s RO output electricity during that month;
  - (d) I is the energy content of all of the renewable sources used in generating the station’s RO output electricity during that month;
  - (e) J is the dry mass of—
    - (i) any waste which constitutes a renewable source (other than sewage), and
    - (ii) any biomass (other than sewage),from which the mixed gas used in generating the station’s RO output electricity during that month is formed, less the dry mass of any digestible fossil fuel from which that waste or biomass is in part composed;
  - (f) K is the dry mass of the sewage from which the mixed gas used in generating the station’s RO output electricity during that month is formed;
  - (g) L is the dry mass of all of the material from which the mixed gas used in generating the station’s RO output electricity during that month is formed, less the dry mass of any digestible fossil fuel from which that material is in part composed;

(h) M is the maximum capacity in that month at which the station could generate electricity in that way using RO capacity for a sustained period without causing damage to the station (assuming the heat used by the station to generate electricity was available to it without interruption); and

(i) N is the total installed capacity of the RO capacity of the station in that month.

(6) Where during any month two or more types of generating capacity form part of the RO capacity of a generating station, the proportion of the station's RO eligible renewable output which is generated using each of those types of generating capacity is  $P \div N$ .

(7) In paragraph (6)—

(a) P is the total installed capacity of that type of generating capacity of the station in that month (other than opted-out capacity); and

(b) N is the total installed capacity of the RO capacity of the station in that month.

(8) In this article—

“dry mass”, in relation to a fuel, means the mass of the fuel when any water present in it has been removed;

“excepted generating station” means a generating station—

(a) which was accredited on or before 31st March 2011;

(b) which, since being accredited, has not ceased to be accredited at any time; and

(c) in respect of which, if it was not accredited as at 31st March 2009, preliminary accreditation was held on and from that date until the date on which it was accredited; and

“mixed gas” means gas formed by the anaerobic digestion of sewage together with—

(a) waste which constitutes a renewable source (other than sewage), or

(b) biomass (other than sewage).

(9) Any reference in this article to a way of generating RO eligible renewable output is a reference to—

(a) one of the ways of generating electricity described in Schedule 2;

(b) generating electricity in the way described in article 28D(1)(c);

(c) generating electricity in the way described in article 28E(1)(c);

(d) generating electricity from renewable sources in a way not falling within subparagraph (a), (b) or (c).

(10) Any reference in this article to a type of generating capacity is a reference to one of the following—

(a) pre-2013 capacity;

(b) 2013/14 capacity;

(c) 2014/15 capacity;

(d) 2015/16 capacity;

(e) post-2016 capacity.

(11) For the purposes of this article, electricity is generated from an ineligible renewable source if it is generated using the RO capacity of a generating station and—

(a) it is generated from landfill gas (other than electricity generated by a generating station to which article 29 applies, generated using pre-2013 capacity, generated in the way described in Schedule 2 as “closed landfill gas”, or generated using the heat from a turbine or engine),

(b) where one or more of the criteria set out in articles 36 to 40 have to be satisfied before ROCs can be issued in respect of that station's or those stations' RO eligible renewable output, it is electricity in respect of which any of those criteria are not satisfied, or

- (c) it is electricity in respect of which ROCs are not to be issued by virtue of Part 4.

**RO eligible renewable output of a qualifying combined heat and power generating station**

**26.**—(1) For the purposes of determining the RO eligible renewable output of a qualifying combined heat and power generating station in any month during which it generates electricity from waste (other than waste which constitutes biomass or is used for permitted ancillary purposes or is an advanced fuel or is in the form of a liquid or gaseous fuel produced by means of anaerobic digestion), article 25 applies subject to the following modifications.

- (2) For paragraph (2)(a)(ii) of article 25, substitute—

“(ii) D is the energy content of all of the renewable sources used in generating that station’s RO output electricity during that month, less the energy content of—

- (aa) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of sub-paragraph (bb) is in part composed);
- (bb) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed,

multiplied by the proportion which the qualifying power output of that station bears to its total power output;”.

- (3) For paragraph (5)(a) and (b) of that article, substitute—

“(a) F is the energy content of the renewable sources used when generating the station’s RO output electricity in that way during that month less the energy content of—

- (i) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of paragraph (ii) is in part composed);
- (ii) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed;

(b) G is the energy content of all of the renewable sources used in generating the station’s RO output electricity during that month less the energy content of—

- (i) any fossil fuel from which those renewable sources are in part composed (other than fossil fuel from which a fuel the energy content of which is deducted by virtue of paragraph (ii) is in part composed);
- (ii) except in the case of an excepted generating station, any of those renewable sources which is a gaseous fuel produced by means of gasification or pyrolysis and which has a gross calorific value when measured at 25 degrees Celsius and 0.1 megapascals at the inlet to the station of less than 2 megajoules per metre cubed;”.

**Amendment to article 30B of the 2009 Order**

8. In paragraph (4) of article 30B of the 2009 Order, for “station’s renewable output” substitute “station’s RO eligible renewable output”.

**Amendment to article 41 of the 2009 Order**

9. For paragraph (5) of article 41 of the 2009 Order substitute—

“(5) In determining whether to revoke a ROC under paragraph (3) or (4), the Authority may disregard any changes to the amounts for “gross output” and “total input electricity” which were used by it to determine a generating station’s RO eligible renewable output in a month if satisfied that, in all the circumstances, it is reasonable for it to do so.”.

**Amendments to article 53 of the 2009 Order**

10.—(1) Article 53 of the 2009 Order is amended as follows.

(2) In paragraph (3)(a), for “input electricity” substitute “total input electricity”.

(3) Omit paragraph (9).

**Preliminary accreditation and accreditation of generating stations**

11. For article 58 of the 2009 Order substitute—

**“Preliminary accreditation of generating stations**

58.—(1) Subject to paragraph (2), where a generating station in respect of which—

- (a) consent under section 36 of the Act or Article 39 of the Electricity (Northern Ireland) Order 1992 has been obtained,
- (b) planning permission under the Town and Country Planning Act 1990 has been granted, or
- (c) development consent under the Planning Act 2008 has been granted,

is not yet commissioned, the Authority may, upon the application of the person who proposes to construct or operate the generating station, grant the station preliminary accreditation.

(2) The Authority must not grant preliminary accreditation to a generating station under this article—

- (a) if the Authority cannot issue ROCs in respect of electricity generated by the station by virtue of article 17 (excluded generating stations) or article 17B (microgenerators in respect of which feed-in tariffs may be available),
- (b) if, in the Authority’s opinion, the station is unlikely to generate electricity in respect of which ROCs may be issued,
- (c) if the application for preliminary accreditation was received by the Authority on or after 1st April 2017,
- (d) if a CFD has been made at any time for the purpose of encouraging low carbon electricity generation by the station, or
- (e) subject to paragraph (3), if an investment contract has been made at any time for the purpose of encouraging low carbon electricity generation by the station.

(3) Paragraph (2)(e) does not apply if the application for a preliminary accreditation is accompanied by a declaration made in writing by the person who proposes to construct or operate the generating station that—

- (a) the investment contract has been terminated or has otherwise ceased to have effect, and

- (b) the termination or cessation of the investment contract was not caused by any action, or failure to act, by a relevant person.
- (4) In paragraph (3)(b), “relevant person” means—
  - (a) a person who proposes to construct or operate the generating station, or
  - (b) a party to the investment contract (other than the Secretary of State or their assigns).
- (5) In this article, references to a person who proposes to construct a generating station include a person who arranges for the construction of the generating station.

#### **Accreditation of generating stations**

**58ZZA.**—(1) Paragraphs (2) to (10) apply to the granting of accreditation of generating stations by the Authority, and paragraphs (2) and (3) are subject to paragraph (4).

(2) Where a generating station has been commissioned, the Authority may, upon the application of its operator (or, where ROCs relating to electricity generated by that station are to be issued to an agent by virtue of article 35, that agent), grant the station accreditation.

(3) Where a generating station has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for its accreditation is made under paragraph (2), the Authority must not grant that application if it is satisfied that—

- (a) there has been a material change in circumstances since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused,
- (b) the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular such that, had the Authority known the true position when the application for preliminary accreditation was made, it would have refused it, or
- (c) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused,

but otherwise the Authority must grant the application.

(4) The Authority must not grant accreditation to a generating station under this article—

- (a) if the Authority cannot issue ROCs in respect of electricity generated by the station by virtue of article 17 (excluded generating stations) or article 17B (microgenerators in respect of which feed-in tariffs may be available),
- (b) if, in the Authority’s opinion, the station is unlikely to generate electricity in respect of which ROCs may be issued,
- (c) subject to paragraph (5), if the application for accreditation is not accompanied by the documents specified in paragraph (8).
- (d) subject to paragraph (6), if an application for a CFD has been made at any time for the purpose of encouraging low carbon electricity generation by the station,
- (e) subject to paragraph (7), if an investment contract has been made at any time for the purpose of encouraging low carbon electricity generation by the station,
- (f) in the case of an application for accreditation received by the Authority on or after 1st April 2017, if the application fails comply with the requirements of paragraph (9), or
- (g) if the application for accreditation is received by the Authority on or after [grace period deadline].

(5) Paragraph (4)(c) does not apply if the application for accreditation is in respect of a potential FIT generating station.

(6) Paragraph (4)(d) does not apply if the application for accreditation is accompanied by the document specified in paragraph (8)(a)(ii).

(7) Paragraph (4)(e) does not apply if the application for accreditation is accompanied by the document specified in paragraph (8)(b)(ii).

(8) The documents specified in this paragraph are—

(a) either—

- (i) a declaration made in writing by the operator of the generating station that an application for a CFD has not been made at any time for the purpose of encouraging low carbon electricity generation by the station, or
- (ii) a declaration made in writing by the operator of the generating station that every application made for a CFD in respect of electricity generation by the station has been rejected by the national system operator or by the Secretary of State,

(b) either—

- (i) a declaration made in writing by the operator of the generating station that an investment contract has never been made for the purpose of encouraging low carbon electricity generation by the station, or
- (ii) a declaration made in writing by the operator of the generating station that—
  - (aa) any investment contract made for the purpose of encouraging low carbon electricity generation by the station has been terminated or has otherwise ceased to have effect, and
  - (bb) the termination or cessation of the investment contract was not caused by any action, or failure to act, by a relevant person (where “relevant person” is to be construed in accordance with article 58(4) and (5)), and

(c) a letter from the national system operator confirming that—

- (i) it is aware of the intention of the operator of the generating station to submit an application for accreditation of the station under this article, and
- (ii) a CFD has never been made for the purpose of encouraging low carbon electricity generation by the station.

(9) An application for accreditation which is received by the Authority on or after 1st April 2017 must be accompanied by [documents required to demonstrate that the criteria for a grace period have been met].

(10) In this article, “potential FIT generating station” means a generating station which has a total installed capacity of no more than 5 megawatts, and which—

(a) is a hydro generating station, or

(b) generates electricity 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.

#### **Preliminary accreditation and accreditation: common provisions**

**58ZZB.**—(1) This article applies to the granting and withdrawing of preliminary accreditation and accreditation of generating stations by the Authority.

(2) The Authority may, in granting preliminary accreditation under article 58 or accreditation under article 58ZZA, attach such conditions as appear to it to be appropriate.

(3) Where any of the circumstances mentioned in paragraph (4) apply in relation to a preliminary accreditation or an accreditation which the Authority has granted (whether or

not under this Order), and having regard to those circumstances the Authority considers it appropriate to do so, the Authority may—

- (a) withdraw the preliminary accreditation or accreditation in question;
  - (b) amend the conditions attached to the preliminary accreditation or accreditation;
  - (c) attach conditions to the preliminary accreditation or accreditation.
- (4) The circumstances referred to in paragraph (3) are as follows—
- (a) in the Authority’s view there has been a material change in circumstances since the preliminary accreditation or accreditation was granted;
  - (b) any condition attached to the preliminary accreditation or accreditation has not been complied with;
  - (c) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation or accreditation was based was incorrect in a material particular;
  - (d) there has been a change in applicable legislation since the preliminary accreditation or accreditation was granted such that, had the application for preliminary accreditation or accreditation been made after the change, it would not have been granted.
- (5) The Authority must notify the applicant in writing of—
- (a) its decision on an application for preliminary accreditation or accreditation of a generating station;
  - (b) any conditions attached to the preliminary accreditation or accreditation; and
  - (c) any withdrawal of preliminary accreditation or accreditation.
- (6) In providing written notification under paragraph (5), the Authority must specify where applicable—
- (a) the date on which the grant or withdrawal of preliminary accreditation or accreditation is to take effect,
  - (b) the date on which any conditions attached to the preliminary accreditation or accreditation are to take effect, and
  - (c) the capacity of the generating station as accredited.”.

#### **Amendment to article 58A of the 2009 Order**

**12.**—(1) Article 58A of the 2009 Order is amended as follows.

(2) After paragraph (3) insert—

“(3A) An application to register one or more wind turbines under this article must be accompanied by—

- (a) one of the documents referred to in article 58B(5)(a),
- (b) one of the documents referred to in article 58B(5)(b), and
- (c) a letter from the national system operator confirming that—
  - (i) it is aware of the intention of the operator of the generating station to submit an application for registration of one or more wind turbines under this article, and
  - (ii) a CFD has never been made for the purpose of encouraging low carbon electricity generation by the station.”.

(3) In paragraph (4)—

- (a) for “Following receipt of an application meeting the requirements of paragraph (3), the Authority must register the wind turbines” substitute “Following receipt of an application meeting the requirements of paragraph (3) and (3A), the Authority may register the wind turbines”;

(b) before sub-paragraph (a) insert—

“(aa) the date of receipt of the application was no later than 31st March 2017 [or longer deadline for stations benefiting from a grace period under article 58ZZA];”.

### **Registration of additional capacity**

**13.** After article 58A of the 2009 Order insert—

**58B.**—(1) This article applies to generating capacity which—

- (a) forms part of a generating station which is accredited,
- (b) first forms part of the station from a date no earlier than 1st April 2014 and no later than 31st March 2017, and
- (c) does not form part of the capacity of the station as accredited.

(2) Subject to paragraph (3), the Authority may, upon the application of an operator of a generating station using generating capacity to which this article applies, register that generating capacity under this article.

(3) The Authority must not register generating capacity under this article unless—

- (a) the application to register the generating capacity was received by the Authority on or before 31st March 2017, and
- (b) the Authority is satisfied that the application complies with the requirements of paragraphs (4) and (5).

(4) An application to register generating capacity under this article must—

- (a) describe the generating capacity in sufficient detail to enable the Authority to exercise its functions under this Order in relation to the issue of ROCs in respect of electricity generated using that generating capacity,
- (b) state the total installed capacity of the generating capacity, and
- (c) state the date on which the generating capacity first formed part of the generating station.

(5) An application to register generating capacity under this article must be accompanied by the following documents—

(a) either—

- (i) a declaration made in writing by the operator of the generating station that an application for a CFD has not been made at any time for the purpose of encouraging low carbon electricity generation by the station, or
- (ii) a declaration made in writing by the operator of the generating station that every application made for a CFD in respect of electricity generation by the station has been rejected by the national system operator or by the Secretary of State,

(b) either—

- (i) a declaration made in writing by the operator of the generating station that an investment contract has never been made for the purpose of encouraging low carbon electricity generation by the station, or
- (ii) a declaration made in writing by the operator of the generating station that—
  - (aa) any investment contract made for the purpose of encouraging low carbon electricity generation by the station has been terminated or has otherwise ceased to have effect, and
  - (bb) the termination or cessation of the investment contract was not caused by any action, or failure to act, by a relevant person (where “relevant person” is to be construed in accordance with article 58(4) and (5)), and

(c) a letter from the national system operator confirming that—



- (i) it is aware of the intention of the operator of the generating station to submit an application for registration of generating capacity under this article, and
- (ii) a CFD has never been made for the purpose of encouraging low carbon electricity generation by the station.

(6) The Authority must notify the operator of the generating station in writing of its decision on an application to register generating capacity under this article.

### **Registration of combustion units**

**58C.**—(1) This article applies to a generating station which—

- (a) is accredited, and
- (b) generates electricity using one or more combustion units.

(2) In respect of a combustion unit at a generating station to which this article applies, the operator of the generating station may apply to the Authority in writing for the combustion unit to be registered under this article.

(3) The application made under paragraph (2) must identify the combustion unit to which it relates and must specify which one of the following the combustion unit is to be registered as—

- (a) a low-range co-firing unit,
- (b) a mid-range co-firing unit,
- (c) a high-range co-firing unit, or
- (d) a conversion unit.

(4) The Authority must reject an application made under paragraph (2) unless it is satisfied that—

- (a) the application meets the requirements of paragraph (3),
- (b) the application was received by the Authority on or before 31st March 2017 [or longer deadline for stations benefiting from a grace period under article 58ZZA],
- (c) the application identifies the combustion unit to which it relates in sufficient detail to enable the Authority to exercise its functions under this Order, and
- (d) the combustion unit is not already registered under this article,

but otherwise the Authority must register the combustion unit in accordance with the application as either a low-range co-firing unit, a mid-range co-firing unit, a high-range co-firing unit or a conversion unit.

(5) The Authority must notify the operator of the generating station in writing of its decision on an application to register a combustion unit under this article.

(6) The registration of a combustion unit under this article cannot be withdrawn.

(7) Subject to paragraph (8), the operator of a generating station may give notice to the Authority in writing to change the registration under this article of a combustion unit at the generating station as either a low-range co-firing unit, a mid-range co-firing unit, a high-range co-firing unit or a conversion unit.

(8) The registration of a combustion unit under this article cannot be changed after 31st March 2017.

### **Unconverted combustion units intending to transfer to the capacity market**

**58D.**—(1) This article applies to a generating station which—

- (a) is accredited, and
- (b) generates electricity using one or more unconverted combustion units.

(2) The operator of a generating station to which this article applies may give a capacity market transfer notice to the Authority in relation to an unconverted combustion unit used by the station to generate electricity.

(3) A capacity market transfer notice is a notice which—

- (a) is in writing,
- (b) identifies the unconverted combustion unit to which it relates,
- (c) states that a capacity agreement has been issued in relation to that unconverted combustion unit, and
- (d) states the date from which the holder of that capacity agreement will be required to provide capacity under the terms of that agreement (“the capacity market participation date”).

(4) The Authority must accept a capacity market transfer notice given in accordance with paragraph (2) if it is satisfied that the notice identifies the unconverted combustion unit to which it relates in sufficient detail to enable the Authority to exercise its functions under this Order.

(5) The Authority must notify the operator of the generating station in writing of its decision to accept or reject a capacity market transfer notice.

(6) Once a capacity market transfer notice has been accepted by the Authority it cannot be withdrawn.

(7) The operator of a generating station may give notice to the Authority in writing to prevent a capacity market transfer notice in respect of a combustion unit at the generating station from coming into force, but such a notice given under this paragraph will not prevent a capacity market transfer notice from coming into force unless it is received by the Authority before the capacity market participation date stated in the capacity market transfer notice.

(8) A notice given under paragraph (7) cannot be withdrawn.

(9) For the purposes of this article, subject to paragraph (7), a capacity market transfer notice comes into force on the capacity market participation date stated in the capacity market transfer notice.

### **Unconverted combustion units intending to transfer to the CFD as biomass conversions**

**58E.**—(1) This article applies to a generating station which—

- (a) is accredited, and
- (b) generates electricity using one or more unconverted combustion units.

(2) The operator of a generating station to which this article applies may give a CFD transfer notice to the Authority in relation to an unconverted combustion unit used by the station to generate electricity.

(3) A CFD transfer notice is a notice which—

- (a) is in writing,
- (b) identifies the unconverted combustion unit to which it relates,
- (c) states the date from which the operator of the generating station intends to start using that combustion unit to generate electricity only from biomass (“the conversion date”), and
- (d) states that a CFD has been made for the purpose of encouraging the generation of electricity by that combustion unit.

(4) The Authority must accept a CFD transfer notice given in accordance with paragraph (2) if it is satisfied that—

- (a) the notice identifies the unconverted combustion unit to which it relates in sufficient detail to enable the Authority to exercise its functions under this Order, and
  - (b) a CFD transfer notice has not previously been accepted in respect of the same combustion unit.
- (5) The Authority must notify the operator of the generating station in writing of its decision to accept or reject a CFD transfer notice.
- (6) Once a CFD transfer notice has been accepted by the Authority it cannot be withdrawn.
- (7) Subject to paragraph (8), the operator of a generating station may change the conversion date stated in a CFD transfer notice in respect of a combustion unit at the generating station by giving notice to the Authority in writing.
- (8) The conversion date stated in a CFD transfer notice cannot be changed—
- (a) after the CFD transfer notice has come into force, or
  - (b) if the CFD made for the purpose of encouraging the generation of electricity by the combustion unit to which the CFD transfer notice relates has been terminated or otherwise ceased to have effect.
- (9) For the purposes of this article, a CFD transfer notice comes into force—
- (a) on the conversion date stated in the CFD transfer notice, or
  - (b) if earlier, as from the start of the first month—
    - (i) which is after March 2014, and
    - (ii) during which the combustion unit to which the CFD transfer notice relates burns only biomass (and for the purposes of this paragraph, no account is to be taken of any fossil fuel or waste which is used in the combustion unit for permitted ancillary purposes.”.

#### **Amendment to article 60 of the 2009 Order**

14. In paragraph (4) of article 60 of the 2009 Order, after “22,” insert “23A,”.

#### **Amendment to Part 1 of Schedule 2 to the 2009 Order**

15. For paragraph 1(2)(d) of Part 1 of Schedule 2 to the 2009 Order substitute—

“(d) in determining the energy content of the energy sources burned in a combustion unit, no account is to be taken of any fossil fuel or waste which is used in that combustion unit for permitted ancillary purposes.”.

#### **Transitional provision**

16. Nothing in this Order is to affect—

- (a) the issue or revocation of a renewables obligation certificate in respect of electricity generated before 1st April 2014, 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 2014, and anything which falls to be done or determined (whether by the operator of the generating station or some other person) in relation to any such obligations or requirements, under the 2009 Order; and
- (c) any obligations or 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 that obligation period, under the 2009 Order.

