This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 7th February 2011.
Draft Order laid before Parliament under section 32L(2) of the Electricity Act 1989 and paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

ELECTRICITY

The Renewables Obligation (Amendment) Order 2011

Made - - - -	*****
Coming into force - -	*1st April 2011*

This Order is made by the Secretary of State in exercise of the powers conferred by sections 32(1) and (2), 32A(1), (2)(f) and (g), 32C(1), (2), (3) and (5), 32J(3) and 32K(1) and (3) of the Electricity Act 1989(**1**) ("the 1989 Act") and section 2(2) of the European Communities Act 1972(**2**) ("the 1972 Act") (as read with paragraph 1A of Schedule 2 to the 1972 Act(**3**)).

The Secretary of State is a Minister designated(**4**) for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for the references to Annex 5 to Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources(**5**) in Schedule A1 inserted by this Order into the Renewables Obligation Order 2009(**6**) to be construed as references to Annex 5 to the Directive as amended from time to time.

The Secretary of State has consulted the Gas and Electricity Markets Authority(**7**), the National Consumer Council(**8**), electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as considered appropriate in accordance with section 32L(1) of the 1989 Act.

(**1**) 1989 c.29, sections 32 to 32M were substituted by section 37 of the Energy Act 2008 (c.32) for sections 32 to 32C.
(**2**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
(**3**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by article 3 of S.I. 2007/1388 and Part 1 of the Schedule to the European Union (Amendment) Act 2008.
(**4**) S.I. 2010/761.
(**5**) OJ L 140, 5.6.2009, p.16.
(**6**) S.I. 2009/785 amended by S.I. 2010/1107.
(**7**) Section 32L(1) of the 1989 Act refers to "the Authority", this is defined in section 111(1) as inserted by paragraph 40(a) of Schedule 6 to the Utilities Act 2000 (c.27).
(**8**) Section 32L(1) of the 1989 Act refers to "the Council", this is defined in section 111(1) as substituted by section 30(4)(b) of the Consumers, Estate Agents and Redress Act 2007 (c.17).

In accordance with section 32L(2) of the 1989 Act and paragraph 2(2) of Schedule 2 to the 1972 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 2011 and comes into force on 1st April 2011.

(2) Subject to paragraph (3), this Order extends to England and Wales only.

(3) Article 2 also extends to Scotland.

(4) In this Order, "the 2009 Order" means the Renewables Obligation Order 2009.

Amendments to section 32M of the Electricity Act 1989 (interpretation of sections 32 to 32M)

2.—(1) Section 32M(1) of the Electricity Act 1989 is amended as follows.

(2) After the definition of "banding provision" insert—

""bioliquid" has the meaning given by Article 2(h) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources;".

(3) In the definition of "fossil fuel", after "any substance" insert ", other than bioliquid,".

Amendments to article 2 of the 2009 Order (interpretation)

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

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

""biomaterial" means the biodegradable part of—

(a) products, waste and residues of biological origin resulting from agriculture (including vegetal and animal substances), forestry and related industries (including fisheries and aquaculture); and

(b) industrial, commercial and municipal waste;";

""fossil derived bioliquid" means bioliquid produced directly or indirectly from—

(a) coal,

(b) lignite,

(c) natural gas (within the meaning of the Energy Act 1976(**9**)),

(d) crude liquid petroleum, or

(e) petroleum products (within the meaning of the Energy Act 1976);";

""greenhouse gas emission criteria" means the criteria set out in Schedule A1;";

""land criteria" means the criteria set out in Schedule A2;";

""offshore", in relation to a generating station which generates electricity from wind, means a generating station which—

(a) has its wind turbines situated wholly in offshore waters; and

(**9**) 1976 c.76.

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

""registrable additional turbine" means a wind turbine which—

(a) forms part of the capacity of a generating station which is offshore;

(b) does not form part of the capacity of the station as accredited; and

(c) was not used to generate electricity before 1st April 2011;";

""Renewables Directive" means Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, and in Schedule A1 to this Order references to Annex 5 to the Renewables Directive are to Annex 5 as amended from time to time;"; and

""sustainability information" means information submitted to the Authority by the operator of a generating station for the purpose of demonstrating that a bioliquid meets the greenhouse gas emission criteria and the land criteria;".

(3) In paragraph (1), for the definition of "total installed capacity" substitute—

""total installed capacity" means—

(a) 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);

(b) in relation to a wind turbine, the maximum capacity at which the turbine could be operated for a sustained period without causing damage to it (assuming there was no interruption to the wind powering it);".

(4) In paragraph (2), after each reference to "waste" insert ", fossil derived bioliquid".

(5) For paragraph (4) substitute—

"(4) The fuels referred to in paragraph (3) are—

(a) fossil derived bioliquid;

(b) bioliquid (not being fossil derived bioliquid);

(c) biomass (not being bioliquid);

(d) waste which constitutes a renewable source (not being bioliquid or biomass);

(e) fossil fuel including waste (other than waste falling within sub-paragraphs (a) to (d)).".

Amendment to article 3 (waste as a renewable source)

4. In article 3(2) of the 2009 Order, for sub-paragraph (b) substitute—

"(b) is—

(i) for any waste that is a fossil derived bioliquid, the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of that fossil derived bioliquid as a whole,

(ii) for all other waste, the energy content of the fossil fuel from which the waste is in part composed or derived expressed as a percentage of the energy content of that waste as a whole.".

Amendment to article 4 (biomass and fuels which are to be treated as biomass)

5. In article 4(4) of the 2009 Order, after "not being waste" insert "or fossil derived bioliquid".

Fossil derived bioliquid

6. After article 4 of the 2009 Order (biomass and fuels which are to be treated as biomass) insert—

"**Fossil derived bioliquid**

4A.—(1) For the purposes of this Order, fossil derived bioliquid is to be treated as being in part composed of (or in part derived from) fossil fuel.

(2) Where fossil derived bioliquid (not being waste) is used, whether on its own or not, to fuel a generating station, the proportion of the fossil derived bioliquid which is to be treated as being composed of (or derived from) fossil fuel—

(a) is to be determined by the Authority, and

(b) is the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of the fossil derived bioliquid as a whole.

(3) It is for the operator of the generating station to demonstrate to the Authority's satisfaction what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.

(4) When determining that proportion the Authority is entitled to have regard to any material (whether or not produced to it by the operator of the generating station) if, in its opinion, that material indicates what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.".

Amendment to article 17A (generating stations accredited for longer than 20 years)

7. In article 17A(1) of the 2009 Order(**10**), after "paragraphs (2) and (3)" insert "and article 17AA".

Circumstances in which no ROCs are to be issued in respect of offshore wind generating stations

8. After article 17A of the 2009 Order (generating stations accredited for longer than 20 years) insert—

"**Offshore wind turbines registered for longer than 20 years**

17AA.—(1) This article applies in relation to the issue of ROCs in respect of the generation of electricity using a registered offshore wind turbine.

(2) ROCs are not to be issued in respect of any electricity generated using a registered offshore wind turbine, on or after the 20th anniversary of the date on which it was registered under article 58A (registration of offshore wind turbines) or 31st March 2037 (whichever is the earlier).

(3) Where the electricity generated by a generating station is generated in part using registered offshore wind turbines, but the amount of electricity so generated is not measured separately from electricity generated otherwise than by using those turbines, the electricity generated by it which is to be treated (for the purposes of paragraph (2)) as having been generated using those turbines is the relevant percentage (the relevant percentage for these purposes being the total installed capacity of those turbines at the date of generation of the electricity expressed as a percentage of the station's total installed capacity at that date).

(**10**) Article 17A was inserted by article 8 of S.I. 2010/1107.

(4) Article 17A does not apply in relation to the issue of ROCs in respect of the generation of electricity using a registered offshore wind turbine.

(5) In this article, "registered offshore wind turbine" means a wind turbine which is registered under article 58A.

Electricity generated using unregistered offshore wind turbines

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

(a) is offshore;

(b) generates electricity from wind; and

(c) in the case of a generating station accredited before 1st April 2011, generates electricity using a registrable additional turbine.

(2) ROCs are not to be issued in respect of any electricity generated by a generating station to which this article applies using an unregistered offshore wind turbine.

(3) Where the electricity generated by a generating station is generated in part using unregistered offshore wind turbines, but the amount of electricity so generated is not measured separately from electricity generated otherwise than by using those turbines, the electricity generated by it which is to be treated (for the purposes of paragraph (2)) as having been generated using those turbines is the relevant percentage (the relevant percentage for these purposes being the total installed capacity of those turbines at the date of generation of the electricity expressed as a percentage of the station's total installed capacity at that date).

(4) In this article, "unregistered offshore wind turbine", in relation to a generating station, means a wind turbine which—

(a) is not registered under article 58A; and

(b) where the generating station was accredited as at 31st March 2011, is a registrable additional turbine.".

Amendment to article 22 (circumstances in which no ROCs are to be issued in respect of electricity generated from renewable sources)

9. In article 22(1) of the 2009 Order, after every reference to "biomass" insert "or fossil derived bioliquid".

Circumstances in which no ROCs are to be issued in respect of electricity generated from bioliquid

10. After article 22 of the 2009 Order (circumstances in which no ROCs are to be issued in respect of electricity generated from renewable sources) insert—

"**Circumstances in which no ROCs are to be issued in respect of electricity generated from bioliquid**

22A.—(1) No ROCs are to be issued in respect of any electricity generated by a generating station from bioliquid unless the bioliquid meets the greenhouse gas emission criteria and the land criteria.

(2) It is for the operator of the generating station to demonstrate to the Authority's satisfaction that the bioliquid meets the greenhouse gas emission criteria and the land criteria.