

**EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED
FROM RENEWABLE ENERGY SOURCES) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2010**

2010 No. 374

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany SR 2010 No. 374 which is laid before the Northern Ireland Assembly. The statutory rule is made under section 2(2) of the European Communities Act 1972 and is subject to negative resolution procedure. The rule is due to come into operation on 5 December 2010.

2. Purpose of the instrument

The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (Northern Ireland) 2010 (“these Regulations”) amend the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003 (SR 2003/470), (“the 2003 Regulations”) to implement recent changes made to the issue, retirement and cancellation of renewable energy guarantees of origin (“REGOs”). REGOs are used as evidence of the production of electricity from renewable sources.

The Renewable Energy Directive (see background section below) requires a number of mandatory changes to be made to the regime governing REGOs. The main changes being made are as follows:

Amending the definition of “energy from renewable sources”

Regulation 3 of these Regulations amends the definition of energy from renewable sources to include energy from two new sources: aerothermal and hydrothermal. The references to “tidal and wave energy” are replaced by a reference to “ocean energy” and the existing definition of biomass is amended to include matter from fisheries and aquaculture.

Changing the measurement unit of a REGO

Regulation 6 of these Regulations amends the unit of measurement of a REGO from kilowatt hour to megawatt hour (“MWh”). The arrangements for rounding will be that a REGO will be issued for electricity rounded up or down to the nearest MWh. Therefore 1 REGO will be issued for electricity generation of 0.5MWh or more and generation of 0.49MWh or less will not earn a REGO.

Retirement of a REGO

Regulation 6 of these Regulations provides that, on the request of a registered holder of a REGO, Ofgem must retire a REGO. The concept of retirement is introduced in order to enable the Ofgem computer system to distinguish between REGOs required for GB Fuel Mix Disclosure (see background section below) and those required for all-island FMD. In order for REGOs to be counted for all-island FMD, suppliers must retire their REGOs before they are cancelled (16 months from the month of generation) or at the

very latest by 1 July following the calendar year after the FMD period for which suppliers wish to present REGOs.

Cancellation of REGOs

The RED requires REGOs to be cancelled once they have been used, but it does not state when cancellation is to take place or prescribe the form that cancellation is to take. Regulation 8 of these Regulations therefore introduces new arrangements requiring a REGO to be cancelled after 16 months. Where a REGO has not been cancelled, but has been retired before cancellation in order to be counted for all-island FMD before 1 July, the REGO will be deemed to have been cancelled after 19 months.

New requirements setting out information to be included in the REGO.

The RED sets out a number of new requirements for information to be included in a REGO. Regulation 10 amends Schedule 1 to the 2003 Regulations which sets out the necessary information that must be supplied in the application for a REGO. Regulation 11 amends Schedule 2 to the 2003 Regulations to provide that the following information is to be recorded on the Ofgem Renewables and CHP Register: the name and address of the person to whom the guarantee of origin has been, or was originally issued, when and from which renewable energy source the electricity was produced; the identity, location and capacity of the station; whether and to what extent the installation has benefited from investment support; whether and to what extent the unit of energy has benefited from any other national support scheme; the date the installation became operational and the date and country of issue and a unique identification number.

Information as to whether and to what extent the installation has benefitted from investment support or whether or not the unit of energy has benefited from any other United Kingdom support scheme includes but is not restricted to investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes and direct price support schemes including feed in tariffs and premium payments.

Recognition of REGOs from other Member States.

Ofgem is currently required to recognise REGOs issued by other Member States. In line with requirements of the Directive, Regulation 9 strengthens the circumstances in which Ofgem will be able to refuse to recognise a REGO, those now being where there are well founded doubts as to its accuracy, reliability or veracity. Where recognition is refused or withdrawn from a REGO from another Member State, Ofgem is now formally required to notify the Commission of the European Community of the fact and the justification for doing so.

DETI has concluded that it will not introduce REGOs for heating and cooling in NI at the present time. Alongside GB, the department will look at this decision again in light of the proposed introduction of the Renewable Heat Incentive next year. This will not affect the obligation on Ofgem in Regulation 9 to recognise REGOs from other Member States (for electricity and heating/cooling), where they are satisfied as to its accuracy, reliability or veracity. Where a REGO from another Member State is recognised by Ofgem its details are duly recorded. A list of all REGOs from other Member States that have been recognised by Ofgem is available on the Ofgem web site.

Administrative guidance will be issued by the REGOs scheme administrator, Ofgem.

3. Background

Article 5 of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market introduced REGOs into European law by requiring Member States to ensure that the origin of electricity produced from renewable energy sources could be guaranteed as such according to objective, transparent and non – discriminatory criteria. Article 5 was transposed into law by the 2003 Regulations.

Article 3(6) of Directive 2003/54/EC of the European Parliament and of the Council of 26th June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (which corresponds to Article 3(9) of the new Electricity Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC) introduced a requirement on Member States to ensure that electricity suppliers specify in bills and promotional materials to their end customers the contribution of each energy source to the overall fuel mix of the supplier in the preceding year. This obligation to specify the fuel mix from the preceding year is known as Fuel Mix Disclosure (FMD).

The Renewable Energy Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the use of energy from renewable sources (“the RED”), amends and subsequently repeals Directives 2001/77/EC. Article 15 of the RED makes a number of changes to the issue, recognition and cancellation of REGOs. The transposition deadline for these provisions is 5th of December 2010.

4. Matters of special interest to the Committee

There are no matters of special interest to the Committee.

5. Consultation

DETI conducted a shortened consultation on proposals for amending the REGOs over the summer. The shortened consultation was aimed at ensuring that the regulations could be made in time for the transposition deadline of 5 December. Eleven responses were received. The main concern raised by consultees was that the new arrangements would ensure that REGOs are able to be used for all-island Fuel Mix Disclosure.

6. Position in Great Britain

Equivalent legislation is being made by the Department of Energy and Climate Change in Great Britain. These regulations are broadly similar to those being made in GB. However, there are some differences between the regulations, with NI regulations introducing the concept of retiring REGOs so that NI REGOs can easily be distinguished from GB regulations under Ofgem’s computer system (currently REGOs are administered on behalf of the Northern Ireland Authority for Utility Regulation by Ofgem as provided for under The Origin of Renewables Electricity (Power of Gas and Electricity Markets Authority to act for Northern Ireland Authority for Utility Regulation) Regulations 2008).

7. Equality impact

In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has established that the proposed Regulations do not have

any implications for equality of opportunity. The Regulations will primarily affect renewable electricity producers and electricity suppliers in Northern Ireland: there is no evidence to show that these groups of people or companies can be assessed as being likely to be affected in the manner suggested under section 75.

8. Regulatory impact

Three options were considered as part of the Regulatory Impact Assessment of these regulations. It was concluded that the preferred option (continuing to use Ofgem to administer the REGOs) would result in a small additional administrative burden on electricity suppliers, who will, under the new regulations, have to “retire” their REGOs from the Ofgem register in order to have REGOs count for NI Fuel Mix Disclosure before they are cancelled. We understand this process to be well within the scope of suppliers who are used to working with the Ofgem register and this change is necessary to comply with the Directive. Counterbalancing this additional burden was the convenience in keeping the same administrator as is currently used for REGOs and for Renewable Obligation Certificates. The Regulatory Impact Assessment is available from the Department.

9. Financial implications

The necessary changes to the REGO Regulations will result in no additional costs for the Department. There will be a small additional administrative burden on electricity suppliers and an additional cost to Ofgem in amending its IT system to deal with the changes.

10. EU implications

A Transposition Note has been prepared and is available at Annex A of this Explanatory Memorandum.

11. Section 24 of the Northern Ireland Act 1998

These Regulations do not contravene section 24 of the Northern Ireland Act 1998.

12. 21 day rule

The transposition deadline of the Renewable Energy Directive is 5 December 2010. The regulations must therefore come into operation on that date. In addition, Ofgem, the REGO administrator, will be making the changes to the computer system which operates REGOs for the whole of the UK on that date.

ANNEX A

Transposition Note

This transposition note sets out the way in which Article 15 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (“the Directive”) is to be implemented through instruments made by, and other measures taken by, the Department of Enterprise, Trade and Investment in Northern Ireland.

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objective	Implementation	Responsibility
15(1)	Requirement to ensure that the origin of electricity produced from renewable sources is to be guaranteed as such in accordance with objective, transparent and non-discriminatory criteria.	Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003 (the 2003 Regulations). Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (Northern Ireland) 2010 (the Amending Regulations).	The Department of Enterprise, Trade and Investment
15(2)	Requirement that: <ul style="list-style-type: none"> guarantees of origin are issued in response to a request from a producer of electricity from renewable energy sources. guarantees of origin may be issued in response to a request from producers of heating and cooling from renewable energy sources. a guarantee of origin shall be of the standard size of 1MWh. 	Regulation 4(1) of the 2003 Regulations as amended by regulation 5 of the Amending Regulations. This option has not been exercised. Regulation 6(3) of the 2003 Regulations, as amended by regulation 6 of the Amending Regulations.	Ofgem The Department of Enterprise, Trade and Investment Ofgem

	<ul style="list-style-type: none"> no more than one guarantee of origin shall be issued in respect of each unit of energy produced and that each unit of energy is taken into account only once. Member States may provide that no support is to be granted to a producer when that producer receives a guarantee of origin for the same production of energy from renewable sources. 	<p>Regulation 4(5) and 6(4) of the 2003 Regulations.</p> <p>This option has not been exercised. The availability of support is governed by other legislation and has no relationship to whether or not a guarantee of origin has been issued.</p>	<p>Ofgem</p> <p>The Department of Enterprise, Trade and Investment</p>
15(3)	<p>Requirement that:</p> <ul style="list-style-type: none"> any use of a guarantee of origin shall take place within 12 months of the corresponding energy unit. a guarantee of origin shall be cancelled once it has been used. 	<p>As set out in the Single Electricity Market High Level Methodology for the Calculation of Fuel Mix Disclosure in the SEM Decision Paper.</p> <p>Regulation 7A of the 2003 Regulations, inserted by regulation 8 of the Amending Regulations, and regulation 6(8) of the 2003 Regulations, inserted by regulation 6 of the Amending Regulations.</p>	<p>SEM Committee</p> <p>Ofgem</p>
15(4)	<p>Requirement that Member States or designated competent bodies shall supervise the issuance, transfer and cancellation of guarantees of origin</p>	<p>Regulation 3 of the 2003 Regulations as amended by regulation 4 of the Amending Regulations.</p>	<p>Ofgem</p>
15(5)	<p>Requirement that Member States or the designated competent bodies shall put in place appropriate mechanisms</p>	<p>Regulation 7 and Schedules 1 and 2 to the 2003 Regulations, as amended by regulations 7, 10 and 11 of the Amending Regulations.</p>	<p>Ofgem</p>

	to ensure that guarantees of origin are issued, transferred and cancelled electronically and are accurate, reliable and fraud resistant.		
15(6)	Requirement for specific information to be specified in a guarantee of origin.	Regulation 7 and Schedule 2 to the 2003 Regulations, as amended by regulation 11 of the Amending Regulations.	Ofgem
15(7)	Requirement that where an electricity supplier is required to prove the share or quantity of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC, it may do so by using its guarantees of origin.	As set out in the Single Electricity Market High Level Methodology for the Calculation of Fuel Mix Disclosure in the SEM Decision Paper.	SEM Committee
15(8)	Requirement that the amount of energy from renewable sources corresponding to guarantees of origin transferred by an electricity supplier to a third party shall be deducted from the share of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC.	As set out in the Single Electricity Market High Level Methodology for the Calculation of Fuel Mix Disclosure in the SEM Decision Paper.	SEM Committee
15(9)	Requirement that Member States shall recognise guarantees of origin issued by other Member States. Recognition may only be refused where a Member State has well founded doubts about its accuracy, reliability or veracity. Member States are required to notify the Commission of all such refusals and their justifications.	Regulation 9 of the 2003 Regulations as amended by regulation 9 of the Amending Regulations.	Ofgem
15(10)	Requirement that if the Commission finds that a refusal to recognise a guarantee of origin is	Action for the European Commission: no implementation required. Regulation 9(2) provides for where the Commission have required recognition of a guarantee of	European Commission

	unfounded, the Commission may adopt a decision requiring the Member State in question to recognise it.	origin.	
15(11)	Requirement that a Member State may introduce in conformity with Community law, objective, transparent and non-discriminatory criteria for the use of guarantees of origin in complying with the obligations laid down in Article 3(6) of directive 2003/54/EC.	As set out in the Single Electricity Market High Level Methodology for the Calculation of Fuel Mix Disclosure in the SEM Decision Paper.	SEM Committee
15(12)	Requirement that where energy suppliers market energy from renewable sources to consumers with a reference to environmental or other benefits of energy from renewable sources, Member States may require those energy suppliers to make available, in summary form, information on the amount or share of energy from renewable sources that comes from installations or increased capacity that become operational after 25 th June 2009.	This option has not been exercised.	The Department of Enterprise, Trade and Investment

