

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED
FROM RENEWABLE ENERGY SOURCES) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2011

2011 No. 31

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany SR 2011 No. 31 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 the date they are made.

2. Purpose of the instrument

The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (Northern Ireland) 2011 (“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 correct a typographical error regarding the 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) required a number of mandatory changes to be made to the regime governing REGOs. These changes are reflected in Statutory Rule 2010 No. 374, the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (Northern Ireland) 2010. These Regulations will correct an error within that instrument as follows:

Cancellation of REGOs

The RED requires REGOs to be cancelled once they have been used and Regulation 7A(1)(a) of the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003 (SR 2003/470) explains the arrangements requiring a REGO to be cancelled after 16 months. A typographical error has occurred and the words ‘longer than’ shall be omitted by these Regulations.

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 was 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. It is not deemed necessary to consult on the amendment reflected in these Regulations.

6. 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

The Regulatory Impact Assessment for the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (Northern Ireland) 2010 is unchanged by these Regulations. The Regulatory Impact Assessment is available from the Department.

9. Financial implications

The amendment to the REGO Regulations will result in no additional costs for the Department.

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 2010 REGO Regulations contained an error, as explained in paragraph 2 above, which will be corrected by these Regulations. The error must be corrected as soon as possible and the Department is therefore bringing the regulations into operation the day they are made in order to ensure, as far as possible, the correct functioning of the REGO 2010 Regs.

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 (SR 2010/374) 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