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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Renewables Obligation Order 2015**

**PART 10**

**Functions of the Authority**

**Determination of matters by the Authority**

- 85.** Where this Order provides for any matter to be determined by the Authority—
- (a) the Authority may require the operator of the generating station to demonstrate to the Authority's satisfaction how that matter is to be determined, and
  - (b) 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 how the matter is to be determined.

**Functions of the Authority**

**86.—(1)** In addition to the functions assigned to it elsewhere in this Order, the Authority must carry out the following specific functions—

- (a) keeping, maintaining and making available to the public a list of generating stations granted preliminary accreditation in accordance with article 88 (or article 58 of the 2009 Order) and accreditation in accordance with article 89 (or article 58ZZA of the 2009 Order), together with any applicable conditions attached to the preliminary accreditation or accreditation;
- (b) keeping and maintaining a list of ROCs which have been revoked and making such list available to the public;
- (c) calculating and publishing before the start of each obligation period the sum which corresponds to a ROC for that period by virtue of article 67(4);
- (d) calculating and publishing before the start of each obligation period the amount which is the mutualisation cap for that period by virtue of article 73(5);
- (e) publishing from time to time during an obligation period the total ROC claim for that period;
- (f) by the 1st April each year publishing a report in relation to the obligation period ending with the 31st March in the previous calendar year ("the relevant period"), such report to include details (or, in the case of paragraph (ix), a summary) of—
  - (i) the compliance of each designated electricity supplier with its renewables obligation, for the relevant period, including the extent to which that obligation was met by the production of UK ROCs under article 7(2), payments made under article 67 or the production of Northern Ireland certificates under article 14(1), or was treated as met by payments made under article 68;

- (ii) the sums received by each UK supplier under article 71 in relation to the relevant period;
  - (iii) the number of ROCs issued by the Authority, the number of ROCs accepted by it under article 7(2), and the number of ROCs issued by it but not yet deleted from the Register in relation to the relevant period;
  - (iv) the number of ROCs issued by the Authority in relation to the relevant period categorized by reference to the way in which the electricity in respect of which the ROCs were issued was generated;
  - (v) any notices published by the Authority under article 74(2) in relation to the relevant period;
  - (vi) any payments made to the Authority in accordance with article 74(5), during or in relation to the relevant period;
  - (vii) the sums received by each compliant UK supplier under article 77, during or in relation to the relevant period;
  - (viii) any recalculations carried out by the Authority in accordance with article 75(5), during or in relation to the relevant period;
  - (ix) the outcome of any enquiries or investigations conducted by the Authority pursuant to sub-paragraph (g) in relation to the relevant period; and
  - (x) any other matters which the Authority considers relevant in relation to the relevant period;
- (g) monitoring compliance with this Order by designated electricity suppliers and operators of generating stations (including compliance by operators of generating stations with any conditions attached to their accreditation), where such monitoring may include conducting enquiries or investigations into—
- (i) the amount of electricity generated from renewable sources by accredited generating stations;
  - (ii) the amount of such electricity supplied to customers in Great Britain;
  - (iii) the transfer and holding of ROCs (including the transfer and holding of ROCs issued to agents by virtue of article 19);
  - (iv) the effect of such matters on the making and allocation of payments under articles 67, 68, 71, 74, 76 and 77; and
  - (v) the effect of the renewables obligation on the activities and operations of designated electricity suppliers and operators of generating stations;
- (h) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to sub-paragraph (g); and
- (i) the provision of such information to the Northern Ireland authority as the Authority considers may be relevant to the exercise of the Northern Ireland authority's functions under any NIRO Order.
- (2) The Authority must, as soon as reasonably practicable after each obligation period, forward to the Secretary of State a summary of the information submitted to it during that period by the operators of generating stations for the purpose of demonstrating that bioliquid meets the greenhouse gas criteria and the land criteria.
- (3) In this article—
- “compliant UK supplier” and “UK supplier” have the same meanings as in Part 8; and
- “total ROC claim” means the total number of ROCs which have been claimed in respect of an obligation period, less—

- (a) the number of ROCs which have been issued in respect of that obligation period, and
- (b) the number of ROCs which the Authority has, in respect of that obligation period, decided not to issue or refused to issue under article 24.

### **Exchange of information with the Northern Ireland Authority**

**87.**—(1) The Authority must, as soon as reasonably practicable after the specified day following an obligation period, notify the Northern Ireland authority of—

- (a) the details of each Northern Ireland certificate produced to the Authority by a designated electricity supplier in discharge of that supplier’s renewables obligation for that period and the name of the designated electricity supplier in question; and
- (b) the total number of Northern Ireland certificates produced to the Authority in respect of that obligation period.

(2) The Authority must, as soon as reasonably practicable after receiving a notification from the Northern Ireland authority as to the ROC identifiers of ROCs produced to the Northern Ireland authority by Northern Ireland suppliers under any NIRO Order, inform the Northern Ireland authority of—

- (a) the ROC identifier of any ROC so notified which the Authority has revoked under article 24 and whether it has issued a replacement ROC in respect of any such ROC (unless that replacement ROC has itself been revoked), and
- (b) the ROC identifier of any ROC so notified that has been produced to the Authority by a designated electricity supplier under article 7(2) and the date on which it was produced.

(3) The Authority must, as soon as reasonably practicable after the specified day following an obligation period, notify the Northern Ireland authority of the number of UK ROCs produced to the Authority in respect of that period.

(4) In this article, “ROC identifier” has the meaning given by paragraph 3 of Schedule 4.

### **Preliminary accreditation of generating stations**

**88.**—(1) Subject to paragraph (2), the Authority may, upon the application of a person who proposes to construct or operate a generating station, grant the station preliminary accreditation if—

- (a) the station is not yet commissioned, and
- (b) it is a station in respect of which—
  - (i) consent under section 36 of the Act<sup>(1)</sup> or Article 39 of the Electricity (Northern Ireland) Order 1992<sup>(2)</sup> has been obtained,
  - (ii) planning permission under the Town and Country Planning Act 1990<sup>(3)</sup> has been granted and any conditions as to the time period in which the development to which it relates must be begun have not been breached, or
  - (iii) development consent under the Planning Act 2008<sup>(4)</sup> has been granted.

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

(1) 1989 c.29. Section 36 has been amended by Schedule 2 paragraph 32(2) and (3) of the Planning Act 2008 (c.29), section 93(1) and (3) of the Energy Act 2004 (c.20), section 12(7)(a) of the Marine and Coastal Access Act 2009 (c.23), and Schedule 1(1) paragraph 1(2)(a) and (b) of the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006/1054.

(2) S.I. 1992/231 (N.I.1). Article 39 has been amended by regulation 9(1) and (2) of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005/335 and regulation 3 of the Electricity (Published Criteria for Generating Station) Regulations (Northern Ireland) 2011/247.

(3) 1990 c.8.

(4) 2008 c.29.

- (a) if, in the Authority’s opinion, the station is unlikely to generate electricity in respect of which ROCs may be issued,
- (b) if a CFD has been entered into at any time in relation to the generation of electricity by the station, or
- (c) subject to paragraph (3), if an investment contract has been entered into at any time in relation to the generation of electricity by the station.

(3) Paragraph (2)(c) does not apply if the application for preliminary accreditation is accompanied by a declaration made in writing by the person who proposes to construct or operate the generating station that the investment contract has been terminated (or has otherwise ceased to have effect) by reason of a permitted termination event.

(4) In paragraph (1) “development” has the meaning given in section 55(1) of the Town and Country Planning Act 1990.

### **Accreditation of generating stations**

**89.**—(1) This article applies 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 19, 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, in the Authority’s opinion, the station is unlikely to generate electricity in respect of which ROCs may be issued,
- (b) subject to paragraph (5), if the generating station is a potential feed-in tariff generating station,
- (c) subject to paragraph (6), if the application for accreditation is not accompanied by the documents specified in paragraph (9),
- (d) subject to paragraph (7), if an application for a CFD has been made at any time in relation to the generation of electricity by the station, or
- (e) subject to paragraph (8), if an investment contract has been entered into at any time in relation to the generation of electricity by the station.

(5) Paragraph (4)(b) does not apply if the application for accreditation is accompanied by a notice in writing stating whether support for electricity generated by the station should be given in the form of ROCs or in the form of financial incentives under a feed-in tariff scheme.

(6) Paragraph (4)(c) does not apply if the application for accreditation is in respect of a generating station which—

- (a) is a potential feed-in tariff generating station, or
- (b) is a microgenerator.

(7) Paragraph (4)(d) does not apply if the application for accreditation is accompanied by the document specified in paragraph (9)(a)(ii).

(8) Paragraph (4)(e) does not apply if the application for accreditation is accompanied by the document specified in paragraph (9)(b)(ii).

(9) 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 in relation to the generation of electricity 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 relation to the generation of electricity by the station has been rejected by the delivery body or by the Secretary of State; and
- (b) either—
  - (i) a declaration made in writing by the operator of the generating station that an investment contract has never been entered into in relation to the generation of electricity by the station, or
  - (ii) a declaration made in writing by the operator of the generating station that any investment contract entered into in relation to the generation of electricity by the station has been terminated (or has otherwise ceased to have effect) by reason of a permitted termination event.

(10) In this article “potential feed-in tariff generating station” means a generating station in relation to which support may be given in the form of financial incentives under the feed-in tariff scheme to encourage the generation of electricity by the station.

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

**90.**—(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 or accreditation, 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 was granted such that, had the application for preliminary accreditation been made after the change, it would not have been granted, or
  - (e) there has been a change in applicable legislation since the accreditation was granted such that, in the Authority's opinion, the station to which the accreditation relates is no longer likely to generate electricity in respect of which ROCs may be issued.
- (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 original capacity of the generating station.

### **Registration of offshore wind turbines**

- 91.**—(1) This article applies to a generating station which—
- (a) is accredited, and
  - (b) generates electricity using offshore wind turbines.
- (2) The operator of a generating station to which this article applies may apply to the Authority in writing for one or more wind turbines forming part, or intended to form part, of the generating station to be registered under this article.
- (3) For each wind turbine to which the application relates, the application must—
- (a) identify the location, or the proposed location, of the wind turbine; and
  - (b) specify the total installed capacity of the wind turbine.
- (4) The application must be received by the Authority on or before 31st March 2017.
- (5) 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 92(5)(a), and
  - (b) one of the documents referred to in article 92(5)(b).
- (6) Following receipt of an application meeting the requirements of paragraphs (3), (4) and (5), the Authority must register the wind turbines to which the application relates if the Authority is satisfied that—
- (a) where the station was accredited before 1st April 2011, the wind turbines are registrable additional turbines;
  - (b) where the wind turbines are registrable additional turbines—
    - (i) the date of receipt of the application was no later than 5 years after the date on which registrable additional turbines were first added to the station; and

- (ii) the Authority has not registered other registrable additional turbines in relation to the station on more than 4 separate occasions;
  - (c) where the wind turbines form part of the original capacity of the station—
    - (i) the date of receipt of the application was no later than 5 years after the date on which the station was accredited; and
    - (ii) the Authority has not registered other wind turbines forming part of the original capacity of the station on more than 4 separate occasions; and
  - (d) where the wind turbines form part of the original capacity of the station and no other wind turbines have been registered under this article in relation to the station, the total installed capacity of the wind turbines to which the application relates is at least 20% of the accredited capacity of the station.
- (7) The Authority must notify the applicant in writing of its decision on an application to register a wind turbine under this article.
- (8) In providing written notification under paragraph (6), the Authority must specify the date on which the registration of the wind turbine is to take effect.
- (9) For the purposes of this article, the date on which a registrable additional turbine is added to a generating station is the date on which the registrable additional turbine is first used to generate electricity.
- (10) In this article, “registrable additional turbine” means an offshore wind turbine which—
- (a) does not form part of the original capacity of a generating station, and
  - (b) was not used to generate electricity before 1st April 2011.

### **Registration of additional capacity**

- 92.**—(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
  - (c) does not form part of the original capacity of the station.
- (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 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, and
  - (b) state the total installed capacity of the generating capacity.
- (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 in relation to the generation of electricity 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 relation to the generation of electricity by the station has been rejected by the delivery body or by the Secretary of State; and
- (b) either—
  - (i) a declaration made in writing by the operator of the generating station that an investment contract has never been entered into in relation to the generation of electricity by the station, or
  - (ii) a declaration made in writing by the operator of the generating station that any investment contract entered into in relation to the generation of electricity by the station has been terminated (or has otherwise ceased to have effect) by reason of a permitted termination event.
- (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.

### **ROC Register**

- 93.**—(1) The Authority must establish and maintain a register of ROCs (“the Register”) in accordance with Schedule 4.
- (2) A ROC is issued for the purpose of this Order at the point at which its particulars (within the meaning of Schedule 4) are entered in the Register by the Authority.
- (3) Without prejudice to the foregoing provisions of this article and Schedule 4, the Authority must ensure that the Register contains, by way of entries made in it—
- (a) an accurate record of the particulars of each ROC which is issued by the Authority (including the person who is for the time being its registered holder) and which remains eligible to be produced to the Authority; and
  - (b) a list of the names of all persons who either are the registered holder of a ROC or, although not at that time the registered holder of a ROC, have notified the Authority that they wish an entry to be made and maintained in respect of them as prospective registered holders of ROCs.
- (4) Only the registered holder of a ROC may produce that ROC to the Authority under article 7.