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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Renewables Obligation Order 2015**

**PART 7**

Cases and circumstances when a ROC must not be issued

**Generating stations not compliant with accreditation or metering requirements**

**43.**—(1) ROCs are not to be issued in respect of any electricity generated by a generating station during a month in which the station—

- (a) is not accredited, or
- (b) any conditions to which the accreditation is subject are not met.

(2) ROCs are not to be issued in respect of any electricity generated by a generating station unless—

- (a) the electricity is measured using a meter which, if used for ascertaining the quantity of electricity supplied by an authorised supplier to a customer, would be approved for the purposes of paragraph 2(1)(a) of Schedule 7 to the Act, or
- (b) the Authority has agreed that estimates may be provided instead of measurements using a meter.

**Maximum period of eligibility for ROCs**

**44.**—(1) Subject to paragraph (3), in the case of a generating station first accredited on or before 25th June 2008, ROCs are not to be issued in respect of any electricity generated by the station—

- (a) using original capacity or mid-2008 additional capacity, after 31st March 2027,
- (b) using additional capacity (other than mid-2008 additional capacity), on or after the 20th anniversary of the date on which, in the Authority's view, that additional capacity first formed part of the station or 31st March 2037 (whichever is the earlier).

(2) Subject to paragraph (3), in the case of a generating station first accredited after 25th June 2008, ROCs are not to be issued in respect of any electricity generated by the station—

- (a) using original capacity, on or after the 20th anniversary of the date on which the station was first accredited or 31st March 2037 (whichever is the earlier),
- (b) using additional capacity, on or after the 20th anniversary of the date on which, in the Authority's view, that additional capacity first formed part of the station or 31st March 2037 (whichever is the earlier).

(3) Paragraphs (1) and (2) do not apply in relation to the issue of ROCs in respect of the generation of electricity using a registered offshore wind turbine.

(4) 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 that wind turbine was registered under article 91 or 31st March 2037 (whichever is the earlier).

(5) In this article—

“additional capacity” means generating capacity which—

- (a) forms part of an accredited generating station, and
- (b) does not form part of the original capacity of that generating station;

“mid-2008 additional capacity” means additional capacity which formed part of a generating station on or before 25th June 2008; and

“registered offshore wind turbine” means a wind turbine which is registered under article 91.

### **Generating stations using excluded capacity to generate electricity**

**45.**—(1) This article applies to a generating station where excluded 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 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 excluded capacity is measured separately from any electricity generated by the station using RO capacity, or
- (b) all of the electricity generated by the station using RO capacity is measured separately from any electricity generated by the station using the excluded capacity.

(3) ROCs are not to be issued in respect of any electricity generated using excluded capacity.

(4) In this article, “excluded capacity” means—

(a) generating capacity which—

- (i) in the Authority’s view formed part of a generating station from a date no earlier than 1st April 2014,
- (ii) does not form part of the original capacity of the station,
- (iii) is not registered under article 92, and
- (iv) is not an offshore wind turbine;

(b) an offshore wind turbine which—

- (i) forms part of a generating station accredited on or before 31st March 2011,
- (ii) does not form part of the original capacity of the station,
- (iii) was not used to generate electricity before 1st April 2011, and
- (iv) is not registered under article 91;

(c) an offshore wind turbine which—

- (i) forms part of a generating station first accredited after 31st March 2011, and
- (ii) is not registered under article 91;

(d) a combustion unit in relation to which a capacity market transfer notice (within the meaning of article 48(3)) has come into force; or

(e) a combustion unit in relation to which a CFD transfer notice (within the meaning of article 50(3))—

- (i) has come into force, and
- (ii) has not been withdrawn in accordance with article 50(4).

(5) For the purposes of paragraph (4)—

- (a) the date on which a capacity market transfer notice comes into force is to be determined in accordance with article 48(6), and

- (b) the date on which a CFD transfer notice comes into force is to be determined in accordance with article 50(7).

### **Generating stations located outside England and Wales**

**46.**—(1) ROCs are not to be issued in respect of any electricity generated by a generating station located in Scotland.

(2) ROCs are not to be issued in respect of any electricity generated by a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003 where the electricity has been supplied to customers in Northern Ireland.

(3) ROCs are not to be issued in respect of any electricity generated by a generating station located beyond the seaward limits of the territorial sea adjacent to the United Kingdom unless—

- (a) it is connected directly to a transmission or distribution system (or the part of such a system) located in Northern Ireland (and to no other system or part thereof), or
- (b) it is an area designated under section 1(7) of the Continental Shelf Act 1964(1) or in a Renewable Energy Zone.

(4) In this article—

“Northern Ireland” has the same meaning as in Article 54(1) of the Energy (Northern Ireland) Order 2003;

“Scotland” includes—

- (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland,
- (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004(2).

### **Electricity supplied to customers in Northern Ireland**

**47.** No ROCs certifying the matters within section 32B(4) or (6) of the Act are to be issued where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in respect of which the ROCs are to be issued has been supplied to customers in Northern Ireland.

### **Combustion units in relation to which a capacity agreement has been issued**

**48.**—(1) This article applies to a combustion unit which is included in a generating CMU in respect of which a capacity agreement has been issued (the “relevant capacity agreement”).

(2) ROCs are not to be issued in respect of any electricity generated by a combustion unit to which this article applies unless—

- (a) a capacity market transfer notice has been given to the Authority by the operator of the generating station in respect of the combustion unit, and
- (b) paragraph (4) or (5) applies in relation to the electricity.

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

- (a) is in writing,
- (b) identifies the combustion unit to which it relates,
- (c) states the date on which the relevant capacity agreement was issued, and

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(1) [1964 c.29](#). This provision was amended by section 37 and paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23).

(2) [2004 c.20](#). The Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 ([S.I. 2005/3153](#)) has been made under section 84(5).

- (d) states the date of commencement of the delivery year, or first delivery year, for which that capacity agreement was issued (“the capacity market participation date”).
- (4) This paragraph applies in relation to electricity generated—
- (a) in a month in which the combustion unit burns only biomass, and
  - (b) before the capacity market transfer notice has come into force.
- (5) This paragraph applies in relation to electricity generated—
- (a) in a month in which the combustion unit burns fossil fuel and biomass, and
  - (b) before the capacity market participation date.
- (6) For the purposes of paragraph (4), a capacity market transfer notice comes into force on the capacity market participation date stated in the notice unless the relevant capacity agreement has been terminated before the earliest of the capacity market participation date and 1st April 2017 (in which case the capacity market transfer notice never comes into force).
- (7) For the purposes of paragraphs (4) and (5), no account is to be taken of any fossil fuel or waste which is used in the combustion unit for permitted ancillary purposes.
- (8) Once a capacity market transfer notice has been received by the Authority it cannot be withdrawn.
- (9) In this article, “capacity agreement”, “generating CMU” and “delivery year” have the same meaning as in the Electricity Capacity Regulations 2014<sup>(3)</sup>.

#### **Electricity in respect of which a CFD or investment contract applies**

**49.** ROCs are not to be issued in respect of any electricity in respect of which a CFD or investment contract applies.

#### **Combustion units in relation to which a CFD or investment contract has been entered into**

- 50.**—(1) This article applies to a combustion unit in relation to which—
- (a) a CFD has been entered into, or
  - (b) an investment contract—
    - (i) has been entered into, and
    - (ii) has not been terminated (or otherwise ceased to have effect) by reason of a permitted termination event.
- (2) ROCs are not to be issued in respect of any electricity generated by a combustion unit to which this article applies unless a CFD transfer notice has been given to the Authority by the operator of the generating station in respect of the combustion unit.
- (3) A CFD transfer notice is a notice which—
- (a) is in writing,
  - (b) identifies the 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 the date on which a CFD or investment contract was entered into in relation to that combustion unit.
- (4) Once a CFD transfer notice has been received by the Authority it cannot be withdrawn unless—

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(3) [S.I. 2014/2043](#), amended by [S.I. 2015/875](#). See regulations 2(1), 4 and 30(1).

- (a) the CFD transfer notice relates to a combustion unit in relation to which an investment contract has been entered into,
  - (b) the investment contract has been terminated (or has otherwise ceased to have effect) by reason of a permitted termination event,
  - (c) the CFD transfer notice was given to the Authority before the investment contract was terminated or otherwise ceased to have effect, and
  - (d) the withdrawal of the CFD transfer notice is made by notice in writing to the Authority by the operator of the generating station of which the combustion unit forms part.
- (5) Subject to paragraph (6), 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.
- (6) The conversion date stated in a CFD transfer notice cannot be changed—
- (a) after 31st March 2027,
  - (b) after the CFD transfer notice has come into force, or
  - (c) if a CFD made in relation to the combustion unit to which the CFD transfer notice relates has been terminated or otherwise ceased to have effect.
- (7) 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.
- (8) For the purpose of paragraph (7)(b)(ii), no account is to be taken of any fossil fuel or waste which is used in the combustion unit for permitted ancillary purposes.

### **Generating stations supported or potentially eligible for support under a feed-in tariff scheme**

- 51.**—(1) ROCs are not to be issued in respect of any electricity generated by a microgenerator if that microgenerator—
- (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.
- (2) Subject to paragraph (3), ROCs are not to be issued in respect of any electricity generated by a generating station—
- (a) if support has been given under a feed-in tariff scheme for the generation of electricity by the station, or
  - (b) if, before the application for accreditation of the station was determined, the Authority was notified in writing by a relevant person that support for electricity generated by the station should be given in the form of financial incentives under a feed-in tariff scheme.

(3) Paragraph (2) does not prevent the issue of ROCs in respect of electricity generated by a generating station if financial incentives are not available under a feed-in tariff scheme for that electricity by virtue of the size of the station's total installed capacity.

(4) In this article—

“relevant person”, in relation to a generating station, means—

- (a) the operator of the station, or
- (b) a person who is entitled to receive financial incentives under a feed-in tariff scheme in respect of that station.

### **Generating stations in respect of which a NFFO arrangement applied but was terminated**

**52.**—(1) This article applies where—

- (a) a NFFO arrangement (“the applicable NFFO arrangement”) provided for the building of a generating station at a specified location (“the location”),
- (b) the applicable NFFO arrangement was terminated due to the operator of the generating station to which it applied having committed an unremedied breach of it, and
- (c) the last period in the tables contained in Schedule 1 to the Non-Fossil Fuel Order which relates to the applicable NFFO arrangement has not expired.

(2) Subject to paragraph (3), where this article applies, ROCs are not to be issued in respect of any electricity generated by a generating station—

- (a) which is situated wholly or partly at the location,
- (b) to which the applicable NFFO arrangement applied at the time it was commissioned, and
- (c) which is owned or operated by a person—
  - (i) who was a party to the applicable NFFO arrangement, or
  - (ii) who is a connected person or a linked person in relation to any such party.

(3) Paragraph (2) does not apply in relation to electricity generated by a generating station in a month in which all of the electricity generated by that station is sold pursuant to another NFFO arrangement.

### **Non-commissioned generating stations in respect of which a NFFO arrangement applies**

**53.**—(1) This article applies where a NFFO arrangement (“the applicable NFFO arrangement”) provides for the building of a generating station (“the specified station”) at a specified location (“the location”) and the specified station has not been commissioned.

(2) Subject to paragraph (3), where this article applies, ROCs are not to be issued in respect of any electricity generated by a generating station which—

- (a) is situated wholly or partly at the location, and
- (b) is owned or operated by a person—
  - (i) who is a party to the applicable NFFO arrangement, or
  - (ii) who is a connected person or a linked person in relation to any such party.

(3) Paragraph (2) does not apply in relation to electricity generated by a generating station in a month in which all of the electricity generated by that station is sold pursuant to another NFFO arrangement.

### **Large hydro generating stations first commissioned on or before 1st April 2002**

54.—(1) ROCs are not to be issued in respect of any electricity generated by a large hydro generating station if the station was first commissioned on or before 1st April 2002.

(2) In this article, “large hydro generating station” means a hydro generating station which has, or has had at any time since 1st April 2002, a declared net capacity of more than 20 megawatts.

### **Generating stations first commissioned before 1st January 1990**

55.—(1) This article applies to a generating station—

- (a) which was first commissioned before 1st January 1990,
- (b) the main components of which have not been renewed since 31st December 1989, and
- (c) which is not a micro hydro generating station.

(2) ROCs are not to be issued in respect of any electricity generated in any month by a generating station to which this article applies unless all of the electricity generated by that station during that month—

- (a) is generated partly from fossil fuel (other than renewable waste) and partly from renewable sources which consist wholly of—
  - (i) biomass,
  - (ii) biomass and Solid Recovered Fuel, or
  - (iii) a liquid or gaseous fuel produced by means of gasification, pyrolysis or anaerobic digestion, or
- (b) is generated from biomass and the following conditions are met—
  - (i) where that station generated electricity in any month prior to April 2003, no less than 75% of the energy content of the fuel used to generate that electricity was derived from fossil fuel,
  - (ii) the first month in which all of the electricity generated by that station was generated from biomass occurred after March 2004, and
  - (iii) in relation to electricity generated in any month after that first month by that station, no more than 75% of the energy content of the fuel used to generate that electricity was derived from fossil fuel.

(3) For the purposes of paragraph (1)(b), the main components of a generating station are only to be regarded as having been renewed since 31st December 1989—

- (a) in the case of a hydro generating station, where the following parts have been installed in the station after 31st December 1989 and were not used for the purpose of electricity generation prior to their installation—
  - (i) all the turbine runners or all the turbine blades or the propeller, and
  - (ii) all the inlet guide vanes or all the inlet guide nozzles;
- (b) in the case of any other generating station, where all the boilers and turbines (driven by any means including wind, water, steam or gas) have been installed in the station after 31st December 1989 and were not used for the purpose of electricity generation prior to their installation.

(4) In determining how electricity has been generated for the purposes of paragraph (2), no account is to be taken of any fossil fuel or waste which the generating station uses for permitted ancillary purposes.

(5) In this article, “micro hydro generating station” means a hydro generating station which—

- (a) has a declared net capacity of 1.25 megawatts or less, and
- (b) has never generated electricity under an arrangement which has ever been a qualifying arrangement as defined in section 33 of the Act (as that section was originally enacted).

#### **Generating stations using peat**

**56.** ROCs are not to be issued in respect of any electricity generated by a generating station during a month in which it generates electricity wholly or partly from peat.

#### **Generating stations using landfill gas**

**57.** ROCs are not to be issued in respect of any electricity generated by a generating station from landfill gas unless the electricity is generated—

- (a) by a generating station to which article 34 applies,
- (b) using pre-2013 capacity,
- (c) in the way described in Schedule 5 as “closed landfill gas”, or
- (d) using the heat from a turbine or engine.

#### **Generating stations using gaseous fuel produced by means of gasification or pyrolysis**

**58.—**(1) ROCs are not to be issued in respect of any electricity generated by a generating station from a gaseous fuel produced by means of gasification or pyrolysis unless—

- (a) the generating station is an excepted generating station, or
  - (b) the gaseous fuel has a gross calorific value of at least 2 megajoules per metre cubed at 25 degrees Celsius and 0.1 megapascals when measured at the inlet to the generating station.
- (2) In this article, “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.

#### **Generating stations using Solid Recovered Fuel**

**59.** ROCs are not to be issued in respect of any electricity generated by a generating station from Solid Recovered Fuel unless—

- (a) the Solid Recovered Fuel constitutes biomass, or
- (b) the generating station is a qualifying CHP station.

#### **Generating stations using waste or fossil fuel**

**60.—**(1) ROCs are not to be issued in respect of any electricity generated by a generating station during a month in which it generates electricity wholly from renewable sources which consist of or include waste unless—

- (a) the waste is biomass,
- (b) the waste is a liquid consisting wholly or mainly of hydrocarbon compounds,
- (c) the waste is in the form of a liquid or gaseous fuel produced by means of gasification, pyrolysis or anaerobic digestion, or
- (d) the station is a qualifying CHP station.

(2) ROCs are not to be issued in respect of any electricity generated by a generating station during a month in which it generates electricity partly from renewable sources, and partly from fossil fuel other than renewable waste, unless—

- (a) the renewable sources used by the station during the month in question consist of—
  - (i) biomass,
  - (ii) biomass and Solid Recovered Fuel, or
  - (iii) a liquid or gaseous fuel produced by means of gasification, pyrolysis or anaerobic digestion; and
- (b) any waste used by the station during that month is—
  - (i) biomass,
  - (ii) liquid consisting wholly or mainly of hydrocarbon compounds,
  - (iii) in the form of a liquid or gaseous fuel produced by means of gasification, pyrolysis or anaerobic digestion, or
  - (iv) Solid Recovered Fuel.

(3) In determining how electricity has been generated for the purposes of this article, no account is to be taken of any fossil fuel or waste which the generating station uses for permitted ancillary purposes.

#### **Circumstances in which ROCs must not be issued in respect of electricity generated from bioliquid**

**61.**—(1) ROCs are not to be issued in respect of any electricity generated by a generating station from bioliquid unless the bioliquid meets the greenhouse gas 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 criteria and the land criteria.

(3) Where paragraph (4) applies to a consignment of bioliquid, a mass balance system must be used for the purpose of demonstrating that the bioliquid meets the greenhouse gas criteria and the land criteria.

- (4) This paragraph applies to a consignment of bioliquid where—
  - (a) the consignment of bioliquid was withdrawn from a mixture containing consignments of bioliquid with differing sustainability profiles, or
  - (b) consignments of the biomaterial from which the consignment of bioliquid was made were withdrawn from a mixture containing consignments of biomaterial with differing sustainability profiles.
- (5) For the purposes of this article—
  - (a) a mass balance system is a system which—
    - (i) provides for the sustainability profiles of the consignments of bioliquid or biomaterial added to a mixture to be attributed to the consignments withdrawn from that mixture, and
    - (ii) requires the sustainability profile attributed to the sum of all the consignments withdrawn from a mixture to be the same, and in the same quantities, as the sustainability profile of the sum of all the consignments added to that mixture;
  - (b) the sustainability profile of a consignment of bioliquid is information identifying—
    - (i) the material of which the bioliquid is composed, and
    - (ii) the proportion that meets the greenhouse gas criteria and the land criteria;

- (c) the sustainability profile of a consignment of biomaterial is—
  - (i) information identifying the material of which the biomaterial is composed, and
  - (ii) information relating to the biomaterial to be used for the purpose of determining whether bioliquid made from the biomaterial meets the greenhouse gas criteria and the land criteria.

### **Common agricultural policy requirements in the case of bioliquids**

**62.** ROCs are not to be issued in respect of any electricity generated by a generating station from bioliquid if—

- (a) the bioliquid is derived from biomaterial which—
  - (i) is of agricultural origin,
  - (ii) was cultivated in the EU, and
  - (iii) is not waste, and
- (b) the Authority is satisfied that the biomaterial referred to in sub-paragraph (a) was—
  - (i) cultivated in a manner that breached a requirement or standard listed in the third column of the table in Annex 2 to Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy<sup>(4)</sup> (“the 2013 Regulation”) and corresponding to the entry in the first column of that table for “environment, climate change, good agricultural condition of land”,
  - (ii) cultivated in a manner that breached statutory management requirement number 10 in Annex 2 to the 2013 Regulation, or
  - (iii) obtained from land which does not meet the minimum requirements for good agricultural and environmental condition defined pursuant to Article 94 of the 2013 Regulation.

### **Circumstances in which ROCs must not be issued in respect of electricity generated from solid or gaseous biomass**

**63.**—(1) This article applies to biomass (other than animal excreta, bioliquid, landfill gas, sewage gas or waste).

(2) ROCs are not to be issued in respect of any electricity generated by a generating station from biomass to which this article applies unless—

- (a) the generating station has a total installed capacity of less than 1 megawatt, or
- (b) the biomass meets the greenhouse gas criteria and the land criteria.

### **Cases where a renewables obligation certificate has already been issued**

**64.** ROCs are not to be issued in respect of any electricity in respect of which—

- (a) a ROC has already been issued and has not been revoked, or
- (b) a renewables obligation certificate has already been issued under a renewables obligation order made by the Scottish Ministers (whether or not that renewables obligation certificate has been revoked).

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(4) OJ No L 347, 20.12.13, p549.

### **Cases and circumstances when a ROC must not be issued: general provisions**

**65.**—(1) Subject to paragraph (2), where by virtue of this Part ROCs are not to be issued in respect of part of the electricity generated by a generating station and that electricity is not measured separately from the remainder of the electricity generated by the station, the operator of the station must provide the Authority with an estimate of the amount of electricity generated by the station in respect of which ROCs are not to be issued.

- (2) The estimate must be produced using a methodology which—
- (a) has been agreed with the Authority, and
  - (b) in the Authority’s opinion, is unlikely to underestimate the amount of electricity in respect of which ROCs are not to be issued.