

EXPLANATORY MEMORANDUM TO
THE PROMOTION OF THE USE OF ENERGY FROM RENEWABLE SOURCES
REGULATIONS 2011

2011 No. 243

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The purpose of the instrument is to transpose some of the requirements of Directive 2009/28/EC (“the renewables directive”). The instrument assigns responsibility for ensuring certain requirements of the renewables directive are met.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Article 13(5) of the renewables directive requires Member States to ensure that certain public buildings fulfil an exemplary role in the context of the directive from 1st January 2012 onwards. Article 14(3) requires Member States to ensure that certification schemes are available by 31st December 2012 for installers of certain small scale equipment.

- 3.2 These articles are transposed by regulations 11 and 12 of the instrument which set out the result to be achieved, but do not set out the choice of form or methods. For full implementation, an appropriate framework to ensure compliance, will need to be put in place by 1st January 2012 and 31st December 2012 respectively.

- 3.3 Article 3(1) of the renewables directive requires Member States to meet the 2020 target for the share of energy from renewable sources. This article is transposed by regulation 3 of the instrument which sets out the result to be achieved, but does not set out the choice of form or methods. The UK National Renewable Energy Action Plan (“NREAP”) adopted under article 4(1) of the directive sets out detail about how the UK could meet the 2020 target and other requirements of the directive.

4. **Legislative Context**

- 4.1 The instrument transposes Articles 3(1), 3(2), 13(5), 14 and 16(4) of the renewables directive. A transposition note is annexed. The instrument includes provision in relation to devolved matters and has been made following consultation with the devolved administrations.

4.2 Other instruments and measures by the Secretary of State and by Ofgem to transpose the renewables directive are set out in the transposition note annexed. Other instruments will be made by Scottish Ministers to transpose articles 17 to 19 of the directive. Other instruments made by Northern Ireland Departments transpose article 15 of the directive. Other instruments will be made by Northern Ireland Departments to transpose articles 16 to 19 of the directive.

4.3 The renewables directive establishes a common framework for the promotion of energy from renewable sources. The instrument puts part of this framework into legislation, to provide transparency about the existence of certain requirements of the directive and the persons who are responsible for ensuring that those requirements are met.

4.4 The instrument imposes a range of duties on the Secretary of State, Northern Ireland Departments (and in regulations 9 and 11, Welsh Ministers). The duties reflect some of the targets and other requirements of the renewables directive. The instrument does not set out the measures that may be taken to ensure that the targets and other requirements of the directive will be met.

4.5 Article 4(1) of the renewables directive required the UK to adopt a National Renewable Energy Action Plan (“NREAP”) setting out adequate measures to be taken to achieve the targets and other requirements of the directive. The UK notified its NREAP to the European Commission in July 2010. Much of the detail about how the UK proposed to meet the targets and other requirements of the directive is set out in the NREAP. Further legislation and administrative measures may be needed to achieve the targets and other requirements of the directive.

4.6 The instrument does not go beyond the requirements set out in the renewables directive. The approach has been to follow the wording of the renewables directive, but changes have been made to reflect terminology used elsewhere in domestic legislation and to avoid ambiguity where it may have led to gold-plating.

4.7 Council document 5421/08 COM (08) 0015 “Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources + Commission Staff Working document - the support of electricity from renewable energy sources (accompanying document to the Proposal)” was submitted to Parliament by the Department for Business Enterprise and Regulatory Reform on 14th February 2008. The House of Commons considered it politically important and it was debated and cleared on 3rd June 2008 (Report No. 15, Session 07/08). The House of Lords debated and cleared the proposal on 20th November 2008 (Sift No. 1312, Session 07/08).

5. Territorial Extent and Application

This instrument applies to England and Wales and Northern Ireland. The instrument also applies to Scotland to a limited degree, as regards the target for the renewables share in 2020 (regulation 3), the indicative targets (regulation 4), the adaptation costs review (regulation 5), informing the public about the benefits of renewable energy (regulation 7) and publishing information about equipment and systems for using renewable energy (regulation 8). Regulations 9 to 13, which relate to devolved matters under the Scotland Act 1998, do not apply to Scotland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 A European Commission proposal for a directive to establish a common framework for the promotion of the use of energy from renewable sources was agreed and adopted in 2009 as the renewables directive. The renewables directive sets mandatory targets for the share of energy consumed in each Member State which is to come from renewable sources in 2020. These national targets are consistent with a target of at least 20% of the energy consumed in the European Union coming from renewable sources in 2020. The renewables directive also lays down rules relating to administrative procedures, information and training, and access to the electricity grid for energy from renewable sources.

7.2 This instrument is part of the measures taken to transpose the renewables directive for the UK. A transposition note is annexed. The instrument places various duties on the Secretary of State, Northern Ireland Departments and Welsh Ministers (and in relation to regulation 13, other public bodies). Article 14(2) of the renewables directive gives Member States the choice between imposing an information obligation on a national competent authority or on the suppliers of equipment for renewable energy. We have placed the information obligation on the Secretary of State and on the Northern Ireland Department of Enterprise, Trade and Investment in order to minimise the impact of this instrument on business.

7.3 In 2005, the baseline year for the renewables directive, the share of energy from renewable sources in the UK was 1.3%. By 2009 this had risen to 3% but the UK target (included in this instrument) is to reach 15% of energy from renewable sources in 2020.

7.4 The scale of change needed in order to meet the UK's renewable energy target will require actions across a wide range of policy areas. In 2008 a consultation exercise was conducted on the whole range of policies required to meet the 2020 target and this was followed in 2009 with the publication of the UK Renewable energy Strategy.

7.5 The Government has made clear its commitment to renewable energy and *The Coalition: our programme for government* sets out a range of proposals in relation to

exploiting the UK's renewable energy resources. Renewable energy remains an area of high public interest.

8. Consultation outcome

8.1 In 2008 a consultation was held to seek views on how to drive up the use of renewable energy in the UK, as part of our overall strategy for tackling climate change and to meet the proposed 15% target for the share of renewable energy in the UK in 2020. The consultation document contained a range of possible measures to encourage deployment of renewable energy in the UK.

8.2 748 responses were received in total to the consultation exercise. When asked at an overall level about the general approach set out in the consultation document, there were more than four times as many expressing agreement as disagreement: agreement was higher amongst all groups of stakeholders. Albeit that for most that support was conditional. The most frequently mentioned proviso was to stress the urgency with which change is required. A consistent point of consensus was that the Government could be doing more on all of the issues raised.

8.3 Details of this consultation are published on the Department's website at: http://decc.gov.uk/en/content/cms/consultations/cons_res/cons_res.aspx The consultation was followed by the publication of the UK Renewable energy Strategy in July 2009.

8.4 No consultation exercise was carried out on the instrument, as the instrument is limited to putting some of the targets and other requirements of the renewables directive into domestic legislation, and assigning responsibility for ensuring those requirements are met. The instrument does not set out the policies or measures chosen to meet the targets and other requirements of the directive.

9. Guidance

No guidance is proposed for the instrument because (with the exception of regulation 13) it imposes obligations only on the Secretary of State, Northern Ireland Departments and the Welsh Ministers. Regulation 13 imposes a requirement on Ministers, government departments, public bodies and persons holding public office to recognise certain certification issued by EEA States.

10. Impact

10.1 The impact of the instrument on business, charities or voluntary bodies is minimal as the instrument puts obligations, which already exist on the UK Government under EU law, into domestic legislation. Many of the measures to be taken to achieve the targets and other requirements of the renewables directive will have an impact on business, charities or voluntary bodies, and will require further impact assessment.

10.2 The impact of the instrument on the public sector is minimal as the promotion of the use of renewable sources was already the policy of the Government and the devolved

administrations. Many of the measures taken to achieve the requirements of the renewables directive will have an impact on the public sector.

10.3 The UK Renewable Energy Strategy set out how the UK could reach its target of 15% of energy from renewable sources by 2020. A suite of impact assessments were published alongside that strategy in July 2009, including an overall impact assessment of policies needed to meet the UK's share of the EU 2020 renewable energy target. Copies of the impact assessments are available on the Department's website at: http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/res/res.aspx

10.4 Updated impact assessments have not been prepared for this instrument because the instrument is limited to putting some of the targets and other requirements of the renewables directive into domestic legislation, and assigning responsibility to the Secretary of State, Northern Ireland Departments, Welsh Ministers and other public bodies for ensuring those requirements are met. The instrument does not set out the policies or measures chosen to meet the targets and other requirements of the directive.

11. Regulating small business

The instrument does not apply to small business.

12. Monitoring & review

12.1 Article 22(1) of the renewables directive requires Member States to submit a report to the European Commission on progress in the promotion and use of energy from renewable sources by 31st December 2011 and every two years thereafter (up to 31st December 2021).

12.2 If the average share of energy from renewable sources in the UK over the two year period 2011/2012 is less than 4%, then the UK will be required under article 4(4) of the renewables directive to submit an amended NREAP to the European Commission by 30th June 2013.

12.3 Article 4(4) of the Directive requires Member States to submit an amended version of their NREAP to the European Commission each time an indicative target is missed (unless the Commission has adopted a decision to release the Member State from that obligation). The indicative targets for the UK are set out in the Schedule to the instrument.

13. Contact

Tony Gerrard at the Department of Energy and Climate Change, Tel: 0300 060 4000 or email: Anthony.Gerrard@decc.gsi.gov.uk can answer any queries regarding the instrument.