EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION (AMENDMENT) (ENERGY INTENSIVE INDUSTRIES) ORDER 2024

2024 No. 403

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Renewables Obligation Order 2015 (the 2015 Order) to give the Secretary of State the ability to revise the level for the Renewables Obligation (RO) 2024/25 obligation period after it was published on 27 September 2023[1]. The Secretary of State will only be able to revise the level once and would only revise it in order to facilitate an increase in the Energy Intensive Industries (EII) exemption rate from 85% to 100%[2].

2.2 The government is seeking to effect this increase in exemption rate through an amendment to the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (the EII Regulations)[3]. The EII Regulations provide an exemption for eligible EII in respect of Contracts for Difference scheme costs. The 2015 Order cross-refers to the EII Regulations to provide an equivalent exemption in respect of RO scheme costs.

2.3 This instrument will come into force the day after it is made, so that the Secretary of State can publish before 1 April 2024 a revised obligation level that will apply from 1 April 2024. As explained in section 6 of this Explanatory Memorandum, stakeholders have already been given notice of what the revised level will be. The Secretary of State will not be able to make a revision after 31 March 2024. The amendment to the EII Regulations that increases the exemption rate from 85% to 100% would then come into force on 1 April 2024 itself. This instrument states that the Secretary of State may provide that the level published on 27 September 2023 will apply for part of the 2024/25 obligation period, and that the revised level will apply for the remainder; this is to provide for a scenario where the amendment to the EII Regulations does not come into force on 1 April 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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[1] The publication is available here: https://www.gov.uk/government/publications/renewables-obligation-level-calculations-2024-to-2025/calculating-the-level-of-the-renewables-obligation-for-2024-to-2025

[2] This increase is part of the British Industry Supercharger Package, announced on 23 February 2023 - https://www.gov.uk/government/news/government-action-to-supercharge-competitiveness-in-key-british-industries-and-grow-economy

[3] The Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2024 are being laid in draft alongside this instrument.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

4.3 An Order making equivalent provision in relation to the RO in Scotland is expected to be laid before the Scottish Parliament in parallel with this instrument. There is a legal obligation on Scottish Ministers to set the obligation level for the Renewables Obligation Scotland (ROS), which is calculated the same way as the Renewables Obligation for England and Wales. The revision of the level for the 2024/25 obligation period would apply to England and Wales and Scotland. For the Northern Ireland Renewables Obligation, no changes are necessary as the EII exemption does not apply in NI, instead they have a separate compensation scheme for RO costs.

5. European Convention on Human Rights

5.1 Andrew Bowie, Parliamentary Under Secretary of State (Minister for Nuclear and Renewables) has made the following statement regarding Human Rights:

"In my view the provisions of the Renewables Obligation (Amendment) (Energy Intensive Industries) Order 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The Renewables Obligation is made up of three separate but complementary schemes in England and Wales, Scotland and Northern Ireland. The 2015 Order applies in respect of the RO in England and Wales.

6.2 The England and Wales scheme was launched in 2002 and in 2017 it closed to new capacity. Existing RO projects will receive support for up to 20 or 25 years, depending on when the station originally accredited, with all support ending on 31 March 2037.

6.3 The RO places an obligation on licensed electricity suppliers to submit a certain number of Renewables Obligation Certificates (ROCs) to Ofgem for each megawatt hour (MWh) of electricity that they supply during a specified period known as an obligation period (which runs annually from 1 April to 31 March the following year). By the 1 October before the start of an obligation period, the Secretary of State must publish the "level" for the forthcoming period, i.e. the number of ROCs per MWh which suppliers will have to present to Ofgem in order to discharge their obligation. The six month notice period is to allow electricity suppliers to price RO scheme costs into their bill tariffs.

6.4 When setting the level, we need to take account of the exemption for RO scheme costs for EII. This instrument will facilitate an increase in the exemption rate from 85% to 100%. The increase in exemption rate will be effected by the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2024, which are being laid in draft alongside this instrument.

6.5 The level for the 2024/25 obligation period was published on 27 September 2023. However, the calculation assumed that the EII exemption rate would still be 85% for the 2024/25 obligation period. In order to facilitate the increase in exemption from 85% to 100%, it is necessary to enable the Secretary of State to revise the level published on 27 September 2023. The new calculation will instead assume that a 100% exemption rate will apply during the 2024/25 obligation period. The Secretary of State may provide that the level published on 27 September 2023 will apply for part of the 2024/25 obligation period, and that the revised level will apply for the remainder.

6.6 The announcement of the level made on 27 September 2023 stated that:

"If the legislation is in place in time to allow the revised level of the obligation to be confirmed ***before 1 April 2024****, the following level will apply from 1 April 2024 for the whole of the 2024 to 2025 obligation period, based on a 100% EII exemption:*

- ***0.491 ROCs per MWh in Great Britain*** *(England, Wales and Scotland)*

However, if the legislative changes are not in place in time to allow the revised level of the obligation to be confirmed before 1 April 2024, the level of the obligation (based on an 85% EII exemption) will apply from 1 April 2024 until further notice. The level would therefore be:

- ***0.487 ROCs per MWh in Great Britain*** *(England, Wales and Scotland)*

In either of these situations, a revised note will be published in due course confirming the level of the obligation that will apply from 1 April 2024, and the date that any revision to the level of the obligation will come into force."

6.7 Stakeholders have therefore already received notice of what the revised level would be, i.e. the level calculated on the basis of an 100% exemption rate rather than an 85% exemption rate.

7. Policy background

What is being done and why?

7.1 UK industrial electricity costs are higher than those of comparable neighbouring countries. These cost differences arise partly due to 'green levies' and charges put on UK industrial electricity which other countries do not impose, and partly due to the lower carbon generation, which is more present in the UK than in other states. This differential means our EII, such as steel, struggle to remain profitable.

7.2 This difference highlights the need for intervention to mitigate high renewable policy costs (green levies) and the risk that production shifts to countries which have not implemented as ambitious carbon reduction policies as the UK (carbon leakage).

7.3 Supporting eligible EII with their high electricity costs could help reduce the gap between UK industrial electricity costs and those of comparable nations, helping to minimise the impact of these charges and therefore carbon leakage.

7.4 Failure to address the electricity price gap would result in production, and therefore output, decreasing and some firms facing increased risk of closure due to an inability to compete and remain profitable. This leads to carbon leakage as production is moved away to countries with less stringent climate reduction policies.

7.5 To address these issues, one of the measures announced in the British Industry Supercharger package was to increase the EII exemption rate in respect of renewable energy scheme costs from 85% to 100%. This instrument is intended to facilitate this increase in the exemption rate for the RO.

What did any law do before the changes to be made by this instrument?

7.6 Under Article 13A(6) of the 2015 Order, the Secretary of State must publish, by the 1st October preceding the obligation period, the number of UK ROCs that a designated electricity supplier is required to present to Ofgem in respect of each MWh of relevant electricity that it supplies during that period in order to discharge its renewables obligation for that period.

Why is it being changed and what will it do now?

7.7 The EII exemption rate in respect of Contracts for Difference scheme costs will be increased from 85% to 100% by the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2024[4]. The 2015 Order cross-refers to the EII Regulations to provide an equivalent exemption for RO scheme costs. In order to facilitate the increase in the exemption rate on the RO for the 2024/25 obligation period, it is necessary to enable the Secretary of State to revise the RO level published on 27 September 2023, as this level was calculated on the basis that the EII exemption rate would be 85% rather than 100%. This instrument would allow the Secretary of State to publish a revised level in respect of the 2024/25 obligation period before or on 31 March 2024.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to carry out a consolidation at present.

10. Consultation outcome

10.1 On 12 August 2022, the then-Department for Business, Energy and Industrial Strategy launched a consultation to consider reforms to the EII exemption scheme, including whether to increase the EII exemption rate. The consultation outlined that amendments to the 2015 Order may be required in order to facilitate any increase in exemption.

10.2 This consultation ran for 5 weeks and closed on 16 September 2022. A total of 63 responses were received from stakeholders, including energy intensive industry companies, trade associations, and non-governmental organisations, among others. There was strong support from respondents for the proposal to increase the EII exemption rate and for associated amendments to the 2015 Order[5].

10.3 The Scottish Government ran a parallel consultation in respect of changes to the Renewables Obligation (Scotland) Order 2009.[6]

[4] These regulations are subject to the draft affirmative procedure and are being laid in draft alongside this instrument.
[5] The Consultation is available here: https://www.gov.uk/government/consultations/review-of-the-energy-intensive-industries-exemption-scheme, and the Government Response is available here: https://www.gov.uk/government/consultations/british-industry-supercharger-capacity-market-consultation-and-eiis-government-response
[6] https://www.gov.scot/publications/renewables-obligation-scotland-energy-intensive-industries-consultation-response-analysis-june-2023/documents/

11. Guidance

11.1 Guidance will be updated ahead of the draft legislation coming into force to explain the changes and how they affect recipients of the scheme and other stakeholders.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There will be a small financial impact on public sector organisations, with the increase in electricity bills for non-eligible consumers likely to be £0.2-0.3/MWh. The overall cost impact to public sector organisations will depend on their electricity consumption.

12.3 The Department for Business and Trade have provided a full impact assessment setting out the key impacts of the amendments made to the EII policy, which covers the amendments made to the 2015 Order in this instrument. This will be published alongside this instrument on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The proposed approach will have minimal burden on small businesses (employing up to 50 people) that wish to benefit from the changes being made to the EII exemption rate.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Andrew Bowie Parliamentary Under Secretary of State (Minister for Nuclear and Renewables) has made the following statement: “Given the minor nature of the amendments, a review clause is not appropriate.”

15. Contact

15.1 Ella Deleersnyder at the Department for Energy Security and Net Zero (ella.deleersnyder@energysecurity.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Helena Charlton, Deputy Director for Renewable Energy Delivery, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Bowie, Parliamentary Under Secretary of State (Minister for Nuclear and Renewables) can confirm that this Explanatory Memorandum meets the required standard.