

NEW AND RENEWABLE ENERGY

Prospects for the 21st Century

**The Renewables Obligation (Amendment) Order 2003
Statutory Consultation on Late Payments**

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CONSULTATION ON CHANGES TO THE RENEWABLES OBLIGATION ORDER DEALING WITH LATE PAYMENTS

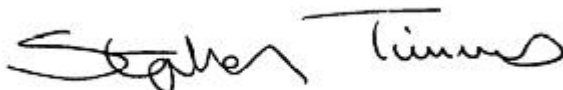
Foreword

New and Renewable Energy – prospects for the 21st Century – The Renewables Obligation (Amendment) Order 2003 Statutory Consultation which I launched on 29 August, set out a number of ways in which the Renewables Obligation Order (ROO) could be made to work even more effectively than it already does.

In the meantime, a number of electricity suppliers were not fully compliant with the Renewables Obligation on 1 October. This has brought into focus the fact that the ROO does not provide specifically for late payments to be made (whether because a company has gone into administration or for any other reason) and disbursed as intended. With full input and support from industry, we have concluded that a short statutory consultation should be held on an amendment to give effect to such a provision. An accelerated process allows us to catch up with the consultation issued on 29 August and take the outcome of both through Parliament together with a view to bringing amendments into force on 1 April 2004.

We therefore propose in this consultation document to amend the legislation specifically to allow Ofgem to receive late payments and having received payments, to disburse them to eligible suppliers for the Obligation period to which they relate.

Our action signals strong Government support for the ROCs mechanism and our confidence in the Renewables Obligation as a cornerstone of our policy to achieve our renewables targets and enable a flourishing renewable energy sector to develop.



Stephen Timms
Minister for Energy

Introduction

Purpose of Consultation

1. This statutory consultation exercise applies to England & Wales only. An equivalent consultation on amendments to the Renewables Obligation (Scotland) Order 2002 will be a separate exercise handled by the Scottish Executive.
2. By publishing this statutory consultation paper we are announcing the changes that we propose to lay before Parliament in the next session and inviting a final check on the finer details of the proposed Order (see Annex A).
3. Views from a range of interested parties have been taken into account in drawing up this statutory consultation. Industry has been actively consulted and contributed to our developing thinking on this consultation. We are pleased to have industry support for the proposal we are putting forward.

Responses to this Consultation

4. Section 32(7) of the Electricity Act 1989, as substituted by the Utilities Act 2000, requires us to consult, before making an order under section 32(1), with certain bodies (the statutory consultees), including the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, electricity suppliers to whom it would apply and generators of electricity from renewable sources. We would also welcome comments on these detailed proposals from other interested parties. The consultation will also be advertised in the national press in order to reach as many stakeholders as possible. Views are sought on the proposed changes to the Renewables Obligation as set out in this document, on the attached Regulatory Impact Assessment and on the draft Amendment Order.
5. Responses to this consultation must be received by Friday 21 November 2003.
6. Please e-mail your response to info.trro@dti.gsi.gov.uk or post or fax it (fax number 020 7215 6528) to:

Holly Firmin
Renewable Energy Policy
Department of Trade & Industry
Bay 110
1 Victoria Street
London SW1H 0ET

7. Please include your name and postal address with any response, including those sent by e-mail. We plan to publish responses on the DTI website. If

you do not wish to have your response made publicly available, please let us know by marking your response “confidential”.

The Renewables Obligation

8. The Renewables Obligation is the Government's main policy measure to encourage the development of renewable forms of energy in the UK. It is underpinned by a substantial package of financial and non-financial supporting mechanisms including targeted capital grants and, through the Renewables UK Unit, active assistance to the industry to develop its competitive potential. The Obligation has already provided and will continue to provide, an impetus for the new renewable generating capacity that will be needed to meet the UK's current 10% by 2010 target for electricity produced from renewable energy sources and as a basis for further reductions in carbon dioxide emissions.
9. The Renewables Obligations (Renewables Obligation Order 2002 in England and Wales and the Renewables Obligation (Scotland) Order 2002 in Scotland, hereafter referred to as the Obligation) on electricity suppliers require all licensed electricity suppliers in Great Britain to supply a specified and growing proportion of their sales from renewable sources – with the ultimate aim of achieving 10% by 2010. It has worked well in its first year. In response, applications for Section 36 consent (under the Electricity Act 1989) for renewables projects have taken off dramatically. By March of this year, the Government had consented to more offshore windpower capacity than all the windfarms built in the whole of the 1990s.

Statutory Consultation Document issued 29 August

10. The consultation document issued on 29 August, *New and Renewable Energy – prospects for the 21st Century – The Renewables Obligation (Amendment) Order 2003 Statutory Consultation*, outlines a number of changes we propose to make with effect from April 2004. The majority are technical adjustments to ensure that the Obligation works as originally intended. On two issues the changes are more substantial. First, we are proposing changes to the rules on co-firing of biomass with fossil fuels. Second, we are proposing to relax the rules so that small generators, such as PV installations on houses, can qualify for Renewables Obligation Certificates (ROCs). All the changes proposed are designed to make the Obligation work even better than it already does.

This Statutory Consultation

11. Several electricity suppliers are not fully compliant with the Obligation as at 1 October bringing into focus the fact that the ROO does not provide specifically for late payments to be made to Ofgem and disbursed as intended to electricity suppliers, in proportion to the ROCs submitted. With full input and support from industry, we have concluded that a short statutory consultation should be held on an amendment to give effect to such a provision. A foreshortened process allows us to catch up with the earlier consultation on the Renewables Obligation issued on 29 August and take the outcome of both through parliament together with a view to bringing amendments into force on 1 April 2004.

The Proposed Amendment

12. Our proposed amendment would specifically allow Ofgem to accept, and disburse to eligible suppliers for the relevant obligation period, late buy-out payments. It would also clarify that any lateness in meeting the Obligation may only be through late buy-out payment. Late redemption of ROCs is not an option. In all cases of late payment, the payments will be recycled to those suppliers who redeemed ROCs for the Obligation period to which the payment relates. This amendment will apply only from its “coming into force” date which, on present planning, would be 1 April 2004. We do not have the powers to apply this change retrospectively.

Rationale

13. The ROO requires suppliers to fulfil their obligation by 1 October each year by surrendering ROCs and/or paying into the buy-out fund. If a supplier fails to pay into the buy-out fund by that date, the total fund may be reduced accordingly, and the amount to be shared out to ROC holders may be reduced.

14. The ROO does not currently provide specifically for Ofgem to accept late payment and subsequently recycle such funds to eligible suppliers. Ofgem has powers to levy a fine for failure to meet the obligation, but even if this were the same or greater than any payment due, the levy fund would not benefit as fines go into the Consolidated Fund.

15. It is clearly desirable that the ROO specifically provides for such late payments to be accepted and distributed to eligible suppliers. As it stands, the ROO does not specifically provide for this, because the focus when it was put in place was simply to provide an alternative to the surrender of ROCs.

Options

Do nothing

16. Doing nothing is not seen as an option. The DTI press release issued on 30 September in respect of the shortfall committed Government to take necessary legislative action, in particular to address the question of late payments.

Amend ROO

17. The other option is to amend the ROO to allow Ofgem specifically to accept late payments, and to disburse them to the owners of ROCs in respect of the obligation period for which the payment is owed.

Our proposal

18. Options to address the late payments issue have been discussed with industry. Informed by stakeholder views, we believe the latter option offers the best means currently available to us of minimising any adverse effects of late payments on the amounts of money disbursed to eligible suppliers.

19. We therefore propose to amend the ROO to allow Ofgem specifically to accept late payments and disburse them to eligible suppliers for the relevant obligation period.

20. This provision should come into force on 1 April 2004.

21. The intent of the above proposed amendment is to reduce the impact of those who do not meet their obligation on those who do. It is not meant to assist late-payers in any way and neither is it intended to encourage suppliers to make late payments. Failure to meet one's obligation by 1 October would, as now,:

(a) risk a substantial fine; and

(b) require payment of any outstanding amount.

22. For the future, we will continue to consult with industry, to explore other options, of both a voluntary and legislative nature, that might further improve the working of the ROC market. These ideas are either not yet fully developed or may require primary legislation. The ideas that have been suggested so far include imposing a surcharge on late payments instead of, or in addition to, a fine; reversing the market risk so that it falls on those who pay into the buy-out fund; and exploiting the scope for voluntary insurance or bond schemes. We are not consulting on these now, but comments and further ideas are welcome.

23. We have announced our intention to undertake a full review of the Obligation in 2005/6 to assess its results in terms of encouraging development of renewables, and also in the light of progress on the Emissions Trading Scheme. The review will also consider whether the profile of the Obligation should be revised to introduce higher targets for the years between 2011/12 and 2020.

State Aid Clearance

24. We will notify the European Commission of this proposed change which is subject to state aid approval.

Conclusion

25. The net impact of the changes we are proposing in this consultation should positively help in the achievement of the UK's current 10% target for renewable energy.

26. We are making firm proposals for the specific amendments in paragraphs 18 to 21 discussed above and invite interested parties to alert us to any details that require amendment before the draft Order (see Annex A) is laid before Parliament.

27. We would also welcome your comments on the Draft Regulatory Impact Assessment which is attached at Annex B.

Draft Order laid before Parliament under section 32 of the Electricity Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No. []

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation (Amendment) Order 2003

Made - - - - - [2003]

Coming into force - - - [2004]

Whereas a draft of this Instrument was laid before Parliament in accordance with section 32(9) of the Electricity Act 1989(1) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 32 to 32C of the Electricity Act 1989(2) and having consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, electricity suppliers to whom this order applies, generators of electricity from renewable sources and such other persons as she considers appropriate, hereby makes the following Order:

Citation, commencement and extent

2.—1) This Order may be cited as the Renewables Obligation (Amendment) Order 2003 and shall come into force on [2004].

This Order extends to England and Wales only.

Amendment

—(1) The Renewables Obligation Order 2002(3) shall be amended as set out in the following paragraphs of this article.

(2) Article 12(2) shall be amended by inserting at the beginning the words “Subject to paragraphs (4) and (5),”.

(3) After article 12(3) there shall be added the following paragraphs:-

“(4) For the purposes of this article, a “late payment” is an amount:

(1) 1989 c. 29. Section 62 of the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted.

(2) Sections 32A to [32C] of the Electricity Act 1989 were inserted by sections 63 to 65 respectively of the Utilities Act 2000.

(3) S.I. 2002/914.

(a) which is received by the Authority in respect of an obligation period (“the obligation period in question”) on or after the specified day relating to that obligation period; and

(b) which, had it been so received before the specified day, would have been an amount received under article 7(1) in respect of the obligation period in question.

(5) The aggregate at any given time of the late payments (together with any interest received thereon by the Authority) is referred to in this article as the “late payment fund”.

(6) Not later than the 1st April immediately following the specified day for the obligation period in question, and at least once every six months thereafter, the Authority shall pay out the late payment fund in accordance with the system of allocation specified in paragraph (3), as if:

(a) the references in that paragraph to “the buy-out fund” were references to the late payment fund;

(b) the references in that article to a “relevant obligation period” were references to the obligation period in question.”

[Date]

Department for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

DRAFT REGULATORY IMPACT ASSESSMENT

AMENDMENT OF THE RENEWABLES OBLIGATION ORDER 2002 LATE PAYMENTS

Title of Proposal

1. Proposed amendment of the Renewables Obligation Order 2002 (ROO) to provide specifically for Ofgem to receive late buy-out payments and to disburse them to eligible suppliers as intended by the Obligation. This proposal is subject to a Statutory Consultation, prior to being laid before Parliament as a draft Order amending the ROO.

Purpose of the RIA

2. The purpose of the RIA is to assess the impact of the proposed amendment to the ROO. The scope of the RIA is proportionate to the impact of the amendment which is simply to ensure that one aspect of the ROO works as intended.

Purpose and Intended Effect of the Proposed Amendment

Background

3. The Renewables Obligation is the Government's main policy measure to encourage the development of renewable forms of energy in the UK. It is underpinned by a substantial package of financial and non-financial supporting mechanisms and, through the Renewables UK Unit, active assistance to the industry to develop its competitive potential. The Obligation has already provided and will continue to provide, an impetus for the new renewable generating capacity that will be needed to meet the UK's current 10% 2010 target for electricity produced from renewable energy sources and as a basis for further reductions in carbon dioxide emissions.
4. The Renewables Obligations (Renewables Obligation Order 2002 in England and Wales and the Renewables Obligation (Scotland) Order 2002 in Scotland, hereafter referred to as the Obligation) on electricity suppliers require all licensed electricity suppliers in Great Britain to supply a specified and growing proportion of their sales from renewable sources – with the ultimate aim of achieving 10% by 2010.
5. The RIA does not apply to Northern Ireland as the Renewables Obligation Order 2002 and the Renewables Obligation Scotland do not extend to Northern Ireland. A Northern Ireland Obligation is expected to come into force in April 2005.

6. Eligible renewables generators receive Renewables Obligation Certificates (ROCs) for each MWh of electricity generated. These certificates can then be sold to suppliers. In order to fulfil their obligation, suppliers can either present enough certificates to cover the required percentage of their output, or they can pay a 'buy-out' price (£30 per MWh in 2002/03 adjusted by RPI annually) for any shortfall. All proceeds from buy-out payments are recycled to suppliers in proportion to the number of ROCs they present.

Issue

7. A number of electricity suppliers were not fully compliant as at 1 October 2003, bringing into focus the fact that the ROO does not provide specifically for late payments to be made to Ofgem and disbursed as intended.
8. The ROO requires suppliers to fulfil their obligation by 1 October each year by surrendering ROCs and/or paying into the buy-out fund. If a supplier fails to pay into the buy-out fund by that date, the total fund may be reduced accordingly, and the amount to be shared out to ROC holders may be reduced.
9. The ROO does not currently provide specifically for Ofgem to accept late payment and recycle such funds to eligible suppliers. Ofgem has powers to levy a fine for failure to meet the obligation, but even if this were the same or greater than any payment due, the levy fund would not benefit as fines go into the Consolidated Fund.
10. It is clearly desirable that all the money owed to the buy-out fund should be collected and then distributed to eligible suppliers. As it currently stands, the ROO does not specifically provide for this, because the focus when it was put in place was simply to provide an alternative to the surrender of ROCs.

Risk assessment of options

10. Doing nothing is not seen as an option. The DTI press release issued on 30 September in respect of the shortfall committed Government to take necessary legislative action, in particular to address the question of late payments. The other option is to amend the ROO to allow Ofgem specifically to accept late payments, and to disburse them to the owners of ROCs.
11. Options to address the late payments issue have been discussed with industry. Informed by stakeholder views, we believe the latter option offers the best means currently available to us of minimising any adverse effects of late payments on the amounts of money disbursed to eligible suppliers.

Proposed amendment

12. Our proposed amendment would allow Ofgem specifically to accept, and disburse to eligible suppliers for the relevant obligation period, late payments into the buy out fund.

Benefits

Issues of equity and fairness

13. This amendment allows all buy-out payments to be distributed amongst suppliers who have complied with the Obligation. So not making the amendment could disadvantage suppliers who have complied.

Compliance costs

14. The amendment incurs no new compliance costs.

Consultation with Small Business

15. We consulted stakeholder representatives whilst developing our thinking on the proposals in the Statutory Consultation.

Competition Assessment

16. The amendment raises no new competition issues.

Enforcement and Sanctions

17. Failure to meet one's obligation by 1 October would, as now,:

- a) risk a substantial fine; and
- b) require payment of any outstanding amount.

Monitoring and Review

18. The Renewables Obligation is administered and enforced by Ofgem.

Consultation within Government and with others

19. These proposals have the support of Ofgem, who are responsible for administering the Obligation, and the Scottish Executive. A similar review will take place in Scotland.

20. Industry has made a substantial input to our thinking on this issue and fully support our proposal.

Public consultation

21. A foreshortened statutory consultation allows us to catch up with the earlier consultation on the Renewables Obligation issued on 29 August and take the outcome of both through Parliament together with a view to bringing amendments into force on 1 April 2004.

Summary and Conclusions

22. The Government proposes that the measures proposed in the Statutory Consultation should be adopted.

DTI CONSULTATION CRITERIA

1. Timing of the consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for consultation (see Foreword for explanation of reasons for this accelerated consultation).
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decision finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address

<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

Comments or Complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Philip Martin,

DTI Consultation Co-ordinator,

Room 725,

1 Victoria Street,

London SW1H 0ET

or telephone him on 020 7215 6206 or mail: Philip.Martin@dti.gsi.gov.uk

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