



Department
of Energy &
Climate Change

THE DRAFT RENEWABLES OBLIGATION ORDER 2015

Summary of responses received to the technical
consultation on the draft Renewables Obligation
Order 2015

22 July 2015

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Summary of responses to the Renewables Obligation Order 2015 (ROO 2015)

1. This technical consultation ran from 24 March to 14 April 2015¹ and 18 responses were received in total. The list of respondents can be found at Annex A.

2. The table below provides a summary of respondents' comments on the various parts of the Order:

ROO 2015	Comments received
Part 1: Introductory provisions	3
Part 2: The renewables obligation	0
Part 3: Matters to be certified by and content of ROCs	0
Part 4: Issue and revocation of ROCs	0
Part 5: RO eligible renewable output	1
Part 6: Banding and grandfathering	0
Part 7: Cases and circumstances when a ROC must not be issued	2
Part 8: Payments to discharge the renewables obligation, dealing with the buy-out and late payment funds, and mutualisation	0
Part 9: Provision of information	16
Part 10: Functions of the Authority	0
Part 11: Modifications and transitional provisions	0
Schedule 1: Greenhouse gas criteria for bioliquid	0
Schedule 2: Greenhouse gas criteria for solid and gaseous biomass	0
Schedule 3: Land criteria	16
Schedule 4: The ROC register	0
Schedule 5: Electricity to be stated in ROCs	1

¹ See : <https://www.gov.uk/government/consultations/draft-renewables-obligation-order-2015>

3. A fuller summary of the main comments and DECC's response is set out below.

Part 1: Definition of "permitted termination event" in Article 2

4. One respondent asked for clarification that the reference to the 'The Court of Justice of the European Union' covered all three courts within this body.

DECC Response:

5. The Court of Justice of the European Union is the official name for the EU Courts. As set out in Article 19(1) of the Treaty of the European Union, it includes the Court of Justice, the General Court and the specialised courts. **We do not consider it necessary to change the reference to the 'The Court of Justice of the European Union' in the definition of a permitted termination event.**

Part 1: Termination of Contracts for Difference (CfD)

6. Two respondents were concerned that Government would no longer have the right to terminate a CfD on the basis of failure to comply with sustainability criteria.

DECC Response:

7. We believe that this concern has arisen because of a misinterpretation of the text in the explanatory note which aimed to alert stakeholders to the fact that we had changed the definition of 'permitted termination event' (in Article 2(1)) so that generators no longer have the right to withdraw a CfD transfer notice under Article 50(4)(b) where their investment contract is terminated or has otherwise ceased to have effect by reason of an amendment to the investment contract made or proposed by the Secretary of State in the light of any standard terms and conditions of CfD issued under section 11 of the Energy Act 2013. This amendment was made as this change mechanism is now spent. **This does not affect DECC's rights to terminate a CfD, nor does it mean that a generator can continue to operate under the CfD and receive support under the RO for using solid or gaseous biomass that does not meet the new sustainability criteria.** The biomass sustainability provisions under the CfD are aligned with those under the RO.

Part 5: Article 26- input electricity used to calculate RO eligible renewable output

8. One respondent suggested that the existing definition of 'input electricity' in draft Article 26 should be amended to provide for the specific circumstance where a generating station operates as a dual scheme station i.e. has excluded capacity (for example some capacity is supported under the CfD scheme). It was suggested that applying the existing definition and methodology when the excluded capacity is not generating for example during a planned maintenance outage – could result in a small over claim of renewables obligation certificates (ROCs).

DECC Response:

9. We have considered this request carefully. The methodology used to determine the RO eligible renewable output and apportion the RO input electricity has been devised to be robust whilst minimising the burden of carrying out the complex calculation on industry and the regulator (Ofgem). It has not been possible to devise a single methodology which takes into account every potential operational scenario. As well as the potential to over claiming ROCs in the scenario described above, there may be other circumstances where a generator could be claiming too few ROCs.

10. DECC is not aware of any other stakeholders experiencing problems with the methodology for calculating the RO input electricity. **We do not propose to change the existing methodology used to determine the RO input electricity but are interested in hearing if other stakeholders have concerns about the definition of ‘input electricity’.**

11. If it were considered appropriate to change the methodology and/or definition of RO input electricity we would need to carry out a full consultation and assessment of impacts.

Part 7: Article 48 – Combustion units entered into a capacity agreement

12. Two respondents expressed concerns that draft Article 48 sought to introduce a significant change with regards to capacity agreements under the Electricity Capacity Regulations 2014, which, if introduced, would lead to inconsistencies between the ROO 2015 and Capacity Market Rules and Regulations. Further discussion with stakeholders indicated that the concern related to the timing and procedures for submitting capacity market transfer notices. The draft Article 48 requires a RO accredited unit in respect of which a capacity agreement has been issued to complete a capacity market transfer notice and submit to Ofgem if they wish to claim ROCs for co-firing or full conversion under the RO. Respondents raised concerns that those generators who had signed a capacity market agreement in January 2015 but have not given a capacity market transfer notice to Ofgem, would no longer be eligible for ROCs in respect of electricity generated before the Order comes into force.

DECC Response:

13. The rule in Article 48 that ROCs should not be issued in respect of electricity generated by a unit that has a capacity market agreement unless a capacity market transfer notice has been given does not apply until that Article comes into force. Article 95(2)(a) sets out that the 2009 Order (which does not contain an equivalent rule prohibiting ROC issue where a capacity market agreement has been issued) is to continue to apply to ROC issue in respect of electricity generated before the ROO 2015 comes into force. **It is not DECC’s intention that Article 48 would have retrospective effect and apply to electricity generated before it comes into force.**

14. Once Article 48 comes into force, generators will need to have given a capacity market transfer notice to Ofgem in order to receive ROCs in respect of electricity generated from that date. To ensure that generators have sufficient time to comply with the Article 48 capacity market transfer notice requirements we will consider bringing Article 48 into effect one month after the rest of the Order. **Ofgem intend to publish guidance on the process, timing and a template for the capacity market transfer notice ahead of the legislation coming into force.**

15. Article 1 of the draft ROO 2015 has been amended accordingly.

Part 9: Provision of information/Schedule 3: Land criteria

16. The Government response to the consultation on proposals to enhance the sustainability criteria for the use of biomass feedstocks under the RO² (and further developed in the Government response of August 2014³), set out the intention of the previous Government to

² <https://www.gov.uk/government/consultations/ensuring-biomass-affordability-and-value-for-money-under-the-renewables-obligation>

introduce mandatory sustainability criteria for generators of 1MW or above using solid and gaseous biomass including land criteria based on the UK Timber Procurement Policy (UK-TPP). In 2014 the Timber Standard for Heat and Electricity⁴ was developed and published following stakeholder engagements. Based on the UK-TPP, the “Timber Standard” sets out the sustainability requirements that must be met for woodfuel to be considered to originate from a sustainable source. The Timber Standard also set out the types of evidence that could be used to demonstrate compliance with these criteria, i.e. Category A evidence (through the use of approved certification schemes), as well as Category B bespoke evidence (including a risk based regional approach). The Timber Standard also sets out that all woodfuel used to generate electricity must originate from a legal source, i.e. be harvested in accordance with the EU Timber Regulation (EUTR).⁵ In December 2014 the Woodfuel Guidance⁶ was published to set out how generators using woodfuel could comply with the sustainability criteria.

17. The sustainable forest management requirements from the Timber Standard have been written directly into the ROO 2015 (Schedule 3, paragraphs 1, 3 and 6) and respondents have commented where they believed the wording had deviated from the intention of the Timber Standard. Having considered these points, where appropriate, alterations and clarifications have been made to Schedule 3 as explained below.

18. Sixteen comments were received on paragraphs 1, 3 and 6 of Schedule 3 of the Order. The respondents’ key concerns were about the reference to a management plan within the land criteria; the requirements for stakeholder engagement in relation to the process of defining sustainable; the term ‘natural’ pest management system; the fact that the Order does itself not require woodfuel to originate from a legal source; the definition of ‘saw log’; and how the Order interacts with the Timber Standard and associated guidance (i.e. Woodfuel Advice Note, Mass Balance Guidance and Risk Based Regional Assessment: A Checklist Approach).

DECC Response to specific comments:

19. Twelve respondents raised concerns about reference to a management plan in paragraph 3 and 6 of Schedule 3 (the woody biomass land criteria), whether this could prevent a Category B regional risk based approach from being used to demonstrate sustainability and whether this would introduce new requirements which go beyond those currently required by the certification schemes FSC and PEFC. Therefore **references to a management plan have been removed from the Order**. However, it is recognised that such a management plan can still be an important way to demonstrate sustainability.

20. Four respondents raised concerns that paragraphs 6(2)(i) and (j) of the draft Order applied the requirements for stakeholder engagement (from S3 & S4) to management of a

³ <https://www.gov.uk/government/consultations/biomass-sustainability>

⁴ <https://www.gov.uk/government/publications/timber-standard-for-heat-electricity>

⁵ Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p.23).

⁶ <https://www.gov.uk/government/publications/woodfuel-guidance>

forest or other area rather than to the definition of sustainable by reference to which the forest or other area is managed.

21. In response to these concerns, and to ensure that forest owners and certification schemes will be using definitions and principles of sustainability which have been agreed internationally and that have been developed using appropriate stakeholder engagement (including principle setting and change processes), **DECC has made drafting changes to paragraph 6(1)(a)(i). These clarify that in order to be considered sustainable, woodfuel must be grown within a forest or other area which is managed in a way that is consistent with the Forest Europe's Sustainable Forest Management Criteria or a set of other international principles for the sustainable management of land** and that such other set of international principles for the sustainable management of land must have been developed using appropriate stakeholder engagement (including principle setting and change processes).

22. Six respondents questioned why the term 'natural pest management' was being used and that its use could incur difficulty in interpretation, implementation and audit. **For this reason paragraph 6(4)(a)(iv) of Schedule 3 has been amended to refer to 'integrated pest management'**. 'Integrated pest management' is defined in paragraph 6(5) by reference to the meaning given in Article 3(6) of Directive 2009/128/EC, which establishes a framework for European Community action to achieve the sustainable use of pesticides.

23. One respondent noted that there is no requirement for woodfuel to originate from a legal source within the Order, as there is in the Timber Standard. This is because the EUTR and related implementing EU legislation is already enforced in the UK through the Timber and Timber Products (Placing on the Market) Regulations 2013. **DECC's view is that it is not appropriate to create another mechanism to enforce these requirements through the Order.**

24. Three respondents were concerned that if reporting of biomass is restricted to only the proportion derived from the saw log as currently defined, all other parts of the log and tree will be considered waste. They believe this could be damaging to those other wood processing industries that are dependent upon the smaller (non-waste) portions of the log, since there will be no measure of how supply of these portions of the log is being impacted by demand from biomass. The Government response of August 2014 set out the intention to replace the definition of 'saw logs' with one which matches the local specifications for saw logs in the place where the closest sawmill operates and to reference details of the local specification used. It is our understanding that most of the non-sawlog wood will be classified as residue and not as waste and so will be reported on. **No change is proposed to the Order but DECC will continue to monitor the use of woody biomass.**

25. Six respondents questioned how paragraphs 1, 3 and 6 of the Order fit in with the Timber Standard and associated guidance. The RO Order 2009 required biomass generators of above 50kW using woodfuel to report against the sustainable source requirements as set out in the UK Timber Standard. When preparing the ROO 2015, which makes compliance with the sustainability criteria mandatory for generators of 1MW or above using woodfuel, the Department decided that it was appropriate for these requirements to be set out within the RO Order itself for clarity and in order to facilitate the administration of the scheme by Ofgem. The Department remains of this view. Paragraphs 1, 3 and 6 of Schedule 3 of the Order now set out the land criteria for woodfuel which must be legally complied with for generators of 1MW or above using woodfuel to receive support under the RO. The Timber Standard and associated guidance sets out how to comply with these sustainability requirements, including the types of evidence that can be used to demonstrate compliance with these requirements. **DECC intends to add reference to the Order into the Timber Standard and associated guidance.**

Additional changes:

26. The Department has made additional amendments to the Order to:

- a. provide for the mandatory sustainability requirements for solid and gaseous biomass to come into force at the same time as the majority of the Order (given that the Department is now planning to bring the Order into force on 1 December 2015, subject to Parliamentary approval);
- b. define “forest” in article 2(1) in line with related definitions in the Renewables Directive and the UK Forestry standard, and
- c. change the methodology in Schedule 2 for calculating the greenhouse gas emissions from solid and gaseous biomass to enable these calculations to be made on a monthly basis.

Schedule 5: Grandfathering pre-2013 capacity

27. One respondent requested a guarantee to be put in place that support for pre-2013 capacity remains grandfathered for remaining obligation periods.

DECC Response:

28. As grandfathering is a statement of policy intent, **DECC does not consider it appropriate to put a guarantee pertaining to grandfathering policy for pre-2013 projects into the Order.**

NEXT STEPS

29. The draft ROO 2015 was laid before Parliament on 21 July 2015 and subject to Parliamentary approval will come into effect from 1 December 2015.

Annex A: List of respondents

Biofuelwatch

Central Point of Expertise on Timber (CPET)

Drax

ecoFUELS

Energy UK

Enviva

FRAM Renewable Fuels Limited

Friends of the Earth

A W Jenkinson

RWE Npower Ltd

Sembcorp Utilities (UK) Limited

Sustainable Biomass Partnership

Roths CoRDe Ltd

United Kingdom Forest Products Association

UPM, UPM Tilhill & Confor

US Industrial Pellet Association

Westervelt Renewable Energy

Wood Panel Industries Federation

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