

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Electricity Market Reform

Chapter 7: The renewables obligation: transitional arrangements.

Section 55: Closure of support under the renewables obligation

282. *Subsection (1)* inserts new sections 32LA and 32LB to the Electricity Act 1989 to confer a power on the Secretary of State to make a renewables obligation closure order. The closure order will prevent renewables obligation certificates from being issued under any renewables obligation order (whether made by the Secretary of State or by the Scottish Ministers) in respect of electricity generated after a specified date (section 32LA(2)). Different closure dates may be specified for different cases or circumstances (section 32LA(3)). The powers in sections 32 to 32M of the Electricity Act 1989 (renewables obligation) will be subject to any provisions contained in a closure order (section 32LA(7)). The closure order may make provision as to the functions of the Authority in relation to the closure of the renewables obligation and may make transitional provision and savings (section 32LA(8)). *Subsections (2) and (3)* make consequential amendments to sections 32M (interpretation) and section 106 (regulations and orders) of the Electricity Act 1989. *Subsection (4)* provides the Department for Enterprise, Trade and Investment in Northern Ireland with the power to amend corresponding legislation in relation to the Northern Ireland renewables obligation to take account of the amendments made by *subsection (1)*.

Section 56: Transition to certificate purchase scheme

283. The section inserts new sections 32N to 32Z2 to the Electricity Act 1989 to enable the Secretary of State to make an order which imposes an obligation on the Authority, the Secretary of State or a CFD counterparty to purchase GB certificates which have been issued to generators in respect of renewable electricity (section 32N). The body on which this certificate purchase obligation is placed is referred to in the sections as the purchasing body of GB certificates (section 32N(2)(a)).

284. With the consent of the Northern Ireland Department for Enterprise, Trade and Investment (DETI), the Secretary of State may also make an order which imposes an obligation on the Northern Ireland Authority for Utility Regulation (the Northern Ireland authority) or a CFD counterparty to purchase NI certificates which have been issued to generators in Northern Ireland in respect of renewable electricity. The body on which this certificate purchase obligation is placed is referred to in the sections as the purchasing body of NI certificates (section 32N(2)(b)).

285. The GB and NI certificates are intended to be issued in place of renewables obligation certificates and to be issued in similar circumstances. The price at which the certificates are to be purchased by the purchasing body will be fixed and different purchase prices

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may be set for different periods of time (section 32O(2)(a) and (b)). Adjustments to the purchase price may also be made for inflation (section 32O(2)(c)).

286. The order may provide for the manner in which a GB or NI certificate is to be presented for payment and may set deadlines and other conditions that must be met before the purchasing body is required to purchase the certificate (section 32O(2)(e) and (h)). The person presenting the certificate for payment may also be required to provide information in a particular form and within deadlines set by the purchasing body (section 32O(4)). The order may authorise certain fees or charges incurred in making the payment for the certificates to be deducted from the payment for the certificate (section 32O(2)(l)).
287. The new section 32P makes provision for an order to impose a levy charged in respect of supplies of electricity. In Great Britain, the levy would be administered by the Authority, by the Secretary of State or by a CFD counterparty body (section 32P(7)). In Northern Ireland, the levy would be administered by the Northern Ireland authority, DETI or a CFD counterparty body (section 32P(8)).
288. The new section 32Q sets out how the amounts raised by the levy are to be used to meet the cost of purchasing certificates (section 32Q(3)) or paid into the Consolidated Fund or the Consolidated Fund of Northern Ireland in respect of costs incurred by the administrator of the levy, the purchasing body, the Authority and the Northern Ireland authority. The Secretary of State may also direct sums held by the purchasing body to be paid into the relevant Consolidated Fund (section 32Q(9) and (10)).
289. The order may provide for different levy rates for different periods or different cases or circumstances (section 32P(3)) and may make exemptions from the levy (section 32P(4)). The order may impose deadlines for payment of the levy, with interest for late payment (section 32P(6)(e)) and may provide for enforcement measures if the requirements in respect of the levy are not complied with (section 32P(6)(i)).
290. In the case of overpayment or underpayment of the levy, the order may require the amount to be set off against or added to the liability of the person to pay the levy for future periods (section 32P(11)). The order may provide for further payments to be made by electricity suppliers if there is a shortfall in the amounts raised by the levy due to missed or late payments or insolvency (section 32P(12)).
291. The CFD counterparty can be designated as the purchasing body or as the administrator of the levy only with the consent of the CFD counterparty (section 32R(2)). The Secretary of State may make an order revoking the designation at any time and the CFD counterparty may withdraw its consent by giving 3 months notice (section 32R(4)). The Secretary of State may also make an order dealing with the transition upon a change in the identity of the purchasing body or administrator when the designation of the CFD counterparty as the purchasing body or administrator ceases to have effect (section 32R(5) and (6)).
292. A certificate purchase order may provide for the Authority to issue a GB certificate to the operator of a generating station or to such other person specified in the order (section 32S(1)). A GB certificate must certify that it has been issued in respect of electricity generated from renewable sources, by the generating station or stations specified in the certificate, and supplied to customers in the United Kingdom or used in a permitted way (as defined in section 32S(10)). A GB certificate cannot be issued if a renewables obligation order is in force and a renewables obligation certificate could be issued for the electricity (section 32S(3)).
293. A certificate purchase order may provide for the Northern Ireland Authority to issue a NI certificate to the operator of a generating station in Northern Ireland (section 32T(1)). A NI certificate must certify the same matters as a renewables obligation certificate issued under article 52 of the Energy (Northern Ireland) Order 2003 (see article 54 of that order). A NI certificate cannot be issued if a Northern Ireland renewables obligation

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order is in force and a Northern Ireland renewables obligation certificate could be issued for the same electricity (section 32T(3)).

294. Article 54(10) of the Energy (Northern Ireland) Order 2003 prevents the issue of a Northern Ireland renewables obligation certificate in respect of electricity generated by a generating station situated in the territorial sea. A similar restriction applies to the issue of NI certificates by the Northern Ireland authority, as for the purposes of section 32N to 32Z2, Northern Ireland does not include any part of the territorial sea adjacent to Northern Ireland, unless a certificate purchase order provides otherwise (section 32Z2(5) and (6)).
295. The new sections 32U to 32X and 32Z to 32Z2 mirror many of the provisions in sections 32C to 32E and 32J to 32M of the Electricity Act 1989 to enable equivalent provision to be made under the certificate purchase scheme as may currently be made under the renewables obligation. In particular, this will enable many of the same rules to apply in connection with the issue of GB and NI certificates as currently apply, or as may in the future apply, to the issue of renewables obligation certificates. In some cases, the powers for the certificate purchase scheme differ from the existing powers for the renewables obligation to reflect the different features of the certificate purchase scheme.
296. Section 32U makes supplemental provision relating to the issue of GB or NI certificates. A certificate purchase order may specify cases or circumstances in which certificates cannot be issued or can be issued in respect of a proportion only of the electricity generated (s32U(1)). Only the proportion attributable to renewable sources is to be treated as generated from such sources where the generating station is fuelled partly by renewables sources and partly by fossil fuel (section 32U(4)). A certificate purchase order can specify how that proportion is to be determined and the consequences where more than the specified proportion of fossil fuel is used (section 32U(5)).
297. A certificate purchase order may impose restrictions on the transfer of GB and NI certificates (section 32U(7)). The order can specify circumstances where the Authority or Northern Ireland authority may revoke certificates (section 32U(8)). The order may provide for sums to be repaid to the Authority or the Northern Ireland authority if the purchasing body has purchased a GB or NI certificate that should not have been issued, and if it is not possible to refuse the issue of another certificate in its place (section 32U(10)) and provide for enforcement and appeals where repayment is required (section 32U(11)).
298. A certificate purchase order may provide for different numbers of certificates to be issued for electricity generated from different renewable sources or in other different cases or circumstances (section 32V). This is known as “banding provision”. Before making a banding provision, the Secretary of State must have regard to the matters listed in section 32V(4).
299. A certificate purchase order may provide for banding provision made in a renewables obligation order to apply in relation to GB and NI certificates as it applied in relation to renewables obligation certificates (section 32W(3)). The requirement to hold a banding review and the requirement to have regard to the matters listed in section 32V(4) does not apply where the effect of earlier banding provisions is being preserved (section 32W(4)).
300. A certificate purchase order may provide for the number of certificates issued in respect of the generation of electricity by a generating station to be conditional upon the repayment or cancellation of the whole or part of a statutory grant (section 32W(5) to (9)). In the case of repayment of a grant, the repayment must be made to the person who made the grant (section 32W(7)(a)). The order may also require interest to be paid, and may leave the interest rate and period to be determined by a person, such as the person who made the grant (section 32W(7)(b)).

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301. A certificate purchase order may provide for the Authority and the Northern Ireland authority to require information which is relevant to whether a GB or NI certificate should be issued (section 32X(1)). The order may also require information to be provided about biomass used to generate electricity (section 32X(3)).
302. Section 32Y places a duty on the Secretary of State, when exercising a number of powers listed for the certificate purchase order, to exercise those powers in the way that the Secretary of State considers will replicate the effect of a provision made by virtue of an equivalent power for the renewables obligation order in England and Wales or in Scotland. The powers to which this duty applies are listed in section 32Y(4) together with the equivalent power for the renewables obligation order.
303. Where a listed power is exercised in relation to Northern Ireland, the power is to be exercised in the way that the Secretary of State considers will replicate the effect of a provision made by virtue of an equivalent power for the Northern Ireland renewables obligation (section 32Y(2)(b)).
304. The duty in section 32Y applies only to the extent that it appears reasonably practicable to exercise the listed power in that way and only to the extent that the duty is not inconsistent with other duties on the Secretary of State (section 32Y(3)).
305. A certificate purchase order may provide for renewables obligation certificates to be treated as if they were GB or NI certificates (section 32Z(2)) and may make different provision for different parts of the United Kingdom or for different localities (section 32Z(3)).
306. The Authority may act on behalf of the Northern Ireland Authority by arrangement (section 32Z(5)). Similar arrangements have been made in respect of the renewables obligation by virtue of section 121 of the Energy Act 2004.
307. Section 32Z2 provides definitions for various terms used in the sections 32N to 32Z2.