

EXPLANATORY MEMORANDUM TO
THE ENERGY ACT 2008 (CONSEQUENTIAL AMENDMENTS) ORDER 2009
2009 No. 556

1. 1.1 This explanatory memorandum has been prepared by DECC and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This Order amends sections 32F and 32I of the Electricity Act 1989 (“the 1989 Act”) as a consequence of amendments made to the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (“the NI Energy Order 2003”).
 - 2.2 Section 32K(2) of the Act has also been amended to allow transitional and saving provisions to be made in respect of renewables obligation certificates issued by the Northern Ireland Authority for Utility Regulation before 1st April 2009.
3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 37 of the Energy Act 2008 substituted sections 32 to 32C of the 1989 Act with sections 32 to 32M, which contain the powers needed to introduce reforms to the Renewables Obligation (RO), including ‘banding’ – the provision of differentiated levels of support according to technology type.
 - 4.2 These powers which enable changes to be made to the Renewables Obligation in Great Britain were discussed at length during the recent passage of the Energy Act 2008 through Parliament. Details of the debates in both Houses can be found at: <http://services.parliament.uk/bills/2007-08/energy.html>
 - 4.3 In Great Britain the obligation is provided for in the 1989 Act.. In Northern Ireland it is provided for in the NI Energy Order 2003. To reflect the changes made by the Energy Act 2008, the NI Energy Order has subsequently been amended by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (NI) 2009 No 35).
 - 4.4 This Order is made under section 38(2) of the Energy Act 2008 which provides that where the NI Energy Order 2003 is amended, the Secretary of State may make an order to:
 - make consequential amendments; and
 - extend section 32K(2) to make transitional provisions and savings in respect of renewable obligation certificates issued by the NI authority

- 4.5 This Order makes consequential amendments to sections 32F and 32I of the 1989 Act to reflect amendments to Northern Ireland legislation. The Order is subject to the negative resolution procedure and will come into force on 1st April 2009, as this is the date that has been adopted for implementation of the reforms to the Renewables Obligation across the UK.
- 4.6 Section 32K(2) has also been amended to extend it to cover transitional and savings provisions to be made in respect of renewable obligations certificates issued by the Northern Ireland Authority for Utility Regulation before 1st April 2009.
- 4.7 Northern Ireland legislation is not amended by the attached Order and it does not apply to Northern Ireland.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of Great Britain

6. European Convention on Human Rights

The Minister of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the The Energy Act 2008 (Consequential Amendments) Act 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

- 7.1 Section 37 of the Energy Act 2008 contains the powers needed to introduce reforms to the Renewables Obligation (RO), including ‘banding’ – the provision of differentiated levels of support according to technology type.
- 7.2 The RO effectively works across the whole of the UK. In Great Britain the obligation is provided for in the Electricity Act 1989. In Northern Ireland it is provided for in the Energy (Northern Ireland) Order 2003 (which essentially mirrors the legislation for the RO in GB). England & Wales, Scotland and Northern Ireland all have their own secondary legislation.
- 7.3 Sections 32-32M of the 1989 Act describe the interaction between the Renewables Obligation in Great Britain and Northern Ireland, and therefore includes references to the NI Energy Order 2003. At the time of the Energy Bill’s Royal Assent, Northern Ireland had not amended their legislation to reflect the changes necessary to reform the RO – as they were waiting to mirror the provisions in the Energy Act 2008. The references in the 1989 Act therefore refer to Northern Ireland’s legislation prior to its amendment

7.4 The NI Energy Order has recently been amended by the Energy (Amendment) Order (Northern Ireland) 2009. We therefore now need to make this order to changes references in the Act to reflect this.

7.5 This order must come into force for the 1st April 2009 when the reforms to the RO are to be implemented. If it doesn't, not only will references to relevant Northern Ireland legislations in sections 32F and 32I be incorrect but we will not be able to make transitional and savings provisions about the treatment of certificates issued in Northern Ireland before the 1st of April 2009

8. Consultation outcome

8.1 This Order is made under section 38(2) of the Energy Act 2008. There is no statutory requirement to consult on the provisions of this Order. An extensive consultation was carried out on the provisions of the Draft ROO 2009 that detailed how the reforms to the Renewables Obligation would work.

9. Guidance

9.1 Given the nature of the order, no guidance has been provided to stakeholders.

10. Impact – No impact

10.1 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring and review will not be necessary.

13. Contact

Kathryn Wood at the Department for Energy and Climate Change Tel: 0207 215 0735 or email: kathryn.wood@decc.gsi.gov.uk can answer any queries regarding the instrument.