

Draft Order laid before the Assembly under Article 66(2) of the Energy (Northern Ireland) Order 2003 for approval by resolution of the Assembly

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2009 No.

ELECTRICITY

Energy (Amendment) Order (Northern Ireland) 2009

Made - - - -

Coming into operation

1st February 2009

The Department of Enterprise, Trade and Investment makes the following Order in exercise of the powers conferred on it by Article 56(1) and Article 66(3) of the Energy (Northern Ireland) Order 2003⁽¹⁾.

Citation and commencement

1. This Order may be cited as the Energy (Amendment) Order (Northern Ireland) 2009 and shall come into operation on 1 February 2009.

Amendment of the Energy (Northern Ireland) Order 2003

2. For Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 substitute—

“Obligation in connection with electricity from renewable sources

52.—(1) The Department may make a renewables obligation order.

(2) A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a “designated electricity supplier”).

(3) The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity in Northern Ireland excluding such categories of supplier (if any) as are specified.

(4) The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by him to customers in Northern Ireland during a specified period.

(1) S.I.2003/419 (N.I.6): see Article 2(2) for the definition of “the Department” and see section 40(2) of the Energy Act 2008

(5) In this Part, “electricity supplier” means the holder of a licence under Article 10(1) (c) or (2) of the Electricity Order, except where he is acting otherwise than for the purposes connected with the carrying on of activities authorised by the licence.

(6) Paragraph (4) is subject to Articles 53 to 55F.

Further provision about the renewables obligation

53.—(1) A renewables obligation order may make provision generally in relation to the renewables obligation.

(2) A renewables obligation order may, in particular, specify—

- (a) how the number of renewables obligation certificates required to be produced by an electricity supplier in respect of the amount of electricity supplied by him to customers in Northern Ireland during a specified period is to be calculated;
- (b) different obligations for successive periods of time;
- (c) that renewables obligation certificates issued in respect of electricity generated—
 - (i) using specified descriptions of renewable sources
 - (ii) by specified descriptions of generating stations
 - (iii) in specified ways, or
 - (iv) in other specified cases or circumstances,

are to count towards discharging an electricity supplier’s obligation only up to a specified number, or a specified proportion, of the certificates required to be produced to discharge the obligation;

- (d) that a specified number, or a specified proportion, of the renewables obligation certificates produced by an electricity supplier when discharging his renewables obligation must be certificates in respect of electricity generated—
 - (i) using specified descriptions of renewable sources,
 - (ii) by specified descriptions of generating station,
 - (iii) in specified ways, or
 - (iv) in other specified cases or circumstances;
- (e) how the amount of electricity supplied by an electricity supplier to customers in Northern Ireland during a specified period is to be calculated;
- (f) that specified information, or information of a specified nature, is to be given to the Authority;
- (g) the form in which such information is to be given and the time by which it is to be given.

(3) A renewables obligation certificate may count once only towards the discharge of the renewables obligation.

(4) A renewables obligation order may, in relation to any specified period (“the current period”)—

- (a) provide that renewables obligation certificates in respect of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
- (b) provide that renewables obligation certificates in respect of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;

- (c) specify how much later the later period referred to in sub-paragraph (a) or (b) may be;
- (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in sub-paragraph (a) or (b);
- (e) specify a maximum proportion, or maximum number of, the renewables obligation certificates issued in respect of electricity supplied in any period which may be counted towards discharging the renewables obligation for a different period.

(5) For the purposes of paragraph (4) a certificate which certifies that electricity has been used in a permitted way (within the meaning of Article 54(7) and (8)) in a particular period is to be treated as if it were a certificate which certifies that electricity has been supplied in that period.

Renewables obligation certificates

54.—(1) A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a renewable obligation certificate”) to—

- (a) the operator of a generating station in Northern Ireland
 - (b) an electricity supplier or a Great Britain supplier, or
 - (c) if the order so provides, a person of any other description specified in the order.
- (2) A renewables obligation certificate is to certify—
- (a) the matters within paragraph (3), or
 - (b) if the order provides that a certificate may certify the matters within paragraph (4), (5), or (6) the matters within that paragraph.
- (3) The matters within this paragraph are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, or to a Great Britain supplier, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that it has been supplied by an electricity supplier to customers in Northern Ireland.
- (4) The matters within this paragraph are—
- (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that it has been supplied by an electricity supplier to customers in Northern Ireland.
- (5) The matters within this paragraph are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that the electricity has been used in a permitted way.
- (6) The matters within this paragraph are—

- (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that the electricity has been used in a permitted way.
- (7) For the purposes of paragraph (5) and (6), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in paragraph (8), and
 - (b) that way is specified in the order as a permitted way—
 - (i) in relation to all generating stations, or
 - (ii) in relation to generating stations of that description.
- (8) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
 - (b) being supplied to customers in Northern Ireland through a private wire network;
 - (c) being provided to a
 - (i) transmission system or,
 - (ii) low voltage line or electrical plant used to convey electricity
 located in Northern Ireland in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated.
 - (d) being used, as respects part, as mentioned in one of sub-paragraph (a), (b) or (c) and as respects the remainder—
 - (i) as mentioned in one of the other sub-paragraphs, or
 - (ii) as respects part, as mentioned in one of the other sub-paragraphs and as respects the remainder as mentioned in the other;
 - (e) being used, as respects part, as mentioned in sub-paragraph (a), (b), (c) or (d) and as respects the remainder by being supplied by an electricity supplier to customers in Northern Ireland.
- (9) For the purposes of paragraph (8)(b) electricity is supplied through a private wire network if it is conveyed to premises by a system which is used for conveying electricity from a generating station in circumstances where—
- (a) the operator of the generating station is exempt from Article 8(1)(c) of the Electricity Order and is not an electricity supplier and
 - (b) the electricity is supplied to one or more customers—
 - (i) by the operator directly, or
 - (ii) by a person to whom the operator supplies the electricity, being a person who is exempt from Article 8(1)(c) of the Electricity Order and is not an electricity supplier.
- (10) In paragraphs (1) to (9) “Northern Ireland” does not include any part of the territorial seas of the United Kingdom.

Article 54: supplemental provision

54A.—(1) A renewables obligation order may provide—

- (a) that no renewables obligation certificates are to be issued in respect of electricity generated in specified cases or circumstances, or

- (b) that renewables obligation certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of paragraph (1) may specify—
 - (a) electricity generated using specified descriptions of renewable sources,
 - (b) electricity generated by specified descriptions of generating station, or
 - (c) electricity generated in specified ways.
- (3) Provision made by virtue of paragraph (1)(b) may include—
 - (a) provision about how the proportion is to be determined;
 - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
 - (c) provision authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
 - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
 - (ii) for the results of that analysis to be made available to the Authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
 - (a) partly by renewable sources, and
 - (b) partly by fossil fuel (other than waste which constitutes a renewable source) or peat.only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A renewables obligation order may specify—
 - (a) how the proportion referred to in paragraph (4) is to be determined, and
 - (b) the consequences for the issuing of renewables obligation certificates if a generating station of the type mentioned in that paragraph uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequence that no certificates are to be issued in respect of any of the electricity generated by that generating station during that period.
- (7) A renewables obligation order may specify circumstances in which the Authority may revoke a renewables obligation certificate before its production for the purposes of the renewables obligation.
- (8) The provision that may be contained by virtue of this Article and Articles 54 and 54B in an order under Article 52 includes—
 - (a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and
 - (b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.
- (9) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements within paragraph (8)(b) that may be specified in or determined under the order include arrangements—

- (a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and
 - (b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.
- (10) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (8)(b) may require the relevant person—
- (a) to make and implement the arrangements that are specified in or determined under the order; and
 - (b) to comply with directions given to him by the Authority for that purpose.
- (11) A person who receives a payment in accordance with provision made by virtue of paragraph (9)(b) shall apply the money received in such manner as the Department may direct.
- (12) A direction under paragraph (11) may require that the money received or part of that money be paid to the Department.
- (13) Part 6 shall apply in relation to a requirement imposed by virtue of paragraph (10) or (11) on a person who is not an electricity licence holder as if he were an electricity licence holder.
- (14) In this Article—
- “qualifying arrangement” means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);
 - “relevant person” means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.

Amounts of electricity specified in certificates

- 54B.**—(1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
- (a) electricity generated from different renewable sources;
 - (b) electricity generated by different descriptions of generating station;
 - (c) electricity generated in different ways.
- (3) In this Article “banding provision” means provision made in a renewables obligation order by virtue of paragraph (1).
- (4) Before making any banding provision, the Department must have regard to the following matters—
- (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
 - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;

- (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c. 17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;
 - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
 - (e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;
 - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, a Community obligation.
- (5) For the purposes of paragraph (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of paragraph (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
- (a) the acquisition of the renewable source;
 - (b) the supply of heat produced in connection with the generation;
 - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made, no subsequent order containing such provision may be made except following a review held by virtue of paragraph (8).
- (8) A renewables obligation order—
- (a) may authorise the Department to review the banding provision at such intervals as are specified in or determined in accordance with the order, and
 - (b) may authorise the Department to review the whole or any part of the banding provision at any time when the Department is satisfied that one or more of the specified conditions is satisfied.

Transitional provision and savings

54C.—(1) This Article applies where a renewables obligation order contains banding provision.

(2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—

- (a) the electricity generated by generating stations of such a description as may be specified, or
- (b) so much of that electricity as may be determined in accordance with the order.

(3) For the purposes of paragraph (2) “pre-commencement order” means an order made under Article 52 before the coming into operation of this Article.

(4) Paragraph (6) applies to a generating station in respect of which a statutory grant has been awarded if—

- (a) the generating station is of a specified description or
- (b) the circumstances of the case meet specified requirements.

(5) The requirements specified under paragraph (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this Article).

(6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this paragraph applies to be conditional upon the operator of the station agreeing—

- (a) if the grant or any part of it has been paid by a Minister or Department, to repay to the Minister or Department, as the case may be, the whole or a specified part of the grant or part before the repayment date
- (b) to pay interest on an amount repayable under sub-paragraph (a) for such period, and at such rate, as may be determined by the Minister or Department as appropriate, and
- (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.

(7) For the purposes of paragraph (6)—

- (a) “the repayment date” means the date specified in or determined in accordance with the order, and
- (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;

and, for the purposes of provision made under that paragraph, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.

(8) In this Article “statutory grant” means—

- (a) a grant awarded under section 5(1) of the Science and Technology Act 1965⁽²⁾ (grants to carry on or support scientific research), or
- (b) any other grant which is payable out of public funds and awarded under a statutory provision.

(9) This Article is without prejudice to Article 55D (1)(b) (power for renewables obligation order to include transitional provision and savings).

Use of renewables obligation certificates issued in Great Britain

54D.—(1) A renewables obligation order may provide that—

- (a) in such cases as may be specified in the order, and
- (b) subject to such conditions as may be so specified,

an electricity supplier may (to the extent provided for in accordance with the order) discharge his renewables obligation (or his obligation in relation to a particular period) by the production to the Authority of a Great Britain certificate.

(2) In this Article “Great Britain certificate” means a certificate issued by the Great Britain authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989⁽³⁾, in an order under section 32 of that Act (renewables obligations for Great Britain suppliers).

(2) 1965 c. 4 as amended by S.I. 1992/1296, S.I. 1969/1498, 1970 c. 4, S.I. 1971/719, S.I. 1995/2985 and S.I. 1999/2785

(3) 1989 c. 29 Articles 32 and 32B were substituted by Section 37 of the Energy Act 2008 (c. 32)

Payment as alternative to complying with renewables obligation order

55.—(1) A renewables obligation order may provide—

- (a) that an electricity supplier may (in whole or in part) discharge his renewables obligation by making a payment to the Authority before the last discharge day, and
- (b) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period.

(2) The order may make provision—

- (a) as to the sum which for the purposes of paragraph (1) is to correspond to a renewables obligation certificate
- (b) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the last discharge day;
- (c) for different sums or rates falling within sub-paragraph (a) or (b) in relation to different periods;
- (d) for different such sums or rates in relation to electricity generated in different cases or circumstances specified in the order (including those of a kind referred to in Article 53(2)(c));
- (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order.

(3) The method specified under paragraph (2)(e) may, in particular, refer to a specified scale or index (as it may have effect from time to time) or to other specified data of any description.

(4) A renewables obligation order may provide that, where—

- (a) a renewables obligation is one in relation to which provision made by virtue of paragraph (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
- (b) the period ending with such day (after the last discharge day) as may be specified in or determined under the order has not expired,

the taking of steps under Article 45 in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.

(5) A renewables obligation order may provide that, in a case in which the amount received by the Authority, or by the Great Britain Authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—

- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
- (b) is of a description so specified or determined,

must by the time and in the circumstances so specified or determined make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.

(6) A renewables obligation order may not by virtue of paragraph (5) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—

- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of paragraph (4)

applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period, or

- (b) in the case of a shortfall in the amount received by the Great Britain authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Great Britain applies, in one or more cases, to the taking of steps in relation to contraventions of Great Britain obligations for that period.

(7) The provision that may be made by virtue of paragraph (5) includes—

- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen, and
- (b) provision that Articles 42 to 51 are to apply in relation to a requirement imposed by virtue of that paragraph on a person who is not a licence holder as if the person were a licence holder.

(8) References in this Article to an electricity supplier's renewables obligation include references to his renewables obligation in relation to a particular period.

(9) For the purposes of this Article the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, the Authority would have received more by way of discharge payments if every renewables obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.

(10) For the purposes of this Article the amount received by the Great Britain authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, that authority would have received more by way of discharge payments if every Great Britain obligation for that period, so far as not otherwise discharged, had been discharged by payment.

(11) In this Article—

“discharge payment”, in relation to a period, means—

- (a) a payment by virtue of paragraph (1)(a) for discharging (in whole or in part) an electricity supplier's renewables obligation for that period,
- (b) so much of a payment by virtue of paragraph (1)(b) for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the last discharge day, or
- (c) so much of any payment to the Great Britain authority as corresponds in relation to a Great Britain obligation for that period, to anything falling within paragraph (a) or (b) above;

“Great Britain obligation” means a renewables obligation of a Great Britain supplier under section 32 of the Electricity Act 1989;

“last discharge day” means the day specified as the day by which renewables obligation certificates must be produced for the purposes of Article 52(4);

“last payment period” means such period beginning with the last discharge day as may be specified;

“the relevant period”—

- (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period, and

- (b) in relation to a shortfall in amounts received by the Great Britain authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.

Allocation of amounts to electricity suppliers

55A.—(1) The amounts received by the Authority by virtue of Article 55 must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.

(2) Paragraph (1) does not apply to those amounts to the extent that they are used by the Authority under Article 55B.

(3) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.

(4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under Article 55(1) (b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under Article 55B or already paid under paragraph (1)) is less than an amount specified in the order.

(5) The references in this Article to electricity suppliers include references to Great Britain suppliers.

Costs of the Authority and the Great Britain authority

55B.—(1) A renewables obligation order may provide for amounts received by the Authority by virtue of Article 55 to be used by the Authority—

- (a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under Articles 52 to 55F, or
- (b) to make payments to the Great Britain authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under section 32 to 32M of the Electricity Act 1989.

(2) A renewables obligation order—

- (a) may exclude amounts of a specified description from being used as mentioned in paragraph (1);
- (b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

Information

55C.—(1) A renewables obligation order may provide for the Authority to require—

- (a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, his renewables obligation;
- (b) a person to provide the authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question

whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.

- (2) That information must be given to the Authority in whatever form it requires.
- (3) A renewables obligation order may—
 - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;
 - (b) specify what, for this purpose, constitutes “biomass”;
 - (c) require the information to be given in a specified form and within a specified period;
 - (d) authorise or require the Authority to postpone the issue of certificates under Article 54 to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
 - (e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.
- (4) The Authority may publish information obtained by virtue of paragraph (3).
- (5) No person is required by virtue of this Article to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court.

Renewables obligation order; general provision

55D.—(1) A renewables obligation order may—

- (a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;
- (b) make transitional provision and savings;
- (c) provide for anything falling to be calculated or otherwise determined under the Order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
- (d) make different provision for different cases or circumstances;
- (e) confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates;

(2) Provision made by virtue of paragraph (1)(b) may, in particular, include provision about the treatment of certificates issued under Article 54 before the substitution of that Article by the Energy (Amendment) Order (Northern Ireland) 2009.

(3) In paragraph (1) “Great Britain certificates” means certificates that are or may be issued by the Great Britain Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;

Renewables obligation orders: procedure

55E. Before making a renewables obligation order, the Department must consult—

- (a) the Authority,
- (b) the Council,
- (c) the electricity suppliers to whom the proposed order would apply,

- (d) such generators of electricity from renewable sources as the Department considers appropriate, and
- (e) such other persons, if any, as the Department considers appropriate.

Interpretation of Articles 52 to 55F

55F.—(1) In this Article and Articles 52 to 55E—

“banding provision” is to be construed in accordance with Article 54B(3);

“fossil fuel” means—

- (a) coal,
- (b) lignite,
- (c) peat,
- (d) natural gas (within the meaning of the Energy Act 1976),
- (e) crude liquid petroleum,
- (f) petroleum products (within the meaning of that Act), or
- (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);

“Great Britain authority” means the Gas and Electricity Markets Authority;

“Great Britain supplier” means an electricity supplier within the meaning of Part 1 of the Electricity Act 1989;

“the renewables obligation” is to be construed in accordance with Article 52(4);

“renewables obligation certificate” is to be construed in accordance with Article 54;

“renewables obligation order” is to be construed in accordance with Article 52;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a renewables obligation order, means specified in the order.

(2) For the purposes of the definition of “renewable sources”, a renewables obligation order may make provision—

- (a) about what constitutes “waste”;
- (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
- (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
- (d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
 - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
 - (ii) for the results of that analysis to be made available to the Authority.

(3) A renewables obligation order may make provision, for the purposes of Articles 52 to 55E, about the circumstances in which electricity is to be regarded as having been supplied to customers in Northern Ireland.”.

3. The following Orders are revoked—

Draft Legislation: This is a draft item of legislation and has not yet been made as a Northern Ireland Statutory Rule. This draft has been replaced by a new draft, Energy (Amendment) Order (Northern Ireland) 2009 ISBN 978-0-337-97568-4

- (a) The Energy (Amendment) Order (Northern Ireland) 2004⁽⁴⁾
- (b) The Energy (Amendment) Order (Northern Ireland) 2006⁽⁵⁾

4. Notwithstanding Articles 2 and 3, Articles 52 to 55 of the Energy (Northern Ireland) Order 2003, as they had effect immediately before this order came into operation, shall continue to have effect in relation to the Renewables Obligation Order (Northern Ireland) 2007⁽⁶⁾ as if this order had not been made.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on []

L.S.

Jenny Pyper
A senior officer of the
Department of Enterprise, Trade and Investment

⁽⁴⁾ S.R. 2004 No. 524
⁽⁵⁾ S.R. 2006 No. 424
⁽⁶⁾ S.R. 2007 No 104

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I 2003 419 (N.I.6) to take account of amendments to sections 32 to 32C of the Electricity Act 1989 (1989 c. 29) by the Energy Act 2008.

Article 52 of the Energy (Northern Ireland) Order 2003 (“the Energy Order) enables the Department of Enterprise, Trade and Investment (“the Department”) by order (“a renewables order”) to impose on each electricity supplier who falls within a specified description, an obligation to provide the Northern Ireland Authority for Utility Regulation (“the Authority”) before one or more days specified in the renewables order evidence regarding the supply of certain quantities of electricity generated from renewable sources (“the renewables obligation”). The evidence required is in the form of renewables obligation certificates (“NIROCs”) issued by the Authority to renewable electricity generators in proportion to the amount of electricity generated from eligible renewable sources. Suppliers may also discharge their obligation (in full or in part) by providing evidence in the form of renewables obligation certificates issued by the Gas and Electricity Markets Authority (“the Great Britain Authority”) in Great Britain or by making buy-out payments to the Authority.

Article 2 of this order substitutes the existing Articles 52 to 55 of the Energy Order with new Articles 52 to 55F that will enable the Department by order to provide for the amount of electricity that is certified by each NIROC to vary between different types of renewable sources or technologies and for suppliers to discharge their obligation on the basis of a certain number of renewables obligation certificates rather than a certain quantity of electricity. This is known as a “banding” of the NIRO.

The new Article 52 imposes the renewables obligation on electricity suppliers; the obligation will require the supplier to produce the required number of NIROCs by the specified date.

The new Article 53 provides for a renewables order to specify the number and type of NIROCs required by a supplier to discharge his renewables obligation.

The new Article 54 enables a renewables order to provide for the Authority to issue and revoke NIROCs in respect of renewable electricity that is generated and supplied in Northern Ireland while the new Article 54A makes provision for the renewables order to determine the sources or circumstances in which NIROCs will be issued.

The new Article 54B provides for the banding of a renewables obligation by enabling the amount of electricity to be stated in each certificate to vary according to renewable source from which or the circumstances in which it was generated. The new Article 54C introduces a power to make transitional provisions in relation to existing projects once a renewables order containing banding provisions is introduced.

The new Article 54D and 55 provide respectively for the continued use of certificates issued by the Great Britain authority and the making of buy-out payments as the two alternative means of discharging a supplier's renewables obligation.

The new Article 55A provides for the redistribution to suppliers of payments made in respect of the buy-out alternative while Article 55B introduces a new power to allow the costs associated with the Authority's administration of the renewables obligation to be met from payments made in respect of the buy-out alternative.

Article 55E requires the Department to consult specific persons before making a renewables order.

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