

EXPLANATORY MEMORANDUM TO THE ENERGY (AMENDMENT) ORDER (NORTHERN IRELAND) 2004

S.R. 2004 No. 524

1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 Part VII 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 Energy Regulation (“the Authority”), before one or more days specified in the renewables order, evidence regarding the supply of electricity generated from renewable sources (“the renewables obligation”). The evidence required will be Northern Ireland Renewables Obligation Certificates (“NIROCs”) issued by the Authority. As an alternative, a renewables order may allow an electricity supplier to discharge its renewables obligation by making buy-out payments to the Authority.
 - 2.2 This Order amends PART VII of the Energy Order to enable the Department to provide, in a renewables order, for:
 - a) more than one specified day in a year;
 - b) the issue of NIROCs to Great Britain electricity suppliers;
 - c) recognition of renewables obligation certificates issued in Great Britain (“GBROCs”);
 - d) late buy-out payments; and,
 - e) electricity suppliers to make payments to the Authority to make good a shortfall in buy-out payments and late buy-out payments.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Background**
 - 4.1 The proposed Order is the first to be made under powers contained in Article 56(1) of the Energy (Northern Ireland) Order 2003. These powers provide for an Order (subordinate legislation) to amend that part of the Energy Order (Part VII) relating to the introduction of a Renewables Obligation in Northern Ireland to reflect amendments made to the corresponding GB primary legislation (the Electricity Act 1989). The Energy Act 2004 amended the Electricity Act 1989

to provide, among other things, for a Northern Ireland Renewables Obligation, when introduced, to operate in tandem with the current GB Obligations, on a UK-wide basis. The Order mirrors these reciprocal GB provisions.

- 4.2 The Order does not implement an EC Directive. Nonetheless, it is supportive of the objectives of Directive 2001/77/EC of the European Parliament and of the Council on the promotion of electricity from renewable sources in the internal electricity market (O.J. No. L283, 27.10.2001, p.33) in that, along with existing provision in Part VII of the Energy Order 2003, it lays the framework for a support scheme aimed at encouraging increases in the amount of electricity generated from renewable sources.
- 4.3 The Order is being laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000 which relates to provisions applicable during suspension of the Northern Ireland Assembly.

5. Extent

The instrument applies to Northern Ireland.

6. European Convention on Human Rights

In the view of the Department of Enterprise, Trade and Investment the provisions of the Energy (Amendment) Order (Northern Ireland) 2004 are compatible with the Convention rights.

7. Policy Background

- 7.1 A Renewables Obligation is seen as representing the main plank of Northern Ireland's policy to increase the proportion of its electricity that is generated from renewable sources. It would help achievement of the current target of 12% contained in the Department's Strategic Energy Framework for the proportion of electricity that is generated from renewable sources by 2012. This target is in line with the indicative target of 10% for the UK as a whole provided for in Directive 2001/77/EC. Currently around 3% of electricity consumed in Northern Ireland is generated from indigenous renewable sources.
- 7.2 As a policy instrument, the Renewables Obligation is a market-led support scheme. The market is established as a result of the shortfall that will exist between the level of the Obligation and the number of Renewables Obligation Certificates (issued in respect of eligible renewable generation) available to cover that Obligation in any one year and the payment required of suppliers to meet that shortfall.
- 7.3 The small size of the electricity market in Northern Ireland (at under 9,000 gigawatt hours of consumption per annum and less than 3% of total UK consumption) is not conducive to the effective operation of such a market-led initiative. A policy decision was taken, in agreement with the Department of Trade and Industry in GB, that the NI Obligation should therefore operate as part of a UK-wide Obligation alongside the two existing GB Obligations.

- 7.4 This Order, in conjunction with the Energy Act 2004, sets the primary framework for that UK-wide market. The detailed implementation will be the subject of further subordinate legislation (including amendments to the current Renewables Obligation Orders in GB) as well as associated consultation processes.
- 7.5 Article 52(6) of the Energy Order requires the Department to consult with specified organisations including the electricity industry and the Authority before making a renewables order. There has been extensive consultation within Northern Ireland over the past 4 years on the policy for promoting renewables in general and the introduction of a Renewables Obligation in particular. These included the Department's consultation document on the future of renewables policy (Realising the Potential) in 2001, the then Enterprise, Trade and Investment Committee's Energy Inquiry, and the consultation undertaken in 2002 prior to the introduction of the Energy Order 2003 as well as the 2003 Consultation which eventually shaped the Strategic Energy Framework. More specifically, in 2003, the Northern Ireland electricity industry was involved in a study undertaken on behalf of the Department by Impax consultants to review the policy options for encouraging the development of the renewables industry. The study considered the implementation of the NIRO in terms of its operation, efficacy and impact on the price of electricity to consumers. In June 2004 a preliminary consultation outlined the context for, and proposed operation of, the NIRO and sought views from a wide range of organisations; this was followed, on 15 October 2004, by the publication of a statutory consultation on the introduction of a Renewables Obligation.

8. Impact

- 8.1 This Order will not, in itself, have any impact on business, charities or voluntary bodies or, indeed, even on those electricity suppliers who will ultimately be affected by the Renewables Obligation to which it relates. This Order, along with the Energy Act 2004, simply lays the foundation by making provision for a Renewables Obligation to function on a UK-wide basis. It does not implement the Obligation; this will be done by subsequent subordinate legislation which will be the subject of a separate Explanatory Memorandum. A Regulatory Impact Assessment has not, therefore, been prepared for this instrument.
- 8.2 The Renewables Obligation for which this Order, in conjunction with the Energy Act 2004, lays a UK-wide framework is a market-led support scheme; it therefore has no impact on the Exchequer. NIROCs and GBROCs will attract a value because of the requirement on suppliers to make a buy-out payment (around £30 per MWh) as an alternative to presenting NIROCs or GBROCs in settlement of their obligation. This additional cost on suppliers will be passed on to consumers who will therefore ultimately meet the cost of the scheme.
- 8.3 On the public sector side, the Obligation will be administered by either the Northern Ireland Authority for Energy Regulation or, under Section 121 of the Energy Act 2004, by the Gas and Electricity Markets Authority which operates

the Obligations in GB, but, as in GB, the costs of this administration will be recovered as a charge on the suppliers' licences.

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