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STATUTORY RULES OF NORTHERN IRELAND

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**2007 No. 104**

**The Renewables Obligation Order (Northern Ireland) 2007**

**PART I**

**Introductory Provisions**

**Citation and commencement**

1. This Order may be cited as the Renewables Obligation Order (Northern Ireland) 2007 and shall come into operation on 1 April 2007.

**Interpretation**

2.—(1) In this Order –

“the 2006 Order” means the Renewable Obligation Order (Northern Ireland 2006<sup>(1)</sup>)

“accreditation” means accreditation as a generating station capable of generating electricity from eligible renewable sources;

“advanced conversion technologies” means gasification, pyrolysis or anaerobic digestion, or any combination thereof;

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen;

“banking day” means a day on which banks are generally open in the City of London excluding Saturdays or Sundays;

“biomass” means fuel used in a generating station of which at least 90 per cent of the energy content (measured over such a period and with such frequency as the Authority deems appropriate) is derived from plant or animal matter or substances derived directly or indirectly therefrom (whether or not such matter or substances are waste) and includes agricultural, forestry or wood wastes or residues, sewage and energy crops (provided that such plant or animal matter is not or is not derived directly or indirectly from fossil fuel) provided that:

- (i) this definition shall not include any substance that, at the time it is used as fuel in a generating station, is a fraction of any mixture of wastes that, taken as a whole, is not itself biomass; and
- (ii) in determining any period over which and frequency with which measurement must take place for the purposes of this definition, the Authority may take into account such matters as it thinks fit, including the length of time for which the fuel has been used by the generating station or by other generating stations;

“CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 published by the Department of the Environment, Transport and the Regions<sup>(2)</sup>;

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(1) S.R. 2006 No.56

(2) Available at <http://www.chpqa.com>

“combined heat and power generating station” means a station producing electricity that is (or may be) operated for purposes including the supply to any premises of—

- (i) heat produced in association with electricity; or
- (ii) steam produced from, or air or water heated by, such heat;

“commissioned” means the completion of a process of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a generating station in order to demonstrate that the generating station is capable of commercial operation;

“the Company” means Northern Ireland Electricity plc;

“connected person”, in relation to an owner or operator of a generating station, or a party to a qualifying arrangement, means a person connected to him within the meaning of section 839 of the Income and Corporation Taxes Act 1988<sup>(3)</sup>;

“declared net capacity” means the highest generation of electricity (calculated by adding together the highest generation of electricity at the main terminals of each alternator and dynamo) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant;

“designated electricity supplier” except where it appears for the second time in the definition of “renewables obligation” and where it appears in the definition of “Great Britain designated supplier”, means any electricity supplier supplying electricity in Northern Ireland;

“the Electricity Act” means the Electricity Act 1989<sup>(4)</sup>;

“eligible GBROC” means a GBROC that satisfies the conditions for eligibility set out in Schedule 1;

“eligible renewable sources” has the meaning given to it in Article 5;

“energy content” of a fuel means the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel;

“energy crops” means a plant crop planted after 31st December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following—

- (a) *miscanthus giganteus*
- (b) *salix* (also known as short rotation coppice willow)
- (c) *populus* (also known as short rotation coppice poplar)

“the Energy Order” means the Energy (Northern Ireland) Order 2003;

“gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

“GBRO Order” means any order made pursuant to section 32 of the Electricity Act;

“GBROC” means a certificate issued by the Great Britain Authority under section 32B of the Electricity Act and pursuant to a GBRO Order and, save where the context otherwise requires, includes a replacement GBROC;

“GBROC identifier” means an identifier unique to a GBROC determined by the Great Britain Authority and containing the following information (or reference to that information in coded format)—

- (i) the month and year during which the electricity was generated;
- (ii) the location of the generating station;

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<sup>(3)</sup> 1988 c.1; section 839 was amended by the Finance Act 1995 (c.4), section 74 and Schedule 17, paragraph 20

<sup>(4)</sup> 1989 c.29

- (iii) a description of the generating station including reference to the source or sources of fuel used to generate electricity by that generating station;
- (iv) the date of issue of the GBROC; and
- (v) a number allocated to a GBROC by the Great Britain Authority in accordance with a GBRO Order;

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

“Great Britain designated supplier” means a designated electricity supplier within the meaning of a GBRO Order;

“hydro generating station” means a generating station which is wholly or mainly driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and the “generating station” extends to all turbines supplied by the same civil works, except that any turbine driven by a compensation flow supplied by those civil works where there is a statutory obligation to maintain such compensation flow in a natural water course shall be regarded as a separate hydro generating station;

“late payment period” in relation to an obligation period, means the period from the specified day in relation to that obligation period to the 31st October immediately following;

“licensed supplier” means an electricity supplier or an electricity supplier within the meaning of Part I of the Electricity Act;

“micro hydro generating station” means (except where it is used in paragraph 5 of Schedule 1) a hydro generating station which—

- (i) has a declared net capacity of 1.25 megawatts or less;
- (ii) has always been in private ownership and operation; and
- (iii) has never generated electricity under an arrangement which has ever been a qualifying arrangement;

“NIROC” means a certificate issued by the Authority under Article 54 of the Energy Order and pursuant to this Order;

“NIROC identifier” has the meaning given to it in paragraph 2 of Schedule 3;

“NIROC sequence number” has the meaning given to it in article 21(1);

“Non-Fossil Fuel Order” means (except where it is used in Schedule 1) the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1994<sup>(5)</sup>; or the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1996<sup>(6)</sup>;

“obligation period” means any of the periods referred to in the first column of Schedule 2;

“particulars”, in relation to a NIROC, has the meaning given to it in paragraph 2 of Schedule 3;

“plant”, with reference to crops or plant matter, includes shrubs and trees;

“pyrolysis” means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

“qualifying arrangement” means (except where used in paragraphs 14 to 21 of Schedule 1) an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under Article 57 of the Energy Order);

“qualifying certificate” means a certificate issued pursuant to this Order and which relates to electricity generated from eligible renewable sources, or an eligible GBROC;

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(5) S.R. 1994 No. 132

(6) S.R. 1996 No.407

“qualifying combined heat and power generating station” means a combined heat and power generating station which is fuelled wholly or partly by waste and which has been accredited under CHPQA.

“Register” has the meaning given to it in Article 22(1);

“registered holder” has the meaning given to it in paragraph 2 of Schedule 3;

“renewables obligation” has the meaning given to it in Article 3 except where this term is referred to in Articles 28(5) and (6);

“replacement GBROC” means a GBROC issued in accordance with the provisions of a GBRO Order to replace another GBROC;

“replacement NIROC” means a NIROC issued in accordance with Article 23(4)(b) and (6);

“retail prices index” means—

- (i) the general index of retail prices (for all items) published by the Office of National Statistics; or
- (ii) where the index is not published for a year, any substituted index or figures published by that Office.

“specified day”, in relation to an obligation period, means the 1st September immediately following it;

“total NIROC claim” means the total number of NIROCs which have been claimed in respect of a particular obligation period, after deducting—

- (i) the number of NIROCs which have been issued in respect of that obligation period; and
- (ii) the number of NIROCs which the Authority has, in respect of that obligation period, decided not to issue or refused to issue under Article 17(2) or 17(3).

“United Kingdom supplier” means a designated electricity supplier or a Great Britain designated supplier;

“waste” has the meaning given to it in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997(7), but does not include gas derived from landfill sites or gas produced from the treatment of sewage; and

the expression “the United Kingdom” includes the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the Continental Shelf Act 1964(8)

(2) For the purpose of this Order, any fuel used in a generating station (not being biomass) shall be treated as biomass if—

- (a) it is one of at least two fuels (not being fossil fuels within the meaning of Article 8) used to fuel that generating station (whether or not those fuels are the only ones so used); and
- (b) at least 90 per cent of the total energy content of those fuels (measured over such period and with such frequency as the Authority deems appropriate) is derived from material which is of such nature that, if 90 per cent of the energy content of a single fuel was so derived, that fuel would constitute biomass.

(3) In accordance with paragraph (2), any reference in this Order to biomass shall be construed as a reference to biomass or fuel which is treated as biomass.

(4) For the purposes of the definition of “hydro generating station”, the “civil works” which are to be regarded as supplying a particular turbine (“the relevant turbine”) are all the man-made weirs, man-made structures and man-made works for holding water which are located on the inlet side of

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(7) [S.I. 1997/278 \(N.I.19\)](#)

(8) [1964 c.29](#). Section 1(7) of the Continental Shelf Act 1964 was amended by the Oil and Gas (Enterprise) Act 1982 (c.23), section 37 and schedule 3, paragraph 1.

the relevant turbine, but excluding any such weirs, structures or works which supply another turbine before water is supplied to the weirs, structures and works which supply the relevant turbine.

(5) Any reference in this Order to the provision of information “in writing” shall include the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(6) Any reference to this Order to the supply of electricity shall, in respect of a supply made in Northern Ireland, be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992<sup>(9)</sup>, and in respect of any other supply, be construed in accordance with the definition of “supply” in section 4(4) of the Electricity Act<sup>(10)</sup>.

## PART II

### The Renewables Obligation

#### The renewables obligation

3.—(1) The renewables obligation is that, subject to Articles 10, 11, 12 and 13, each designated electricity supplier shall before each specified day produce to the Authority evidence showing—

- (a) that he has supplied to customers in Northern Ireland during the obligation period to which the specified day relates such amount of electricity generated from eligible renewable sources as is determined under Article 4; or
- (b) that another electricity supplier has done so (or that two or more others have done so); or
- (c) that, between them, they have done so.

(2) The evidence referred to in paragraph (1) is NIROCs certifying the matters in Article 54(2) or (2ZA) of the Energy Order provided that such NIROCs relate to electricity generated from eligible renewable sources.

(3) A NIROC referred to in paragraph (2) shall be regarded as produced to the Authority as the evidence or part of the evidence required under paragraph (1) in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the NIROC a notification in writing identifying the NIROC to be produced for that purpose and giving the NIROC identifier.

(4) Without prejudice to paragraph (3), the Authority may draw up procedural guidelines for the production of NIROCs as the evidence or part of the evidence required under paragraph (1).

(5) An electricity supplier has a renewables obligation in respect of an obligation period if he supplies electricity in Northern Ireland at any time during that period regardless of whether he supplies electricity in Northern Ireland for the whole of that period.

#### The amount of the renewables obligation

4.—(1) The amount of electricity referred to in Article 3(1)(a), in respect of an obligation period, is such amount of electricity as equals the relevant percentage of all the electricity supplied by the designated electricity supplier to customers in Northern Ireland during the obligation period (as determined pursuant to paragraph (3)), such amount being rounded to the nearest whole megawatt hour (with any exact half megawatt hour being rounded upwards).

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<sup>(9)</sup> [S.I. 1992/231 \(N.I.1\)](#)

<sup>(10)</sup> The definition of “supply” in Section 4(4) of the Electricity Act was substituted by Section 28(1) and (3)(b) of the Utilities Act 2000, (c).27

(2) In paragraph (1) “the relevant percentage” means, in respect of an obligation period, the percentage set out in the second column of Schedule 2 against the reference to that obligation period in the first column of Schedule 2.

(3) For the purposes of paragraph (1) the amount of the electricity supplied by the designated electricity supplier to customers in Northern Ireland during an obligation period is to be determined by reference to —

- (a) the estimated figures, for his total sales of electricity to customers in Northern Ireland for each of the twelve periods of approximately one month falling wholly or mainly within the obligation period, which are furnished to the Department of Enterprise, Trade and Investment and the Authority under paragraph (4), together with,
- (b) any additional or updated figures for such sales as are furnished to the Authority under paragraph (5)(a).

(4) Each designated electricity supplier shall furnish to the Department of Enterprise, Trade and Investment and to the Authority the estimated figures relating to his total sales of electricity to customers in Northern Ireland during an obligation period by no later than the 1st June immediately following the end of the obligation period.

(5) Each designated electricity supplier shall by no later than the 1st July immediately following the end of an obligation period, inform the Authority of—

- (a) the amount of electricity which he has supplied to customers in Northern Ireland during the obligation period; and
- (b) the amount in megawatt hours of his renewables obligation in respect of the obligation period.

(6) In furnishing the information specified in paragraphs (4) and (5), the designated electricity supplier shall have regard to any sales figures, which he has provided (or intends to provide) to the Department of Trade and Industry for statistical purposes and publication in “Energy Trends”(11).

## PART III

### Electricity from Renewable Energy Sources

#### **Eligible renewable sources: general**

5.—(1) Subject to Article 9, electricity shall be considered to have been generated from eligible renewable sources to the extent that it has been generated from renewable sources and provided that it has not been generated by an excluded generating station as specified in this Article and in Articles 6 and 7.

(2) The following shall be excluded generating stations—

- (a) subject to paragraphs (4) and (5), generating stations (other than micro hydro generating stations) which were first commissioned before 1st January 1990 and where the main components have not been renewed since 31st December 1989 as described in paragraph (6); and
- (b) generating stations located outside Northern Ireland.

(3) In paragraph (2)(b) “Northern Ireland” does not include any part of the territorial sea of the United Kingdom.

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(11) [http://www.dti.gov.uk/energy/inform/energy\\_trends/index.shtml](http://www.dti.gov.uk/energy/inform/energy_trends/index.shtml)

(4) A generating station shall not be an excluded generating station by virtue of paragraph (2)(a) in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).

(5) A generating station shall not be an excluded generating station by virtue of paragraph (2)(a) in any month during which it is fuelled wholly by biomass, if—

- (a) prior to 1st April 2003 at least 75 per cent of the energy content of the fuel by which it was fuelled was derived from fossil fuel; and
- (b) during no month (being a month after March 2005) after the first month during which it was fuelled wholly by biomass has the energy content of the fuel by which it was fuelled been derived as to more than 75 per cent from fossil fuel.

(6) For the purposes of paragraph (2)(a), the main components of a generating station shall only be regarded as having been renewed since 31st December 1989 where—

- (a) in the case of a hydro generating station the following parts have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date—
  - (i) either all the turbine runners or all the turbine blades or the propeller; and
  - (ii) either all the inlet guide vanes or all the inlet guide nozzles; or
- (b) in the case of any other generating station, all the boilers and turbines (driven by any means including wind, water, steam or gas) have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date.

### **Eligible renewable sources: qualifying arrangement**

6.—(1) Paragraph (2) applies where—

- (a) a qualifying arrangement (“the applicable qualifying arrangement”) provided for the building of a generating station at a specified location (“the location”);
- (b) the applicable qualifying arrangement was terminated due to the operator of the generating station to which it applied having committed an unremedied breach of it; and
- (c) the last period in the tables contained in Schedule 1 to the Non-Fossil Fuel Order which relates to the applicable qualifying arrangement has not expired.

(2) Where this paragraph applies a generating station—

- (a) which is situated at the location; and
- (b) to which the applicable qualifying arrangement applied at the time it was commissioned, or which is owned or operated by a person who was a party to the applicable qualifying arrangement (or who is a connected person or a linked person in relation to any such party),

shall be an excluded generating station.

(3) Paragraph (4) applies where an extant qualifying arrangement (“the applicable qualifying arrangement”) provides for the building of a generating station (“the specified station”) at a specified location (“the location”) and the specified station has not been commissioned.

(4) Where this paragraph applies a generating station—

- (a) which is situated at the location; and
- (b) which is owned or operated by a person who is a party to the applicable qualifying arrangement, or is a connected person or a linked person in relation to any such party,

shall be an excluded generating station.



(5) Paragraphs (2) and (4) shall not apply to a station which, during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.

(6) In paragraphs (2) and (4), in relation to a person who is a party to the applicable qualifying arrangement (“the first person”), another person (“the second person”) is a “linked person” where the second person has given or has arranged to give or has ensured or has arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location.

(7) The references in paragraph (6) to the first person and the second person, shall include any person who is a connected person in relation to either of them.

(8) For the purposes of this Article and Schedule 1, a generating station shall be regarded as being situated at a location provided for by an extant qualifying arrangement whether it is situated wholly or partly at that location.

#### **Eligible renewable sources: other fuels**

7.—(1) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste unless—

- (a) the only waste or wastes by which it is fuelled in that month is or are biomass or liquids comprised wholly or mainly of hydrocarbon compounds;
- (b) all the waste by which it is fuelled in that month which is not biomass has first been manufactured into fuel which is in either a gaseous or liquid form (or both) by means of plant and equipment using advanced conversion technologies only; or
- (c) the generating station is a qualifying combined heat and power generating station.

(2) A generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by any other fuel (or fuels) other than biomass.

(3) After 31st March 2016 a generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).

(4) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by peat.

(5) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by any substance derived directly or indirectly from any of the substances referred to in Article 8(1)(a)(i) unless that substance is a substance falling within Article 8(1)(a)(ii) or it is waste or a component of biomass.

(6) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste where all the waste which is neither biomass nor liquids comprised wholly or mainly of hydrocarbon compounds is or is derived directly or indirectly from one or more of the substances referred to in Article 8(1)(a)(i).

#### **Eligible renewable sources: supplemental**

8.—(1) In this Article, Articles 5, 7 and 13 and in Schedule 1—

- (a) “fossil fuel” means—
  - (i) coal, lignite, natural gas (as defined in the Energy Act 1976(12)) or crude liquid petroleum; and
  - (ii) anything which is derived directly or indirectly from any of the substances referred to in sub-paragraph (i) which (except as mentioned below) is created for the purpose of being used as a fuel,



other than anything (not being a liquid comprised wholly or mainly of hydrocarbon compounds), which is or is derived directly or indirectly from any of the substances referred to in sub-paragraph (i), which is waste or a component of biomass; and for the purposes of sub-paragraph (ii) a liquid comprised wholly or mainly of hydrocarbon compounds need not be created for the purposes of being used as a fuel;

- (b) “waste” is to be regarded as including anything derived directly or indirectly from waste (as that term is defined in Article 2(1)); and
- (c) “standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station.

(2) In articles 5, 7 and 13 and in Schedule 1, in determining whether a generating station is fuelled by a particular fuel regard is to be had only to fuel which it uses to generate electricity.

(3) For the purposes of Articles 5, 7 and 13 and Schedule 1, fossil fuel or waste which a generating station uses for—

- (i) the ignition of gases of low or variable calorific value;
- (ii) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature;
- (iii) emission control; or
- (iv) standby generation or the testing of standby generation capacity;

shall only be treated as comprising fuel used to generate electricity in any month in which the combined energy content of the fossil fuel or waste, or both, which the generating station uses for those purposes exceeds 10 per cent of the energy content of the energy sources by which it is fuelled.

### **Calculation of amount of electricity generated from eligible renewable sources**

9.—(1) Subject to paragraphs (3) and (5), the amount of electricity generated by a generating station which is to be regarded as having been generated from eligible renewable sources in any month is to be calculated by multiplying the renewable output of that generating station in that month by a proportion which is equal to the proportion which the net output of that generating station in that month bears to the gross output of that generating station in that month.

(2) For the purposes of the calculation referred to in paragraph (1)—

- (a) subject to paragraph (6), “the renewable output” is such amount as is obtained by deducting from the gross output of that generating station in that month the amount of electricity which has been generated in that month from fossil fuel; and
- (b) “the net output” is such amount as is obtained by deducting from the gross output of that generating station in that month the input electricity of that generating station in that month.

(3) In the case of a generating station fuelled wholly or partly by biomass, 10 per cent of the electricity generated from biomass in any month shall be treated as having been generated from fossil fuel unless the operator of the generating station satisfies the Authority that during that month a lesser percentage of the energy content of the biomass derives from fossil fuel, in which case that lesser percentage shall be treated as having been generated from fossil fuel.

(4) In calculating “the renewable output” in the case of a generating station fuelled partly by fossil fuel and partly by another fuel or fuels the amount of electricity which has been generated from fossil fuel is to be determined according to the respective energy contents of the fuels used.

(5) Where the operator of a generating station (or, where NIROCs relating to electricity generated in whole or in part by that generating station are issued to an agent by virtue of Article 15, that agent and not the operator) satisfies the Authority that in any month the input electricity of the generating

station does not exceed 0.5 per cent of its gross output, no input electricity shall be deducted from the gross output in calculating the net output of the generating station for that month and, accordingly, the net output shall be equal to the gross output in that month.

(6) In the case of a qualifying combined heat and power generating station, the renewable output shall be such amount as is obtained by—

- (a) deducting from the gross output of that generating station in that month the amount of electricity which has been generated in that month from fossil fuel; and
- (b) multiplying the figure resulting from the calculation in sub-paragraph (a) by the relevant proportion.

(7) In this Article—

- (a) “fossil fuel” has the meaning given to it by Article 52(7) of the Energy Order except that the expression also includes any substance which is derived directly or indirectly from fossil fuel (whether or not such substance is waste or a component of biomass);
- (b) “gross output” means, in relation to any month, the total amount of electricity generated by a generating station in that month;
- (c) “input electricity” means, in relation to any month, all the electricity used by a generating station in that month (whether or not it is generated by the generating station and whether or not it is used while the generating station is generating electricity) for a purpose directly relating to the operation of that generating station, including fuel handling, fuel preparation, maintenance and pumping water;
- (d) in the case of a generating station fuelled wholly or partly by hydrogen (not being fossil fuel), “input electricity” also includes any electricity in respect of which NIROCs are or have been issued or which was not generated from eligible renewable sources that is used to produce the hydrogen by which that station is fuelled, regardless of where or by whom the hydrogen is produced;
- (e) “qualifying power output” and “total power output” have the meanings given to them in CHPQA; and
- (f) “relevant proportion” means a proportion which is equal to the proportion which the qualifying power output of the qualifying combined heat and power generating station bears to the total power output of that generating station.

## PART IV

### Alternative Ways of Discharging Renewables Obligation

#### **Alternative way of discharging renewables obligation: payments**

**10.**—(1) Instead of producing certificates pursuant to Article 3, a designated electricity supplier may discharge (in whole or in part) his renewables obligation in relation to a particular obligation period by making a payment to the Authority before the specified day relating to that obligation period.

(2) Subject to paragraphs (3) and (4), the payment to be made under paragraph (1) is thirty four pounds and thirty pence for each megawatt hour of electricity generated from eligible renewable sources for which the designated electricity supplier does not produce NIROCs pursuant to Article 3 or Article 12 or eligible GBROCs pursuant to Article 11 (“the buy-out price”).

(3) If, in the case of the calendar year 2007 or any subsequent calendar year, the annual retail prices index for that year (“the later year”) is higher or lower than that for the previous year, the buy-out price relating to the obligation period beginning on the 1st April immediately following the

later year shall be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year.

(4) When the buy-out price is calculated under paragraph (3) the result shall be rounded to the nearest penny (with any exact half of a penny being rounded upwards).

#### **Alternative way of discharging renewables obligation: GBROCs**

**11.**—(1) Subject to Article 13, instead of producing NIROCs pursuant to Article 3, a designated electricity supplier may discharge (in whole or in part) his renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with this Article eligible GBROCs issued in respect of electricity that has been supplied to customers during that obligation period.

(2) A GBROC referred to in paragraph (1) shall be regarded as produced to the Authority in respect of an obligation period where, before the specified day relating to that period, the Authority receives, from the designated electricity supplier which is treated as holding the GBROC for the purposes of the GBRO Order under which it was issued, a notification in writing identifying the GBROC to be so produced and giving its GBROC identifier.

(3) Without prejudice to paragraph (2), the Authority may draw up procedural guidelines for the production of GBROCs under this Article.

#### **Alternative way of discharging renewables obligation: NIROCs certifying the matters in Article 54(2ZB) or (2ZC) of the Energy Order**

**12.**—(1) Subject to Article 13, instead of producing NIROCs pursuant to Article 3, a designated electricity supplier may discharge (in whole or in part) his renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with this Article NIROCs issued by the Authority and certifying the matters in Article 54(2ZB) or (2ZC) of the Energy Order.

(2) A NIROC referred to in paragraph (1) shall be regarded as produced to the Authority in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the NIROC a notification in writing identifying the NIROC to be produced for that purpose and the NIROC identifier.

(3) Without prejudice to paragraph (2), the Authority may draw up procedural guidelines for the production of NIROCs under this Article.

(4) For the purposes of Article 54 (2ZB) and (2ZC) of the Energy Order, electricity generated by any generating station is used in a permitted way if it is used in one of the ways mentioned in Article 54(2ZE) of the Energy Order.

#### **Further provision in relation to production of NIROCs and GBROCs**

**13.**—(1) A designated electricity supplier may discharge up to 25 per cent of his renewables obligation in respect of an obligation period by producing to the Authority NIROCs and eligible GBROCs relating to electricity supplied in the immediately preceding obligation period.

(2) Subject to paragraph (3), in respect of any obligation period which falls—

(a) from 1st April 2007 until 31st March 2011, no more than 10 per cent; and

(b) from 1st April 2011 until 31st March 2016, no more than 5 per cent

of a designated electricity supplier's renewables obligation may be satisfied by the production of NIROCs and eligible GBROCs issued in respect of generating stations which, during the month to which a NIROC or an eligible GBROC relates, have been fuelled partly by fossil fuel (as defined in Article 8) and partly by biomass (and by no other fuel).

(3) In the case of NIROCs or eligible GBROCs issued in respect of a generating station which, during the month to which those NIROCs or eligible GBROCs relate, has been fuelled partly by fossil fuel (as defined in Article 8) and partly by biomass consisting in whole or in part of energy crops (and no other fuel), the limits set out in paragraph (2) shall not apply to the production of those NIROCs or eligible GBROCs if and to the extent that they state the amount of electricity which is attributable to the energy crops.

(4) A designated electricity supplier shall not produce to the Authority a GBROC or a NIROC which has previously been or is simultaneously produced to the Great Britain Authority under a GBRO Order.

## PART V

### NIROCs: Issue and Revocation

#### Obligation to issue NIROCs

14.—(1) Where each of the relevant criteria in Article 16 has been met (having regard as necessary to the requirements in Articles 17 and 18), the Authority shall issue NIROCs, in accordance with the procedure set out in Article 21, in relation to a generation station in respect of each month of each obligation period in which electricity has been generated by the generating station from eligible renewable sources (whether or not for the whole of that month).

(2) Except as provided for in paragraphs (3) and (4) and Article 15, NIROCs shall be issued to the operator of the generating station by which the relevant electricity was generated in a particular month.

(3) Where electricity is required to be generated by a generating station from eligible renewable sources under a qualifying arrangement or in compliance with such an arrangement to be made available to the Company (“the relevant output”), NIROCs shall be issued as set out below.

(4) Where the Company is entitled to the relevant output under or in compliance with a qualifying arrangement, NIROCs shall be issued to licensed suppliers notified to the Authority by the Company as being purchasers of the entitlement to receive NIROCs and to each in such quantities as are appropriate to the entitlement to receive NIROCs which the Company notifies the Authority each has purchased in arrangements made by the Company under Article 20 (subject to the total amount of NIROCs available to be so issued).

#### Issue of NIROCs to agents

15.—(1) Subject to Article 14(3) and (4), an operator of a generating station with a declared net capacity of 50 kilowatts or less may appoint an agent to receive any NIROC which relates to electricity generated, in whole or in part, by that generating station (“a relevant NIROC”).

(2) Where he does so, he shall notify the Authority in writing of the agent’s name and address.

(3) Once the Authority has received such a notification, it shall issue any relevant NIROC to that agent.

(4) Where the operator or agent wishes to terminate the agent’s appointment, the operator or, as the case may be, agent must give written notice of the intended termination to the Authority.

(5) Where notice is given under paragraph (4) and received by the Authority, the termination shall take effect (subject to paragraph (6)) at the end of the obligation period during which it is given; until the expiration of that obligation period, the Authority shall continue to issue any relevant NIROCs to the agent.

(6) Notwithstanding paragraph (5), after the expiration of that obligation period the Authority shall continue to issue relevant NIROCs to the agent where those NIROCs relate to electricity generated during that obligation period.

(7) Paragraphs (5) and (6) do not apply in any case where the Authority is satisfied, by evidence produced to it, that owing to exceptional circumstances the termination should take effect on a date before the end of the obligation period during which the notice is given; in which case the termination shall take effect on that date.

(8) Where any provision of this Order requires or permits something to be done by, to or in respect of an agent appointed under this Article and the agent's appointment is terminated before that thing is done, references to that agent (however framed) are to be construed—

- (a) where a successor to him has been appointed under this Article, as references to that successor;
- (b) in any other case, to the operator of the generating station for whom he acted before his appointment was terminated.

### **Criteria for issue of NIROCs**

**16.**—(1) The criteria for the issue of NIROCs referred to in Article 14 and issue of replacement NIROCs referred to in Article 23(4) are those set out in paragraphs (2) to (9).

(2) The first criterion is that the Authority has previously confirmed in writing to either the operator of the generating station to which the NIROC relates or, where the NIROC is to be issued to an agent by virtue of Article 15, that agent that the generating station has been granted accreditation and the Authority has not since withdrawn that accreditation;

(3) The second criterion is that the Authority has been provided in writing with all the information listed in paragraphs 2(b)(i) to (iii) of Schedule 3 together with any other information which it reasonably requires in order to assess whether the NIROC should be issued and it is satisfied that such information is accurate and reliable.

(4) The third criterion is that, in the case of a NIROC certifying the matters within Article 54(2) or (2ZA) of the Energy Order, the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator need only provide once during every obligation period) applicable to the relevant electricity that—

- (a) the operator has not made (or, where the declaration relates to electricity that he proposes to generate after the declaration is made, that he will not make) the electricity available to any person in circumstances such that the operator knows or has reason to believe that the consumption of the electricity has resulted (or, as the case may be, will result) in it not having been supplied, in the case of a NIROC certifying the matters within Article 54(2) or (2ZA) of the Energy Order, by an electricity supplier to customers in Northern Ireland; and
- (b) the operator is not (and will not during the obligation period become) a person mentioned in Article 6(2)(b) or (4)(b).

(5) The fourth criterion is that, in the case of a NIROC certifying the matters within Article 54 (2ZA) or (2ZC) of the Energy Order—

- (a) each of the generating stations in relation to which the NIROC is to be issued—
  - (i) has a declared net capacity of 50 kilowatts or less,
  - (ii) is accredited as a generating station capable of generating electricity from the same eligible renewable source, and
  - (iii) is located in Northern Ireland;
- (b) the NIROC is to be issued to an agent by virtue of Article 15; and

- (c) the operators of the generating stations in relation to which the NIROC is to be issued have each appointed the same person to act as agent to receive the NIROC.
- (6) The fifth criterion is that, in the case of a NIROC certifying the matters within Article 54(2ZB) or (2ZC) of the Energy Order, the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator need only provide once during every obligation period) that the electricity generated by the generating station has been used in a permitted way.
- (7) The sixth criterion is that the electricity in respect of which the NIROC is to be issued is not or does not include electricity in respect of which a NIROC has already been issued and not revoked.
- (8) The seventh criterion is that the electricity in respect of which the NIROC is to be issued has been measured accurately using a meter which if used for ascertaining the quantity of electricity supplied by an electricity supplier to a customer would be approved for the purposes of paragraph 3 to Schedule 7 to the Electricity (Northern Ireland) Order 1992.
- (9) The eighth criterion is that the Authority is not prohibited from issuing a NIROC on any of the grounds set out in Article 17(2) and has not refused to issue a NIROC on any of the grounds set out in Article 17(3).

#### **Criteria for issue of NIROCs: supplemental**

- 17.—**(1) Where a NIROC, if issued, will be issued to a licensed supplier pursuant to Article 14(4), the references in Article 16(4) to the operator of the generating station shall be treated as references to the Company; but Article 16(4)(b) shall not apply.
- (2) The Authority shall not issue a NIROC in respect of any electricity generated by a particular generating station in a particular month if the Great Britain Authority has previously issued a certificate under section 32B of the Electricity Act in respect of any such electricity and whether or not any such certificate previously issued has been revoked.
- (3) The Authority may refuse to issue a NIROC in any case where the Authority—
- (a) considers that the declaration in Article 16(4) is not accurate in relation to all or part of the electricity in respect of which the Authority is considering issuing the NIROC;
  - (b) except in the case of a NIROC certifying the matters within Article 54(2ZB) and (2ZC) of the Energy Order, has reason to believe that the electricity in respect of which the Authority is considering issuing the NIROC was consumed in circumstances which resulted in all or part of the electricity not having been supplied by an electricity supplier to customers in Northern Ireland; or,
  - (c) is not satisfied that the operator of any generating station to which the NIROC relates has, during the relevant month, complied with any condition to which accreditation of the relevant generating station is subject.
- (4) For the purposes of Article 16(3), where information regarding the fuel used by any generating station to which the NIROC relates has originated at a separate location to that of the generating station, in determining whether it is accurate and reliable the Authority may have regard to—
- (a) the distance over which the fuel was transported;
  - (b) conditions under which the fuel was prepared and transported;
  - (c) the resources required for the Authority to verify the accuracy and reliability of the information; and
  - (d) such other matters as it considers relevant

### **Criteria for issue of NIROCs to agents: supplemental**

**18.**—(1) Where a NIROC is to be issued to an agent by virtue of Article 15, the following provisions of this Article shall apply.

- (2) Subject to paragraph (3), in Article 16(4) and (6) and Article 21(3)(b) and (4)—
  - (a) references to the operator of the generating station shall be treated as references to the agent who acts in relation to that generating station; and
  - (b) any obligation imposed on the operator in relation to that generating station shall be treated as imposed on the agent instead.
- (3) Paragraph (2) shall not apply to sub-paragraphs (a) and (b) of Article 16(4).
- (4) Where the NIROC relates to more than one generating station—
  - (a) in Article 16(2) the written confirmation referred to shall be required in relation to each of the generating stations to which the NIROC relates;
  - (b) in Article 16(4) and (6) the declaration referred to shall be required in relation to the electricity generated by each of the generating stations to which the NIROC relates;
  - (c) in Article 16(4)(a) and (b) references to the operator shall be treated as references to the operator of each of the generating stations to which the NIROC relates.

### **Issuing NIROCs certifying the matters in Article 54(2ZA) or (2ZC) of the Energy Order: supplemental**

**19.**—(1) Where two or more generating stations constitute a group for the purposes of this Article, the Authority shall be entitled to issue a NIROC in respect of electricity generated by those generating stations if, and only if—

- (a) the amount of electricity generated by each of them (calculated in accordance with Article 21(2)(a) and (b)) is added together and rounded (in accordance with Article 21(2)(c)),
  - (b) that rounded amount is stated in the NIROC, and
  - (c) the NIROC certifies the matters within Article 54(2ZA) or (2ZC) of the Energy Order.
- (2) Where an agent appointed under Article 15 acts for two or more generating stations which constitute a group for the purposes of this Article, he shall provide the Authority with—
- (a) a figure representing the amount of electricity which he believes should be stated in any NIROC to be issued in respect of that group, and
  - (b) the data which led him to arrive at that figure.
- (3) Two or more generating stations constitute a group for the purposes of this Article where—
- (a) they have been accredited as generating stations capable of generating electricity from the same eligible renewable source;
  - (b) in respect of each of them the same person has been appointed to act as agent under Article 15; and
  - (c) in respect of electricity generated by them, entitlement to NIROCs is determined in the same way (either on a monthly basis or on an annual basis, depending on whether a notice has been given to the Authority under Article 24(2) or not).

### **NIROCs: financial bids**

**20.**—(1) In the case only of a NIROC relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the Company shall make and implement arrangements within such a period as the Authority may direct—



- (a) requiring the determination of the person, being a licenced supplier, to whom the NIROC is to be issued to be made by reference to financial bids made in respect of the NIROC with the person making the highest financial bid being the person to whom the NIROC is to be issued; and
  - (b) requiring that person to make a payment, in accordance with his bid, to the Company.
- (2) The Company must conduct itself at all times in relation to the arrangements referred to in paragraph (1) in a manner so as to ensure and satisfy the Authority that it does not show any undue preference or exercise any undue discrimination in relation to any licensed supplier or class of licensed supplier.
- (3) On each occasion that a licensed supplier is determined as being a person to whom one or more NIROCs should be issued pursuant to paragraph (1) the Company must promptly notify the Authority as to the licensed supplier so determined and in respect of each such notification, the Company shall, either with the notification or as soon as reasonably practicable after the notification, notify the Authority of the number of NIROCs to be issued to that licensed supplier.
- (4) The Authority may give directions to the Company with regard to the making and implementing of arrangements by the Company under this Article and such directions may specify a date or dates by which the Company shall make and implement such arrangements and the Company shall comply with such directions.

#### **Procedure and calculations for issue of NIROCs**

**21.**—(1) The Authority shall when issuing NIROCs (other than replacement NIROCs certifying the matters within Article 54(2) and (2ZB) of the Energy Order, which shall be issued in accordance with Article 23(4)(b) and (6))—

- (a) allocate a number (“the NIROC sequence number”) to each NIROC issued;
  - (b) allocate NIROC sequence numbers sequentially in ascending numerical order—
    - (i) where the NIROCs are to be issued in respect of electricity generated from renewable sources by two or more generating stations which constitute a group for the purposes of Article 19, to all the NIROCs issued in respect of that group in a particular month;
    - (ii) in all other cases to all the NIROCs issued in respect of electricity generated from eligible renewable sources by a particular generating station in a particular month; and,
  - (c) in the case of a generating station which in a particular month generates electricity from eligible renewable sources under or in compliance with a qualifying arrangement, issue NIROCs in respect of that month—
    - (i) firstly to the licensed suppliers to whom Article 14(4) applies in that month on the basis of information provided to it by the Company; and,
    - (ii) thereafter, in the event that the generating station generates any electricity from eligible renewable sources in that month other than under a qualifying arrangement or which in that month is not required in compliance with such an arrangement to be made available to the Company, to the operator of that generating station.
- (2) Where it issues NIROCs pursuant to this Part the Authority shall—
- (a) determine the amount of electricity which is to be regarded as having been generated from eligible renewable sources by a generating station in a particular month (“the relevant month”) pursuant to Article 9;
  - (b) deduct from the amount determined in accordance with sub-paragraph (a) any electricity in respect of which in the relevant month any of the criteria in Article 16 were not satisfied;
  - (c) determine

- (i) where any NIROC to be issued will certify the matters within Article 54 (2ZA) or (2ZC) of the Energy Order, the amount of electricity which results from the calculations in sub-paragraphs (a) and (b) in respect of each of the generating stations to which the NIROC relates, add the amounts so determined together, and round the sum of those amounts to the nearest megawatt hour (with any exact half megawatt hour being rounded upwards);
  - (ii) in all other cases, the amount of electricity which results from the calculations in sub-paragraphs (a) and (b) and round the amount so determined to the nearest megawatt hour (with any exact half megawatt hour being rounded upwards);
  - (d) determine the number of NIROCs which it is appropriate to issue for the amount of electricity determined pursuant to sub-paragraph (c) on the basis that one NIROC represents one megawatt hour of electricity; and
  - (e) issue the appropriate number of NIROCs determined pursuant to sub-paragraph (d) to whomever it is required to issue them by virtue of Article 14 or 15.
- (3) Subject to paragraphs (4), (5) and (6), for the purpose of paragraph (2)(a), the Authority shall use, in the case of the amounts for “gross output” and “input electricity” (as those two expressions are defined in Article 9(7)) either—
- (a) the most accurate figures for those amounts which are provided to the Authority at the end of the second month following the end of the relevant month (the “relevant date”); or
  - (b) where the operator of a generating station satisfies the Authority by the relevant date that it will never be possible for it to provide accurate figures, such figures as are estimated by the operator by the relevant date on a basis agreed in advance by the Authority.
- (4) Where the figures are neither provided under paragraph (3)(a) nor estimated under paragraph (3)(b), the Authority may, in circumstances which it considers exceptional, accept figures which the operator of the generating station provides after the relevant date.
- (5) Where figures are provided under paragraph (3)(a) or accepted under paragraph (4) and, before the Authority makes a determination under paragraph (2)(a), the Authority becomes aware of figures which it considers to be more accurate, the Authority may, where it considers appropriate, accept the later figures and make determinations under paragraphs (2)(a) to (d) on the basis of the later figures.
- (6) Where the Authority makes a determination under paragraph (2)(a) on the basis of figures provided under paragraph (3)(a) or accepted under paragraphs (4) or (5) and the Authority subsequently becomes aware of figures which it considers to be more accurate, the Authority—
- (a) may, where it considers appropriate, accept the later figures and make new determinations under paragraphs (2)(a) to (d); and
  - (b) shall, where the new determination under paragraph (2)(d) differs from the original determination under that provision, either—
    - (i) if it has not already issued NIROCs under paragraph (2)(e), issue NIROCs under that paragraph in accordance with the new determination;
    - (ii) revoke NIROCs in accordance with Article 23 where it has issued too many; or
    - (iii) issue additional NIROCs in accordance with paragraph (2)(e) where it has issued too few.
- (7) NIROCs in respect of the relevant month shall be issued no earlier than the relevant date.

## **NIROC Register**

**22.**—(1) The Authority shall establish and maintain a register of NIROCs (“the Register”) which shall be conclusive as to whether or not a NIROC subsists and as to the person who is for the time being its registered holder.

(2) Schedule 3 shall have effect with respect to the Register.

(3) A NIROC comprises a Register entry of its particulars and shall be regarded as being issued at the point when those particulars are entered in the Register by the Authority.

(4) In accordance with the provisions of Schedule 3, the Authority shall ensure that the Register contains, by way of entries made in it—

- (a) an accurate record of the particulars of each NIROC as issued by the Authority (amended to reflect any change of registered holder which may occur) and which remains eligible to be produced as evidence pursuant to Article 3 or 12; and
- (b) in addition to the record of the particulars of each NIROC, a list of the names of all persons who are either the registered holder of a NIROC or, although not at that time the registered holder of a NIROC, have notified the Authority that they wish an entry to be made and maintained in respect of them as prospective registered holders of NIROCs.

(5) Only the registered holder of a NIROC may use it as the evidence or as part of the evidence required from him under Article 3(1) and a NIROC may not be used by its registered holder or by any other person as the evidence or as part of the evidence required under Article 3(1) from any person other than the registered holder.

## **Revocation of NIROCs**

**23.**—(1) The Authority—

- (a) shall, where in respect of any electricity generated by a generating station in a particular month it is satisfied that the declaration provided to it pursuant to Article 16(4) is false or that a NIROC was issued on the basis of any fraudulent behaviour, statement or undertaking on the part of the operator of that generating station or any connected person or, where NIROCs are issued to an agent by virtue of Article 15, that agent, revoke all NIROCs issued in respect of that generating station in that month;
- (b) shall, in accordance with the procedure laid down in paragraph (3), revoke any NIROC where it is otherwise satisfied that the NIROC is inaccurate;
- (c) may, in accordance with the procedure laid down in paragraph (3), revoke any NIROC where—
  - (i) the Authority is no longer satisfied that the NIROC should have been issued;
  - (ii) the Authority has reasonable doubts as to the accuracy or reliability of the information upon which the Authority relied prior to the issue of the NIROC; or
  - (iii) the Authority has been unable, due to a failure or refusal by any person (whether inside or outside Northern Ireland) to provide the Authority with any information reasonably requested by it, to check the accuracy of either the NIROC or any information which the Authority relied upon prior to the issue of the NIROC; and
- (d) subject to paragraph (2), shall, in reaching a decision as to the inaccuracy of a NIROC for the purposes of sub-paragraph (b) and in exercising its powers to revoke a NIROC pursuant to sub-paragraph (c), disregard any changes to the amounts for “gross output” and “input electricity” (as those two expressions are defined in Article 9(7) which were used by it (as provided in Article 21(3)) to determine the amount of electricity to be regarded as having been generated from eligible renewable sources by a particular generating station in a particular month.

(2) Paragraph (1)(d) does not apply where, in accordance with Article 21(6), the Authority has accepted later figures and made new determinations under Article 21(2)(a) to (d).

(3) Where the Authority revokes NIROCs in accordance with paragraph (1)(b) or (c), it shall—

- (a) revoke the appropriate number of NIROCs from those issued in a particular month in descending numerical order of NIROC sequence number; and
- (b) delete from the Register those NIROCs previously allocated the highest NIROC sequence numbers and remaining on the Register in advance of those with lower NIROC sequence numbers,

and in determining the number of NIROCs which it is appropriate to revoke it shall proceed on the basis that one NIROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

(4) Where the Authority has revoked a NIROC—

- (a) it shall as soon as practicable give notice in writing of such revocation to the registered holder of the NIROC at the time of revocation; and
- (b) subject to paragraph (5) the Authority may, in circumstances where it considers it appropriate to do so, issue a replacement NIROC in accordance with the procedures laid down in paragraph (6), or, as the case maybe, (7), provided that it is satisfied that each of the relevant criteria in Article 16 is met (having regard as necessary to the requirements in Articles 17 and 18), and such NIROC shall be treated as if issued under Article 14 or, as the case may be, 15;

(5) Where the revoked NIROC was revoked in accordance with paragraph 1(a), paragraph 4(b) shall not apply unless—

- (i) the revoked NIROC certified the matters within Article 54(2ZA) or (2ZC) of the Energy Order; and
- (ii) the reason for its revocation is unrelated to the generating station or stations in respect of which the replacement NIROC is to be issued.

(6) Where pursuant to paragraph (4)(b) the Authority issues a replacement NIROC certifying the matters within Article 54(2) and (2ZB) of the Energy Order, it shall—

- (a) allocate to the replacement NIROC the lowest NIROC sequence number of any NIROC previously issued in respect of the same generating station and same month that has been revoked which has not already been allocated to a replacement NIROC (unless that replacement NIROC has itself been revoked);
- (b) issue each replacement NIROC to the person to whom the NIROC issued in respect of that generating station and that month and bearing the same NIROC sequence number was previously issued; and
- (c) proceed on the basis that one NIROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

(7) Where pursuant to paragraph 4(b) the Authority issues a replacement NIROC certifying the matters within Article 54(2ZA) or 54(2ZC) of the Energy Order it shall do so in accordance with Article 21.

### **Small generators**

**24.—**(1) This Article applies to generating stations with a declared net capacity of 50 kilowatts or less (“sub-50 kilowatt stations”).

(2) The operator of a sub-50 kilowatt station or, where NIROCs relating to electricity generated by a sub-50 kilowatt station are to be issued to an agent by virtue of Article 15, that agent and not the operator of the station may—

- (a) where NIROCs have not yet been issued in respect of any electricity generated during the course of an obligation period by that station (“the relevant station”) during the course of that obligation period; or
- (b) not less than one month before the beginning of any obligation period (“the relevant obligation period”),

give notice in writing to the Authority that the operator’s entitlement to NIROCs in respect of electricity generated by the relevant station shall be determined on the basis set out in the remainder of this Article.

(3) Paragraph (4) shall apply—

- (a) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(a), in the case of the relevant station for the remainder of the obligation period during which the notice was given and subsequent obligation periods; and
- (b) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(b), in the case of the relevant station for the relevant obligation period and subsequent obligation periods.

(4) Where this paragraph applies, the reference to “month” in each place where it occurs in Article 5, 6, 7, 8, 9, 13, 14, 16, 17, 21 and 23 and Schedule 3 shall be taken to be a reference to “obligation period”, subject to the following exceptions—

- (a) in Article 14(1) the words “of each month” shall be omitted;
- (b) in Article 21(3)(a) the reference to “the second month” shall remain unchanged;
- (c) in paragraph 2(b)(i) of Schedule 3 the words “the month and year” shall be replaced by “the obligation period”.

(5) An operator or, as the case may be, agent who has given notice under paragraph (2) may—

- (a) if he gave notice under paragraph (2)(a), not less than 1 month before the beginning of any obligation period following the obligation period during which the notice was given; or
- (b) if he gave that notice under paragraph (2)(b), not less than 1 month before the beginning of any obligation period following the relevant obligation period,

by notice in writing to the Authority, withdraw the notice given under paragraph (2).

(6) Where an operator or, as the case may be, agent gives notice under paragraph (5), the Authority shall, from the beginning of the obligation period in respect of which the operator or, as the case may be, agent gave that notice, determine the operator’s entitlement to NIROCs in respect of electricity generated by the relevant station on the basis set out in Article 14(1).

(7) Where any NIROC to be issued will certify the matters within Article 54(2ZA) or (2ZC) of the Energy Order, the foregoing provisions of this Article shall have effect subject to the following modifications—

- (a) references to the relevant station shall be treated as references to the generating stations to which the NIROC relates;
- (b) references to the operator of the relevant station shall be treated as references to the operators of those generating stations,

and cognate expressions shall be construed accordingly.

## PART VI

### Payments out of the Buy-Out Fund

#### Allocation of payments made under Article 10

**25.**—(1) The aggregate of the amounts received by the Authority under Article 10 in respect of an obligation period (“the relevant obligation period”)(together with any interest thereon received by the Authority) is referred to as “the buy-out fund”.

(2) The Authority shall pay out the buy-out fund, by the 1st November immediately following the relevant obligation period in accordance with the system of allocation specified in paragraphs (3) to (6).

(3) The buy-out fund relating to a relevant obligation period shall be divided amongst the United Kingdom suppliers who meet one or more of the applicable conditions referred to in paragraphs (4) and (5) so that each such United Kingdom supplier receives a proportion of the buy-out fund calculated in accordance with paragraph (6).

(4) The applicable condition for a designated electricity supplier is that, in respect of the relevant obligation period, he has complied (in whole or in part) with his renewables obligation by producing qualifying certificates to the Authority.

(5) The applicable condition for a Great Britain designated supplier is that, in respect of a period contemporaneous with the relevant obligation period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with section 32(1) of the Electricity Act by producing qualifying certificates to the Great Britain Authority.

(6) The proportion of the buy-out fund which each United Kingdom supplier is entitled to receive under paragraph (3) is equal to the proportion which the amount of electricity covered by all the qualifying certificates it has produced as mentioned in paragraphs (4) or (5) bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Great Britain Authority in respect of the relevant obligation period, or any period contemporaneous with the relevant obligation period, in discharge of any renewables obligation imposed in accordance with section 32(1) of the Electricity Act or this Order.

## PART VII

### Late Payments

#### Late Payments

**26.**—(1) As soon as reasonably practicable after the specified day in relation to an obligation period (“the obligation period in question”), the Authority shall notify any designated electricity supplier that has not discharged his renewables obligation in full by the specified day (“defaulting supplier”) that he has not fully discharged his renewables obligation, and to what extent.

(2) If a defaulting supplier makes a late payment to the Authority before the end of the late payment period relating to the obligation period in question he shall be treated as having discharged his renewables obligation in full for that obligation period.

(3) If a defaulting supplier pays part of a late payment to the Authority before the end of the late payment period relating to the obligation period in question he shall be treated as having discharged the same proportion of the amount of his renewables obligation which was not discharged by the specified day as the proportion which the partial payment bears to the total late payment required in order for the supplier to be treated under paragraph (2) as having discharged his renewables obligation in full for the obligation period in question.

(4) The Authority shall pay out the late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in Article 25(3) to 25(6), as if—

- (a) the references in paragraph (3) and (6) of that Article to “the buy-out fund” were references to that late payment fund; and
- (b) the references in paragraphs (3) to (6) of that Article to a “relevant obligation period” were references to the obligation period in question.

(5) the Authority shall not, during the late payment period, impose a penalty under Article 45 of the Energy Order on any defaulting supplier in respect of that supplier’s failure to discharge his renewables obligation in full before the specified day.

(6) In this Article—

- (a) “late payment” means the total of—
  - (i) the amount, or additional amount that the defaulting supplier would have paid under Article 10 to discharge his renewables obligation in full immediately before the specified day, taking into account any payments already made by the defaulting supplier under that Article and any qualifying certificates produced by the supplier to the Authority; and
  - (ii) interest on the amount specified in sub-paragraph (i) charged at the specified rate and calculated on a daily basis, from the specified day to the date on which payment is received by the Authority;
- (b) “the late payment fund” means the aggregate of the amounts received by the Authority under paragraphs (2) and (3) in respect of the obligation period in question (together with any interest received thereon by the Authority); and
- (c) “specified rate” means 5 percentage points above the base rate of the Bank of England as at the first day of the late payment period in relation to any obligation period.

## PART VIII

### Provision of Information and Functions of the Authority

#### **Provision of information to the Authority**

**27.—**(1) The Authority may require a designated electricity supplier to provide it with such information in such form and within such time as it may reasonably require which is, in the Authority’s opinion, relevant to the question whether the supplier is discharging, or has discharged, his renewables obligation in relation to any obligation period.

(2) The Authority may request any person who generates, supplies or transmits electricity in relation to which a NIROC has been or may be issued, or any person who buys or sells such electricity or NIROCs (otherwise than as a consumer) to provide the Authority with such information in such form and within such time as it may reasonably request in order to carry out any of its functions under this Order.

(3) Where a designated electricity supplier receives a payment other than under Article 25 or 26 in relation to a failure by a Great Britain designated supplier to discharge its renewables obligation imposed in accordance with section 32(1) of the Electricity Act, the designated electricity supplier receiving the payment shall notify the Authority, immediately after receiving the payment, of the amount he received and the reason for the payment.



(4) In paragraph (2) the reference to any person who generates electricity in relation to which a NIROC has been or may be issued shall be taken to include a reference to any agent to whom any such NIROC has been or may be issued by virtue of Article 15.

### **Exchange of information with the Great Britain Authority**

**28.**—(1) The Authority shall, as soon as reasonably practicable after the specified day, notify the Great Britain Authority of the GBROC identifier of each GBROC produced to it by a designated electricity supplier under Article 11 and the name of the designated electricity supplier which produced that GBROC and of the total number of GBROCs produced to the Authority under Article 11 in respect of the obligation period to which the specified day relates.

(2) The Authority shall, as soon as reasonably practicable after receiving a notification from the Great Britain Authority as to the NIROC identifiers of NIROCs produced to it by Great Britain designated suppliers under GBRO Orders, inform the Great Britain Authority of—

- (a) the NIROC identifier of any NIROC so notified which it has revoked under Article 23 and whether it has issued a replacement NIROC under Article 23(4)(b) in respect of any such NIROC (unless that replacement NIROC has itself been revoked);
- (b) the NIROC identifier of any NIROC so notified that has also been produced by a designated electricity supplier under Article 3(2) and the date on which it was so produced.

(3) The Authority may conduct enquiries or investigations in respect of whether any electricity which is or may be the subject of a GBROC issued under any provision included in a GBRO Order by virtue of section 32B(2A) of the Electricity Act has been supplied to customers in Northern Ireland and if, as a result of any such enquiry or investigation, the Authority is not satisfied that any such electricity has been so supplied it shall notify the Great Britain Authority accordingly.

(4) The Authority shall as soon as reasonably practicable after the specified day notify the Great Britain Authority as to the number of NIROCs produced to the Authority under Article 3 by each designated electricity supplier in respect of the obligation period to which the specified day relates.

(5) The Authority shall as soon as reasonably practicable after the specified day notify the Great Britain Authority as to—

- (a) which designated electricity suppliers have discharged their renewables obligation in full in respect of the obligation period to which the specified day relates; and
- (b) which designated electricity suppliers have discharged their renewables obligation in part in respect of the obligation period to which the specified day relates and the amount of electricity covered by all the qualifying certificates that each such designated electricity supplier has produced to the Authority in respect of the obligation period to which the specified day relates.

(6) The Authority shall as soon as reasonably practicable after the end of the late payment period notify the Great Britain Authority as to—

- (a) which designated electricity suppliers are to be treated as having discharged their renewables obligation in full in respect of the obligation period to which the end of the late payment period relates by virtue of Article 26(2); and
- (b) which designated electricity suppliers are to be treated as having discharged their renewables obligation in part in respect of the obligation period to which the end of the late payment period relates by virtue of Article 26(3) and the amount of electricity covered by all the qualifying certificates that each such designated electricity supplier has produced to the Authority in respect of the obligation period to which the late payment period relates.

## Functions of the Authority

29. In addition to the functions assigned to it elsewhere in this Order, the Authority shall have the following specific functions—

- (a) keeping, maintaining and making available to the public a list of generating stations granted preliminary accreditation and accreditation in accordance with Article 30, together with any applicable conditions attached to the preliminary accreditation or accreditation;
- (b) keeping and maintaining a list of NIROCs which have been revoked and making such list available to the public;
- (c) calculating and publishing before the start of each obligation period (with the exception of the first obligation period to which this Order relates) the amount of the payment per megawatt hour of electricity referred to in Article 10 resulting from the adjustments made to reflect changes in the retail prices index;
- (d) publishing from time to time the total NIROC claim;
- (e) by 1st April each year (with the exception of 1st April 2007 and 1 April 2008) publishing an annual report in relation to the obligation period ending on the 31st March in the previous calendar year, such report to include details (or, in the case of sub-paragraph (v), a summary) of—
  - (i) the compliance of each designated electricity supplier with his renewables obligation, including the extent to which that obligation has been met by the production of NIROCs pursuant to Article 3 or 12, payments made under Article 10 or the production of eligible GBROCs pursuant to Article 11 or treated as met by payments made under Article 26;
  - (ii) the sums received by each United Kingdom supplier under Articles 25 and 26;
  - (iii) the number of NIROCs issued by the Authority in accordance with Articles 14, 15 and 23, the number of NIROCs accepted by it as evidence under Article 3(1), the number of GBROCs accepted by it under Article 11, the number of NIROCs accepted by it under Article 12, and the number of NIROCs issued but not yet deleted in respect of the obligation period;
  - (iv) the number of NIROCs respect by the Authority in accordance with Articles 14, 15 and 23, broken down into different descriptions of generating stations (as referred to in paragraph 2 of Schedule 3);
  - (v) the outcome of any enquiries or investigations conducted by the Authority pursuant to paragraph (f); and
  - (vi) any other matters which the Authority considers relevant to the implementation of this Order;
- (f) monitoring implementation of the renewables obligation and compliance with this Order by designated electricity suppliers and operators of generating stations (including compliance by operators of generating stations with any conditions attached to their accreditation) and such monitoring may include conducting enquiries or investigations into—
  - (i) the quantities of electricity generated from eligible renewable sources by accredited generating stations;
  - (ii) the quantities of such electricity supplied to customers in Northern Ireland;
  - (iii) the transfer and holding of NIROCs (including the transfer and holding of NIROCs issued to agents by virtue of Article 15);
  - (iv) the effect of such matters on the making and allocation of payments under Articles 10, 25 and 26; and

- (v) the effect of the renewables obligation on designated electricity suppliers and the operators of generating stations;
- (g) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to paragraph (f); and
- (h) the provision of such information to the Great Britain Authority as the Authority considers may be relevant to the exercise of the Great Britain Authority's functions under any GBRO Order.

### **Preliminary accreditation and accreditation of generating stations**

**30.**—(1) Paragraphs (2) to (9) shall apply to the granting and withdrawing of preliminary accreditation and accreditation of generating stations.

(2) Where a generating station in respect of which—

- (a) consent under Article 39 of the Electricity (Northern Ireland) Order 1992 has been obtained; or
- (b) planning permission under the Planning (Northern Ireland) Order 1991(13) has been granted

has not been commissioned, the Authority may, upon the application of the person who proposes to construct or operate the generating station, grant the station preliminary accreditation as being capable of generating electricity from eligible renewable sources.

(3) Where a generating station has been commissioned, the Authority may, upon application of its operator (or, where NIROCs relating to electricity generated in whole or in part by that generating station will be issued to an agent by virtue of Article 15, that agent), grant the station accreditation for the purposes of Article 16(2).

(4) Where a generating station has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) an application for its accreditation is validly made under paragraph (3), the Authority shall not grant that application if—

- (a) in the Authority's view there was a material change in circumstances since the preliminary accreditation was granted;
- (b) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular; or
- (c) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made under the amended legislation, it would not in the Authority's view have been granted

but otherwise shall grant the application.

(5) The Authority may, in granting preliminary accreditation or accreditation, attach such conditions as appear to it to be appropriate.

(6) Where any of the circumstances mentioned in paragraph (7) apply, the Authority may—

- (a) withdraw the preliminary accreditation or accreditation from any generating station;
- (b) amend conditions attached to the preliminary accreditation or accreditation under paragraph (5);
- (c) attach conditions to the preliminary accreditation or accreditation.

(7) The circumstances referred to in paragraph (6) are as follows—

- (a) in the Authority’s view there has been a material change in the circumstances since the preliminary accreditation or accreditation was granted;
  - (b) any condition subject to which preliminary accreditation or accreditation was granted has not been complied with;
  - (c) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation or accreditation was based was incorrect in a material particular;
  - (d) there has been a change in applicable legislation since the preliminary accreditation or accreditation was granted such that, had the application for preliminary accreditation or accreditation been made under the amended legislation, it would not in the Authority’s view have been granted.
- (8) The Authority shall notify the applicant in writing of—
- (a) its decision on an application for preliminary accreditation or accreditation of a generating station;
  - (b) any conditions attached to the preliminary accreditation or accreditation; and
  - (c) any withdrawal of preliminary accreditation or accreditation.
- (9) In providing written notification under paragraph (8), the Authority shall specify the date on which the grant or withdrawal or preliminary accreditation or accreditation is to take effect and, where applicable, the date on which any conditions attached to the preliminary accreditation or accreditation are to take effect.
- (10) In paragraph (2), the reference to the person who proposes to construct the generating station shall include a person who arranges for the construction of the generating station.

## PART IX

### Revocation, Transitional and Savings

#### **Revocation, Transitional and Savings**

- 31.**—(1) Subject to paragraphs (2) to (12), the 2006 Order is hereby revoked.
- (2) The 2006 Order shall continue to apply in respect of the renewables obligation of each designated electricity supplier to produce to the Authority evidence in accordance with the terms of Article 3 of the 2006 Order, before the specified day of 1st September 2007; and for the purposes of this Article, the first line in the column headed “Obligation period”, and the first percentage specified in the column headed “Percentage of total supplies” in Schedule 2 to the 2006 Order shall continue to apply.
- (3) The 2006 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of Article 4(4) of the 2006 Order to furnish information to the Department of Enterprise, Trade and Investment by no later than the 1st June 2007.
- (4) The 2006 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of Article 4(5) of the 2006 Order to inform the Authority before 1st July 2007 of the amount in megawatt hours of his renewables obligation in respect of the obligation period which ended before the 1st July 2007 and the amount of all electricity supplied by that designated electricity supplier to customers in Northern Ireland during that period.
- (5) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge his renewables obligation in relation to the obligation period ending 31st March 2007 by making a payment to the Authority before the specified day of 1st September 2007, in accordance with the terms of Article 11 of the 2006 Order.

(6) The 2006 Order shall continue to apply in respect of the obligations of the Authority to pay out the buy-out fund, by 1st November 2007, in accordance with the terms of Article 22 of the 2006 Order.

(7) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge his renewables obligation in relation to the obligation period ending on 31st March 2007 by producing to the Authority eligible GBROCs before the specified day of 1st September 2007, in accordance with the terms of Article 12 of the 2006 Order.

(8) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to be treated as having discharged his renewables obligation in relation to the obligation period ending on 31st March 2007 by making a late payment to the Authority before the end of the late payment period in question, in accordance with the terms of Article 23 of the 2006 Order.

(9) The 2006 Order shall continue to apply in respect of the obligations of the Authority to notify any designated electricity supplier that has not discharged his renewables obligation in full by the specified day of 1st September 2007 relating to the obligation period ending on 31st March 2007, and to what extent, in accordance with Article 23 of the 2006 Order.

(10) The 2006 Order shall continue to apply in respect of the obligations of the Authority to pay out the late payment fund, by 1st January 2008 in accordance with the terms of Article 23 of the 2006 Order.

(11) The 2006 Order shall continue to apply in respect of the obligations of the Authority to notify to the Great Britain Authority the information set out in Article 25 of the 2006 Order, in accordance with the terms and conditions of that article of the 2006 Order.

(12) The 2006 Order shall continue to apply in respect of all the functions of the Authority referred to in Article 26 of the 2006 Order insofar as they relate to the obligation period ending on 31st March 2007.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 21st February 2007.



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