
STATUTORY RULES OF NORTHERN IRELAND

2007 No. 104

The Renewables Obligation Order (Northern Ireland) 2007

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.