

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRICITY (PRIORITY DISPATCH) REGULATIONS**  
**(NORTHERN IRELAND) 2012**

**SR 2012 No. 385**

**1. INTRODUCTION**

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Statutory Rule. It does not form part of the Statutory Rule.
- 1.2 The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

**2. PURPOSE**

- 2.1 The Statutory Rule transposes into domestic legislation certain requirements of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (**the Renewable Energy Directive**).
- 2.2 The Statutory Rule also transposes elements of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (**the Cogeneration Directive**).
- 2.3 The Statutory Rule amends the Electricity (Northern Ireland) Order 1992 (**the Electricity Order**).

**3. BACKGROUND AND POLICY OBJECTIVES**

Renewable Energy Directive

- 3.1 On 5 June 2009, the European Commission published the Renewable Energy Directive. The purpose of this Directive is to put in place the framework for achieving the European Council decision for a mandatory EU target of a 20% share of the EU’s energy from renewable sources by 2020. In order to achieve that 20% across the EU, the Renewable Energy Directive sets out targets for each Member State to achieve; the UK’s target is 15%.
- 3.2 In the UK, the Renewable Energy Directive has been transposed by The Promotion of the Use of Energy from Renewable Sources Regulations 2011 and by the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations (NI) 2010.
- 3.3 Article 16 of the Renewable Energy Directive covers “access to and operation of the grids”. The Department’s consultation sets out the way in which the Department and

the Utility Regulator view Northern Ireland as already compliant with the majority of Article 16 requirements.

- 3.4 Article 16(2)(c) of the Renewable Energy Directive states that “Member States shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria”.
- 3.5 The full text of the Directive can be accessed at the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF>

### Cogeneration Directive

- 3.2 The Department supports the development of good quality CHP, whether from renewable or other sources, and has committed under the Strategic Energy Framework 2010 to “encourage greater scope for combined heat and power in Northern Ireland”.

The Cogeneration Directive establishes a framework for the promotion and development of good efficiency cogeneration of heat and power. It provides for the establishment of support systems, harmonised efficiency values, and a system of certification (guarantees of origin) so that the origin of good efficiency cogeneration can be guaranteed.

As part of this package of support measures, Article 8(1) of the Cogeneration Directive provides that, for the purpose of ensuring the transmission and distribution of electricity produced from high-efficiency cogeneration, the "*provisions of Article 7(1) ... of Directive 2001/77/EC (the Renewable Electricity Directive) as well as the relevant provisions of Directive 2003/54/EC (the 2003 Electricity Directive) shall apply*".

Article 7(1) of the Renewable Electricity Directive contains a number of requirements on Member States relating to grid system issues for renewable electricity generation. These requirements include a requirement to ensure that "when dispatching generating installations, transmission system operators shall give priority to generating installations using renewable energy sources insofar as the operation of the national electricity system permits".

The intention of Article 8(1) of the Cogeneration Directive is to extend priority dispatch to high efficiency cogeneration, and the Department takes the view that it is appropriate at this stage to proceed on the basis that Northern Ireland is required under European Law to give priority dispatch to high efficiency cogeneration, and to draft its Regulations accordingly. It is therefore the Department's intention to legislate to require that good quality CHP qualifies for priority dispatch under the proposed draft regulations.

The full text of the Directive can be accessed at the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:052:0050:0060:EN:PDF>

#### 4. CONSULTATION

4.1 In April 2011, the Department published a consultation paper (“the Consultation Paper”) seeking views and comments on the proposed implementation of the Directives in Northern Ireland. The Consultation Paper and its annexes can be accessed at:

[http://www.detini.gov.uk/consultation\\_on\\_priority\\_dispatch\\_under\\_the\\_renewable\\_energy\\_directive](http://www.detini.gov.uk/consultation_on_priority_dispatch_under_the_renewable_energy_directive)

4.2 The Department has since published responses to issues that were raised in the Consultation Paper on its website, which can be accessed at:

<http://www.detini.gov.uk/deti-energy-publications.htm>.

#### 5. EQUALITY IMPACT

5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has been carried out on the provisions of the Statutory Rule and has concluded that an equality impact assessment is not required.

#### 6. REGULATORY IMPACT

6.1 A full regulatory impact assessment has not been produced for this instrument because of the mandatory nature of the requirement to transpose EU Directives. However, a Transposition Note has been prepared for those Articles of the aforementioned Directives affected by the Statutory Rule and are attached at **Annex A**.

6.2 The Department considered a number of options when implementing this instrument -

- **Option 1 - do nothing.** If Northern Ireland failed to implement the Directives then the United Kingdom would be at risk of the Commission commencing infraction proceedings. The result of this would be a proportionate financial fine which the UK Government would pass on, in full, to the Northern Ireland Executive. This option was therefore not carried forward.
- **Option 2 – Introduce licence amendments only.** The second option was to introduce licence amendments to the underlying licence conditions which could be sufficient to ensure compliance with the EU Directives. However, discussions between the two Regulators and the two Departments in the Northern Ireland and the Republic of Ireland concluded that legislation would be needed to ensure that the current economic basis for dispatch is brought into line with the requirements of the Renewable Energy Directive where the economic basis of dispatch may conflict with its requirements.
- **Option 3 – Introduce legislation.** The third option was to introduce legislation to give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria. The legislation would also give priority to high efficiency cogeneration. This would mean that Northern Ireland would be fully compliant with both Directives regarding priority dispatch given to renewable generation.

- 6.4 Transposition of the Directive would facilitate the Department in meeting its target set out in the Strategic Energy Framework (SEF) which includes a target of 40% of electricity from renewable sources by 2020. Legislation would also help the Utility Regulator to carry out its functions to ensure that all reasonable demands for electricity are met and in a manner best calculated to secure a diverse and viable long-term energy supply.
- 6.5 The Department considered that it is important to introduce legislation as it is required to act as a support to ensure that the current economic basis for dispatch is brought into line with the rest of Europe. Therefore the Department followed the approach of option 3 to ensure that there was a clear and meaningful way forward on the detail of the issues noted above.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 Currently, in the Single Electricity Market (SEM), the cheapest generation is dispatched first, but as demand increases, more expensive generators will be asked to supply electricity. The Directives mentioned above, are now putting a requirement on Member States to ensure renewable generation is dispatched first. The requirement in the Renewable Energy Directive to dispatch renewable electricity first outweighs the pure principle of economic dispatch. At present, it is difficult to gauge what the exact requirements and costs will be in relation to providing priority dispatch for renewable energy generation.

## **8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998**

- 8.1 This Statutory Rule does not contravene section 24 of the Northern Ireland Act 1998.

## **9. EU IMPLICATIONS**

- 9.1 There are no negative implications for the EU or its Member States.

## **10. PARITY OR REPLICATORY MEASURE**

- 10.1 Under the GB system, all types of generators self dispatch. Every connected generator in GB has a guarantee of being able to use the network; the only reason they may not be able to generate is to ensure reliability and safety of the system. On such occasions, GB market arrangements determine which generators reduce their output, with these generators compensated. The UK Department of Energy and Climate Change (DECC) has taken the view that GB is therefore compliant with the requirements of Article 16(2)(c) of the Directive and no further action on their part is required. However, the Department has legislated to transpose the Directives for Northern Ireland.

## **11. ADDITIONAL INFORMATION**

### **Commentary on Articles**

- 11.1 In summary, the Statutory Rule:

- Inserts a new Article 11AB in the Electricity Order, requiring the inclusion of appropriate conditions in new electricity transmission licences to ensure that dispatch of electricity by the licence holders comply with these rules of priority. It

also allows the modification of existing electricity transmission licences for the same purpose.

- The Decision of the Single Electricity Market Committee referred to in these Regulations as the SEM decision document can be found at:  
[http://www.allislandproject.org/en/sem\\_publications.aspx?year=2011&section=2](http://www.allislandproject.org/en/sem_publications.aspx?year=2011&section=2)

11.2 DECC compiled complete transposition notes when the requirements of the Directive were transposed in the UK in ‘The Promotion of the Use of Energy from Renewable Sources Regulations 2011’. Therefore, it has been deemed unnecessary to replicate the entire transposition notes for the Directive. However, a Transposition Note has been prepared for those Articles of the aforementioned Directives affected by the Statutory Rule and is attached at **Annex A**.

### **Commencement**

11.2 The Statutory Rule comes into operation on 20th November 2012.

**ENERGY DIVISION  
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT  
October 2012**

## Transposition Note

This transposition note sets out the way in which Article 16(2)(c) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, and (“the Renewable Energy Directive”) is to be implemented through instruments made by, and other measures taken by, the Department of Enterprise, Trade and Investment in Northern Ireland.

The same exercise is also undertaken for Article 8(1) of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (“the Cogeneration Directive”).

These Regulations do what is necessary to implement the Renewable Energy Directive and the Cogeneration Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

## Renewable Energy Directive

Article	Objective	Information on compliance and implementation
16(2)(c)	Priority dispatch and curtailments	This requirement is new. To implement this requirement, The Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012 (“the Regulations”) supplement existing arrangements by inserting a new Article 11AB in the Electricity Order, ensuring that when dispatching electricity generating installations, the electricity transmission system operator (TSO) gives priority to generating installations using renewable energy sources only where the secure operation of the electricity system allows. TSOs will also report on events relating to short-term curtailment for the purposes of a safe and secure electricity supply, to the Utility Regulator, as is required by the SEMC decision.

## Cogeneration Directive

Article	Objective	Information on compliance and implementation
8(1)	Electricity grid system and tariff issues	This requirement is new. The Regulations inserting the new Article 11AB(c) in the Electricity Order to ensure that priority is given to generation produced from high-efficiency cogeneration.