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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**The Energy (Northern Ireland) Order 2003**

**PART VII**

**ELECTRICITY FROM RENEWABLE SOURCES**

**Obligation in connection with electricity from renewable sources**

**52.**—(1) The Department may by order impose on each electricity supplier who falls within a specified description (“a designated electricity supplier”) an obligation to do what is set out in paragraph (2) (and that obligation is referred to in this Part as the “renewables obligation”).

(2) Subject to the provisions of this Article and Articles 53 and 55, the renewables obligation is that the designated electricity supplier must, before a specified day (or before each of several specified days, or before a specified day in each year), produce to the Authority evidence of a specified kind showing—

- (a) that he has supplied to customers in Northern Ireland during a specified period such amount of electricity generated by using renewable sources as is specified in relation to such a supplier; 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.

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

(4) Evidence of the supply of electricity may not be produced more than once in relation to the same electricity.

(5) In the case of electricity generated by a generating station fuelled or driven partly by renewable sources and partly by fossil fuel or peat, only the proportion attributable to the renewable sources can count towards discharging the renewables obligation (but this is subject to Article 53(1)(g)).

(6) Before making an order under this Article, the Department shall consult—

- (a) the Authority;
- (b) the Council;
- (c) the electricity suppliers to whom the proposed order would apply;
- (d) persons generating electricity from renewable sources in Northern Ireland; and
- (e) such other persons, if any, as the Department considers appropriate.

(7) In this Article and Article 53—

“fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976 (c. 76));

“peat” includes substances produced directly or indirectly from peat;

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

“specified” means specified in the order.

### **Orders under Article 52: supplementary**

**53.**—(1) An order under Article 52 may make provision generally in relation to the renewables obligation imposed by the order, and may in particular specify—

- (a) different obligations for successive periods of time;
  - (b) that only electricity generated using specified descriptions of renewable source is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (c) that only electricity generated by specified descriptions of generating station is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (d) that a specified minimum amount of electricity generated as mentioned in sub-paragraph (b) or (c) is to be counted towards the discharge of the renewables obligation;
  - (e) how the amount of electricity supplied by an electricity supplier (whether generally or to particular customers or descriptions of customer) is to be determined;
  - (f) how the proportion referred to in Article 52(5) or in the definition of “renewable sources” in Article 52(7) is to be determined;
  - (g) the consequences for the discharge of the renewables obligation if a generating station of the type mentioned in Article 52(5) uses more than a specified proportion of fossil fuel or peat during a specified period (which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation);
  - (h) that specified information, or information of a specified nature, is to be given to the Authority (in addition to the evidence referred to in Article 52(2)), and the form in which it is to be given.
- (2) An order may, in relation to any specified period (“the current period”)—
- (a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in sub-paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in sub-paragraph (a) or (b);
  - (e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period.
- (3) An order may make any provision capable of being made under section 2(2) of the European Communities Act 1972 (c. 68) in connection with European Parliament and Council Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market.
- (4) An order may make—
- (a) different provision for different cases or circumstances; and
  - (b) different provision in relation to different electricity suppliers,

if the Department is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers.

(5) An order may provide for the Authority to require an electricity supplier to provide it with information, or with information of a particular kind, which is in its opinion relevant to the question whether the supplier is discharging, or has discharged, the renewables obligation.

(6) That information must be given to the Authority in whatever form it requires.

(7) No person shall be required by virtue of this Article to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court.

(8) An order may make further provision as to the functions of the Authority in relation to the obligation imposed by the order.

### **Green certificates**

**54.**—(1) An order under Article 52 may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate to the operator of a generating station in Northern Ireland or to an electricity supplier.

(2) A certificate under this Article is to certify—

- (a) that the generating station or, in the case of a certificate issued to an electricity supplier, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and
- (b) that it has been supplied to customers in Northern Ireland.

(3) If an electricity supplier produces a certificate to the Authority, it is to count for the purposes of Article 52(2) as sufficient evidence of the facts certified.

### **Payment as alternative to complying with order under Article 52**

**55.**—(1) An order under Article 52 may provide that instead of producing evidence under Article 52(2), a designated electricity supplier may discharge (in whole or in part) his renewables obligation (or his obligation in relation to a particular period) by making a payment to the Authority.

(2) The order may make provision—

- (a) as to the sum which for the purposes of paragraph (1) is to correspond to the supply of a given amount of electricity;
- (b) for different such sums in relation to different periods;
- (c) for different such sums in relation to electricity generated in different ways specified in the order (such as those referred to in Article 53(1)(b) and (c)); and
- (d) for any such sum to be adjusted from time to time for inflation by a method specified in the order (which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or such data in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards).

(3) The Authority shall pay the amounts received to electricity suppliers in accordance with a system of allocation specified in the order.

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

### **Power to amend this Part**

**56.**—(1) The Department may by order make such amendments to the preceding provisions of this Part as appear to the Department to be necessary or expedient—

- (a) to take account of any amendments made or proposed to be made to any of the corresponding Great Britain provisions; or
- (b) for giving effect to, or enabling effect to be given to—
  - (i) any Community obligation; or
  - (ii) any arrangement or agreement entered into between the Government of the United Kingdom and the government of any other member State.

(2) In this Article “the corresponding Great Britain provisions” means—

- (a) sections 32 to 32C of the Electricity Act 1989 (c. 29); and
- (b) any provision amending or re-enacting (with or without modification) any provision mentioned in sub-paragraph (a).

### **Non-fossil fuel obligation**

**57.**—(1) Subject to the following provisions of this Article, Article 35 of the Electricity Order (electricity from non-fossil fuel sources) shall cease to have effect.

(2) The Department may by order make such provision as it considers necessary or expedient for the purpose of—

- (a) saving orders under Article 35 of the Electricity Order made before the coming into operation of paragraph (1);
- (b) preserving, modifying, replacing or otherwise dealing with arrangements (as mentioned in that Article) made pursuant to such an order, including making provision for substituting different parties to the arrangements or for replacement arrangements to be between parties different from those party to the replaced arrangements.

(3) The power in paragraph (2)(b) may be exercised both before the coming into operation of paragraph (1) and afterwards.

(4) An order under this Article may, in particular, provide for Article 35 (apart from paragraphs (3) and (4)) to continue to have effect with modifications specified in the order.

(5) An order under this Article may impose requirements in relation to the sale of any electricity acquired under arrangements made pursuant to an order under Article 35 of the Electricity Order (or such arrangements as modified or replaced by virtue of an order under this Article).

(6) Requirements imposed under paragraph (5) may include requirements as to the application of the proceeds of sale of any electricity mentioned in that paragraph.

(7) An order under this Article may provide—

- (a) that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part VI; and
- (b) for one of those requirements to be that a person referred to in sub-paragraph (a) or (b) of paragraph (8) is not to act or omit to act as set out there;

but, while paragraphs (3) and (4) of Article 35 of the Electricity Order remain in force, an order may not provide for anything which would be an offence under Article 35 (3) of that Order to be treated as a relevant requirement.

(8) The persons, acts and omissions referred to in paragraph (7)(b) are—

- (a) an act or omission by a person subject to requirements contained in the order which prevents any arrangements made pursuant to the order from securing such results as are specified in the order; and
- (b) an act or omission by a party to arrangements made pursuant to an order under Article 35 of the Electricity Order made before the coming into operation of paragraph (1) (or such arrangements as modified or replaced by virtue of an order under this Article) which prevents the arrangements from securing the result mentioned in paragraph (2) of that Article (or that paragraph as modified by virtue of an order under this Article), or such corresponding result as is specified in the order.

#### **Abolition of fossil fuel levy**

**58.** Article 36 of the Electricity Order (fossil fuel levy) shall cease to have effect.