



Energy Act 2004

2004 CHAPTER 20

PART 2

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

CHAPTER 4

RENEWABLES OBLIGATIONS RELATING TO ELECTRICITY

115 Discharge of renewables obligation in Great Britain by payment

- (1) In section 32(3) of the 1989 Act (renewables obligation), for the words from “must” to “produce” substitute “ must, by each specified day, have produced ”.
- (2) In section 32C of that Act (payment as an alternative to complying with a renewables obligation), in subsection (1) for the words from “that” onwards substitute—
 - “(a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the day specified as the day by which evidence must be produced for the purposes of section 32(3); and
 - (b) that an electricity supplier’s renewables obligation that was not discharged in whole or in part before the day so specified is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of such period beginning with that day as may be specified in the order.”
- (3) In subsection (2) of that section (supplementary provisions of order providing for payments)—
 - (a) after paragraph (a) insert—
 - “(aa) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the time by

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which evidence had to be produced for the purposes of section 32(3);”

- (b) in paragraph (b), for “such sums” substitute “ sums or rates falling within paragraph (a) or (aa) ”;
- (c) in paragraph (c), after “sums” insert “ or rates ”; and
- (d) in paragraph (d), after “sum” insert “ or rate ”.

(4) For subsection (3) of that section substitute—

“(2A) An order under section 32 may provide that, where—

- (a) a renewables obligation is one in relation to which provision made by virtue of subsection (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
- (b) the period ending with such day (after the day by which the obligation had to be complied with) as may be specified in or determined under the order has not expired,

the taking of steps under section 27A in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.

(2B) An order under section 32 may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—

- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
- (b) is of a description so specified or determined,

must, by the time and in the circumstances so specified or determined, make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.

(2C) An order under section 32 may not by virtue of subsection (2B) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—

- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of subsection (2A) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period; or
- (b) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period.

(2D) The provision that may be made by virtue of subsection (2B) includes—

- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen; and

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- (b) provision that sections 25 to 28 are to apply in relation to a requirement imposed by virtue of that subsection on a person who is not a licence holder as if he were a licence holder.
- (3) The amounts received by the Authority by virtue of the preceding provisions of this section must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under section 32.”
- (5) In that section, at the end insert—
 - “(6) References in this section to an electricity supplier’s renewables obligation include references to its renewables obligation in relation to a particular period.
 - (7) For the purposes of this section—
 - (a) the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period, and
 - (b) the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period,if, and to the extent that, the Authority or (as the case may be) the Northern Ireland authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Northern Ireland obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
 - (8) In this section—

“discharge payment”, in relation to a period, means—

 - (a) a payment by virtue of paragraph (a) of subsection (1) for discharging (in whole or in part) an electricity supplier’s renewables obligation for that period;
 - (b) so much of a payment by virtue of paragraph (b) of that subsection for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the day mentioned in that paragraph; or
 - (c) so much of any payment to the Northern Ireland authority as corresponds, in relation to a Northern Ireland obligation for that period, to anything falling within paragraph (a) or (b) above;

“Northern Ireland obligation” means a renewables obligation of a Northern Ireland supplier under Article 52 of the Energy (Northern Ireland) Order 2003;

“the relevant period”—

 - (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period; and
 - (b) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.”
- (6) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of

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this section by consultation that took place wholly or partly before the commencement of this section.

Modifications etc. (not altering text)

C1 S. 115(6): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

Commencement Information

II S. 115 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

116 Issue of green certificates in Great Britain

- (1) Section 32B of the 1989 Act (green certificates) is amended as follows.
- (2) In subsection (1), for “or to an electricity supplier” substitute “, to an electricity supplier or to a Northern Ireland supplier”.
- (3) After that subsection insert—

“(1A) A certificate is to certify either the matters within subsection (2) or the matters within subsection (2A).”
- (4) In subsection (2)—
 - (a) for “A certificate is to certify” substitute “ The matters within this subsection are ”;
 - (b) in paragraph (a), after “an electricity supplier” insert “ or to a Northern Ireland supplier ”.
- (5) After that subsection insert—

“(2A) The matters within this subsection are—

 - (a) that the generating station or, in the case of a certificate issued to an electricity supplier or to a Northern Ireland supplier, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate;
 - (b) that the generating station in question is not a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003; and
 - (c) that the electricity has been supplied to customers in Northern Ireland.

(2B) An order under section 32 must—

 - (a) prohibit the issue of a certificate certifying matters within subsection (2A) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland; and
 - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its production for the purposes of provision made by virtue of subsection (4).”
 - (6) In subsection (3), after “Authority” insert “ that certifies matters within subsection (2) ”.

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(7) After that subsection insert—

“(4) An order under section 32 may provide that—

- (a) in such cases as may be specified in the order, and
- (b) subject to such conditions as may be so specified,

an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a certificate that certifies matters within subsection (2A).

(5) References in this section to the supply of electricity to customers in Northern Ireland shall be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.”

(8) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

Modifications etc. (not altering text)

- C2** S. 116(8): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

Commencement Information

- I2** S. 116 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

117 Use of green certificates issued in Northern Ireland

(1) After section 32B of the 1989 Act insert—

“32BA Use of green certificates issued in Northern Ireland

(1) An order under section 32 may provide that—

- (a) in such cases as may be specified in the order, and
- (b) subject to such conditions as may be so specified,

an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate.

(2) In this section “Northern Ireland certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of Article 54 of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).”

(2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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- (3) In Article 56(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of the 1989 Act includes a reference to subsection (1) of this section.
- (4) Subsection (3) extends to Northern Ireland only.

Modifications etc. (not altering text)

- C3** S. 117(2): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, **Sch.** (with art. 6)

Commencement Information

- I3** S. 117 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

118 Distributions to Northern Ireland suppliers

- (1) In section 32C of the 1989 Act (payment of money to discharge renewables obligation and distribution of fund to electricity suppliers), after subsection (4) insert—
- “(5) The references in subsections (3) and (4) to electricity suppliers include references to persons who are Northern Ireland suppliers.”
- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

Modifications etc. (not altering text)

- C4** S. 118(2): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, **Sch.** (with art. 6)

Commencement Information

- I4** S. 118 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

119 Supplementary provision relating to renewables obligation in Great Britain

- (1) In subsection (3) of section 32 of the 1989 Act (definition of renewables obligation), for “and 32C” substitute “ to 32C ”.
- (2) In subsection (7) of that section, for paragraph (d) substitute—
- “(d) such generators of electricity from renewable sources as he considers appropriate; and”.
- (3) After subsection (8) of that section insert—
- “(8A) In this section and in sections 32A to 32C—
- “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions shall be construed accordingly;

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“Northern Ireland authority” means the Northern Ireland Authority for Energy Regulation;

“Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003.”

- (4) In section 32A of that Act (supplementary provision relating to orders under section 32), in subsection (3) for the words from “the differences” onwards substitute “no supplier would by virtue of the differences be unduly disadvantaged in competing with other suppliers”.
- (5) After that subsection insert—
 - “(3A) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.”
- (6) In subsection (7) of that section, for “obligation imposed” substitute “matters dealt with”.
- (7) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

Modifications etc. (not altering text)

- C5** [S. 119\(7\)](#): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, **Sch.** (with art. 6)

Commencement Information

- I5** [S. 119](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

120 Issue of green certificates in Northern Ireland

- (1) Article 54 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (which contains provision corresponding to provision contained in section 32B of the 1989 Act) is amended as follows.
- (2) After paragraph (2) insert—
 - “(2A) In paragraphs (1) and (2) “Northern Ireland” does not include any part of the territorial sea of the United Kingdom.
 - (2B) The provision that may be contained by virtue of this Article in an order under Article 52 includes—
 - (a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and
 - (b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.
 - (2C) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements

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- within paragraph (2B)(b) that may be specified in or determined under the order include arrangements—
- (a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and
 - (b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.
- (2D) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (2B)(b) may require the relevant person—
- (a) to make and implement the arrangements that are specified in or determined under the order; and
 - (b) to comply with directions given to him by the Authority for that purpose.
- (2E) A person who receives a payment in accordance with provision made by virtue of paragraph (2C)(b) shall apply the money received in such manner as the Department may direct.
- (2F) A direction under paragraph (2E) may require that the money received or part of that money be paid to the Department.
- (2G) Part VI shall apply in relation to a requirement imposed by virtue of paragraph (2D) or (2E) on a person who is not an electricity licence holder as if he were an electricity licence holder.”
- (3) After paragraph (3) insert—
- “(4) An order under Article 52 may confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates.
- (5) In this Article—
- “Great Britain certificates” means certificates that are or may be issued by the Gas and Electricity Markets Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;
- “qualifying arrangement” means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);
- “relevant person” means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.”
- (4) The requirements of Article 52(6) of that Order (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.
- (5) This section extends to Northern Ireland only.

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Commencement Information

I6 S. 120 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

121 GEMA’s power to act on behalf of Northern Ireland regulator

- (1) GEMA and the Northern Ireland Authority for Energy Regulation (“the Northern Ireland Authority”) shall be entitled—
 - (a) to enter into arrangements for GEMA to act on behalf of the Northern Ireland Authority for, or in connection with, the carrying out of the 2003 renewables obligations functions; and
 - (b) to give effect to those arrangements.
- (2) In this section “the 2003 renewables obligations functions” means the functions conferred on the Northern Ireland Authority under or for the purposes of Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (renewables obligations for Northern Ireland suppliers).

Commencement Information

I7 S. 121 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

122 Consultation in relation to Northern Ireland renewables orders

- (1) This section applies where the Department of Enterprise, Trade and Investment in Northern Ireland amends the provisions of Part 7 of the 2003 Order (renewables obligations for Northern Ireland suppliers) by way of an amending order to take account of amendments of the 1989 Act made by this Chapter.
- (2) In the case of a renewables order containing provision made by virtue of the amending order, the requirements of Article 52(6) of the 2003 Order (consultation before making a renewables order) may be satisfied by consultation that took place wholly or partly before the amending order came into force (including consultation taking place before the commencement of this section).
- (3) In this section—
 - “amending order” means an order under Article 56 of the 2003 Order;
 - “the 2003 Order” means the Energy (Northern Ireland) Order 2003;
 - “renewables order” means an order under Article 52 of the 2003 Order.
- (4) This section extends to Northern Ireland only.

Commencement Information

I8 S. 122 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

123 Modification of conditions of Northern Ireland electricity licences

- (1) In Part 7 of the Energy (Northern Ireland) Order 2003 (renewable energy sources), after Article 58 insert—

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“58A Modifications of licences in connection with Energy Act 2004

- (1) Where the Department or the Authority considers it necessary or expedient to do so in connection with—
 - (a) amendments of this Order made by section 120 of the Energy Act 2004, or
 - (b) provision made by an order under Article 56 to take account of amendments of the Electricity Act 1989 made by Chapter 4 of Part 2 of that Act of 2004,
 it may modify the conditions of an electricity licence.
- (2) The power to make modifications under this Article includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification of a licence condition under this Article the Department shall consult the Authority and the licence holder.
- (4) Before making a modification of a licence condition under this Article the Authority shall—
 - (a) consult the licence holder; and
 - (b) obtain the consent of the Department to the modification.
- (5) Paragraphs (3) and (4)(a) may be satisfied by consultation—
 - (a) that, in the case of a modification within paragraph (1)(b), took place wholly or partly before the order in question comes into force; and
 - (b) that, in any case, took place wholly or partly before the commencement of this Article.
- (6) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.
- (7) The power conferred by virtue of paragraph (1)(a) may not be exercised after the end of the period of two years beginning with the commencement of this Article.
- (8) The power conferred by virtue of paragraph (1)(b) may not be exercised in relation to an order under Article 56 after the end of the period of two years beginning with the day on which the order comes into force.”

(2) This section extends to Northern Ireland only.

Commencement Information

I9 S. 123 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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