

2004 No. 524

ELECTRICITY

Energy (Amendment) Order (Northern Ireland) 2004

Made - - - - - 22nd December 2004

Coming into operation 8th February 2005

*To be laid before Parliament under paragraph 7(3) of the
Schedule to the Northern Ireland Act 2000*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by Article 56(1) of the Energy (Northern Ireland) Order 2003(a) and of every other power enabling it in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Energy (Amendment) Order (Northern Ireland) 2004 and shall come into operation on 8th February 2005.

Amendment of the Energy (Northern Ireland) Order 2003

2. The Energy (Northern Ireland) Order 2003 shall be amended in accordance with Articles 3 to 7.

Obligation in connection with electricity from renewable sources

3. In Article 52 (obligation in connection with electricity from renewable sources) –
- (a) in paragraph (2), for “and 55” substitute “to 55” and for the words from “must” to “produce” substitute “must, by each specified day, have produced”; and,
 - (b) after paragraph (7) insert –
 - “(8) In this Article and in Articles 53 to 55 –
 - “Great Britain authority” means the Gas and Electricity Markets Authority;
 - “Great Britain supplier” means an electricity supplier within the meaning of Part I of the Electricity Act 1989(b).”.

Orders under Article 52: supplementary

4. In Article 53 (orders under Article 52: supplementary) –
- (a) for paragraph (4) substitute –
 - “(4) An order may make –
 - (a) different provision for different cases or circumstances; and
 - (b) different provision in relation to different suppliers,

(a) S.I. 2003/419 (N.I. 6); see Article 2(2) for the definition of “the Department”
(b) 1989 c. 29

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

(4A) In paragraph (4) “supplier” means an electricity supplier or a Great Britain supplier.”; and

(b) in paragraph (8) for “obligation imposed” substitute “matters dealt with”.

Green certificates

5. In Article 54 (green certificates) –

(a) in paragraph (1), for “or to an electricity supplier” substitute “, to an electricity supplier or to a Great Britain supplier”; and,

(b) in paragraph (2)(a), after “an electricity supplier” insert “or to a Great Britain supplier”.

Use of green certificates issued in Great Britain

6. After Article 54 (green certificates) insert –

“Use of green certificates issued in Great Britain

54A.—(1) An order under Article 52 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,

a designated electricity supplier may (to the extent provided for in accordance with the order) discharge his renewables obligation (or his obligation in relation to a particular period) by the production to the Authority of a Great Britain certificate.

(2) In this Article “Great Britain certificate” means a certificate issued by the Great Britain 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 (renewables obligations for Great Britain suppliers).”.

Payment as alternative to complying with order under Article 52

7. In Article 55 (payment as alternative to complying with order under Article 52) –

(a) in paragraph (1) for the words from “that” onwards substitute –

“(a) that a designated electricity supplier may (in whole or in part) discharge his 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 Article 52(2); and

(b) that a designated 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.”;

(b) in paragraph (2) –

(i) after sub-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 which evidence had to be produced for the purposes of Article 52(2);”

(ii) in sub-paragraph (b), for “such sums” substitute “sums or rates falling within sub-paragraph (a) or (aa)”;

(iii) in sub-paragraph (c), after “sums” insert “or rates”; and

(iv) in sub-paragraph (d), after “sum” insert “or rate”;

(c) for paragraph (3) substitute –

“(2A) An order under Article 52 may provide that, where –

- (a) a renewables obligation is one in relation to which provision made by virtue of paragraph (1)(b) applies in the case of the designated 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 Article 45 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 Article 52 may provide that, in a case in which the amount received by the Authority, or by the Great Britain 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 Article 52 may not by virtue of paragraph (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 paragraph (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 Great Britain authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Great Britain applies, in one or more cases, to the taking of steps in relation to contraventions of Great Britain obligations for that period.

(2D) The provision that may be made by virtue of paragraph (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
- (b) provision that Articles 42 to 51 are to apply in relation to a requirement imposed by virtue of that paragraph 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 Article must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under Article 52.”; and

(d) at the end insert –

“(5) The references in paragraphs (3) and (4) to electricity suppliers include references to persons who are Great Britain suppliers.

(6) References in this Article to a designated electricity supplier’s renewables obligation include references to his renewables obligation in relation to a particular period.

(7) For the purposes of this Article –

- (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 Great Britain 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 Great Britain authority would have received more by way of discharge payments if every renewables obligation

or (as the case may be) Great Britain obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.

(8) In this Article –

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

- (a) a payment by virtue of paragraph (1)(a) for discharging (in whole or in part) a designated electricity supplier’s renewables obligation for that period;
- (b) so much of a payment by virtue of paragraph (1)(b) 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 Great Britain authority as corresponds, in relation to a Great Britain obligation for that period, to anything falling within paragraph (a) or (b);

“Great Britain obligation” means a renewables obligation of a Great Britain supplier under section 32 of the Electricity Act 1989;

“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 Great Britain authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22nd December 2004.

(L.S.)

Jenny Pyper

A senior officer of the Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order amends Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I. 2003 419 (N.I. 6)) to take account of amendments made to sections 32 to 32C of the Electricity Act 1989 (1989 c. 29) by the Energy Act 2004 (2004 c. 20).

Article 52 of the Energy (Northern Ireland) Order 2003 (“the Energy Order”) enables the Department of Enterprise, Trade and Investment (“the Department”) by order (“a renewables order”) to impose on each electricity supplier who falls within a specified description, an obligation to provide the Northern Ireland Authority for Energy Regulation (“the Authority”) before one or more days specified in the renewables order evidence regarding the supply of electricity generated from renewable sources (“the renewables obligation”). The effect of Article 3(a) of this Order is to make clear that the Department may provide in a renewables order for more than one specified day in a year. Article 3(b) inserts into the Energy Order definitions of “Great Britain authority” and “Great Britain supplier” for the purposes of Article 52 to 55 of that Order.

Article 4 of this Order amends Article 53 of the Energy Order by providing that the condition that electricity suppliers must not be unduly disadvantaged in competing with other electricity suppliers by differential provision in a renewables order now covers Great Britain suppliers.

Article 5 of this Order provides that a renewables order may empower the Authority to issue certificates under Article 54 of the Energy Order to Great Britain electricity suppliers as well as to Northern Ireland electricity suppliers and the operators of generating stations in Northern Ireland. Such certificates will be used as evidence that an electricity supplier has discharged its renewables obligation either in Great Britain or in Northern Ireland.

Article 6 of this Order provides that a renewables order may provide for a Northern Ireland electricity supplier to discharge its renewables obligation in Northern Ireland by producing a certificate issued under a Great Britain renewables order.

Article 55 of the Energy Order provides that a renewables order may allow an electricity supplier to discharge its renewables obligation by making a buy-out payment to the Authority instead of producing evidence regarding the supply of electricity generated from renewable sources. Article 7 of this Order amends Article 55 of the Energy Order and provides for a renewables order –

- (a) to provide for a supplier who has not discharged its renewables obligation by the specified date, to be treated as having discharged it by making a late buy-out payment;
- (b) to provide for surcharges which will be added to any late buy-out payment;
- (c) to specify steps under Article 45 of the Energy Order (financial penalties) which cannot be taken during a specified period following the date on which the supplier should have complied with its renewables obligation;
- (d) to provide for electricity suppliers to make payments to the Authority to make good a shortfall in buy-out payments and late buy-out payments either in Northern Ireland or Great Britain; and
- (e) to provide for Great Britain suppliers to participate in the redistribution of buy-out payments and late buy-out payments made by Northern Ireland suppliers.

Provision made in this Order in relation to Great Britain suppliers, Great Britain certificates and Great Britain payments reciprocate provision made in Chapter 4 of Part 2 of the Energy Act 2004 in relation to Northern Ireland suppliers, Northern Ireland certificates and Northern Ireland payments.

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