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## STATUTORY INSTRUMENTS

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# 2005 No. 926

## The Renewables Obligation Order 2005

### Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation Order 2005 and shall come into force on 1st April 2005.

(2) This Order extends to England and Wales only.

### Interpretation

2.—(1) In this Order—

“the 2002 Order” means the Renewables Obligation Order 2002 <sup>M1</sup>;

“the 2004 Order” means the Renewables Obligation (Amendment) Order 2004 <sup>M2</sup>;

“the Act” means the Electricity Act 1989;

“advanced conversion technologies” means gasification, pyrolysis or anaerobic digestion, or any combination thereof;

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen;

“banking day” means a day on which banks are generally open in the City of London excluding Saturdays or Sundays;

“biomass” means fuel used in a generating station of which at least 98 per cent of the energy content (measured over a period of one month) is derived from plant or animal matter or substances derived directly or indirectly therefrom (whether or not such matter or substances are waste) and includes agricultural, forestry or wood wastes or residues, sewage and energy crops (provided that such plant or animal matter is not or is not derived directly or indirectly from fossil fuel);

“commissioned” means the completion of a process of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a generating station in order to demonstrate that the generating station is capable of commercial operation;

“connected person”, in relation to an owner or operator of a generating station, or a party to a qualifying arrangement, means a person connected to him within the meaning of section 839 of the Income and Corporation Taxes Act 1988 <sup>M3</sup>;

“declared net capacity” means the highest generation of electricity (calculated by adding together the highest generation of electricity at the main terminals of each alternator and dynamo) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant;

“designated electricity supplier” means any electricity supplier supplying electricity in England and Wales;

“eligible NIROC” means a NIROC that satisfies the conditions for eligibility set out in Schedule 3;

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“eligible renewable sources” has the meaning given to it in article 11;

“energy content” of a fuel means the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel;

“energy crops” means a plant crop planted after 31st December 1989 and grown primarily for the purpose of being used as fuel;

“gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

“hydro generating station” means a generating station which is wholly or mainly driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and the “generating station” extends to all turbines supplied by the same civil works, except that any turbine driven by a compensation flow supplied by those civil works where there is a statutory obligation to maintain such compensation flow in a natural water course shall be regarded as a separate hydro generating station;

“interconnector” means the electric lines, electrical plant and meters operated solely for the transfer of electricity between a transmission and distribution network in Great Britain and a transmission and distribution network in another country or in Northern Ireland;

“large hydro generating station” means a hydro generating station which has, or has had at any time since 1st April 2002, a declared net capacity of more than 20 megawatts;

“late payment period” in relation to an obligation period, means the period from the specified day in relation to that obligation period to the following 30th November;

“micro hydro generating station” means a hydro generating station which—

- (a) has a declared net capacity of 1.25 megawatts or less;
- (b) has always been in private ownership and operation; and
- (c) has never generated electricity under an arrangement which has ever been a qualifying arrangement as defined in section 33 of the Act (as that section was originally enacted);

“NIRO Order” means any order made pursuant to article 52 of the Northern Ireland Energy Order;

“NIROC” means a certificate issued by the Northern Ireland Authority under article 54 of the Northern Ireland Energy Order and pursuant to a NIRO Order and, save where the context otherwise requires, includes a replacement NIROC;

“NIROC identifier” means an identifier unique to a NIROC determined by the Northern Ireland Authority and containing the following information (or reference to that information in coded format)—

- (i) the month and year during which the electricity was generated;
- (ii) the location of the generating station;
- (iii) a description of the generating station including reference to the source or sources of fuel used to generate electricity by that generating station;
- (iv) the date of issue of the NIROC; and
- (v) a number allocated to a NIROC by the Northern Ireland Authority in accordance with a NIRO order.

“nominated person” has the same meaning in this Order as is given to it in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 <sup>M4</sup>;

“Non-Fossil Fuel Order” means (except where used in Schedule 3) any of the following orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994 <sup>M5</sup>; the Electricity

(Non-Fossil Fuel Sources) (Scotland) Order 1994<sup>M6</sup>; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997<sup>M7</sup>; the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997<sup>M8</sup>; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998<sup>M9</sup>; and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999<sup>M10</sup>;

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

“Northern Ireland Electricity Order” means the Electricity (Northern Ireland) Order 1992<sup>M11</sup>;

“Northern Ireland Energy Order” means the Energy (Northern Ireland) Order 2003<sup>M12</sup>;

“Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Northern Ireland Energy Order;

“obligation period” means any of the periods referred to in the first column of Schedule 1;

“on land” in relation to the location of a generating station means wholly or partly on land above mean high water level;

“particulars” in relation to a ROC has the meaning given to it in paragraph 2 of Schedule 2;

“plant”, with reference to crops or plant matter, includes shrubs and trees;

“pyrolysis” means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

“qualifying arrangement” means (except in the definition of “micro hydro generating station” and in Schedule 3) an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under section 67 of the Utilities Act 2000);

“qualifying certificate” means a certificate issued pursuant to an order made under section 32 of the Act and which relates to electricity produced from eligible renewable sources, or an eligible NIROC;

“Register” has the meaning given to it in article 4(1);

“registered holder” has the meaning given to it in paragraph 2 of Schedule 2;

“renewables obligation” has the meaning given to it in article 3 except where this term is referred to in articles 15(5), 15(6), 15(7), 18(5), 18(6), 18(11), 18(12), 18(13), 18(21), 18(23) (a) and 18(23)(e);

“replacement NIROC” means a NIROC issued in accordance with the provisions of a NIRO Order to replace another NIROC;

“replacement ROC” means a ROC issued in accordance with article 5(3)(b) and (4);

“ROC” means a certificate issued by the Authority under section 32B of the Act and pursuant to this Order;

“ROC identifier” has the meaning given by paragraph 2 of Schedule 2;

“ROC sequence number” has the meaning given to it in article 4(9);

“specified day”, in relation to an obligation period, means the 1st October immediately following it;

“transmission and distribution network” means any transmission system or any distribution system or both (as transmission system is defined and distribution system is used in the definition of “distribute”, in section 4(4) of the Act<sup>M13</sup>) in Great Britain or any equivalent system in another country or in Northern Ireland;

“United Kingdom supplier” means a designated electricity supplier, an electricity supplier supplying electricity in Scotland or a Northern Ireland supplier;

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“waste” has the meaning given to it in section 75(2) of the Environmental Protection Act 1990<sup>M14</sup> as that subsection will have effect once it has been amended by paragraph 88 of Schedule 22 to the Environment Act 1995<sup>M15</sup>, but does not include gas derived from landfill sites or gas produced from the treatment of sewage; and

the expression “the United Kingdom” includes the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the Continental Shelf Act 1964<sup>M16</sup>.

(2) For the purposes of the definition of “hydro generating station”, the “civil works” which are to be regarded as supplying a particular turbine (“the relevant turbine”) are all the man-made weirs, man-made structures and man-made works for holding water which are located on the inlet side of the relevant turbine, but excluding any such weirs, structures or works which supply another turbine before water is supplied to the weirs, structures and works which supply the relevant turbine.

(3) Any reference in this Order to the provision of information “in writing” shall include the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(4) Unless the context otherwise requires any reference in this Order to a numbered article or Schedule is a reference to the article in or the Schedule to this Order bearing that number and any reference in an article or a Schedule to a numbered paragraph is a reference to the paragraph of that article or Schedule bearing that number.

(5) Any reference in this Order to the supply of electricity shall, in respect of a supply made to customers in Northern Ireland, be construed in accordance with the definition of “supply” in article 3 of the Northern Ireland Electricity Order.

#### Marginal Citations

- M1** [S.I. 2002/914](#), as amended by [S.I. 2004/924](#).
- M2** [S.I. 2004/924](#).
- M3** 1988 c. 1. Section 839 was amended by the [Finance Act 1995 \(c. 4\)](#), [section 74](#) and Schedule 17, paragraph 20
- M4** [S.I. 2000/2727](#), as amended by [S.I. 2001/3268](#)
- M5** [S.I. 1994/3259](#), as amended by [S.I. 1995/68](#)
- M6** [S.I. 1994/3275](#) (S.190)
- M7** [S.I. 1997/248](#)
- M8** [S.I. 1997/799](#) (S.76)
- M9** [S.I. 1998/2353](#)
- M10** [S.I. 1999/439](#) (S.24)
- M11** [S.I. 1992/231](#) (N.I. 1)
- M12** [S.I. 2003/419](#) (N.I. 6).
- M13** [Section 4\(4\)](#) was amended by section 28 of the Utilities Act 2000 and section 135 of the Energy Act 2004.
- M14** 1990 c. 43.
- M15** 1995 c. 25. At the time of the making of this Order paragraph 88 of Schedule 22 to the Environment Act 1995 has only been brought into force for the purposes of the Landfill (Scotland) Regulations 2003, SSI. 2003/235, but it is to be treated as if it had been brought into force for all purposes in this article.
- M16** 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by the [Oil and Gas \(Enterprise\) Act 1982 \(c. 23\)](#), [section 37](#) and Schedule 3, paragraph 1.

## The renewables obligation

3.—(1) The renewables obligation is that, subject to articles 7, 8, 9 and 10 each designated electricity supplier shall before each specified day produce to the Authority evidence showing—

- (a) that it has supplied to customers in Great Britain during the obligation period to which the specified day relates such amount of electricity generated from eligible renewable sources as is determined under article 6; 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.

(2) The evidence referred to in paragraph (1) is certificates issued by the Authority under section 32B(2) of the Act, provided that such certificates relate to electricity generated from eligible renewable sources.

(3) A certificate referred to in paragraph (2) shall be regarded as produced to the Authority as the evidence or part of the evidence required under paragraph (1) in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a ROC, the ROC identifier (as defined in paragraph 2 of Schedule 2).

(4) Without prejudice to paragraph (3), the Authority may draw up procedural guidelines for the production of certificates as the evidence or part of the evidence required under paragraph (1).

(5) An electricity supplier has a renewables obligation in respect of an obligation period if it supplies electricity in England and Wales at any time during that period regardless of whether it supplies electricity in England and Wales for the whole of that period.

## ROCs

4.—(1) The Authority shall establish and maintain a register of ROCs (“the Register”) which shall be conclusive as to whether or not a ROC subsists and as to the person who is for the time being its registered holder.

(2) Schedule 2 shall have effect with respect to the Register.

(3) A ROC 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 2, the Authority shall ensure that the Register contains, by way of entries made in it—

- (a) an accurate record of the particulars of each ROC 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 article 9; and
- (b) in addition to the record of the particulars of each ROC, a list of the names of all persons who are either the registered holder of a ROC or, although not at that time the registered holder of a ROC, have notified the Authority that they wish an entry to be made and maintained in respect of them as prospective registered holders of ROCs.

(5) Only the registered holder of a ROC may use it as the evidence or as part of the evidence required from him under article 3(1) and a ROC 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.

(6) The Authority shall not issue a ROC—

- (a) in respect of any electricity generated by a particular generating station in a particular month if it has previously issued a certificate under section 32B of the Act in respect of

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any such electricity other than under this Order and whether or not any such certificate previously issued has been revoked; or

- (b) certifying the matters within section 32B(2A) of the Act, 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.

(7) Except as provided in paragraph (8), ROCs (other than replacement ROCs) shall be issued by the Authority to the operator of a generating station by which the relevant electricity was generated in a particular month where the Authority is satisfied that each of the relevant criteria in paragraph (10) is met.

(8) 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 nominated person (“the relevant output”), ROCs (other than replacement ROCs) appropriate to the amount of the relevant output generated in a particular month shall be issued by the Authority where it is satisfied that each of the relevant criteria in paragraph (10) is met—

- (a) where the nominated person is entitled to the relevant output under or in compliance with a qualifying arrangement only to electricity suppliers notified to the Authority by the nominated person as being purchasers of the relevant output and to each in such quantities as are appropriate to the amount of the relevant output which the nominated person notifies the Authority each has purchased (subject to the total amount of ROCs available to be so issued); or
- (b) where one or more electricity suppliers are entitled to the relevant output under a qualifying arrangement only to those electricity suppliers, each in proportion to its entitlement.

(9) The Authority shall when issuing ROCs (other than replacement ROCs which shall be issued in accordance with article 5(3)(b) and (4))—

- (a) allocate a number (“the ROC sequence number”) to each ROC issued;
- (b) allocate ROC sequence numbers sequentially in ascending numerical order to all the ROCs issued in respect of electricity generated from eligible renewable sources by a particular generating station in a particular month;
- (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 ROCs in respect of that month firstly to the electricity suppliers to whom paragraph (8)(a) or (b) applies in that month on the basis of information provided to it by the nominated person and 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 nominated person, to the operator of that generating station.

(10) The criteria referred to in paragraphs (7) and (8) and in article 5(3) are—

- (a) the Authority has previously confirmed in writing to the operator of the generating station to which the ROC relates that the generating station is accredited as being a generating station capable of generating electricity from eligible renewable sources and the Authority has not since withdrawn that accreditation;
- (b) the Authority has been provided in writing with all the information listed in paragraph 2(b) (i) to (iii) of Schedule 2 together with any other information which it reasonably requires in order to assess whether the ROC should be issued and it is satisfied that such information is accurate and reliable;
- (c) 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) applicable to the relevant electricity that—

- (i) he has not made 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 in it not having been supplied by an electricity supplier to customers in Great Britain (or, in the case of a ROC certifying the matters within section 32B(2A) of the Act, by a Northern Ireland supplier to customers in Northern Ireland);
  - (ii) he has not consumed the electricity himself in such circumstances that its consumption has resulted in the electricity not having been supplied by an electricity supplier to customers in Great Britain (or, in the case of a ROC certifying the matters within section 32B(2A) of the Act, by a Northern Ireland supplier to customers in Northern Ireland); and
  - (iii) he is not a person mentioned in article 11(3)(b)(ii) or article 11(13)(b)(ii);
- (d) where the electricity has been generated on land in Northern Ireland and supplied to customers in Great Britain, the operator of the generating station has provided the Authority with evidence of the following matters and the Authority is satisfied with such evidence—
- (i) the quantity, date and period of time (referred to in this sub-paragraph as “the relevant period”) during the particular month when the electricity from eligible renewable sources was generated by the generating station;
  - (ii) that such electricity was delivered by means of a transmission and distribution network in Northern Ireland from the generating station to an interconnector between Great Britain and Northern Ireland during each relevant period;
  - (iii) that such electricity flowed across such interconnector to Great Britain during each relevant period;
  - (iv) that no electricity flowed or was claimed by a user of the interconnector or the interconnector operator to have flowed across such interconnector in the opposite direction during each relevant period; and
  - (v) that such interconnector was capable of conveying such quantity of electricity (together with any other electricity which was contracted to be conveyed) during each relevant period;
- (e) where the electricity was not generated on land in Great Britain or in Northern Ireland and was supplied to customers in Great Britain, the operator of the generating station has provided the Authority with evidence of the matters listed in either paragraph (10)(e)(i) or (ii) and the Authority is satisfied with such evidence—
- (i) that at the time the electricity was generated the generating station was connected directly to a transmission and distribution network in Great Britain and electricity generated by that generating station could not have been conveyed to Great Britain via an interconnector; or
  - (ii) that at the time the electricity was generated the generating station was connected directly to a transmission and distribution network in Northern Ireland, that it was not connected directly to any other transmission and distribution network and of those matters listed in paragraph (10)(d)(i) to (v);
- (f) in the case of a ROC certifying the matters within section 32B(2A) of the Act and which relates to electricity which was generated by a generating station which, at the time the electricity was generated, was not directly and exclusively connected to a transmission or distribution network in Northern Ireland, the operator of the generating station has provided the Authority with evidence of the following matters and the Authority is satisfied with such evidence—

- (i) the quantity, date and period of time (referred to in this sub-paragraph as “the relevant period”) during the particular month when the electricity from eligible renewable sources was generated by the generating station;
  - (ii) that such electricity was delivered by means of a transmission and distribution network in Great Britain from the generating station to an interconnector between Great Britain and Northern Ireland during each relevant period;
  - (iii) that such electricity flowed across such interconnector to Northern Ireland during each relevant period;
  - (iv) that no electricity flowed or was claimed by a user of the interconnector or the interconnector operator to have flowed across such interconnector in the opposite direction during each relevant period; and
  - (v) that such interconnector was capable of conveying such quantity of electricity (together with any other electricity which was contracted to be conveyed) during each relevant period;
- (g) in the case of a ROC certifying the matters within section 32B(2A) of the Act which relates to electricity which was generated by a generating station which, at the time the electricity was generated, was directly and exclusively connected to a transmission or distribution network in Northern Ireland, the operator of the generating station has provided the Authority with evidence of the quantity, date and period of time during the particular month when the electricity from eligible renewable sources was generated by the generating station, and the Authority is satisfied with such evidence;
- (h) ROCs in respect of the relevant electricity generated by the generating station in the particular month have not already been issued; and
- (i) the Authority has not refused to issue a ROC on any of the grounds set out in paragraph (12).
- (11) Where a ROC, if issued, will be issued to an electricity supplier pursuant to paragraph (8)(a) or (8)(b), the references in paragraph (10)(c) to the operator of the generating station shall be treated as references to that electricity supplier; but paragraph (10)(c)(iii) shall not apply.
- (12) The Authority may refuse to issue a ROC in any case where the Authority—
- (a) is not satisfied as to the reliability or accuracy of the information being presented to it in relation to the issue of the ROC;
  - (b) except in the case of a ROC certifying the matters within section 32B(2A) of the Act, considers that the declaration in paragraph (10)(c) is not accurate in relation to the electricity in respect of which the Authority is considering issuing the ROC;
  - (c) except in the case of a ROC certifying the matters within section 32B(2A) of the Act, has reason to believe that the electricity in respect of which the Authority is considering issuing the ROC was consumed in circumstances which resulted in the electricity not having been supplied by an electricity supplier to customers in Great Britain; or
  - (d) is not satisfied that the operator of the generating station has, during the relevant month, complied with any condition to which accreditation of the relevant generating station is subject.
- (13) Where it issues ROCs pursuant to this article 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”) and, in determining that amount, it shall use, in the case of the amounts for “gross output” and “input electricity” (as those two expressions are defined in article 12(5)) the most accurate figures for those amounts which are known to or estimated by



the Authority at the end of the second month following the end of the relevant month and it shall disregard any changes to those figures after the end of the said second month and article 12 shall have effect subject to this sub-paragraph;

- (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 paragraph (10) were not satisfied;
- (c) determine 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); and
- (d) issue ROCs appropriate to the amount of electricity determined pursuant to sub-paragraph (c) to the operator of the generating station or to the electricity supplier in accordance with paragraphs (7) and (8) and in determining the number of ROCs which it is appropriate to issue proceed on the basis that one ROC represents one megawatt hour of electricity.

(14) The Authority shall issue ROCs pursuant to this article in relation to a generating 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) and ROCs in respect of a particular month (“the relevant month”) shall be issued no earlier than the end of the second month following the end of the relevant month.

(15)

- (a) This paragraph applies to generating stations with a declared net capacity of 50 kilowatts or less (“sub-50 kilowatt stations”).
- (b) The operator of a sub-50 kilowatt station may—
  - (i) not less than one month before the beginning of the first month (“the relevant month”) in respect of which the operator requests the issue of ROCs in respect of electricity generated by the relevant station; or
  - (ii) not less than one month before the beginning of any obligation period (“the relevant obligation period”),

give notice in writing to the Authority that its entitlement to ROCs in respect of electricity generated by that station (“the relevant station”) shall be determined on the basis set out in the remainder of this paragraph.

- (c) Sub-paragraph (d) shall apply—
  - (i) where an operator has given notice as specified in paragraph (15)(b)(i), in the case of the relevant station for the remainder of the obligation period during which the relevant month falls and subsequent obligation periods; and
  - (ii) where an operator has given notice as specified in paragraph (15)(b)(ii), in the case of the relevant station for the relevant obligation period and subsequent obligation periods.
- (d) Where this sub-paragraph applies, the reference to “month” in each place where it occurs in articles 2(1) (definition of biomass) 4, 5, 10, 11 and 12 and Schedule 2 shall be taken to be a reference to “obligation period”, subject to the following exceptions—
  - (i) in article 4(13)(a) the references to “the second month” and to “the said second month” shall remain unchanged;
  - (ii) in article 4(14) the words “of each month” shall be omitted, and the reference to “the end of the second month” shall remain unchanged; and
  - (iii) in paragraph 2(b)(i) of Schedule 2 the words “the month and year” shall be replaced by “the obligation period”.

- (e) An operator who has given notice under sub-paragraph (b) may—
  - (i) if he gave that notice under paragraph (15)(b)(i), not less than 1 month before the beginning of any obligation period following the obligation period during which the relevant month falls; or
  - (ii) if he gave that notice under paragraph (15)(b)(ii), 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 sub-paragraph (b).
- (f) Where an operator gives notice under sub-paragraph (e) the Authority shall, from the beginning of the obligation period in respect of which the operator gave that notice, determine the operator's entitlement to ROCs in respect of electricity generated by the relevant station on the basis set out in paragraph (14) above.

### Revocation of ROCs

#### 5.—(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 by the operator of that generating station pursuant to article 4(10)(c) or by the electricity supplier pursuant to article 4(11) is false or that a ROC 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, revoke all ROCs issued in respect of that generating station in that month;
- (b) shall revoke any ROC certifying the matters within section 32B(2A) of the Act 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;
- (c) shall, in accordance with the procedure laid down in paragraph (2), revoke any ROC where it is otherwise satisfied that the ROC is inaccurate;
- (d) may, in accordance with the procedure laid down in paragraph (2), revoke any ROC where—
  - (i) the Authority is no longer satisfied that the ROC 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 ROC; or
  - (iii) the Authority has been unable, due to a failure or refusal by any person (whether inside or outside England and Wales) to provide the Authority with any information reasonably requested by it, to check the accuracy of either the ROC or any information which the Authority relied upon prior to the issue of the ROC; and
- (e) shall, in reaching a decision as to the inaccuracy of a ROC for the purposes of paragraph (1)(c) and in exercising its powers to revoke a ROC pursuant to paragraph (1)(d), disregard any changes to the amounts for “gross output” and “input electricity” (as those two expressions are defined in article 12(5)) which were used by it (as provided in article 4(13)(a)) 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) Where the Authority revokes ROCs in accordance with paragraph (1)(c) or (d), it shall revoke the appropriate number of ROCs from those issued in respect of the generating station in respect of a particular month in descending numerical order of ROC sequence number, deleting those ROCs previously allocated the highest ROC sequence numbers and remaining on the Register from the Register in advance of those with lower ROC sequence numbers and in determining the number of ROCs which it is appropriate to revoke it shall proceed on the basis that one ROC represents one megawatt hour of electricity (with any exact half megawatt being rounded upwards).

- (3) Where the Authority has revoked a ROC—
- (a) it shall as soon as practicable give notice of such revocation in writing to the registered holder of the ROC at the time of revocation;
  - (b) other than when a ROC has been revoked in accordance with paragraph (1)(a), the Authority may, in circumstances where it considers it appropriate to do so, issue a replacement ROC in accordance with the procedures laid down in paragraph (4) provided that it is satisfied that each of the relevant criteria in article 4(10) is met and such ROC shall be treated as if issued under article 4.
- (4) Where pursuant to paragraph (3)(b) the Authority issues a replacement ROC it shall—
- (a) allocate to the replacement ROC the lowest ROC sequence number of any ROC 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 ROC which has not itself been revoked;
  - (b) issue each replacement ROC to the person to whom the ROC issued in respect of that generating station and that month and bearing the same ROC sequence number was previously issued; and
  - (c) proceed on the basis that one ROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

### **The amount of the renewables obligation**

6.—(1) The amount of electricity referred to in article 3(1)(a), in respect of an obligation period, is such amount of electricity as equals the relevant percentage of all the electricity supplied by the designated electricity supplier to customers in England and Wales during the obligation period (as determined pursuant to paragraph (3)), such amount being rounded to the nearest whole megawatt hour (with any exact half megawatt hour being rounded upwards).

(2) In paragraph (1) “the relevant percentage” means, in respect of an obligation period, the percentage set out in the second column of Schedule 1 against the reference to that obligation period in the first column of Schedule 1.

(3) For the purposes of paragraph (1) the amount of the electricity supplied by the designated electricity supplier to customers in England and Wales during an obligation period is to be determined by taking the aggregate of the estimated figures for its total sales of electricity to customers in England and Wales for each of the twelve periods of approximately one month falling wholly or mainly within the obligation period as reflected in the statistics contained in Table 5.5 of “Energy Trends” as that table appears on the Department of Trade and Industry's website on the 1st August immediately following the end of the obligation period.

(4) Where Table 5.5 of “Energy Trends” is not available in respect of any period the reference in paragraph (3) to Table 5.5 shall be taken to be to such table as is published by the Department of Trade and Industry in substitution for Table 5.5.

(5) Each designated electricity supplier shall furnish to the Department of Trade and Industry the estimated figures relating to its total sales of electricity to customers in England and Wales during an obligation period for incorporation in the statistics referred to in paragraph (3) by no later than the 20th June immediately following the end of the obligation period and this obligation shall be independent of any obligation to furnish those figures which arises otherwise than under this Order.

(6) Each designated electricity supplier shall before 7th August in each year inform the Authority of the amount in megawatt hours of its renewables obligation in respect of the last obligation period which ended before the 7th August in question and the amount of all electricity supplied by that designated electricity supplier to customers in England and Wales during that obligation period (as determined pursuant to paragraph (3)).

### **Alternative way of discharging renewables obligation: payments**

7.—(1) Instead of producing certificates pursuant to article 3, a designated electricity supplier may discharge (in whole or in part) its renewables obligation in relation to a particular obligation period by making a payment to the Authority before the specified day relating to that obligation period.

(2) Subject to paragraphs (3) to (5), the payment to be made under paragraph (1) is thirty two pounds and thirty three pence for each megawatt hour of electricity generated from eligible renewable sources for which the designated electricity supplier does not produce certificates pursuant to article 3 or article 9 or NIROCs pursuant to article 8 (“the buy-out price”).

(3) If, in the case of the calendar year 2005 or any subsequent calendar year, the annual retail prices index for that year (“the later year”) is higher or lower than that for the previous year, the buy-out price relating to the obligation period beginning on the 1st April immediately following the later year shall be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year.

(4) When the buy-out price is calculated under paragraph (3) the result shall be rounded to the nearest penny (with any exact half of a penny being rounded upwards).

(5) In this article and articles 18 and 19 “the retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office of National Statistics; or
- (b) where the index is not published for a year, any substituted index or figures published by that Office.

### **Alternative way of discharging renewables obligation: NIROCs**

8.—(1) Subject to article 10(1), instead of producing certificates pursuant to article 3, a designated electricity supplier may discharge (in whole or in part) its renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with this article eligible NIROCs issued in respect of electricity that has been supplied to customers during that obligation period.

(2) A NIROC referred to in paragraph (1) shall be regarded as produced to the Authority in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which is treated as holding the NIROC for the purposes of the NIRO Order under which it was issued a notification in writing identifying the NIROC to be so produced and giving its NIROC identifier.

(3) Without prejudice to paragraph (2), the Authority may draw up procedural guidelines for the production of NIROCs under this article.

### **Alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2A) of the Act**

9.—(1) Subject to article 10(1), instead of producing certificates pursuant to article 3, a designated electricity supplier may discharge (in whole or in part) its renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with this article certificates issued by the Authority and certifying the matters in section 32B(2A) of the Act, provided that such certificates relate to electricity generated from eligible renewable sources.

(2) A certificate referred to in paragraph (1) shall be regarded as produced to the Authority in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a ROC, the ROC identifier (as defined in paragraph 2 of Schedule 2).

(3) Without prejudice to paragraph (2), the Authority may draw up procedural guidelines for the production of certificates under this article.

### **Further provision in relation to production of ROCs and NIROCs**

**10.**—(1) A designated electricity supplier may discharge up to 25 per cent of its renewables obligation in respect of an obligation period by producing to the Authority certificates issued by the Authority under section 32B of the Act and eligible NIROCs relating to electricity supplied in the immediately preceding obligation period.

(2) In respect of any obligation period which falls –

- (a) within the period from 1st April 2005 up to and including 31st March 2006, no more than 25 per cent;
- (b) within the period from 1st April 2006 up to and including 31st March 2011, no more than 10 per cent; and
- (c) within the period from 1st April 2011 up to and including 31st March 2016, no more than 5 per cent

of a designated electricity supplier's renewables obligation may be satisfied by the production of certificates issued by the Authority under section 32B of the Act and eligible NIROCs issued in respect of generating stations which during the month to which a ROC or NIROC relates, have been fuelled partly by fossil fuel (as defined in article 11) and partly by biomass (and by no other fuel)

(3) A designated electricity supplier shall not produce to the Authority a certificate issued under section 32B of the Act or a NIROC which has previously been or simultaneously is produced to the Northern Ireland Authority under a NIRO Order.

### **Eligible renewable sources**

**11.**—(1) Subject to article 12, electricity shall be considered to have been generated from eligible renewable sources to the extent that it has been generated from renewable sources and provided that it has not been generated by an excluded generating station as specified in paragraphs (2) to (13).

(2) The following shall be excluded generating stations—

- (a) large hydro generating stations except those first commissioned after 1 April 2002;
- (b) subject to paragraphs (6) and (7), generating stations (other than micro hydro generating stations) which were first commissioned before 1st January 1990 and where the main components have not been renewed since 31st December 1989 as described in paragraph (14);
- (c) generating stations located outside the United Kingdom, except generating stations which are not located on land and which are directly and exclusively connected to a transmission or distribution network located in Northern Ireland; and
- (d) generating stations generating electricity under the arrangements or additional arrangements referred to in article 35(1) of the Northern Ireland Electricity Order.

(3)

(a) This paragraph applies where—

- (i) a qualifying arrangement (“the applicable qualifying arrangement”) provided for the building of a generating station at a specified location (“the location”);
- (ii) the applicable qualifying arrangement was terminated due to the operator of the generating station to which it applied having committed an unremedied breach of it; and

- (iii) the last period in the tables contained in Schedule 1 to the Non-Fossil Fuel Order which relates to the applicable qualifying arrangement has not expired.
  - (b) A generating station—
    - (i) which is situated at the location; and
    - (ii) to which the applicable qualifying arrangement applied at the time it was commissioned, or which is owned or operated by a person who was a party to the applicable qualifying arrangement (or who is a connected person or a linked person in relation to any such party),shall be an excluded generating station.
  - (c) Sub-paragraph (b) shall not apply to a station which, during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.
  - (d) In this paragraph and in paragraph (13), in relation to a person who is a party to the applicable qualifying arrangement (“the first person”), another person (“the second person”) is a “linked person” where the second person has given or has arranged to give or has ensured or has arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location.
  - (e) The references in sub-paragraph (d) to the first person and the second person shall include any person who is a connected person in relation to either of them.
- (4) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste unless—
- (a) the only waste or wastes by which it is fuelled in that month is or are biomass or liquids comprised wholly or mainly of hydrocarbon compounds; or
  - (b) all the waste by which it is fuelled in that month which is not biomass has first been manufactured into fuel which is in either a gaseous or liquid form (or both) by means of plant and equipment using advanced conversion technologies only.
- (5) A generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by any other fuel (or fuels) other than biomass.
- (6) A generating station shall not be an excluded generating station by virtue of paragraph (2)(b) in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).
- (7) A generating station shall not be an excluded generating station by virtue of paragraph (2)(b) in any month during which it is fuelled wholly by biomass, if—
- (a) prior to 1st April 2003 at least 75 per cent of the energy content of the fuel by which it was fuelled was derived from fossil fuel; and
  - (b) during no month (being a month after March 2004) after the first month during which it was fuelled wholly by biomass has the energy content of the fuel by which it was fuelled been derived as to more than 75 per cent from fossil fuel.
- (8)
- (a) After 31st March 2009 a generating station which in any month is fuelled partly by fossil fuel and partly by biomass (and by no other fuel) shall be an excluded generating station during that month if, during that month, less than the specified percentage of the energy content of the biomass derives from energy crops.
  - (b) In sub-paragraph (a), “the specified percentage” means, in respect of any month from 1st April 2009 until 31st March 2010, 25 per cent; in respect of any month from 1st April

2010 until 31st March 2011, 50 per cent; and in respect of any month from 1st April 2011 until 31st March 2016, 75 per cent.

(9) After 31st March 2016 a generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).

(10) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by peat.

(11) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by any substance derived directly or indirectly from any of the substances referred to in paragraph (15)(a)(i) unless that substance is a substance falling within paragraph (15)(a)(ii) or it is waste or a component of biomass.

(12) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste where all the waste which is neither biomass nor liquids comprised wholly or mainly of hydrocarbon compounds is or is derived directly or indirectly from one or more of the substances referred to in paragraph (15)(a)(i).

(13)

(a) This paragraph applies where an extant qualifying arrangement (“the applicable qualifying arrangement”) provides for the building of a generating station (“the specified station”) at a specified location (“the location”) and the specified station has not been commissioned.

(b) A generating station—

(i) which is situated at the location; and

(ii) which is owned or operated by a person who is a party to the applicable qualifying arrangement, or is a connected person or a linked person (as defined in paragraph (3)(d)) in relation to any such party,

shall be an excluded generating station.

(c) Sub-paragraph (b) shall not apply to a station which, during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.

(14) For the purposes of paragraph (2)(b), the main components of a generating station shall only be regarded as having been renewed since 31st December 1989 where—

(a) in the case of a hydro generating station the following parts have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date—

(i) either all the turbine runners or all the turbine blades or the propeller; and

(ii) either all the inlet guide vanes or all the inlet guide nozzles; or

(b) in the case of any other generating station all the boilers and turbines (driven by any means including wind, water, steam or gas) have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date.

(15) In this article and in Schedule 3—

(a) “fossil fuel” means—

(i) coal, lignite, natural gas (as defined in the Energy Act 1976<sup>M17</sup>) and crude liquid petroleum; and

(ii) anything which is derived directly or indirectly from any of the substances referred to in sub-paragraph (a)(i) which (except as mentioned below) is created for the purpose of being used as a fuel,

other than anything (not being a liquid comprised wholly or mainly of hydrocarbon compounds), which is or is derived directly or indirectly from any of the substances

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referred to in sub-paragraph (a)(i), which is waste or a component of biomass; and for the purposes of sub-paragraph (a)(ii) a liquid comprised wholly or mainly of hydrocarbon compounds need not be created for the purposes of being used as a fuel;

- (b) “waste” is to be regarded as including anything derived directly or indirectly from waste (as that term is defined in article 2(1)); and
- (c) “standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station.

(16) In this article and in article 10 and in Schedule 3, in determining whether a generating station is fuelled by a particular fuel regard is to be had only to fuel which it uses to generate electricity.

(17) For the purposes of this article and article 10 and Schedule 3, fossil fuel or waste which a generating station uses for—

- (i) the ignition of gases of low or variable calorific value;
- (ii) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature;
- (iii) emission control; or
- (iv) standby generation or the testing of standby generation capacity

shall only be treated as comprising fuel used to generate electricity in any month in which the combined energy content of the fossil fuel or waste, or both, which the generating station uses for those purposes exceeds 10 per cent of the energy content of the energy sources by which it is fuelled.

(18) For the purposes of this article and Schedule 3, a generating station shall be regarded as being situated at a location provided for by an extant qualifying arrangement whether it is situated wholly or partly at that location.

#### Marginal Citations

M17 [1976 c. 76](#)

### Calculation of amount of electricity generated from eligible renewable sources

**12.—**(1) Subject to paragraphs (2) and (4), the amount of electricity generated by a generating station which is to be regarded as having been generated from eligible renewable sources in any month is to be calculated by multiplying the renewable output of that generating station in that month by a proportion which is equal to the proportion which the net output of that generating station in that month bears to the gross output of that generating station in that month and for the purposes of this calculation—

- (a) “the renewable output” is such amount as is obtained by deducting from the gross output of that generating station in that month the amount of electricity which has been generated from fossil fuel in that month; and
- (b) “the net output” is such amount as is obtained by deducting from the gross output of that generating station in that month the input electricity of that generating station in that month.

(2) In the case of a generating station fuelled wholly or partly by biomass, 2 per cent of the electricity generated from biomass in any month shall be treated as having been generated from fossil fuel unless the operator of the generating station satisfies the Authority that during that month a lesser percentage of the energy content of the biomass derives from fossil fuel, in which case that lesser percentage shall be treated as having been generated from fossil fuel.



(3) In calculating “the renewable output” in the case of a generating station fuelled partly by fossil fuel and partly by another fuel or fuels the amount of electricity which has been generated from fossil fuel is to be determined according to the respective energy contents of the fuels used.

(4) Where the operator of a generating station satisfies the Authority that in any month the input electricity of the generating station does not exceed 0.5 per cent of its gross output, no input electricity shall be deducted from the gross output in calculating the net output of the generating station for that month and, accordingly, the net output shall be equal to the gross output in that month.

(5) In this article—

- (a) “fossil fuel” has the meaning given to it by section 32 of the Act except that the expression also includes any substance which is derived directly or indirectly from fossil fuel (whether or not such substance is waste or a component of biomass);
- (b) “gross output” means, in relation to any month, the total amount of electricity generated by a generating station in that month; and
- (c) “input electricity” means, in relation to any month, all the electricity used by a generating station in that month (whether or not it is generated by the generating station and whether or not it is used while the generating station is generating electricity) for a purpose directly relating to the operation of that generating station, including fuel handling, fuel preparation, maintenance and pumping water.

### **Calculation of amount of electricity supplied to customers**

13. Where electricity generated from eligible renewable sources has been sold by the operator of the generating station to an electricity supplier (or to a Northern Ireland supplier, in the case of a generating station which may lawfully be supplied with electricity by a Northern Ireland supplier) and is then purchased from the electricity supplier (or, in the case as aforesaid, from the Northern Ireland supplier) and consumed by the operator of the generating station, such electricity shall be regarded as having been supplied by an electricity supplier (or, as the case may be, by a Northern Ireland supplier) to a customer.

### **Provision of information to the Authority**

14.—(1) The Authority may require a designated electricity supplier to provide it with such information in such form and within such time as it may reasonably require which is, in the Authority's opinion, relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation in relation to any obligation period.

(2) The Authority may request any person who generates, supplies, distributes or transmits electricity in relation to which a ROC has been or may be issued, or any person who buys or sells such electricity or ROCs (otherwise than as a consumer) to provide the Authority with such information in such form and within such time as it may reasonably request in order to carry out any of its functions under this Order.

### **Allocation of payments made under article 7**

15.—(1) The aggregate of the amounts received by the Authority under article 7 in respect of an obligation period (“the relevant obligation period”) (together with any interest thereon received by the Authority) is referred to as “the buy-out fund”.

(2) The Authority shall pay out the buy-out fund, by the 1st December immediately following the relevant obligation period in accordance with the system of allocation specified in paragraphs (3) to (7).

(3) The buy-out fund relating to a relevant obligation period shall be divided amongst the United Kingdom suppliers who meet one or more of the applicable conditions referred to in paragraphs (4),

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(5) and (6) so that each such United Kingdom supplier receives a proportion of the buy-out fund calculated in accordance with paragraph (7).

(4) The applicable condition for a designated electricity supplier is that, in respect of the relevant obligation period, it has complied (in whole or in part) with its renewables obligation by producing qualifying certificates to the Authority.

(5) The applicable condition for an electricity supplier supplying electricity in Scotland is that, in respect of a period contemporaneous with the relevant obligation period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with section 32(1) of the Act by producing qualifying certificates to the Authority.

(6) The applicable condition for a Northern Ireland supplier is that, in respect of a period contemporaneous with the relevant obligation period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with article 52 of the Northern Ireland Energy Order by producing qualifying certificates to the Northern Ireland Authority.

(7) The proportion of the buy-out fund which each United Kingdom supplier is entitled to receive under paragraph (3) is equal to the proportion which the amount of the electricity covered by all the qualifying certificates it has produced as mentioned in paragraphs (4), (5) or (6), bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority in respect of the relevant obligation period or any period contemporaneous with the relevant obligation period, in discharge of any renewables obligation imposed in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order.

### **Exchange of information with the Northern Ireland Authority**

**16.—**(1) The Authority shall as soon as reasonably practicable after the specified day notify the Northern Ireland Authority of the NIROC identifier of each NIROC produced to it by a designated electricity supplier under article 8 and the name of the designated electricity supplier which produced that NIROC and as to the total number of NIROCs produced to the Authority under article 8 in respect of the obligation period to which the specified day relates.

(2) The Authority shall as soon as reasonably practicable after receiving a notification from the Northern Ireland Authority as to the ROC identifiers of ROCs produced to it by the Northern Ireland suppliers under any NIRO Order inform the Northern Ireland Authority of—

- (a) the ROC identifier of any ROC so notified which it has revoked under article 5 and whether it has issued a replacement ROC under article 5(3)(b) in respect of any such ROC;
- (b) the ROC identifier of any ROC so notified that has also been produced by a designated electricity supplier under article 3(2) and the date on which it was also produced.

(3) The Authority shall as soon as reasonably practicable after the specified day notify the Northern Ireland Authority as to the number of certificates produced to the Authority under article 3 and the number of certificates certifying the matters in section 32B(2A) of the Act produced to the Authority under article 9 by each designated electricity supplier in respect of the obligation period to which the specified day relates.

### **Late payments**

**17.—**(1) As soon as reasonably practicable after the specified day in relation to an obligation period (“the obligation period in question”), the Authority shall notify any designated electricity supplier that has not discharged its renewables obligation in full by the specified day (“defaulting supplier”) that it has not fully discharged its renewables obligation, and to what extent.

(2) If a defaulting supplier makes a late payment to the Authority before the end of the late payment period relating to the obligation period in question it shall be treated as having discharged its renewables obligation in full for that obligation period.

(3) If a defaulting supplier pays part of a late payment to the Authority before the end of the late payment period relating to the obligation period in question it shall be treated as having discharged the same proportion of the amount of its renewables obligation which was not discharged by the specified day as the proportion which the partial payment bears to the total late payment required in order for the supplier to be treated under paragraph (2) as having discharged its renewables obligation in full for the obligation period in question.

(4) The Authority shall pay out the late payment fund by the 1st February immediately following the late payment period, in accordance with the system of allocation specified in article 15(3) to 15(7), as if—

- (a) the references in paragraphs (3) and (7) of that article to “the buy-out fund” were references to that late payment fund; and
- (b) the references in paragraphs (3) to (7) of that article to a “relevant obligation period” were references to the obligation period in question.

(5) The Authority shall not, during the late payment period, impose a penalty under section 27A(1) of the Act on any defaulting supplier in respect of that supplier's failure to discharge its renewables obligation in full before the specified day.

(6) In this article—

- (a) “late payment” means the total of—
  - (i) the amount, or additional amount that the defaulting supplier would have paid under article 7 to discharge its renewables obligation in full immediately before the specified day, taking into account any payments already made by the defaulting supplier under that article and any qualifying certificates produced by the supplier to the Authority; and
  - (ii) interest on the amount specified in sub-paragraph (i) charged at the specified rate and calculated on a daily basis, from the specified day to the date on which payment is received by the Authority;
- (b) “the late payment fund” means the aggregate of the amounts received by the Authority under paragraphs (2) and (3) in respect of the obligation period in question (together with any interest received thereon by the Authority); and
- (c) “specified rate” means 5 percentage points above the base rate of the Bank of England as at the first day of the late payment period in relation to any obligation period.

## Mutualisation

**18.—(1)** —As soon as reasonably practicable after the end of the late payment period in relation to an obligation period, the Authority shall—

- (a) determine whether a relevant shortfall has occurred in relation to the obligation period; and
- (b) where a relevant shortfall has occurred, notify each relevant supplier of—
  - (i) the size of the shortfall;
  - (ii) the amount to be recovered from all relevant suppliers in accordance with paragraph (3); and
  - (iii) the amount of the payment that the relevant supplier is required to make under paragraph (4).

(2) Where the Authority notifies relevant suppliers under paragraph (1)(b) it shall publish a notice stating—

- (a) the size of the shortfall; and
- (b) the amount to be recovered from all relevant suppliers in accordance with paragraph (3).

(3) Where a relevant shortfall has occurred, the specified amount shall be recovered from all relevant suppliers in accordance with paragraph (4).

(4) A relevant supplier shall make a payment to the Authority which is the same proportion of the sum to be recovered under paragraph (3) as the proportion which that supplier's renewables obligation for the shortfall period bears to the total of the renewables obligations of all the relevant suppliers for that shortfall period.

(5) When calculating the amount to be recovered from all relevant suppliers in accordance with paragraph (3), the Authority shall, where a non-compliant United Kingdom supplier has complied in part with any renewables obligation imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order by producing qualifying certificates to the Authority or to the Northern Ireland Authority in respect of a shortfall period or any period contemporaneous to the shortfall period, reduce the specified amount in accordance with paragraph (6).

(6) Where paragraph (5) applies, the specified amount shall be reduced by a proportion which is equal to the proportion which the amount of the electricity covered by all the qualifying certificates produced by the non-compliant United Kingdom supplier as mentioned in paragraph (5) bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority in respect of that shortfall period or any period contemporaneous to that shortfall period in discharge of any renewables obligation imposed in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order.

(7) Subject to paragraphs (16) and (17), a payment required under paragraph (4) shall be paid in the following instalments—

- (a) 25 per cent of the total payment required shall be paid to the Authority before the 1st September in the mutualisation period;
- (b) 25 per cent of the total payment required shall be paid to the Authority before the 1st December in the mutualisation period;
- (c) 25 per cent of the total payment required shall be paid to the Authority before the 1st March in the mutualisation period; and
- (d) 25 per cent of the total payment required shall be paid to the Authority before the 1st June in the obligation period immediately following the mutualisation period.

(8) The Authority shall pay out the mutualisation fund in accordance with the system of allocation specified in paragraphs (9) to (13) by the following dates—

- (a) 1st November in the mutualisation period;
- (b) 1st February in the mutualisation period;
- (c) 1st May in the obligation period immediately following the mutualisation period; and
- (d) 1st August in the obligation period immediately following the mutualisation period.

(9) The mutualisation fund relating to a shortfall period shall be divided amongst the compliant United Kingdom suppliers who meet one or more of the applicable conditions referred to in paragraphs (10), (11) and (12) so that each such compliant United Kingdom supplier receives a proportion of the mutualisation fund calculated in accordance with paragraph (13).

(10) The applicable condition for a designated electricity supplier is that, in respect of that shortfall period, it has complied (in whole or in part) with its renewables obligation by producing qualifying certificates to the Authority.

(11) The applicable condition for an electricity supplier supplying electricity in Scotland is that, in respect of a period contemporaneous with the shortfall period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with section 32(1) of the Act by producing qualifying certificates to the Authority.

(12) The applicable condition for a Northern Ireland supplier is that, in respect of a period contemporaneous with the shortfall period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with article 52 of the Northern Ireland Energy Order by producing qualifying certificates to the Northern Ireland Authority.

(13) The proportion of the mutualisation fund which each compliant United Kingdom supplier is entitled to receive under paragraph (9) is equal to the proportion which the amount of the electricity covered by all the qualifying certificates it has produced as mentioned in paragraphs (10), (11) and (12), bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority in respect of the shortfall period or any period contemporaneous with the shortfall period, in discharge of any renewables obligation imposed in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, excluding any qualifying certificates produced by non-compliant United Kingdom suppliers.

(14) Where a relevant shortfall has occurred, if a designated electricity supplier makes a payment to other United Kingdom suppliers in relation to its failure to discharge its renewables obligation in full in relation to the shortfall period (excluding any payments made by the first supplier in respect of mutualisation payments made by the other designated electricity suppliers)—

- (a) the designated electricity supplier who made such payment shall notify the Authority, immediately after making the payments, of which United Kingdom suppliers the payments were made to, how much each supplier received and to which obligation period the payment relates; and
- (b) any designated electricity supplier who received such payments shall notify the Authority immediately after receiving the payment, of the amount it received.

(15) If the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period and, due to the recalculations required under paragraph (16), it is not reasonably practicable for it to pay out the mutualisation fund by the date required by paragraph (8), the Authority shall pay out the mutualisation fund as soon as reasonably practicable after that date.

(16) Where, before the 1st August in the obligation period immediately following the mutualisation period, the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period, the Authority shall, as soon as reasonably practicable—

- (a) recalculate the amount to be recovered under paragraph (3) by reducing the specified amount by the total amount received by the United Kingdom suppliers;
- (b) issue a revised notification to each relevant supplier detailing—
  - (i) the recalculated amount to be recovered from all relevant suppliers in accordance with paragraph (3); and
  - (ii) the recalculated amount of the total payment the relevant supplier is required to make under paragraph (4) (“recalculated supplier payment”) and a breakdown of any instalment payments required after the date of the notification in respect of the recalculated supplier payment in accordance with paragraph (17) (“future instalment payments”).

(17) Where the instalment payments already made by a relevant supplier are less than the recalculated supplier payment required from a relevant supplier, that supplier shall make future

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instalment payments on the dates mentioned in paragraph (7) which have not yet passed, each instalment payment being equal to the outstanding amount divided by the number of future instalment payments.

(18) Where following a recalculation under paragraph (16), a relevant supplier has paid more than the recalculated supplier payment, the Authority shall, where it has received instalment payments under paragraph (7) but has not yet paid out the mutualisation fund, repay to each relevant supplier from the mutualisation fund, the difference (together with any interest received thereon by the Authority) between the amount that the supplier has paid and the recalculated supplier payment.

(19) Where the Authority is required to repay sums to each relevant supplier in accordance with paragraph (18) and the mutualisation fund is insufficient to enable the Authority to repay each relevant supplier in full, the Authority shall reduce the sum to be paid to each supplier by a proportion equal to the proportion which that deficit bears to the amount that would have sufficed for that purpose; and the supplier shall not be entitled to any further payments from the Authority in this regard.

(20) Where following a recalculation under paragraph (16), a relevant supplier has paid more than the recalculated supplier payment but there is no mutualisation fund to pay out, the supplier shall not be entitled to any repayment from the Authority.

(21) Where a designated electricity supplier receives a payment from an electricity supplier supplying electricity in Scotland in relation to the electricity supplier's failure to discharge in full any renewables obligation imposed on it in accordance with section 32(1) of the Act, the designated electricity supplier shall notify the Authority, immediately after receiving the payment, of the amount it received.

(22) Where a person required to make a payment under paragraph (4)—

- (a) fails to make payment in full in accordance with that paragraph, and
- (b) at any time during or after the end of the shortfall period in question, ceases to hold a licence to supply electricity under section 6(1) of the Act,

sections 25 to 28 of the Act shall apply in respect of that person in respect of the obligations imposed by this article, as if that person still held a licence to supply electricity.

(23) In this article—

- (a) “compliant United Kingdom supplier” means a United Kingdom supplier which, at the end of the late payment period has discharged or is treated as if it had discharged in full every renewables obligation imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, in respect of the obligation period to which that late payment period relates, or any period contemporaneous with that obligation period;
- (b) “mutualisation fund” means the aggregate at any given time of the amounts (excluding any amounts repaid under paragraph (18)) received by the Authority under this article in respect of a shortfall period (together with any interest received thereon by the Authority);
- (c) “mutualisation payment” means a payment required under paragraph (4);
- (d) “mutualisation period” means the second obligation period following a shortfall period;
- (e) “non-compliant United Kingdom supplier” means a United Kingdom supplier which, at the end of the late payment period, has not discharged or is not treated as if it had discharged in full every renewables obligations imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, in respect of the obligation period to which that late payment period relates, or any period contemporaneous with that obligation period;

- (f) “outstanding amount” means the recalculated supplier payment less the total of any instalment payments already made by the relevant supplier in accordance with paragraph (7);
- (g) “payment total” means the total of—
  - (i) the buy out fund in relation to the obligation period in question, immediately before it was paid out in accordance with article 15, and
  - (ii) the late payment fund in relation to the obligation period in question (less any sums paid to the Authority as referred to in article 17(6)(a)(ii)) immediately before it is paid out in accordance with article 17;
- (h) “recalculated supplier payment” has the meaning given by paragraph (16)(b)(ii);
- (i) “relevant shortfall” means, in relation to any obligation period set out in the first column of Schedule 4, a shortfall which is equal to or greater than the corresponding amount set out in the second column of that Schedule;
- (j) “relevant supplier” means any designated electricity supplier with a renewables obligation for the shortfall period, which at the end of the late payment period in relation to the shortfall period, had discharged or is treated as if it had discharged the whole or part of its renewables obligation;
- (k) “the retail prices index” has the same meaning as in article 7;
- (l) “shortfall” means the difference between—
  - (i) the payment total, and
  - (ii) what the payment total would have been if all the designated electricity suppliers who, at the end of the late payment period in relation to an obligation period had not discharged or were not treated as if they had discharged their renewables obligation in full under article 17(2), had made a payment referred to in article 17(6)(a)(i);
- (m) “shortfall period” means an obligation period in respect of which a relevant shortfall occurs;
- (n) “specified amount” means subject to paragraphs (5), (6), (16) and (24), the whole of the relevant shortfall, except to the extent that it exceeds £200,000,000.

(24) If, in the case of the calendar year 2005 or any subsequent calendar year, the annual retail prices index for that year (“the later year”) is higher or lower than that for the previous year, the figure of £200,000,000 used in the definition of “specified amount” shall, in relation to the obligation period beginning on the 1st April immediately following the later year, be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year.

(25) Where the figure of £200,000,000 is modified under paragraph (24) the resulting figure shall be rounded to the nearest pound (with any exact half of a pound being rounded upwards).

### **Functions of the Authority**

**19.** The Authority shall have the functions assigned to it elsewhere in this Order, including any general or specific role, duty or decision making function in addition to the following specific functions—

- (a) the accreditation of generating stations (to be notified to the operator of a generating station which is being accredited in writing from such date and subject to such conditions as the Authority considers appropriate) and the withdrawal of such accreditation or the alteration of any conditions attached to it (such withdrawal or alteration to be notified to the operator of the affected generating station in writing);

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- (b) keeping and maintaining a list of accredited generating stations and the conditions for their accreditation and making such list available to the public;
- (c) issuing and revoking ROCs in accordance with articles 4 and 5;
- (d) keeping and maintaining a list of ROCs which have been revoked and making such list available to the public;
- (e) calculating and publishing before the start of each obligation period (with the exception of the first obligation period to which this Order relates) the amount of the payment per megawatt hour of electricity referred to in article 7 resulting from the adjustments made to reflect changes in the retail prices index;
- (f) calculating and publishing before the start of each obligation period (with the exception of the first obligation period to which this Order relates) the figure referred to in article 18(24) resulting from the adjustments made to reflect changes in the retail prices index;
- (g) by 1st April each year (with the exception of 1st April 2005 and 2006) publishing an annual report in relation to the obligation period ending on the 31st March in the previous calendar year, such report to include details (or, in the case of sub-paragraph (ix), a summary) of—
  - (i) the compliance of each designated electricity supplier with its renewables obligation, including the extent to which that obligation has been met by the production of ROCs pursuant to article 3 or article 9, payments made under article 7 or the production of NIROCs pursuant to article 8, or treated as met by payments made under article 17;
  - (ii) the sums received by each United Kingdom supplier under articles 15 and 17;
  - (iii) the number of ROCs issued by the Authority in accordance with articles 4 and 5, the number of ROCs and other certificates accepted by it as evidence under article 3(1), the number of NIROCs accepted by it under article 8, the number of ROCs and other certificates accepted by it under article 9, and the number of ROCs issued but not yet deleted in respect of the obligation period;
  - (iv) the number of ROCs issued by the Authority in accordance with articles 4 and 5 broken down into different descriptions of generating stations (as referred to in paragraph 2 of Schedule 2);
  - (v) any notifications made by the Authority under article 18(2);
  - (vi) any instalment payments made to the Authority in accordance with article 18(7), during the period to which the annual report relates;
  - (vii) the sums received by each compliant United Kingdom supplier under article 18(9), during the period to which the annual report relates;
  - (viii) any recalculations carried out by the Authority in accordance with 18(16), during the period to which the annual report relates;
  - (ix) the outcome of any enquiries or investigations conducted by the Authority pursuant to paragraph (h); and
  - (x) any other matters which the Authority considers relevant to the implementation of this Order;
- (h) monitoring implementation of the renewables obligation and compliance by designated electricity suppliers and operators of generating stations with this Order (including compliance by operators of generating stations with any conditions attached to their accreditation) and such monitoring may include conducting enquiries or investigations into the quantities of electricity generated from eligible renewable sources by accredited generating stations, the quantities of such electricity supplied to customers in Great Britain, the transfer and holding of ROCs, the effect of such matters on the making and allocation



of payments under articles 7, 15, 17 and 18 and the effect of the renewables obligation on designated electricity suppliers and the operators of generating stations;

- (i) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to sub-paragraph (h); and
- (j) the provision of such information to the Northern Ireland Authority as the Authority considers may be relevant to the exercise of the Northern Ireland Authority's functions under any NIRO Order.

### **Revocation, transitional and savings**

**20.**—(1) Subject to paragraphs (2) to (8), the 2002 Order and the 2004 Order are hereby revoked.

(2) The 2002 Order shall continue to apply in respect of the renewables obligation of each designated electricity supplier to produce to the Authority evidence in accordance with the terms of article 3 of the 2002 Order, before the specified days of 1st October 2003, 1st October 2004 and 1st October 2005 respectively; and for the purposes of this paragraph and paragraphs (3) to (8), the first three lines in the column headed “Obligation period”, and the first three percentages specified in the column headed “Percentage of total supplies” in Schedule 1 to the 2002 Order shall continue to apply.

(3) The 2002 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of article 6(5) of the 2002 Order to furnish information to the Department of Trade and Industry by no later than the dates of 20th June 2003, 20th June 2004 and 20th June 2005, respectively.

(4) The 2002 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of article 6(6) of the 2002 Order to inform the Authority of information before 7th August 2003, 7th August 2004 and 7th August 2005, respectively.

(5) The 2002 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge its renewables obligation in relation to a particular obligation period by making a payment to the Authority before the specified days of 1st October 2003, 1st October 2004 and 1st October 2005, respectively, all in accordance with the terms of article 7 of the 2002 Order.

(6) The 2002 Order shall continue to apply in respect of the obligations of the Authority to pay out the buy-out fund, by 1st December 2003, 1st December 2004 and 1st December 2005, respectively, all in accordance with the terms of article 12 of the 2002 Order.

(7) The 2002 Order shall continue to apply in respect of the obligations of the Authority to pay out the late payment fund, by 1st April 2005 and 1st April 2006, respectively, all in accordance with article 12 of the 2002 Order.

(8) The 2002 Order shall continue to apply in respect of all the functions of the Authority referred to in article 13 of the 2002 Order insofar as they relate to obligation periods under the 2002 Order up to and including the obligation period ending on 31st March 2005.

(9) Where, immediately before the coming into force of this Order, article 2(5) of the 2002 Order had effect in relation to any sub-50 kilowatt station (as defined in article 4(15)), article 4(15) shall apply in relation to that station in respect of the obligation period from 1st April 2005 to 31st March 2006 as if—

- (a) that obligation period were a relevant obligation period for the purposes of article 4(15); and
- (b) the operator of that station had given notice under article 4(15)(b)(ii) in respect of that station not less than one month before the beginning of that obligation period.

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**Changes and effects yet to be applied to :**

- [Instrument rev by S.I. 2006/1004 art 32](#)