STATUTORY RULES OF NORTHERN IRELAND

2013 No. 116

ELECTRICITY

The Renewables Obligation (Amendment) Order (Northern Ireland) 2013

Laid before the Assembly in draft

Made - - - -	*23rd April 2013*
Coming into operation	*1st May 2013*

The Department of Enterprise, Trade and Investment ("the Department") makes the following Order in exercise of the powers conferred upon it by Articles 52 to 55F and 66(3) of the Energy (Northern Ireland) Order 2003(**1**) and section 2(2) of the European Communities Act 1972(**2**) ("the 1972 Act") (as read with paragraph 1A of Schedule 2 to the 1972 Act(**3**)).

The Department is designated(**4**) for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for the references to Annex 5 to Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources(**5**) inserted by this Order into Article 46A of the Renewables Obligation Order (Northern Ireland) 2009(**6**) to be construed as references to Annex 5 to the Directive as amended from time to time.

The Department has had regard to those matters stated in Article 54B(4) of the 2009 Order and has held a review by virtue of Article 54B(8) of that Order.

The Department has consulted the Northern Ireland Authority for Utility Regulation, the General Consumer Council for Northern Ireland, electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources in Northern Ireland and other persons as it considered appropriate in accordance with Article 55E of that Order.

In accordance with Article 66(2) of that Order a draft of this instrument was laid before and approved by a resolution of the Assembly.

(**1**) S.I. 2003/419 (N.I.6) Articles 52 to 55F were substituted by S.R. 2009 No.35
(**2**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
(**3**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Article 3 of S.I. 2007/1388 and Part 1 of the Schedule to the European Union (Amendment) Act 2008.
(**4**) S.I. 2010/761.
(**5**) OJ L 140, 5.6.2009, p.16.
(**6**) S.R. 2009 No. 154 as amended by S.R. 2011 No. 169

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Renewables Obligation (Amendment) Order (Northern Ireland) 2013 and comes into operation on 1st May 2013.

(2) In this Order, "the 2009 Order" means the Renewables Obligation Order (Northern Ireland) 2009(**7**).

Amendments to Article 2 of the 2009 Order (interpretation)

2.—(1) Article 2 of the 2009 Order(**8**) is amended as follows.

(2) In paragraph (1), after the definition of "the 2007 Order" insert—

""2013/14 capacity" means—

(a) in relation to a generating station accredited on or before 30th April 2013, any capacity which—

(i) in the Authority's view, forms part of the station from a date no earlier than 1st May 2013 and no later than 31st March 2014, and

(ii) does not form part of the capacity of the station as accredited;

(b) in relation to a generating station which is registered under Article 50A as a grace period generating station, any capacity which—

(i) in the Authority's view, forms part of the station from a date no later than 31st March 2014, and

(ii) does not form part of the capacity of the station as accredited;

(c) in relation to a generating station which—

(i) was not accredited on or before 30th April 2013,

(ii) was accredited on or before 31st March 2014, and

(iii) is not registered under Article 50A as a grace period generating station,

the capacity of the station as accredited, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2014;

"2013/15 capacity" means any capacity which is—

(a) 2013/14 capacity, or

(b) 2014/15 capacity;

"2014/15 capacity" means—

(a) in relation to a generating station accredited on or before 31st March 2014, any capacity which—

(i) in the Authority's view, forms part of the station from a date no earlier than 1st April 2014 and no later than 31st March 2015, and

(ii) does not form part of the capacity of the station as accredited;

(b) in relation to a generating station which—

(i) was not accredited on or before 31st March 2014, and

(ii) was accredited on or before 31st March 2015,

(**7**) S.R. 2009 No. 154 as amended by S.R. 2010 No. 134 and S. R. 2011 No. 169
(**8**) Article 2 was amended by Article 3 of S.R. 2011 No. 169

the capacity of the station as accredited, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2015;

"2015/16 capacity" means—

(a) in relation to a generating station accredited on or before 31st March 2015, any capacity which—

(i) in the Authority's view, forms part of the station from a date no earlier than 1st April 2015 and no later than 31st March 2016, and

(ii) does not form part of the capacity of the station as accredited;

(b) in relation to a generating station which

(i) was not accredited on or before 31st March 2015, and

(ii) was accredited on or before 31st March 2016,

the capacity of the station as accredited, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2016;".

(3) In paragraph (1), after the definition of "accreditation" insert—

""advanced fuel" means a liquid or gaseous fuel which is produced directly or indirectly from the gasification or the pyrolysis of—

(a) waste, or

(b) biomass;".

(4) In paragraph (1), after the definition of "combined heat and power generating station" insert—

""combustion unit" means a boiler, turbine or engine;".

(5) In paragraph (1), for the definition of "energy crops" substitute—

""energy crops" means—

(a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than twenty years and which is one of the following—

(i) Acer pseudoplatanus (also known as sycamore);

(ii) Alnus (also known as alder);

(iii) Betula (also known as birch);

(iv) Castanea sativa (also known as sweet chestnut);

(v) Corylus avellana (also known as hazel);

(vi) Fraxinus excelsior (also known as ash);

(vii) Populus (also known as poplar);

(viii) Salix (also known as willow);

(ix) Tilia cordata (also known as small-leaved lime); or

(b) a perennial crop which is one of the following—

(i) Arundo donax (also known as giant reed);

(ii) Bambuseae, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as fuel;

(iii) Miscanthus;

(iv) Panicum;

(v) Pennisetum (other than Pennisetum setaceum (also known as fountain grass), Pennisetum clandestinum (also known as kikuyu grass) and Pennisetum villosum (also known as feathertop grass));

(vi) Phalaris;".

(6) In paragraph (1), after the definition of "plant" insert—

""post-2016 capacity" means—

(a) in relation to a generating station accredited on or before 31st March 2016, any capacity which—

(i) in the Authority's view, forms part of the station from a date no earlier than 1st April 2016, and

(ii) does not form part of the capacity of the station as accredited;

(b) in relation to a generating station which—

(i) is accredited, and

(ii) was not accredited on or before 31st March 2016,

the capacity of the station as accredited, together with any additional capacity which, in the Authority's view, forms part of the station;

"pre–2013 capacity" means—

(a) in relation to a generating station accredited on or before 30th April 2013, the capacity of the station as accredited, together with any additional capacity, which in the Authority's view, forms part of the station from a date no later than 30th April 2013;

(b) in relation to a generating station which is registered under Article 50A as a grace period generating station, the capacity of the station as accredited;".

(7) In paragraph (1), after the definition of "qualifying power output" insert—

""qualifying proportion", in relation to electricity generated by a qualifying combined heat and power generating station, is the proportion which the qualifying power output of the station bears to its total power output;".

(8) In paragraph (1), in the definition of "regular biomass"—

(a) in sub-paragraph (d) omit "gasification or pyrolysis;"; and

(b) after sub-paragraph (d) insert—

"(e) advanced fuel;".

(9) In paragraph (1), for the definition of "Renewables Directive" substitute—

""Renewables Directive" means Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, and in Article 46A and Schedules A1 and 3A references to Annex 5 to the Directive are to be construed as references to Annex 5 to the Directive as amended from time to time;".

(10) In paragraph (1), in the definition of "total installed capacity" after sub-paragraph (b) insert —

"(c) in relation to a type of generating capacity forming part of a generating station, the maximum capacity at which that generating capacity could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);".

(11) After paragraph (6) insert—

"(7) Any reference in this Order to a "type of generating capacity" is a reference to one of the following—

(a) pre-2013 capacity;

(b) 2013/14 capacity;

(c) 2014/15 capacity;

(d) 2015/16 capacity;

(e) post-2016 capacity.".

Amendment to Article 4 (biomass and fuels which are to be treated as biomass)

3. For Article 4(1) of the 2009 Order substitute—

"(1) In this Order, "biomass" means fuel which—

(a) falls within paragraph (1A),

(b) falls within paragraph (1B), or

(c) is a fossil derived bioliquid.

(1A) Fuel falls within this paragraph if—

(a) at least 90% of its energy content is derived from relevant material (that is to say, material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae), and

(b) any fossil fuel forming part of the fuel is present following a process—

(i) to which the relevant material has been subject, and

(ii) the undertaking of which has caused the fossil fuel to be present in, on or with that material even though that was not the object of the process.

(1B) Fuel falls within this paragraph if—

(a) at least 90% of its energy content is derived from relevant material (that is to say, material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae),

(b) it is waste, and

(c) any fossil fuel forming part of it was not added to it with a view to the fossil fuel being used as a fuel.".

Amendments to Article 13 (further provision in relation to the production of renewables obligation certificates)

4.—(1) Article 13 of the 2009 Order is amended as follows.

(2) For paragraphs (3) to (6) substitute—

"(3) Subject to paragraph (4), no more than 4% of a designated electricity supplier's renewables obligation may be satisfied by the production of renewables obligation certificates issued in respect of electricity generated from bioliquid.

(4) The limit set out in paragraph (3) does not apply to the production of renewables obligation certificates issued in respect of electricity—

(a) generated by a generating station to which Article 27 applies,

(b) generated by a qualifying combined heat and power generating station which has, as at the date of generation of the electricity, a total installed capacity of less than 1 megawatt,

(c) generated from advanced fuel,

(d) generated in the way described as "energy from waste with CHP" in Schedule 2, or