STATUTORY RULES OF NORTHERN IRELAND

2011 No. 169

ELECTRICITY

The Renewables Obligation (Amendment) Order (Northern Ireland) 2011

Laid before the Assembly in draft

Made - - - -	*23rd March 2011*
Coming into operation	*1st April 2011*

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 of the Energy (Northern Ireland) Order 2033(**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 a Department 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**) in Schedules A1 and 3A inserted by this Order into 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 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 considered appropriate.

(**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 was amended by S.R. 2010 No. 134

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Renewables Obligation (Amendment) Order (Northern Ireland) 2011 and comes into operation on 1st April 2011.

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

Amendments to Article 55(F) of the Energy (Northern Ireland) Order 2003 (interpretation of Articles 52 to 55F)

2.—(1) Article 55F(1) of the Energy (Northern Ireland) Order 2003 (Interpretation of Articles 52 to 55F) is amended as follows;

(2) After the definition of "banding provision" insert—

""bioliquid" has the meaning given by Article 2(h) of Directive 2009/28/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of the use of energy from renewable resources;".

(3) In the definition of "fossil fuel", after "any substance" insert, "other than bioliquid".

Amendments to Article 2 of the 2009 Order (interpretation)

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

(2) In paragraph (1) at the appropriate place in alphabetical order insert each of the following definitions, that is to say—

""biomaterial" means the biodegradable part of—

(a) products, waste and residues of biological origin from agriculture (including vegetal and animal substances), forestry and related industries (including fisheries and aquaculture); and

(b) industrial, commercial and municipal waste;";

""fossil derived bioliquid" means bioliquid produced directly or indirectly from—

(a) coal;

(b) lignite;

(c) natural gas (within the meaning of the Energy Act 1976(**7**));

(d) crude liquid petroleum, or;

(e) petroleum products (within the meaning of the Energy Act 1976);";

""greenhouse gas emission criteria" means the criteria set out in Schedule A1;";

""land criteria" means the criteria set out in Schedule A2;";

""MCS" means the Microgeneration Certification Scheme or equivalent schemes accredited under EN45011 which certify microgeneration products and installers in accordance with consistent standards;";

""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 Schedules A1 and 3A to be construed as references to Annex 5 to the Directive as amended from time to time;"; and

(**7**) 1976 c.76

""sustainability information" means information submitted to the Authority by the operator of a generating station for the purpose of demonstrating that a bioliquid meets the greenhouse gas emission criteria and the land criteria;".

(3) In paragraph (1), for the definition of "total installed capacity", substitute—

""total installed capacity" means—

(a) in relation to a generating station, the maximum capacity at which the station 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);

(b) in relation to a wind turbine, the maximum capacity at which the turbine could be operated for a sustained period without causing damage to it (assuming there was no interruption to the wind powering it);".

(4) In paragraph (2), after each reference to "waste" insert ", fossil derived bioliquid".

(5) For paragraph (4) substitute—

"(4) The fuels referred to in paragraph (3) are—

(a) fossil derived bioliquid;

(b) bioliquid (not being fossil derived bioliquid);

(c) biomass (not being bioliquid);

(d) waste which constitutes a renewable source (not being bioliquid or biomass);

(e) fossil fuel including waste (other than waste falling within sub-paragraphs (a) to (d)).".

Amendments to Article 3 (waste as a renewable source)

4. In Article 3(2) of the 2009 Order, for sub-paragraph (b) substitute—

"(b) is—

(i) for any waste that is a fossil derived bioliquid, the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of that fossil derived bioliquid as a whole,

(ii) for all other waste, the energy content of the fossil fuel from which the waste is in part composed or derived expressed as a percentage of the energy content of that waste as a whole.".

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

5. In Article 4(4) of the 2009 Order after "not being waste" insert "or fossil derived bioliquid".

Fossil derived bioliquid

6. After Article 4 of the 2009 Order (biomass and fuels which are to be treated as biomass) insert —

"**Fossil derived bioliquid**

4A.—(1) For the purpose of this Order, fossil derived bioliquid is to be treated as being in part composed of (or in part derived from) fossil fuel.

(2) Where fossil derived bioliquid (not being waste) is used, whether on its own or not, to fuel a generating station, the proportion of fossil derived bioliquid which is to be treated as being composed of (or derived from) fossil fuel—

(a) is to be determined by the Authority, and

(b) is the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly derived expressed as a percentage of the energy content of the fossil derived bioliquid as a whole.

(3) It is for the operator of the generating station to demonstrate to the Authority's satisfaction what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.

(4) When determining that proportion the Authority is entitled to have regard to any material (whether or not produced to it by the operator of the generating station) if, in its opinion, that material indicates what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.".

Amendment to Article 18A (generating stations accredited for longer than 20 years)

7. In Article 18A (5) of the 2009 Order, for "article" substitute "Article".

Amendment to Article 22 (circumstances in which no NIROCs are to be issued in respect of electricity generated from renewable sources)

8. In Article 22(1) of the 2009 Order, after every reference to "biomass" insert "or fossil derived bioliquid".

Circumstances in which no NIROCs are to be issued in respect of electricity generated from bioliquid

9. After Article 22 of the 2009 Order (circumstances in which no NIROCs are to be issued in respect of electricity generated from renewable sources) insert—

"**Circumstances in which no NIROCs are to be issued in respect of electricity generated from bioliquid**

22A.—(1) No NIROCs are to be issued in respect of any electricity generated by a generating station from bioliquid unless the bioliquid meets the greenhouse gas emission criteria and the land criteria.

(2) It is for the operator of the generating station to demonstrate to the Authority's satisfaction that the bioliquid meets the greenhouse gas emission criteria and the land criteria.

(3) Where paragraph (4) applies to a consignment of bioliquid, mass balance system must be used for the purpose of demonstrating that bioliquid meets the greenhouse gas emission criteria and the land criteria.

(4) This paragraph applies to a consignment of bioliquid where—

(a) the consignment of bioliquid was withdrawn from a mixture containing consignments of bioliquid with differing sustainability profiles; or

(b) consignments of the biomaterial from which the consignment of bioliquid was made were withdrawn from a mixture containing consignments of biomaterial with differing sustainability profiles.

(5) For the purposes of paragraph (3), a mass balance system is a system which—

(a) provides for the sustainability profiles of the consignments of biomaterial or bioliquid added to a mixture to be attributed to the consignments withdrawn from that mixture; and

(b) requires the sustainability profiles attributed to the sum of all the consignments withdrawn from a mixture to be the same, and in the same quantities, as the sustainability profile of the sum of all the consignments added to that mixture.

(6) For the purposes of paragraphs (4) and (5)—

(a) the sustainability profile of a consignment of biomaterial is—

(i) information identifying the material of which the biomaterial is composed; and

(ii) information relating to the biomaterial to be used for the purpose of determining whether bioliquid made from the biomaterial meets the greenhouse gas emission criteria and the land criteria;

(b) the sustainability profile of a consignment of bioliquid is information identifying —

(i) the material of which the bioliquid is composed; and

(ii) the proportion that meets the greenhouse gas emission criteria and the land criteria.

Common agricultural policy requirements

22B. No NIROCs are to be issued in respect of any electricity generated by a generating station from bioliquid if—

(a) the bioliquid is derived from biomaterial which—

(i) is of agricultural origin;

(ii) was cultivated in the EU; and

(iii) is not waste; and

(b) the Authority is satisfied that the biomaterial referred to in sub-paragraph (a) was —

(i) cultivated in a manner that breached a statutory management requirement identified in entries 1 to 5 and 9 of the list in Annex 2 to Council Regulation (EC) No 73/2009(**8**) ("the 2009 Regulation"); or

(ii) obtained from land which does not meet the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of the 2009 Regulation(**9**).".

Amendments to Article 27 (microgenerators and qualifying small scale generators)

10. For Article 27, 27A and 27B substitute—

"**Microgenerators and qualifying new small scale generators**

27.—(1) This Article applies to a generating station which—

(**8**) OJ L e0, 31.1.2009, p.16 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003.

(**9**) Article 6(1) requires Member States to define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex 3 to the 2009 Regulation.