Draft Order laid before the Scottish Parliament under section 32(9) of the Electricity Act 1989, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T

2007 No.

ELECTRICITY

The Renewables Obligation (Scotland) Order 2007

Made - - - -

Coming into force - - *1st April 2007*

ARRANGEMENT OF ARTICLES

The Scottish Ministers in exercise of the powers conferred by sections 32 to 32C of the Electricity Act 1989(**a**), and of all other powers enabling them in that behalf and having, in accordance with section 32(7) of that Act, consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as they consider appropriate, hereby make the following Order, a draft of which has, in accordance with section 32(9) of that Act, been laid before and approved by resolution of the Scottish Parliament:

PART 1

Introductory Provisions

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation (Scotland) Order 2007 and shall come into force on 1st April 2007.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

"the 2006 Order" means the Renewables Obligation (Scotland) Order 2006(**b**);

"the Act" means the Electricity Act 1989;

"accreditation" means accreditation as a generating station capable of generating electricity from eligible renewable sources;

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

"advanced conversion technology fuel" means fuel that is in a gaseous or liquid form and has been manufactured using one or more advanced conversion technologies;

"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 90 per cent of the energy content (measured over such period and with such frequency as the Authority deems

(**a**) 1989 c.29. Section 62 of the Utilities Act 2000 (c.27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted. The new section 32 of the Electricity Act 1989 has subsequently been amended by sections 115 and 119 of the Energy Act 2004 (c.20) and section 24 of the Climate Change and Sustainable Energy Act 2006 (c.19) ("the 2006 Act"). Sections 63 to 65 of the Utilities Act 2000 inserted new sections 32A to 32C of the Electricity Act 1989, which have been amended by sections 115, 116, 118 and 119 of the Energy Act 2004 and sections 23 and 24 of the 2006 Act. Section 32BA of the Electricity Act 1989 was inserted by section 117 of the Energy Act 2004. The functions of the Secretary of State, in respect of sections 32 to 32B (as most recently amended by the 2006 Act) were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 (S.I. 2006/3258), article 2. The functions of the Secretary of State in respect of section 32C of the Electricity Act 1989 and section 67 of the Utilities Act 2000 were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001 (S.I. 2001/3504), article 2. The functions of the Secretary of State in respect of section 32BA of the Electricity Act 1989 were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), article 2.

(**b**) S.S.I. 2006/173.

appropriate) 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), provided that:

(a) this definition shall not include any substance that, at the time it is used as fuel in a generating station, is a fraction of any mixture of wastes that, taken as a whole, is not itself biomass; and

(b) in determining any period over which and frequency with which measurement must take place for the purposes of this definition, the Authority may take into account such matters as it thinks fit, including the length of time for which the fuel has been used by the generating station or by other generating stations;

"CHPQA" means the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 published by the Department of the Environment, Transport and the Regions(**a**);

"combined heat and power generating station" means a station producing electricity that is (or may be) operated for purposes including the supply to any premises of–

(a) heat produced in association with electricity; or

(b) steam produced from, or air or water heated by, such heat;

"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 that person within the meaning of section 839 of the Income and Corporation Taxes Act 1988(**b**);

"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 Scotland;

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

"eligible renewable sources" has the meaning given to it in articles 6 to 9;

"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 which is grown primarily for the purpose of being used as fuel or which is one of the following–

(a) *miscanthus giganteus;*

(b) *salix* (also known as short rotation coppice willow);

(c) *populus* (also known as short rotation coppice poplar);

"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

(**a**) Available at http://www.chpqa.com.

(**b**) 1988 c.1. Section 839 was amended by the Finance Act 1995 (c.4), Schedule 17, paragraph 20, and by the Income Tax (Trading and Other Income) Act 2005 (c.5), Schedule 1, paragraph 341 and modified by S.I. 1997/1154.

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 31st October immediately following;

"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);

"minimum tidal requirement" has the meaning given in article 5(4);

"minimum wave requirement" has the meaning given in article 5(1);

"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)–

(a) the month and year during which the electricity was generated;

(b) the location of the generating station;

(c) a description of the generating station including reference to the source or sources of fuel used to generate electricity by that generating station;

(d) the date of issue of the NIROC; and

(e) 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(**a**) or in the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005(**b**) (as the case may be);

"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(**c**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994(**d**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997(**e**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997(**f**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998(**g**); and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999(**h**);

"Northern Ireland Authority" means the Northern Ireland Authority for Energy Regulation;

"Northern Ireland Electricity Order" means the Electricity (Northern Ireland) Order 1992(**i**);

(**a**) S.I. 2000/2727, as amended by S.I. 2001/3268.
(**b**) S.S.I. 2005/549.
(**c**) S.I. 1994/3259, as amended by S.I. 1995/68.
(**d**) S.I. 1994/3275 (S. 190).
(**e**) S.I. 1997/248.
(**f**) S.I. 1997/799 (S. 76).
(**g**) S.I. 1998/2353.
(**h**) S.I. 1999/439 (S. 24).
(**i**) S.I. 1992/231 (N.I. 1), article 35 is prospectively repealed by S.I. 2003/419 (N.I. 6), but the relevant provision has not yet been commenced.

"Northern Ireland Energy Order" means the Energy (Northern Ireland) Order 2003(**a**);

"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 SROC, 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;

"qualifying combined heat and power generating station" means a combined heat and power generating station which is fuelled wholly or partly by waste and which has been accredited under CHPQA;

"Register" has the meaning given to it in article 23(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 27(4), 27(5), 27(6), 31(5), 31(6), 32(4), 32(5), 32(6), 33(8), 34(1)(a) and 34(1)(e);

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

"replacement SROC" means a SROC issued in accordance with article 24(4)(b) and (6);

"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;

"Scottish area of the Renewable Energy Zone" means the area designated in the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(**b**) as the area in relation to which the Scottish Ministers are to have functions;

"Scottish waters" means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland;

"specified day", in relation to an obligation period, means the 1st September immediately following it;

"SROC" means a certificate issued by the Authority under section 32B of the Act and pursuant to this Order;

"SROC identifier" has the meaning given by paragraph 2 of Schedule 2;

"SROC sequence number" has the meaning given to it in article 22(1);

(**a**) S.I. 2003/419 (N.I. 6).
(**b**) S.I. 2005/3153.

"total SROC claim" means the total number of SROCs which have been claimed in respect of a particular obligation period, after deducting–

(a) the number of SROCs which have been issued in respect of that obligation period; and

(b) the number of SROCs which the Authority has, in respect of that obligation period, decided not to issue or refused to issue under article 19(2) or 19(3);

"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(**a**)) 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 England and Wales or a Northern Ireland supplier;

"waste" has the meaning given to it in section 75(2) of the Environmental Protection Act 1990(**b**), 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(**c**).

(2) For the purposes of this Order, any fuel used in a generating station (not being biomass) shall be treated as biomass if–

(a) it is one of at least two fuels (not being fossil fuels within the meaning of article 9) used to fuel or drive that generating station (whether or not those fuels are the only ones so used); and

(b) at least 90 per cent of the total energy content of those fuels (measured over such period and with such frequency as the Authority deems appropriate) is derived from material which is of such a nature that, if 90 per cent of the energy content of a single fuel was so derived, that fuel would constitute biomass.

(3) Accordingly, any reference in this Order to biomass shall be construed as a reference to biomass or fuel which is treated as biomass.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(**a**) Section 4(4) was amended by section 28 of the Utilities Act 2000 and section 135 of the Energy Act 2004.
(**b**) 1990 c.43. Section 75(2) was amended by paragraph 88 of Schedule 22 to the Environment Act 1995 (c.25).
(**c**) 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.

PART 2

The Renewables Obligation

The renewables obligation

3.—(1) The renewables obligation is that, subject to Part 4, 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 articles 4 and 5; 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 and certifying the matters in section 32B(2) or (2ZA) 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 SROC, the SROC identifier.

(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 Scotland at any time during that period regardless of whether it supplies electricity in Scotland for the whole of that period.

The amount of the renewables obligation

4.—(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 Scotland 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 third sub-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 Scotland during an obligation period is to be determined by reference to–

(a) the estimated figures, for its total sales of electricity to customers in Scotland for each of the twelve periods of approximately one month falling wholly or mainly within the obligation period, which are furnished to the Department of Trade and Industry and the Authority under paragraph (4), together with,

(b) any additional or updated figures for such sales as are furnished to the Authority under paragraph (5)(a).

(4) Each designated electricity supplier shall furnish to the Department of Trade and Industry and to the Authority, the estimated figures relating to its total sales of electricity to customers in Scotland during an obligation period by no later than 1st June immediately following the end of the obligation period.

(5) Each designated electricity supplier shall by no later than 1st July immediately following the end of an obligation period, inform the Authority of–

(a) the amount of electricity which it has supplied to customers in Scotland during the obligation period;

(b) the amount in megawatt hours of electricity generated as determined pursuant to article 4 in respect of the obligation period; and

(c) its minimum wave requirement and minimum tidal requirement (if any) in respect of the obligation period as determined pursuant to article 5.

(6) In furnishing the information specified in paragraphs (4) and (5), the designated electricity supplier shall have regard to any sales figures, which it has provided (or intends to provide) to the Department of Trade and Industry for statistical purposes and publication in "Energy Trends"(**a**).

Minimum amount from specified descriptions of renewable source and generating station

5.—(1) At least the specified minimum amount (the "minimum wave requirement") of the amount of electricity referred to in article 3(1)(a) in respect of an obligation period must be electricity generated by a generating station which–

(a) is primarily driven by waves;

(b) is situated in Scottish waters or the Scottish area of the Renewable Energy Zone; and

(c) is not generated by devices built with or maintained by capital or revenue funding under–

(i) the Department of Trade and Industry Wave and Tidal Stream Energy Demonstration Scheme(**b**); or

(ii) the Scottish Executive's Wave and Tidal Energy Support Scheme(**c**).

(2) The minimum wave requirement in paragraph (1) is the amount which equals the "relevant wave percentage" of all electricity supplied by the designated electricity supplier to customers in Scotland during an obligation period (as determined pursuant to article 4(3)), such amount being rounded to the nearest whole megawatt hour (with any exact half megawatt hour being rounded upwards).

(3) In paragraph (2) "the relevant wave percentage" means, in respect of an obligation period, the percentage (if any) set out in the first sub-column of Schedule 1 against the reference to that obligation period in the first column of Schedule 1.

(4) At least the specified minimum amount (the "minimum tidal requirement") of electricity referred to in article 3(1)(a) in respect of an obligation period must be electricity generated by a generating station which–

(a) is primarily driven by tidal flows or currents;

(b) is situated in Scottish waters or the Scottish area of the Renewable Energy Zone; and

(c) is not generated by devices built with or maintained by capital or revenue funding under–

(i) the Department of Trade and Industry Wave and Tidal Stream Energy Demonstration Scheme; or

(ii) the Scottish Executive's Wave and Tidal Energy Support Scheme.

(5) The minimum tidal requirement in paragraph (4) is the amount which equals the "relevant tidal percentage" of all electricity supplied by the designated electricity supplier to customers in Scotland during an obligation period (as determined pursuant to article 4(3)), such amount being rounded to the nearest whole megawatt hour (with any exact half megawatt hour being rounded upwards).

(**a**) Available at http://www.dti.gov.uk/energy/statistics/publications/trends/index.html.
(**b**) Available at http://www.dti.gov.uk/files/file23963.pdf.
(**c**) Available at http://www.scotland.gov.uk/Topics/Business-Industry/infrastructure/19185/WTSupportScheme/WTSupportSchemeIntro.

(6) In paragraph (5) "the relevant tidal percentage" means, in respect of an obligation period, the percentage (if any) set out in the second sub-column of Schedule 1 against the reference to that obligation period in the first column of Schedule 1.

PART 3

Electricity from Renewable Energy Sources

Eligible renewable sources: general

6.—(1) Subject to article 10, 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 this article and articles 7 and 8.

(2) The following shall be excluded generating stations–

(a) large hydro generating stations except those first commissioned after 1st April 2002;

(b) subject to paragraphs (3) and (4), 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 (5);

(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 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).

(4) A generating station shall not be an excluded generating station by virtue of paragraph (2)(b) in any month during which it is fuelled 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.

(5) 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.

Eligible renewable sources: qualifying arrangement

7.—(1) Paragraph (2) applies where–

(a) a qualifying arrangement ("the applicable qualifying arrangement") provided for the building of a generating station at a specified location ("the location");

(b) 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

(c) 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.

(2) Where this paragraph applies, a generating station–

(a) which is situated at the location; and

(b) 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.

(3) Paragraph (4) 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.

(4) Where this paragraph applies, a generating station–

(a) which is situated at the location; and

(b) 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 in relation to any such party),

shall be an excluded generating station.

(5) Paragraphs (2) and (4) shall not apply to a generating station which during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.

(6) In paragraphs (2) and (4), 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.

(7) The references in paragraph (6) to the first person and the second person shall include any person who is a connected person in relation to either of them.

(8) For the purposes of this article, 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.

Eligible renewable sources: other fuels

8.—(1) 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;

(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; or

(c) the generating station is a qualifying combined heat and power generating station.

(2) A generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by another fuel (or fuels) other than biomass.

(3) 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).

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

(5) 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 article 9(1)(a)(i) unless that substance is a substance falling within article 9(1)(a)(ii) or it is waste or a component of biomass.

(6) 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 article 9(1)(a)(i).

Eligible renewable sources: supplemental

9.—(1) In this article and articles 6, 8 and 15 and in Schedule 3–

(a) "fossil fuel" means–

(i) coal, lignite, natural gas (as defined in the Energy Act 1976(**a**)) or crude liquid petroleum; and

(ii) anything which is derived directly or indirectly from any of the substances referred to in paragraph (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 referred to in paragraph (i), which is waste or a component of biomass; and for the purposes of paragraph (ii) a liquid comprised wholly or mainly of hydrocarbon compounds need not be created for the purpose 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.

(2) In articles 6, 8 and 15 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.

(3) For the purposes of articles 6, 8 and 15 and Schedule 3, fossil fuel or waste which a generating station uses for–

(a) the ignition of gases of low or variable calorific value; or

(b) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature; or

(c) emission control; or

(d) 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.

Calculation of amount of electricity generated from eligible renewable sources

10.—(1) Subject to paragraphs (3) and (5), 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.

(**a**) 1976 c.76.

(2) For the purposes of the calculation referred to in paragraph (1)–

(a) subject to paragraph (6), "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 in that month from fossil fuel; 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.

(3) In the case of a generating station fuelled wholly or partly by biomass, 10 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.

(4) 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.

(5) Where the operator of a generating station (or, where SROCs relating in whole or in part to electricity generated by that generating station are issued to an agent by virtue of article 17, that agent and not the operator) 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.

(6) In the case of a qualifying combined heat and power generating station, the renewable output shall be such amount as is obtained by–

(a) deducting from the gross output of that generating station in that month the amount of electricity which has been generated in that month from fossil fuel; and

(b) multiplying the figure resulting from the calculation in sub-paragraph (a) by the relevant proportion.

(7) 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;

(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; and

(d) in the case of a generating station fuelled wholly or partly by hydrogen (not being fossil fuel), "input electricity" also includes any electricity in respect of which SROCs are or have been issued or which was not generated from eligible renewable sources that is used to produce the hydrogen by which that station is fuelled, regardless of where or by whom the hydrogen is produced;

(e) "qualifying power output" and "total power output" have the meanings given to them in CHPQA; and

(f) "relevant proportion" means a proportion which is equal to the proportion which the qualifying power output of the qualifying combined heat and power generating station bears to the total power output of that generating station.

PART 4

Alternative Ways of Discharging Renewables Obligation

Alternative way of discharging renewables obligation: payments

11.—(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 (6), the payment to be made under paragraph (1) is £34.30 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, 13, 14 or NIROCs pursuant to article 12 ("the buy-out price").

(3) If, in the case of the calendar year 2007 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) Where a designated electricity supplier does not produce certificates pursuant to articles 3, 13 or 14 as evidence that it or another electricity supplier has complied with the minimum wave requirement, if any, of its renewables obligation, the payment to be made under paragraph (1) is £175 for each megawatt hour of electricity for which no such certificate is produced ("the wave buy-out price").

(6) Where a designated electricity supplier does not produce certificates pursuant to articles 3, 13 or 14 as evidence that it or another electricity supplier has complied with the minimum tidal requirement, if any, of its renewables obligation, the payment to be made under paragraph (1) is £105 for each megawatt hour of electricity for which no such certificate is produced ("the tidal buy-out price").

Alternative way of discharging renewables obligation: NIROCs

12.—(1) Subject to article 15, instead of producing certificates pursuant to article 3, a designated electricity supplier may discharge (in whole, except to the extent of the minimum wave or tidal requirement, 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) or (2AA) of the Act

13.—(1) Subject to article 15, 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) or (2AA) 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 SROC, the SROC identifier.

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

Alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2AB) or (2AC) of the Act

14.—(1) Subject to article 15, 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(2AB) or (2AC) of the Act.

(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 SROC, the SROC identifier.

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

(4) For the purposes of section 32B(2AB) and (2AC) of the Act, electricity generated by any generating station is used in a permitted way if it is used in one of the ways mentioned in section 32B(2AE) of the Act.

Further provision in relation to production of certificates and NIROCs

15.—(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) Subject to paragraph (3), in respect of any obligation period which falls–

(a) from 1st April 2007 until 31st March 2011, no more than 10 per cent; and

(b) from 1st April 2011 until 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 certificate or NIROC relates, have been fuelled partly by fossil fuel (as defined in article 9) and partly by biomass and by no other fuel.

(3) In the case of certificates or NIROCs issued in respect of a generating station which, during the month to which those certificates or NIROCs relate, has been fuelled partly by fossil fuel (as defined in article 9) and partly by biomass consisting in whole or in part of energy crops (and no other fuel), the limits set out in paragraph (2) shall not apply to the production of those certificates or NIROCs if and to the extent that they state the amount of electricity which is attributable to the energy crops.

(4) 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 is simultaneously produced to the Northern Ireland Authority under a NIRO Order.

PART 5

SROCs: Issue and Revocation

Obligation to issue SROCs

16.—(1) Where each of the relevant criteria in article 18 has been met (having regard as necessary to the requirements in articles 19 and 20), the Authority shall issue SROCs, in accordance with the procedure set out in article 22, 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).

(2) Except as provided for in paragraphs (3) to (5) and article 17, SROCs shall be issued to the operator of the generating station by which the relevant electricity was generated in a particular month.

(3) 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"), SROCs shall be issued as set out below.

(4) Where the nominated person is entitled to the relevant output under or in compliance with a qualifying arrangement, SROCs shall be issued 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 SROCs available to be so issued).

(5) Where one or more electricity suppliers are entitled to the relevant output under a qualifying arrangement, SROCs shall be issued to those electricity suppliers, each in proportion to its entitlement.

Issue of SROCs to agents

17.—(1) Subject to article 16(3) and (5), an operator of a generating station with a declared net capacity of 50 kilowatts or less may appoint an agent to receive any SROC which relates, in whole or in part, to electricity generated by that generating station ("a relevant SROC").

(2) Where the operator appoints an agent under paragraph (1), the operator shall notify the Authority in writing of the agent's name and address.

(3) Once the Authority has received such a notification, it shall issue any relevant SROC to that agent.

(4) Where the operator or agent wishes to terminate the agent's appointment, the operator or, as the case may be, the agent must give written notice of the intended termination to the Authority.

(5) Where notice is given under paragraph (4) and received by the Authority, the termination shall take effect (subject to paragraph (6)) at the end of the obligation period during which it is given; until the end of that obligation period, the Authority shall continue to issue any relevant SROCs to the agent.

(6) Notwithstanding paragraph (5), after the expiration of that obligation period the Authority shall continue to issue relevant SROCs to the agent where those SROCs relate to electricity generated during that obligation period.

(7) Paragraphs (5) and (6) do not apply in any case where the Authority is satisfied, in the light of evidence produced to it, that owing to exceptional circumstances the termination should take effect on a date before the end of the obligation period during which the notice is given; in which case the termination shall take effect on that date.

(8) Where any provision of this Order requires or permits something to be done by, to or in respect of an agent appointed under this article and the agent's appointment is terminated before that thing is done, references to that agent (however framed) are to be construed–

(a) where a successor to the agent has been appointed under this article, as references to that successor;

(b) in any other case, to the operator of the generating station for whom the agent acted before the agent's appointment was terminated.

Criteria for issue of SROCs

18.—(1) The criteria for issue of SROCs referred to in article 16 and issue of replacement SROCs referred to in article 24(4) are those detailed in paragraphs (2) to (13).

(2) The first criterion is that the Authority has previously confirmed in writing to the operator of any generating station to which the SROC relates (or, where the SROC is to be issued to an agent by virtue of article 17, that agent) that the generating station has been granted accreditation as a generating station capable of generating electricity from eligible renewable sources and the Authority has not since withdrawn that accreditation.

(3) The second criterion is that the Authority has been provided in writing with all the information listed in paragraphs 2(b)(i) to (iii) of Schedule 2 together with any other information which it reasonably requires in order to assess whether the SROC should be issued and it is satisfied that such information is accurate and reliable.

(4) The third criterion is that, in the case of a SROC certifying the matters within section 32B(2), (2ZA), (2A) or (2AA), the operator of the generating station to which the SROC relates has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents and which the operator need only provide once during every obligation period) applicable to the relevant electricity that–

(a) the operator has not made (or, where the declaration relates to electricity that the operator proposes to generate after the declaration is made, that the operator will not make) 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 (or, as the case may be, will result) in it not having been supplied, in the case of a SROC certifying the matters within section 32B(2) or (2ZA), by an electricity supplier to customers in Great Britain (or, in the case of a SROC certifying the matters within section 32B(2A) or (2AA) of the Act, by a Northern Ireland supplier to customers in Northern Ireland); and

(b) the operator is not (and does not intend during the obligation period to become) a person mentioned in article 7(2)(b) or (4)(b).

(5) The fourth criterion is that, where the electricity has been generated on land in Northern Ireland and supplied to customers in Great Britain, the operator of any generating station to which the SROC relates has provided the Authority with evidence of the following matters–

(a) the quantity, date and period of time (referred to in this paragraph as "the relevant period") during the particular month when the electricity from eligible renewable sources was generated by the generating station;

(b) 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;

(c) that such electricity flowed across such interconnector to Great Britain during each relevant period;

(d) 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

(e) 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;

and the Authority is satisfied with such evidence.

(6) The fifth criterion is that, 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 any generating station to which the SROC relates has provided the Authority with evidence of the following matters–

(a) that at the time the generating station generated the electricity it 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

(b) that at the time the generating station generated the electricity it 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 (5)(a) to (e);

and the Authority is satisfied with such evidence.

(7) The sixth criterion is that, in the case of a SROC certifying the matters within section 32B(2A) or (2AA) 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–

(a) the quantity, date and period of time (referred to in this paragraph as "the relevant period") during the particular month when the electricity from eligible renewable sources was generated by the generating station;

(b) 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;

(c) that such electricity flowed across such interconnector to Northern Ireland during each relevant period;

(d) 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;

(e) 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,

and the Authority is satisfied with such evidence.

(8) The seventh criterion is that, in the case of a SROC certifying the matters within section 32B(2A) or (2AA) 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.

(9) The eighth criterion is that, in the case of a SROC certifying the matters within section 32B(2ZA), (2AA) or (2AC) of the Act–

(a) each of the generating stations in relation to which the SROC is to be issued–

(i) has a declared net capacity of 50 kilowatts or less;

(ii) is accredited as a generating station capable of generating electricity from the same eligible renewable source; and

(iii) is located in Scotland;

(b) the SROC is to be issued to an agent by virtue of article 17; and

(c) the operators of the generating stations in relation to which the SROC is to be issued have each appointed the same person to act as agent to receive the SROC;

(10) The ninth criterion is that, in the case of a SROC certifying the matters within section 32B(2AB) or (2AC) of the Act, the operator of the generating station in relation to which the SROC is to be issued has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator or, as the case may be, agent need only provide once during every obligation period) that the electricity has been used in a permitted way.

(11) The tenth criterion is that the electricity in respect of which the SROC is to be issued is not or does not include electricity in respect of which a SROC has already been issued and not revoked.

(12) The eleventh criterion is that the electricity in respect of which the SROC is to be issued has been measured accurately using a meter which if used for ascertaining the quantity of electricity supplied by an authorised supplier to a customer would be approved for the purposes of paragraph 2 of Schedule 7 to the Act.

(13) The twelfth criterion is that the Authority is not prohibited from issuing a SROC on any of the grounds set out in article 19(2) and has not refused to issue a SROC on any of the grounds set out in article 19(3).

Criteria for issue of SROCs: supplemental

19.—(1) Where a SROC, if issued, will be issued to an electricity supplier pursuant to article 16(4) or (5), the references in article 18(4) to the operator of any generating station to which the SROC relates shall be treated as references to that electricity supplier but article 18(4)(b) shall not apply.

(2) The Authority shall not issue a SROC–

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

(b) certifying the matters within section 32B(2A) or (2AA) of the Act, where the Northern Ireland Authority has notified the Authority that it is not satisfied that all or part of the electricity in question has been supplied to customers in Northern Ireland.

(3) The Authority may refuse to issue a SROC in any case where the Authority–

(a) except in the case of a SROC certifying matters within section 32B(2A) or (2AA) of the Act, considers that the declaration in article 18(4) is not accurate in relation to all or part of the electricity in respect of which the Authority is considering issuing the SROC;

(b) except in the case of a SROC certifying the matters within section 32B(2A), (2AA), (2AB) or (2AC) of the Act, has reason to believe that the electricity in respect of which the Authority is considering issuing the SROC was consumed in circumstances which resulted in all or part of the electricity not having been supplied by an electricity supplier to customers in Great Britain; or

(c) is not satisfied that the operator of any generating station to which the SROC relates has, during the relevant month, complied with any condition to which accreditation of the relevant generating station is subject.

(4) For the purpose of article 18(3), where information regarding the fuel used by any generating station to which the SROC relates has originated at a separate location to that of the generating station, in determining whether the information is accurate and reliable the Authority may have regard to–

(a) the distance over which the fuel was transported;

(b) the conditions under which the fuel was prepared and transported;

(c) the resources required for the Authority to verify the accuracy and reliability of the information; and

(d) such other matters as it considers relevant.

Criteria for issue of SROCs to agents: supplemental

20.—(1) Where a SROC is to be issued to an agent by virtue of article 17, the following provisions of this article shall apply.

(2) Subject to paragraph (3), in articles 18(4) to (8) and (10) and 22(3)(b) and (4)–

(a) references to the operator of the generating station shall be treated as references to the agent who acts in relation to that generating station; and

(b) any obligation imposed on the operator in relation to that generating station shall be treated as imposed on the agent instead.

(3) Paragraph (2) shall not apply to sub-paragraphs (a) and (b) of article 18(4).

(4) Where the SROC relates to more than one generating station–

(a) in article 18(2) the written confirmation referred to shall be required in relation to each of the generating stations to which the SROC relates;

(b) in article 18(4) and (10) the declaration referred to shall be required in relation to the electricity generated by each of the generating stations to which the SROC relates;

(c) in article 18(4)(a) and (b) references to the operator shall be treated as references to the operator of each of the generating stations to which the SROC relates;

(d) in article 18(7) the evidence referred to shall be required in respect of each generating station–

(i) which, at the time the electricity was generated, was not directly and exclusively connected to a transmission or distribution network in Northern Ireland; and

(ii) to which the SROC relates; and

(e) in article 18(8) the evidence referred to shall be required in respect of each generating station–

(i) which, at the time the electricity was generated, was directly and exclusively connected to a transmission or distribution network in Northern Ireland; and

(ii) to which the SROC relates.

Issuing SROCs certifying the matters in section 32B(2ZA), (2AA) or (2AC) of the Act: supplemental

21.—(1) Where two or more generating stations constitute a group for the purposes of this article, the Authority shall be entitled to issue a SROC in respect of electricity generated by those generating stations if, and only if–

(a) the amount of electricity generated by each of them (calculated in accordance with article 22(2)(a) and (b)) is added together and rounded (in accordance with article 22(2)(c);

(b) that rounded amount is stated in the SROC; and

(c) the SROC certifies the matters within section 32B(2ZA), (2AA) or (2AC) of the Act.

(2) Where an agent appointed under article 17 acts for two or more generating stations which constitute a group for the purposes of this article, the agent shall provide the Authority with–

(a) a figure representing the amount of electricity which the agent believes should be stated in any SROC to be issued in respect of that group; and

(b) the data which led the agent to arrive at that figure.

(3) Two or more generating stations constitute a group for the purposes of this article where–

(a) they have been accredited as generating stations capable of generating electricity from the same eligible renewable source;

(b) in respect of each of them the same person has been appointed to act as agent under article 17; and

(c) in respect of electricity generated by them, entitlement to SROCs is determined in the same way (either on a monthly basis or on an annual basis, depending on whether a notice has been given to the Authority under article 25(2) or not).

Procedure and calculations for issue of SROCs

22.—(1) The Authority shall, when issuing SROCs (other than replacement SROCs certifying the matters within section 32B(2), (2A) or (2AB) of the Act, which shall be issued in accordance with article 24(4)(b) and (6))–

(a) allocate a number ("the SROC sequence number") to each SROC issued;

(b) allocate SROC sequence numbers sequentially in ascending numerical order–

(i) where the SROCs are to be issued in respect of electricity generated from eligible renewable sources by two or more generating stations which constitute a group for the purposes of article 21, to all the SROCs issued in respect of that group in a particular month; and

(ii) in all other cases, to all the SROCs issued in respect of electricity generated from eligible renewable sources by a particular generating station in a particular month; and

(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 SROCs in respect of that month–

(i) firstly to the electricity suppliers to whom article 16(4) or (5) applies in that month on the basis of information provided to it by the nominated person; and

(ii) 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.

(2) Where it issues SROCs pursuant to this Part 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") pursuant to article 10;

(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 relevant criteria in article 18(1) were not satisfied;

(c) (i) where any SROC to be issued will certify the matters within section 32B(2ZA), (2AA) or (2AC) of the Act, determine the amount of electricity which results from the calculations in sub-paragraphs (a) and (b) in respect of each of the generating stations to which the SROC relates, add the amounts so determined together, and round the sum of those amounts to the nearest megawatt hour (with any exact half megawatt being rounded upwards); and

(ii) in all other cases, 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);

(d) determine the number of SROCs which it is appropriate to issue for the amount of electricity determined pursuant to sub-paragraph (c) on the basis that one SROC represents one megawatt hour of electricity; and

(e) issue the appropriate number of SROCs determined pursuant to sub-paragraph (d) to whomever it is required to issue them by virtue of article 16 or 17.

(3) Subject to paragraphs (4), (5) and (6), for the purpose of making the determination in paragraph (2)(a) the Authority shall use in the case of the amounts for "gross output" and "input electricity" (as those two expressions are defined in article 10(7)) either–

(a) the most accurate figures for those amounts which are provided to the Authority at the end of the second month following the end of the relevant month ("the relevant date"); or

(b) where the operator of the generating station satisfies the Authority by the relevant date that it will never be possible for it to provide accurate figures, such figures as are

estimated by the operator or, as the case may be, agent by the relevant date on a basis agreed in advance by the Authority.

(4) Where figures are neither provided under paragraph (3)(a) nor estimated under paragraph (3)(b) the Authority may, in circumstances which it considers exceptional, accept figures which the operator of the generating station provides after the relevant date.

(5) Where figures are provided under paragraph (3)(a) or accepted under paragraph (4) and, before the Authority makes a determination under paragraph (2)(a), the Authority becomes aware of figures which it considers to be more accurate, the Authority may, where it considers appropriate, accept the later figures and make determinations under paragraph (2)(a) to (d) on the basis of the later figures.

(6) Where the Authority makes a determination under paragraph (2)(a) on the basis of figures provided under paragraph (3)(a) or accepted under paragraph (4) or (5) and the Authority subsequently becomes aware of figures which it considers to be more accurate, the Authority–

(a) may, where it considers appropriate, accept the later figures and make new determinations under paragraphs (2)(a) to (d); and

(b) shall, where the new determination under paragraph (2)(d) differs from the original determination under that provision, either–

(i) if it has not already issued SROCs under paragraph (2)(e), issue SROCs under that paragraph in accordance with the new determination;

(ii) revoke SROCs in accordance with article 22 where it has issued too many; or

(iii) issue additional SROCs in accordance with paragraph (2)(e) where it has issued too few.

(7) SROCs in respect of the relevant month shall be issued no earlier than the relevant date.

SROC Register

23.—(1) The Authority shall establish and maintain a register of SROCs ("the Register") which shall be conclusive as to whether or not a SROC 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 SROC 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 SROC 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, 13 or 14; and

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

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

Revocation of SROCs

24.—(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 in relation to that generating station pursuant to article 18(4) is false or that a SROC was issued on the basis of any fraudulent

behaviour, statement or undertaking on the part of the operator of that generating station or by any connected person, or, where SROCs are issued to an agent by virtue of article 17, that agent, revoke all SROCs issued in respect of that generating station in that month;

(b) shall revoke any SROC certifying matters within section 32B(2A) or (2AA) of the Act where the Northern Ireland Authority has notified the Authority that it is not satisfied that all of the electricity in question has been supplied to customers in Northern Ireland;

(c) shall, in accordance with the procedure laid down in paragraph (3), revoke any SROC where it is otherwise satisfied that the SROC is inaccurate;

(d) may, in accordance with the procedure laid down in paragraph (3), revoke any SROC where–

(i) the Authority is no longer satisfied that the SROC 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 SROC; or

(iii) the Authority has been unable, due to a failure or refusal by any person (whether inside or outside Scotland) to provide the Authority with any information reasonably requested by it, to check the accuracy of either the SROC or any information which the Authority relied upon prior to the issue of the SROC; and

(e) subject to paragraph (2), shall, in reaching a decision as to the inaccuracy of a SROC for the purposes of sub-paragraph (c) and in exercising its powers to revoke a SROC pursuant to sub-paragraph (d), disregard any changes to the amounts for "gross output" and "input electricity" (as those two expressions are defined in article 10(7)) which were used by it (as provided in article 22(3)) 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) Paragraph (1)(e) does not apply where, in accordance with article 22(6), the Authority has accepted later figures and made new determinations under article 22(2)(a) to (d).

(3) Where the Authority revokes SROCs in accordance with paragraph (1)(c) or (d), it shall–

(a) revoke the appropriate number of SROCs from those issued in a particular month in descending numerical order of SROC sequence number; and

(b) delete from the Register those SROCs previously allocated the highest SROC sequence numbers and remaining on the Register in advance of those with lower SROC sequence numbers,

and in determining the number of SROCs which it is appropriate to revoke it shall proceed on the basis that one SROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

(4) Where the Authority has revoked a SROC–

(a) it shall as soon as practicable give notice in writing of such revocation to the registered holder of the SROC at the time of revocation;

(b) subject to subparagraph (c), the Authority may, in circumstances where it considers it appropriate to do so, issue a replacement SROC in accordance with the procedures laid down in paragraph (5) or, as the case may be, (6), provided that it is satisfied that each of the relevant criteria in article 18 is met (having regard as necessary to the requirements in article 19 and 20), and such SROC shall be treated as if issued under article 16 or, as the case may be, 17;

(5) Where the revoked SROC was revoked in accordance with paragraph (1)(a), paragraph (4)(b) shall not apply unless–

(i) the revoked SROC certified the matters within section 32B(2ZA), (2AA) or (2AC) of the Act; and

(ii) the reason for its revocation is unrelated to the generating station or stations in respect of which the replacement SROC is to be issued.

(6) Where pursuant to paragraph (4)(b) the Authority issues a replacement SROC certifying the matters within section 32B(2), (2A) or (2AB) of the Act it shall–

(a) allocate to the replacement SROC the lowest SROC sequence number of any SROC previously issued in respect of the same generating station or stations and same month that has been revoked which has not already been allocated to a replacement SROC (unless that replacement SROC has itself been revoked);

(b) issue each replacement SROC to the person to whom the SROC issued in respect of that generating station or those generating stations and that month and bearing the same SROC sequence number was previously issued; and

(c) proceed on the basis that one SROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

(7) Where, pursuant to paragraph (4)(b), the Authority issues a replacement SROC certifying the matters within section 32B(2ZA), (2AA) or (2AC) of the Act it shall do so in accordance with article 22.

Small generators

25.—(1) This article applies to generating stations with a declared net capacity of 50 kilowatts or less ("sub-50 kilowatt stations").

(2) The operator of a sub-50 kilowatt station (or, where SROCs relating to electricity generated by that generating station are issued to an agent by virtue of article 17, that agent and not the operator) may–

(a) where SROCs have not yet been issued in respect of any electricity generated during the course of an obligation period by that station, during the course of that obligation period; or

(b) not less than one month before the beginning of any obligation period ("the relevant obligation period"),

give notice in writing to the Authority that the operator's entitlement to SROCs in respect of electricity generated by that station ("the relevant station") shall be determined on the basis set out in the remainder of this article.

(3) Paragraph (4) shall apply–

(a) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(a), in the case of the relevant station for the remainder of the obligation period during which the notice was given and subsequent obligation periods; and

(b) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(b), in the case of the relevant station for the relevant obligation period and subsequent obligation periods.

(4) Where this sub-paragraph applies, the reference to "month" in each place where it occurs in articles 6 to 10, 15, 16, 18, 19, 22 and 24 and Schedule 2 shall be taken to be a reference to "obligation period", subject to the following exceptions–

(a) in article 16(1) the words "of each month" shall be omitted;

(b) in article 22(3)(a) the reference to "the second month" shall remain unchanged; and

(c) in paragraph 2(b)(i) of Schedule 2 the words "the month and year" shall be replaced by "the obligation period".

(5) An operator or, as the case may be, agent who has given notice under paragraph (2) may–

(a) if that notice was given under sub-paragraph (a), not less than one month before the beginning of any obligation period following the obligation period during which the notice was given; or

(b) if that notice was given under sub-paragraph (b), not less than one 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 paragraph (2).

(6) Where an operator or, as the case may be, agent gives notice under paragraph (5), the Authority shall, from the beginning of the obligation period in respect of which the operator or, as the case may be, agent, gave that notice, determine the operator's entitlement to SROCs in respect of electricity generated by the relevant station on the basis set out in article 16(1).

(7) Where any SROC to be issued will certify the matters within section 32B(2ZA), (2AA) or (2AC) of the Act, the foregoing provisions of this article shall have effect subject to the following modifications–

(a) references to the relevant station shall be construed as references to the generating stations to which the SROC relates; and

(b) references to the operator of the relevant station shall be construed as references to the operators of those generating stations,

and cognate expressions shall be construed accordingly.

PART 6

Payments out of the Buy-Out Funds

Administrative division of payments made under article 11

26.—(1) For the purpose of making allocations under this Part, the Authority shall divide the amounts which it receives under article 11 in accordance with this article.

(2) The amount determined in accordance with the following formula in respect of an obligation period ("the relevant obligation period") is referred to as "the wave buy-out fund"–

$$A - (B \ x \ C)$$

where–

A equals the total amount received by the Authority under article 11(5) in respect of the relevant obligation period (together with any interest thereon received by the Authority);

B equals the total amount of megawatt hours of electricity in respect of which a payment was made under article 11(5) in respect of the relevant obligation period; and

C equals the buy-out price under article 11(2) (adjusted if appropriate for the relevant obligation period in accordance with article 11(3) and (4)).

(3) The amount determined in accordance with the following formula in respect of the relevant obligation period is referred to as "the tidal buy-out fund"–

$$D - (E \ x \ C)$$

where –

D equals the total amount received by the Authority under article 11(6) in respect of the relevant obligation period (together with any interest thereon received by the Authority);

E equals the total amount of megawatt hours of electricity in respect of which a payment was made under article 11(6) in respect of the relevant obligation period; and

C equals the buy-out price under article 11(2) (adjusted if appropriate for the relevant obligation period in accordance with article 11(3) and (4).

(4) The aggregate of the amounts received by the Authority under article 11 in respect of the relevant obligation period (together with any interest thereon received by the Authority) less the amounts which constitute the wave buy-out fund and tidal buy-out fund is referred to as "the buy-out fund".

Allocation of the buy-out fund

27.—(1) The Authority shall pay out the buy-out fund, by the 1st November immediately following the relevant obligation period in accordance with the system of allocation specified in paragraphs (2) to (6).

(2) 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 (3), (4) and (5) so that each such United Kingdom supplier receives a proportion of the buy-out fund calculated in accordance with paragraph (6).

(3) 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.

(4) The applicable condition for an electricity supplier supplying electricity in England and Wales 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.

(5) 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.

(6) The proportion of the buy-out fund which each United Kingdom supplier is entitled to receive under paragraph (2) is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates it has produced as mentioned in paragraph (3), (4) or (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 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.

Allocation of the wave buy-out fund

28.—(1) The Authority shall pay out the wave buy-out fund, by the 1st November immediately following the relevant obligation period in accordance with the system of allocation specified in paragraphs (2) to (4).

(2) The wave buy-out fund relating to a relevant obligation period shall be divided amongst the designated electricity suppliers who meet the condition referred to in paragraph (3) so that each such supplier receives a proportion of the wave buy-out fund calculated in accordance with paragraph (4).

(3) The condition for a designated electricity supplier is that, in respect of the relevant obligation period, it has produced certificates to the Authority in compliance with its renewables obligation which meet (in whole or in part) the minimum wave requirement.

(4) The proportion of the wave buy-out fund which each designated electricity supplier is entitled to receive under paragraph (2) is equal to the proportion which the amount of electricity covered by all of the certificates it has produced as mentioned in paragraph (3) up to a maximum amount equal to the supplier's minimum wave requirement bears to the total amount of electricity covered by all such certificates produced to the Authority in respect of the relevant obligation period.

(5) If, in the relevant obligation period, there are no designated electricity suppliers who meet the condition referred to in paragraph (3), the Authority shall refund payments made under article 11(5) net of the buy-out price under article 11(2).

Allocation of the tidal buy-out fund

29.—(1) The Authority shall pay out the tidal buy-out fund, by the 1st November immediately following the relevant obligation period in accordance with the system of allocation specified in paragraphs (2) to (4).

(2) The tidal buy-out fund relating to a relevant obligation period shall be divided amongst the designated electricity suppliers who meet the condition referred to in paragraph (3) so that each such supplier receives a proportion of the tidal buy-out fund calculated in accordance with paragraph (4).

(3) The condition for a designated electricity supplier is that, in respect of the relevant obligation period, it has produced certificates to the Authority in compliance with its renewables obligation which meet (in whole or in part) the minimum tidal requirement.

(4) The proportion of the tidal buy-out fund which each designated electricity supplier is entitled to receive under paragraph (2) is equal to the proportion which the amount of electricity covered by all of the certificates it has produced as mentioned in paragraph (3) up to a maximum amount equal to the supplier's minimum tidal requirement bears to the total amount of electricity covered by all such certificates produced to the Authority in respect of the relevant obligation period.

(5) If, in the relevant obligation period, there are no designated electricity suppliers who meet the condition referred to in paragraph (3), the Authority shall refund payments made under article 11(6) net of the buy-out price under article 11(2).

PART 7

Additional Payments

Late payments

30.—(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 January immediately following the late payment period, in accordance with the system of allocation specified in article 27(2) to (6), as if–

(a) the references in paragraphs (2) and (6) of that article to "the buy-out fund" were references to that late payment fund; and

(b) the references in paragraphs (2) to (6) of that article to a "relevant obligation period" were references to the obligation period in question.

(5) The Authority shall pay out the wave late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in article 28(2) to (4), as if–

(a) the references in paragraphs (2) and (4) of that article to "the wave buy-out fund" were references to that wave late payment fund; and

(b) the references in paragraphs (2) to (4) of that article to a "relevant obligation period" were references to the obligation period in question.

(6) The Authority shall pay out the tidal late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in article 29(2) to (4), as if–

(a) the references in paragraphs (2) and (4) of that article to "the tidal buy-out fund" were references to that tidal late payment fund; and

(b) the references in paragraphs (2) to (4) of that article to a "relevant obligation period" were references to the obligation period in question."

(7) The Authority shall not, during the late payment period, impose a penalty under section 27A(1)(**a**) 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.

(8) 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 11 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 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) less the amounts that constitute the wave late payment fund and the tidal late payment fund;

(c) "the tidal 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 to the extent that any late payment is based on the amount that the defaulting supplier would have paid under article 11(6) to discharge the minimum tidal requirement of its renewables obligation (together with any interest received thereon by the Authority);

(d) "the wave 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 to the extent that any late payment is based on the amount that the defaulting supplier would have paid under article 11(5) to discharge the minimum wave requirement of its renewables obligation (together with any interest received thereon by the Authority); and

(e) "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 the obligation period.

Mutualisation: payments in

31.—(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

(**a**) Section 27A was inserted by section 59 of the Utilities Act 2000 (c.27).

(b) where a relevant shortfall has occurred, notify each relevant supplier of–

(i) the amount 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 amount 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 with 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 of 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 with 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 article 33(3) and (4), 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 1st September in the mutualisation period;

(b) 25 per cent of the total payment required shall be paid to the Authority before 1st December in the mutualisation period;

(c) 25 per cent of the total payment required shall be paid to the Authority before 1st March in the mutualisation period; and

(d) 25 per cent of the total payment required shall be paid to the Authority before 1st June in the obligation period immediately following the mutualisation period.

(8) 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 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.

Mutualisation: payments out

32.—(1) The Authority shall pay out the mutualisation fund in accordance with the system of allocation specified in paragraphs (2) to (6) 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.

(2) 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 specified in paragraphs (3) to (5) so that each such compliant United Kingdom supplier receives a proportion of the mutualisation fund calculated in accordance with paragraph (6).

(3) 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.

(4) The applicable condition for an electricity supplier supplying electricity in England and Wales 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.

(5) 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.

(6) The proportion of the mutualisation fund which each compliant United Kingdom supplier is entitled to receive under paragraph (2) is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates it has produced as mentioned in paragraphs (3) to (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 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.

Mutualisation: recalculations

33.—(1) 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 payment, of the United Kingdom suppliers to which the payments were made, how much each supplier received and to which obligation period the payment relates; and

(b) any designated electricity supplier who received such payment shall notify the Authority immediately after receiving the payment, of the amount it received.

(2) 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 any recalculations required under paragraph (3), it is not reasonably practicable for it to pay out the mutualisation fund by the date required by article 32(1), the Authority shall pay out the mutualisation fund as soon as reasonably practicable after that date.

(3) 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 article 31(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 article 31(3); and

(ii) the recalculated amount of the total payment the relevant supplier is required to make under article 31(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 (4) ("future instalment payments").

(4) 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 instalment payments on the dates mentioned in article 31(7) which have not yet passed, each instalment payment being equal to the outstanding amount divided by the number of future instalment payments.

(5) Where, following a recalculation under paragraph (3), a relevant supplier has paid more than the recalculated supplier payment, the Authority shall, where it has received instalment payments under article 31(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.

(6) Where the Authority is required to repay sums to each relevant supplier in accordance with paragraph (5) 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.

(7) Where, following a recalculation under paragraph (3), 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.

(8) Where a designated electricity supplier receives a payment from an electricity supplier supplying electricity in England and Wales 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.

Mutualisation: definitions and interpretation

34.—(1) In this Part–

(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 article 33(5)) received by the Authority under articles 31 and 33 in respect of a shortfall period (together with any interest received thereon by the Authority);

(c) "mutualisation payment" means a payment required under article 31(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 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;

(f) "outstanding amount" means the recalculated supplier payment less the total of any instalment payments already made by the relevant supplier in accordance with article 31(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 26; 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 30(6)(a)(ii)) immediately before it is paid out in accordance with article 30;

(h) "recalculated supplier payment" has the meaning given by article 33(3)(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) "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 30(2), had made a payment referred to in article 30(6)(a)(i);

(l) "shortfall period" means an obligation period in respect of which a relevant shortfall occurs; and

(m) "specified amount" means subject to paragraph (2) and articles 31(5) and (6) and 33(3) the whole of the relevant shortfall, except to the extent that it exceeds £20,640,000.

(2) If, in the case of the calendar year 2007 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 £20,640,000 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.

(3) Where the figure of £20,640,000 is modified under paragraph (2) the resulting figure shall be rounded to the nearest pound (with any exact amount of 50p being rounded upwards).

PART 8

Provision of Information and Functions of the Authority

Provision of information to the Authority

35.—(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 SROC has been or may be issued, or any person who buys or sells such electricity or SROCs (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.

(3) In paragraph (2) the reference to any person who generates electricity in relation to which a SROC has been or may be issued shall be taken to include a reference to any agent to whom such SROC has been or may be issued by virtue of article 17.

Exchange of information with the Northern Ireland Authority

36.—(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 12 and the name of the designated electricity supplier which produced that NIROC and of the total number of NIROCs produced to the Authority under article 12 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 SROC identifiers of SROCs produced to it by the Northern Ireland suppliers under any NIRO Order inform the Northern Ireland Authority of–

(a) the SROC identifier of any SROC so notified which it has revoked under article 24 and whether it has issued a replacement SROC under article 24(4)(b) in respect of any such SROC (unless that replacement SROC has itself been revoked); and

(b) the SROC identifier of any SROC 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) or (2AA) of the Act produced to the Authority under article 13 by each designated electricity supplier in respect of the obligation period to which the specified day relates.

Functions of the Authority

37. In addition to the functions assigned to it elsewhere in this Order, the Authority shall have the following specific functions–

(a) keeping, maintaining and making available to the public a list of generating stations granted preliminary accreditation and accreditation in accordance with article 38 together with any applicable conditions attached to the preliminary accreditation or accreditation;

(b) keeping and maintaining a list of SROCs which have been revoked and making such list available to the public;

(c) 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 11(2) resulting from the adjustments made to reflect changes in the retail prices index;

(d) 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 34(2) resulting from the adjustments made to reflect changes in the retail prices index;

(e) publishing from time to time the total SROC claim;

(f) by 1st April each year (with the exception of 2007) 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

SROCs pursuant to article 3, 13 or 14, payments made under article 11, or the production of NIROCs pursuant to article 12 or treated as met by payments made under article 30;

(ii) the compliance of each designated electricity supplier with the minimum wave and tidal requirements of its renewable obligation, including the extent to which that obligation has been met by the production of SROCs pursuant to article 3 or article 13, payments made under article 11(5) or (6) or treated as met by payments under article 30;

(iii) the sums received by each United Kingdom supplier under articles 27 to 30;

(iv) the number of SROCs issued by the Authority in accordance with articles 16, 17 and 24, the number of SROCs and other certificates accepted by it as evidence under article 3(1), the number of NIROCs accepted by it under article 12, the number of SROCs and other certificates accepted by it under article 13 or 14, and the number of SROCs issued but not yet deleted in respect of the obligation period;

(v) the number of SROCs issued by the Authority in accordance with articles 16, 17 and 24 broken down into different descriptions of generating stations (as referred to in paragraph 2 of Schedule 2);

(vi) any notices published by the Authority under article 31(2);

(vii) any instalment payments made to the Authority in accordance with article 31(7), during the period to which the annual report relates;

(viii) the sums received by each compliant United Kingdom supplier under article 32(2), during the period to which the annual report relates;

(ix) any recalculations carried out by the Authority in accordance with article 33(3), during the period to which the annual report relates;

(x) the outcome of any enquiries or investigations conducted by the Authority pursuant to sub-paragraph (g); and

(xi) any other matters which the Authority considers relevant to the implementation of this Order;

(g) monitoring implementation of the renewables obligation and compliance with this Order by designated electricity suppliers and operators of generating stations (including compliance by operators of generating stations with any conditions attached to their accreditation) and such monitoring may include conducting enquiries or investigations into–

(i) the quantities of electricity generated from eligible renewable sources by accredited generating stations;

(ii) the quantities of such electricity supplied to customers in Great Britain;

(iii) the transfer and holding of SROCs (including the transfer and holding of SROCs issued to agents by virtue of article 17);

(iv) the effect of such matters on the making and allocation of payments under articles 11, 27, 28, 29, 30, 32 and 33; and

(v) the effect of the renewables obligation on designated electricity suppliers and the operators of generating stations;

(h) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to paragraph (g); and

(i) 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.

Preliminary accreditation and accreditation of generating stations

38.—(1) Paragraphs (2) to (9) shall apply to the granting and withdrawing of preliminary accreditation and accreditation of generating stations.

(2) Where a generating station in respect of which–

(a) consent under section 36 of the Act has been obtained; or

(b) planning permission under the Town and Country Planning (Scotland) Act 1997(**a**) has been granted,

has not been commissioned, the Authority may, upon the application of the person who proposes to construct or operate the generating station, grant the station preliminary accreditation as being capable of generating electricity from eligible renewable sources.

(3) Where a generating station has been commissioned, the Authority may, upon the application of its operator (or, where SROCs relating in whole or in part to electricity generated by that generating station will be issued to an agent by virtue of article 17, that agent), grant the station accreditation as being capable of generating electricity from eligible renewable sources for the purposes of article 18(2).

(4) Where a station has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for its accreditation is validly made under paragraph (3), the Authority shall not grant that application if–

(a) there has in the Authority's view been a material change in circumstances since the preliminary accreditation was granted; or

(b) the Authority has reason to suppose that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular; or

(c) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made under the amended legislation, it would not in the Authority's view have been granted;

but otherwise shall grant the application.

(5) The Authority may, in granting preliminary accreditation or accreditation, attach such conditions as appear to it to be appropriate.

(6) Where any of the circumstances mentioned in paragraph (7) apply, the Authority may–

(a) withdraw the preliminary accreditation or accreditation from any generating station; or

(b) amend conditions attached to the preliminary accreditation or accreditation under paragraph (5); or

(c) attach conditions to the preliminary accreditation or accreditation.

(7) The circumstances referred to in paragraph (6) are as follows–

(a) in the Authority's view there has been a material change in circumstances since the preliminary accreditation or accreditation was granted;

(b) any condition subject to which the preliminary accreditation or accreditation was granted has not been complied with;

(c) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation or accreditation was based was incorrect in a material particular;

(d) there has been a change in applicable legislation since the preliminary accreditation or accreditation was granted such that, had the application for preliminary accreditation or accreditation been made under the amended legislation, it would not in the Authority's view have been granted.

(8) The Authority shall notify the applicant in writing of–

(**a**) 1997 c.8.

(a) its decision on an application for preliminary accreditation or accreditation of a generating station;

(b) any conditions attached to the preliminary accreditation or accreditation; and

(c) any withdrawal of preliminary accreditation or accreditation.

(9) In providing written notification under paragraph (8), the Authority shall specify the date on which the grant or withdrawal of preliminary accreditation or accreditation and any conditions attached to the preliminary accreditation or accreditation shall take effect.

(10) In paragraph (2), the reference to the person who proposes to construct the generating station shall include a person who arranges for the construction of the generating station.

PART 9

Revocation, Transitional and Savings

Revocation, transitional and savings

39.—(1) Subject to paragraphs (2) to (15), the 2006 Order is hereby revoked.

(2) The 2006 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 2006 Order, before the specified day of 1st September 2007; and for the purposes of this article, the first line in the column headed "Obligation period", and the first percentage specified in the column headed "Percentage of total supplies" in Schedule 1 to the 2006 Order shall continue to apply.

(3) The 2006 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of article 4(4) of the 2006 Order to furnish information to the Department of Trade and Industry by no later than 1st June 2007.

(4) The 2006 Order shall continue to apply in respect of the obligations of each designated electricity supplier in terms of article 4(5) of the 2006 Order to inform the Authority before 1st July 2007 of the amount in megawatt hours of its renewables obligation in respect of the obligation period which ended before 1st July 2007 and the amount of all electricity supplied by that designated electricity supplier to customers in Scotland during that obligation period.

(5) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge its renewables obligation in relation to the obligation period ending on 31st March 2007 by making a payment to the Authority before the specified day of 1st September 2007, in accordance with the terms of article 11 of the 2006 Order.

(6) The 2006 Order shall continue to apply in respect of the obligations of the Authority to pay out the buy-out fund, by 1st November 2007, in accordance with the terms of article 22 of the 2006 Order.

(7) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge its renewables obligation in relation to the obligation period ending on 31st March 2007 by producing to the Authority eligible NIROCs before the specified day of 1st September 2007, in accordance with the terms of article 12 of the 2006 Order.

(8) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to discharge its renewables obligation in relation to the obligation period ending on 31st March 2007 by producing to the Authority certificates issued by the Authority certifying the matters in section 32B(2A) of the Act before the specified day of 1st September 2007, in accordance with the terms of article 13 of the 2006 Order.

(9) The 2006 Order shall continue to apply in respect of the ability of a designated electricity supplier to be treated as having discharged its renewables obligation in relation to the obligation period ending on 31st March 2007 by making a late payment to the Authority before the end of the late payment period in question, in accordance with the terms of article 23 of the 2006 Order.

(10) The 2006 Order shall continue to apply in respect of the obligations of the Authority to notify any designated electricity supplier that has not discharged its renewables obligation in full by the specified day of 1st September 2007 relating to the obligation period ending on 31st March 2007, and to what extent, in accordance with the terms of article 23 of the 2006 Order.

(11) The 2006 Order shall continue to apply in respect of the obligations of the Authority to pay out the late payment fund, by 1st January 2008 in accordance with the terms of article 23 of the 2006 Order.

(12) The 2006 Order shall continue to apply in respect of the obligations of the Authority to notify to the Northern Ireland Authority the information detailed in article 29 of the 2006 Order, in accordance with the terms of that article of the 2006 Order.

(13) The 2006 Order shall continue to apply in respect of all the obligations of the Authority and designated electricity suppliers referred to in article 24 of the 2006 Order in accordance with the terms of that article and insofar as those obligations relate to a relevant shortfall occurring in the obligation period ending on 31st March 2007.

(14) For the purposes of paragraph (13), the first line in the column headed "Obligation period" and the first amount specified in the column headed "Amount" in Schedule 4 to the 2006 Order shall continue to apply.

(15) The 2006 Order shall continue to apply in respect of all the functions of the Authority referred to in article 30 of the 2006 Order insofar as they relate to the obligation period ending on 31st March 2007.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2007

SCHEDULE 1

Articles 4(2) and 5

AMOUNT OF THE RENEWABLES OBLIGATION

Obligation period	*Percentage of total supplies*		
	Wave requirement	*Tidal requirement*	*Total obligation*
1st April 2007 to 31st March 2008	0	0	7.9
1st April 2008 to 31st March 2009	0.05	0.05	9.1
1st April 2009 to 31st March 2010	0.1	0.1	9.7
1st April 2010 to 31st March 2011	0.15	0.15	10.4
1st April 2011 to 31st March 2012	0.2	0.2	11.4
1st April 2012 to 31st March 2013	0.25	0.25	12.4
1st April 2013 to 31st March 2014	0.3	0.3	13.4
1st April 2014 to 31st March 2015	0.35	0.35	14.4
1st April 2015 to 31st March 2016	0.35	0.35	15.4
Each subsequent period of twelve months ending with the period of twelve months ending on 31st March 2027	0.35	0.35	15.4

SCHEDULE 2

Article 23(2)

THE REGISTER

1. The Authority shall maintain the Register (which may be in electronic form) at any of its premises.

2. Particulars of a SROC comprise–

(a) the name of the person to whom the Authority issues the SROC or, where the Authority has amended the Register in dealing with a request for substitution in accordance with paragraph 6, the name of the substitute ("the registered holder"); and

(b) an identifier unique to the SROC ("the SROC identifier") determined by the 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 or, where the SROC certifies the matters within section 32B(2ZA), (2AA) or (2AC) of the Act, the location of the agent to whom, by virtue of article 17, the SROC was issued;

(iii) a description of that generating station or, where the SROC certifies the matters within section 32B(2ZA), (2AA) or (2AC) of the Act, the generating stations to which the SROC relates, including reference to the eligible renewable source or sources used by it or them to generate electricity;

(iv) the date of issue of the SROC; and

(v) the SROC sequence number determined by the Authority in accordance with article 22(1)(a) or 24(6).

3. A person may only be the registered holder of a SROC or have an entry made and maintained in respect of them under article 23(4)(b) if they provide to the Authority in writing–

(a) evidence of their identity; and

(b) where persons are authorised to act on their behalf in respect of the production of SROCs as the evidence or part of the evidence required under article 3(1) and in respect of requests for amendments to be made to the Register as provided for in this Schedule, details of those persons.

4. The Authority may from time to time draw up procedural guidelines for itself and others to assist it in maintaining the Register and carrying out its functions in respect thereof.

5. The Authority shall delete from the Register any SROC which–

(a) has been revoked in accordance with article 24;

(b) has in accordance with article 3(3), 13 or 14 been produced as evidence or as part of the evidence required under article 3(1);

(c) is no longer eligible to be produced as evidence or as part of the evidence required under article 3(1);

(d) the registered holder requests should be deleted; or

(e) the Northern Ireland Authority has notified the Authority has been produced to the Northern Ireland Authority by a Northern Ireland supplier under a NIRO Order;

and where it is so deleted, the SROC cannot thereafter be produced as the evidence or part of the evidence required under article 3(1).

6. Where the registered holder of a SROC and a person whom the registered holder wishes to be the substitute (as defined in this paragraph) require in respect of a particular SROC that the

Register be amended, by substituting for the name of the registered holder the name of a second person ("the substitute"), (who shall be a person whose name is included on the list maintained pursuant to article 23(4)(b))–

(a) the registered holder and the person whom the registered holder wishes to be the substitute shall each submit to the Authority in writing requests which are identical in all material respects and which include the SROC identifier of the SROC to which the request relates; and

(b) the Authority shall–

(i) in any August, within 10 banking days; and

(ii) in all other instances, within 5 banking days,

after the banking day on which it is first in receipt at the commencement of its working hours of requests which comply with sub-paragraph (a), amend the particulars of the SROC recorded in the Register to show the substitute as the registered holder.

7. Where the Authority receives in writing a request for substitution it shall inform both the registered holder of the SROC and the substitute named therein that the request has been received and, in the event that the requests from the registered holder of the SROC and the person whom the registered holder wishes to be the substitute are not identical in all material respects or do not include the SROC identifier of the SROC, shall draw this to their attention.

8. Where a SROC is issued in accordance with article 16 (and, where it applies, article 17) or a replacement SROC is issued in accordance with article 24 or a substitute is recorded as the registered holder pursuant to paragraph 6, the Authority shall notify the registered holder (in the case of a SROC or a replacement SROC being issued) and the former and new registered holder (in the case of a substitution) in writing within 5 banking days of the issue or substitution having taken place.

9. The substitute shall not be the registered holder of the SROC until such time as the particulars of the SROC recorded in the Register identify the substitute as such.

10. The Register may be amended by a decision of the Authority–

(a) where the Authority is satisfied that an entry in the Register has been obtained by fraud;

(b) where a decision of a Court of competent jurisdiction or the operation of law requires the amendment of the Register;

(c) in any other case where by reason of any error or omission on the part of the Authority it is necessary to amend the Register.

11. The contents of the Register (including the entries referred to in article 23(4)(b)) shall be available for inspection by the public on request at reasonable notice during the Authority's working hours and at the request of any person the Authority shall provide a written statement of any entry on the Register including any entry referred to in article 23(4)(b).

12. Where any person considers that an entry maintained in respect of that person under article 23(4)(b) should be amended or deleted, that person may apply to the Authority in writing requesting that the entry be amended or deleted.

13. The Authority shall in any procedural guidelines which it produces provide details of its usual working hours.

SCHEDULE 3

Article 2(1)(**a**)

CONDITIONS OF ELIGIBILITY FOR NIROCs

1. The electricity to which the NIROC relates was generated from renewable sources.

2. The electricity was generated in Northern Ireland (which for the purposes of this paragraph shall not include any part of the territorial sea of the United Kingdom).

3. The electricity to which the NIROC relates was not generated by a generating station that is a large hydro generating station unless it was first commissioned after 1st April 2002.

4. Subject to paragraphs 5 and 6, the electricity to which the NIROC relates was not generated by a generating station (other than a micro hydro generating station) that was first commissioned before 1st January 1990 and where the main components of that generating station have not been renewed since 31st December 1989 as described in paragraph 21.

5. Paragraph 4 shall not apply in relation to a NIROC issued in respect of electricity generated by a generating station that during the month to which the NIROC relates was fuelled partly by fossil fuel and partly by biomass (and by no other fuel).

6. Paragraph 4 shall not apply in relation to a NIROC issued in respect of electricity generated by a generating station that during the month to which the NIROC relates was 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 the generating station 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.

7. The electricity to which the NIROC relates was not generated by a generating station that in the month to which the NIROC relates 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; or

(c) the generating station is a qualifying combined heat and power generating station.

8. The electricity to which the NIROC relates was not generated by a generating station that in the month to which the NIROC relates was fuelled partly by fossil fuel and partly by any other fuel (or fuels) other than biomass.

9. After 31st March 2016, the electricity to which the NIROC relates was not generated by a generating station that during the month to which the NIROC relates was fuelled partly by fossil fuel and partly by biomass (and by no other fuel).

10. The electricity to which the NIROC relates was not generated by a generating station that during the month to which the NIROC relates was fuelled wholly or partly by peat.

11. The electricity to which the NIROC relates was not generated by a generating station that during the month to which the NIROC relates was fuelled wholly or partly by any substance derived directly or indirectly from any of the substances referred to in article 9(1)(a)(i) unless that substance is a substance falling within article 9(1)(a)(ii) or it is waste or a component of biomass.

(**a**) See definition of "eligible NIROC".

12. The electricity to which the NIROC relates was not generated by a generating station that during the month to which the NIROC relates was 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 article 9(1)(a)(i).

13. Paragraph 14 applies where–

(a) a qualifying arrangement ("the applicable qualifying arrangement") provided for the building of a generating station at a specified location ("the location");

(b) 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

(c) 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.

14. If this paragraph applies, it is a condition of eligibility that the electricity to which the NIROC relates was not generated by a generating station–

(a) which is situated at the location; and

(b) 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).

15. Paragraph 16 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.

16. If this paragraph applies it is a condition of eligibility that the electricity to which the NIROC relates was not generated by a generating station–

(a) which is situated at the location; and

(b) 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 in relation to any such party.

17. Paragraphs 14 and 16 shall not apply to a NIROC relating to electricity generated by a generating station which, during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.

18. In paragraphs 14 and 16, 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.

19. The references in paragraph 18 to the first person and the second person shall include any person who is a connected person in relation to either of them.

20. For the purposes of paragraphs 13 to 19, 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.

21. For the purposes of paragraph 4, 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.

22. The following terms shall have the meanings given below where they appear in this Schedule:

(a) "fossil fuel" has the meaning given by article 9(1)(a);

(b) "Non-Fossil Fuel Orders" has the meaning that it has in the NIRO Order under which the NIROC was issued;

(c) "qualifying arrangement" has the meaning that it has in the NIRO Order under which the NIROC was issued;

(d) "renewable sources" means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

(e) "specified" means specified in this Schedule;

(f) "waste" is to be regarded as including anything derived directly or indirectly from waste (as that term is defined in article 2(1)).

23. Paragraph 24 applies, where in respect of any generating station, the operator–

(a) has given notice under a NIRO Order which, had that notice been given in respect of a station to which article 25 applies, would have constituted notice under article 25(2); and

(b) has not done anything that, had it been done in respect of a station to which article 25 applies, would have constituted withdrawal of that notice under article 25(5).

24. In the case of a generating station referred to in paragraph 23 the reference to "month" in each place where it occurs in this Schedule shall be taken to be a reference to "obligation period" where "obligation period" has the meaning that it has in the NIRO Order under which the NIROC in question was issued.

SCHEDULE 4

Article 34(1)(i)

AMOUNT OF RELEVANT SHORTFALL FOR EACH OBLIGATION PERIOD

Obligation Period	*Amount*
1st April 2006 to 31st March 2007	£670,000
1st April 2007 to 31st March 2008	£790,000
1st April 2008 to 31st March 2009	£910,000
1st April 2009 to 31st March 2010	£970,000
1st April 2010 to 31st March 2011	£1,040,000
1st April 2011 to 31st March 2012	£1,140,000
1st April 2012 to 31st March 2013	£1,240,000
1st April 2013 to 31st March 2014	£1,340,000
1st April 2014 to 31st March 2015	£1,440,000
1st April 2015 to 31st March 2016	£1,540,000
Each subsequent period of twelve months ending with the period of twelve months ending on 31st March 2027	£1,540,000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 32 of the Electricity Act 1989 and imposes an obligation ("the renewables obligation") on all electricity suppliers, which are licensed under that Act and which supply electricity in Scotland, to supply to customers in Great Britain a specified amount of electricity generated by using renewable sources. As alternatives, in respect of all or part of an electricity supplier's renewables obligation, an electricity supplier is permitted to provide evidence that other licensed electricity suppliers have supplied electricity generated using renewable sources instead of it, or to make a payment to the Gas and Electricity Markets Authority ("the Authority"). Renewable sources include sources of energy such as wind, water, solar and biomass.

The Order revokes and replaces, with amendments, the Renewables Obligation (Scotland) Order 2006 ("the 2006 Order"). The main differences between this Order and the 2006 Order are the introduction of minimum wave and tidal requirements as part of the renewables obligation; and changes enabling small and micro generators to amalgamate their output and/or appoint agents to act on their behalf.

Article 2 contains the interpretation provisions for the Order.

Article 3 imposes the renewables obligation on electricity suppliers. The renewables obligation requires the electricity supplier to produce evidence of the supply of electricity generated from renewable sources to the Authority. The evidence required is certificates issued by the Authority. Those certificates issued under this Order are referred to as "SROCs". Alternatively the electricity supplier may produce certificates issued under the corresponding Order made by the Secretary of State for Trade and Industry: the Renewables Obligation Order 2006. Part 4 of the Order (articles 11 to 15 described below) provides alternative means of discharging the obligation.

Articles 4 and 5 and Schedule 1 provide for how the amount of an electricity supplier's renewables obligation is to be determined. This includes a specified minimum amount which must be generated from wave and tidal generating stations located in Scottish waters or the Scottish area of the Renewable Energy Zone.

Articles 6 to 10 determine what types of electricity generated from renewable sources are eligible to satisfy an electricity supplier's renewables obligation.

Article 11 provides that, instead of producing certificates to the Authority, an electricity supplier may discharge (in whole or part) its renewables obligation by making a payment to the Authority.

Article 12 provides for suppliers to discharge their renewables obligation by tendering eligible certificates, issued under the Northern Ireland Renewables Obligation orders ("NIROCs") to the Authority. Schedule 3 sets out the conditions governing NIROC eligibility.

Articles 13 and 14 provide for an electricity supplier to discharge its renewables obligation by producing to the Authority certificates certifying the matters in section 32B(2A), (2AA), 32B(2AB) or (2AC) of the Electricity Act 1989 (including electricity supplied to customers in Northern Ireland, electricity supplied by two or more generating stations between them, and electricity consumed by the operators of the generating station).

Articles 16 to 23 and Schedule 2 provide for the issue of SROCs by the Authority and the maintenance by it of a register of SROCs. Article 17 provides for the operators of micro generating stations to appoint agents to receive SROCs on their behalf.

Article 24 provides for the revocation of SROCs in specified circumstances.

Article 25 contains special arrangements enabling generating stations with a declared net capacity of 50 kilowatts or less to be able to claim SROCs on an annual rather than monthly basis.

Article 26 sets out the formula to be applied in respect of making allocations of payments to the wave and tidal buy-out funds

Article 27 provides how the payments made to the Authority by electricity suppliers under article 11 (payments as alternative means of discharging renewables obligation) are to be divided amongst those electricity suppliers subject to the renewables obligation. Articles 28 and 29 provide for allocation of the wave and tidal buy-out funds to designated suppliers who produce certificates in compliance with their renewables obligations which meet the minimum wave or tidal requirement during the obligation period and further provides for refund by the Authority of monies paid into the buy-out if no designated suppliers produce any such certificate.

Article 30 provides for an electricity supplier to be treated as having discharged its renewables obligation if it makes a late payment in accordance with that article. The late payment must be made during a specified period and is subject to a surcharge which rises on a daily basis. If the supplier only makes a partial late payment the remaining part of its renewables obligation remains outstanding and the supplier is still in default of its renewables obligation.

Articles 31 to 33 provide for mutualisation as set out in details of how the process will work; such as how a shortfall in the buy out fund will be calculated and which shortfalls are recoverable via mutualisation. Specifically, where the shortfall is less than the sum set out in Schedule 4 for that obligation period, mutualisation is not triggered; when the shortfall is equal to or greater than the sum set out in Schedule 4 and does not exceed £20,640,000, the whole shortfall is recovered via mutualisation; and when the shortfall is over £20,640,000, only the first £20,640,000 of the shortfall is recovered.

The payments required by electricity suppliers in accordance with the mutualisation provisions are made in quarterly instalments. For example, for a shortfall in the obligation period 2007/2008, the instalments are required before the following dates: 1st September 2009, 1st December 2009, 1st March 2010 and 1st June 2010.

Article 35 provides for the Authority to obtain information to enable it to carry out its functions under the Order.

Article 36 provides for the exchange of information between the Authority and the Northern Ireland Authority relating to NIROCs produced to the Authority under article 12 and SROCs produced to the Northern Ireland Authority under the Northern Ireland Renewables Obligation orders.

Article 37 makes provision relating to the functions of the Authority under the Order.

Article 38 provides for the preliminary accreditation and accreditation of generating stations. In order to be eligible to claim SROCs in respect of electricity generated from eligible renewable sources, a generating station must obtain accreditation from the Authority.

Article 39 revokes the 2006 Order and also provides for savings provisions in respect of the obligations of each electricity supplier to produce evidence and other information in respect of the renewables obligation, or to make payments to the Authority, and to furnish information to the DTI in respect of periods prior to the coming into force of the Order.

A Regulatory Impact Assessment is available and can be obtained from the Energy Policy Unit, the Scottish Executive Enterprise and Lifelong Learning Department, 5 Cadogan Street, Glasgow, G2 6AT.

This Order re-enacts provisions of the 2006 Order which gave effect to Article 3.1 of the European Directive on the promotion of electricity produced from renewable energy sources in the internal market (Directive 2001/77/EC, O.J. L 283, 27.10.01, p.33).

Draft Order laid before the Scottish Parliament under section 32(9) of the Electricity Act 1989, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T

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