EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION (AMENDMENT) ORDER (NORTHERN IRELAND) 2010

2010 NO [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Assembly.

1.2 The Statutory Rule, which is planned to come into operation on 1 April 2010, is made under powers conferred by Articles 52 to 55F and 66(3) of the Energy (Northern Ireland) Order 2003 and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1 The Statutory Rule will introduce changes to the Northern Ireland Renewables Obligation (NIRO) by amending current NIRO legislation.

3. Background

3.1 The NIRO was introduced on 1 April 2005 as the main support mechanism for encouraging increased generation of electricity from renewable energy sources in Northern Ireland. The original 2005 legislation has been the subject of amendment in 2006, 2007 and 2009 and the current legislation governing the NIRO is the Renewables Obligation Order (Northern Ireland) 2009 which became effective from 1 April 2009.

3.2 The NIRO places a legal requirement on electricity suppliers to account for a specified and increasing proportion of their electricity as having been supplied from renewable energy sources or to pay a buy-out fee that is proportionate to any shortfall. Suppliers provide evidence of compliance by presenting Renewables Obligation Certificates which are issued to renewable electricity generators for each megawatt-hour (MWh) of eligible output. Certificates issued in Northern Ireland are known as NIROCs and the NIRO legislation places responsibility for issuing them and administering the NIRO generally on the Northern Ireland Authority for Utility Regulation (NIAUR).

3.3 The NIRO operates in tandem with two similar Obligations in Great Britain – the 'RO' in England & Wales and the 'ROS' in Scotland. NIROCs issued in

Northern Ireland are tradeable with those issued under the two GB Obligations (GBROCs) in a UK-wide market for Renewables Obligation Certificates; both NIROCs and GBROCs are accepted as the necessary evidence under each of the Obligations. GBROCs are issued by the GB Energy Regulator, OFGEM, which also carries out this function and the general administration of the NIRO on behalf of NIAUR in Northern Ireland.

3.4 The proposed Rule, which is intended to come into operation on 1 April 2010, will amend the current Renewables Obligation Order (Northern Ireland) 2009 by:

- Removing the present 20% cap on the NIRO;
- Moving to 10% headroom from 2011;
- Introduce a 20 year limit on support;
- Extend RO lifetime to 2033;
- Increase offshore wind banding to 2 ROCs;
- Allowing for increased support for small scale generation;
- Increasing support back up to 1 ROC for landfill gas;
- Allowing for NIROC revocation; and
- Removing a requirement for sewage and landfill gas sustainability reporting.

The effect of these proposed amendments is described in more detail below.

Policy Objectives of the Statutory Rule

3.5 The proposed Renewables Obligation (Amendment) Order (Northern Ireland) 2010 has a number of objectives:

a) To remove the 20% cap on the NIRO. Under the current NIRO, the level of the obligation cannot rise beyond 20 ROCs/100MWh. This ceiling is currently provided for in Article 10 of the 2009 NIRO Order and reflects the earlier UK aspiration of achieving 20% renewable electricity in the UK as a whole. This limit would restrict our ability to reach the new higher 2020 targets for renewable electricity required by EU mandated renewable energy targets. We therefore propose to remove the current limit on the maximum level of the NIRO through this Order.

b) To move to 10% headroom from 1 April 2011 onwards. The headroom mechanism is intended to help stabilise the price of NIROCs by ensuring there is always a positive gap between demand for NIROCS

(as expressed in the obligation level set by the NIRO) and supply (as determined by actual renewable electricity generation levels) and that the gap is kept at as steady a level as possible. As the price of NIROCs is driven by the balance of this supply and demand, the headroom mechanism should therefore mean that the NIROC price does not fluctuate too far in either direction. In the consultation DETI had proposed moving to 10% headroom incrementally over four years, but the support for an immediate move to 10% headroom was overwhelming. We cannot move to 10% headroom from 1 April 2010 because we have already set the obligation level for the year 2010/11, so the legislation will embody the change to 10% headroom from 1 April 2011 onwards. Headroom will operate in parallel with fixed targets until 2015.

c) To introduce a twenty-year time limit on support under the RO. The UK Renewable Energy Strategy (RES) consultation mooted the introduction of time-limited support of 20 years for new projects under the RO. The 20 year eligibility for projects is believed to be appropriate to balancing the need to provide investors with long-term certainty with the need to keep costs to consumers to a minimum. It would not be cost-effective to allow all projects to claim NIROCs for the full life-time of the NIRO once extended beyond 2027 (see point d below). For example, a qualifying generating station built in 2010 should not need to continue to receive NIROCs beyond 2030 as all capital costs should have been recovered before this. In order to maintain a consistent approach and avoid additional administrative complexities for Ofgem the draft Order used 26 June 2008 (the date of the RES consultation when this possible change was first announced and which is in line with proposals for the GBRO) as the cut-off point. We therefore propose to introduce the limit on the following basis:

- The **existing regime** will apply to projects which were accredited under the NIRO before 26 June 2008. These projects will continue to be eligible under the NIRO until 2027, the date on which the NIRO currently ceases to apply, and will be retired from the scheme on the project end date or 31 March 2027, whichever is the earlier.

- The **new regime** will apply to projects receiving accreditation on or after 26 June 2008. These projects will receive support under the NIRO for a fixed period of 20 years, but subject to the proposed new NIRO end date of 2033. They will be retired from NIRO support after 20 years or 31 March 2033 (the proposed new end date of the NIRO), whichever is the earlier.

d) To extend the lifetime of the RO from 2027 to 2033. The NIRO is currently designed to provide support to eligible renewable electricity

until 2027. Most renewable electricity projects are long term, with project lives and financing structured over 15-20 years and it is therefore necessary to give long term certainty to investors that the support will be there to continue building new projects. While it is proposed to extend the RO in GB until 2037, DETI wishes to take account of the outcome of work currently being undertaken in conjunction with NIAUR on future renewables support mechanism with reference to the DECC proposals to introduce a FIT arrangement for small-scale generation. We therefore propose, at this stage, to extend the NIRO to 2033.

e) To allow for increased support for small-scale generation. GB is introducing a feed-in tariff for small-scale generation under powers in the Energy Act 2008 which do not extend to Northern Ireland. To seek to provide some form of additional assistance to small scale generators in Northern Ireland, it is proposed that additional NIROCs be given to new generating stations accredited from 1 April 2010 in the following technologies:

	Proposed NIROCs from 1 April 2010
<u>Wind</u>	
Up to 250 kW	4 NIROCs
250kW – 5MW	1 NIROC
<u>Hydro</u>	
Up to 20kW	4 NIROCs
20kW – 250kW	3 NIROCS
250kW – 1MW	2 NIROCS
1MW – 5MW	1 NIROC
<u>PV</u>	
Up to 50kW	4 NIROCs
50kW – 5MW	2 NIROC

f) To implement 1 ROC for landfill gas in Northern Ireland. The “banding” of the NIRO was introduced in the Renewables Obligation Order (NI) 2009 in order to provide varying amounts of support under the NIRO for different technologies. In GB, support for electricity generation from landfill gas has been reduced to 0.25 ROCs/MWh. However, DETI has successfully argued for and gained State Aid approval for retention of 1 ROC/MWh for landfill gas installations in Northern Ireland and will embody that amendment in this Order.

h) To allow for NIROC revocation. NIROC revocation was introduced to prevent generators over-claiming NIROCs and to allow Ofgem to rectify any mistakes made in allocation. A number of stakeholders have raised concerns around NIROC revocation, specifically the revocation of NIROCs after they have been presented to Ofgem by suppliers. DETI is keen to ensure a balance between unwanted complexity/risk and ensuring a consistent, fair approach. We therefore see a need to come to a common understanding on the best approach to this matter. In order to provide a solution to the issue it is proposed that Ofgem offsets the number of ROCs to be revoked from the generator's future output. For example if ROCs from a generator were found to have been issued incorrectly, Ofgem would subtract the same number of ROCs from a future claim from that generator. To give some certainty to Ofgem and generators, it is proposed that a time limit be set on how long Ofgem has to go back and take action. Given the auditing timeframe, a period of six years from the date of the incorrect claim is proposed.

i) To remove sewage and landfill gas from the requirement for sustainability reporting. Sewage gas is the product of biomass and a large part of the material sent to landfill is also biomass in origin. Both of these types of generation are caught under the current provisions in the Renewables Obligation Order (NI) 2009 to provide sustainability reports. We do not believe this adds value since the aim of sustainability reporting is to incentivise the most sustainable forms of biomass and co-firing and address key concerns over e.g. land use change. However since sewage and landfill gas are waste products, they are not likely to be able to be sourced and operators will only be able to state that the source is unknown and this has the potential to skew statistics on sustainability supporting. We therefore propose that sewage and landfill gas be exempted from sustainability reporting – except where biomass e.g. food waste is added to sewage.

3.6 The Explanatory Note to the Order provides broad guidance on individual Articles.

4. Consultation

4.1 A statutory consultation on the proposals was carried out and concluded on 12 December 2009. The consultation was based largely on the proposals being put forward in GB with the key exception being on the proposals for increased support for small-scale generators.

5. Equality Impact

5.1 The Renewables Obligation (Amendment) Order (NI) 2010 has been screened for compliance with section 75 of the Northern Ireland Act 1998. The Renewables Obligation is a market-based mechanism, the rules of which apply in a non-discriminatory way to its participants; in particular the costs of the NIRO are met by consumers without differentiation. The proposed changes will not alter this position. It was therefore found that a full EQIA was not considered necessary.

6. Regulatory Impact

6.1 The size of the whole Northern Ireland electricity market within the UK is approximately 2.5% of total consumption and the relative costs and benefits associated with the changes must be seen within this context. The special arrangement that Northern Ireland has within the UK-wide operation of the Obligation means that the Obligation level imposed on suppliers here is much lower than that in GB and indeed is much lower than the actual renewables generation in NI, thus restricting the impact of the NIRO on consumer costs because of the average higher cost of electricity in Northern Ireland. Therefore, under this concessionary level of the NIRO, which extends to 2012, there will be minimal short-term cost to the consumer as a result of the proposals in this Order. Any additional costs to the consumer associated with the increase in NIROCs for small scale generation in NI will depend on the amount of new generation incentivised by the planned measure and is believed likely to be small (under £1m) and must be regarded in the context that costs are spread across the UK as a whole.

6.2 The additional support for small scale generators will assist those businesses and other organisations and provide support for businesses which sell renewables technologies.

7. Financial Implications

7.1 The NIRO is a market-led support mechanism through which the cost of providing support to renewable generators is borne by electricity consumers. There are no financial implications for DETI.

8. Section 24 of the NI Act 1998

8.1 These Regulations do not contravene section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 There are no associated EU implications. The Renewables Obligations (including the NIRO) are support measures implemented in line with recommendations of the EC Renewables Directive (EC/2001/77) but are not a mandatory requirement of the Directive. However, it is important to note that the amendments to the NIRO are subject to State Aid clearance by the European Commission.

10. Parity or Replicatory Measure

10.1 Similar legislation is being introduced simultaneously in Great Britain in respect of the Obligations in Scotland and in England & Wales. As the three Obligations operate in tandem it is critical that all three pieces of legislation are in place to allow the banded Obligations to come into operation with effect from 1 April 2010.

10.2 The main difference between the GB and NI legislation is around the proposed introduction of a Feed-In Tariff (FIT) scheme in GB. Northern Ireland does not have the enabling powers to introduce a FIT at this time and an interim solution providing an enhanced form of ROCs for small-scale generators has been proposed in this Order.

11. Additional information

11.1 Not applicable.

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