Consultation

The Renewables Obligation (Amendment) Order (NI) 2007

May 2007

Department of
Enterprise, Trade
and Investment
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Department of Enterprise,
Trade and Investment

Renewables Obligation (Amendment) Order (NI) 2007

Statutory Consultation on Proposed Changes to the Renewables Obligation To Facilitate its Operation within the All-Island Single Electricity Market

May 2007

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INTRODUCTION

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1.1 The Northern Ireland Renewables Obligation (NIRO) is the Department's main policy measure for supporting the development of renewable electricity in Northern Ireland. The NIRO was introduced on 1 April 2005 and has been the subject of amendment in 2006 and 2007: the current legislation governing the NIRO is the Renewables Obligation Order (Northern Ireland) 2007 which became effective from 1 April 2007 with amendments to facilitate access by smaller scale renewable generators to the benefits of the NIRO.

1.2 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 sources or to pay a buy-out fee that is proportionate to any shortfall. Suppliers provide evidence of compliance by presenting Renewables Obligation Certificates (ROCs) which are issued to generators of renewable electricity for each megawatt-hour (MWh) of eligible output. The NIRO operates in tandem with similar Obligations in Great Britain and ROCs issued in Northern Ireland under the NIRO (NIROCs) are tradeable with those issued under the GB Obligations (GBROCs) in a UK-wide market for ROCs; both NIROCs and GBROCs are accepted as the necessary evidence under each of the Obligations. ROCs are issued by OFGEM, which, in the case of NIROCs, is the acting on behalf of the Northern Ireland Authority for Utility Regulation (NIAUR),

1.3 Electricity generators can only be issued with a NIROC if they meet a number of specific criteria including confirmation that the electricity on which they are claiming NIROCs

(i) has been generated from eligible renewable sources; and,
(ii) has been or will be supplied in Northern Ireland.

The Northern Ireland Authority for Utility Regulation (NIAUR) has statutory responsibility for administering the NIRO including a duty to satisfy itself that the issue of a NIROC is appropriate. As noted above the function of administering the NIRO has

been sub-contracted to OFGEM under an Agency Services Agreement.

1.4 A key feature of the Single Electricity Market (SEM) arrangements currently being developed between Northern Ireland and the Republic of Ireland is the single wholesale pool which will effectively replace the existing bilateral arrangements between individual generators and suppliers. All generators (of 10MW capacity or more) and all suppliers will be obliged to participate in the pool. The pool will effectively purchase electricity from a variety of generating sources in both jurisdictions and sell it to suppliers across the island of Ireland. Consequently, in the absence of a precise tracking mechanism for the electricity, it will be difficult to confirm with certainty that electricity generated in Northern Ireland has been supplied to consumers in Northern Ireland. This poses potential complications for the issue of NIROCs and more generally for the operation of the NIRO.

1.5 This statutory consultation is being conducted under Article 52 (6) of the Energy (NI) Order 2003 and relates to a proposed change to the Renewables Obligation Order (Northern Ireland) 2007 ("the 2007 Order") to address the problem highlighted at paragraph 1.4. The change focuses on the declaration required from generators under the current legislation (the 2007 Order) to provide for the circumstances that will be introduced by the SEM. It provides for certain specified arrangements to be put in place to allow the generator to assume that the electricity sold to the pool was supplied to a particular NI supplier and to facilitate OFGEM in issuing NIROCs for that electricity.

1.6 The draft Renewables Obligation (Amendment) Order (Northern Ireland) 2007 ("the 2007 Amendment Order") which will effect the changes is included as Annex B to this document while Annex C highlights by way of track changes the amendments being made to Article 16 of the existing Order.

1.7 Whilst the primary legislation governing the NIRO requires the Department to consult with the electricity suppliers, renewable generators, the Northern Ireland Authority for Utility Regulation (NIAUR) and the General Consumer Council of Northern Ireland (GCCNI), the views of other interested parties are also welcome on this consultation.

1.8 As the NIRO operates in tandem with the GB Obligations and there is mutual recognition between NIROCs and GBROCs in what is a UK-wide market for the certificates (generically referred to as 'ROCs') issued by OFGEM, DETI will work closely with the Department of Trade and Industry (DTI), the Scottish Executive, OFGEM and the Northern Ireland Authority for Utility Regulation (NIAUR) on all the key issues set out in the consultation document. In this respect, too, the Department is also inviting comment from generators in GB.

1.9 This Statutory Consultation seeks comments on the proposals for changes to the NIRO, as contained in this document, as well as the draft 2007 Amendment Order (Annex B) and the draft Regulatory Impact Assessment (Annex E).

1.10 The Policy and Legislation Screening Equality Form prepared for the introduction of the NIRO in 2005 concluded that the impact of the NIRO on Section 75 groups is limited and not significant. As indicated in the RIA attached as Annex E, the proposed changes will be applied as part of the NIRO in a non-discriminatory way and they do not give rise to further increases in electricity costs.

How to respond

1.11 Responses to this consultation should be forwarded to reach DETI on or before 25 June 2007 and may be sent either:

by e-mail to:
NIROSEM2007@detini.gov.uk

by post to:
Miss Davina Quigley,
Sustainable Energy Branch
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
BELFAST
BT4 2JP.

All responses should include the name and postal address of the responder.

1.12 The Department recognises that the timescale for responses to this consultation is less than the 12-week period that is recommended as good practice in the Consultation Criteria at Annex D. However, in this instance, a shorter period is being sought because of the need to have a solution in place in time for the introduction of the SEM on 1 November 2007, taking account of the necessary legislative procedures. In addition, the Department is of the view that the proposed change to the existing NIRO legislation is fundamentally a technical issue and does not involve any change to its renewables policy.

Confidentially & Data Protection

1.13 Your response may be made public by the DETI. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as 'CONFIDENTIAL'. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.14 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.15 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

1.16 Questions about the policy issues raised in the document can be addressed to:

Malachy McKernan
Sustainable Energy Branch
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
Belfast
BT4 2JP

E-mail: malachy.mckernan@detini.gov.uk
Tel: 028 9052 9269

Copies of The Consultation

1.17 This Consultation document is being produced primarily in electronic form and may be accessed on the DETI Energy website: www.energy.detini.gov.uk or may be obtained from the address above or by telephoning 028 9052 9574.

1.18 If you require access to this Statutory Consultation document in a different format – eg Braille, disk, audio cassette – or in a minority ethnic language please contact the Department on 028 9052 9574 and appropriate arrangements will be made as soon as possible.

2

The Northern Ireland Renewables Obligation (NIRO)

2.1 The Northern Ireland Renewables Obligation (NIRO) is the main policy mechanism for supporting the development of large scale renewable electricity in Northern Ireland. It was introduced by the Renewables Obligation Order (Northern Ireland) 2005 and has been subsequently subject to amendment to take account of refinements made to the Obligations both in NI and in GB where similar Obligations operate in tandem with the NIRO. The NIRO currently operates under the Renewables Obligation Order (Northern Ireland) 2007.

2.2 The NIRO places a legal requirement on electricity suppliers to account each year for a specified and increasing proportion of their electricity as having been supplied from renewable sources or to pay a buy-out fee that is proportionate to any shortfall; in 2007/08 that proportion is 2.8% of a supplier's sales. The NIRO operates in tandem with similar Obligations in GB and evidence of compliance is by way of Renewables Obligation Certificates (ROCs) issued to generators for each megawatt-hour (MWh) of eligible output. These ROCs are issued by OFGEM, the GB Energy Regulator, across the UK Obligations and, in Northern Ireland, OFGEM act on behalf of the Northern Ireland Authority for Utility Regulation (NIAUR) which has statutory responsibility for the administration of the NIRO. ROCs issued in Northern Ireland under the NIRO are specifically referred to as NIROCs and are tradeable with ROCs issued under the GB Obligations (GBROCs) with which the NIRO operates in a UK-wide market for ROCs.

2.3 The buy-out alternative to presenting ROCs, which is £34.30/MWh in the 2007/08 Obligation period, gives a value to ROCs and they typically trade at £40 - £50. The higher value of ROCs compared with the Buy-Out price is primarily due to the fact that, at the end of each Obligation period, the Buy-Out

Fund is redistributed among suppliers in proportion to the number of ROCs they produced in settlement of their Obligation for that period.

2.4 A NIROC is issued to a renewable generator subject to the generating station having been accredited as eligible under the NIRO and subject to the station meeting other necessary criteria (see Annex C) including confirmation by the generator that the electricity on which they are claiming NIROCs
   (i) has been generated from eligible renewable sources; and,
   (ii) has been or will be supplied for consumption in Northern Ireland.

2.5 The Northern Ireland Authority for Utility Regulation (NIAUR) which has the statutory responsibility for administering the NIRO through its executive Ofreg, has a duty to satisfy itself that the issue of a NIROC is appropriate; the function of administering the NIRO has, however, been sub-contracted to OFGEM.

The Single Wholesale Electricity Market (SEM)

2.6 The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 provides for the underpinning in Northern Ireland of the new Single Wholesale Electricity Market (SEM) on the island of Ireland; reciprocal legislation is also in place in the Republic of Ireland. The aim of the SEM is to create a single, competitive, sustainable and reliable all-island market that covers Northern Ireland and Ireland and which will bring a range of operational and wider strategic benefits at the minimum necessary cost.

2.7 A key feature of the Single Electricity Market (SEM) arrangements is the single wholesale pool which will effectively replace the existing bilateral trading arrangements between individual generators and electricity suppliers. All generators (of 10MW capacity or more) and all suppliers will be obliged to participate in the pool which will establish a consistent buying and a selling price for electricity across the island in any half-hourly trading period.

Potential Complications being introduced by the SEM

2.8 The fact that the single wholesale pool will purchase electricity from a variety of sources in both jurisdictions and sell it to suppliers across the island of Ireland means that, in the absence of a precise tracking mechanism for the electricity, the SEM arrangements hold complications for allocating attributes (eg source and type) to electricity being supplied to specific customers or, indeed, to a specific jurisdiction.

2.9 Specifically, the SEM introduces potential implications for 4 important processes:
   (i) Fuel Mix Disclosure requirements on suppliers: suppliers may have to accept an overall pool mix with potential implications especially for existing suppliers of ‘green electricity’;
   (ii) the issue of NIROCs under the Northern Ireland Renewables Obligation (NIRO) to generators in Northern Ireland: to be eligible for

NIROCs a renewable generator must confirm that the electricity has been consumed in Northern Ireland;

(iii) the issue of Levy Exemption certificates (LECs) to generators in both jurisdictions under the Climate Change Levy Exemption arrangements: electricity must be consumed within the UK to be eligible for LECs (each LEC is worth £4.41/MWh); and,

(iv) Monitoring of renewables targets: both jurisdictions are subject to their own separate renewables targets with NI contributing to the UK indicative target set in the EC Directive on renewable electricity (EC/2001/77) as well as having its own target of 12% for the proportion of its electricity consumption that is to come from indigenous renewable sources by 2012.

2.10 While all areas require resolution and a solution in one may assist with resolution of the others, this consultation focuses on the implications for the NIRO and seeks a resolution that can be implemented with effect from 1 November 2007, the date on which the SEM arrangements are scheduled to become operational.

Complications for NIRO following SEM Implementation

2.11 The NIRO focus on, and requirement for, consumption in Northern Ireland is, as in GB, enshrined in legislation and, in relation to the introduction of the SEM, difficulties are foreseen in relation to Article 16(4) of the NIRO Order 2007 which requires that, in order to qualify for NIROCs:

" the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator need only provide once during every obligation period) applicable to the relevant electricity that—

the operator has not made (or, where the declaration relates to electricity that he proposes to generate after the declaration is made, that he 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 ....by an electricity supplier to customers in Northern Ireland;"

2.12 In addition, Article 17(3) of the Order provides that NIAUR may refuse to issue a NIROC in any case where it –

(a) considers that the declaration in Article 16(4) is not accurate in relation to all or part of the electricity in respect of which the Authority is considering issuing the NIROC;

(b) considers that the declaration in Article 16(4) is not accurate and reliable ....[or]

(c) *has reason to believe that the electricity in respect of which [it] is considering issuing the NIROC was consumed in circumstances which resulted in the electricity not having been supplied by an electricity supplier to customers in Northern Ireland.."*

2.13 Furthermore Article 23(1)(a) provides that NIAUR

"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 pursuant to Article 16(4) is false .... revoke all NIROCs issued in respect of that generating station in that month".

2.14 The concern is that, under the proposed SEM arrangements, and in particular the operation of a single wholesale pool for electricity, a generator may not be able to make the declaration required by the NIRO legislation and that NIAUR may have difficulty in accepting any declaration that is associated with renewables generation sold into the SEM pool. In the absence of a solution, it is possible that NIROCs could not be issued (or would be revoked). This would have adverse implications for investor confidence in the NIRO, could seriously affect its viability as the main renewables development support mechanism and threaten the achievement of Northern Ireland's 12% target form the amount of electricity to be generated from indigenous renewable sources by 2012.

2.15 Clearly, a solution is imperative to ensure the continued viability of the NIRO within the SEM.

Q1: Do you agree that the introduction of SEM introduces complications for the issue of NIROCs to generators?

Q2: Do you agree that a solution is needed to ensure the continued viability of the NIRO?

Extent of the Potential SEM-NIRO Difficulty

2.16 Participation in the SEM pool arrangements is mandatory for generators with capacity in excess of 10MW. Currently this covers some 80MW of renewables capacity and involves an annual NIROC value of almost £10m. Moreover, windfarms with a similar total capacity have planning permission and many more in the planning process.

2.17 In addition, it is possible in theory, for the SEM arrangements to impact on the ability of GB renewable generators exporting output across the Interconnector to Northern Ireland: if electricity coming through the interconnector is required to enter the pool any such electricity that would otherwise have been eligible for ROCs in GB would have difficulty vouching that it had been supplied within the UK. Such a difficulty would clearly have implications for the operation of the Obligations in GB.

Q3: What, if any, other complications do you envisage the introduction of SEM might hold for NIRO?

Options for a Solution

2.18 The following have been identified as the key options for consideration:

(a) Do Nothing

Although included for completeness, this option is clearly untenable. An inability for renewables generators in Northern Ireland (and possibly GB) to

obtain ROCs in respect of their output would effectively mean the collapse of DETI's main form of support for renewables development.

Q4: Do you agree that action must be taken to address the potential complications for the issue of NIROCs to generators?

(b) Use the average Pool Fuel Mix to Determine Renewables Supply in Northern Ireland

This option would calculate the amount of eligible renewable generation as a proportion of total generation in the pool mix in any trading period and apply that proportion to the total amount of electricity supplied in Northern Ireland. As a refinement it may be possible for suppliers to take account also of electricity traded outside the pool.

Assessment

The key advantage of this option would be its simplicity of operation and the fact that it could be implemented without delay. In addition there would not be any additional cost implications associated with its implementation.

However, such a broad brush approach has a number if disadvantages. It is unlikely to find favour with suppliers who market themselves as 'green suppliers' and want to ensure that they can have some control over the amount of renewable electricity that they can offer for supply. From the generators perspective, too, acceptance of an average proportion that may not account for all its generation holds the potential to limit the amount of its output which will be eligible for NIROCs and, as such, this option does not provide a solution to the SEM-NIRO issue. Finally, the average pool mix does not provide a solution to the requirement for LECs, Fuel Mix Disclosure or for monitoring progress towards the renewables targets of each of the jurisdictions.

Q5: Do you agree that an assumption based on the average pool mix does not represent an appropriate solution? If not, please explain.

(c) Confirmation by the administrator of the SEM Pool

While it is physically impossible to track the path of renewable electricity through the transmission system, the detailed operation of the SEM pool might conceivably be designed to enable the administrator of the pool to allocate (on paper) specific generation (eg renewables) to specific suppliers and to provide the generator with documentation that would confirm the supplier to whom the electricity was sold.

Assessment

Such a procedure would ensure a single point for determination and would minimise the risk of double-counting of renewable output.

The team developing the detailed operational aspects of the SEM have indicated, however, that arrangements to track bilateral derivative contracts based on SEM pool price between generators and suppliers could only be included at prohibitive cost. The Team

believe that a similar outcome could be achieved by relying on a declaration by renewable generators that they established bilateral derivative pool contracts with NI suppliers for electricity that was actually despatched by the system operator.

Critically, the proposal in this option is seen as not being a function of the pool administrator and holds no additional benefit for the administrator who would be undertaking all of the additional work. Moreover, it would be included only at prohibitive additional cost to the operation of the pool and would, in any case, not be possible to implement by 1 November 2007.

Q6: Do you agree that confirmation by the Administrator of the SEM pool does not represent an appropriate solution to the complication posed to the NIRO? If not, please explain.

(d) Renewable generation is the first to be consumed in each jurisdiction

This option holds as its basis the assumption that renewable electricity generated in Northern Ireland is consumed ahead electricity generated from other energy sources or from the Republic of Ireland.

Assessment

Implementation of this option would ensure that all renewable electricity generation in Northern Ireland is regarded as being consumed in Northern Ireland and would therefore enable generators to make the NIRO declaration. It would also represent a relatively simple approach to addressing the current issue.

Such a procedure is based on a very broad assumption that does not necessarily reflect the current situation which involves a proportion of renewables from the Republic of Ireland being consumed in NI and receiving LECs in respect of this consumption. The system would have limited auditability and could be expected to be a cause of concern for NIAUR and OFGEM. It would also need to be accompanied by some additional mechanism that would allocate the renewables output between suppliers with a particular focus on the needs of those marketing themselves as 'green suppliers'.

Q7: Do you agree that a system based on the assumption that renewable generation is the first to be consumed in each jurisdiction does not represent an appropriate solution to the complication posed to the NIRO? If not, please explain.

(e) Tracking through a system of Certification

This option would involve a certification system running alongside the NIRO with the certificates being used as the mechanism to confirm supply.

Assessment

The EC Directive (2001/77/EC) on the promotion of electricity from renewable energy sources requires all Member States to establish a system of certificates that provide a guarantee that electricity is derived from renewable sources. These certificates are known as Renewable Electricity

Guarantees of Origin (REGOs) and are issued, on request, by Ofreg to the renewable generator as an EU-wide confirmation that the electricity generated is from a renewable source.

As yet there has not been any demand for REGOs and none has yet been issued in NI – they have no monetary value and there has clearly not been any need for generators to have them to confirm the authenticity of their renewables generation. It is possible, however, that REGOs will be used (as in GB) for suppliers to comply with Fuel Mix Disclosure regulations. There are also indications that a harmonised system will be introduced across Europe (possibly based on REGOs) for tracking electricity.

However, as there is currently no provision for the issue of REGOs in the Republic of Ireland this is not likely to provide a solution within the necessary timeframe. Despite its EC recognition the use of REGOs in the SEM does not provide any more precise mechanism for tracking the electricity as any of the other options as it does not necessarily represent the physical flow of energy. In addition, it implies the use of 2 concurrent certification systems with additional costs associated with the issue and redemption of the REGOs.

Q8: Do you agree that a tracking system based on certificates such as REGOs does not provide a solution that can be implemented as required from 1 November 2007? If not, please explain.

(f) Bilateral Contracts operating alongside and in tandem with SEM

Under this option, separate arrangements (possibly financial contracts for difference) between generators and suppliers would be used as a proxy for proof of purchase of renewable energy.

Assessment

While, in common with all other options, this procedure would not necessarily reflect the actual physical flow of energy, these contracts could be regarded as successors to the bilateral contracts that currently operate between generators and suppliers and, therefore, would conceivably represent an equivalent auditable mechanism for monitoring the throughput of electricity from various sources of generation to a point of usage.

This option would enable 'green suppliers' to continue to market their electricity as from renewable sources and to monitor the extent to which they can supply such electricity. Furthermore, the contracts (if based on Contracts for Difference which are being implemented for other purposes in SEM) could also be used to provide a hedge for suppliers – and for generators - against pool price fluctuations and give a level of certainty to both parties. In addition, discussion with HM Revenue and Customs indicates that such contracts will satisfy the requirements for the issue of LECs and, in this respect, will have particular relevance for electricity generated in the Republic of Ireland for consumption in Northern Ireland although such electricity is not eligible for ROCs.

Finally, responses to the recently completed All-Island Project consultation on the Disclosure of Information to final customers by suppliers points to the use of Contracts for Difference as a preferred way forward to meet these requirements allowing suppliers, and especially those who market their supplies as 'green' to confirm the source of their electricity . In view of the uses envisaged for such an approach, the use of these contracts to facilitate generators' declaration under the NIRO can therefore be expected to involve minimal additional cost.

Q9: Do you agree that a system based on bilateral contracts between generators and suppliers offers the optimum approach to addressing the SEM-NIRO difficulty by 1 November 2007? If not, please explain

Disadvantages inherent in this approach are shared with *the other* options. Principally, the contracts do not precisely reflect the flow of actual any of energy – something which cannot be achieved in a pool system in any case.

Recommended Approach

2.19 The Department has considered the above options in preliminary consultation with NIAUR and with DTI, OFGEM and their respective legal advisers. The Department considers that Option (f) represents the optimum way forward to ensure the continued viability of the NIRO within the SEM from 1 November 2007.

2.20 Importantly, the proposed solution is expected to align with actions being proposed to address the complications raised by the SEM for other processes. Indeed, it follows the procedure currently used for the issue of LECs to overseas generators which requires:

(i) a transmission route including (for non-UK generation) an interconnector between the UK and the country of generation; and
(ii) a contract between the generator and a supplier or suppliers that enables the generator to make a declaration similar to that required by the NIRO.

2.21 In summary, the Department believes that a system based on bilateral contracts appears to offer the best all-round solution in that:

(i) they are expected to provide generators with the confidence to sign the NIRO declaration
(ii) they provide a financial hedge for suppliers and generators;
(iii) they allow 'green suppliers' to confirm with confidence and assure customers of the source of their energy
(iv) their use for other non-NIRO purposes reduces the regulatory and cost impact on suppliers and generators; and,
(v) principally, they will enable generators to comply with the requirements of the NIRO Order and access NIROCs for their output.

2.22 The precise format of the contract will be a matter for both parties but clearly it will be critical that the contracts can specify the quantity of electricity involved, the period over which it is being generated/supplied and that the information can be audited for

verification. The concept used by the Directed Contracts for Difference (www.allislandproject.org) which has been finalised by the team developing the SEM detail could provide a template for use in the NIRO case.

Q10: Does the Contract for Difference approach provide a suitable basis for addressing the SEM-NIRO issue?

Q11. What, if any, other potential solutions would you regard as appropriate to addressing the SEM-NIRO complication
(a) by 1 November 2007
(b) for the longer term?

Associated Issues

Legislative Implications

2.23 The fact that the recommended option (in common with all others) cannot reflect the actual flow of energy from the particular generating station to the final consumer meant that it does not fully meet the letter of what is required in the NIRO generator declaration. The NIRO Order therefore requires amendment to enable the generator to make the Declaration without fear of being refused NIROCs on the grounds of a potentially fraudulent claim and also to allow NIAUR to issue the NIROC without fear of judicial challenge.

2.24 The amendment to Article 16 of the NIRO Order (Annex B) is intended to address the legislative issue by:

(a) permitting the generator to sign the declaration on the basis of "relevant arrangements" entered into between the operator and a Northern Ireland supplier; and,

(b) specifying the contracts under the SEM as the "relevant arrangement".

2.25 NIAUR/OFGEM will be required to satisfy themselves that the contracts are in place, that they provide the information needed to allow OFGEM to make a decision on the issue of NIROCs and that the contracts have been fulfilled. In this context, the NIRO Order places a responsibility on NIUER to be satisfied that the declarations from generators are genuine; otherwise, OFGEM has the power not to issue or to revoke NIROCs to a generator.

2.26 In addition, concern had been raised that the onus on NIAUR was fundamentally enshrined in the primary legislation which provides that the certificates issued had to confirm that the electricity was consumed in Northern Ireland. There is a suggestion therefore that a change to the primary legislation may also be required to ensure that the proposed amendment to the NIRO Order is fully beyond challenge.

2.27 While the Department agrees that such an amendment could be helpful, amendment to primary legislation is a more lengthy process. Moreover, the Department is of the view that such amendment is not critical to the solution being proposed in this consultation. Principally, the primary legislation (Article 54(1) of the Energy Order) states that the NIRO Order may provide for NIAUR "to issue from time to

time, in accordance with such criteria (if any) as are specified in the [NIRO] order, a certificate to the operator of a generating station in Northern Ireland ….” . These criteria are contained at Article 16 of the NIRO Order (Annex C) and include, from 1 April 2007, provision for NIROCs to be issued in respect of eligible electricity that is used in a 'permitted way' including being provided to the Northern Ireland electricity grid system "in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated". It is suggested therefore that the proposed amendment to Article 16 of the NIRO is not inconsistent with the primary legislation.

> *Q12: Do you agree that the solution being proposed in this consultation adequately addresses the legal complication posed form the NIRO by the introduction of the SEM? If not, please explain.*

Cost Implications

2.28 The Partial Regulatory Impact Assessment included as Annex E to this Consultation recognises that there may be additional costs associated with implementation of the proposed change to the NIRO. It has not been possible to assess these costs at this stage; however, it is anticipated that, given generators and suppliers currently enter into bilateral contracts in respect of their of the electricity the proposed solution may bring limited additional costs.

2.29 It is anticipated however that there will be additional costs in relation to OFGEM's administration of the proposed procedures. Again, the extent of this is not clear as it will depend on the complexity of the specific contracts but it is expected that, at the outset at least, OFGEM will wish to inspect each contract and obtain confirmation that the requirements of Article 16 had been fulfilled.

> Q13: (a) What, if any, additional costs do you envisage being associated directly with the solution being proposed in this consultation?
>
> (b) Please describe and quantify any such additional costs.

Handling of Electricity Generated Outside the Proposed Contracts

2.30 There are 2 main scenarios for the generation and supply of renewable electricity outside the proposed arrangements. First, there are those generators below the 10MW capacity threshold and not obliged to sell into the pool, and second, there may be instances when a generator with a contract has output that will not be covered by the contracts; this could arise where the contract is terminated during an obligation period and where the generator must consequently "spill" to the Pool.

2.31 For the under 10MW stations, it is not anticipated that there will be a difficulty. These generators are expected to continue with bilateral contracts that are a feature of existing arrangements. Many generate under NFFO contracts with NIE Power Procurement Business (PPB). The handling of these contracts under the

SEM is currently the subject of separate consideration by the All-Island Project team. A decision is anticipated in early May and will be taken into account in the consultation process.

2.32 However, there are potential difficulties for those generators who sell into the pool in cases where a contract is terminated or there is electricity surplus to the amount covered by the relevant arrangement. Clearly, in the absence of a NI Supplier to whom the output can be sold the generator will be unable to make the required NIRO declaration of supply in NI and will be unable to claim NIROCs for that output.

Q14: What, if any, option do you envisage to enable electricity not covered by a relevant arrangement under the proposed NIRO amendment to be eligible for NIROCs?

Q15: Do you envisage any other NIRO-related issues as a consequence of the introduction of the SEM? If so, please explain.

2.33 At present in these circumstances accredited generators are able to "spill" their electricity on to the system, and still sign the declaration that it has been consumed in Northern Ireland. Under the new arrangements accredited generators will only be able to sign the declaration for that portion of their electricity which is covered by a relevant arrangement. Therefore green electricity sold into the pool, which is not covered by a relevant arrangement, would not be eligible for a NIROC. It has been suggested that NIAUR should appoint a "buyer of last resort" to ensure that all Northern Ireland generation from accredited sources could be supplied in Northern Ireland. Currently, NIAUR is of the view that the market should be allowed to propose a solution. However, if it can be shown that there is a possibility of market failure, NIAUR could examine the circumstances and consider alternative approaches.

Annex A – List of Specific Questions

Q1: Do you agree that the introduction of SEM introduces complications for the issue of NIROCs to generators?

Q2: Do you agree that a solution is needed to ensure the continued viability of the NIRO?

Q3: What, if any, other complications do you envisage the introduction of SEM might hold for NIRO?

Q4: Do you agree that action must be taken to address the potential complications for the issue of NIROCs to generators?

Q5: Do you agree that an assumption based on the average pool mix does not represent an appropriate solution? If not, please explain.

Q6: Do you agree that confirmation by the Administrator of the SEM pool does not represent an appropriate solution to the complication posed to the NIRO? If not, please explain.

Q7: Do you agree that a system based on the assumption that renewable generation is the first to be consumed in each jurisdiction does not represent an appropriate solution to the complication posed to the NIRO? If not, please explain.

Q8: Do you agree that a tracking system based on certificates such as REGOs does not provide a solution that can be implemented as required from 1 November 2007? If not, please explain.

Q9: Do you agree that a system based on bilateral contracts between generators and suppliers offers the optimum approach to addressing the SEM-NIRO difficulty by 1 November 2007?

Q10: Does the Contract for Difference approach provide a suitable template basis for addressing the SEM-NIRO issue?

Q11. What, if any, other potential solutions would you regard as appropriate to addressing the SEM-NIRO complication
(a) by 1 November 2007
(b) for the longer term?

Q12: Do you agree that the solution being proposed in this consultation adequately addresses the legal complication posed form the NIRO by the introduction of the SEM? If not, please explain.

Q13: (a) What, if any, additional costs do you envisage being associated directly with the solution being proposed in this consultation?
(b) Please describe and quantify any such additional costs.

Q14: What, if any, option do you envisage to enable electricity not covered by a relevant arrangement under the proposed NIRO amendment to be eligible for NIROCs?

Q15: Do you envisage any other NIRO-related issues as a consequence of the introduction of the SEM? If so, please explain.

Annex B – Draft Renewables Obligation (Amendment) Order (NI) 2007

Draft Order laid before the Assembly under Article 66(2) of the Energy (Northern Ireland) Order 2003 for approval.

STATUTORY RULES OF NORTHERN IRELAND

2007 No. XX

ELECTRICITY

The Renewables Obligation (Amendment) Order (Northern Ireland) 2007

Made - - -	*2007*
Coming into force - -	*1st November 2007*

The Department of Enterprise, Trade and Investment makes the following Order in exercise of the powers conferred on it by Articles 52 to 55 of the Energy (Northern Ireland) Order 2003([1]).

The Department has consulted the Northern Ireland Authority for Energy Regulation, the General Consumer Council for Northern Ireland, electricity suppliers to whom this Order applies, persons generating electricity from renewable sources in Northern Ireland and such other persons as it considers appropriate.

Citation and commencement

1. This Order may be cited as the Renewables Obligation (Amendment) Order (Northern Ireland) 2007 and shall come into operation on 1 November 2007.

Amendment to the Renewables Obligation Order (Northern Ireland) 2007

2. The Renewables Obligation Order (Northern Ireland) 2007 shall be amended in accordance with Articles 3 to [ ].

([1]) S.I. 2003/419 (N.I. 6); Articles 52 to 55 were amended by S.R. 2004 No. 524 and Article 54A was inserted by S.R. 2004 No 524; Article 54 was amended by section 120 of the Energy Act 2004 (c.20).

Criteria for issue of NIROCs

3.—1. Article 16 (Criteria for issue of NIROCs) is amended as follows.

4. After paragraph (9) insert —

"(10) The operator of a generating station is entitled to make the declarations referred to at paragraphs (4) and (6) if and to the extent that:

(a) the relevant electricity has been (or is to be) sold by him through the SEM Pool ;

(b) there exists in relation to that electricity a relevant arrangement within the meaning of paragraph (11);

(c) the material terms of that relevant arrangement are complied with by the parties thereto; and

(d) there exists in relation to each unit of the relevant electricity no more than one relevant arrangement.

(11) For the purposes of paragraph (10), a relevant arrangement means a contractual agreement between the operator of a generating station and a designated electricity supplier which provides that, in relation to a trading period in which the relevant electricity is sold by the operator through the SEM Pool, the designated electricity supplier shall –

(a) purchase through the SEM Pool an amount of electricity specified in or determined under the agreement, which amount shall not exceed the amount of electricity sold through the SEM Pool by the operator in that period;

(b) purchase through the SEM Pool an aggregate amount of electricity which is not less than the sum of:

(i) the amount of electricity specified in or determined under the agreement; and

(ii) the amounts of electricity specified or determined in any other relevant arrangements applicable to that designated electricity supplier in respect of that period; and

(c) supply to customers in Northern Ireland an aggregate amount of electricity which is not less than the aggregate amount of electricity referred to in sub-paragraph (b).

(12) In this Article—,

(a) "SEM Pool" means the wholesale electricity trading and settlement system established by the trading and settlement code.

(b) "Trading and Settlement Code" means the trading and settlement code referred to in a Memorandum of Understanding dated 6th December 2006 between the Governments of the United Kingdom and of Ireland as such code may be amended or replaced from time to time.

(c) "Trading Period" means an electricity trading period as defined in the Trading and Settlement Code."

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on
________________________ 2007

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order amends Article 16 of the Renewables Obligation Order (Northern Ireland) 2007 ("the 2007 Order") to enable renewable electricity generators in Northern Ireland to treat their output as having been supplied to customers in Northern Ireland by entering into arrangements with Northern Ireland suppliers following the introduction of a Single Electricity Market for the island of Ireland with effect from 1 November 2007.

ANNEX C – PROPOSED ARTICLE 16

Criteria for issue of NIROCs

16 -

(1) The criteria for the issue of NIROCs referred to in Article 14 and issue of replacement NIROCs referred to in Article 23(4) are those set out in paragraphs (2) to (9).

(2) The first criterion is that the Authority has previously confirmed in writing to either the operator of the generating station to which the NIROC relates or, where the NIROC is to be issued to an agent by virtue of Article 15, that agent that the generating station has been granted accreditation 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 3 together with any other information which it reasonably requires in order to assess whether the NIROC 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 NIROC certifying the matters within Article 54(2) or (2ZA) of the Energy Order, the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, 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 he proposes to generate after the declaration is made, that he 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 NIROC certifying the matters within Article 54(2) or (2ZA) of the Energy Order, by an electricity supplier to customers in Northern Ireland; and

(b) the operator is not (and will not during the obligation period become) a person mentioned in Article 6(2)(b) or (4)(b).

(5) The fourth criterion is that, in the case of a NIROC certifying the matters within Article 54 (2ZA) or (2ZC) of the Energy Order—

(a) each of the generating stations in relation to which the NIROC 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 Northern Ireland;

(b) the NIROC is to be issued to an agent by virtue of Article 15; and

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

(6) The fifth criterion is that, in the case of a NIROC certifying the matters within Article 54(2ZB) or (2ZC) of the Energy Order, the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator need only provide once during every obligation period) that the electricity generated by the generating station has been used in a permitted way.

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

(8) The seventh criterion is that the electricity in respect of which the NIROC is to be issued has been measured accurately using a meter which if used for ascertaining the quantity of electricity

supplied by an electricity supplier to a customer would be approved for the purposes of paragraph 3 to Schedule 7 to the Electricity (Northern Ireland) Order 1992.

(9) The eighth criterion is that the Authority is not prohibited from issuing a NIROC on any of the grounds set out in Article 17(2) and has not refused to issue a NIROC on any of the grounds set out in Article 17(3).

(10) ***The operator of a generating station is entitled to make the declarations referred to at paragraphs (4) and (6) if and to the extent that:***

- ***(a) the relevant electricity has been (or is to be) sold by him through the SEM Pool ;***
- ***(b) there exists in relation to that electricity a relevant arrangement within the meaning of paragraph (11);***
- ***(c) the material terms of that relevant arrangement are complied with by the parties thereto; and***
- ***(d) there exists in relation to each unit of the relevant electricity no more than one relevant arrangement.***

(11) ***For the purposes of paragraph (10), a relevant arrangement means a contractual agreement between the operator of a generating station and a designated electricity supplier which provides that, in relation to a trading period in which the relevant electricity is sold by the operator through the SEM Pool, the designated electricity supplier shall –***

- ***(a) purchase through the SEM Pool an amount of electricity specified in or determined under the agreement, which amount shall not exceed the amount of electricity sold through the SEM Pool by the operator in that period;***
- ***(b) purchase through the SEM Pool an aggregate amount of electricity which is not less than the sum of:***
    - ***(i) the amount of electricity specified in or determined under the agreement; and***
    - ***(ii) the amounts of electricity specified or determined in any other relevant arrangements applicable to that designated electricity supplier in respect of that period; and***
- ***(c) supply to customers in Northern Ireland an aggregate amount of electricity which is not less than the aggregate amount of electricity referred to in sub-paragraph (b).***

(12) ***In this Article—,***

- ***(a) "SEM Pool" means the wholesale electricity trading and settlement system established by the trading and settlement code.***
- ***(b) "Trading and Settlement Code" means the trading and settlement code referred to in a Memorandum of Understanding dated 6th December 2006 between the Governments of the United Kingdom and of Ireland as such code may be amended or replaced from time to time.***
- ***(c) "Trading Period" means an electricity trading period as defined in the Trading and Settlement Code."***

Annex D - Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address

http://www.cabinet-office.gov.uk/ servicefirst/index/consultation.htm

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An executive summary of this document is also available in an accessible format if required i.e. Braille, large print, audio cassette or in a minority ethnic language.