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Number 11 of 2010

ENERGY (BIOFUEL OBLIGATION AND MISCELLANEOUS PROVISIONS) ACT 2010

REVISED

Updated to 1 September 2019

This Revised Act is an administrative consolidation of the *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Judicial Council Act 2019* (33/2019), enacted 23 July 2019, and all statutory instruments up to and including *National Treasury Management Agency (Amendment) Act 2014 (State Authority) Order 2019* (S.I. No. 446 of 2019), made 1 September 2019, were considered in the preparation of this Revised Act.

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Number 11 of 2010

ENERGY (BIOFUEL OBLIGATION AND MISCELLANEOUS PROVISIONS) ACT 2010

REVISED

Updated to 1 September 2019

AN ACT TO FURTHER PROMOTE THE USE OF BIOFUEL IN THE STATE AND FOR THAT PURPOSE TO PROVIDE FOR THE INCREASED SUPPLY OF BIOFUEL IN THE STATE BY MEANS OF A BIOFUEL OBLIGATION REQUIRING THAT A SPECIFIED AMOUNT OF ROAD TRANSPORT FUEL IS BIOFUEL; TO IMPOSE A LEVY ON RELEVANT DISPOSALS OF BIOFUEL; TO CONFER ADDITIONAL FUNCTIONS ON THE NATIONAL OIL RESERVES AGENCY TO ADMINISTER THE BIOFUEL OBLIGATION; TO GIVE EFFECT TO CERTAIN PROVISIONS OF DIRECTIVE 2009/28/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 APRIL 2009 ON THE PROMOTION OF THE USE OF ENERGY FROM RENEWABLE SOURCES AND AMENDING AND SUBSEQUENTLY REPEALING DIRECTIVES 2001/77/EC AND 2003/30/EC; FOR THOSE AND OTHER PURPOSES TO AMEND AND EXTEND THE **NATIONAL OIL RESERVES AGENCY ACT 2007**; TO AMEND THE **FUELS (CONTROL OF SUPPLIES) ACT 1971**, THE **FUELS (CONTROL OF SUPPLIES) ACT 1982**, THE **ELECTRICITY REGULATION ACT 1999** AND THE **ENERGY (MISCELLANEOUS PROVISIONS) ACT 2006** AND TO PROVIDE FOR RELATED MATTERS.

[9th June, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement. **1.**— (1) This Act may be cited as the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010.

(2) Subject to *subsection (3)*, this Act comes into operation on such day or days as the Minister for Communications, Energy and Natural Resources may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(3) This Part and *sections 3* (in so far as it applies to sections 44A and 44B (both inserted by the said *section 3*) of the **National Oil Reserves Agency Act 2007**), **4**, **5** and **16** come into operation on the date of the passing of this Act.

Annotations**Editorial Notes:**

E1 Power pursuant to section exercised (2.02.2012) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Section 3) (Commencement) Order 2012* (S.I. No. 32 of 2012).

2. In this Order “Act of 2010” means the *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (No. 11 of 2010).

3. The 2nd day of February 2012 is appointed as the day on which, subject to Article 4, section 3 (in so far as it is not already in operation) of the Act of 2010 comes into operation.

4. Article 3 does not apply to section 3 of the Act of 2010 in so far as that section relates to the insertion of section 44X into the National Oil Reserves Agency Act 2007 (No. 7 of 2007).

E2 Power pursuant to section exercised (27.06.2011) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) (No. 2) Order 2011* (S.I. No. 280 of 2011).

2. The 27th day of June 2011 is appointed as the day on which the following provisions of the *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (No. 11 of 2010) come into operation:

- (a) section 24;
- (b) section 25;
- (c) section 26;
- (d) paragraph (a) of section 27.

E3 Power pursuant to section exercised (1.02.2011) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) Order 2011* (S.I. No. 42 of 2011).

2. The 1st day of February 2011 is appointed as the day on which the following provisions of the *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (No. 11 of 2010) come into operation:

- (a) section 22;
- (b) section 23;
- (c) paragraphs (b) to (j) of section 27.

E4 Power pursuant to section exercised (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) Order 2010* (S.I. No. 322 of 2010).

3. The 1st day of July 2010 is appointed as the day on which the following provisions of the Act of 2010 come into operation:

- (a) subject to Article 4, section 3 (in so far as it is not already in operation);
- (b) sections 6 to 15, and
- (c) sections 17 to 21.

4. Article 3(a) does not apply to section 3 of the Act of 2010 in so far as that section relates to the insertion of sections 44G(4) and 44X into the National Oil Reserves Agency Act 2007 (No. 7 of 2007).

Definition.

2.— In this Act “Principal Act” means the *National Oil Reserves Agency Act 2007*.**PART 2****BIOFUEL OBLIGATION**

Biofuel obligation.

3.— The Principal Act is amended by inserting the following Part after Part 5:

“PART 5A

BIOFUEL OBLIGATION

Definitions
for Part 5A.

44A.— (1) In this Part—

‘biofuel’ means liquid or gaseous fuel for transport produced from biomass;

‘biofuel levy assessment notice’ means a notice given under section 44Q;

‘biofuel obligation’ has the meaning assigned by section 44C;

‘biofuel obligation account’ means an account held under section 44E by an obligated party, biofuel producer or biofuel supplier and references to ‘biofuel obligation account holder’ shall be construed accordingly;

‘biofuel obligation certificate’ means a certificate issued under section 44G to a biofuel obligation account holder;

‘biofuel producer’ means a person who produces biofuel for his or her own use or for sale;

‘biofuel supplier’ means a person who supplies biofuel;

‘biomass’ means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste;

‘Directive’ means Directive 2009/28/EC¹ of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC;

‘expenses’ has the meaning assigned by section 36;

‘Member State’ means a state which is a member of the European Union and includes states that are parties to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the protocol done at Brussels on 17 March 1993;

‘motor vehicle’ means a mechanically propelled vehicle which is powered, in whole or in part, by an internal combustion engine and is designed, constructed or modified to be suitable for use on roads;

‘obligated party’ means an oil company or oil consumer, as the case may be, that is subject to the biofuel obligation under this Part;

‘obligation period’, in relation to the biofuel obligation, means—

(a) in the case of the first obligation period, the period beginning on the day on which section 44C comes into operation and ending on 31 December next following that day, and

(b) in the case of each subsequent obligation period, the period of 12 months beginning on 1 January and ending on 31 December next following the immediately preceding obligation period;

‘period of validity’, in relation to a biofuel obligation certificate, has the meaning assigned by section 44G;

‘petroleum products’ has the meaning assigned by section 36;

¹ OJ No. L140, 5.6.2009, p16.

'relevant disposal of biofuel' has the meaning assigned by section 44N;

'relevant disposal of road transport fuel' means the volume (expressed in litres) of road transport fuel that in any obligation period—

(a) an oil company consumes or disposes of by sale or otherwise to persons in the State, or

(b) an oil consumer consumes in the State;

'relevant disposal of petroleum products' has the same meaning as in Part 5;

'road transport fuel' means any liquid or gaseous fuel which may be used to power, in whole or in part, a motor vehicle whether or not it may also be used for any other purpose;

'volume assessment' means an assessment under section 44O of relevant disposals of biofuel.

(2) A word or expression that is used in this Part and is also used in the Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Directive.

Conversion factors.

44B.— (1) In the case of biofuel which is not in liquid form, the Agency shall, for the purposes of this Part, apply a gas to liquid conversion factor (in this section referred to as a 'conversion factor') calculated on the basis of providing a fair comparison between a unit volume of biofuel in gaseous form and a unit volume of road transport fuel in liquid form.

(2) Subject to subsection (3), the Agency, having considered any representations made under subsection (3)(a), shall publish a notice of the conversion factors to be applied under subsection (1) in the *Iris Oifigiúil* and on its website and by such other means as the Agency considers appropriate.

(3) (a) Before publishing conversion factors under subsection (2), the Agency, following consultation with the persons specified in paragraph (b), shall publish a notice of the proposed conversion factors on its website and by such other means as the Agency considers appropriate inviting persons to make representations in writing to the Agency in relation to the proposed conversion factors within 28 days from the date of publication on its website.

(b) For the purposes of paragraph (a), the Agency shall consult with—

(i) the Minister,

(ii) the Minister for Finance,

(iii) the Minister for the Environment, Heritage and Local Government,

(iv) the Environmental Protection Agency,

(v) the National Standards Authority of Ireland, and

(vi) Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland,

and may consult with such other persons as the Agency considers appropriate.

Biofuel obligation.

44C.— (1) This section applies to relevant disposals of road transport fuel in respect of which, in the obligation period concerned, an oil company or an oil consumer, as the case may be, is liable to pay the levy—

- (a) whether or not the levy has been paid, and
- (b) in the case of an oil consumer, whether or not the oil consumer is exempt from, or has claimed an exemption from, the levy in accordance with section 38.

(2) Every oil company and oil consumer liable to pay the levy (in this Part referred to as an 'obligated party') is required to ensure that in each obligation period not less than a specified amount of its relevant disposal of road transport fuel to which this section applies is biofuel (in this Part referred to as the 'biofuel obligation').

(3) The specified amount, referred to in subsection (1), for the purpose of determining the biofuel obligation, shall be expressed in litres and shall be calculated by reference to—

- (a) the relevant disposals of petroleum products by each obligated party during the obligation period concerned, and
- (b) the percentage rate provided for by section 44D(1).

Rate of
biofuel
obligation.

44D.— (1) The percentage rate referred to in section 44C(3)(b) shall be—

- (a) such percentage as stands specified by order under subsection (2), or
- (b) where no amount stands so specified, 4.166 per cent.

(2) (a) The Minister may, from time to time, review the percentage rate provided for by subsection (1) and may, subject to this section, having considered any representations made under subsection (4)(a), by order provide for a percentage rate in lieu of the percentage rate provided for by subsection (1)(a) or the percentage rate specified in subsection (1)(b).

(b) The Minister may revoke an order under this subsection without providing for a percentage rate, in which case the percentage rate specified in subsection (1)(b) shall apply.

(3) For the purposes of a review under this section the Minister shall have regard to—

- (a) the effect of the biofuel obligation on fuel prices in the State,
- (b) the reports required to be submitted to the Commission of the European Communities on progress in the promotion and use of energy from renewable sources pursuant to Article 22 of the Directive, and
- (c) the reports required to be submitted by the Commission of the European Communities to the European Parliament and the Council pursuant to Article 23 of the Directive,

and may have regard to such other matters as he or she considers appropriate relating to the effects, if any, of increased consumption of biofuel in the State on economic activities in the State and on the environment.

(4) (a) Before making an order under subsection (2), the Minister, following consultation with the persons specified in paragraph (b), shall publish a draft of the proposed order on the internet and by such other means as the Minister considers appropriate inviting persons to make representations in writing to the Minister in relation to the proposed order within 28 days from the date of publication on the internet.

(b) For the purposes of paragraph (a), the Minister shall consult with—

- (i) the Minister for Finance,
- (ii) the Minister for the Environment, Heritage and Local Government,
- (iii) the Agency,
- (iv) the Environmental Protection Agency,
- (v) the National Standards Authority of Ireland, and
- (vi) Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland,

and may consult with such other persons as the Minister considers appropriate.

Biofuel obligation account.

44E.— (1) The Agency shall, in respect of each obligated party, open an account (in this Part referred to as a ‘biofuel obligation account’) within—

- (a) 21 days after the coming into operation of this section, or
- (b) 21 days after the oil company or oil consumer concerned first becomes liable to pay the levy,

whichever is the earlier.

(2) The following matters shall be recorded in a biofuel obligation account:

- (a) the balance of biofuel obligation certificates held to the credit of the account;
- (b) the issuing, transfer, cancellation and revocation of biofuel obligation certificates;
- (c) such other information as the Agency determines relating to the administration of the biofuel obligation.

(3) The Agency may, in accordance with this section and any regulations made under it, open a biofuel obligation account on application to the Agency by a biofuel producer or biofuel supplier who is not an obligated party.

(4) An application under subsection (3) by a biofuel producer or biofuel supplier (in this section referred to as the ‘applicant’) to open a biofuel obligation account shall be in the prescribed form and shall include—

- (a) a current tax clearance certificate,
- (b) such information, particulars and documentation as the Agency may reasonably require in order to be satisfied that the applicant is a biofuel producer or a biofuel supplier, and
- (c) such other information, particulars and documentation as may be prescribed.

(5) The Agency may request an applicant to give to the Agency—

- (a) such additional information, particulars and documentation as the Agency determines for the purposes of an application under subsection (3), and
- (b) such evidence as the Agency may reasonably require in order to verify any information, particulars or documentation given to the Agency in respect of an application under subsection (3).

(6) A request under subsection (5) shall be in such form as the Agency determines and shall specify a period of not less than 21 days from the date of the request within which such information, particulars, documentation or evidence, as the case may be, shall be given to the Agency.

(7) When making an application under subsection (3), without prejudice to any other powers which the Agency may have in that behalf, the applicant shall give consent to the Agency in the prescribed form allowing the Agency or an authorised officer of the Agency such access to premises (within the meaning of section 45), documents, books, records, computers and equipment as the Agency may reasonably require in order to verify the information, particulars and documentation given in the application or any additional information, particulars or documentation or evidence given under this section.

(8) The Agency may refuse to grant an application under subsection (3) to open a biofuel obligation account where—

- (a) the Agency is not satisfied that the applicant is a biofuel producer or biofuel supplier, as the case may be,
- (b) the application is incomplete,
- (c) the applicant fails to give any additional information, particulars or documentation or evidence within the period specified in a request made under subsection (5),
- (d) the applicant fails to give the consent referred to in subsection (7),
- (e) the Agency is of the opinion that any of the information, particulars or documentation given in the application or any additional information, particulars or documentation or evidence given under this section is incorrect, or
- (f) the applicant is already a biofuel obligation account holder.

(9) If the Agency proposes to refuse an application under subsection (3), it shall give the applicant a notice in such form as the Agency determines—

- (a) specifying the grounds on which it is proposed to refuse the application, and
- (b) informing the applicant that he or she may, within 21 days from the date of the notice, make representations in writing to the Agency—
 - (i) showing why the application should be granted, or
 - (ii) rectifying the information, particulars or documentation given in the application or any additional information, particulars or documentation or evidence given under this section,

or both.

(10) Not later than 21 days from the date of the notice under subsection (9), the applicant may make representations in writing to the Agency—

- (a) showing why the application should be granted, or
- (b) rectifying the information, particulars or documentation given in the application or any additional information, particulars or documentation or evidence given under this section,

or both.

(11) The Agency may refuse an application under subsection (3) only after having considered any representations made by the applicant in accordance with subsection (10).

(12) If the Agency refuses an application under subsection (3), it shall, as soon as is reasonably practicable, give to the applicant notice of the refusal in such form as the Agency determines and the notice shall include a statement setting out the reasons for the refusal.

(13) (a) An applicant aggrieved by a decision of the Agency under subsection (11) refusing an application under subsection (3) may, within 21 days beginning on the day on which the notice under subsection (12) is given to the applicant, appeal to the Minister against the decision by giving to the Minister a notice of appeal in writing stating—

- (i) the name and address of the applicant,
- (ii) a statement of the principal grounds for contesting the decision of the Agency and the arguments supporting those grounds, and
- (iii) a schedule listing all the documents annexed to the notice of appeal.

(b) An applicant shall give a copy of the notice of appeal referred to in paragraph (a) to the Agency.

(c) The Minister shall consider the appeal in accordance with the prescribed procedures and, as the Minister sees fit, cancel or confirm the notice of refusal.

(d) The Minister shall notify the applicant and the Agency in writing of his or her decision and the reasons for the decision as soon as is reasonably practicable.

(e) A decision of the Minister on an appeal under this section shall be final and binding on the applicant and the Agency.

(14) The Minister may make regulations for the purposes of this section providing for all or any of the following:

- (a) the form in which an application under subsection (3) shall be made, including by electronic means;
- (b) the information, particulars and documentation to be included in an application under subsection (3);
- (c) the form and content of the consent to be given by the applicant under subsection (7) for the purposes of an application under subsection (3);
- (d) the procedures to be followed for the purposes of an appeal to the Minister under subsection (13);
- (e) such other matters as the Minister considers necessary and appropriate relating to an application under subsection (3) or an appeal to the Minister under subsection (13).

(15) A person commits an offence where he or she gives information under this section or any regulations made under it and he or she—

- (a) knowingly makes any statement or representation (whether written or verbal) which is to his or her knowledge false or misleading in any material respect, or

(b) knowingly conceals any material fact, or

(c) produces or furnishes, or causes or knowingly allows to be produced or furnished, any information, particulars, documentation or evidence which he or she knows to be false in a material particular.

(16) In this section 'tax clearance certificate' means a certificate under section 1095 (as substituted by section 127(b) of the Finance Act 2002) of the Taxes Consolidation Act 1997.

Management of biofuel obligation accounts.

44F.— (1) On opening a biofuel obligation account under section 44E(1) or on granting an application under section 44E(3) to open a biofuel obligation account, the Agency shall issue the biofuel obligation account holder with an account number in respect of the biofuel obligation account concerned.

(2) Biofuel obligation accounts shall be opened and maintained in electronic form or in such other form as the Agency determines or in both forms and in accordance with such procedures as the Agency determines for the purposes of, but not necessarily limited to—

(a) the opening, maintenance and closure of accounts, and

(b) the issuing, transfer, cancellation and revocation of biofuel obligation certificates and any other functions of the Agency under this Act relating to the administration of the biofuel obligation.

Biofuel obligation certificates.

44G.— (1) The Agency shall, on application to it by a biofuel obligation account holder, subject to compliance with this section and any regulations made under it, in respect of each litre of biofuel disposed of by sale or otherwise in the State by the biofuel obligation account holder during the obligation period concerned, issue—

(a) 2 certificates in the case of such biofuels as the Agency may from time to time determine, in accordance with this section, are so eligible having satisfied itself that the material used to produce the biofuels concerned can be considered to be a biodegradable waste, residue, non-food cellulosic material, ligno-cellulosic material or algae, and

(b) one certificate in the case of all other biofuels,

and each such certificate is, in this Part, referred to as a 'biofuel obligation certificate'.

(2) An application for a biofuel obligation certificate shall be made in the prescribed form and shall include the prescribed information, particulars and documentation.

(3) An application for a biofuel obligation certificate may be made at any time during the obligation period in which the biofuel was disposed of as referred to in subsection (1) but in any case not later than 21 days after the end of that obligation period.

(4) An application for a biofuel obligation certificate shall include a statement by the biofuel obligation account holder concerned, in the prescribed form and including the prescribed information, particulars and documentation, that he or she has complied with—

(a) the sustainability criteria for biofuels and bioliquids set out in paragraphs 2 to 6 of Article 17 of the Directive, and

(b) any requirements for verification of compliance with those sustainability criteria for the purposes of Article 18 of the Directive.

(5) An application for a biofuel obligation certificate shall include a declaration in the prescribed form by the biofuel obligation account holder—

- (a) that the information, particulars and documentation included in the application are to the best of his or her knowledge and belief accurate and true,
- (b) that the biofuel the subject of the application meets such minimum standards in relation to the biofuel concerned as the Minister may prescribe under section 44X, and
- (c) that the biofuel the subject of the application has not previously been counted towards the discharge of a renewable energy obligation applying in any Member State, including the State.

(6) It shall be a condition of a biofuel obligation certificate issued under this section that the biofuel obligation account holder to whom the certificate issued complies with section 44L in respect of the cancellation of certificates.

(7) The Agency shall not issue a biofuel obligation certificate under this section unless the biofuel obligation account holder has paid any amount due and owing under this Part to the Agency in respect of any liability arising in respect of the buy-out charge under section 44J or the biofuel levy, as the case may be.

(8) The Minister may make regulations for the purposes of this section providing for all or any of the following:

- (a) the form in which an application for a biofuel obligation certificate shall be made, including by electronic means, as appropriate;
- (b) the information, particulars and documentation to be included in an application for a biofuel obligation certificate including, but not necessarily limited to, the type, nature and quantity of biofuel the subject of the application;
- (c) the form and content of the statement to be made for the purposes of subsection (4) and the information, particulars and documentation to be included in that statement for those purposes;
- (d) the form and content of the declaration to be made for the purposes of subsection (5).

(9) For the purposes of this section, the Agency issues a biofuel obligation certificate to a biofuel obligation account holder by recording the credit of a certificate to the biofuel obligation account concerned.

(10) A biofuel obligation certificate shall be valid for the aggregate of the period (in this Part referred to as the ‘period of validity’)—

- (a) beginning on the first day of the obligation period in which the biofuel was disposed of as referred to in subsection (1) to the end of that obligation period, and
- (b) the 2 years immediately following the end of that obligation period.

(11) (a) Before making a determination with regard to the eligibility of any biofuel for the purposes of subsection (1)(a), the Agency shall consult with the persons specified in paragraph (b) and may consult with such other persons as it considers appropriate in order to satisfy itself that the material used to produce the biofuel concerned can be considered to be a biodegradable waste, residue, non-food cellulosic material, ligno-cellulosic material or algae.

(b) For the purposes of paragraph (a), the Agency shall consult with—

- (i) the National Standards Authority of Ireland,
- (ii) Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland,
- (iii) the Environmental Protection Agency, and
- (iv) the Minister for the Environment, Heritage and Local Government.

(12) Where, following consultation under subsection (11), the Agency is satisfied for the purpose specified in paragraph (a) of subsection (11), the Agency shall publish a draft of the proposed determination on its website and by such other means as the Agency considers appropriate inviting persons to make representations in writing to the Agency in relation to the proposed determination within 28 days from the date of publication on its website.

(13) The Agency, having considered any representations made under subsection (12), shall publish a notice of its determination in the *Iris Oifigiúil* and on its website and by such other means as the Agency considers appropriate.

(14) The Agency shall keep and maintain a list of biofuels in respect of which a determination is made for the purposes of subsection (1)(a) and shall publish the list on its website and by such other means as the Agency considers appropriate.

(15) A person commits an offence where he or she gives information under this section or any regulations made under it and he or she—

- (a) knowingly makes any statement or representation (whether written or verbal) which is to his or her knowledge false or misleading in any material respect, or
- (b) knowingly conceals any material fact, or
- (c) produces or furnishes, or causes or knowingly allows to be produced or furnished, any information, particulars or documentation which he or she knows to be false in a material particular.

Statement of account.

44H.— (1) Subject to subsection (2), the Agency shall give to each biofuel obligation account holder within 14 days after the end of each 3 month period a statement in such form as the Agency determines specifying—

- (a) the number of biofuel obligation certificates (if any) held to the credit of the biofuel obligation account concerned on the date of the statement,
- (b) the date of each such certificate, and
- (c) such other particulars relating to each such certificate as the Agency determines.

(2) The first such statement referred to in subsection (1) shall be given within 14 days after the end of the first 3 month period beginning on the coming into operation of this section.

(3) The Agency shall, as soon as is reasonably practicable, on receipt of a request in writing from a biofuel obligation account holder, issue a statement in such form as the Agency determines specifying the number of biofuel obligation certificates (if any) held to the credit of that account holder's biofuel obligation account and the date of each such certificate.

Compliance with biofuel obligation.

44I.— (1) The Agency shall notify each obligated party in such form as the Agency determines within 35 days after the end of the obligation period concerned of—

(a) the biofuel obligation relating to the obligated party for that period, and

(b) the number of biofuel obligation certificates (if any) held to the credit of the biofuel obligation account concerned which may be counted towards the discharge of the biofuel obligation for that period.

(2) For the purposes of subsection (1)(b), each biofuel obligation certificate shall have a value equivalent to one litre of the specified amount calculated in accordance with section 44C(3) for the purpose of determining the biofuel obligation.

(3) Within 28 days after the date of the notification under subsection (1), each obligated party shall, for the purpose of discharging the biofuel obligation, notify the Agency in such form as the Agency determines specifying by reference to such particulars as the Agency determines the biofuel obligation certificates held to the credit of the biofuel obligation account concerned which are to be counted towards the discharge of the biofuel obligation notified under subsection (1).

(4) Where an obligated party fails to notify the Agency within the period specified in subsection (3) of the number of biofuel obligation certificates to be so counted, the Agency shall determine which certificates held to the credit of the biofuel obligation account concerned are to be so counted in the date order according to which those certificates were issued and shall notify the obligated party accordingly in such form as the Agency determines as soon as is reasonably practicable.

(5) For the purposes of this section, the discharge of the biofuel obligation notified under subsection (1) shall be effected by recording a debit in the biofuel obligation account concerned of the biofuel obligation certificates to be counted under subsection (3) or (4), as appropriate, towards the discharge of the biofuel obligation so notified.

(6) (a) Subject to paragraph (b), a biofuel obligation certificate, the period of validity of which has not expired, may be counted towards the discharge of the biofuel obligation notified under subsection (1) of the obligated party to whose biofuel obligation account the certificate is credited for any obligation period subsequent to the obligation period in respect of which the certificate issued.

(b) A biofuel obligation certificate referred to in paragraph (a) may not be counted towards the discharge of more than 25 per cent of the amount of the biofuel obligation notified to the obligated party under subsection (1) in respect of that subsequent obligation period.

(7) A biofuel obligation certificate held to the credit of a biofuel obligation account may not be counted towards the discharge of the biofuel obligation notified under subsection (1) in respect of any obligation period which is prior to the period of validity of the certificate concerned.

Discharge of biofuel obligation by payment.

44J.— (1) Where the biofuel obligation notified under subsection (1) of section 44I is not discharged, in whole or in part, in respect of the obligated party concerned, in accordance with, and in the period specified in, subsection (3) of that section, or, as the case may be, under subsection (4) of that section, the obligated party shall pay to the Agency an amount in respect of the shortfall (in this section referred to as the 'buy-out charge') calculated in accordance with the formula—

X x Y

where—

X is the amount of the biofuel obligation notified under section 44I(1) which remains undischarged, and

Y is the price per litre of biofuel prescribed in accordance with this section (in this section referred to as the ‘buy-out price’).

(2) For the purposes of subsection (1), the Agency shall give a notice in such form as the Agency determines to the obligated party concerned within 28 days after the end of the period specified in section 44I(3), stating—

- (a) the amount of the biofuel obligation notified under section 44I(1) which remains undischarged, whether in whole or in part,
- (b) the amount of the buy-out charge in respect of the amount of the biofuel obligation which remains undischarged,
- (c) the date by which the buy-out charge is to be paid, which date shall not be less than 28 days from the date of the notice, and
- (d) the consequences of non-payment of the buy-out charge in accordance with this section, including recovery of the amount as a simple contract debt, the incurring of interest on the amount and the payment of a late discharge fee.

(3) If all or any part of the buy-out charge notified under subsection (2) is not paid on or before the date specified in the notice as the date by which the buy-out charge is to be paid, interest on the unpaid amount accrues at the rate prescribed under this section from that date to the date of payment.

(4) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the obligated party by whom it is payable, any amount due and owing to it under this section in respect of the buy-out charge and any interest that has accrued on that amount.

(5) The Minister may make regulations providing for all or any of the following matters:

(a) subject to subsection (7) and having considered any representations made under paragraph (a)(ii) of that subsection and subject to the prior consent of the Minister for Finance, the amount of the buy-out price, or any variation of that amount from time to time, having regard to—

- (i) the market prices for road transport fuel and the effect of the level of the buy-out price on those market prices,
- (ii) the wholesale availability and market prices for biofuel, and
- (iii) the level of the buy-out price required in order for the biofuel obligation to operate effectively;

(b) subject to section 44V, the rate of interest on amounts of buy-out charge not paid when due;

(c) the amount of the late discharge fee.

(6) Any moneys received by the Agency under this section shall be paid to the Exchequer.

(7) (a) Before making any regulations providing for the amount of the buy-out price, or any variation of that amount from time to time, the Minister—

- (i) shall consult with the persons specified in paragraph (b) and may consult with such other persons as he or she considers appropriate, and
- (ii) following consultation under subparagraph (i), shall give not less than 3 months notice of the proposed regulations by publishing a notice on the internet and by such other means as the Minister considers appropriate inviting persons to make representations in writing to the Minister in relation to the proposed regulations within 28 days from the date of publication on the internet.

(b) For the purposes of paragraph (a), the Minister shall consult with—

- (i) the Minister for Finance,
- (ii) the Minister for the Environment, Heritage and Local Government,
- (iii) the Agency,
- (iv) the Environmental Protection Agency,
- (v) the National Standards Authority of Ireland, and
- (vi) Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland.

Transfer of biofuel obligation certificates.

44K.— (1) Biofuel obligation certificates may be transferred from the biofuel obligation account holder to whose account the certificates are credited to another biofuel obligation account holder, subject to this section and any regulations made under it.

(2) Where a biofuel obligation account holder proposes to transfer biofuel obligation certificates to another biofuel obligation account holder, he or she shall give notice to the Agency in such form as the Agency determines of—

- (a) the name and account number of the biofuel obligation account holder who proposes to transfer biofuel obligation certificates (in this section referred to as the ‘transferor’),
- (b) the name and account number of the biofuel obligation account holder to whom it is proposed to transfer the biofuel obligation certificates (in this section referred to as the ‘transferee’),
- (c) the number and date of each biofuel obligation certificate concerned,
- (d) the proposed date of the transfer, and
- (e) such other matters as the Agency may determine.

(3) The Minister, following consultation with the Agency, may make regulations providing for—

- (a) the conditions subject to which a transfer may be effected under this section, including the minimum and maximum number of biofuel obligation certificates which may be transferred by any biofuel obligation account holder during any obligation period, and

(b) such other matters relating to the transfer of biofuel obligation certificates as the Minister considers appropriate.

(4) For the purposes of this section, a transfer shall be effected by recording a debit in the transferor's biofuel obligation account and a credit in the transferee's biofuel obligation account of the biofuel obligation certificates so transferred.

(5) The Agency shall not effect the transfer of any biofuel obligation certificate—

(a) the period of validity of which has expired, or

(b) which is the subject of a notice of revocation under section 44M which has not yet taken effect under that section.

(6) This Part applies to a biofuel obligation certificate transferred under this section in all respects as it applies to a biofuel obligation certificate issued under section 44G and a biofuel obligation certificate so transferred may be counted by the transferee towards the discharge of the biofuel obligation notified to the transferee under section 44I(1).

Cancellation of biofuel obligation certificate where biofuel exported from the State.

44L.— (1) Where biofuel is exported from the State, being biofuel in respect of which a biofuel obligation certificate issued under section 44G, the biofuel obligation account holder to whom the certificate issued shall make an application to the Agency to cancel that certificate, whether or not the certificate has been transferred to another biofuel obligation account holder under section 44K before or after the date on which the biofuel was so exported.

(2) An application under subsection (1) shall be made within 28 days after the date on which the biofuel has been so exported—

(a) in such form as the Agency determines for that purpose, including by electronic means, as appropriate, and

(b) including such information, particulars and documentation as the Agency reasonably requires for the purposes of this section relating to the exportation of the biofuel concerned from the State.

(3) The Agency may request an applicant to give to the Agency—

(a) such additional information, particulars and documentation as the Agency determines for the purposes of an application under subsection (1), and

(b) such evidence as the Agency may reasonably require in order to verify any information, particulars or documentation given to the Agency in respect of an application under subsection (1).

(4) A request under subsection (3) shall be in such form as the Agency determines and shall specify a period of not less than 21 days from the date of the request within which such information, particulars, documentation or evidence, as the case may be, shall be given to the Agency.

(5) Where an application under subsection (1) to cancel a biofuel obligation certificate is made, the Agency shall, as soon as is reasonably practicable, in such form as the Agency determines—

(a) acknowledge receipt of the application, and

(b) where the certificate has been transferred under section 44K, notify the biofuel obligation account holder to whom it has been so transferred.

(6) On the date of the acknowledgement and, as appropriate, notification under subsection (5) the certificate shall cease to be valid and cancellation of the certificate shall be effected by recording a debit accordingly in the biofuel

obligation account to which the certificate is credited on the date of the notification.

Revocation of
biofuel
obligation
certificates.

44M.— (1) The Agency may revoke a biofuel obligation certificate where—
 (a) the biofuel obligation account holder has been convicted of an offence under section 44E, 44G or 44U,
 (b) the biofuel obligation account holder to whom the certificate issued under section 44G has failed to comply with the condition specified in subsection (6) of that section,
 (c) in the opinion of the Agency, the biofuel obligation certificate was obtained by fraud or misrepresentation,
 (d) in the opinion of the Agency, any information, particulars or documentation provided in respect of the application for, or transfer of, the biofuel obligation certificate was false or misleading in a material respect, or
 (e) the biofuel obligation certificate was issued or transferred by virtue of an administrative error.

(2) Before revoking a biofuel obligation certificate under this section, the Agency shall give notice, in such form as the Agency determines, of its proposal to revoke the certificate and the reasons for the proposal to the biofuel obligation account holder to whom the certificate issued under section 44G and, as appropriate, where the certificate concerned was transferred under section 44K, to the account holder to whom the certificate was so transferred and to whose biofuel obligation account the certificate is credited on the date of the notice.

(3) The notice under subsection (2) shall state that representations in writing may be made to the Agency in relation to the proposal to revoke not later than 21 days after the date of the notice.

(4) If, after the expiration of 21 days from the date of the notice under subsection (2) and having considered any representations made to it under subsection (3), the Agency decides to revoke the biofuel obligation certificate it shall give notice, in such form as the Agency determines, of its decision and the reasons for the decision to the biofuel obligation account holder and, as appropriate, where the certificate concerned was transferred under section 44K, the account holder to whom the certificate was so transferred and to whose biofuel obligation account the certificate is credited on the date of the notice.

(5) A biofuel obligation account holder who receives a notice under subsection (4) may appeal to the District Court against the decision within a period of 21 days beginning on the date of such receipt.

(6) On the hearing of an appeal by the biofuel obligation account holder to whom the decision relates, the District Court may—

- (a) make an order affirming or setting aside the decision of the Agency to revoke the biofuel obligation certificate,
- (b) make an order remitting the decision of the Agency to revoke the biofuel obligation certificate, with or without directions, to the Agency for reconsideration by it and the making of a new decision, or
- (c) make any other order that it considers just and equitable in the circumstances.

(7) Where no appeal is made under subsection (5), the decision of the Agency shall take effect after the end of the period specified in that subsection.

(8) Where an appeal is made under subsection (5), the decision of the Agency shall stand suspended until the appeal is determined or withdrawn.

(9) The decision of the Agency shall take effect for the purposes of subsection (7) or on the determination of the appeal by recording a debit of the biofuel obligation certificate in the biofuel obligation account to which the certificate is credited.

Biofuel levy.

44N.— (1) For the purpose of meeting expenses properly incurred or likely to be so incurred, by the Agency and each designated subsidiary in performing functions under this Act, biofuel obligation account holders shall, in accordance with this Part and any regulations made under section 44T pay to the Agency in each month a levy (in this Act referred to as the 'biofuel levy') on their relevant disposals of biofuel in the preceding month.

(2) A relevant disposal of biofuel is the volume (expressed in litres) of biofuel that in any month a biofuel obligation account holder disposes of by sale or otherwise in the State or consumes in the State.

(3) No biofuel levy is payable by a biofuel obligation account holder on its relevant disposals of biofuel where the biofuel levy has been paid by the biofuel obligation account holder from which it acquired the biofuel.

Volume assessment.

44O.— (1) Before the end of each month, the Minister shall notify the Agency of the Minister's assessment of the volume of biofuel appearing to have been relevantly disposed of in the preceding month by each biofuel obligation account holder liable to pay the biofuel levy.

(2) The volume assessment is to be based on—

(a) the information given by the biofuel obligation account holder in accordance with regulations made under section 44U relating to returns, or

(b) if that information has not been given or if the Minister has reason to believe that information so given is inaccurate or incomplete in any material respect, such estimates as appear to the Minister to be reasonable having regard to any other available information.

Calculation of biofuel levy.

44P.— (1) The Minister shall calculate in accordance with this section the amount of biofuel levy payable in respect of a month by each biofuel obligation account holder liable to pay the biofuel levy on its relevant disposals of biofuel in the month and shall notify the Agency of that amount.

(2) The amount of biofuel levy shall be calculated by reference to—

(a) the biofuel obligation account holder's relevant disposals of biofuel in the month as specified in its volume assessment for the month, and

(b) the rate of biofuel levy prescribed under section 44T for the month.

Biofuel levy assessment notice.

44Q.— The Agency shall give each biofuel obligation account holder liable to pay the biofuel levy in respect of a month a biofuel levy assessment notice in the prescribed form specifying—

(a) the biofuel obligation account holder's relevant disposals of biofuel as specified in its volume assessment for that month,

(b) the rate of biofuel levy prescribed under section 44T for the month,

(c) the amount of the biofuel levy payable by it in respect of that month as calculated under section 44P, and

(d) the date, prescribed under section 44T, on which the biofuel levy becomes payable.

Interest on unpaid amount of assessment.

44R.— (1) If all or any part of the amount specified in a biofuel levy assessment notice is not paid on or before the date specified in the notice under section 44Q as the date on which the amount becomes payable, interest on the unpaid amount accrues at the rate prescribed under section 44T(g) from that date to the date of payment.

(2) Notwithstanding subsection (1), interest does not accrue on an amount that, in a review in accordance with regulations made under section 44T, the Minister determines is not payable.

Recovery of unpaid biofuel levy and interest.

44S.— The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the biofuel obligation account holder by whom it is payable any amount due and owing to the Agency under this Part in respect of the biofuel levy and any interest that has accrued on that amount.

Regulations relating to biofuel levy.

44T.— (1) The Minister may make regulations providing for all or any of the following matters relating to the biofuel levy:

(a) subject to the prior consent of the Minister for Finance, the rate of biofuel levy per litre of relevant disposals of biofuel or any variation of that rate from time to time;

(b) the form of the biofuel assessment notice;

(c) the review by the Minister of a biofuel levy assessment notice at the request of a biofuel obligation account holder that claims that the notice is erroneous;

(d) the period within which a request for such a review shall be made and the conditions to be satisfied by a biofuel obligation account holder before a request may be made;

(e) the date on which payment of the biofuel levy becomes due;

(f) the form in which payment of the biofuel levy is to be made to the Agency by a biofuel obligation account holder;

(g) subject to section 44V, the rate of interest on amounts of biofuel levy not paid when due;

(h) such other matters as are necessary for or incidental to the imposition, payment and collection of the biofuel levy.

(2) In prescribing the rate or any variation of the rate of biofuel levy, the Minister shall seek to ensure that (taking one year with another) the sums realised by applying that rate or any variation of the rate to the volume assessments meet but do not exceed the estimated expenses of the Agency and of each designated subsidiary.

(3) For the purpose of determining in any year the estimated expenses of the Agency, the Minister may—

(a) consider the information contained in the Agency's strategy statement,

(b) have regard to such information as is provided under section 29, and

(c) take account of the expenses of the Agency and of each designated subsidiary in the previous financial year, and of any additional expenditure likely to be incurred by any of them in the forthcoming financial year.

(4) Any variation of the rate of biofuel levy prescribed under this section takes effect no earlier than 3 months after the making of the regulations varying the prescribed rate.

Minister's power to make regulations relating to returns.

44U.— (1) The Minister may make regulations, for the purposes of this Part, requiring the Agency and biofuel obligation account holders to make written returns to the Minister in each month.

(2) Regulations under this section may, among other things, provide for the following matters:

- (a) the information to be contained in returns;
- (b) requirements relating to the certification of returns;
- (c) the dates by which returns are to be made;
- (d) the form in which returns are to be made.

(3) A person commits an offence under this section if the person—

- (a) fails to give for a period of 3 consecutive months from the applicable date required under subsection (2)(c) a return in such form and containing such information as is required under subsection (2)(a), or
- (b) provides in a return information that is false or misleading in a material respect and that the person knows is false or misleading.

Formula for determining interest rate.

44V.— Regulations under section 44J(5)(b) or 44T(1)(g), as the case may be, may prescribe a formula for determining the interest rate by reference to—

- (a) the prevailing Euro Interbank Offered Rate,
- (b) an additional rate certified by the Central Bank and Financial Services Authority of Ireland, and
- (c) such other additional rate as the Minister considers appropriate taking into account the cost of recovering unpaid levy, including any bank charges the Agency may incur in maintaining a bank overdraft to cover a shortfall in funds arising out of unpaid levy.

Keeping of records.

44W.— (1) The Minister may make regulations providing for the keeping of specified records by biofuel obligation account holders in respect of matters connected with the biofuel obligation and the biofuel levy, including the form in which and the period for which such records are to be kept.

(2) Regulations made under this section may apply either generally or by reference to a specified class or classes of biofuel obligation account holder.

(3) Regulations made under this section may apply either generally or by reference to a specified class or classes of record.

Biofuel standards.

44X.— (1) Subject to subsections (2) and (3), the Minister, having regard to the need to promote the use of biofuels that meet certain minimum standards and to ensure the protection of consumers of biofuels, may make regulations prescribing minimum standards in relation to biofuels, consumed or disposed of by sale or otherwise in the State, which are required to be met for the purpose of making an application under section 44G for a biofuel obligation certificate.

(2) Regulations under this section may prescribe—

- (a) different minimum standards in respect of different classes of biofuels, and

(b) different dates in respect of the coming into force of different minimum standards prescribed by the regulations.

(3) Before making regulations under subsection (1), the Minister shall consult with—

- (a) the Minister for the Environment, Heritage and Local Government,
- (b) the Minister for Agriculture, Fisheries and Food,
- (c) the National Standards Authority of Ireland,
- (d) the Revenue Commissioners, and
- (e) the Agency.”.

PART 3

AMENDMENTS TO PRINCIPAL ACT

Amendment of
section 2
(interpretation)
of Principal Act.

4.— Section 2 of the Principal Act is amended—

(a) by inserting the following definitions after the definition of “bilateral agreement”:

- “ ‘ biofuel ’ has the meaning assigned by section 44A;
- ‘biofuel levy’ means the biofuel levy imposed under Part 5A;
- ‘biofuel obligation’ has the same meaning as in Part 5A;
- ‘biofuel producer’ has the meaning assigned by section 44A;
- ‘biofuel supplier’ has the meaning assigned by section 44A,”,

and

(b) by substituting the following for the definition of “prescribed”:

- “ ‘ prescribed ’ means prescribed by regulations made by the Minister under this Act;”.

Amendment of
section 8 (object
and functions of
Agency) of
Principal Act.

5.— Section 8(1) of the Principal Act is amended by inserting the following after paragraph (c):

- “(ca) administering the biofuel obligation in accordance with Part 5A,
- “(cb) collecting and recovering the biofuel levy.”.

Amendment of
section 14 (board
of directors) of
Principal Act.

6.— Section 14 of the Principal Act is amended—

(a) in subsection (3), by inserting the following after paragraph (a):

- “(aa) biofuel or biofuel related industries;”,

and

(b) by substituting the following for subsection (8):

“(8) The directors (including the chairperson and chief executive) shall be paid by the Agency out of the levy and biofuel levy such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.”.

Amendment of section 16 (power to establish subsidiaries) of Principal Act. **7.**— Section 16(12) of the Principal Act is amended by inserting “and biofuel levy” after “levy”.

Amendment of section 18 (power to engage consultants and advisers) of Principal Act. **8.**— Section 18(2) of the Principal Act is amended by inserting “and biofuel levy” after “levy”.

Amendment of section 19 (chief executive (appointment and terms of office)) of Principal Act. **9.**— Section 19(4) of the Principal Act is amended by inserting “and biofuel levy” after “levy”.

Amendment of section 21 (staff of Agency) of Principal Act. **10.**— Section 21(3) of the Principal Act is amended by inserting “and biofuel levy” after “levy”.

Appointment of National Treasury Management Agency to act on behalf of Agency in certain matters. **11.**— (1) The Principal Act is amended by inserting the following section after section 31 but in Part 3:

“Appointment of National Treasury Management Agency to act on behalf of Agency in certain matters.

31A.— (1) In this section ‘ NTMA ’ means the National Treasury Management Agency.

(2) (a) Subject to the prior consent of the Minister for Finance, the Agency may from time to time request the NTMA to perform, on its behalf, all or any part of the functions of the Agency under—

(i) sections 8(3)(f), 26 and 27 of the Principal Act,

(ii) section 3 of the Borrowing Powers of Certain Bodies Act 1996, and

(iii) **section 2 of the Financial Transactions of Certain Companies and Other Bodies Act 1992.**

(b) The Agency may from time to time, subject to the prior consent of the Minister for Finance, revoke or amend a request made under paragraph (a), but without prejudice to the validity of anything done previously on foot of that request in the terms that it stood immediately before that revocation or amendment.

(c) For so long as a request made under paragraph (a) has effect, the NTMA shall, subject to paragraph (d), perform on behalf of the Agency the functions specified in the request.

(d) The functions of the Agency specified in any request made under paragraph (a) shall be performed by the NTMA on behalf of the Agency subject to such terms and conditions (including any amendment to such terms and conditions) as the Agency and the NTMA may from time to time agree.

(3) The Minister for Finance may from time to time revoke, in whole or in part, any consent given under subsection (2), but without prejudice to the validity of anything done previously on foot of that consent in the terms that it stood immediately before that revocation.

(4) The NTMA has, by virtue of this subsection, all the powers that are necessary for or incidental to the performance on behalf of the Agency of the functions specified in a request made under subsection (2).

(5) The Agency, in connection with the performance of the functions referred to in subsection (4), may—

(a) engage in transactions of a normal banking nature in respect of the management of the Agency's money, including issuing funds from the Agency's account,

(b) pay into any foreign currency clearing account created by the Minister for Finance under **section 139** of the **Finance Act 1993** the proceeds of any transaction denominated in a currency other than the currency of the State, and

(c) apply any amounts standing to the credit of any foreign currency clearing account towards the discharging of payment obligations arising under any transaction referred to in paragraph (a).

(6) The expenses and other costs incurred by the NTMA in connection with or arising out of any transactions engaged in by the NTMA in the performance on behalf of the Agency of any of the functions specified in a request made under subsection (2) shall be charged to the Agency.”.

(2) Section 36 of the Principal Act is amended in the definition of “expenses” by inserting the following after paragraph (i):

“(j) the expenses and other costs incurred by the NTMA in connection with or arising out of any transactions engaged in by the NTMA in the performance on behalf of the Agency of any of the functions specified in a request made under section 31A(2);”.

Amendment of
section 36
(definitions for
Part 5) of
Principal Act.

12.— Section 36 of the Principal Act is amended in the definition of “expenses” by inserting the following after paragraph (g):

“(ga) the costs incurred by the Agency in administering the biofuel obligation;

(gb) the costs incurred by the Agency in collecting the biofuel levy;”.

Amendment of
section 44
(regulations
relating to levy)
of Principal Act.

13.— Section 44(1) of the Principal Act is amended—

(a) by substituting the following for paragraph (a):

“(a) following consultation with the Minister for Finance, the rate of levy per tonne or litre of relevant disposals of petroleum products;”,

and

(b) by deleting paragraph (g).

Amendment of section 45 (definitions for Part 6) of Principal Act.

14.— Section 45 of the Principal Act is amended—

(a) in the definition of “premises”, by inserting “or biofuel, as the case may be” after “oil”, and

(b) in the definition of “relevant activity”, by substituting the following for paragraph (a):

“(a) any activity connected with the Agency, an oil company, an oil consumer, a biofuel producer or a biofuel supplier, as the case may be, and”.

Amendment of section 47 (powers of authorised officers) of Principal Act.

15.— Section 47(1) of the Principal Act is amended—

(a) in paragraph (f), by inserting “biofuel,” after “oil,”, and

(b) in paragraph (g), by inserting “biofuel,” after “oil,”.

Claims for repayment where overpayment in respect of levy or biofuel levy.

16.— The Principal Act is amended by inserting the following section after section 59:

“Claims for repayment where overpayment in respect of levy or biofuel levy.

59A.— (1) In this section ‘a person to whom this section applies’ means—

(a) in the case of the levy, an oil company or oil consumer, as the case may be, and

(b) in the case of the biofuel levy, a biofuel obligation account holder, and references to ‘person’ shall be construed accordingly.

(2) Where a person to whom this section applies considers that there has been an overpayment to the Agency in respect of the liability arising under Part 5 to pay the levy or under Part 5A to pay the biofuel levy, as the case may be, the person concerned may make a claim, at such intervals as may be prescribed, to the Minister in the prescribed form for repayment of the amount of the overpayment and including the prescribed information, particulars and documentation.

(3) A claim for repayment under this section shall not be made more than 18 months after the end of year in which the overpayment concerned was made.

(4) Where the Minister is satisfied that an overpayment was made in respect of the liability to pay the levy or biofuel levy, as the case may be, arising during the period in respect of which the claim for repayment is made, the Minister may direct the Agency—

(a) to repay the amount of the excess, or

(b) to offset the amount of the claim for repayment against any accrued liability (including any underpayment made by a person to whom

this section applies in respect of the levy or biofuel levy, as the case may be) of the person concerned, in whole or in part, in respect of the levy or biofuel levy, as the case may be, for any period before or after the period in respect of which the claim for repayment is made and which remains unpaid.

(5) Interest shall not be payable in respect of any part of the overpayment whether repaid or offset under paragraph (a) or (b), as the case may be, of subsection (4).

(6) The Minister may make regulations providing for all or any of the following:

- (a) the form in which a claim for repayment may be made, including by electronic means, as appropriate;
- (b) the intervals at which claims for repayment may be made, which intervals shall not be less than every 3 months beginning on the coming into operation of this section;
- (c) such information, particulars and documentation as the Minister may reasonably require to be included in a claim for repayment in order to be satisfied as to the claim being made.”.

Amendment of
section 63
(burden of proof
in certain
proceedings) of
Principal Act.

17.— Section 63 of the Principal Act is amended—

- (a) by renumbering the existing provision as subsection (1) of that section, and
- (b) by inserting the following after subsection (1):

“(2) Where in proceedings for the recovery of biofuel levy a dispute arises as to whether no biofuel levy is payable by virtue of section 44N(3), the burden of proof rests with the defendant biofuel obligation account holder.”.

Amendment of
section 64
(prosecution of
offences) of
Principal Act.

18.— Section 64 of the Principal Act is amended—

- (a) in subsection (1), by substituting the following for paragraph (a):

“(a) in the case of an offence under section 44E, 44G, 44U or 50, by the Minister or the Agency, and”,

and

- (b) by inserting the following after subsection (2):

“(3) Unless it is satisfied that there are special and substantial reasons for not so doing, the court shall, where a person is convicted of an offence under this Act, order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection or prosecution of the offence.”.

Amendment of
section 67 (giving
of notices) of
Principal Act.

19.— Section 67(1) of the Principal Act is amended by inserting the following after paragraph (d):

- “(da) if the person concerned has agreed to the service of notices by means of an electronic communication (within the meaning assigned by section 2 of the *Electronic Commerce Act 2000*) to that person (being an addressee within the meaning assigned by that section) and provided that there is a facility to confirm receipt

of electronic mail and that such receipt has been confirmed, then by that means;”.

PART 4

MISCELLANEOUS AMENDMENTS TO OTHER ACTS

CHAPTER 1

Amendment of Fuels (Control of Supplies) Act 1971

Amendment of
section 4
(offences,
prosecutions and
punishments) of
Fuels (Control of
Supplies) Act
1971.

20.— Section 4 of the Fuels (Control of Supplies) Act 1971 is amended—

(a) by substituting the following for subsection (4):

“(4) Where an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.”,

and

(b) by substituting the following for subsection (5):

“(5) Every person who commits an offence under this section shall—

(a) on summary conviction, be liable to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, be liable to a fine not exceeding €1,000,000 or to imprisonment for a term not exceeding 10 years, or to both.”.

CHAPTER 2

Amendment of Fuels (Control of Supplies) Act 1982

Amendment of
section 7 (powers
of authorised
officer to inspect
premises, obtain
information, etc.)
of Fuels (Control
of Supplies) Act
1982.

21.— Section 7 of the Fuels (Control of Supplies) Act 1982 is amended—

(a) in subsection (3), by substituting the following for all of the words from “shall be liable on summary conviction” to the end of the subsection:

“shall—

(i) on summary conviction, be liable to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, be liable to a fine not exceeding €20,000 or to imprisonment for a term not exceeding 2 years, or to both.”,

and

(b) by inserting the following after subsection (5):

“(6) Where an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.”.

CHAPTER 3

Amendment of Electricity Regulation Act 1999

Amendment of
section 1
(interpretation)
of Act of 1999.

22.— In this Chapter “Act of 1999” means the **Electricity Regulation Act 1999**.

Amendment of
section 2
(interpretation)
of Act of 1999.

23.— Section 2(1) of the Act of 1999 is amended by inserting the following definitions:

“‘gas installer’ means LPG installer or natural gas installer, as the case may be;

‘LPG’ means liquefied petroleum gas;

‘LPG fitting’ means any non-portable appliance, apparatus or other thing including associated pipework and flueing which is used or designed to be used by—

(a) a domestic customer, or

(b) such class or classes of industrial or commercial customer as the Commission may specify from time to time,

in connection with the consumption or use of LPG;”.

Amendment of
section 9
(functions of
Commission) of
Act of 1999.

24.— Section 9 of the Act of 1999 is amended—

(a) in subsection (1)(ec), by substituting “gas safety,” for “gas safety.”,

(b) in subsection (1), by inserting the following after paragraph (ec):

“(ed) to regulate the activities of LPG installers with respect to safety.”,

(c) in subsection (1G)(a), by substituting “paragraphs (ea) and (ed) of subsection (1)” for “subsection (1)(ea),”

(d) in subsection (1G)(b)(ii), by inserting “and LPG installers” after “natural gas installers”, and

(e) in subsection (1G)(b)(iii), by inserting “or LPG installer” after “natural gas installer”.

Amendment of
section 9G (gas
works) of Act of
1999.

25.— Section 9G of the Act of 1999 is amended by substituting the following for subsection (2)—

“(2) In this section ‘works’ means work which is related to the installation, removal, repair or replacement of a natural gas fitting or an LPG fitting.”.

Amendment of
section 9H
(regulations
relating to gas
safety) of Act of
1999.

26.— Section 9H of the Act of 1999 is amended—

- (a) in subsection (1), by substituting “paragraphs (ea), (eb) and (ed) of section 9(1)” for “paragraphs (ea) and (eb) of section 9(1)”,
- (b) in subsection (2)(a), by inserting “and LPG fittings” after “natural gas fittings”,
- (c) F1[...]
- (d) in subsection 2(b), by substituting “natural gas fitting,” for “natural gas fitting.”,
- (e) in subsection (2), by inserting the following after paragraph (b):
 - “(c) the conditions to be fulfilled before LPG may be connected or reconnected to any premises or part of any premises following the installation, maintenance, modification or repair of an LPG fitting.”,
- (f) in subsection (6)(a), by inserting “or LPG fitting” after “natural gas fitting”,
- (g) in subsection (6)(a), by inserting “or LPG, as the case may be,” after “delivery of natural gas”,
- (h) in subsection (6)(b), by inserting “or LPG fitting” after “natural gas fitting”,
- (i) in subsection (6)(b), by inserting “or LPG, as the case may be,” after “delivery of natural gas”, and
- (j) in subsection (6)(b)(ii)(II), by substituting “published under section 9(1G)” for “published under section 9(1F)”.

Annotations

Amendments:

F1 Repealed (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 22(c), S.I. No. 122 of 2012.

Amendment of
section 9J (gas
safety officers) of
Act of 1999.

27.— Section 9J of the Act of 1999 is amended—

- (a) by substituting the following for subsection (1)(b):
 - “(b) paragraphs (ea), (eb) and (ed) of section 9(1), and”,
- (b) in subsection (2)(a)(iii), by deleting “or”,
- (c) by inserting the following after subsection (2)(a)(iii):
 - “(iiia) LPG fitting, or”,
- (d) in subsection (2)(a)(iv), by inserting “or LPG fitting” after “natural gas fitting”,
- (e) in subsection (2)(a), by substituting “from any danger arising from natural gas or LPG, as the case may be,” for “from any danger arising from natural gas”,
- (f) in subsection (2)(b)(v), by inserting “or LPG, as the case may be” after “natural gas”,

(g) in subsection (4)(b), by inserting “or LPG, as the case may be,” after “natural gas”,

(h) by substituting the following for subsection (4)(c):

“(c) search for any escaped natural gas or LPG, as the case may be, or any leak or defect in any pipeline, natural gas fitting or LPG fitting,”,

(i) in subsection (4)(d), by substituting “natural gas or LPG, as the case may be,” for “natural gas”, and

(j) in subsection (6)(d), by inserting “or LPG, as the case may be,” after “natural gas”.

CHAPTER 4

Amendment of Energy (Miscellaneous Provisions) Act 2006

Repeal of section 14 (extension of gas safety provisions to liquefied petroleum gas) of Energy (Miscellaneous Provisions) Act 2006.

28.—Section 14 of the *Energy (Miscellaneous Provisions) Act 2006* is repealed.



Number 11 of 2010

ENERGY (BIOFUEL OBLIGATION AND MISCELLANEOUS PROVISIONS) ACT 2010

REVISED

Updated to 1 September 2019

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Energy (Miscellaneous Provisions) Act 2012 (3/2012)*

All Acts up to and including *Judicial Council Act 2019 (33/2019)*, enacted 23 July 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Section 3) (Commencement) Order 2012* (S.I. No. 32 of 2012)
- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) (No. 2) Order 2011* (S.I. No. 280 of 2011)
- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) Order 2011* (S.I. No. 42 of 2011)
- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (Commencement of Certain Provisions) Order 2010* (S.I. No. 322 of 2010)

All statutory instruments up to and including *National Treasury Management Agency (Amendment) Act 2014 (State Authority) Order 2019* (S.I. No. 446 of 2019), made 1 September 2019, were considered in the preparation of this revision.