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*Number 7 of 2007*

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**NATIONAL OIL RESERVES AGENCY ACT 2007**

**REVISED**

**Updated to 30 November 2016**

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This revised Act is an administrative consolidation of the *National Oil Reserves Agency Act 2007*. 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 *National Tourism Development Authority (Amendment) Act 2016 (14/2016)*, enacted 16 November 2016, and all statutory instruments up to and including *Energy Act 2016 (Commencement of Certain Provisions) (No. 2) Order 2016 (S.I. No. 572 of 2016)*, made 24 November 2016, were considered in the preparation of this revision.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to [revisedacts@lawreform.ie](mailto:revisedacts@lawreform.ie).





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**Introduction**

This revision 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](http://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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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 1998, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

**Acts which affect or previously affected this revision**

- *Energy Act 2016 (12/2016)*
- *Freedom of Information Act 2014 (30/2014)*
- *Energy (Miscellaneous Provisions) Act 2012 (3/2012)*
- *Ministers and Secretaries (Amendment) Act 2011 (10/2011)*
- *Central Bank Reform Act 2010 (23/2010)*

- *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010)

All Acts up to and including *National Tourism Development Authority (Amendment) Act 2016* (14/2016), enacted 16 November 2016, were considered in the preparation of this revision.

**Statutory instruments which affect or previously affected this revision**

- *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016)
- *National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2016* (S.I. No. 225 of 2016)
- *European Union (Renewable Energy) Regulations 2014* (S.I. No. 483 of 2014)
- *National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2012* (S.I. No. 562 of 2012)
- *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012)
- *European Union (Biofuel Sustainability Criteria) Regulations 2012* (S.I. No. 33 of 2012)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 2011* (S.I. No. 480 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *National Oil Reserves Agency Act 2007 (Biofuel Obligation Buy-out Charge) Regulations 2010* (S.I. No. 644 of 2010)
- *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010)
- *European Communities (Repeal of Section 26(4) of the National Oil Reserves Agency Act 2007) Regulations 2009* (S.I. No. 247 of 2009)
- *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009* (S.I. No. 220 of 2009)
- *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) Regulations 2009* (S.I. No. 214 of 2009)
- *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009)
- *National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007* (S.I. No. 567 of 2007)
- *National Oil Reserves Agency Act 2007 (Share Transfer Day) Order 2007* (S.I. No. 566 of 2007)
- *National Oil Reserves Agency Act 2007 (Remaining Provisions) (Commencement) Order 2007* (S.I. No. 565 of 2007)
- *National Oil Reserves Agency Act 2007 (Share Transfer) Order 2007* (S.I. No. 155 of 2007)
- *National Oil Reserves Agency Act 2007 (Parts 1 and 2) (Commencement) Order 2007* (S.I. No. 153 of 2007)

All statutory instruments up to and including *Energy Act 2016 (Commencement of Certain Provisions) (No. 2) Order 2016* (S.I. No. 572 of 2016), made 24 November 2016, were considered in the preparation of this revision.



---

*Number 7 of 2007*

---

**NATIONAL OIL RESERVES AGENCY ACT 2007**

**REVISED**

**Updated to 30 November 2016**

---

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short Title and commencement.
2. Interpretation.
3. Expenses.

PART 2

SHARE TRANSFER

4. Transfer to Minister of share owned by Irish National Petroleum Corporation Limited in National Oil Reserves Agency Limited.
5. Share transfer day.
6. Transfer costs and stamp duty.

PART 3

THE NATIONAL OIL RESERVES AGENCY

7. Continuation of Agency.
8. Object and functions of Agency.
9. Additional functions.
10. Share capital of Agency.
11. Issue of shares.
12. Exercise by Minister of functions exercisable by shareholders.
13. Memorandum and articles of association.

14. Board of directors.
15. Strategy statement.
16. Power to establish subsidiaries.
17. Power to charge and recover fees.
18. Power to engage consultants and advisers.
19. Chief executive (appointment and term of office).
20. Functions of chief executive.
21. Staff of Agency.
22. Superannuation.
23. Membership of either House of Oireachtas, European Parliament or local authority.
24. Unauthorised disclosure of confidential information.
25. Code of conduct.
26. Power to borrow.
27. Temporary borrowing.
28. Annual report.
29. Accounts and audit.
30. Information to Minister on performance of functions.
31. Information to Oireachtas on performance of functions.
- 31A. Appointment of National Treasury Management Agency to act on behalf of Agency in certain matters.

#### PART 4

#### MAINTENANCE OF OIL STOCKS

32. Duty of Agency.
33. Holding contracts.
34. Duties of Minister.
35. Release of oil stocks in cases of particular urgency.

#### PART 5

#### LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS

36. Definitions for *Part 5*.
37. Liability of oil companies and oil consumers to pay levy.
38. Exemptions from levy.
39. Volume assessment.
40. Calculation of levy.
41. Levy assessment notice.

- 42. Interest on unpaid amount of assessment.
- 43. Recovery of unpaid levy and interest.
- 43A. Exchange of Information.
- 44. Regulations relating to levy.

PART 5A

BIOFUEL OBLIGATION

- 44A. Definitions for Part 5A.
- 44B. Conversion factors.
- 44C. Biofuel obligation.
- 44D. Rate of biofuel obligation.
- 44E. Biofuel obligation account.
- 44F. Management of biofuel obligation accounts.
- 44G. Biofuel obligation certificates.
- 44H. Statement of account.
- 44I. Compliance with biofuel obligation.
- 44J. Discharge of biofuel obligation by payment.
- 44K. Transfer of biofuel obligation certificates.
- 44L. Cancellation of biofuel obligation certificate where biofuel exported from the State.
- 44M. Revocation of biofuel obligation certificates.
- 44N. Biofuel levy.
- 44O. Volume assessment.
- 44P. Calculation of biofuel levy.
- 44Q. Biofuel levy assessment notice.
- 44R. Interest on unpaid amount of assessment.
- 44S. Recovery of unpaid biofuel levy and interest.
- 44T. Regulations relating to biofuel levy.
- 44U. Minister's power to make regulations relating to returns.
- 44V. Formula for determining interest rate.
- 44W. Keeping of records.
- 44X. Biofuel standards.

PART 6

ENFORCEMENT PROVISIONS

- 45. Definitions for *Part 6*.
- 46. Authorised officers.

- 47. Powers of authorised officers.
- 48. Search warrants.
- 49. Duty of authorised officers to report certain matters.
- 50. Offences.
- 51. Indemnification.

PART 7

AMENDMENTS AND REVOCATION

- 52. Amendment of section 7 of Act of 2001.
- 53. Amendment of section 8 of Act of 2001.
- 54. Amendment of section 9 of Act of 2001.
- 55. Amendment of Third Schedule to Freedom of Information Act 1997.
- 56. Revocation.

PART 8

MISCELLANEOUS PROVISIONS

- 57. Regulations to give effect to acts of European Communities.
- 58. Regulations and orders.
- 59. Minister's power to make regulations relating to returns.
- 59A. Claims for repayment where overpayment in respect of levy or biofuel levy.
- 60. Laying of regulations and orders before Houses of Oireachtas.
- 61. Power of Minister to apply for compliance order and issue directions.
- 62. Minister's prior approval required for certain contracts, holding contract obligations, etc.
- 63. Burden of proof in certain proceedings.
- 64. Prosecution of offences.
- 65. Offences by bodies corporate.
- 66. Penalties.
- 67. Giving of notices.
- 68. Contingency planning for an oil supply disruption.

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ACTS REFERRED TO

Companies Act 1963	1963, No. 33
Companies Acts	
Ethics in Public Office Act 1995	1995, No. 22
European Parliament Elections Act 1997	1997, No. 2
Finance Act 1999	1999, No. 2
Freedom of Information Act 1997	1997, No. 13








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Number 7 of 2007

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**NATIONAL OIL RESERVES AGENCY ACT 2007**

**REVISED**

**Updated to 30 November 2016**

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AN ACT TO PROVIDE FOR THE TRANSFER OF THE SHARE HELD BY THE IRISH NATIONAL PETROLEUM CORPORATION LIMITED IN THE NATIONAL OIL RESERVES AGENCY LIMITED TO THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES; TO CONTINUE IN EXISTENCE THE NATIONAL OIL RESERVES AGENCY LIMITED AS AN GHNÍOMHAIREACTH CHÚLTACA OLA NÁISIÚNTA OR THE NATIONAL OIL RESERVES AGENCY; TO DEFINE ITS FUNCTIONS, INCLUDING THOSE RELATING TO OIL STOCKHOLDING OBLIGATIONS; TO IMPOSE A LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS; TO AMEND THE IRISH NATIONAL PETROLEUM CORPORATION LIMITED ACT 2001; AND TO PROVIDE FOR RELATED MATTERS.

[13th March, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Annotations**

**Modifications (not altering text):**

- C1** Functions transferred and terms “Minister for Finance” and “Department of Finance” construed (20.09.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 2011* (S.I. No. 480 of 2011), arts. 2, 3, 4 and sch., in effect as per art. 1(2).

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or any instrument made thereunder and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under—

(a) the provisions of the enactments specified in the Schedule, and

...

are transferred to the Minister for Public Expenditure and Reform.

4. References to the Minister for Finance contained in any Act or instrument made under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

SCHEDULE

Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 7 of 2007	National Oil Reserves Agency Act 2007	Sections 44(1)(a), 44B(3)(b)(ii), 44D(4)(b)(i), 44J(5)(a) and (7)(b)(i) and 44T(1)
...	...	...

**C2** Functions transferred and terms “Minister for Finance” and “Department of Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of:

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 7 of 2007	National Oil Reserves Agency Act 2007	Sections 4, 8, 9, 10, 11, 13, 16, 29, and 31A
...	...	...

- C3** Functions transferred and references to “Minister” and “Department of Finance” construed (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), ss. 7, 9, 11 and sch. 2 part 1, commenced as per s. 1(2).

**Department of Public Expenditure and Reform.**

7.— (1) There shall stand established on the appointed day a Department of State to be known, in the Irish language, as an Roinn Caiteachais Phoiblí agus Athchóirithe or, in the English language, as the Department of Public Expenditure and Reform.

(2) The member of the Government who is in charge of the Department of Public Expenditure and Reform—

(a) shall be known, in the Irish language, as an tAire Caiteachais Phoiblí agus Athchóirithe or, in the English language, as the Minister for Public Expenditure and Reform, and

(b) is, in this Act, referred to as the “Minister”.

...

**Transfer of certain other functions to Minister.**

9.— ...

(3) The functions conferred on the Minister for Finance by or under any of the provisions specified in Part 2 of Schedule 2 are transferred to the Minister.

...

**Transfer of administration and business of Department of Finance.**

11.— (1) The administration and business in connection with the performance of the functions transferred by sections 8 and 9 are hereby transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any statute or instrument under a statute in so far as they relate to the administration and business transferred by subsection (1) shall, from the appointed day, be construed as references to the Department of Public Expenditure and Reform.

...

SCHEDULE 2

Functions Transferred To Minister

...

PART 1

Functions performable with consent of Minister for Finance

STATUTES

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 7 of 2007	National Oil Reserves Agency Act 2007	Sections 26 and 27
...	...	...

**Editorial Notes:**

- E1** National Oil Reserves Agency designated an exempt agency and not a public body for purposes of *Freedom of Information Act 2014* (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 6(3) and sch. 1 part 2, commenced on enactment subject to transitional provision in s. 1(3).

## PART 1

### PRELIMINARY AND GENERAL

Short Title and commencement.

1.— (1) This Act may be cited as the National Oil Reserves Agency Act 2007.

(2) This Act shall come into operation on such day or days as the Minister 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.

#### Annotations

##### Editorial Notes:

**E2** Power pursuant to section exercised (1.08.2007) by *National Oil Reserves Agency Act 2007 (Remaining Provisions) (Commencement) Order 2007* (S.I. No. 565 of 2007).

2. The 1st day of August 2007 is appointed as the day on which the National Oil Reserves Agency Act 2007 (No. 7 of 2007), in so far as it is not already in operation, shall come into operation.

**E3** Power pursuant to section exercised (16.04.2007) by *National Oil Reserves Agency Act 2007 (Parts 1 and 2) (Commencement) Order 2007* (S.I. No. 153 of 2007).

2. The 16<sup>th</sup> day of April 2007 is appointed as the day on which Parts 1 and 2 of the National Oil Reserves Agency Act 2007 (No. 7 of 2007) shall come into operation.

Interpretation.

2.— In this Act—

“Act of 1963” means the Companies Act 1963;

“Act of 2001” means the Irish National Petroleum Corporation Limited Act 2001;

F1[‘additives’ means non-hydrocarbon compounds added to or blended with a product to modify the properties of that product;]

“Agency” means the body corporate formed and registered under the Companies Acts and continued in existence under *section 7* as An Ghníomhaireacht Chúltaca Ola Náisiúnta or, in the English language, as the National Oil Reserves Agency;

“authorised officer” has the meaning assigned by *section 46*;

F1[‘available and physically accessible’ in respect of stocks means that, in a case of particular urgency, the stocks are at the disposal of the Minister and arrangements are in place to release the stocks to the market within time frames and under conditions conducive to alleviating an oil supply disruption;]

“bilateral agreement” means any agreement between the Government and the government of another state relating to the holding of oil stocks;

F2[‘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*;]

F1[‘central stockholding entity’ means the body or service upon which powers may be conferred to act to acquire, maintain or sell oil stocks, including emergency stocks and specific stocks;]

“chief executive” means the chief executive of the Agency;

F3[‘Council Directive’ means Council Directive 2009/119/EC of 14 September 2009<sup>1</sup>;

“designated subsidiary” means a subsidiary in respect of which an order is in operation under *section 16(12)*;

F1[‘effective international decision to release stocks’ means any decision taken by the Governing Board of the International Energy Agency to make crude oil or petroleum products available to the market by a release of the stocks of its members or by additional measures which is in force for the time being;

‘emergency stocks’ means the oil stocks that each Member State is required to maintain pursuant to Article 3 of the Council Directive;]

F4[‘EU emergency stocks’, ‘Irish emergency stocks’ and ‘oil stocks agreement’ have the meanings assigned to them, respectively in the European Union (Oil Reserves) Regulations 2012 (S.I. No. 541 of 2012);]

“holding contract” has the meaning assigned by *section 33*;

“IEP Agreement” means the Agreement on an International Energy Program signed at Paris on 18 November 1974;

F1[‘inland consumption’ means the total quantities, calculated in accordance with *Schedule 2*, delivered within the State for both energy and non-energy use; this aggregate includes deliveries to the transformation sector and deliveries to industry, transport, households and other sectors for final consumption; it also includes the own consumption of the energy sector (other than refinery fuel);]

“intermediate product” means any substance other than crude oil that is capable of being processed into petroleum products of any description;

F1[‘International Energy Agency’ means the intergovernmental organisation of that name established within the framework of the Organisation for Economic Co-operation and Development;]

“levy” means the levy imposed under *Part 5*;

“local authority” has the same meaning as in the Local Government Act 2001;

F1[‘major supply disruption’ means a substantial and sudden drop in the supply of crude oil or petroleum products to the European Communities or to a Member State, irrespective of whether that drop has led to an effective international decision to release stocks;]

“Minister” means the Minister for Communications, Marine and Natural Resources;

“national oil reserves” means at any time the total volume of oil stocks F5[(excluding EU emergency stocks and specific stocks)] held at that time by—

- (a) the Agency or another person on its behalf under a holding contract,
- (b) oil companies, and
- (c) oil consumers;

“oil” means crude oil, intermediate products and petroleum products;

<sup>1</sup> OJ No. L265, 9.10.2009, p. 9

“oil company”, with respect to any month, means any person (other than the Agency) that, in the preceding calendar year—

- (a) imported into the State or acquired, by purchase or otherwise, from another oil company or from an oil refining or oil storage facility in the State, oil for that person’s own consumption, for resale or for disposal to a third party, or
- (b) operated an oil refining or oil storage facility in the State that held in storage, consumed or sold oil;

“oil consumer”, with respect to any month, means any person that, in the preceding calendar year—

- (a) imported into the State,
- (b) acquired, by purchase or otherwise, from an oil company in the State, or
- (c) held in storage in the State,

1,000 or more tonnes of petroleum products exclusively for that person’s own consumption in the State and not for resale or for disposal to a third party;

“petroleum products” includes the following categories of products:

- (a) motor spirit and aviation fuel (that is to say, jet fuel of the gasoline type and aviation spirit);
- (b) gas oil, diesel oil and kerosene (including jet fuel of the kerosene type);
- (c) fuel oils;

F6[‘prescribed’ means prescribed by regulations made by the Minister under this Act;]

F1[‘reference year’ means the calendar year of the consumption or of the net import data used to calculate either the stocks to be held, or the stocks actually held, at any given time;

‘Regulation (EC) No. 1099/2008’ means Regulation (EC) No. 1099/2008 of the European Parliament and of the Council of 22 October 2008 on Energy Statistics<sup>2</sup>;

“regulations relating to returns” means regulations under *section 59*;

“share transfer day” means the day appointed under *section 5*;

“stockholding obligations”, in relation to the State, means its obligations relating to the maintenance of oil stocks under—

- (a) the Council Directive,
- (b) any provision of the treaties governing the European Communities,
- (c) any act adopted by the institutions of those Communities,
- (d) the IEP Agreement, and
- (e) any international convention or agreement to which the State is or becomes a party;

“subsidiary” means a subsidiary (within the meaning of section 155 of the Act of 1963) of the Agency;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

<sup>2</sup> OJ L304 14.11.2008, pg 1

**Annotations****Amendments:**

- F1** Inserted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 5.
- F2** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 4(a), commenced as per s. 1(3).
- F3** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 10(a).
- F4** Inserted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 10(b).
- F5** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 10(c).
- F6** Substituted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 4(b), commenced as per s. 1(3).

Expenses.

**3.**— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

**PART 2****SHARE TRANSFER**

Transfer to Minister of share owned by Irish National Petroleum Corporation Limited in National Oil Reserves Agency Limited.

**4.**— Notwithstanding any enactment or rule of law or any provision contained in the memorandum or articles of association of the Irish National Petroleum Corporation Limited, the Minister shall by order direct the Irish National Petroleum Corporation Limited to transfer, on the share transfer day, the share owned by it in the National Oil Reserves Agency Limited to the Minister on such terms and conditions as the Minister, after consulting with the Minister for Finance, thinks fit.

**Annotations****Editorial Notes:**

- E4** Power pursuant to section exercised (17.04.2007) by *National Oil Reserves Agency Act 2007 (Share Transfer) Order 2007* (S.I. No. 155 of 2007).

Share transfer day.

**5.**— The Minister shall by order appoint a day to be the day on which the Irish National Petroleum Corporation Limited transfers the share owned by it in the National Oil Reserves Agency Limited to the Minister.



**Annotations****Editorial Notes:**

**E5** Power pursuant to section exercised (1.08.2007) by *National Oil Reserves Agency Act 2007 (Share Transfer Day) Order 2007* (S.I. No. 566 of 2007).

2. The 1st day of August 2007 is appointed as the share transfer day.

Transfer costs  
and stamp duty.

**6.—** (1) Amounts (if any) paid by the Minister in respect of a transfer directed under *section 4* shall be repaid to the Central Fund out of monies provided by the Oireachtas.

(2) Stamp duty is not chargeable on an instrument under which the share owned by the Irish National Petroleum Corporation Limited in the National Oil Reserves Agency Limited is transferred to the Minister.

**PART 3**

## THE NATIONAL OIL RESERVES AGENCY

Continuation of  
Agency.

**7.—** (1) The National Oil Reserves Agency Limited continues in existence under this Act, but is to be known as An Gníomhaireacht Chúltaca Ola Náisiúnta or, in the English language, as the National Oil Reserves Agency.

(2) Subject to this Act, the Companies Acts continue to apply to the Agency.

(3) Section 6(1)(a) of the Act of 1963 does not apply to the Agency.

Object and func-  
tions of Agency.

**8.—** (1) The principal object of the Agency is to perform the functions assigned to it by or under this Act, including the functions of—

(a) maintaining, in accordance with *Part 4*, oil stocks,

(b) providing, on its own initiative or at the request of the Minister, advice, information or guidance to the Minister on any matter relating to the holding of oil stocks,

(c) collecting and recovering the levy,

**F7[(ca) administering the biofuel obligation in accordance with *Part 5A*,**

**(cb) collecting and recovering the biofuel levy,]**

(d) providing, as the Agency considers appropriate, such consultancy, advisory, technical assistance and contract services (including research and training services) in the State or elsewhere, on any matter relating to the Agency's functions under *subsection (1)(a)*, and

(e) representing, at the request of the Minister, a Minister of the Government at meetings of international bodies in so far as the meetings relate to the holding of oil stocks.

(2) The object specified in *subsection (1)* is to be included in the Agency's memorandum of association.

(3) The Agency has power to do anything that appears to it to be requisite, advantageous or incidental to, or appears to it to facilitate (either directly or indirectly), the performance by it of its functions as specified in or under this Act or in its

memorandum of association and that is not inconsistent with any enactment for the time being in force, including power—

- (a) to acquire, by purchase or otherwise, hold, store, import, export, transport and exchange oil,
- (b) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to acquire land or an interest in land,
- (c) to construct, acquire, maintain, operate and develop, in the State or elsewhere, works, plant, equipment, storage tanks and pipelines for holding and transporting oil stocks,
- (d) to acquire, charter, hire or otherwise engage ships, vehicles and other means of transportation,
- (e) to undertake in the State or elsewhere any other commercial business or operations in connection with the functions of the Agency,
- (f) to invest and deal with the Agency's money,
- (g) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to enter into joint ventures, partnerships or other commercial arrangements with other persons to construct, acquire, maintain and develop in the State or elsewhere works, plant, equipment, storage tanks and pipelines for holding and transporting oil stocks,
- (h) to sell, as the Agency thinks fit, oil held by or on behalf of the Agency,
- (i) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to sell all or part of any other property of the Agency for such consideration as the Agency thinks fit and in particular for shares, stock, debentures or other securities of any body corporate, and
- (j) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to enter into any commercial agreement with a third party in the State or elsewhere for the purpose of enabling the Agency to perform its functions under *subsection (1)(a)*.

(4) This section does not prevent the inclusion in the memorandum of association of all objects and powers, consistent with this Act, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal object of the Agency.

(5) The Agency may perform any of its functions through or by the chief executive or any member of its staff duly authorised in that behalf by the Agency.

**Annotations**

**Amendments:**

- F7** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 5, commenced as per s. 1(3).

Additional functions.

**9.**— The Minister may, with the consent of the Minister for Finance and after consulting with the Agency and any other Minister of the Government who, in the Minister's opinion, is concerned, by order assign to the Agency such additional functions connected with the functions assigned to it by or under this Act as the Minister considers appropriate.

- Share capital of Agency. **10.**— The authorised share capital of the Agency, as stated in its memorandum of association, shall be such amount, divided into shares of such value, as may be determined from time to time by the Minister for Finance after consulting with the Minister.
- Issue of shares. **11.**— (1) Shares in the share capital of the Agency may be issued only with the consent of the Minister for Finance given after consulting with the Minister.
- (2) The cost of any shares issued to the Minister by the Agency shall be advanced to the Minister by the Minister for Finance out of the Central Fund or the growing produce of the Fund.
- Exercise by Minister of functions exercisable by shareholders. **12.**— The Minister may exercise, in respect of the shares held by him or her in the Agency, all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his or her attorney.
- Memorandum and articles of association. **13.**— (1) The Agency shall take such steps as may be necessary under the Companies Acts to alter its memorandum and articles of association for the purpose of making them consistent with this Act.
- (2) Notwithstanding anything contained in the Companies Acts, any alteration that is made in the memorandum or articles of association of the Agency takes effect only if the alteration is made with the prior approval of the Minister given with the consent of the Minister for Finance.
- Board of directors. **14.**— (1) The board of directors of the Agency is to consist of—
- (a) not more than 5 directors (including the chairperson), and
- (b) the person holding the office of chief executive who, by virtue of that office, is a director.
- (2) The directors (other than the chief executive) shall be appointed by the Minister with the consent of the Minister for Finance.
- (3) A person appointed as a director under *subsection (2)* shall be a person who, in the Minister's opinion, has experience and competence in one or more of the following areas:
- (a) oil or oil related industries;
- F8[(aa) biofuel or biofuel related industries;]
- (b) chemical or chemical related industries;
- (c) finance;
- (d) economics;
- (e) legal matters;
- (f) energy production and supply industries.
- (4) Each director appointed under *subsection (2)* shall be appointed for a period not exceeding 5 years and is eligible for reappointment.
- (5) The Minister shall designate one of the directors (other than the chief executive) as chairperson.
- (6) The Minister with the consent of the Minister for Finance may, at any time, remove from office a director appointed under *subsection (2)* if—

- (a) in the Minister's opinion, the director has become incapable through ill-health of performing his or her functions,
- (b) in the Minister's opinion, the director has committed stated misbehaviour,
- (c) the director's removal from office appears to the Minister to be necessary for the Agency to perform its functions effectively, or
- (d) the director has contravened *section 24* of this Act or an applicable provision of the Ethics in Public Office Act 1995.

(7) Section 182 of the Act of 1963 does not apply to the Agency.

F9[(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.]

(9) A person who, immediately before the commencement of this section, held office as a director of the Agency shall, subject to *subsection (6)* and *section 23* and the terms and conditions upon which he or she was appointed, continue in office as such director until the end of the period for which he or she was appointed, as if appointed under *subsection (2)*.

(10) In this section "applicable provision of the Ethics in Public Office Act 1995", in relation to a director appointed under *subsection (2)*, means a provision of that Act that, by virtue of a regulation under section 3 of that Act, applies to that director.

#### Annotations

#### Amendments:

- F8 Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 6(a), S.I. No. 322 of 2010.
- F9 Substituted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 6(b), S.I. No. 322 of 2010.

Strategy statement.

15.— (1) As soon as practicable after the share transfer day, the Agency shall prepare and submit to the Minister for approval a strategy statement for—

- (a) in the case of the initial strategy statement, the ensuing five year period, and
- (b) in the case of each subsequent strategy statement, the period specified by the Minister.

(2) Each strategy statement shall be prepared in such form and manner as the Minister may direct.

(3) In preparing a strategy statement, the Agency shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources and shall include the following information:

- (a) the key strategies and activities the Agency will pursue to further its objects and perform its functions;
- (b) the outputs the Agency aims to achieve and against which its performance will be assessed;
- (c) the staff, resources and expenditure proposals necessary to pursue the strategies and activities referred to in *paragraph (a)*.

(4) As soon as practicable after approving a strategy statement, the Minister shall cause a copy of the statement to be laid before each House of the Oireachtas.

Power to establish subsidiaries.

16.— (1) The Agency may, with the consent of the Minister and the Minister for Finance, perform any of its functions through a subsidiary.

(2) For the purpose of *subsection (1)*, the Agency may do one or more of the following:

(a) acquire, form or establish one or more than one subsidiary;

(b) acquire or hold shares, or any other interest, in a company or become a member of a company.

(3) A subsidiary that is acquired, formed or established under *subsection (2)* may be formed and registered under—

(a) the Companies Acts, or

(b) the laws of a place other than the State.

(4) The Agency shall ensure that the memorandum and articles of association of each subsidiary are in a form consistent with this Act and that the prior approval of the Minister and the Minister for Finance is obtained in relation to the memorandum and articles of association of each subsidiary and any alterations to them.

(5) Each subsidiary formed or established under the Companies Acts shall be limited by shares and comply with those Acts.

(6) The Minister may, subject to *subsection (7)*, give a direction in writing to the Agency on any matter relating to a subsidiary, and the Agency shall ensure compliance with the direction.

(7) A direction that relates to the disposal of any assets or surpluses of a subsidiary may only be given with the consent of the Minister for Finance.

(8) The grades of staff and the number of staff of a subsidiary shall be determined by the Agency, with the consent of the Minister and the Minister for Finance.

(9) A member of the staff of a subsidiary holds office or employment subject to such terms and conditions as are approved by the Minister with the consent of the Minister for Finance.

(10) The directors of a subsidiary shall be appointed and may be removed from office by the Agency with the prior approval of the Minister given with the consent of the Minister for Finance.

(11) If a person who is both a director of a subsidiary and a director of the Agency is removed under *section 14(6)* from office as a director of the Agency or ceases under *section 23* to hold such office, that person immediately ceases to be a director of the subsidiary.

(12) The Minister may, by order, designate a subsidiary that complies with the requirements of this section as a subsidiary whose operating costs and administrative expenses are to be paid out of the levy F10[and biofuel levy].

(13) Where any function of the Agency is, under the memorandum of association of a subsidiary, a function of the subsidiary, every provision of, or of any instrument under this Act or any other enactment relating to the Agency shall, in respect of that function, apply to the subsidiary as it applies to the Agency.

**Annotations****Amendments:**

**F10** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 7, S.I. No. 322 of 2010.

Power to charge and recover fees. **17.—** (1) The Agency may charge, receive and recover fees for work undertaken by it on behalf of any person other than a Minister of the Government.

(2) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from any such person any amount due and owing to it under *subsection (1)*.

Power to engage consultants and advisers. **18.—** (1) The Agency may engage such consultants or advisers as it considers necessary for performing its functions.

(2) Any fees due to a consultant or adviser engaged under this section shall be paid by the Agency out of the levy F11 [and biofuel levy].

**Annotations****Amendments:**

**F11** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 8, S.I. No. 322 of 2010.

Chief executive (appointment and term of office). **19.—** (1) There shall be a chief executive of the Agency.

(2) The chief executive shall be appointed and may be removed or suspended from office by the directors appointed under *section 14(2)*.

(3) The chief executive holds office for such period and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) that the directors appointed under *section 14(2)* may, with the approval of the Minister given with the consent of the Minister for Finance, determine.

(4) The remuneration and allowances determined under *subsection (3)* and any superannuation benefits payable to or in respect of the chief executive shall be paid by the Agency out of the levy F12 [and biofuel levy].

(5) A person may be reappointed as chief executive subject to the other provisions of this section.

(6) Where and for so long as the chief executive is suspended from office, the chief executive is suspended from being a director of the Agency.

**Annotations****Amendments:**

**F12** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 9, S.I. No. 322 of 2010.

Functions of chief executive. **20.—** (1) The functions of the chief executive are—

- (a) to carry on, manage and control generally the administration and business of the Agency, and
- (b) to perform any other functions that may be determined by the directors.

(2) The chief executive is responsible to the board of directors for the performance of his or her functions and the implementation of the board's policies.

(3) The chief executive shall provide the directors with such information, including financial information, in relation to the performance of his or her functions as the directors may require.

(4) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Agency as may be designated for that purpose by the directors.

(5) The person designated under *subsection (4)* to perform functions of the chief executive is not entitled to act as a director of the Agency.

(6) The directors may at any time revoke or alter a designation made under *subsection (4)*.

(7) The chief executive shall not hold any other office or position or carry on any business, trade or profession without the consent of the directors.

Staff of Agency. **21.—** (1) The Agency may, subject to a determination under *subsection (2)*, appoint persons to be members of its staff.

(2) The Agency shall, with the approval of the Minister given with the consent of the Minister for Finance, determine—

- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of staff appointed under this section, and
- (b) the grades and the numbers of staff of the Agency at each grade.

(3) The remuneration and allowances of the members of the Agency's staff and any superannuation benefits payable to or in respect of those members shall be paid by the Agency out of the levyF13[and biofuel levy].

(4) A member of staff of the Agency shall perform such duties as the chief executive may assign to him or her.

(5) A person who, immediately before the commencement of this section, was a member of staff of the Agency shall, subject to *section 23(2)* and the terms and conditions upon which he or she was appointed, continue in employment as if appointed under *subsection (1)*.

**Annotations**

**Amendments:**

**F13** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 10, S.I. No. 322 of 2010.

Superannuation. **22.—** (1) The Agency shall prepare and submit to the Minister a scheme, or more than one scheme, for granting superannuation benefits to or in respect of such members of staff (including the chief executive) of the Agency as it may think fit.

(2) A superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) A superannuation scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Agency in accordance with its terms.

(4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(5) The Agency may not grant, or enter into any arrangement for the provision of any superannuation benefit to or in respect of a member of staff (including the chief executive) of the Agency except in accordance with a superannuation scheme approved under this section or approved by the Minister with the consent of the Minister for Finance.

(6) Each superannuation scheme shall include provision for appeals from a decision relating to a superannuation benefit under the scheme.

(7) The Minister shall ensure that a superannuation scheme approved under this section, including an amendment of a scheme, is laid before each House of the Oireachtas as soon as practicable after it is approved.

(8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the superannuation scheme is laid before it, annul the scheme.

(9) The annulment of a superannuation scheme under *subsection (8)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the scheme before the passing of the resolution.

(10) A scheme for granting superannuation benefits to or in respect of members of the staff of the Agency that is in existence immediately before the passing of this Act and that has been approved by the Minister with the consent of the Minister for Finance is deemed to have been submitted and approved under this section.

#### Annotations

#### Editorial Notes:

- E6** Any defined benefit scheme established under section is excluded from *Pensions Act 1990 (25/1990)*, Part III, by *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002 (S.I. No. 279 of 2002)*, reg. 11 as substituted (26.02.2009) by *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009 (S.I. No. 70 of 2009)*, reg. 2.

Membership of either House of Oireachtas, European Parliament or local authority.

**23.—** (1) A director of the Agency (including the chief executive) immediately ceases to hold office on—

- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament,
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becoming a member of a local authority.



(2) A member of staff of the Agency is immediately seconded from employment with the Agency on—

- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament, or
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy.

(3) No remuneration or allowances are payable by the Agency in respect of the secondment period to a person seconded under *subsection (2)* from employment, and that period is not to be counted as service with the Agency for the purposes of any superannuation benefit.

(4) In relation to a person seconded under *subsection (2)* from employment, the secondment period begins on the occurrence of the relevant event referred to in that subsection and ends when the person ceases to be a member of either House of the Oireachtas or of the European Parliament.

(5) A person who is entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a member of the European Parliament is, while so entitled or such a member, not eligible to become a director of the Agency or to be employed in any capacity by the Agency.

Unauthorised disclosure of confidential information.

**24.**— (1) Except in the circumstances specified in *subsection (2)*, a person shall not disclose confidential information obtained while performing functions as—

- (a) a director of the Agency,
- (b) a member of a committee of the Agency,
- (c) the chief executive or any other member of staff of the Agency,
- (d) an authorised officer,
- (e) a person engaged by the Agency as a consultant or adviser, or
- (f) an employee of a person referred to in *paragraph (e)*.

(2) A person does not contravene *subsection (1)* by disclosing confidential information if—

- (a) the Agency authorises its disclosure,
- (b) the disclosure is made to the Agency,
- (c) the disclosure is made to the Minister by or on behalf of the Agency or in compliance with a requirement of this Act, or
- (d) the disclosure is otherwise required by law.

(3) In this section “confidential information” means—

- (a) information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) proposals of a commercial nature or tenders submitted to the Agency by a contractor, a consultant or any other person.

**Annotations**

**Modifications (not altering text):**

- C4** Person holding record under section excluded from requirement to refuse an FOI request (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 41(1)(a) and sch. 3 part 1, commenced on enactment. This section is listed in sch. 3 part 1.

**Enactments relating to non-disclosure of records.**

**41.—**(1) A head shall refuse to grant an FOI request if—

- (a) the disclosure of the record concerned is prohibited by law of the European Union or any enactment (other than a provision specified in column (3) of *Part 1* or *2* of *Schedule 3* of an enactment specified in that Schedule), or

...

SCHEDULE 3  
ENACTMENTS EXCLUDED FROM APPLICATION OF *Section 41*

PART I

STATUTES

...		
No. 7 of 2007	National Oil Reserves Agency Act 2007	Section 24.
...	...	...

Code of conduct. **25.—** (1) The Agency shall, following consultation with the Minister, draw up a code of conduct in respect of proper standards of integrity, conduct and concern for the public interest to be maintained by a person while performing functions as—

- (a) a director of the Agency,
- (b) a member of a committee of the Agency,
- (c) the chief executive or any other member of staff of the Agency,
- (d) a consultant or adviser engaged by the Agency, or
- (e) an employee of a person referred to in *paragraph (d)*.

(2) The Agency shall publish any code of conduct drawn up under this section.

Power to borrow. **26.—** (1) The Agency may, subject to *subsections (2) and (3)*, raise or borrow money (including money in a currency other than the currency of the State) by means of the issue of debentures or otherwise, for the purpose of providing for current or capital purposes.

(2) The aggregate amount at any time of money raised or borrowed under this section shall not exceed €1 billion.

(3) No money may be raised or borrowed under this section except with the prior approval of the Minister given with the consent of the Minister for Finance and subject to such terms and conditions as they may determine.

(4) F14[...]

(5) For the purposes of this section and *section 27* money raised or borrowed in a currency other than the currency of the State is deemed to be the equivalent in the

currency of the State of the actual money raised or borrowed, such equivalent being calculated according to the rate of exchange, at the time the money is raised or borrowed, for that currency and the currency of the State.

(6) The limit on borrowings provided for under *subsection (2)* applies to the aggregate at any one time of borrowings of the Agency and all subsidiaries.

**Annotations**

**Amendments:**

**F14** Repealed (30.06.2009) by *European Communities (Repeal of Section 26(4) of the National Oil Reserves Agency Act 2007) Regulations 2009* (S.I. No. 247 of 2009), reg. 2.

Temporary borrowing.

**27.**— The Agency may, with the prior approval of the Minister given with the consent of the Minister for Finance, borrow temporarily by arrangement with bankers or otherwise such sums of money (including money in a currency other than the currency of the State) as it may require for the purpose of providing for current expenditure.

Annual report.

**28.**— (1) The Agency shall submit an annual report of its activities and those of any subsidiaries after the end of the financial year to which the report relates.

(2) Each annual report shall be in such form and include information regarding such matters as the Minister may direct.

(3) The Minister shall cause copies of the annual report to be laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.

Accounts and audit.

**29.**— (1) Without prejudice to the requirements of the Companies Acts in relation to proper books of account, the Agency shall keep, in such form as may be approved by the Minister with the consent of the Minister for Finance, all proper books and records of account of—

(a) all income received by it including the sources,

(b) all expenditure incurred by it, and

(c) its assets and liabilities.

(2) The Agency shall submit its accounts annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, shall direct.

(3) After the audit, the Agency shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.

(4) The Minister shall cause copies of the documents presented under *subsection (3)* to be laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the audited accounts relate.

Information to Minister on performance of functions.

**30.**— (1) If required by the Minister, the Agency shall provide the Minister with information in relation to such matters as he or she may specify concerning or relating to—

(a) the performance of its functions (including those performed through a subsidiary),

- (b) its plans for the future performance of its functions,
- (c) any strategy statement that has been laid before each House of the Oireachtas under *section 15*,
- (d) any report or account prepared by it under *sections 28* or *29*,
- (e) the economy and efficiency of use of the Agency in the use of its resources,
- (f) the systems, procedures and practices employed by the Agency for the purpose of evaluating the effectiveness of its operations, or
- (g) the policy and activities, other than day-to-day activities, of the Agency and of any subsidiaries.

(2) Information required by the Minister under *subsection (1)* shall be provided in such form and within such period as the Minister may direct.

Information to Oireachtas on performance of functions.

**31.**— (1) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive shall give evidence to that Committee on all matters pertaining to the expenditure of the Agency and any of its subsidiaries.

(2) Whenever requested to do so by a committee (other than the Committee referred to in *subsection (1)*) of one or both Houses of the Oireachtas, the chief executive shall account to such committee for the performance of the functions of the Agency and any of its subsidiaries.

F15[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.]

**Annotations**

**Amendments:**

**F15** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 11(1), S.I. No. 322 of 2010.

## PART 4

### MAINTENANCE OF OIL STOCKS

Duty of Agency. **32.**— (1) The Agency shall maintain at the Minister's disposal, such oil stocks as will secure that at all times, subject to *section 35*, national oil reserves F16[and Irish emergency stocks] are maintained at—

- (a) a level sufficient to comply with the State's stockholding obligations, or
- (b) such higher level as the Minister may, by written direction, specify if he or she considers it necessary to do so for the effective performance of the Agency's functions.

F17[(1A) The level of Irish emergency stocks to be maintained for the purposes of *subsection (1)(a)*, insofar as that subsection relates to those stocks, shall be at least the greater of—

- (a) stocks equal to 90 days of average daily net imports calculated in accordance with *subsection (1B)*, or
- (b) stocks equal to 61 days of average inland consumption calculated in accordance with *subsection (1B)*.

(1B)(a) In calculating which level of Irish emergency stocks referred to in *subsection (1A)* is to apply—

- (i) 90 days of average daily net imports shall be calculated on the basis of the crude oil equivalent of imports during the previous calendar year determined in accordance with *Schedule 1*, and
  - (ii) 61 days of average daily inland consumption shall be calculated on the basis of the crude oil equivalent of inland consumption during the previous calendar year, established and calculated in accordance with *Schedule 2*.
- (b) For the purposes of the calculations referred to in *paragraph (a)*, biofuels and additives shall be taken into account only when they have been blended with the petroleum products concerned.
- (c) The average daily net imports and average daily inland consumption referred to in *subparagraphs (i) and (ii) of paragraph (a)* shall be determined, in relation to the period from 1 January to 31 March of each calendar year, on the basis of the quantities imported into, or consumed in, the State during the last year but one before the calendar year in question.
- (d) The level of Irish emergency stocks shall be calculated in accordance with *Schedule 3*.
- (e) The level of Irish emergency stocks at a given time shall be calculated using data from the reference year determined in accordance with *paragraphs (a), (b) and (c)*.
- (f) When calculating the level of Irish emergency stocks, biofuels and additives shall be taken into account when—
- (i) they have been blended with petroleum products concerned, or
  - (ii) they are—
    - (I) stored on the territory of the State,
    - (II) to be blended with petroleum products to be used for transportation purposes in accordance with *Part 5*,and
    - (III) reported on monthly in accordance with the National Oil Reserves Agency Act 2007 (Returns and Biofuels Levy) Regulations 2010 (S.I. No. 356 of 2010).
- (1C)(a) At least one-third of Irish emergency stocks shall be in the form of one or more of the following product categories as defined in section 4 of Annex B to Regulation (EC) No. 1099/2008:
- (i) Ethane
  - (ii) LPG
  - (iii) Motor gasoline
  - (iv) Aviation gasoline
  - (v) Gasoline-type jet fuel (naphtha-type jet fuel or JP4)
  - (vi) Kerosene-type jet fuel
  - (vii) Other kerosene
  - (viii) Gas or diesel oil (distillate fuel oil)
  - (ix) Fuel oil (high sulphur content and low sulphur content)
  - (x) White spirit and SBP

- (xi) Lubricants
- (xii) Bitumen
- (xiii) Paraffin waxes
- (xiv) Petroleum coke.

(b) Stock levels for each category of product referred to in *paragraph (a)* shall, in respect of each product in the category concerned, be calculated in accordance with *Schedule 3*.]

(2) The Agency may carry out its duty F18[under this section] by—

- (a) holding the oil stocks itself, or
- (b) entering into holding contracts.

**Annotations**

**Amendments:**

- F16** Inserted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 13.
- F17** Inserted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 6(a-c).
- F18** Substituted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 6(d).

Holding contracts.

**33.—** (1) A holding contract is a contract between the Agency and another person by which that other person undertakes to hold at the disposal of the Agency an agreed volume of oil stocks (whether or not owned by the Agency) for the purposes of the Agency's functions.

(2) A holding contract may provide for the agreed volume of oil stocks to be held—

- (a) inside the State, or
- (b) outside the State in the territory of another state in accordance with F19[an oil stocks agreement].

(3) Before entering into a holding contract providing for oil stocks to be held outside the State in accordance with F19[an oil stocks agreement], the Agency shall submit its proposals to the Minister for approval.

(4) Before deciding whether to give or withhold approval of proposals submitted under *subsection (3)*, the Minister shall have regard to such factors as he or she considers appropriate, including any need for particular categories of oil stocks to be held within the State.

**Annotations**

**Amendments:**

- F19** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 12.

Duties of Minister.

**34.**— (1) The Minister shall, in accordance with the State’s stockholding obligations, from time to time determine the extent to which, and the manner in which, crude oil, intermediate products and different categories of petroleum products may be taken into account—

- (a) in calculating national oil reserves F20[and Irish emergency stocks], and
- (b) in determining the volume of oil stocks to be maintained by the Agency in order to carry out its duty under *section 32*.

(2) The Minister shall keep the Agency informed of the volume of oil stocks, calculated by reference to the information supplied to the Minister in accordance with the regulations relating to returns, that the Agency must maintain to comply with its duty under *section 32*.

**Annotations**

**Amendments:**

**F20** Inserted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 13.

Release of oil stocks in cases of particular urgency.

**35.**— (1) If the Minister considers that a case of particular urgency exists, F21[whether by reason of an effective international decision to release stocks or a major supply disruption, or otherwise,] and that it is necessary for the compliance by the State with its stockholding obligations to do so, he or she shall notify the Agency that the oil stocks maintained by it may be reduced below the level required under *section 32* for such period and to such level as the Minister may, in writing, direct.

- (2) After consulting the Agency, the Minister may, in writing—
  - (a) issue a direction specifying the procedures to be applied by the Agency for releasing such oil stocks, and
  - (b) authorise the Agency to release oil stocks in accordance with those procedures.

**Annotations**

**Amendments:**

**F21** Inserted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 7.

## PART 5

### LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS

Definitions for Part 5.

**36.**— In this Part—

“expenses” means the operating costs and administrative expenses of the Agency and each designated subsidiary, including the following:

- (a) oil storage costs;
- (b) the costs of holding under a holding contract oil stocks not owned by the Agency;



- (c) the remuneration, if any, and allowances for expenses of the directors;
- (d) the remuneration and allowances for expenses of the chief executive and any superannuation benefits payable to or in respect of him or her;
- (e) the remuneration and allowances of the members of staff and any superannuation benefits payable to or in respect of such members;
- (f) fees due to any consultants or advisers engaged under this Act;
- (g) the costs incurred by the Agency in collecting the levy;
- F22[(ga) the costs incurred by the Agency in administering the biofuel obligation;
- (gb) the costs incurred by the Agency in collecting the biofuel levy;]
- (h) the payment of any interest and other bank charges incurred on borrowings under sections 26 and 27;
- (i) the repayment of principal borrowed under section 26 or 27 to purchase oil or to do anything specified in section 8(3)(a), (b), (c) or (f);
- F23[(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);]

“levy assessment notice” means a notice issued under section 41;

“marine bunkers” means petroleum products that are exempt from excise duty as being intended for the fuel tanks of sea-going vessels;

“petroleum products” does not include marine bunkers, aviation fuel and jet fuel of the kerosene type;

“relevant disposal of petroleum products” has the meaning assigned by section 37(2);

“volume assessment” means an assessment under section 39 of relevant disposals of petroleum products.

#### Annotations

#### Amendments:

- F22** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 12, S.I. No. 322 of 2010.
- F23** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 11(2), S.I. No. 322 of 2010.

Liability of oil companies and oil consumers to pay levy.

**37.**— (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, oil companies and oil consumers shall, in accordance with this Part and the regulations under section 44, pay to the Agency in each month a levy on their relevant disposals of petroleum products in the preceding month.

(2) A relevant disposal of petroleum products is the volume (expressed in tonnes or litres) of petroleum products that in any month—

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

(b) in relation to an oil consumer, it consumes in the State.

(3) No levy is payable by an oil company (other than an oil company operating an oil refining or oil storage facility in the State) or an oil consumer on its relevant disposals of petroleum products where the levy has been paid by the oil company from which it acquired the petroleum products.

Exemptions from  
levy.

**38.**— (1) Subject to *subsection (2)*, no levy is payable in any month by an oil consumer that, throughout the preceding month, held within the State stocks of petroleum products owned by it that equalled or exceeded—

- (a) 55 times the average volume of those products consumed by it on each day in the preceding calendar year, or
- (b) such other daily volume as may be prescribed by the Minister for the purpose of securing supplies of oil in accordance with the State's stockholding obligations or with its national requirements.

**F24**[(2) In calculating for the purposes of this section stocks of petroleum products held throughout the preceding month by an oil consumer, the Minister shall not take into account any volume of petroleum products on behalf of the oil consumer under a contract between the oil consumer and another person, unless—

- (a) the other person is a person mentioned in Article 8(1) of the Council Directive,
- (b) the contract provides for an agreed volume of petroleum products owned by the oil consumer to be so held by the other person for the purpose of a claim by the oil consumer for exemption from levy under this section,
- (c) the contract provides for the agreed volume of petroleum products to be available and physically accessible,
- (d) before the contract was entered into, the contract proposals (within the meaning assigned by *section 62*) were submitted **F25**[to the Minister,]

**F26**[(e) where the contract provides for the agreed volume of petroleum products to be held outside the State—

- (i) the oil consumer and other person have demonstrated that the petroleum products are held in accordance with the provisions of any oil stocks agreement that the State may enter into from time to time and are, whether or not co-mingled with other stocks held by economic operators—

(I) clearly identifiable in terms of location, volume and category of oil product,

(II) subject to inspection, verification and audit, and

(III) available at all times to be released without encumbrance when the oil consumer is called on to do so by the Minister,

and

- (ii) the oil consumer reports monthly in respect of those petroleum products in accordance with the National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007 (S.I. No. 567 of 2007)]

**F27**[(f) the contract provides that where the other person is—

- (i) an economic operator which has surplus stocks or available stockholding capacity outside the territory of the State but within the Community,

or

- (ii) an economic operator which has surplus stocks or available stockholding capacity within the territory of the State,

the delegation of stockholding obligations to that person under the contract shall—

(I) where *subparagraph (i)* applies—

(A) be authorised in advance by the Minister and by all Member States within whose territories the stocks will be held, and

(B) not be sub-delegated by that other person,

or

(II) where *subparagraph (ii)* applies—

(A) be communicated in advance to the Minister,

and

(B) not be sub-delegated by that other person,

(g) the contract provides that any change to, or extension of, the stockholding obligations delegated by the oil consumer under that contract to—

(i) a central stockholding entity, other than the Agency, where—

(I) the central stockholding agency has, before entering into the contract, declared itself willing to hold such stocks, and

(II) the delegation has been authorised in advance by the Minister and by all Member States within whose territories the stocks will be held, or

(ii) an economic operator, where—

(I) the operator has surplus stocks or available stockholding capacity outside the territory of the State but within the Community, and

(II) the delegation has been authorised in advance by the Minister and by all Member States within whose territories the stocks will be held,

will take effect only where such change or extension is authorised in advance by the Minister and by any other Member State which authorised the delegation of the stockholding obligations under that contract,

and

(h) the contract provides that any change to, or extension of, the stockholding obligations delegated by the oil consumer under that contract to an economic operator that has surplus stocks or available stockholding capacity within the territory of the State shall be deemed to be a new delegation of those obligations.]

(2A) Where an oil consumer proposes to delegate the consumer's stockholding obligation F28[to the Agency or to a central stockholding entity other than the Agency,] the oil consumer shall notify the Minister at least 170 days prior to the start of the period to which the obligation in question relates in accordance with Article 8(4) of the Council Directive.]

(3) An oil consumer that claims exemption from levy under this section shall supply to the Minister, in accordance with and within the time specified in the regulations relating to returns, all information relevant to the exemption claimed.

**Annotations****Amendments:**

- F24** Substituted and inserted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 11.
- F25** Substituted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 8(a)(i).
- F26** Substituted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 8(a)(ii).
- F27** Inserted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 8(a)(iii-v).
- F28** Substituted (29.04.2016) by *European Union (Oil Reserves) (Amendment) Regulations 2016* (S.I. No. 231 of 2016), reg. 8(b).

Volume assess-  
ment.

**39.**— (1) Before the end of each month, the Minister shall notify the Agency of the Minister's assessment of the volume of each category of petroleum products appearing to have been relevantly disposed of in the preceding month by each oil company and oil consumer liable to pay the levy.

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

- (a) the information supplied by the oil company or oil consumer in accordance with the regulations relating to returns, or
- (b) if that information has not been supplied or if the Minister has reason to believe that information so supplied 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  
levy.

**40.**— (1) The Minister shall calculate in accordance with this section the amount of levy payable in respect of a month by each oil company and oil consumer liable to pay the levy on its relevant disposals in the month and shall notify the Agency of that amount.

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

- (a) the oil company's or the oil consumer's relevant disposals of petroleum products (including, where appropriate, of each category of petroleum products) in the month as specified in its volume assessment for the month, and
- (b) the rate of levy prescribed under *section 44* for the month.

Levy assessment  
notice.

**41.**— The Agency shall give each oil company and oil consumer liable to pay the levy in respect of a month a levy assessment notice specifying—

- (a) the oil company's or oil consumer's relevant disposals of petroleum products as specified in its volume assessment for that month,
- (b) the rate of levy prescribed under *section 44* for the month and, where appropriate, for each category of petroleum products specified in that assessment,
- (c) the amount of the levy payable by it in respect of that month as calculated under *section 40*,

(d) the date, determined in accordance with the regulations, on which the levy becomes payable, and

(e) where appropriate, any exemption from levy in accordance with *section 38*.

Interest on unpaid amount of assessment.

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

(2) Notwithstanding *subsection (1)*, interest does not accrue on an amount that in a review under *section 44(1)(e)* the Minister determines is not payable.

Recovery of unpaid levy and interest.

**43.**— The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the oil company or oil consumer by whom it is payable any amount due and owing to it under this Part in respect of the levy and any interest that has accrued on that amount.

F29[Exchange of information

**43A.** (1) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure or production of taxpayer information obtained by or furnished to the Revenue Commissioners for the purposes of the Acts, the Revenue Commissioners may transfer to the Minister taxpayer information, held by them for those purposes, relating to mineral oil brought into the State and declared to the Revenue Commissioners in accordance with excise law.

(2) Taxpayer information transferred to the Minister by the Revenue Commissioners under *subsection (1)* may be used only by the Minister in the exercise of his or her powers and functions, relating to the administration of the levy, under this Act or any regulations made under this Act and shall not be disclosed by the Minister to any other person for any other purpose whatsoever.

(3) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure or production of information obtained by or furnished to the Minister, the Minister may transfer to the Revenue Commissioners information, relating to mineral oil brought into the State, furnished to the Minister by oil companies and oil consumers under *section 59* and any regulations made under that section for the purposes of this Act.

(4) Information transferred to the Revenue Commissioners by the Minister under *section (3)* may be used only by the Revenue Commissioners in the exercise of their powers under the Acts and shall not be disclosed by the Revenue Commissioners to any other person for any other purpose whatsoever.

(5) In this section—

‘excise law’ means the statutes and the instruments made under statute that relate to the duties of excise or the management of those duties;

‘mineral oil’ has the meaning given to it by section 94 of the Finance Act 1999;

‘taxpayer information’ has the meaning given to it by section 851A of the Taxes Consolidation Act 1997;

‘the Acts’ has the meaning given to it by section 1078 of the Taxes Consolidation Act 1997.]

**Annotations****Amendments:**

**F29** Inserted (7.10.2016) by *Energy Act 2016* (12/2016), s. 28, S.I. No. 509 of 2016.

**Editorial Notes:**

**E7** The section heading is taken from the amending section in the absence of one included in the amendment.

Regulations relating to levy.

**44.**— (1) The Minister may, by regulations, provide for all or any of the following matters relating to the levy:

F30[(a) following consultation with the Minister for Finance, the rate of levy per tonne or litre of relevant disposals of petroleum products;]

(b) the daily volume of petroleum products to be held by an oil consumer for the purposes referred to in *section 38(1)(b)*;

(c) the manner in which levy assessment notices are to be prepared by the Agency;

(d) the keeping by oil companies and oil consumers of specified records in respect of matters connected with liability to pay the levy and the specifying of the form in which and the period for which such records are to be kept;

(e) the review by the Minister of a levy assessment notice at the request of an oil company or oil consumer that claims that the notice is erroneous;

(f) the time within which a request for such review shall be made and the conditions to be satisfied by an oil company or oil consumer before the request can be made;

(g) F31[...]

(h) the times at which payment becomes due;

(i) the form in which payment is to be made to the Agency by an oil company or oil consumer;

(j) the rate of interest on amounts not paid when due;

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

(2) Different rates of levy may be prescribed by the Minister for different categories of petroleum products and in relation to different months.

(3) In determining the rates of levy, the Minister shall seek to ensure that (taking one year with another) the sums realised by applying those rates to the volume assessments meet but do not exceed the estimated expenses of the Agency and of each designated subsidiary.

(4) For the purpose of determining in any year such 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.

(5) The rate of levy determined under Regulation 6(4) of the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) and in effect immediately before the revocation of those Regulations by *section 56* is deemed to have been prescribed under this section and continues in effect until it is varied under this section.

(6) If the prescribed rate of levy is varied, the new rate of levy takes effect no earlier than 3 months after the making of the regulation varying the prescribed rate.

(7) Regulations under *subsection (1)(j)* 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 F32[Central Bank 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.

#### Annotations

#### Amendments:

- F30** Substituted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 13(a), S.I. No. 322 of 2010.
- F31** Deleted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 13(b), S.I. No. 322 of 2010.
- F32** Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(14) and sch. 2 part 14 item 27, S.I. No. 469 of 2010.

#### Editorial Notes:

- E8** Power pursuant to section exercised (16.06.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009* (S.I. No. 220 of 2009).
- E9** Power pursuant to section exercised (1.08.2007) by *National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007* (S.I. No. 567 of 2007), in effect as per reg. 1(2); amended (29.05.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) Regulations 2009* (S.I. No. 214 of 2009) and (16.06.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009* (S.I. No. 220 of 2009).
- E10** Previous affecting provision: power pursuant to section exercised (29.05.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) Regulations 2009* (S.I. No. 214 of 2009); revoked (16.06.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009* (S.I. No. 220 of 2009), reg. 3.

F33[PART 5A

BIOFUEL OBLIGATION]

**Annotations**

**Amendments:**

**F33** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, commenced as per s. 1(3).

**Editorial Notes:**

**E11** Obligation imposed on biofuel obligation account holder to make written return to the Minister for purposes of Part (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), reg. 3, in effect as per reg. 1(2).

**F33** [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/EC<sup>1</sup> 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

<sup>1</sup> OJ No. L140, 5.6.2009, p16.



(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*;

‘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*;

**F34** [‘reporting period’, in respect of each obligation period, means a period of 3 consecutive months beginning on 1 January, 1 April, 1 July and 1 October;]

‘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.]

#### Annotations

#### Amendments:

**F33** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, commenced as per s. 1(3).

**F34** Inserted (30.11.2016) by *Energy Act 2016* (12/2016), s. 29, S.I. No. 572 of 2016.

**F35** [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.]

**Annotations**

**Amendments:**

- F35** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (11/2010)*, s. 3, commenced as per s. 1(3).

**F36** [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)*.]

**Annotations**

**Amendments:**

- F36** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (11/2010)*, s. 3, S.I. No. 322 of 2010.

**Editorial Notes:**

- E12** Percentage rate specified for purposes of subs. (3)(b) (3.05.2016) by *National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2016 (S.I. No. 225 of 2016)*, in effect as per reg. 2. Order comes into operation 1 January 2017.

**E13** Previous affecting provision: S.I. No. 562 of 2012, percentage rate proscribed is revoked by S.I. No. 225 of 2016, as per reg. 3.

**F37**[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.]

**Annotations****Amendments:**

**F37** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**Editorial Notes:**

**E14** Power pursuant to section exercised (1.01.2017) by *National Oil Reserves Agency Act 2007 (Biofuel Obligations Rate) Order 2016* (S.I. No. 225 of 2016), in effect as per reg. 1(2).

**E15** Power pursuant to section exercised (1.01.2013) by *National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2012* (S.I. No. 562 of 2012), in effect as per reg. 1(2). (This statutory instrument is revoked by S.I. No. 225 of 2016 once it comes into operation on 1.01.2017).

**F38** [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.]

**Annotations**

**Amendments:**

**F38** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F39** [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.]

**Annotations**

**Amendments:**

**F39** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F40** [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 **F41** [reporting 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.

**F42** [(2A) (a) The Agency shall, in respect of each reporting period, make a determination specifying the closing date for the submission to it of applications for biofuel obligation certificates.

(b) The Agency shall publish a determination under *paragraph (a)* on its website as soon as is practicable after the date of its making.]

F43[(3) An application for a biofuel obligation certificate may be made at any time during the reporting period in which the biofuel was disposed of as referred to in *subsection (1)* but in any case not later than the closing date specified in respect of the reporting period concerned in a determination made under *subsection (2A)*.]]

F44[(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—

F45[(a) the sustainability criteria for biofuels and bioliquids set out in Schedule 3 to the European Union (Renewable Energy) Regulations 2014 (S.I. No. 483 of 2014), and

(b) any requirements for verification of compliance with those sustainability criteria in accordance with those Regulations.]]

F40[(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.]

#### Annotations

#### Amendments:

**F40** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F41** Substituted (30.11.2016) by *Energy Act 2016* (12/2016), s. 30(a), S.I. No. 572 of 2016.

- F42** Inserted (30.11.2016) by *Energy Act 2016* (12/2016), s. 30(b), S.I. No. 572 of 2016.
- F43** Substituted (30.11.2016) by *Energy Act 2016* (12/2016), s. 30(c), S.I. No. 572 of 2016.
- F44** Inserted (2.02.2012) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 32 of 2012.
- F45** Substituted (23.10.2014) by *European Union (Renewable Energy) Regulations 2014* (S.I. No. 483 of 2014), reg. 26.

**Editorial Notes:**

- E16** Obligation imposed on biofuel obligation account holder, in seeking to comply with subs. (4), to furnish to the National Oil Reserves Agency a statement of compliance with Articles 17 and 18 of the Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 (2.02.2012) by *European Union (Biofuel Sustainability Criteria) Regulations 2012* (S.I. No. 33 of 2012), reg. 5.
- E17** *European Union (Biofuel Sustainability Criteria) Regulations 2012* (S.I. No. 33 of 2012) confirmed to apply to biofuel obligation account holders who apply for a biofuel obligation certificate under subs. (1) (2.02.2012) by *European Union (Biofuel Sustainability Criteria) Regulations 2012* (S.I. No. 33 of 2012), reg. 3.

**F46**[Statement of account. **44H.**— **F47**[(1) The Agency shall give to each biofuel obligation account holder, not later than the date specified in respect of the reporting period concerned in a determination made under *subsection (3A)*, 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) **F48**[...]

(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.]

**F49**[(3A) (a) The Agency shall, in respect of each reporting period, make a determination specifying the date by which it shall issue—

- (i) a statement referred to in *subsection (1)*, and
- (ii) a statement referred to in *subsection (3)*.

(b) The Agency shall publish a determination under *paragraph (a)* on its website as soon as is practicable after the date of its making.]

**Annotations**

**Amendments:**

- F46** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.
- F47** Substituted (30.11.2016) by *Energy Act 2016* (12/2016), s. 31(a), S.I. No. 572 of 2016.

**F48** Deleted (30.11.2016) by *Energy Act 2016* (12/2016), s. 31(b), S.I. No. 572 of 2016.

**F49** Inserted (30.11.2016) by *Energy Act 2016* (12/2016), s. 31(c), S.I. No. 572 of 2016.

**F50**[Compliance with biofuel obligation.

**44I.**— (1) The Agency shall notify each obligated party in such form as the Agency determines within **F51**[60 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 **F52**[75 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.]

#### Annotations

#### Amendments:

**F50** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F51** Substituted (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(2)(a), S.I. No. 122 of 2012.

**F52** Substituted (30.11.2016) by *Energy Act 2016* (12/2016), s. 32, S.I. No. 572 of 2016.

**Editorial Notes:**

**E18** Previous affecting provision: subs. (3) amended (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(2)(b), S.I. No. 122 of 2012; substituted as per F-note above.

**F53** [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—

$$X \times Y$$

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 **F54**[14 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 **F54**[14 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.]

#### Annotations

#### Amendments:

**F53** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F54** Substituted (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(3), S.I. No. 122 of 2012.

#### Editorial Notes:

**E19** Power pursuant to section exercised (1.01.2011) by *National Oil Reserves Agency Act 2007 (Biofuel Obligation Buy-out Charge) Regulations 2010* (S.I. No. 644 of 2010), in effect as per reg. 1(2).

**F55** [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.

**F56**[(2A) In order to count biofuel obligation certificates against the discharge of a biofuel obligation for any obligated period, the notice of transfer for those certificates must be submitted to the Agency within 81 days after the end of the obligation period concerned.]

(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)*.]

#### Annotations

#### Amendments:

**F55** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F56** Inserted (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(4), S.I. No. 122 of 2012.

F57 [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.]

#### Annotations

#### Amendments:

**F57** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

F58 [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,

F59[(ca) the biofuel obligation account holder fails to comply with Regulation 7(4) of the European Union (Biofuel Sustainability Criteria) Regulations 2012 (S.I. No. 33 of 2012),]

(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.]



**Annotations**

**Amendments:**

- F58** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.
- F59** Inserted (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(5), S.I. No. 122 of 2012.

**F60**[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.]

**Annotations**

**Amendments:**

- F60** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F61**[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.]

**Annotations**

**Amendments:**

- F61** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

F62[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.]

**Annotations**

**Amendments:**

**F62** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

F63[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.]

**Annotations**

**Amendments:**

**F63** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**Editorial Notes:**

**E20** Power pursuant to section exercised (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), in effect as per reg. 1(2).

F64[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.]

**Annotations**

**Amendments:**

**F64** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F65** [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.]

**Annotations**

**Amendments:**

**F65** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**F66** [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.]

#### Annotations

#### Amendments:

**F66** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

#### Editorial Notes:

**E21** Power pursuant to section exercised (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), in effect as per reg. 1(2).

**F67** [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.]

#### Annotations

#### Amendments:

**F67** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

#### Editorial Notes:

**E22** Power pursuant to section exercised (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), in effect as per reg. 1(2).

**F68**[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.]

**Annotations**

**Amendments:**

**F68** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**Editorial Notes:**

**E23** Power pursuant to section exercised (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), in effect as per reg. 1(2).

**F69**[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.]

**Annotations**

**Amendments:**

**F69** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, S.I. No. 322 of 2010.

**Editorial Notes:**

**E24** Power pursuant to section exercised (1.07.2010) by *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010* (S.I. No. 356 of 2010), in effect as per reg. 1(2).

**F70**[Biofuel standards. **44X.**— ...]

**Annotations**

**Amendments:**

- F70** Inserted by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, not commenced as of date of revision.

**Modifications (not altering text):**

- C5** Prospective amending provision: s. 44X inserted by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 3, not commenced as of date of revision.

**F70[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 6

### ENFORCEMENT PROVISIONS

**Annotations**

**Modifications (not altering text):**

- C6** Application of Part extended (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 14.

14. Part 6 of the Act of 2007 applies to the enforcement of these Regulations and, accordingly—

- (a) an authorised officer (within the meaning of section 46 of that Act) is authorised for the purposes of enforcing these Regulations and the Council Directive, and
- (b) an authorised person may exercise the powers of an authorised person under section 47 of the Act of 2007 for the purposes of the Agency obtaining necessary information in the performance of its functions under these Regulations.

Definitions for  
Part 6.

**45.**— In this Part—

“premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle and includes any container, storage tank or pipeline used for holding, storing or transporting oil F71[or biofuel, as the case may be];

“relevant activity” means—

F72[(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]

(b) any activity connected with the holding of oil stocks in the State on behalf of another state in accordance with F73[an oil stocks agreement].

**Annotations**

**Amendments:**

**F71** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 14(a), S.I. No. 322 of 2010.

**F72** Substituted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 14(b), S.I. No. 322 of 2010.

**F73** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 12.

Authorised officers.

**46.—** (1) The following persons are authorised officers for the purposes of this Act:

(a) any officer of Customs and Excise;

(b) an auditor appointed by the Agency with the consent of the Minister;

(c) any other person (including an officer of the Minister or the Agency) appointed by the Minister.

(2) An appointment under *subsection (1)(b) or (c)* may, subject to *subsection (3)*, be for a fixed period for the purposes of all or any of the provisions of this Act.

(3) Where the exercise of the powers conferred under *section 47 or section 48* relate to a relevant activity of the Agency, such powers may not be exercised by a person appointed by the Agency or an officer of the Agency.

(4) A person appointed to be an authorised officer under *subsection (1)(b) or (c)* shall, on appointment, be provided with a certificate of appointment issued—

(a) in the case of a person appointed under *subsection (1)(b)*, by the Agency, and

(b) in the case of a person appointed under *subsection (1)(c)*, by the Minister.

(5) An authorised officer, when exercising a power conferred on him or her by this Act shall, if requested by a person affected by the exercise of such power, produce the certificate of his or her appointment to that person.

(6) An appointment under this section as an authorised officer ceases—

(a) if made by the Agency, on the Agency revoking the appointment,

(b) if made by the Minister, on the Minister revoking the appointment,

(c) if for a fixed period, on the expiry of that period, or

(d) if the person is an officer of Customs and Excise or an officer of the Minister or the Agency, on that person ceasing to be such officer.

(7) A person who immediately before the commencement of this section was an authorised officer under the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) is deemed to have been appointed under this section.

Powers of authorised officers.

47.— (1) For the purpose of obtaining any information necessary for the performance by the Minister or the Agency of their functions under this Act (including any functions relating to the holding of oil stocks in the State on behalf of another state in accordance with F74[an oil stocks agreement]), an authorised officer may do any or all of the following:

- (a) at all reasonable times enter and inspect any premises at or by means of which a relevant activity is carried on or in which records in relation to such activity are kept;
- (b) at such premises, inspect any books, records or other documents (including documents stored in non-legible form) that the officer finds in the course of the inspection, and take copies of them or extracts from them;
- (c) direct that such books, records or other documents found at the premises be retained for such period as may be reasonable for further examination;
- (d) remove from the premises any such books, records or other documents and retain them for such period as the officer reasonably considers to be necessary for further examination;
- (e) require the owner or person in charge of the premises or any person whom the officer reasonably believes to be employed there to give to the officer such assistance and information, and to produce to him or her such books, records or other documents (and in the case of documents stored in non-legible form, produce to the officer legible reproductions of them) that are in that person's power or procurement, as the officer may reasonably require;
- (f) carry out, or have carried out, such examinations, inspections, tests and measurements of oil, F75[biofuel,] plant, equipment, storage tanks, pipelines or any other equipment or appliances at the premises as the officer considers appropriate;
- (g) remove, or have removed, from the premises any such oil, F75[biofuel,] equipment or appliance and retain them for such period as the officer reasonably considers to be necessary for further examination;
- (h) secure for later inspection any premises or part of any premises in which a relevant activity is carried on or in which records in relation to such activity are kept;
- (i) take photographs or make any record or visual recording of any relevant activity carried on at such premises.

(2) Any information obtained by an auditor appointed under *section 46(1)(b)* shall be given directly to the Minister who, if he or she considers it appropriate for the purpose of the effective performance of the Agency's functions, may pass on all or any of that information to the Agency.

(3) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises, an application may be made under *section 48* for a warrant authorising such entry.

(4) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant under *section 48* authorising such entry.

(5) An authorised officer who has reasonable grounds to believe that a person has committed an offence under this Act may require that person to provide the officer with his or her name and the address at which he or she ordinarily resides.



**Annotations****Amendments:**

- F74** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 12.
- F75** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 15, S.I. No. 322 of 2010.

Search warrants.

**48.**— (1) A Judge of the District Court may issue a search warrant if satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of the performance by the Minister or the Agency of their functions under this Act is to be found at any premises where a relevant activity is carried on.

(2) A search warrant issued under this section shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers and members of the Garda Síochána as the named officer thinks necessary, at any time or times, within 28 days of the date of issue of the warrant, on production, if so requested, of the warrant, to enter (if need be by reasonable force) such premises as are specified in the warrant.

(3) Where any premises are entered by an authorised officer pursuant to a warrant issued under this section, the officer may, in relation to those premises, exercise all or any of the powers conferred on an authorised officer under *section 47*.

Duty of authorised officers to report certain matters.

**49.**— (1) An authorised officer who, after entering premises under *section 47* or under the authority of a warrant issued under *section 48*, forms the opinion in the course of exercising his or her powers under *section 47* that—

- (a) a relevant activity has been or is being carried on by any person at the premises otherwise than in compliance with a regulatory provision, or
- (b) there is a risk to the health, safety or welfare of any employees at work on the premises,

shall report the matter to the appropriate authority.

(2) In this section—

“appropriate authority” means—

- (a) a member of the Garda Síochána,
- (b) the Health and Safety Authority,
- (c) the Environmental Protection Agency,
- (d) the local authority in whose administrative area the premises are located, or
- (e) the Revenue Commissioners;

“regulatory provision” means—

- (a) any provision that is contained in or made under an enactment passed for the protection of employees, the protection of the environment or the regulation of planning and development, or
- (b) any provision of Chapter 1 of Part 2 of the Finance Act 1999 or of a regulation made under section 104 of that Act.

- Offences. **50.**— A person is guilty of an offence under this section if the person—
- (a) obstructs, impedes or assaults an authorised officer in the exercise of a power conferred under *section 47*,
  - (b) without reasonable excuse, fails or refuses to comply with a direction or requirement of an authorised officer under *section 47(1)(c)* or *(e)*,
  - (c) without reasonable excuse, fails to comply with *section 62(4)(b)*,
  - (d) alters, suppresses or destroys any books, records or documents (including documents stored in non-legible form) that the person has been required to produce or may reasonably expect to produce,
  - (e) gives to an authorised officer information that the person knows to be false or misleading in a material respect, or
  - (f) falsely represents himself or herself to be an authorised officer.
- Indemnification. **51.**— Where the Agency is satisfied that any member of staff of the Agency or an authorised officer appointed by it has carried out his or her duties in relation to the enforcement of the provisions of this Act in good faith, the Agency shall indemnify such member of staff or such authorised officer against all actions or claims that may arise in carrying out those duties.

## PART 7

### AMENDMENTS AND REVOCATION

- Amendment of section 7 of Act of 2001. **52.**— Section 7 of the Act of 2001 is amended—
- (a) by deleting subsection (1),
  - (b) by substituting the following subsection for subsection (2):

“(2) Notwithstanding any enactment or rule of law or any provision contained in the memorandum or articles of association of the Corporation, the Minister may, by order, direct the Corporation to transfer all or any of its assets or liabilities or both to the Minister or other public authority on such terms and conditions as the Minister after consulting with the Minister for Finance thinks fit.”,
  - (c) by substituting the following subsection for subsection (3):

“(3) Amounts (if any) paid by the Minister in respect of a transfer directed under subsection (2) shall be repaid to the Central Fund out of monies provided by the Oireachtas.”,

and
  - (d) by deleting subsection (4).
- Amendment of section 8 of Act of 2001. **53.**— Section 8 of the Act of 2001 is amended—
- (a) by substituting the following subsection for subsection (5):

“(5) Notwithstanding any enactment or rule of law, the Corporation shall not be liable to repay to the Minister any amount paid by the Minister under the provisions of the guarantee referred to in subsection (1).”,

and

(b) by deleting subsection (6).

Amendment of section 9 of Act of 2001.

**54.**— The following section is substituted for section 9 of the Act of 2001:

“Alteration of memorandum and articles of association of Corporation.

9.— The Corporation shall take such steps as may be necessary under the Companies Acts to alter its memorandum and articles of association for the purpose of making them consistent with this Act.”.

Amendment of Third Schedule to Freedom of Information Act 1997.

**55.**— The Third Schedule to the Freedom of Information Act 1997 is amended by inserting at the end of Part I—

(a) in column (2), “National Oil Reserves Agency Act 2007.”, and

(b) in column (3), opposite the mention in column (2) of the *National Oil Reserves Agency Act 2007*, “section 24.”.

Revocation.

**56.**— The European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) are revoked.

## PART 8

### MISCELLANEOUS PROVISIONS

Regulations to give effect to acts of European Communities.

**57.**— The power to make regulations under this Act includes the power to make provision in such regulations to give effect to—

(a) a provision of the treaties of the European Communities, or

(b) an act adopted by an institution of those Communities.

Regulations and orders.

**58.**— (1) The Minister may make regulations—

(a) for any purpose in relation to which regulations are provided for in this Act,

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed, and

(c) generally for the purpose of giving effect to this Act.

(2) The Minister may make orders for any matter in relation to which orders are provided for in this Act.

Minister’s power to make regulations relating to returns.

**59.**— (1) The Minister may make regulations—

(a) for the purposes of *Parts 4 and 5*, requiring the Agency, oil companies and oil consumers to supply the Minister with written returns in each month, and

(b) for the purposes of F76[an oil stocks agreement], requiring persons holding oil stocks in the State on behalf of another state in accordance with that agreement to supply the Minister with written returns as and when required by the Minister.

(2) Regulations under this section may, among other things, make provision 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 supplied;
  - (d) the form in which returns are to be supplied;
  - (e) for the purpose of *section 61*, procedures for making representations to the Minister.
- (3) A person is guilty of an offence under this section if the person—
- (a) fails to supply 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.

**Annotations**

**Amendments:**

- F76** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 12.

**Editorial Notes:**

- E25** Power pursuant to section exercised (1.08.2007) by *National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007* (S.I. No. 567 of 2007), in effect as per reg. 1(2); subsequently amended (29.05.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) Regulations 2009* (S.I. No. 214 of 2009) and (16.06.2009) by *National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009* (S.I. No. 220 of 2009).

**F77** [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.]

#### Annotations

#### Amendments:

**F77** Inserted (9.06.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (11/2010)*, s. 16, commenced as per s. 1(3).

Laying of regulations and orders before Houses of Oireachtas.

**60.**— (1) Every regulation and order made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made.

(2) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a regulation or an order (other than an order under *section 1(2), 4 or 5*) was laid before it in accordance with *subsection (1)*, annul the regulation or order.

(3) The annulment of a regulation or order under this section takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the regulation or order before the passing of the resolution.

Power of Minister to apply for compliance order and issue directions.

**61.**— (1) If it appears to the Minister that a person has failed to comply with any requirement of regulations relating to returns the Minister, having afforded the person the opportunity to make representations to him or her in accordance with procedures prescribed under *section 59(2)(e)*, may—

(a) apply to the High Court for an order under *subsection (3)*, or

(b) give to the person such directions as the Minister thinks fit for securing compliance with the relevant requirement.

(2) Before making an application under *subsection (1)(a)*, the Minister shall give the person concerned a notice in writing specifying the nature of the default and giving the person a period of 14 days after being notified of the default within which to make good the default.

(3) If satisfied on application under *subsection (1)(a)* that the person concerned has failed to comply with such requirement, the High Court may make an order requiring that person to comply with the requirement.

Minister's prior approval required for certain contracts, holding contract obligations, etc.

**62.—** (1) An oil company or oil consumer shall submit contract proposals to the Minister for approval before it enters into a contract with a person (other than the Agency) by which the oil company or the oil consumer, as the case may be, undertakes to hold in the State in accordance with F78[an oil stocks agreement] an agreed volume of oil stocks in respect of the other person's stockholding obligations.

(2) Before deciding whether to give or withhold approval of proposals submitted under *subsection (1)*, the Minister shall have regard to such factors as he or she considers appropriate, including—

(a) the level of national oil reserves, and

(b) the availability of adequate holding facilities in the State for the purpose of meeting the State's stockholding obligations.

(3) For the purposes of *subsection (2)*, the Minister may seek the advice of the Agency in relation to the matters referred to in *paragraphs (a) and (b)* of that subsection.

(4) (a) Where a contract to which *subsection (1)* relates has been entered into by an oil company or an oil consumer to hold oil stocks in the State in accordance with F78[an oil stocks agreement], then the oil stocks concerned shall be so held by such oil company or oil consumer.

(b) Where in respect of oil stocks a holding contract has been entered into by a person with the Agency and such contract in whole or in part relates to holding of oil stocks in the State, then, subject to *paragraph (c)*, the oil stocks to be held in the State under such contract shall be so held by such person.

(c) Oil stocks maintained in the State for the purposes of *paragraph (b)* shall be so maintained—

(i) where duly held in conjunction with an oil refining business carried on in the State, as a specific amount of non-identified oil, and

(ii) in any other case, as a specific amount of identified oil which may not be drawn upon or replenished (except by the Agency), but without prejudice to the replacement of the oil from time to time, with the prior consent of the Agency, for the purpose of avoiding degradation of quality.

(5) In this section and *section 38* "contract proposals" means—

(a) the name and address of the parties to the contract to hold oil stocks,

(b) the nature and quantity of the stocks,

(c) the location where the stocks are to be held,

(d) the period for which the stocks are to be held, and

(e) such other information as the Minister may require under the State's stockholding obligations.

#### Annotations

#### Amendments:

**F78** Substituted (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 12.

**Editorial Notes:**

- E26** *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 13, provides for the insertion of the words “and Irish emergency stocks” after the words “national oil reserves” in subs. (1)(a). The words “national oil reserves” do not appear in subs. (1)(a) and therefore this insertion is not possible.

Burden of proof  
in certain  
proceedings.

**63.**— F79[(1)] Where in proceedings for the recovery of levy a dispute arises as to whether no levy is payable by virtue of *section 37(3)* or as to whether the terms and conditions have been met for claiming an exemption from levy in accordance with *section 38*, the burden of proof rests with the defendant oil company or oil consumer.

F80[(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.]

**Annotations****Amendments:**

- F79** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 17(a), S.I. No. 322 of 2010.
- F80** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 17(b), S.I. No. 322 of 2010.

Prosecution of  
offences.

**64.**— (1) Summary proceedings for an offence may be brought and prosecuted—

F81[(a) in the case of an offence under *section 44E, 44G, 44U or 50*, by the Minister or the Agency, and]

(b) in relation to an offence under *section 59*, by the Minister.

(2) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, proceedings for an offence under this Act may be instituted at any time within 2 years from the date of the alleged commission of the offence.

F82[(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.]

**Annotations****Amendments:**

- F81** Substituted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 18(a), S.I. No. 322 of 2010.
- F82** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 18(b), S.I. No. 322 of 2010.

Offences by  
bodies corporate.

**65.**— Where an offence under this Act 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 the body corporate or a person who was purporting to act in any such

capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Penalties. **66.**— (1) A person guilty of an offence under this Act is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.

(2) If the contravention in respect of which a person is convicted of an offence under this Act continues after the conviction, the person is guilty of a further offence on every day on which the contravention continues and for each such offence the person is liable on summary conviction to a fine not exceeding €250.

Giving of notices. **67.**— (1) A notice required or permitted under this Act to be given to a person is to be addressed to the person by name and may be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business;
- (d) if an address has been provided by the person, by leaving it at the address provided or sending it by pre-paid registered post addressed to the person at that address;

**F83**[(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;]

(e) if the person giving the notice considers that notice should be given immediately and a fax machine is located at an address mentioned in *paragraph (b)* or *(d)*, by sending it by fax to that machine but only if the sender's fax machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

**Annotations**

**Amendments:**

**F83** Inserted (1.07.2010) by *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010* (11/2010), s. 19, S.I. No. 322 of 2010.

**Modifications (not altering text):**

**C7** Application of section extended (19.12.2012) by *European Union (Oil Reserves) Regulations 2012* (S.I. No. 541 of 2012), reg. 8(2).

8. (1) Where there is reason to implement the emergency procedures under Article 20 of the Council Directive, the Minister shall:



(a) have regard to Article 5(2), and

(b) where it is necessary for the purposes of giving effect to Article 5(2) by notice direct a person not to hinder the transfer, use or release of EU emergency stocks or specific stocks.

(2) Section 67 of the Act of 2007 applies to a notice under this Regulation.

**F84**[Contingency planning for an oil supply disruption.

**68.**— (1) The Minister may prepare contingency plans to be implemented in the event of an oil supply disruption.

(2) Each oil company and oil consumer shall assist and co-operate with the Minister, the Agency and relevant public bodies in the preparation of contingency plans for, and the response to, an oil supply disruption.

(3) Each oil company and oil consumer shall, if so directed by the Minister, furnish to him or her and the Agency such information as he or she may require in respect of the preparation of contingency plans for, and response to, an oil supply disruption.]

#### Annotations

#### Amendments:

**F84** Inserted (16.04.2012) by *Energy (Miscellaneous Provisions) Act 2012* (3/2012), s. 21(6), S.I. No. 122 of 2012.