
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 116

ELECTRICITY

The Renewables Obligation (Scotland) Amendment Order 2013

Made - - - - *28th March 2013*

Coming into force - - *1st April 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 32(1) and (2), 32A(1) and (2), 32C(1) to (6), 32D(1), (2) and (8)(b), 32E(2) and (6), 32J(3) and 32K(1) and (3) of the Electricity Act 1989 (“the 1989 Act”)(1) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(2) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Scottish Ministers that it is expedient for the references to Annex 5 to [Directive 2009/28/EC](#) of the European Parliament and of the Council on the promotion of the use of energy from renewable sources(3) inserted by this Order into article 54A of the Renewables Obligation (Scotland) Order 2009(4) to be construed as references to Annex 5 to that Directive as amended from time to time.

In accordance with section 32L(3) of the 1989 Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 32D(4) of the 1989 Act the Scottish Ministers have had regard to the matters referred to in that section.

In accordance with section 32D(7) of the 1989 Act they have carried out a review by virtue of section 32D(8) of the 1989 Act.

In accordance with section 32L(1) of the 1989 Act they have consulted the Gas and Electricity Markets Authority(5), the National Consumer Council(6), electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as they considered appropriate.

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- (1) [1989 c.29](#). Sections 32 to 32M were substituted by section 37 of the Energy Act 2008 ([c.32](#)). Section 32M(1) was amended by [S.I. 2011/984](#).
- (2) [1972 c.68](#). Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 ([c.46](#)) (“the 1998 Act”), (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 ([c.7](#)). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (3) OJ L 140, 5.6.2009, p.16.
- (4) [S.S.I. 2009/140](#) as amended by [S.S.I. 2009/276](#), [2010/147](#) and [2011/225](#).
- (5) Section 32L(1) of the Electricity Act 1989 refers to “the Authority”, this is defined in section 111(1) as inserted by paragraph 40(a) of Schedule 6 to the Utilities Act 2000 ([c.27](#)).
- (6) Section 32L(1) of the 1989 Act refers to “the Council”, this is defined in section 111(1) as substituted by section 30(4)(b) of the Consumers, Estate Agents and Redress Act 2007 ([c.27](#)).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Renewables Obligation (Scotland) Amendment Order 2013 and comes into force on 1st April 2013.

(2) In this Order, “the 2009 Order” means the Renewables Obligation (Scotland) Order 2009(7).

Amendment of the Renewables Obligation (Scotland) Order 2009

2. The 2009 Order is amended in accordance with articles 3 to 28.

Interpretation

3. In article 2 (interpretation)(8)—

(a) in paragraph (1)—

(i) before the definition of “the Act” insert—

““2013/14 capacity” means—

(a) in relation to a generating station accredited on or before 31st March 2013, any capacity which—

(i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2013 and no later than 31st March 2014; and

(ii) does not form part of the capacity of the station as accredited;

(b) in relation to a generating station which is registered under article 58ZA as a grace period generating station, any capacity which—

(i) in the Authority’s view, forms part of the station from a date no later than 31st March 2014; and

(ii) does not form part of the capacity of the station as accredited;

(c) in relation to a generating station which—

(i) was not accredited on or before 31st March 2013;

(ii) was accredited on or before 31st March 2014; and

(iii) is not registered under article 58ZA as a grace period generating station,

the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2014;

“2013/15 capacity” means any capacity which is—

(a) 2013/14 capacity; or

(b) 2014/15 capacity;

“2014/15 capacity” means—

(a) in relation to a generating station accredited on or before 31st March 2014, any capacity which—

(i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2014 and no later than 31st March 2015; and

(7) S.S.I. 2009/140 as amended by S.S.I. 2009/276, S.S.I. 2010/147 and S.S.I. 2011/225.

(8) Article 2 was amended by article 3 of S.S.I. 2011/225.

- (ii) does not form part of the capacity of the station as accredited;
 - (b) in relation to a generating station which—
 - (i) was not accredited on or before 31st March 2014; and
 - (ii) was accredited on or before 31st March 2015,the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2015;
- “2015/16 capacity” means—
- (a) in relation to a generating station accredited on or before 31st March 2015, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2015 and no later than 31st March 2016; and
 - (ii) does not form part of the capacity of the station as accredited;
 - (b) in relation to a generating station which—
 - (i) was not accredited on or before 31st March 2015; and
 - (ii) was accredited on or before 31st March 2016,the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2016;”;
- (ii) after the definition of “accreditation” insert—
- ““advanced fuel” means a liquid or gaseous fuel which is produced directly or indirectly from the gasification or the pyrolysis of—
- (a) waste, or
 - (b) biomass;”;
- (iii) after the definition of “combined heat and power generating station” insert—
- ““combustion unit” means a boiler, turbine or engine;”;
- (iv) for the definition of “energy crop” substitute—
- ““energy crops” means—
- (a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than 20 years and which is one of the following—
 - (i) *Acer pseudoplatanus* (also known as sycamore);
 - (ii) *Alnus* (also known as alder);
 - (iii) *Betula* (also known as birch);
 - (iv) *Castanea sativa* (also known as sweet chestnut);
 - (v) *Corylus avellana* (also known as hazel);
 - (vi) *Fraxinus excelsior* (also known as ash);
 - (vii) *Populus* (also known as poplar);
 - (viii) *Salix* (also known as willow); or
 - (ix) *Tilia cordata* (also known as small-leaved lime); or
 - (b) a perennial crop which is one of the following—
 - (i) *Arundo donax* (also known as giant reed);

- (ii) Bambuseae, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as a fuel;
 - (iii) Miscanthus;
 - (iv) Panicum;
 - (v) Pennisetum (other than Pennisetum setaceum (also known as fountain grass), Pennisetum clandestinum (also known as kikuyu grass) and Pennisetum villosum (also known as feathertop grass)); or
 - (vi) Phalaris;”;
- (v) for the definition of “microgenerator” substitute—
- ““microgenerator” means a generating station, other than an enhanced wave or enhanced tidal stream generating station, which has a declared net capacity of 50 kilowatts or less;”;
- (vi) after the definition of “plant” insert—
- ““post-2016 capacity” means—
- (a) in relation to a generating station accredited on or before 31st March 2016, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2016; and
 - (ii) does not form part of the capacity of the station as accredited;
 - (b) in relation to a generating station which—
 - (i) is accredited; and
 - (ii) was not accredited on or before 31st March 2016,
 the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station;
- “pre-2013 capacity” means—
- (a) in relation to a generating station accredited on or before 31st March 2013, the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2013;
 - (b) in relation to a generating station which is registered under article 58ZA as a grace period generating station, the capacity of the station as accredited;”;
- (vii) after the definition of “qualifying power output” insert—
- ““qualifying proportion”, in relation to electricity generated by a qualifying combined heat and power generating station, is the proportion which the qualifying power output of the station bears to its total power output;”;
- (viii) in the definition of “regular biomass”—
- (aa) after sub-paragraph (b) insert—
 - “(bb) advanced fuel;”;
 - (bb) in sub-paragraph (d) omit “, gasification or pyrolysis”;
- (ix) in the definition of “Renewables Directive” after “sources” insert “, and in article 54A and Schedule A1 to this Order references to Annex 5 to the Renewables Directive are to Annex 5 as amended from time to time”;

(x) in the definition of “total installed capacity” after sub-paragraph (b) insert—

“(c) in relation to a type of generating capacity forming part of a generating station, the maximum capacity at which that generating capacity could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);”;

(b) after paragraph (7) insert—

“(8) Any reference in this Order to a “type of generating capacity” is a reference to one of the following—

- (a) pre-2013 capacity;
- (b) 2013/14 capacity;
- (c) 2014/15 capacity;
- (d) 2015/16 capacity;
- (e) post-2016 capacity.”.

Biomass and fuels which are to be treated as biomass

4. For article 4(1) (biomass and fuels which are to be treated as biomass) substitute—

“(1) In this Order “biomass” means fuel which—

- (a) falls within paragraph (1A);
- (b) falls within paragraph (1B); or
- (c) is a fossil derived bioliquid.

(1A) Fuel falls within this paragraph if—

- (a) at least 90 per cent of its energy content is derived from material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae (“relevant material”); and
- (b) any fossil fuel forming part of the fuel is present following a process—
 - (i) to which the relevant material has been subject; and
 - (ii) the undertaking of which has caused the fossil fuel to be present in, on or with that material even though that was not the object of the process.

(1B) Fuel falls within this paragraph if—

- (a) at least 90 per cent of its energy content is derived from material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;
- (b) it is waste; and
- (c) any fossil fuel forming part of it was not added to it with a view to the fossil fuel being used as a fuel.”.

Further provision in relation to the production of renewables obligation certificates

5.—(1) Article 13 (further provision in relation to the production of renewables obligation certificates) is amended as follows.

(2) For paragraphs (3) to (6) substitute—

“(3) Subject to paragraph (4), no more than 4 per cent of a designated electricity supplier’s renewables obligation may be satisfied by the production of renewables obligation certificates issued in respect of electricity generated from bioliquid.