SCOTTISH STATUTORY INSTRUMENTS

2005 No. 185

ELECTRICITY

The Renewables Obligation (Scotland) Order 2005

Made - - - -	*24th March 2005*
Coming into force - -	*1st April 2005*

The Scottish Ministers in exercise of the powers conferred by sections 32 to 32C of the Electricity Act 1989(**1**), and of all other powers enabling them in that behalf and having, in accordance with section 32(7) of that Act, consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as they consider appropriate, hereby make the following Order a draft of which has, in accordance with section 32(9) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation (Scotland) Order 2005 and shall come into force on 1st April 2005.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order

"the 2004 Order" means the Renewables Obligation (Scotland) Order 2004(**2**);

"the Act" means the Electricity Act 1989;

(**1**) 1989 c. 29. Section 62 of the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted. The new section 32 of the Electricity Act 1989 has subsequently been amended by sections 115 and 119 of the Energy Act 2004 (c. 20). Sections 63 to 65 of the Utilities Act 2000 inserted new sections 32A to 32C of the Electricity Act 1989, which have been amended by sections 115, 116, 118, and 119 of the Energy Act 2004. Section 32BA of the Electricity Act 1989 was inserted by section 117 of the Energy Act 2004. The functions of the Secretary of State, as regards sections 32 and 32A were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000 (S.I.2000/3253), article 3. The functions of the Secretary of State in respect of sections 32B and 32C of the Electricity Act 1989 and section 67 of the Utilities Act 2000 were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001 (S.I. 2001/3504) article 2. The functions of the Secretary of State in respect of sections 32BA and 32(7) of the Electricity Act 1989 and sections 115(6), 116(8), 117(2), 118(2) and 119(7) of the Energy Act 2004 were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849) article 2.

(**2**) S.S.I. 2004/170.

"advanced conversion technologies" means gasification, pyrolysis or anaerobic digestion, or any combination thereof;

"anaerobic digestion" means the bacterial fermentation of organic material in the absence of free oxygen;

"banking day" means a day on which banks are generally open in the City of London excluding Saturdays or Sundays;

"biomass" means fuel used in a generating station of which at least 98 per cent of the energy content (measured over a period of one month) is derived from plant or animal matter or substances derived directly or indirectly therefrom (whether or not such matter or substances are waste) and includes agricultural, forestry or wood wastes or residues, sewage and energy crops (provided that such plant or animal matter is not or is not derived directly or indirectly from fossil fuel);

"commissioned" means the completion of a process of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a generating station in order to demonstrate that the generating station is capable of commercial operation;

"connected person", in relation to an owner or operator of a generating station, or a party to a qualifying arrangement, in this definition referred to as "that person", means a person connected to that person within the meaning of section 839 of the Income and Corporation Taxes Act 1988(**3**);

"declared net capacity" means the highest generation of electricity (calculated by adding together the highest generation of electricity at the main terminals of each alternator and dynamo) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant;

"designated electricity supplier" means any electricity supplier supplying electricity in Scotland;

"eligible NIROC" means a NIROC that satisfies the conditions for eligibility set out in Schedule 3;

"eligible renewable sources" has the meaning given to it in article 11;

"energy content" of a fuel means the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel;

"energy crops" means a plant crop planted after 31st December 1989 and grown primarily for the purpose of being used as fuel;

"gasification" means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

"hydro generating station" means a generating station which is wholly or mainly driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and the "generating station" extends to all turbines supplied by the same civil works, except that any turbine driven by a compensation flow supplied by those civil works where there is a statutory obligation to maintain such compensation flow in a natural water course shall be regarded as a separate hydro generating station;

"interconnector" means the electric lines, electrical plant and meters operated solely for the transfer of electricity between a transmission and distribution network in Great Britain and a transmission and distribution network in another country or in Northern Ireland;

(**3**) 1988 c. 1. Section 839 was amended by the Finance Act 1995 (c. 4), section 74 and Schedule 17, paragraph 20

"large hydro generating station" means a hydro generating station which has, or has had at any time since 1st April 2002, a declared net capacity of more than 20 megawatts;

"late payment period" in relation to an obligation period, means the period from the specified day in relation to that obligation period to the following 30th November;

"micro hydro generating station" means a hydro generating station which–

(a) has a declared net capacity of 1.25 megawatts or less;

(b) has always been in private ownership and operation; and

(c) has never generated electricity under an arrangement which has ever been a qualifying arrangement as defined in section 33 of the Act (as that section was originally enacted);

"NIRO Order" means any order made pursuant to article 52 of the Northern Ireland Energy Order;

"NIROC" means a certificate issued by the Northern Ireland Authority under article 54 of the Northern Ireland Energy Order and pursuant to a NIRO Order and, save where the context otherwise requires, includes a replacement NIROC;

"NIROC identifier" means an identifier unique to a NIROC determined by the Northern Ireland Authority and containing the following information (or reference to that information in coded format)–

(i) the month and year during which the electricity was generated;

(ii) the location of the generating station;

(iii) a description of the generating station including reference to the source or sources of fuel used to generate electricity by that generating station;

(iv) the date of issue of the NIROC; and

(v) a number allocated to a NIROC by the Northern Ireland Authority in accordance with a NIRO Order;

"nominated person" has the same meaning in this Order as is given to it in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(**4**);

"Non-Fossil Fuel Order" means (except where used in Schedule 3) any of the following orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994(**5**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994(**6**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997(**7**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997(**8**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998(**9**); and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999(**10**);

"Northern Ireland Authority" means the Northern Ireland Authority for Energy Regulation;

"Northern Ireland Electricity Order" means the Electricity (Northern Ireland) Order 1992(**11**);

"Northern Ireland Energy Order" means the Energy (Northern Ireland) Order 2003(**12**);

"Northern Ireland supplier" means an electricity supplier within the meaning of Part 7 of the Northern Ireland Energy Order;

"obligation period" means any of the periods referred to in the first column of Schedule 1;

(**4**) S.I. 2000/2727, as amended by S.I. 2001/3268
(**5**) S.I. 1994/3259, as amended by S.I. 1995/68
(**6**) S.I. 1994/3275 (S.190)
(**7**) S.I. 1997/248
(**8**) S.I. 1997/799 (S.76)
(**9**) S.I. 1998/2353
(**10**) S.I. 1999/439 (S.24)
(**11**) S.I. 1992/231 (N.I. 1)
(**12**) S.I. 2003/419 (N.I. 6).

"on land" in relation to the location of a generating station means wholly or partly on land above mean high water level;

"particulars" in relation to a SROC, has the meaning given to it in paragraph 2 of Schedule 2;

"plant" with reference to crops or plant matter, includes shrubs and trees;

"pyrolysis" means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

"qualifying arrangement" means (except in the definition of "micro hydro generating station" and in Schedule 3) an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under section 67 of the Utilities Act 2000);

"qualifying certificate" means a certificate issued pursuant to an order made under section 32 of the Act and which relates to electricity produced from eligible renewable sources, or an eligible NIROC;

"Register" has the meaning given to it in article 4(1);

"registered holder" has the meaning given to it in paragraph 2 of Schedule 2 except where the term is used in article 8(3);

"renewables obligation" has the meaning given to it in article 3 except where this term is referred to in articles 15(5), 15(6), 15(7), 18(5), 18(6), 18(11), 18(12), 18(13), 18(21), 18(23)(a) and 18(23)(e);

"replacement NIROC" means a NIROC issued in accordance with the provisions of the NIRO Order to replace another NIROC;

"replacement SROC" means a SROC issued in accordance with articles 5(3)(b) and 5(4);

"SROC" means a certificate issued by the Authority under section 32B of the Act and pursuant to this Order;

"SROC identifier" has the meaning given by paragraph 2 of Schedule 2;

"SROC sequence number" has the meaning given to it in article 4(9);

"specified day", in relation to an obligation period, means the 1st October immediately following it;

"transmission and distribution network" means any transmission system or any distribution system or both (as transmission system is defined and distribution system is used in the definition of "distribute", in section 4(4) of the Act(**13**)) in Great Britain or any equivalent system in another country or in Northern Ireland;

"United Kingdom supplier" means a designated electricity supplier, an electricity supplier supplying electricity in England and Wales or a Northern Ireland supplier;

"waste" has the meaning given to it in section 75(2) of the Environmental Protection Act 1990(**14**) as that subsection will have effect once it has been amended by paragraph 88 of Schedule 22 to the Environment Act 1995(**15**), but does not include gas derived from landfill sites or gas produced from the treatment of sewage; and

(**13**) Section 4(4) was amended by section 28 of the Utilities Act 2000 and section 135 of the Energy Act 2004.
(**14**) 1990 c. 43.
(**15**) 1995 c. 25. At the time of the making of this Order paragraph 88 of Schedule 22 to the Environment Act 1995 has only been brought into force for the purposes of the Landfill (Scotland) Regulations 2003, SSI. 2003/235, but it is to be treated as if it had been brought into force for all purposes in this article.

the expression "the United Kingdom" includes the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the Continental Shelf Act 1964(**16**).

(2) For the purposes of the definition of "hydro generating station", the "civil works" which are to be regarded as supplying a particular turbine ("the relevant turbine") are all the man-made weirs, man-made structures and man-made works for holding water which are located on the inlet side of the relevant turbine, but excluding any such weirs, structures or works which supply another turbine before water is supplied to the weirs, structures and works which supply the relevant turbine.

(3) Any reference in this Order to the provision of information "in writing" shall include the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(4) Unless the context otherwise requires any reference in this Order to a numbered article or Schedule is a reference to the article in or the Schedule to this Order bearing that number and any reference in an article or a Schedule to a numbered paragraph is a reference to the paragraph of that article or Schedule bearing that number.

(5) Any reference in this Order to the supply of electricity shall, in respect of a supply made to customers in Northern Ireland, be construed in accordance with the definition of "supply" in article 3 of the Northern Ireland Electricity Order.

The renewables obligation

3.—(1) The renewables obligation is that, subject to articles 7, 8, 9 and 10 each designated electricity supplier shall before each specified day produce to the Authority evidence showing–

(a) that it has supplied to customers in Great Britain during the obligation period to which the specified day relates such amount of electricity generated from eligible renewable sources as is determined under article 6; or

(b) that another electricity supplier has done so (or that two or more others have done so); or

(c) that, between them, they have done so.

(2) The evidence referred to in paragraph (1) is certificates issued by the Authority under section 32B(2) of the Act, provided that such certificates relate to electricity generated from eligible renewable sources.

(3) A certificate referred to in paragraph (2) shall be regarded as produced to the Authority as the evidence or part of the evidence required under paragraph (1) in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a SROC, the SROC identifier (as defined in paragraph 2 of Schedule 2).

(4) Without prejudice to paragraph (3), the Authority may draw up procedural guidelines for the production of certificates as the evidence or part of the evidence required under paragraph (1).

(5) An electricity supplier has a renewables obligation in respect of an obligation period if it supplies electricity in Scotland at any time during that period regardless of whether it supplies electricity in Scotland for the whole of that period.

SROCs

4.—(1) The Authority shall establish and maintain a register of SROCs ("the Register") which shall be conclusive as to whether or not a SROC subsists and as to the person who is for the time being its registered holder.

(**16**) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23), section 37 and Schedule 3, paragraph 1.