SCOTTISH STATUTORY INSTRUMENTS

2004 No. 170

ELECTRICITY

The Renewables Obligation (Scotland) Order 2004

Made - - - -	*29th March 2004*
Coming into force - -	*1st April 2004*

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, generators of electricity from renewable sources and such 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 2004 and shall come into force on 1st April 2004.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

"the 2002 Order" means the Renewables Obligation (Scotland) Order 2002(**2**);

"the Act" means the Electricity Act 1989;

"the Authority" means the Gas and Electricity Markets Authority;

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

(**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of the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted, and sections 63 to 65 inserted new sections 32A to 32C. 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.

(**2**) S.S.I. 2002/163.

"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, means a person connected to the operator 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 renewable sources" has the meaning given to it in article 8;

"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 the transmission and distribution network in Great Britain and the transmission and distribution network in another country or Northern Ireland;

"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;

"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

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

(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);

"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 Orders" means 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**);

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

"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") an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (including any replacement of such an arrangement where that replacement was made pursuant to an order made under section 67 of the Utilities Act 2000)(**11**);

"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;

"renewables obligation" has the meaning given to it in article 3;

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

"SROC" means a certificate issued by the Authority under section 32B of the Act and pursuant to this Order and, save where otherwise provided or where the context otherwise requires, includes a replacement SROC;

"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 the terms are used in the definitions of "transmit" and "distribute" respectively in section 4(4) of the Act(**12**) in Great Britain or any equivalent systems in another country or in Northern Ireland;

(**4**) S.I. 2000/2727.
(**5**) S.I. 1994/3259 as amended by S.I. 1995/68.
(**6**) S.I. 1994/3275.
(**7**) S.I. 1997/248.
(**8**) S.I. 1997/799.
(**9**) S.I. 1998/2353.
(**10**) S.I. 1999/439.
(**11**) 2000 c. 27.
(**12**) Section 4(4) was amended by section 28 of the Utilities Act 2000 (c. 27).

"waste" has the meaning given to it in section 75(2) of the Environmental Protection Act 1990(**13**) but does not include gas derived from landfill sites or gas produced from the treatment of sewage; and

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(**14**).

(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 either electronic mail or facsimile or similar means which are capable of producing a document containing the text of any communication.

(4) In the case of a generating station with a declared net capacity of 50 kilowatts or less the reference to "month" in each place where it occurs in articles 2(1) (definition of "biomass"), 3(4), 4, 5, 8 and 9 and Schedule 2 shall be taken to be a reference to "obligation period", subject to the following exceptions:–

(a) in article 4(13)(a) the references to "the second month" and to "the said second month" shall remain unchanged;

(b) in article 4(14) the words "of each month" shall be omitted, and the reference to "the end of the second month" shall remain unchanged; and

(c) in paragraph 2(b)(i) of Schedule 2 the words "the month and year" shall be replaced by "the obligation period".

The renewables obligation

3.—(1) The renewables obligation is that, subject to paragraphs (3) and (4) and article 7, 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 of the Act, provided that such certificates relate to electricity generated from eligible renewable sources.

(3) A designated electricity supplier may discharge up to 25 per cent of its renewables obligation in respect of an obligation period by producing to the Authority certificates which would comply with the requirements of this article except that the electricity to which they relate was supplied in the immediately preceding obligation period.

(4) In respect of any obligation period which falls within–

(a) the period up to and including 31st March 2006, no more than 25 per cent;

(b) the period from 1st April 2006 up to and including 31st March 2011, no more than 10 per cent; and

(**13**) 1990 c. 43. Section 75(2) was amended by section 120 and paragraph 88 of Schedule 22 to the Environment Act 1995 (c. 25).
(**14**) 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.

(c) the period from 1st April 2011 up to and including 31st March 2016, no more than 5 per cent,

of a designated electricity supplier's renewables obligation may be satisfied by the production of certificates issued in respect of generating stations which, during the month to which a certificate relates, have been fuelled partly by fossil fuel (as defined in article 8(15)(a)) and partly by biomass (and by no other fuel).

(5) A certificate referred to in paragraph (2) is to 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 the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be used and, in the case of a SROC, the SROC identifier (as defined in paragraph 2 of Schedule 2).

(6) Without prejudice to paragraph (5), the Authority may draw up procedural guidelines for the production of certificates as the evidence or part of the evidence required under paragraph (1).

(7) An electricity supplier has a renewables obligation in respect of an obligation period if it supplies electricity to customers in Scotland at any time during that period regardless of whether it supplies electricity to such customers 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.

(2) Schedule 2 shall have effect with respect to the Register.

(3) A SROC comprises a Register entry of its particulars and shall be regarded as being issued at the point when those particulars are entered in the Register by the Authority.

(4) In accordance with the provisions of Schedule 2, the Authority shall ensure that the Register contains, by way of entries made in it–

(a) an accurate record of the particulars of each SROC as issued by the Authority (amended to reflect any change of registered holder which may occur) and which remains eligible to be produced as evidence pursuant to article 3; and

(b) in addition to the record of the particulars of each SROC, a list of the names of all persons who are either the registered holder of a SROC or, although not at that time the registered holder of a SROC, have notified the Authority that they wish an entry to be made and maintained in respect of them as prospective registered holders of SROCs.

(5) Only the registered holder of a SROC may use the SROC as the evidence or as part of the evidence required from it under article 3(1) and a SROC may not be used by its registered holder or by any other person as the evidence or as part of the evidence required under article 3(1) from any person other than the registered holder.

(6) The Authority shall not issue a SROC in respect of any electricity generated by a particular generating station in a particular month if it has previously issued a certificate under section 32B of the Act in respect of any such electricity other than under this Order and whether or not any such certificate previously issued has been revoked.

(7) Except as provided in paragraph (8), SROCs (other than replacement SROCs) shall be issued by the Authority to the operator of a generating station by which the electricity was generated in a particular month where the Authority is satisfied that each of the relevant criteria in paragraph (10) is met.

(8) Where electricity is required to be generated by a generating station from eligible renewable sources under a qualifying arrangement or in compliance with such an arrangement to be made available to the nominated person ("the relevant output"), SROCs (other than replacement SROCs)