Draft Order laid before Parliament under section 32L(2) of the Electricity Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation Order 2009

Made - - - -	**** 2009*
Coming into force - -	*1st April 2009*

This Order is made by the Secretary of State in exercise of the powers conferred by sections 32 to 32M of the Electricity Act 1989(**1**).

The Secretary of State has had regard to those matters stated in section 32D(4) of that Act.

The Secretary of State has 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 considered appropriate in accordance with section 32L(1) of that Act.

In accordance with section 32L(2) of that Act a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly the Secretary of State makes the following Order:

PART 1

Introductory provisions

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation Order 2009 and comes into force on 1st April 2009.

(2) This Order extends to England and Wales only.

Interpretation

2.—(1) In this Order—

"the Act" means the Electricity Act 1989;

(**1**) 1989 c.29, as substituted by section 37 of the Energy Act 2008 (c.32).

"accreditation", in relation to a generating station, means accreditation of the station as one which is capable of generating electricity from renewable sources by the Authority or the Northern Ireland authority (and includes an accreditation granted before 1st April 2009);

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

"biomass" is to be construed in accordance with article 4;

"CEN/TS 15359:2006" means the document identified by Standard Number DD CEN/TS 15359 and entitled "Solid recovered fuels. Specifications and classes" published by the European Committee for Standardisation on 30th June 2006(**2**);

"CEN/TS 15402:2006" means the document identified by Standard Number DD CEN/TS 15402 and entitled "Solid recovered fuels. Methods for the determination of the content of volatile matter" published by the European Committee for Standardisation on 30th November 2006(**3**);

"CEN/TS 15415:2006" means the document identified by Standard Number DD CEN/TS 15415 and entitled "Solid recovered fuels. Determination of particle size and particle size distribution by screen method" published by the European Committee for Standardisation on 30th November 2006(**4**);

"CEN/TS 15590:2007" means the document identified by Standard Number DD CEN/TS 15590 and entitled "Solid recovered fuels. Determination of potential rate of microbial self heating using the real dynamic respiration" published by the European Committee for Standardisation on 29th June 2007(**5**);

"CHPQA" means the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009, as published by the Department for Environment, Food and Rural Affairs, and Guidance Note 44 (Use of CHPQA to obtain Renewables Obligation Certificates (ROCs) Including Under a Banded Obligation (expected to apply from April 2009)), published by the Department of Energy and Climate Change;

"civil works", in relation to a hydro generating station, are to be regarded as all man-made structures, and man-made works for holding water which are located on the inlet side of a turbine (turbine A), excluding any such structures or works which supply another turbine before water is supplied to the structures and works which supply turbine A;

"combined heat and power generating station" means a station which generates electricity and is (or may be) operated for purposes including the supply to any premises of—

(a) heat produced in association with electricity; or

(b) steam produced from, or air or water heated by, such heat;

"commissioned", in relation to a generating station, means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that that generating station is capable of commercial operation;

"connected person", in relation to the owner or operator of a generating station, or any party to a NFFO arrangement, means any person connected to the owner, operator or party within the meaning of section 839 of the Income and Corporation Taxes Act 1988(**6**);

(**2**) ISBN 0580485350. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.
(**3**) ISBN 0580495485. Copies can be obtained from the British Standards Institution:www.bsi-global.com/en//.
(**4**) ISBN 058049554X. Copies can be obtained from the British Standards Institution:www.bsi-global.com/en/.
(**5**) ISBN 9780580576546. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.
(**6**) 1988 c.1. Section 839 was amended by section 74 of and Schedule 17, paragraph 20 to the Finance Act 1995 (c.4), by sections 89 and 178 of and Schedule 13, Part 2, paragraphs 7, 25 and 27(1) and Schedule 26, Part 3 to the Finance Act 2006 (c.25), by section 1027 of and Schedule 1, Part 1, paragraphs 1 and 223 to the Income Tax Act 2007 (c.3), and by regulations 47 and 100 of S.I. 2005/3229.

"declared net capacity", in relation to a generating station, means the maximum capacity at which the station 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) less the amount of electricity that is consumed by the plant;

"designated electricity supplier" is to be construed in accordance with article 5(1);

"electricity interconnector" means so much of an electric line or other electric plant as subsists wholly or primarily for the purposes of the conveyance of electricity between a transmission or distribution system in Great Britain and an equivalent system in another country (including Northern Ireland);

"energy content", in relation to any substance, means the energy contained within that substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance's gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid and gaseous fuels (including definitions) published by the British Standard Institute on 28th June 1991(**7**));

"energy crops" means a plant crop planted after 31st December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following—

(a) miscanthus giganteus (a perennial grass);

(b) salix (also known as short rotation coppice willow);

(c) populus (also known as short rotation coppice poplar);

"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;

"hazardous waste" means any waste which is hazardous waste as defined by Article 1(4) of the Hazardous Waste Directive;

"Hazardous Waste Directive" means Council Directive 91/689/EEC on hazardous waste(**8**), as amended by Council Directive 94/31/EC(**9**);

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

"landfill" has the meaning given in Article 2(g) of Council Directive 1999/31/EC(**10**);

"landfill gas" means gas formed by the digestion of material in a landfill;

"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;

"linked person", in relation to a person who is a party to a NFFO arrangement ("the first person"), means another person who has given or who has arranged to give to the first person or has ensured or arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location;

(**7**) ISBN 0580194825. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.
(**8**) OJ L 377, 31.12.1991, p. 20.
(**9**) OJ L 168, 2.7.1994, p. 28.
(**10**) OJ L 182, 16.7.1999, p. 1.

"microgenerator" means a generating station which has a declared net capacity of 50 kilowatts or less;

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

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

(b) 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);

"NFFO arrangement" means 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(**11**));

"NIRO Order" means any order made under Articles 52 to 55F of the Northern Ireland Energy Order;

"nominated person" has the same meaning as it has in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(**12**) or in the Electricity from Non-Fossil Fuels Sources (Scotland) Saving Arrangements Order 2005(**13**) (as the case may be);

"Non-Fossil Fuel Order" means any of the following Orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994(**14**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994(**15**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997(**16**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997(**17**); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998(**18**); and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999(**19**);

"Northern Ireland certificate" means a renewables obligation certificate issued by the Northern Ireland authority under the Northern Ireland Energy Order and pursuant to a NIRO Order;

"Northern Ireland Energy Order" means the Energy (Northern Ireland) Order 2003(**20**);

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

"offshore waters" means—

(a) waters in or adjacent to the United Kingdom which are between the mean low water mark and the seaward limits of the territorial sea, and

(b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964(**21**);

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

"permitted ancillary purposes" is to be construed in accordance with article 22(3) (fossil fuel or waste used for permitted ancillary purposes);

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

"preliminary accreditation", in relation to a generating station, means accreditation of the station as one which (when commissioned) will be capable of generating electricity from

(**11**) 2000 c.27; section 67(1)(c) was amended by the Energy Act 2008 (c.32), section 39.
(**12**) S.I. 2000/2727.
(**13**) S.S.I. 2005/549.
(**14**) S.I. 1994/3259.
(**15**) S.I. 1994/3275 (S. 190).
(**16**) S.I. 1997/248.
(**17**) S.I. 1997/799 (S. 76).
(**18**) S.I. 1998/2353.
(**19**) S.I. 1999/439 (S. 24).
(**20**) S.I. 2003/419 (N.I. 6); Articles 52 to 55F were substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (NI) 2009 No 35).
(**21**) 1964 c.29.

renewable sources by the Authority or the Northern Ireland authority (and includes a preliminary accreditation granted before 1st April 2009);

"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 combined heat and power generating station" means a combined heat and power generating station which has been accredited under the CHPQA;

"qualifying power output", in relation to a qualifying combined heat and power generating station, has the meaning given to it in the CHPQA;

"Register" has the meaning given to it in article 59(1);

"registered holder" has the meaning given to it in paragraph 3 of Schedule 4;

"regular biomass" means biomass other than—

(a) sewage gas,

(b) landfill gas,

(c) energy crops,

(d) fuel produced by means of anaerobic digestion, gasification or pyrolysis;

"renewables obligation" has the meaning given to it in article 5(1);

"renewables obligation certificate" means—

(a) a renewables obligation certificate issued by the Authority under this Order;

(b) a renewables obligation certificate issued by the Authority under a renewables obligation order made by Scottish Ministers; and

(c) a Northern Ireland certificate;

"renewable output" is to be construed in accordance with articles 25 and 26;

"Respiratory Index" means the rate of oxygen uptake expressed in milligrams of oxygen per kilogram of volatile solids per hour;

"retail prices index" means—

(a) the general index of retail prices (for all items) published by the Office of National Statistics; or

(b) where the index is not published for a year, any substituted index or figures published by that Office;

"ROC" means a renewables obligation certificate issued by the Authority under this Order;

"ROC identifier" has the meaning given by paragraph 3 of Schedule 4;

"sewage gas" means gas formed by the anaerobic digestion of sewage (including sewage which has been treated or processed);

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

"Solid Recovered Fuel" means solid fuel which—

(a) complies with the classification and specification requirements in CEN/TS 15359:2006,

(b) is prepared from a waste which is not a hazardous waste,

(c) has a maximum Respiratory Index value of no more than 1500 milligrams of oxygen per kilogram of volatile solids per hour when measured using the real dynamic respiration test specified in CEN/TS 15590:2007, and