Draft Order laid before Parliament under section 32(9) of the Electricity Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation Order 2006 (Amendment) Order 2007

Made - - - -	**** 2007*
Coming into force - -	*1st April 2007*

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

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 he considers appropriate.

A draft of this Instrument has been laid before and approved by a resolution of each House of Parliament pursuant to section 32(9) of that Act.

Accordingly, the Secretary of State makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation Order 2006 (Amendment) Order 2007 and shall come into force on 1st April 2007.

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

Interpretation

2. References in this Order to "the 2006 Order" are to the Renewables Obligation Order 2006(**2**).

The 2006 Order: interpretation

3.—(1) Article 2 of the 2006 Order (interpretation) is amended as follows.

(**1**) 1989 c.29. Sections 62 to 65 of the Utilities Act 2000 (c.27) substituted new sections 32, 32A, 32B and 32C of the Electricity Act 1989. Those provisions of the Electricity Act 1989 have subsequently been amended by sections 115, 116, 118 and 119 of the Energy Act 2004 (c.20) and by sections 23 and 24 of the Climate Change and Sustainable Energy Act 2006 (c.19). Section 32BA of the Electricity Act 1989 was inserted by section 117 of the Energy Act 2004.

(**2**) S.I. 2006/1004.

(2) In paragraph (1), in the definition of "energy crops"—

(a) for "and" substitute "which is"; and

(b) at the end insert—

"or which is one of the following—

(a) *miscanthus giganteus*;

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

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

(3) After paragraph (1) insert—

"(1A) For the purposes of this Order, any fuel used in a generating station (not being biomass) shall be treated as biomass if—

(a) it is one of at least two fuels (not being fossil fuels within the meaning of article 8) used to fuel that generating station (whether or not those fuels are the only ones so used); and

(b) at least 90 per cent of the total energy content of those fuels (measured over such period and with such frequency as the Authority deems appropriate) is derived from material which is of such a nature that, if 90 per cent of the energy content of a single fuel was so derived, that fuel would constitute biomass.

(1B) Accordingly, any reference in this Order to biomass shall be construed as a reference to biomass or fuel which is treated as biomass.".

The renewables obligation

4.—(1) Article 3 of the 2006 Order (the renewables obligation) is amended as follows.

(2) In paragraph (1), after "13" insert ", 13A".

(3) In paragraph (2)—

(a) after "under" insert "and certifying the matters in"; and

(b) after "32B(2)" insert "or (2ZA)".

Eligible renewable sources: other fuels

5. In article 7 of the 2006 Order (eligible renewable sources: other fuels), omit paragraphs (3) and (4).

Calculation of amount of electricity generated from eligible renewable sources

6. In article 9(5) of the 2006 Order (calculation of amount of electricity generated from eligible renewable sources), after the words "generating station", where first appearing, insert "(or, where ROCs relating to electricity generated in whole or in part by that generating station are issued to an agent by virtue of article 15A, that agent and not the operator)".

Calculation of amount of electricity supplied to customers

7. Omit article 10 of the 2006 Order (calculation of amount of electricity supplied to customers).

Alternative way of discharging renewables obligation: payments

8. In article 11(2) of the 2006 Order (alternative way of discharging renewables obligation: payments), for "article 3 or article 13" substitute "article 3, 13 or 13A".

Alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2A) of the Act

9. In article 13(1) of the 2006 Order (alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2A) of the Act), after "32B(2A)" insert "or (2AA)".

Alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2AB) or (2AC) of the Act

10. After article 13 of the 2006 Order insert—

"**Alternative way of discharging renewables obligation: certificates certifying the matters in section 32B(2AB) or (2AC) of the Act**

13A.—(1) Subject to article 14, instead of producing certificates pursuant to article 3, a designated electricity supplier may discharge (in whole or in part) its renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with this article certificates issued by the Authority and certifying the matters in section 32B(2AB) or (2AC) of the Act.

(2) A certificate referred to in paragraph (1) shall be regarded as produced to the Authority 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 ROC, the ROC identifier.

(3) Without prejudice to paragraph (2), the Authority may draw up procedural guidelines for the production of certificates under this article.

(4) For the purposes of section 32B(2AB) and (2AC) of the Act, electricity generated by any generating station is used in a permitted way if it is used in one of the ways mentioned in section 32B(2AE) of the Act.".

Further provision in relation to production of certificates and NIROCs

11.—(1) Article 14 of the 2006 Order (further provision in relation to production of certificates and NIROCs) is amended as follows.

(2) At the beginning of paragraph (2) for "In" substitute "Subject to paragraph (2A), in".

(3) After paragraph (2) insert—

"(2A) In the case of certificates or NIROCs issued in respect of a generating station which, during the month to which those certificates or NIROCs relate, has been fuelled partly by fossil fuel (as defined in article 8) and partly by biomass consisting in whole or in part of energy crops (and no other fuel), the limits set out in paragraph (2) shall not apply to the production of those certificates or NIROCs if and to the extent that they state the amount of electricity which is attributable to the energy crops.".

Obligation to issue ROCs

12.—(1) Article 15 of the 2006 Order (obligation to issue ROCs) is amended as follows.

(2) In paragraph (1)—

(a) for "article 17" substitute "articles 17 and 17A"; and

(b) at the end omit "to the persons specified below".

(3) In paragraph (2), after "(5)" insert "and article 15A".

Issue of ROCs to agents

13. After article 15 of the 2006 Order insert—

"**Issue of ROCs to agents**

15A.—(1) Subject to article 15(3) to (5), an operator of a generating station with a declared net capacity of 50 kilowatts or less may appoint an agent to receive any ROC which relates to electricity generated, in whole or in part, by that generating station (a "relevant ROC").

(2) Where he does so, he shall notify the Authority in writing of the agent's name and address.

(3) Once the Authority has received such a notification, it shall issue any relevant ROC to that agent.

(4) Where the operator or agent wishes to terminate the agent's appointment, the operator or, as the case may be, agent must give written notice of the intended termination to the Authority.

(5) Where notice is given under paragraph (4) and received by the Authority, the termination shall take effect (subject to paragraph (6)) at the end of the obligation period during which it is given; until the expiration of that obligation period, the Authority shall continue to issue any relevant ROCs to the agent.

(6) Notwithstanding paragraph (5), after the expiration of that obligation period the Authority shall continue to issue relevant ROCs to the agent where those ROCs relate to electricity generated during that obligation period.

(7) Paragraphs (5) and (6) do not apply in any case where the Authority is satisfied, by evidence produced to it, that owing to exceptional circumstances the termination should take effect on a date before the end of the obligation period during which the notice is given; in which case the termination shall take effect on that date.

(8) Where any provision of this Order requires or permits something to be done by, to or in respect of an agent appointed under this article and the agent's appointment is terminated before that thing is done, references to that agent (however framed) are to be construed—

(a) where a successor to him has been appointed under this article, as references to that successor;

(b) in any other case, to the operator of the generating station for whom he acted before his appointment was terminated.".

Criteria for issue of ROCs

14.—(1) Article 16 of the 2006 Order (criteria for issue of ROCs) is amended as follows.

(2) In paragraph (2)—

(a) after "writing to" insert "either"; and

(b) after "relates" insert "or, where the ROC is to be issued to an agent by virtue of article 15A, that agent".

(3) In paragraph (4)—

(a) after "is that" insert ", in the case of a ROC certifying the matters within section 32B(2), (2ZA), (2A) or (2AA) of the Act,";

(b) in sub-paragraph (a)—

(i) at the beginning, for "he" substitute "the operator";

(ii) after "supplied" insert ", in the case of a ROC certifying the matters within section 32B(2) or (2ZA) of the Act,"; and

(iii) after "32B(2A)" insert "or (2AA)";

(c) omit sub-paragraph (b); and

(d) in sub-paragraph (c), for "he" substitute "the operator".

(4) In paragraphs (7) and (8), after "32B(2A)" insert "or (2AA)".

(5) After paragraph (8) insert—

"(8A) The eighth criterion is that, in the case of a ROC certifying the matters within section 32B(2ZA), (2AA) or (2AC) of the Act—

(a) each of the generating stations in relation to which the ROC is to be issued—

(i) has a declared net capacity of 50 kilowatts or less,

(ii) is accredited as a generating station capable of generating electricity from the same eligible renewable source, and

(iii) is located in England or Wales;

(b) the ROC is to be issued to an agent by virtue of article 15A; and

(c) the operators of the generating stations in relation to which the ROC is to be issued have each appointed the same person to act as agent to receive the ROC.

(8B) The ninth criterion is that, in the case of a ROC certifying the matters within section 32B(2AB) or (2AC) of the Act, the operator of the generating station has provided the Authority with a declaration (which the Authority shall be entitled to accept as sufficient evidence of its contents, and which the operator need only provide once during every obligation period) that the electricity generated by the generating station has been used in a permitted way.".

(6) For paragraph (9) substitute—

"(9) The tenth criterion is that the electricity in respect of which the ROC is to be issued is not or does not include electricity in respect of which a ROC has already been issued and not revoked.".

(7) After paragraph (9) insert—

"(9A) The eleventh criterion is that the electricity in respect of which the ROC is to be issued has been measured accurately using a meter which if used for ascertaining the quantity of electricity supplied by an authorised supplier to a customer would be approved for the purposes of paragraph 2 of Schedule 7 to the Act.".

(8) In paragraph (10), for "ninth" substitute "twelfth".

Criteria for issue of ROCs: supplemental

15.—(1) Article 17 of the 2006 Order (criteria for issue of ROCs: supplemental) is amended as follows.

(2) In paragraph (2)(b)—

(a) after "32B(2A)" insert "or (2AA)"; and

(b) after "satisfied that" insert "all of".

(3) In paragraph (3)—

(a) in sub-paragraph (a)—

(i) after "32B(2A)" insert "or (2AA)"; and