This draft Statutory Instrument has been printed in substitution of the draft Statutory Instrument which was printed on 16 February 2004 and is being issued free of charge to all known recipients of that Statutory Instrument.Draft Order laid before Parliament under section 32 of the Electricity Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation (Amendment) Order 2004

Made - - - -	*2004*
Coming into force - -	*1st April 2004*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 32(9) of the Electricity Act 1989(**1**) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 32 to 32C of the Electricity Act 1989(**2**) and having 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 she considers appropriate, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation (Amendment) Order 2004 and shall come into force on 1st April, 2004.

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

Amendment

2.—(1) The Renewables Obligation Order 2002(**3**) shall be amended as set out in the following paragraphs of this article.

(2) Article 2(1) shall be amended by substituting the words "an owner or operator of a generating station, or a party to a qualifying arrangement" for the words "an operator of a generating station", in the definition of "connected person".

(**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of the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted.
(**2**) Sections 32A to 32C of the Electricity Act 1989 were inserted by sections 63 to 65 respectively of the Utilities Act 2000.
(**3**) S.I. 2002/914.

(3) Article 2(1) shall be amended by the deletion of the words ", in relation to a hydro generating station," from the definition of "declared net capacity".

(4) Article 2(1) shall be amended by the insertion of the following definition of "energy content" after the definition of "eligible renewable sources"—

""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;".

(5) Article 2(1) shall be amended by replacing the definition of "micro hydro generating station" with the following definition—

""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);".

(6) Article 2(1) shall be amended by deleting the definition of "minimal fossil use generating station".

(7) After article 2(4) there shall be inserted the following—

"(5) 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(12)(a) the references to "the second month" and to "the said second month" shall remain unchanged;

(b) in article 4(13) 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".".

(8) Article 3(4) shall be replaced with the following—

"(4) In respect of any obligation period which falls—

(a) within the period from 1st April 2002 up to and including 31st March 2006, no more than 25 per cent;

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

(c) within 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) and partly by biomass (and by no other fuel).".

(9) Article 4(10)(c) shall be amended by inserting, after the word "declaration", the following—

"(which the Authority shall be entitled to accept as sufficient evidence of its contents)."

(10) Article 4(10)(c)(i) shall be amended by deleting the word "and".

(11) Article 4(10)(c)(ii) shall be amended by inserting the word "and" at the end of that article.

(12) After head (ii) of article 4(10)(c) there shall be inserted the following sub-paragraph—

"(iii) he is not a person mentioned in article 8(2A)(b)(ii) or article 8(11)(b)(ii) .".

(13) After article 4(10) there shall be inserted the following—

"(10A) Where a ROC, if issued, will be issued to an electricity supplier pursuant to paragraph (8)(a) or (b), the references in paragraph (10)(c) to the operator of the generating station shall be treated as references to that electricity supplier; but paragraph (10)(c)(iii) shall not apply.".

(14) Article 5(1)(a) shall be amended by inserting, after the words "pursuant to article 4(10)(c)", the words "or by the electricity supplier pursuant to article 4(10A)".

(15) Article 8(2)(b) shall be amended by replacing the words "subject to paragraph (5)" with the words "subject to paragraphs (5) and (5A)".

(16) Article 8(2)(c) shall be amended by inserting the word "and" at the end.

(17) Article 8(2)(d) shall be amended by deleting the word "and".

(18) Article 8(2)(e) shall be deleted and the following shall be inserted after article 8(2)(d)—

"(2A) –

(a) This paragraph applies where—

(i) a qualifying arrangement ("the applicable qualifying arrangement") provided for the building of a generating station at a specified location ("the location");

(ii) the applicable qualifying arrangement was terminated due to the operator of the generating station to which it applied having committed an unremedied breach of it; and

(iii) the last period in the tables contained in schedule 1 to the Non-Fossil Fuel Order which relates to the applicable qualifying arrangement has not expired.

(b) A generating station—

(i) which is situated at the location; and

(ii) to which the applicable qualifying arrangement applied at the time it was commissioned, or which is owned or operated by a person who was a party to the applicable qualifying arrangement (or who is a connected person or a linked person in relation to any such party),

shall be an excluded generating station.

(c) Sub-paragraph (b) shall not apply to a station which, during the month in question, generates only electricity which is sold pursuant to another extant qualifying arrangement.

(d) In this paragraph and in paragraph (11), in relation to a person who is a party to the applicable qualifying arrangement ("the first person"), another person ("the second person") is a "linked person" where the second person has given or has arranged to give or has ensured or has 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.

(e) The references in sub-paragraph (d) to the first person and the second person shall include any person who is a connected person in relation to either of them.".

(19) Article 8(3) shall be replaced with the following—

"(3) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste unless—

(a) the only waste by which it is fuelled in that month is biomass; or