

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

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2004 No.**

**ELECTRICITY**

**The Renewables Obligation (Scotland) Order 2004**

*Made* - - - - 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 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;

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the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted, and sections 63 to 65 inserted new sections 32A to 32C.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

“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(2);

“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

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(2) 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(3);
- “Non-Fossil Fuel Orders” means any of the following orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994(4); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994(5); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997(6);
- the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997(7); the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998(8); and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999(9);
- “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);
- “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(10) in Great Britain or any equivalent systems in another country or in Northern Ireland);

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(3) S.I. 2000/2727.

(4) S.I. 1994/3259 as amended by S.I. 1995/68.

(5) S.I. 1994/3275.

(6) S.I. 1997/248.

(7) S.I. 1997/799.

(8) S.I. 1998/2353.

(9) S.I. 1999/439.

(10) 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<sup>(11)</sup> 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<sup>(12)</sup>.

(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

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<sup>(11)</sup> 1990 c. 43. Section 75(2) was amended by section 120 and paragraph 88 of Schedule 22 to the Environment Act 1995 (c. 25).

<sup>(12)</sup> 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)

appropriate to the amount of the relevant output generated in a particular month shall be issued by the Authority where it is satisfied that each of the relevant criteria in paragraph (10) is met—

- (a) where the nominated person is entitled to the relevant output under or in compliance with a qualifying arrangement only to electricity suppliers notified to the Authority by the nominated person as being purchasers of the relevant output and to each in such quantities as are appropriate to the amount of the relevant output which the nominated person notifies the Authority each has purchased (subject to the total amount of SROCs available to be so issued); or
  - (b) where one or more electricity suppliers are entitled to the relevant output under a qualifying arrangement only to those electricity suppliers, each in proportion to its entitlement.
- (9) The Authority shall when issuing SROCs (other than replacement SROCs which shall be issued in accordance with article 5(3)(b) and (4))—
- (a) allocate a number (“the SROC sequence number”) to each SROC issued;
  - (b) allocate SROC sequence numbers sequentially in ascending numerical order to all the SROCs issued in respect of electricity generated from eligible renewable sources by a particular generating station in a particular month; and
  - (c) in the case of a generating station which in a particular month generates electricity from eligible renewable sources under or in compliance with a qualifying arrangement, issue SROCs in respect of that month firstly to the electricity suppliers to whom paragraph (8) (a) or (b) applies in that month on the basis of information provided to it by the nominated person and thereafter, in the event that the generating station generates any electricity from eligible renewable sources in that month other than under a qualifying arrangement or which in that month is not required in compliance with such an arrangement to be made available to the nominated person, to the operator of that generating station.
- (10) The criteria referred to in paragraphs (7) and (8) and article 5(3) are—
- (a) the Authority has previously confirmed in writing to the operator of the generating station to which the SROC relates that the generating station is accredited as being a generating station capable of generating from eligible renewable sources and the Authority has not since withdrawn that accreditation;
  - (b) the Authority has been provided in writing with all the information listed in paragraph 2(b) (i) to (iii) of Schedule 2 together with any other information which it reasonably requires in order to assess whether the SROC should be issued and it is satisfied that such information is accurate and reliable;
  - (c) 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) applicable to the relevant electricity that:
    - (i) it has not made the electricity available to any person in circumstances such that the operator knows or has reason to believe that the consumption of the electricity will result in it not having been supplied by an electricity supplier to customers in Great Britain;
    - (ii) it has not consumed the electricity in such circumstances that its consumption has resulted in the electricity not having been supplied by an electricity supplier to customers in Great Britain; and
    - (iii) it is not a person mentioned in article 8(3)(b)(ii) or article 8(13)(b)(ii);
  - (d) where electricity has been generated on land in Northern Ireland, the operator of the generating station has provided the Authority with evidence of the following matters and the Authority is satisfied with such evidence:—

- (i) the quantity, date and period of time (referred to in this paragraph (10)(d) as “the relevant period”) during the particular month when the electricity from eligible renewable sources was generated by the generating station;
  - (ii) that such electricity was delivered by means of a transmission and distribution network in Northern Ireland from the generating station to an interconnector between Great Britain and Northern Ireland during each relevant period;
  - (iii) that such electricity flowed across such interconnector to Great Britain during each relevant period;
  - (iv) that no electricity flowed or was claimed by a user of the interconnector or the interconnector operator to have flowed across such interconnector in the opposite direction during each relevant period; and
  - (v) that such interconnector was capable of conveying such quantity of electricity (together with any other electricity which was contracted to be conveyed) during each relevant period;
- (e) where the electricity was not generated on land in Great Britain or Northern Ireland, the operator of the generating station has provided the Authority with evidence of the matters listed in either sub-paragraph (i) or (ii) and the Authority is satisfied with such evidence—
- (i) that at the time the electricity was generated the generating station was connected directly to a transmission and distribution network in Great Britain and electricity generated by that station could not have been conveyed to Great Britain via an interconnector; or
  - (ii) that at the time the electricity was generated the generating station was connected directly to a transmission and distribution network in Northern Ireland, that it was not connected directly to any other transmission and distribution network and of those matters listed in sub-paragraph (d)(i) to (v);
- (f) SROCs in respect of the relevant megawatt hours of electricity generated by the generating station in a particular month have not already been issued; and
- (g) the Authority has not refused to issue a SROC on any of the grounds set out in paragraph (12).
- (11) Where a SROC, 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.
- (12) The Authority may refuse to issue a SROC in any case where the Authority—
- (a) is not satisfied as to the reliability or accuracy of the information being presented to it in relation to the issue of the SROC;
  - (b) considers that the declaration in paragraph (10)(c) is not accurate in relation to the electricity in respect of which the Authority is considering issuing the SROC;
  - (c) has reason to believe that the electricity in respect of which the Authority is considering issuing the SROC was consumed in circumstances which have resulted in the electricity not having been supplied by an electricity supplier to customers in Great Britain; or
  - (d) is not satisfied that the operator of the generating station has, during the relevant obligation period, complied with any condition to which accreditation of the relevant generating station is subject.
- (13) Where it issues SROCs pursuant to this article the Authority shall—
- (a) determine the amount of electricity which is to be regarded as having been generated from eligible renewable sources by a generating station in a particular month (“the relevant month”) and, in determining that amount, it shall use, in the case of the amounts for

“gross output” and “input electricity” (as those two expressions are defined in article 9(5)) the most accurate figures for those amounts which are known to or estimated by the Authority at the end of the second month following the end of the relevant month and it shall disregard any changes to those figures after the end of the said second month and article 9 shall have effect subject to this sub-paragraph;

- (b) deduct from the amount determined in accordance with sub-paragraph (a) any electricity in respect of which in the relevant month any of the criteria in paragraph (10) were not satisfied;
- (c) determine the amount of electricity which results from the calculation in sub-paragraphs (a) and (b) and round the amount so determined to the nearest megawatt hour (with any exact half megawatt hour being rounded upwards); and
- (d) issue SROCs appropriate to the amount of electricity determined pursuant to sub-paragraph (c) to the operator of the generating station or the electricity supplier in accordance with paragraphs (7) and (8) and in determining the number of SROCs which it is appropriate to issue proceed on the basis that one SROC represents one megawatt hour of electricity.

(14) The Authority shall issue SROCs pursuant to this article in relation to a generating station in respect of each month of each obligation period in which electricity has been generated by the generating station from eligible renewable sources (whether or not for the whole of that month) and SROCs in respect of a particular month (“the relevant month”) shall be issued no earlier than the end of the second month following the end of the relevant month.

### **Revocation of SROCs**

#### **5.—(1) The Authority—**

- (a) shall, where in respect of any electricity generated by a generating station in a particular month it is satisfied that the declaration provided to it by the operator of that generating station pursuant to article 4(10)(c) or by the electricity supplier pursuant to article 4(11) is false or that a SROC was issued on the basis of any fraudulent behaviour, statement or undertaking on the part of the operator of that generating station or any connected person, revoke all SROCs issued in respect of that generating station in that month;
- (b) shall, in accordance with the procedure laid down in paragraph (2), revoke any SROC where it is otherwise satisfied that the SROC is inaccurate; and
- (c) may, in accordance with the procedure laid down in paragraph (2), revoke any SROC where—
  - (i) the Authority is no longer satisfied that the SROC should have been issued;
  - (ii) the Authority has reasonable doubts as to the accuracy or reliability of the information upon which the Authority relied prior to the issue of the SROC; or
  - (iii) the Authority has been unable, due to a failure or refusal by any person (whether inside or outside Scotland) to provide the Authority with any information reasonably requested by it, to check the accuracy of either the SROC or any information which the Authority relied upon prior to the issue of the SROC; and
- (d) shall, in reaching a decision as to the inaccuracy of a SROC for the purposes of paragraph (1)(b) and in exercising its powers to revoke a SROC pursuant to paragraph (1)(c), disregard any changes to the amounts for “gross output” and “input electricity” (as those two expressions are defined in article 9(5)) which were used by it (as provided in article 4(13)(a)) to determine the amount of electricity to be regarded as having been generated from eligible renewable sources by a particular generating station in a particular month.



(2) Where the Authority revokes SROCs in accordance with paragraph (1)(b) or (c), it shall revoke the appropriate number of SROCs from those issued in respect of the generating station in respect of a particular month in descending numerical order of SROC sequence number, deleting those SROCs previously allocated the highest SROC sequence numbers and remaining on the Register in advance of those with lower SROC sequence numbers and in determining the number of SROCs which it is appropriate to revoke it shall proceed on the basis that one SROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

(3) Where the Authority has revoked a SROC—

- (a) it shall as soon as practicable give notice of such revocation in writing to the registered holder of the SROC at the time of revocation;
- (b) other than when a SROC has been revoked in accordance with paragraph (1)(a), the Authority may, in circumstances where it considers it appropriate to do so, issue a replacement SROC in accordance with the procedures laid down in paragraph (4) provided that it is satisfied that each of the relevant criteria in article 4(10) is met and such SROC shall be treated as if issued under article 4.

(4) Where pursuant to paragraph (3)(b) the Authority issues a replacement SROC it shall—

- (a) allocate to the replacement SROC the lowest SROC sequence number of any SROC previously issued in respect of the same generating station and same month that has been revoked which has not already been allocated to a replacement SROC which has not itself been revoked;
- (b) issue each replacement SROC to the person to whom the SROC issued in respect of that generating station and that month and bearing the same SROC sequence number has previously been issued; and
- (c) proceed on the basis that one SROC represents one megawatt hour of electricity (with any exact half megawatt hour being rounded upwards).

### **The amount of the renewables obligation**

6.—(1) The amount of electricity referred to in article 3(1)(a), in respect of an obligation period, is such amount of electricity as equals the relevant percentage of all the electricity supplied by the designated electricity supplier to customers in Scotland during the obligation period (as determined pursuant to paragraph (3)), such amount being rounded to the nearest whole megawatt hour (with any exact half megawatt hour being rounded upwards).

(2) In paragraph (1) “the relevant percentage” means, in respect of an obligation period, the percentage set out in the second column of Schedule 1 against the reference to that obligation period in the first column of Schedule 1.

(3) For the purposes of paragraph (1) the amount of the electricity supplied by the designated electricity supplier to customers in Scotland during an obligation period is to be determined by taking the aggregate of the estimated figures for its total sales of electricity to customers in Scotland for each of the twelve periods of approximately one month falling wholly or mainly within the obligation period as reflected in the statistics contained in Table 5.5 of “Energy Trends” as that table appears on the Department of Trade and Industry’s website on the 1st August immediately following the end of the obligation period.

(4) Where Table 5.5 of “Energy Trends” is not available in respect of any period the reference in paragraph (3) to Table 5.5 shall be taken to be to such table as is published by the Department of Trade and Industry in substitution for Table 5.5.

(5) Each designated electricity supplier shall furnish to the Department of Trade and Industry the estimated figures relating to its total sales of electricity to customers in Scotland during an obligation period for incorporation in the statistics referred to in paragraph (3) by no later than the 20th June

immediately following the end of the obligation period and this obligation shall be independent of any obligations to furnish those figures which arise otherwise than under this Order.

(6) Each designated electricity supplier shall before 7th August in each year inform the Authority of the amount in megawatt hours of its renewables obligation in respect of the last obligation period which ended before the 7th August in question and the amount of all electricity supplied by that designated electricity supplier to customers in Scotland during that obligation period (as determined pursuant to paragraph (3)).

#### **Alternative way of discharging renewables obligation: payments**

7.—(1) 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 making a payment to the Authority before the specified day relating to that obligation period.

(2) Subject to paragraphs (3) to (5), the payment to be made under paragraph (1) is £30 for each megawatt hour of electricity generated from eligible renewable sources for which the designated electricity supplier does not produce certificates pursuant to article 3 (“the buy-out price”).

(3) If, in the case of the calendar year 2002 or any subsequent calendar year, the annual retail prices index for that year (“the later year”) is higher or lower than that for the previous year, the buy-out price relating to the obligation period beginning on the 1st April immediately following the later year shall be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year.

(4) When the buy-out price is calculated under paragraph (3) the result shall be rounded to the nearest penny (any exact half of a penny being rounded upwards).

(5) In this article “the 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.

#### **Eligible renewable sources**

8.—(1) Subject to article 9, electricity shall be considered to have been generated from eligible renewable sources to the extent that it has been generated from renewable sources and provided that it has not been generated by an excluded generating station as specified in paragraphs (2) to (14).

(2) The following shall be excluded generating stations:—

- (a) large hydro generating stations except those first commissioned after 1st April 2002;
- (b) subject to paragraphs (6) and (7), generating stations (other than micro hydro generating stations) which were first commissioned before 1st January 1990 and where the main components have not been renewed since 31st December 1989 as described in paragraph (14);
- (c) generating stations located outside the United Kingdom; and
- (d) generating stations generating electricity under the arrangements or additional arrangements referred to in article 35(1) of the Electricity (Northern Ireland) Order 1992<sup>(13)</sup>.

(a) (3) (a) This paragraph applies where—

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(13) S.I. 1992/231 (N.I.1).

- (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 Orders 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 13, 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 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.
- (4) 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
  - (b) all the waste by which it is fuelled in that month which is not biomass has first been manufactured into fuel which is in either a gaseous or liquid form (or both) by means of plant and equipment using advanced conversion technologies only.
- (5) A generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by any other fuel (or fuels) other than biomass.
- (6) A generating station shall not be an excluded generating station by virtue of paragraph (2) (b) in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).
- (7) After 1st April 2004 a generating station shall not be an excluded generating station by virtue of paragraph (2)(b) in any month during which it is fuelled wholly by biomass, if—
- (a) prior to 1st April 2003, at least 75 per cent of the energy content of the fuel by which it was fuelled was derived from fossil fuel; and
  - (b) in no month after March 2004 has the energy content of the fuel by which it was fuelled been derived as to more than 75 per cent from fossil fuel.
- (8) (a) After 31st March 2009 a generating station which in any month is fuelled partly by fossil fuel and partly by biomass (and by no other fuel) shall be an excluded generating station during that month if, during that month, less than the specified percentage of the energy content of the biomass derives from energy crops.

- (b) In sub-paragraph (a), “the specified percentage” means, in respect of any month from 1st April 2009 until 31st March 2010, 25 per cent; in respect of any month from 1st April 2010 until 31st March 2011, 50 per cent; and in respect of any month from 1st April 2011 until 31st March 2016, 75 per cent.
- (9) After 31st March 2016 a generating station shall be an excluded generating station in any month during which it is fuelled partly by fossil fuel and partly by biomass (and by no other fuel).
- (10) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by peat.
- (11) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by any substance derived directly or indirectly from any of the substances referred to in paragraph (15)(a)(i) unless that substance is a substance falling within paragraph (15)(a)(ii) or it is waste or a component of biomass.
- (12) A generating station shall be an excluded generating station in any month during which it is fuelled wholly or partly by waste where all the waste which is not biomass is or is derived directly or indirectly from one or more of the substances referred to in paragraph (15)(a)(i).
- (a) (13) (a) This paragraph applies where an extant qualifying arrangement (“the applicable qualifying arrangement”) provides for the building of a generating station (“the specified station”) at a specified location (“the location”) and the specified station has not been commissioned.
- (b) A generating station—
- (i) which is situated at the location; and
  - (ii) which is owned or operated by a person who is a party to the applicable qualifying arrangement, or is a connected person or a linked person in relation to any such party, shall be an excluded generating station.
- (c) 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.
- (14) The main components of a generating station shall only be regarded as having been renewed since 31st December 1989 where—
- (a) in the case of a hydro generating station the following parts have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date—
    - (i) either all the turbine runners or all the turbine blades or the propeller; and
    - (ii) either all the inlet guide vanes or all the inlet guide nozzles; or
  - (b) in the case of any other generating station all the boilers and turbines (driven by any means including wind, water, steam or gas) have been installed in the generating station after 31st December 1989 and were not used for the purpose of electricity generation prior to that date.
- (15) In this article—
- (a) “fossil fuel” means:
    - (i) coal, lignite, natural gas (as defined in the Energy Act 1976(14)) and crude liquid petroleum; and
    - (ii) anything which is derived directly or indirectly from any of the substances referred to in sub-paragraph (a)(i) which is created for the purpose of being used as a fuel,

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(14) 1976 c. 76.

other than anything, which is or is derived directly or indirectly from any of the substances referred to in sub-paragraph (a)(i), which is waste or a component of biomass;

- (b) “waste” is to be regarded as including anything derived directly or indirectly from waste (as that term is defined in article 2(1)); and
  - (c) “standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station.
- (16) (a) In this article and in article 3(4), in determining whether a generating station is fuelled by a particular fuel, regard is to be had only to fuel which it uses to generate electricity.
- (b) For the purposes of this article, fossil fuel or waste which a generating station uses for—
    - (i) the ignition of gases of low or variable calorific value;
    - (ii) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature;
    - (iii) emission control; or
    - (iv) standby generation or the testing of standby generation capacity,

shall only be treated as comprising fuel used to generate electricity in any month in which the combined energy content of the fossil fuel or waste, or both, which the generating station uses for those purposes exceeds 10 per cent of the energy content of the renewable sources by which it is fuelled (and for this purpose the term “renewable sources” includes any waste or component of biomass that is fossil fuel or is derived directly or indirectly from fossil fuel).

(17) For the purposes of this article, a generating station shall be regarded as being situated at a location provided for by an extant qualifying arrangement whether it is situated wholly or partly at that location.

### **Calculation of amount of electricity generated from eligible renewable sources**

9.—(1) Subject to paragraphs (2) and (4), the amount of electricity generated by a generating station which is to be regarded as having been generated from eligible renewable sources in any month is to be calculated by multiplying the renewable output of that generating station in that month by a proportion which is equal to the proportion which the net output of that generating station in that month bears to the gross output of that station in that month and for the purposes of this calculation—

- (a) “the renewable output” is such amount as is obtained by deducting from the gross output of that generating station in that month the amount of electricity which has been generated from fossil fuel in that month; and
- (b) “the net output” is such amount as is obtained by deducting from the gross output of that generating station in that month the input electricity of that generating station in that month.

(2) In the case of a generating station fuelled wholly or partly by biomass, 2 per cent of the electricity generated from biomass in any month shall be treated as having been generated from fossil fuel unless the operator of the generating station satisfies the Authority that during that month a lesser percentage of the energy content of the biomass derives from fossil fuel, in which case that lesser percentage shall be treated as having been generated from fossil fuel.

(3) In calculating “the renewable output” in the case of a generating station fuelled partly by fossil fuel and partly by another fuel or fuels the amount of electricity which has been generated from fossil fuel is to be determined according to the respective energy contents of the fuels used.

(4) Where the operator of a generating station satisfies the Authority that in any month the input electricity of the generating station does not exceed 0.5 per cent of its gross output, no input electricity shall be deducted from the gross output in calculating the net output of the generating station for that month and, accordingly, the net output shall be equal to the gross output in that month.

(5) In this article—

- (a) “fossil fuel” has the meaning given to it by section 32 of the Act except that the expression also includes any substance which is derived directly or indirectly from fossil fuel (whether or not such substance is waste or a component of biomass);
- (b) “gross output” means, in relation to any month, the total amount of electricity generated by a generating station in that month; and
- (c) “input electricity” means, in relation to any month, all the electricity used by a generating station in that month (whether or not it is generated by the generating station and whether or not it is used while the generating station is generating electricity) for a purpose directly relating to the operation of that generating station, including fuel handling, fuel preparation, maintenance and pumping water.

### **Calculation of amount of electricity supplied to customers**

**10.** Where electricity generated from eligible renewable sources has been sold by the operator of the generating station to an electricity supplier and is then purchased from the electricity supplier and consumed by the operator of the generating station, such electricity shall be regarded as having been supplied by an electricity supplier to a customer.

### **Provision of information to the Authority**

**11.—(1)** The Authority may require a designated electricity supplier to provide it with such information in such form and within such time as it may reasonably require which is, in the Authority’s opinion, relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation in relation to any obligation period.

(2) The Authority may request any person who generates, supplies, distributes or transmits electricity in relation to which a SROC has been or may be issued, or any person who buys or sells such electricity or SROCs (otherwise than as a consumer) to provide the Authority with such information in such form and within such time as it may reasonably request in order to carry out any of its functions under this Order.

### **Allocation of payments made under article 7**

**12.—(1)** The aggregate of the amounts received by the Authority under article 7 in respect of an obligation period (“the relevant obligation period”) (together with any interest thereon received by the Authority) is referred to in this article as “the buy-out fund”.

(2) The Authority shall pay out the buy-out fund, by the 1st December following the relevant obligation period in accordance with the system of allocation specified in paragraph (3).

(3) The buy-out fund relating to a relevant obligation period shall be divided amongst each of those designated electricity suppliers which, in respect of that period, has complied (in whole or in part) with its renewables obligation by producing to the Authority certificates pursuant to article 3 so that each such supplier receives that proportion of the buy-out fund which is equal to the proportion which the electricity covered by the certificates it has produced to the Authority pursuant to article 3 in respect of the relevant obligation period bears to the total of the electricity covered by all the certificates produced to the Authority pursuant to article 3 in respect of that period.

(4) For the purposes of this article, a “late payment” is an amount—

- (a) which is received by the Authority in respect of an obligation period (“the obligation period in question”) on or after the specified day relating to that obligation period; and
  - (b) which, had it been so received before the specified day, would have been an amount received under article 7(1) in respect of the obligation period in question.
- (5) The aggregate at any given time of the late payments received in respect of an obligation period (together with any interest received thereon by the Authority) is referred to in this article as the “late payment fund” for the obligation period in question.
- (6) Not later than the 1st April immediately following the specified day for the obligation period in question, and at least once within every six month period thereafter, the Authority shall pay out the late payment fund for the obligation period in question in accordance with the system of allocation specified in paragraph (3), as if–
- (a) the references in that paragraph to “the buy-out fund” were references to that late payment fund; and
  - (b) the references in that article to a “relevant obligation period” were references to the obligation period in question.

### **Functions of the Authority**

**13.** The Authority shall have the functions assigned to it elsewhere in this Order, including any general or specific role, duty or decision making function in addition to the following specific functions–

- (a) the accreditation of generating stations (to be notified to the operator of a generating station which is being accredited in writing from such date and subject to such conditions as the Authority considers appropriate) and the withdrawal of such accreditation or the alteration of any conditions attached to it (such withdrawal or alteration to be notified to the operator of the affected generating station in writing);
- (b) keeping and maintaining a list of accredited generating stations and the conditions for their accreditation and making such list available to the public;
- (c) issuing and revoking SROCs in accordance with articles 4 and 5;
- (d) keeping and maintaining a list of SROCs which have been revoked and making such list available to the public;
- (e) calculating and publishing before the start of each obligation period (with the exception of the first obligation period) the amount of the payment per megawatt hour of electricity referred to in article 7 resulting from the adjustments made to reflect changes in the retail prices index;
- (f) by 1st March each year publishing an annual report in relation to the obligation period ending on the previous 31st March, such report to include details (or, in the case of sub-paragraph (v), a summary) of–
  - (i) the compliance of each designated electricity supplier with its renewables obligation, including the extent to which that obligation has been met by the production of certificates pursuant to article 3 or payments made under article 7;
  - (ii) the sums received by each designated electricity supplier under article 12;
  - (iii) the number of SROCs issued by the Authority in accordance with articles 4 and 5, the number of SROCs and other certificates accepted by it as evidence under article 3(1) and the number of SROCs issued but not yet deleted in respect of the obligation period;

- (iv) the number of SROCs issued by the Authority in accordance with articles 4 and 5 broken down into different descriptions of generating stations (as referred to in paragraph 2 of Schedule 2);
  - (v) the outcome of any enquiries or investigations conducted by the Authority pursuant to paragraph (g); and
  - (vi) any other matters which the Authority considers relevant to the implementation of this Order;
- (g) monitoring implementation of the renewables obligation and compliance by designated electricity suppliers and operators of generating stations with this Order (including compliance by operators of generating stations with any conditions attached to their accreditation) and such monitoring may include conducting enquiries or investigations into the quantities of electricity generated from eligible renewable sources by accredited generating stations, the quantities of such electricity supplied to customers in Great Britain, the transfer and holding of SROCs, the effect of such matters on the making and allocation of payments under articles 7 and 12 and the effect of the renewables obligation on designated electricity suppliers and the operators of generating stations; and
- (h) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to paragraph (g).

#### **Revocation**

**14.** The Renewables Obligation (Scotland) Order 2002(**15**) is hereby revoked.

St Andrew's House,  
Edinburgh  
2004

Authorised to sign by the Scottish Ministers



## SCHEDULE 1

Articles 2(1) and 6(2)

## AMOUNT OF THE RENEWABLES OBLIGATION

<i>Obligation period</i>	<i>Percentage of total supplies</i>
1st April 2002 to 31st March 2003	3.0
1st April 2003 to 31st March 2004	4.3
1st April 2004 to 31st March 2005	4.9
1st April 2005 to 31st March 2006	5.5
1st April 2006 to 31st March 2007	6.7
1st April 2007 to 31st March 2008	7.9
1st April 2008 to 31st March 2009	9.1
1st April 2009 to 31st March 2010	9.7
1st April 2010 to 31st March 2011	10.4
Each subsequent period of twelve months ending with the period of twelve months ending on 31st March 2027	10.4

## SCHEDULE 2

Articles 2(1) and 4(2)

## THE REGISTER

1. The Authority shall maintain the Register (which may be in electronic form) at any of its premises.

2. Particulars of a SROC comprise–

- (a) the name of the person to whom the Authority issues the SROC or, where the Authority has amended the Register in dealing with a request for substitution in accordance with paragraph 6, the name of the substitute (the “registered holder”); and
- (b) an identifier unique to the SROC (“the SROC identifier”) determined by the 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 eligible renewable source or sources used to generate electricity by that generating station;
  - (iv) the date of issue of the SROC; and
  - (v) the SROC sequence number determined by the Authority in accordance with articles 4(9) or 5(4).

3. A person may only be the registered holder of a SROC or have an entry made and maintained in respect of them under article 4(4)(b) if they provide to the Authority in writing–

- (a) evidence of their identity; and

- (b) details of persons authorised to act on their behalf in respect of the production of SROCs as the evidence or part of the evidence required under article 3(1) and in respect of requests for amendments to be made to the Register as provided for in this Schedule.
4. The Authority may from time to time draw up procedural guidelines for itself and others to assist it in maintaining the Register and carrying out its functions in respect thereof.
5. The Authority shall delete from the Register any SROC which—
- (a) has been revoked in accordance with article 5;
  - (b) has in accordance with article 3(5) been produced as evidence or as part of the evidence required under article 3(1);
  - (c) is no longer eligible to be produced as evidence or as part of the evidence required under article 3(1); or
  - (d) the registered holder requests should be deleted,
- and where it is so deleted, the SROC cannot thereafter be produced as the evidence or part of the evidence required under article 3(1).
6. Where the registered holder of a SROC and a person whom it wishes to be the substitute (as defined in this paragraph) require in respect of a particular SROC request that the Register be amended, by substituting for the name of the registered holder the name of a second person (“the substitute”), (who shall be a person whose name is included on the list maintained pursuant to article 4(4)(b))—
- (a) the registered holder and the person whom he wishes to be the substitute shall each submit to the Authority in writing requests which are identical in all material respects and which include the SROC identifier of the SROC to which the request relates; and
  - (b) the Authority shall, in any September, within 10 banking days and in all other instances, within 5 banking days after the banking day on which it is first in receipt at the commencement of its working hours of requests which comply with paragraph 6(a) amend the particulars of the SROC recorded in the Register to show the substitute as the registered holder.
7. Where the Authority receives in writing a request for substitution it shall inform both the registered holder of the SROC and the substitute named therein that the request has been received and, in the event that the requests from the registered holder of the SROC and the person whom it wishes to be the substitute are not identical in all material respects or do not include the SROC identifier of the SROC, shall draw this to their attention.
8. Where a SROC is issued in accordance with article 4 or a replacement SROC is issued in accordance with article 5 or a substitute is recorded as the registered holder pursuant to paragraph 6, the Authority shall notify the registered holder (in the case of a SROC or a replacement SROC being issued) and the former and new registered holder (in the case of a substitution) in writing within 5 banking days of the issue or substitution having taken place.
9. The substitute shall not be the registered holder of the SROC until such time as the particulars of the SROC recorded in the Register identify it as such.
10. The Register may be amended by a decision of the Authority—
- (a) where the Authority is satisfied that an entry in the Register has been obtained by fraud;
  - (b) where a decision of a Court of competent jurisdiction or the operation of law requires the amendment of the Register; or
  - (c) in any other case where by reason of any error or omission on the part of the Authority it is necessary to amend the Register.

11. The contents of the Register (including the entries referred to in article 4(4)(b)) shall be available for inspection by the public on request at reasonable notice during the Authority's working hours and at the request of any person the Authority shall provide a written statement of any entry on the Register including any entry referred to in article 4(4)(b).

12. Where any person considers that an entry maintained in respect of them under article 4(4)(b) should be amended or deleted, that person may apply to the Authority in writing requesting that the entry be amended or deleted.

13. The Authority shall in any procedural guidelines which it produces provide details of its usual working hours.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Order is made under sections 32-32C of the Electricity Act 1989 and imposes an obligation ("the renewables obligation") on all electricity suppliers, which are licensed under that Act and which supply electricity in Scotland, to supply to customers in Great Britain specified amounts of electricity generated by using renewable sources. As alternatives, in respect of all or part of an electricity supplier's renewables obligation, an electricity supplier is permitted to provide evidence that other licensed electricity suppliers have supplied electricity generated using renewable sources instead of it, or to make a payment to the Gas and Electricity Markets Authority ("the Authority"). Renewable sources include sources of energy such as wind, water, solar and biomass.

The Order revokes, and replaces, with amendments, the Renewables Obligation (Scotland) Order 2002 ("the 2002 Order"). The provisions of this Order are very similar to the 2002 Order, the main amendments applying to article 2 (extending eligibility to smaller generators) and articles 3 and 8 (extension of deadlines for eligibility of co-firing plant). There are a large number of smaller technical amendments.

Article 3 imposes the renewables obligation on electricity suppliers. The renewables obligation requires the electricity supplier to produce evidence of the supply of electricity generated from renewable sources to the Authority. The evidence required is certificates issued by the Authority. Those certificates issued under this Order are referred to as "SROCs".

Article 4 and Schedule 2 provide for the issue of SROCs by the Authority and the maintenance by it of a register of SROCs.

Article 5 provides for the revocation of SROCs in specified circumstances.

Article 6 and Schedule 1 provide for how the amount of an electricity supplier's renewables obligation is to be determined.

Article 7 provides that, instead of producing certificates to the Authority, an electricity supplier may discharge (in whole or part) its renewables obligation by making a payment to the Authority.

Articles 8, 9 and 10 determine what types of electricity generated from renewable sources are eligible to satisfy an electricity supplier's renewables obligation.

Article 11 provides for the Authority to obtain information to enable it to carry out its functions under the Order.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Renewables Obligation (Scotland) Order 2004 No. 170

Article 12 provides how payments (including late payments) made to the Authority by electricity suppliers under article 7 are to be divided amongst licensed electricity suppliers.

Article 13 makes provision relating to the functions of the Authority under the Order.

A regulatory impact assessment is available and can be obtained from the Energy Policy Division, Scottish Executive Enterprise Transport and Lifelong Learning Department, Meridian Court, Cadogan Street, Glasgow.

The address of the Department of Trade and Industry website referred to in Article 6(3) is [www.dti.gov.uk](http://www.dti.gov.uk).