
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

The Renewables Obligation (Scotland) Order 2009

PART 9

Provision of information, functions of the Authority and modification of this Order in relation to microgenerators in certain circumstances

Provision of information to the Authority

53.—(1) The Authority may, by the date (if any) specified by it, require—

- (a) a designated electricity supplier to provide it with information which in its opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation;
- (b) a person to provide it with information which in its opinion is relevant to the question whether a SROC is, or was or will in future be, required to be issued to the person.

(2) Without prejudice to paragraph (1), the Authority may, by the date (if any) specified by it, require any person who—

- (a) is the operator of a generating station generating electricity in respect of which a SROC has been or may be issued;
- (b) supplies, distributes or transmits such electricity; or
- (c) buys or sells (as a trader) such electricity or SROCs,

to provide it with such information as in its opinion it requires in order to carry out any of its functions under this Order.

(3) Without prejudice to paragraphs (1) and (2), for the purposes of determining the renewable output of a generating station in a month (“the relevant month”) the operator of the station must provide the Authority with figures showing—

- (a) the amount of input electricity used by the station in the relevant month; and
- (b) the gross output of the station in that month,

by the end of the second month following the relevant month (and those figures may be estimated if the Authority has agreed to estimates being provided and to the way in which those estimates are to be calculated).

(4) Nothing in paragraph (3) prevents the Authority from accepting figures, or further figures, provided after the end of the second month following the relevant month if the Authority considers it appropriate to do so.

(5) Without prejudice to paragraphs (1) and (2), each designated electricity supplier must provide the Authority with—

- (a) estimates of the amount of electricity it has supplied to customers in Scotland during each month of an obligation period by no later than 1st June following that period;

- (b) figures showing the amount of electricity it has actually supplied to customers in Scotland during each month of an obligation period by no later than 1st July following that period; and
- (c) an estimate of the number of renewables obligation certificates it believes it would be required to produce to the Authority in order to discharge its renewables obligation for an obligation period if it did not discharge its renewables obligation for that period (in whole or in part) by some other means by no later than 1st July following that period.

(6) When giving the information referred to in paragraph 5(a) and (b), a designated electricity supplier must have regard to any sales figures, relating to the electricity in respect of which it is giving that information, which it has provided (or intends to provide) to the Department of Energy and Climate Change for publication in “Energy Trends”⁽¹⁾.

(7) Without prejudice to paragraphs (1) and (2), for the purposes of determining whether a SROC certifying the matters within section 32B(5), (6) or (8) of the Act should be issued, the person to whom any such SROC would be issued must provide the Authority with—

- (a) a figure representing the amount of electricity in respect of which SROCs should (in that person’s opinion) be issued; and
- (b) the data on which that person relied upon in arriving at that figure.

(8) Information requested under or required to be provided by this article must be given to the Authority in whatever form it requires.

(9) In this article “input electricity” and “gross output”, in relation to a generating station, have the same meaning as they have in articles 24 and 25 (calculating a generating station’s renewable output).

Information to be provided to the Authority where electricity is generated from biomass

54.—(1) This article applies to a generating station—

- (a) which generates electricity (wholly or partly) from biomass; and
- (b) which is not a microgenerator.

(2) In relation to each consignment of biomass used in a generating station to which this article applies, the operator of the station must, by the 31st May immediately following the obligation period during which the biomass is used (“the relevant date”), provide the Authority with the information specified in paragraph (3).

(3) The information specified in this paragraph is information identifying, to the best of the operator’s knowledge and belief—

- (a) the material from which the biomass was composed (for example, whether it was composed of wood);
- (b) where the biomass can take different forms (for example, wood can take a variety of forms, depending on whether and how it has been processed and what it is, is to be or has been used for), the form of the biomass;
- (c) where the biomass was solid, its mass;
- (d) where the biomass was fluid, its volume when measured at 25 degrees Celsius and 0.1 megapascals;
- (e) whether the biomass was a by product of a process;
- (f) whether the biomass was waste;

(1) Available at www.dti.gov.uk/energy/inform/energy_trends/index.shtml.

- (g) where the biomass was plant matter or derived from plant matter, the country where the plant matter was grown;
 - (h) where the information specified in sub-paragraph (g) is not known or the biomass was not plant matter or derived from plant matter, the country from which the operator obtained the biomass;
 - (i) whether any of the consignment was an energy crop or derived from an energy crop and, if so—
 - (i) the proportion of the consignment which was or was derived from the energy crop, and
 - (ii) the type of energy crop in question;
 - (j) whether the biomass or any matter from which it was derived was certified under an environmental quality assurance scheme and, if so, the name of the scheme; and
 - (k) where the biomass was plant matter or derived from plant matter, the use to which the land on which the plant matter was grown has been put since 30th November 2005.
- (4) Where, in relation to biomass used in a generating station to which this article applies, the operator of the station fails to provide the Authority with the information specified in paragraph (3) by the relevant date, the Authority—
- (a) may in relation to any SROCs to which the operator would otherwise be entitled, postpone (subject to sub-paragraph (b)) the issue of those SROCs (up to the specified number) until such time as the information is provided; and
 - (b) must in relation to any such SROCs refuse the issue of those SROCs (up to the specified number) if that information is not provided by the 31st August immediately following the relevant date.
- (5) For the purposes of paragraph (4), the specified number is the number of SROCs which the Authority has or estimates that it has or, but for this article, would have issued in respect of the electricity generated by the biomass in relation to which the information specified in paragraph (3) should have been provided.
- (6) In this article, “environmental quality assurance scheme” means a voluntary scheme which establishes environmental or social standards in relation to the production of biomass or matter from which a biomass fuel is derived.

Provision of information to the Secretary of State

55. Any information provided to the Authority under article 53(5) must be provided to the Secretary of State at the same time.

Exchange of information with the Northern Ireland authority

56.—(1) The Authority must, as soon as reasonably practicable after the specified day following an obligation period, notify the Northern Ireland authority of—

- (a) the details of each Northern Ireland certificate produced to the Authority by a designated electricity supplier in discharge of that supplier’s renewables obligation for that period and the name of the designated electricity supplier in question; and
- (b) the total number of Northern Ireland certificates produced to the Authority in respect of that obligation period.

(2) The Authority must, as soon as reasonably practicable after receiving a notification from the Northern Ireland authority as to the SROC identifiers of SROCs produced to the Northern Ireland

authority by Northern Ireland suppliers under any NIRO Order, inform the Northern Ireland authority of—

- (a) the SROC identifier of any SROC so notified which the Authority has revoked under article 40 and whether it has issued a replacement SROC in respect of any such SROC (unless that replacement SROC has itself been revoked);
- (b) the SROC identifier of any SROC so notified that has been produced to the Authority by a designated electricity supplier under article 5(2) and the date on which it was produced.

(3) The Authority must, as soon as reasonably practicable after the specified day following an obligation period, notify the Northern Ireland authority of the number of renewables obligation certificates produced to the Authority in respect of that period.

Functions of the Authority

57.—(1) In addition to the functions assigned to it elsewhere in this Order, the Authority shall have the following specific functions—

- (a) keeping, maintaining and making available to the public a list of generating stations granted preliminary accreditation and accreditation in accordance with article 58, together with any applicable conditions attached to the preliminary accreditation or accreditation;
- (b) keeping and maintaining a list of SROCs which have been revoked and making such list available to the public;
- (c) calculating and publishing before the start of each obligation period (with the exception of the first obligation period to which this Order relates) the sum which corresponds to a SROC for that period by virtue of article 43(4);
- (d) calculating and publishing before the start of each obligation period (with the exception of the first obligation period to which this Order relates) the amount which is the mutualisation cap for that period by virtue of article 48(8);
- (e) publishing from time to time during an obligation period the total SROC claim for that period;
- (f) by the 1st April each year publishing a report in relation to the obligation period ending on the 31st March in the previous calendar year (“the relevant period”), such report to include details (or, in the case of paragraph (ix), a summary) of—
 - (i) the compliance of each designated electricity supplier with its renewables obligation, for the relevant period, including the extent to which that obligation was met by—
 - (aa) the production of renewables obligation certificates under article 5(2);
 - (bb) payments made under article 43; or
 - (cc) was treated as met by payments made under article 44;
 - (ii) the sums received by each United Kingdom supplier under article 47 in relation to the relevant period;
 - (iii) the number of SROCs issued by the Authority, the number of renewables obligation certificates accepted by it under article 5(2), and the number of SROCs issued by it but not yet deleted from the Register in relation to the relevant period;
 - (iv) the number of SROCs issued by the Authority in relation to the relevant period categorized by reference to the way in which the electricity in respect of which the SROCs were issued was generated;
 - (v) any notices published by the Authority under article 49(2) or article 50(5)(e) in relation to the relevant period;

- (vi) any payments made to the Authority in accordance with article 49(5), during or in relation to the relevant period;
 - (vii) the sums received by each compliant United Kingdom supplier under article 52, during or in relation to the relevant period;
 - (viii) any recalculations carried out by the Authority in accordance with article 50(5), during or in relation to the relevant period;
 - (ix) the outcome of any enquiries or investigations conducted by the Authority pursuant to sub-paragraph (g) in relation to the relevant period; and
 - (x) any other matters which the Authority considers relevant in relation to the relevant period;
- (g) monitoring compliance with this Order by designated electricity suppliers and operators of generating stations (including compliance by operators of generating stations with any conditions attached to their accreditation) and such monitoring may include conducting enquiries or investigations into—
- (i) the amount of electricity generated from renewable sources by accredited generating stations;
 - (ii) the amount of such electricity supplied to customers in Great Britain;
 - (iii) the transfer and holding of SROCs (including the transfer and holding of SROCs issued to agents by virtue of article 35);
 - (iv) the effect of such matters on the making and allocation of payments under articles 43, 44, 47, 49, 51 and 52; and
 - (v) the effect of the renewables obligation on the activities and operations of designated electricity suppliers and operators of generating stations;
- (h) publishing at its discretion reports of enquiries or investigations conducted by the Authority pursuant to sub-paragraph (g); and
- (i) the provision of such information to the Northern Ireland authority as the Authority considers may be relevant to the exercise of the Northern Ireland authority's functions under any NIRO Order.
- (2) In this article “total SROC claim” means the total number of SROCs which have been claimed in respect of an obligation period, less—
- (a) the number of SROCs which have been issued in respect of that obligation period; and
 - (b) the number of SROCs which the Authority has, in respect of that obligation period, decided not to issue or refused to issue under article 41 or 54(4).

Preliminary accreditation and accreditation of generating stations

58.—(1) Paragraphs (2) to (10) apply to the granting and withdrawing of preliminary accreditation and accreditation of generating stations by the Authority, and paragraphs (3) to (5) are subject to paragraph (2).

(2) The Authority must not grant accreditation or preliminary accreditation to a generating station under this article—

- (a) if it cannot issue SROCs in respect of electricity generated by that station by virtue of article 17 (excluded generating stations); or
 - (b) if, in its opinion, the station is unlikely to generate electricity in respect of which SROCs may be issued.
- (3) Where a generating station in respect of which—

- (a) consent under section 36 of the Act or where appropriate, Article 39 of the Electricity (Northern Ireland) Order 1992 has been obtained; or
- (b) planning permission under the Town and Country Planning (Scotland) Act 1997(2) has been granted,

is not yet commissioned, the Authority may, upon the application of the person who proposes to construct or operate the generating station, grant the station preliminary accreditation.

(4) Where a generating station has been commissioned, the Authority may, upon the application of its operator (or, where SROCs relating to electricity generated by that station are to be issued to an agent by virtue of article 35, that agent), grant the station accreditation.

(5) Where a station has been granted preliminary accreditation (and such preliminary accreditation has not been withdrawn) and an application for its accreditation is made under paragraph (4), the Authority must not grant that application if it is satisfied that—

- (a) there has been a material change in circumstances since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused;
- (b) the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular such that, had the Authority known the true position when the application for preliminary accreditation was made, it would have refused it; or
- (c) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made after the change, it would have been refused,

but otherwise the Authority must grant the application.

(6) The Authority may, in granting preliminary accreditation or accreditation under this article, attach such conditions as appear to it to be appropriate.

(7) Where any of the circumstances mentioned in paragraph (8) apply in relation to a preliminary accreditation or an accreditation which the Authority has granted (whether or not under this article), and having regard to those circumstances the Authority considers it appropriate to do so, the Authority may—

- (a) withdraw the preliminary accreditation or accreditation in question;
- (b) amend conditions attached to the preliminary accreditation or accreditation;
- (c) attach conditions to the preliminary accreditation or accreditation.

(8) The circumstances referred to in paragraph (7) are as follows—

- (a) in the Authority's view there has been a material change in circumstances since the preliminary accreditation or accreditation was granted;
- (b) any condition attached to the preliminary accreditation or accreditation has not been complied with;
- (c) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation or accreditation was based was incorrect in a material particular; or
- (d) there has been a change in applicable legislation since the preliminary accreditation or accreditation was granted such that, had the application for preliminary accreditation or accreditation been made after the change, it would not have been granted.

(9) The Authority must notify the applicant in writing of—

- (a) its decision on an application for preliminary accreditation or accreditation of a generating station;
- (b) any conditions attached to the preliminary accreditation or accreditation; and
- (c) any withdrawal of preliminary accreditation or accreditation.

(10) In providing written notification under paragraph (9), the Authority must specify the date on which the grant or withdrawal of preliminary accreditation or accreditation is to take effect and, where applicable, the date on which any conditions attached to the preliminary accreditation or accreditation are to take effect.

(11) In paragraph (3), the reference to the person who proposes to construct the generating station includes a person who arranges for the construction of the generating station.

SROC Register

59.—(1) The Authority must establish and maintain a register of SROCs (“the Register”) in accordance with Schedule 4, which shall have effect.

(2) A SROC is issued for the purpose of this Order at the point at which its particulars (within the meaning of Schedule 4) are entered in the Register by the Authority.

(3) Without prejudice to the foregoing provisions of this article and Schedule 4, the Authority must ensure that the Register contains, by way of entries made in it—

- (a) an accurate record of the particulars of each SROC which is issued by the Authority (including the person who is for the time being its registered holder) and which remains eligible to be produced to the Authority; and
- (b) a list of the names of all persons who either are 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.

(4) Only the registered holder of a SROC may produce that SROC to the Authority under article 5.

Modification of this Order in relation to microgenerators in certain circumstances

60.—(1) This article applies to generating stations which are microgenerators.

(2) The operator of a generating station to which this article applies or, where SROCs relating to generating stations to which this article applies are to be issued to an agent by virtue of article 35, that agent (and not the operators of the generating stations in question) may—

- (a) where SROCs have not yet been issued in respect of any electricity generated during the course of an obligation period by the station or stations in question, during the course of that obligation period; or
- (b) in any other case, not less than one month before the beginning of an obligation period (“the relevant obligation period”),

give notice in writing to the Authority that entitlement to SROCs in respect of electricity generated by the station or stations in question is to be determined on the basis set out in the remainder of this article.

(3) Paragraph (4) applies—

- (a) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(a), for the remainder of the obligation period during which the notice was given and subsequent obligation periods; and
- (b) where an operator or, as the case may be, agent has given notice as specified in paragraph (2)(b), for the relevant obligation period and subsequent obligation periods.

(4) Where this paragraph applies, the reference to “a month” in each place where it occurs in articles 13, 22, 24, 25, 36, 39, 41, 53 and Schedule 4 is to be taken to be a reference to “an obligation period”, subject to the following exceptions—

- (a) in articles 24(2)(b) and 53(3) the reference to “the second month” is to remain unchanged;
- (b) in paragraph 3(b)(i) of Schedule 4 the words “the month and year” is to be replaced by “the obligation period”.

(5) An operator or, as the case may be, agent who has given notice under paragraph (2) may—

- (a) if notice was given under paragraph (2)(a), not less than one month before the beginning of any obligation period following the obligation period during which the notice was given; or
- (b) if notice was given under paragraph (2)(b), not less than one month before the beginning of any obligation period following the relevant obligation period,

by notice in writing to the Authority, withdraw the notice given under paragraph (2).

(6) Where an operator or, as the case may be, agent withdraws a notice given under paragraph (2), that notice ceases to have effect from the beginning of the obligation period in relation to which the notice under paragraph (5) was given.

Revocation, transitional and savings

61.—(1) Subject to paragraphs (2) to (4), the following Orders are revoked—

- (a) the 2007 Order; and
- (b) the Renewables Obligation (Scotland) Amendment Order 2008(3).

(2) The 2007 Order is to continue to apply in relation to—

- (a) the issue and revocation of SROCs under it in respect of electricity generated before 1st April 2009, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to such issue or revocation;
- (b) any obligations or requirements imposed by it on an electricity supplier, an operator of a generating station or some other person in respect of the obligation period ending on 31st March 2009, and anything which falls to be done or determined (whether by the supplier, the generator or some other person) in relation to any such obligations and requirements; and
- (c) any obligations and functions of the Authority in respect of that obligation period, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to it.

(3) Without prejudice to the generality of the foregoing—

- (a) article 35 of the 2007 Order is to continue to apply so as to enable the Authority to request information in respect of electricity generated in the obligation period ending on 31st March 2009;
- (b) Schedule 1 to the 2007 Order is to continue to apply in relation to that obligation period.

(4) For the purpose of article 13(2)—

- (a) SROCs issued under the 2007 Order in respect of electricity supplied in the obligation period ending on 31st March 2009; and
- (b) certificates issued under the Renewables Obligation Order 2006(4) or the Renewables Obligation Order (Northern Ireland) 2007(5) in respect of electricity supplied in the period corresponding to that obligation period,

(3) S.I.2008/132.

(4) S.I. 2006/1004 amended by S.I. 2007/1078.

may be produced to the Authority by a designated electricity supplier in discharge of up to 25 per cent of its renewables obligation in respect of the obligation period ending on 31st March 2010.

(5) In this article, “obligation period” (except the reference to the obligation period ending on 31st March 2010 in paragraph (4)) and “SROCs” have the same meaning as in the 2007 Order.