
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 170

The Renewables Obligation (Scotland) Order 2004

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⁽¹⁾.
- (a) (3) (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 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

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

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.
- (a) (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(2)) 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, 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).

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(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.