
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 140

The Renewables Obligation (Scotland) Order 2009

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Renewables Obligation (Scotland) Order 2009 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

[^{F1}“2013/14 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2013, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2013 and no later than 31st March 2014; and
 - (ii) does not form part of the capacity of the station as accredited;
- (b) in relation to a generating station which is registered under article 58ZA as a grace period generating station, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no later than 31st March 2014; and
 - (ii) does not form part of the capacity of the station as accredited;
- (c) in relation to a generating station which—
 - (i) was not accredited on or before 31st March 2013;
 - (ii) was accredited on or before 31st March 2014; and
 - (iii) is not registered under article 58ZA as a grace period generating station, the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2014;]

[^{F1}“2013/15 capacity” means any capacity which is—

- (a) 2013/14 capacity; or
- (b) 2014/15 capacity;]

[^{F1}“2014/15 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2014, any capacity which—

- (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2014 and no later than 31st March 2015; and
- (ii) does not form part of the capacity of the station as accredited;
- (b) in relation to a generating station which—
 - (i) was not accredited on or before 31st March 2014; and
 - (ii) was accredited on or before 31st March 2015,the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2015;]

[^{F1}“2015/16 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2015, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2015 and no later than 31st March 2016; and
 - (ii) does not form part of the capacity of the station as accredited;
- (b) in relation to a generating station which—
 - (i) was not accredited on or before 31st March 2015; and
 - (ii) was accredited on or before 31st March 2016,the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2016;]

“the Act” means the Electricity Act 1989;

“the 2007 Order” means the Renewables Obligation (Scotland) Order 2007 ^{M1};

[^{F2}“the 2015 Order” means the Renewables Obligation Order 2015;]

“accreditation” in relation to a generating station, means accreditation of the station as one which is capable of generating electricity from renewable sources by the Authority or the Northern Ireland authority (and includes accreditation granted before 1st April 2009) and “accredited” should be construed accordingly;

[^{F3}“advanced fuel” means a liquid or gaseous fuel which is produced directly or indirectly from the gasification or the pyrolysis of—

- (a) waste, or
- (b) biomass;]

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen;

[^{F4}“animal excreta” means excreta produced by animals and includes biomass wholly derived from excreta produced by animals;]

“biomass” is to be construed in accordance with article 4;

[^{F5}“biomaterial” means the biodegradable part of—

- (a) products, waste and residues of biological origin resulting from agriculture (including vegetal and animal substances), forestry and related industries (including fisheries and aquaculture); and
- (b) industrial, commercial and municipal waste;]

“CEN/TS 15359:2006” means the document identified by Standard Number DD CEN/TS 15359 and entitled “Solid recovered fuels. Specifications and classes.” published by the European Committee for Standardisation on 30th June 2006 ^{M2};

“CEN/TS 15402:2006” means the document identified by Standard Number DD CEN/TS 15402 and entitled “Solid recovered fuels. Methods for the determination of the content of volatile matter.” published by the European Committee for Standardisation on 30th November 2006 ^{M3};

“CEN/TS 15415:2006” means the document identified by Standard Number DD CEN/TS 15415 and entitled “Solid recovered fuels. Determination of particle size and particle size distribution by screen method.” published by the European Committee for Standardisation on 30th November 2006 ^{M4};

“CEN/TS 15590:2007” means the document identified by Standard Number DD CEN/TS 15590 and entitled “Solid recovered fuels. Determination of potential rate of microbial self heating using the real dynamic respiration index.” published by the European Committee for Standardisation on 29th June 2007 ^{M5};

[^{F6}“CFD” has the meaning given in section 6(2) of the Energy Act 2013 (regulations to encourage low carbon electricity generation);]

[^{F7}“CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 6, October 2016 and Guidance Note 44 (Use of CHPQA in respect of the Renewables Obligation and Contracts for Difference), Issue 6, October 2016;]

“civil works”, in relation to a hydro generating station, are to be regarded as all man made structures, and man made works for holding water which are located on the inlet side of a turbine (turbine A), excluding any such structures or works which supply another turbine before water is supplied to the structures and works which supply turbine A;

“combined heat and power generating station” means a station which generates electricity and is (or may be) operated for purposes including the supply to any premises of–

- (a) heat produced in association with electricity; or
- (b) steam produced from, or air or water heated by, such heat;

[^{F8}“combustion unit” means a boiler, turbine or engine;]

“commissioned”, in relation to a generating station, means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of station in order to demonstrate that that station is capable of commercial operation;

“connected person”, in relation to the owner or operator of a generating station, or any party to a NFFO arrangement, means any person connected to the owner, operator or party within the meaning of [^{F9}section 1122 of the Corporation Tax Act 2010];

“declared net capacity” in relation to a generating station, means the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption) less the amount of electricity that is consumed by the plant;

[^{F10}“demonstration lease” means a lease granted by the Crown Estate [^{F11}Commissioners or a relevant person], one of whose purposes is testing, demonstrating and approving the viability of a wind turbine;]

“designated electricity supplier” is to be construed in accordance with article 5(1);

[^{F12}“EII excluded electricity” means electricity which constitutes EII excluded electricity within the meaning of regulation 6(1) of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015;]

“electricity interconnector” means so much of an electric line or other electric plant as subsists wholly or primarily for the purposes of the conveyance of electricity between a transmission

or distribution system in Great Britain and an equivalent system in another country (including Northern Ireland);

“energy content”, in relation to any substance, means the energy contained within that substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance's gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid and gaseous fuels (including definitions) published by the British Standards Institution on 28th June 1991 ^{M6});

[^{F13}“energy crops” means—

- (a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than 20 years and which is one of the following—
 - (i) *Acer pseudoplatanus* (also known as sycamore);
 - (ii) *Alnus* (also known as alder);
 - (iii) *Betula* (also known as birch);
 - (iv) *Castanea sativa* (also known as sweet chestnut);
 - (v) *Corylus avellana* (also known as hazel);
 - (vi) *Fraxinus excelsior* (also known as ash);
 - (vii) *Populus* (also known as poplar);
 - (viii) *Salix* (also known as willow); or
 - (ix) *Tilia cordata* (also known as small-leaved lime); or
- (b) a perennial crop which is one of the following—
 - (i) *Arundo donax* (also known as giant reed);
 - (ii) *Bambuseae*, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as a fuel;
 - (iii) *Miscanthus*;
 - (iv) *Panicum*;
 - (v) *Pennisetum* (other than *Pennisetum setaceum* (also known as fountain grass), *Pennisetum clandestinum* (also known as kikuyu grass) and *Pennisetum villosum* (also known as feathertop grass)); or
 - (vi) *Phalaris*;

[^{F6}“excepted generating station” means a generating station—

- (a) which was accredited on or before 31st March 2011;
- (b) which, since being accredited, has not ceased to be accredited at any time; and
- (c) in respect of which, if it was not accredited as at 31st March 2009, preliminary accreditation was held on and from that date until the date on which it was accredited;]

[^{F6}“excluded capacity” means—

- (a) generating capacity which in the Authority's view—
 - (i) formed part of a generating station from a date no earlier than 1st April 2014;
 - (ii) does not form part of the capacity of the station as accredited;
 - (iii) is not registered under article 58B (registration of additional capacity); and
 - (iv) is not a wind turbine forming part of a generating station which is offshore;
- (ab) [^{F14}in relation to a large hydro generating station, generating capacity which in the Authority's view—

- (i) formed part of the station from a date no earlier than 20th November 2018; and
- (ii) does not form part of the capacity of the station as accredited;]
- (b) a wind turbine which in the Authority’s view—
 - (i) is not registered under article 58A (registration of offshore wind turbines);
 - (ii) forms part of a generating station which is offshore; and
 - (iii) where the generating station was accredited as at 31st March 2011, is a registrable additional turbine; or
- (c) a combustion unit in relation to which a CFD transfer notice has come into force, and for the purposes of this definition—
 - (i) “CFD transfer notice” has the meaning given in article 21B(4) (combustion units in relation to which a CFD or investment contract has been entered into); and
 - (ii) the date on which a CFD transfer notice comes into force is to be determined in accordance with article 21B(8);]

[^{F5}“fossil derived bioliquid” means bioliquid produced directly or indirectly from—

- (a) coal,
- (b) lignite,
- (c) natural gas (within the meaning of the Energy Act 1976),
- (d) crude liquid petroleum, or
- (e) petroleum products (within the meaning of the Energy Act 1976);]

“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;

[^{F15}“greenhouse gas emission criteria” means—

- (a) in the case of bioliquid, the criteria set out in Schedule A1 (greenhouse gas emission criteria for bioliquid); and
- (b) in all other cases, the criteria set out in Part 1 of Schedule A1A (greenhouse gas emission criteria for solid and gaseous biomass);]

[^{F16}“hazardous waste” is as defined in Articles 3(2) and 7 of Directive [2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as amended by Commission Regulation (EU) No 1357/2014 replacing Annex III of Directive [2008/98/EC](#);

^{F17}

“hydro generating station” means a generating station driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and includes all turbines supplied with water by or from the same civil works, except any turbine driven by a compensation flow supplied by or from those civil works in a natural water course where there is a statutory obligation to maintain that compensation flow in that water course (in which case that turbine and associated infrastructure is to be regarded as a separate hydro generating station);

[^{F6}“investment contract” has the meaning given in paragraph 1 of Schedule 2 to the Energy Act 2013 (meaning of “investment contract”);]

[^{F6}“ISAE 3000” means the International Standard on Assurance Engagements 3000 promulgated by the International Federation of Accountants;]

[^{F5}“land criteria” means the criteria set out in Schedule A2;]

“landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC^{M7};

“landfill gas” means gas formed by the digestion of material in a landfill;

“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;

“linked person” in relation to a person who is a party to a NFFO arrangement (“the first person”) means another person who has given or who has arranged to give to the first person or has ensured or 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;

[^{F18}“microgenerator” means a generating station, other than an enhanced wave or enhanced tidal stream generating station, which has a declared net capacity of 50 kilowatts or less;]

“micro hydro generating station” means a hydro generating station which—

- (a) has a declared net capacity of 1.25 megawatts or less;
- (b) has always been in private ownership and operation; and
- (c) has never generated electricity under an arrangement which has been a qualifying arrangement as defined in section 33 of the Act (as that section was originally enacted);

[^{F6}“municipal waste” means—

- (a) waste from households; and
- (b) other waste that, because of its nature or composition, is similar to waste from households;]

[^{F6}“national system operator” has the meaning given in section 8(3) of the Energy Act 2013 (duties of a CFD counterparty);]

“NFFO arrangement” means an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under section 67 of the Utilities Act 2000^{M8});

“NIRO Order” means any order made under Article 52 to 55F of the Northern Ireland Energy Order;

“nominated person” has the same meaning as it has in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000^{M9} or in the Electricity from Non-Fossil Fuels Sources (Scotland) Saving Arrangements Order 2005^{M10} (as the case may be);

“Non-Fossil Fuel Order” means any of the following Orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994^{M11}; the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994^{M12}; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997^{M13}; the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997^{M14}; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998^{M15}; and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999^{M16};

“Northern Ireland certificate” means a renewables obligation certificate issued by the Northern Ireland authority under the Northern Ireland Energy Order and pursuant to a NIRO Order;

“Northern Ireland Energy Order” means the Energy (Northern Ireland) Order 2003^{M17};

[^{F19}“obligation level” has the meaning given by article 12B(8);]

“obligation period” means any of the periods referred to in the first column of Schedule 1;

[^{F5}“offshore”, in relation to a generating station which generates electricity from wind, means a generating station which—

- (a) has its wind turbines situated wholly in offshore waters; and
- (b) is not connected to dry land by means of a permanent structure which provides access to land above the mean low water mark;]

“offshore waters” means—

- (a) waters in or adjacent to the United Kingdom which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964^{M18};

“on land”, in relation to the location of a generating station, means wholly or partly on land above mean high water level;

“permitted ancillary purposes” is to be construed in accordance with article 22(3) (fossil fuel or waste used for permitted ancillary purposes);

“plant”, with reference to crops or plant matter, includes shrubs and trees;

[^{F20}“post-2016 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2016, any capacity which—
 - (i) in the Authority’s view, forms part of the station from a date no earlier than 1st April 2016; and
 - (ii) does not form part of the capacity of the station as accredited;
- (b) in relation to a generating station which—
 - (i) is accredited; and
 - (ii) was not accredited on or before 31st March 2016, the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station;]

[^{F20}“pre-2013 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2013, the capacity of the station as accredited, together with any additional capacity which, in the Authority’s view, forms part of the station from a date no later than 31st March 2013;
- (b) in relation to a generating station which is registered under article 58ZA as a grace period generating station, the capacity of the station as accredited;]

“preliminary accreditation” in relation to a generating station, means accreditation of the station as one which (when commissioned) will be capable of generating electricity from renewable sources by the Authority or the Northern Ireland authority (and includes a preliminary accreditation granted before 1st April 2009);

“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 combined heat and power generating station” means a combined heat and power generating station which has been accredited under the CHPQA;

“qualifying power output”, in relation to a qualifying combined heat and power generating station, has the meaning given to it in the CHPQA;

[^{F21}“qualifying proportion”, in relation to electricity generated by a qualifying combined heat and power generating station, is the proportion which the qualifying power output of the station bears to its total power output;]

“Register” has the meaning given to it in article 59(1);

“registered holder” has the meaning given to it in paragraph 3(a) of Schedule 4;

[^{F5}“registrable additional turbine” means a wind turbine which—

- (a) forms part of the capacity of a generating station which is offshore;
- (b) does not form part of the capacity of the station as accredited; and
- (c) was not used to generate electricity before 1st April 2011;]

“regular biomass” means biomass other than—

- (a) sewage gas;
- (b) landfill gas;
- (bb) [^{F22}advanced fuel;]
- (c) energy crops; or
- (d) fuel produced by means of anaerobic digestion^{F23} ...;

[^{F24}“relevant electricity” means—

- (a) in respect of—
 - (i) any obligation period in respect of which article 12A applies; or
 - (ii) any month of an obligation period in respect of which a revised obligation level applies in accordance with article 12B(6)(a)(ii) or (b)(ii) or (7)(a) or (b)(ii),any electricity supplied to customers in Scotland other than EII excluded electricity; and
- (b) in respect of any other period, any electricity supplied to customers in Scotland;]

“relevant material” is to be construed in accordance with article [^{F25}4(1A)(a)];

[^{F26}“relevant person”, in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that property or those rights or interests;]

[^{F27}“relevant target” has the meaning given by paragraph 1 of Schedule A1A (greenhouse gas emission criteria for solid and gaseous biomass);]

“Renewable Energy Zone” has the same meaning as in section 84 of the Energy Act 2004^{M19};

[^{F5}“Renewables Directive” means Directive [2009/28/EC](#) of the European Parliament and of the Council on the promotion of the use of energy from renewable sources^{[^{F28}}, and in article 54A and [^{F29}Schedules A1 and A2] to this Order references to Annex 5 to the Renewables Directive are to Annex 5 as amended from time to time];]

“renewables obligation” has the meaning given to it in article 5;

“renewables obligation certificate” means—

- (a) a renewables obligation certificate issued by the Authority under a renewables obligation order made by the Scottish Ministers;
- (b) a renewables obligation certificate issued by the Authority under a renewables obligation order made by the Secretary of State; or
- (c) a Northern Ireland certificate;

^{F30}
.....

“Respiratory Index” means the rate of oxygen uptake expressed in milligrams of oxygen per kilogram of volatile solids per hour;

“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;

[^{F31}“revised obligation level” has the meaning given by article 12B(8);]

[^{F6}“RO capacity”, in relation to a generating station, means the generating capacity of the station other than excluded capacity;]

[^{F6}“RO eligible renewable output” is to be construed in accordance with articles 25 (calculating a generating station’s RO eligible renewable output) and 26 (RO eligible renewable output of a qualifying combined heat and power generating station);]

“Solid Recovered Fuel” means solid fuel which—

- (a) complies with the classification and specification requirements in CEN/TS 15359:2006;
- (b) is prepared from a waste which is not a hazardous waste;
- (c) has a maximum Respiratory Index value of no more than 1500 milligrams of oxygen per kilogram of volatile solids per hour when measured using the real dynamic respiration test specified in CEN/TS 15590:2007; and
- (d) when subject to a methodology for the determination of particle size in accordance with CEN/TS 15415:2006 is able to pass through an opening measuring no more than 150 millimetres in all dimensions;

“SROC” means a renewables obligation certificate issued by the Authority under a renewables obligation order made by the Scottish Ministers;

“SROC identifier” has the meaning given by paragraph 3(b) of Schedule 4;

“sewage gas” means gas formed by the anaerobic digestion of sewage (including sewage which has been treated or processed);

“specified day”, in relation to an obligation period, means the 1st September immediately following it;

[^{F5}“sustainability information” means information submitted to the Authority by the operator of a generating station for the purpose of demonstrating that a bioliquid meets the greenhouse gas emission criteria and the land criteria;]

[^{F6}“total input electricity”, in relation to a generating station, means—

- (a) the total amount of electricity used by the station for purposes directly related to its operation (including for fuel handling, fuel preparation, maintenance and the pumping of water) whether or not that electricity is generated by the station or used while the station is generating electricity; and
- (b) where the station generates electricity wholly or partly from hydrogen (other than hydrogen that constitutes fossil fuel), any electricity—
 - (i) in respect of which SROCs are or have been issued;
 - (ii) in respect of which SROCs cannot be issued by virtue of any provision of Part 4 (cases and circumstances when a SROC must not be issued); or
 - (iii) which was not generated from renewable sources;and which is used in the production of that hydrogen (regardless of where or by whom the hydrogen is produced);]

[^{F32}“total installed capacity” in relation to references to a generating station or to generating capacity of any description means the maximum capacity at which that generating station or

generating capacity could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);]

[^{F66}“total output electricity”, in relation to a generating station, means the total amount of electricity generated by that station;]

“total power output”, in relation to a qualifying combined heat and power generating station, has the meaning given to it in the CHPQA;

“transmission or distribution system” means a transmission or distribution system within the meaning of Part 1 of the Act ^{M20} or an equivalent system in Northern Ireland;

“volatile solids” means any mass loss, corrected for moisture, when a solid is heated out of contact with air under the specified conditions and using the methods in CEN/TS 15402:2006; and

[^{F33}“waste” has the meaning given in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste but—

- (a) also includes anything derived from waste; and
- (b) [^{F34}does not include landfill gas, sewage gas or any substance intentionally modified or contaminated to fall within the meaning of “waste” given in Article 3(1) of that Directive.]]

(2) Where—

- (a) waste [^{F35}, fossil derived bioliquid] or biomass is used in a generating station (whether alone or together or in combination with another fuel);
- (b) a proportion of that waste [^{F35}, fossil derived bioliquid] or biomass is, or is derived from, fossil fuel; and
- (c) in any month during which that waste [^{F35}, fossil derived bioliquid] or biomass is used that proportion varies,

references in this Order to the energy content of that waste [^{F35}, fossil derived bioliquid] or biomass and fossil fuel are references to the overall energy content of that waste [^{F35}, fossil derived bioliquid] or biomass and fossil fuel used to fuel the generating station during that month.

(3) Where two or more of the fuels listed in paragraph (4) are mixed together to form one substance which is then used in a generating station to generate electricity, the provisions of this Order apply in relation to the electricity so generated in the same way as they would apply if the electricity had been generated using those fuels without mixing them together.

[^{F36}(4) The fuels referred to in paragraph (3) are—

- (a) fossil derived bioliquid;
- (b) bioliquid (not being fossil derived bioliquid);
- (c) biomass (not being bioliquid);
- (d) waste which constitutes a renewable source (not being bioliquid or biomass); and
- (e) fossil fuel including waste (other than waste falling within sub-paragraphs (a) to (d)).]

(5) Any reference in this Order to the provision of information “in writing” includes the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(6) Any reference in this Order to the supply of electricity made to customers in Northern Ireland is to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992 ^{M21}.

(7) Any reference in this Order to a numbered Schedule is a reference to the Schedule bearing that number in this Order.

[^{F37}(8) Any reference in this Order to a “type of generating capacity” is to be construed in accordance with article 25(9) (calculating a generating station’s RO eligible renewable output).]

[^{F38}(9) A reference in this Order to residue does not, in the case of residue from processing, include a reference to any substance that is a primary aim of a production process or that the process has been deliberately modified to produce.]

- F1 Words in art. 2(1) inserted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(i)** (with art. 29)
- F2 Words in art. 2(1) inserted (8.12.2017) by [The Renewables Obligation \(Scotland\) Amendment Order 2017 \(S.S.I. 2017/432\)](#), arts. 1(1), **3(a)**
- F3 Words in art. 2(1) inserted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(ii)** (with art. 29)
- F4 Words in art. 2(1) inserted (1.12.2015) by [The Renewables Obligation \(Scotland\) Amendment Order 2015 \(S.S.I. 2015/384\)](#), arts. 1(1), **3(a)** (with art. 16)
- F5 Words in art. 2(1) inserted (1.4.2011) by [The Renewables Obligation \(Scotland\) Amendment Order 2011 \(S.S.I. 2011/225\)](#), arts. 1, **3(a)** (with art. 19)
- F6 Words in art. 2(1) inserted (1.4.2014) by [The Renewables Obligation \(Scotland\) Amendment Order 2014 \(S.S.I. 2014/94\)](#), arts. 1(1), **3(2)(a)** (with art. 27)
- F7 Words in art. 2(1) substituted (1.1.2017) by [The Combined Heat and Power Quality Assurance Regulations 2016 \(S.I. 2016/1108\)](#), regs. 1(1), **4(a)**
- F8 Words in art. 2(1) inserted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(iii)** (with art. 29)
- F9 Words in art. 2(1) substituted (1.12.2015) by [The Renewables Obligation \(Scotland\) Amendment Order 2015 \(S.S.I. 2015/384\)](#), arts. 1(1), **3(b)** (with art. 16)
- F10 Words in art. 2(1) inserted (1.12.2015) by [The Renewables Obligation \(Scotland\) Amendment Order 2015 \(S.S.I. 2015/384\)](#), arts. 1(1), **3(c)** (with art. 16)
- F11 Words in art. 2(1) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 117(2)(a)**
- F12 Words in art. 2(1) inserted (8.12.2017) by [The Renewables Obligation \(Scotland\) Amendment Order 2017 \(S.S.I. 2017/432\)](#), arts. 1(1), **3(b)**
- F13 Words in art. 2(1) substituted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(iv)** (with art. 29)
- F14 Words in art. 2 inserted (20.11.2018) by [The Renewables Obligation \(Scotland\) Amendment Order 2018 \(S.S.I. 2018/352\)](#), arts. 1(1), **3**
- F15 Words in art. 2(1) substituted (1.12.2015) by [The Renewables Obligation \(Scotland\) Amendment Order 2015 \(S.S.I. 2015/384\)](#), arts. 1(1), **3(d)** (with art. 16)
- F16 Words in art. 2(1) substituted (8.6.2015) by [The Waste \(Meaning of Hazardous Waste and European Waste Catalogue\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/188\)](#), regs. 1(1), **7**
- F17 Words in art. 2(1) omitted (27.3.2011) by virtue of [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), reg. 1(1), **Sch. para. 22(b)**
- F18 Words in art. 2(1) substituted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(v)** (with art. 29)
- F19 Words in art. 2(1) inserted (8.12.2017) by [The Renewables Obligation \(Scotland\) Amendment Order 2017 \(S.S.I. 2017/432\)](#), arts. 1(1), **3(c)**
- F20 Words in art. 2(1) inserted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(vi)** (with art. 29)
- F21 Words in art. 2(1) inserted (1.4.2013) by [The Renewables Obligation \(Scotland\) Amendment Order 2013 \(S.S.I. 2013/116\)](#), arts. 1(1), **3(a)(vii)** (with art. 29)

- F22** Words in art. 2(1) inserted (1.4.2013) by The Renewables Obligation (Scotland) Amendment Order 2013 (S.S.I. 2013/116), arts. 1(1), **3(a)(viii)(aa)** (with art. 29)
- F23** Words in art. 2(1) omitted (1.4.2013) by virtue of The Renewables Obligation (Scotland) Amendment Order 2013 (S.S.I. 2013/116), arts. 1(1), **3(a)(viii)(bb)** (with art. 29)
- F24** Words in art. 2(1) inserted (8.12.2017) by The Renewables Obligation (Scotland) Amendment Order 2017 (S.S.I. 2017/432), arts. 1(1), **3(d)**
- F25** Word in art. 2(1) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384), arts. 1(1), **3(e)** (with art. 16)
- F26** Words in art. 2(1) inserted (1.4.2017) by The Crown Estate Transfer Scheme 2017 (S.I. 2017/524), art. 1(2), **Sch. 5 para. 117(2)(b)**
- F27** Words in art. 2(1) inserted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384), arts. 1(1), **3(f)** (with art. 16)
- F28** Words in art. 2(1) inserted (1.4.2013) by The Renewables Obligation (Scotland) Amendment Order 2013 (S.S.I. 2013/116), arts. 1(1), **3(a)(ix)** (with art. 29)
- F29** Words in art. 2(1) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384), arts. 1(1), **3(g)** (with art. 16)
- F30** Words in art. 2(1) omitted (1.4.2014) by virtue of The Renewables Obligation (Scotland) Amendment Order 2014 (S.S.I. 2014/94), arts. 1(1), **3(2)(c)** (with art. 27)
- F31** Words in art. 2(1) inserted (8.12.2017) by The Renewables Obligation (Scotland) Amendment Order 2017 (S.S.I. 2017/432), arts. 1(1), **3(e)**
- F32** Words in art. 2(1) substituted (1.4.2014) by The Renewables Obligation (Scotland) Amendment Order 2014 (S.S.I. 2014/94), arts. 1(1), **3(2)(d)** (with art. 27)
- F33** Words in art. 2(1) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384), arts. 1(1), **3(h)** (with art. 16)
- F34** Words in art. 2(1) substituted (1.1.2018) by The Renewables Obligation (Amendment) Regulations 2017 (S.I. 2017/1234), regs. 1(2), **8(2)**
- F35** Words in art. 2(2) inserted (1.4.2011) by The Renewables Obligation (Scotland) Amendment Order 2011 (S.S.I. 2011/225), arts. 1, **3(c)** (with art. 19)
- F36** Art. 2(4) substituted (1.4.2011) by The Renewables Obligation (Scotland) Amendment Order 2011 (S.S.I. 2011/225), arts. 1, **3(d)** (with art. 19)
- F37** Art. 2(8) substituted (1.4.2014) by The Renewables Obligation (Scotland) Amendment Order 2014 (S.S.I. 2014/94), arts. 1(1), **3(3)** (with art. 27)
- F38** Art. 2(9) inserted (1.1.2018) by The Renewables Obligation (Amendment) Regulations 2017 (S.I. 2017/1234), regs. 1(2), **8(3)**

Marginal Citations

- M1** S.S.I. 2007/267, as amended by S.S.I. 2008/132.
- M2** ISBN 0580 485350. Copies can be obtained from the British Standards Institution at www.bsi-global.com/en/.
- M3** ISBN 0580 49548 5. Copies can be obtained from the British Standards Institution at www.bsi-global.com/en/.
- M4** ISBN 0580 49554X. Copies can be obtained from the British Standards Institution at www.bsi-global.com/en/.
- M5** ISBN 978 0 580 57654 6. Copies can be obtained from the British Standards Institution at www.bsi-global.com/en/.
- M6** ISBN 0580194825. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.
- M7** O.J. No. L 182, 16.7.1999, p.1.
- M8** 2000 c. 27; section 67(1)(c) was amended by the Energy Act 2008 (c. 32), **section 39**.
- M9** S.I. 2000/2727.
- M10** S.S.I. 2005/549.
- M11** S.I. 1994/3259.
- M12** S.I. 1994/3275 (S. 190).

- M13** S.I. 1997/248.
M14 S.I. 1997/799 (S. 76).
M15 S.I. 1998/2353.
M16 S.I. 1999/439 (S. 24).
M17 S.I. 2003/419 (N.I. 6) Articles 52 to 55F were substituted by the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (N.I.) 2009 No. 35).
M18 1964 c. 29.
M19 2004 c. 20.
M20 See section 4(4) . The definition of “distribute” contains the definition of “distribution system” and was inserted by the [Utilities Act 2007 \(c. 27\)](#), [section 28\(1\)](#) and (3)(a). The definition of “transmission system” was substituted by the [Energy Act 2004 \(c. 20\)](#) section 135(1) and (4).
M21 S.I. 1992/231 (N.I. 1).

Waste as a renewable source

3.—(1) For the purposes of sections 32 to 32M of the Act and this Order, the term “renewable sources” includes waste of which not more than 90 per cent is waste which is, or is derived from, fossil fuel.

(2) The proportion of waste which is, or is derived from, fossil fuel—

(a) is to be determined by the Authority, and

[^{F39}(b) is—

- (i) for any waste that is a fossil derived bioliquid, the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of that fossil derived bioliquid as a whole;
- (ii) for all other waste, the energy content of the fossil fuel from which the waste is in part composed or derived expressed as a percentage of the energy content of that waste as a whole.]

(3) Where waste is used (whether on its own or not) to fuel a generating station, it is for the operator of the generating station to demonstrate to the Authority's satisfaction what proportion of the waste is, or is derived from, fossil fuel.

(4) Without prejudice to paragraph (3), when determining that proportion the Authority is entitled to have regard to any material (whether or not produced to it by the operator of the generating station) if, in its opinion, that material may indicate what proportion of the waste is, or is derived from, fossil fuel.

(5) Where the operator of a generating station in which municipal waste is used satisfies the Authority—

(a) by reference to data published by an allocating authority, a waste disposal authority or a waste collection authority, that the proportion of the municipal waste so used which is, or is derived from, fossil fuel, is unlikely to exceed 50 per cent; and

(b) that the municipal waste so used has not been subject to any process before being so used that is likely to have materially increased that proportion,

that constitutes sufficient evidence of the fact that the proportion of the municipal waste so used which is, or is derived from, fossil fuel is 50 per cent.

(6) Where—

(a) municipal waste is used in a generating station and—

(i) the Authority is not satisfied as to the matters identified in paragraph (5); or

(ii) the operator of the station claims that the proportion of that waste which is, or is derived from, fossil fuel is less than 50 per cent; or

(b) waste (not being municipal waste) is used in a generating station and the Authority is not satisfied as to what proportion of the waste is, or is derived from, fossil fuel,

the Authority may require the operator of the generating station to arrange for samples of any fuel used (or to be used) in the station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner approved by the Authority, and for the results of that analysis to be made available to the Authority.

(7) In this article—

“allocating authority”^{F40} ... and “waste disposal authority” have the same meaning as in Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003^{M22}; and

“waste collection authority” has the same meaning as in Part 2 of the Environmental Protection Act 1990.

F39 Art. 3(2)(b) substituted (1.4.2011) by [The Renewables Obligation \(Scotland\) Amendment Order 2011 \(S.S.I. 2011/225\)](#), arts. 1, 4 (with art. 19)

F40 Words in art. 3(7) omitted (1.4.2014) by virtue of [The Renewables Obligation \(Scotland\) Amendment Order 2014 \(S.S.I. 2014/94\)](#), arts. 1(1), 4 (with art. 27)

Marginal Citations

M22 2003 c. 33. See sections 21 and 24 of that Act.

Biomass and fuels which are to be treated as biomass

4.—^{F41}(1) In this Order “biomass” means fuel which—

- (a) falls within paragraph (1A);
- (b) falls within paragraph (1B); or
- (c) is a fossil derived bioliquid.

(1A) Fuel falls within this paragraph if—

- (a) at least 90 per cent of its energy content is derived from material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi^{F42}, algae or bacteria (“relevant material”); and
- (b) any fossil fuel forming part of the fuel is present following a process—
 - (i) to which the relevant material has been subject; and
 - (ii) the undertaking of which has caused the fossil fuel to be present in, on or with that material even though that was not the object of the process.

(1B) Fuel falls within this paragraph if—

- (a) at least 90 per cent of its energy content is derived from [^{F43}relevant material];
- (b) it is waste; and
- (c) any fossil fuel forming part of it was not added to it with a view to the fossil fuel being used as a fuel.]

(2) For the purposes of this Order except for article 54 (information to be provided to the Authority where electricity is generated from biomass), a fuel which is used in a generating station with biomass but which is not biomass (including, where two or more of the fuels listed in article 2(4) are mixed together before being so used, each of those fuels which is not biomass) is to be treated as biomass if—

- (a) the energy content of the fuel is derived in part from relevant material and in part from fossil fuel;
 - (b) either—
 - (i) the fossil fuel is present in it following a process—
 - (aa) to which its relevant material has been subject; and
 - (bb) the undertaking of which has caused the fossil fuel to be present in, on or with that material even though that was not the object of the process; or
 - (ii) it is waste and the fossil fuel forming part of it was not added to it with a view to its being used as a fuel; and
 - (c) at least 90 per cent of the total energy content of the fuel and the biomass with which the fuel is used is derived from relevant material.
- (3) Accordingly, any reference in this Order to biomass, other than in article 54, is to be construed as a reference to biomass or fuel which (by virtue of paragraph (2)) is to be treated as biomass.
- (4) Where biomass (not being waste [^{F44}or fossil derived bioliquid]) is used, whether on its own or not, to fuel a generating station and a proportion of it is composed of fossil fuel, the proportion of it which is composed of fossil fuel—
- (a) is to be determined by the Authority; and
 - (b) is the energy content of the fossil fuel from which it is in part composed expressed as a percentage of its energy content as a whole.
- (5) It is for the operator of the generating station to demonstrate to the Authority's satisfaction what proportion of the biomass is fossil fuel.
- (6) When determining that proportion the Authority is entitled to have regard to any material (whether or not produced to it by the operator of the generating station) if, in its opinion, that material may indicate what proportion of the biomass is fossil fuel.
- (7) For the purposes of this article, fossil fuel is not to be regarded as being derived directly or indirectly from [^{F45}relevant material].

F41	Art. 4(1)-(1B) substituted for art. 4(1) (1.4.2013) by The Renewables Obligation (Scotland) Amendment Order 2013 (S.S.I. 2013/116) , arts. 1(1), 4 (with art. 29)
F42	Words in art. 4(1A)(a) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384) , arts. 1(1), 4(a) (with art. 16)
F43	Words in art. 4(1B)(a) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384) , arts. 1(1), 4(b) (with art. 16)
F44	Words in art. 4(4) inserted (1.4.2011) by The Renewables Obligation (Scotland) Amendment Order 2011 (S.S.I. 2011/225) , arts. 1, 5 (with art. 19)
F45	Words in art. 4(7) substituted (1.12.2015) by The Renewables Obligation (Scotland) Amendment Order 2015 (S.S.I. 2015/384) , arts. 1(1), 4(c) (with art. 16)

[^{F46}Fossil derived bioliquid]

- 4A.**—(1) For the purposes of this Order, fossil derived bioliquid is to be treated as being in part composed of (or in part derived from) fossil fuel.
- (2) Where fossil derived bioliquid (not being waste) is used, whether on its own or not, to fuel a generating station, the proportion of the fossil derived bioliquid which is to be treated as being composed of (or derived from) fossil fuel—
- (a) is to be determined by the Authority, and

(b) is the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of the fossil derived bioliquid as a whole.

(3) It is for the operator of the generating station to demonstrate to the Authority's satisfaction what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.

(4) When determining that proportion the Authority is entitled to have regard to any material (whether or not produced to it by the operator of the generating station) if, in its opinion, that material indicates what proportion of the fossil derived bioliquid is to be treated as being composed of (or derived from) fossil fuel.]

F46 Art. 4A inserted (1.4.2011) by [The Renewables Obligation \(Scotland\) Amendment Order 2011 \(S.S.I. 2011/225\)](#), arts. 1, 6 (with art. 19)

Changes to legislation:

There are currently no known outstanding effects for the The Renewables Obligation (Scotland) Order 2009, PART 1.