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SCOTTISH STATUTORY INSTRUMENTS

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**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—

“the Act” means the Electricity Act 1989;

“the 2007 Order” means the Renewables Obligation (Scotland) Order 2007(1);

“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;

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

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

“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(2);

“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(3);

“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(4);

“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

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(1) S.S.I. 2007/267, as amended by S.S.I. 2008/132.

(2) ISBN 0580 485350. Copies can be obtained from the British Standards Institution at [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(3) ISBN 0580 49548 5. Copies can be obtained from the British Standards Institution at [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(4) ISBN 0580 49554X. Copies can be obtained from the British Standards Institution at [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

heating using the real dynamic respiration index.” published by the European Committee for Standardisation on 29th June 2007(5);

“CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009, as published by the Department for Environment, Food and Rural Affairs, and Guidance Note 44 (Use of CHPQA (expected to apply from April 2009) to obtain Renewables Obligation Certificates ( ROCs) Including Under a Banded Obligation), published by the Department of Energy and Climate Change in November 2008(6);

“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;

“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 section 839 of the Income and Corporation Taxes Act 1988(7);

“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;

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

“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(8));

“energy crop” means a plant crop planted after 31st December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following–

- (a) *miscanthus giganteus* (a perennial grass);
- (b) *salix* (also known as short rotation coppice willow); or
- (c) *populus* (also known as short rotation coppice poplar);

(5) ISBN 978 0 580 57654 6. Copies can be obtained from the British Standards Institution at [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(6) Product code for the Standard [00EP0798]. Copies of Standard and Guidance Note 44 can be obtained from [www.chpqa.com](http://www.chpqa.com).

(7) 1988 c. 1. Section 839 was amended by section 74 of, and Schedule 17, paragraph 20 to, the Finance Act 1995 (c. 4), sections 89 and 178 of, and Schedule 13, Part 2, paragraphs 7, 25 and 27(1) and Schedule 26, Part 3 to, the Finance Act 2006 (c. 25), section 1027 of and Schedule 1, Part 1, paragraphs 1 and 223 to, the Income Tax Act 2007 (c. 3), and regulations 47 and 100 of S.I. 2005/3229.

(8) ISBN 0580194825. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

“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;

“hazardous waste” means any waste which is hazardous waste as defined by Article 1(4) of the Hazardous Waste Directive;

“Hazardous Waste Directive” means Council Directive [91/689/EEC](#) on hazardous waste<sup>(9)</sup>, as amended by Council Directive [94/31/EC](#)<sup>(10)</sup>;

“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);

“landfill” has the meaning given in Article 2(g) of Council Directive [1999/31/EC](#)<sup>(11)</sup>;

“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;

“microgenerator” means a 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);

“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<sup>(12)</sup>);

“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<sup>(13)</sup> or in the Electricity from Non-Fossil Fuels Sources (Scotland) Saving Arrangements Order 2005<sup>(14)</sup> (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<sup>(15)</sup>; the Electricity (Non-Fossil Fuel Sources)

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(9) O.J. No. L 377, 31.12.1991, p.20.

(10) O.J. No. L 168, 2.7.1994, p.28.

(11) O.J. No. L 182, 16.7.1999, p.1.

(12) [2000 c. 27](#); section 67(1)(c) was amended by the Energy Act 2008 (c. 32), section 39.

(13) [S.I. 2000/2727](#).

(14) [S.S.I. 2005/549](#).

(15) [S.I. 1994/3259](#).

(Scotland) Order 1994**(16)**; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997**(17)**; the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997**(18)**; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998**(19)**; and the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999**(20)**;

“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**(21)**;

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

“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**(22)**;

“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;

“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;

“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;

“regular biomass” means biomass other than—

- (a) sewage gas;
- (b) landfill gas;
- (c) energy crops; or
- (d) fuel produced by means of anaerobic digestion, gasification or pyrolysis;

“relevant material” is to be construed in accordance with article 4(1)(a);

**(16)** S.I. 1994/3275 (S. 190).

**(17)** S.I. 1997/248.

**(18)** S.I. 1997/799 (S. 76).

**(19)** S.I. 1998/2353.

**(20)** S.I. 1999/439 (S. 24).

**(21)** 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).

**(22)** 1964 c. 29.

“Renewable Energy Zone” has the same meaning as in section 84 of the Energy Act 2004<sup>(23)</sup>;

“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;

“renewable output” is to be construed in accordance with articles 25 and 26;

“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;

“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;

“total installed 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);

“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<sup>(24)</sup> or an equivalent system in Northern Ireland;

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<sup>(23)</sup> 2004 c. 20.

<sup>(24)</sup> 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).

“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

“waste” has the meaning given to it in section 75(2) of the Environmental Protection Act 1990<sup>(25)</sup> but does not include gas derived from landfill sites or gas produced from the treatment of sewage.

(2) Where—

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

references in this Order to the energy content of that waste or biomass and fossil fuel are references to the overall energy content of that waste 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.

(4) The fuels referred to in paragraph (3) are biomass, waste (not being biomass) which constitutes a renewable source and fossil fuel (including waste which does not constitute a renewable source).

(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<sup>(26)</sup>.

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

### **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
- (b) is 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 the 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.

<sup>(25)</sup> 1990 c. 43, as amended by section 120(1) of and paragraph 88(1) and (2) of Schedule 22 to the Environment Act 1995 (c. 25).

<sup>(26)</sup> S.I. 1992/231 (N.I. 1).

(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”, “municipal waste” and “waste disposal authority” have the same meaning as in Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003<sup>(27)</sup>; and  
“waste collection authority” has the same meaning as in Part 2 of the Environmental Protection Act 1990.

### **Biomass and fuels which are to be treated as biomass**

4.—(1) In this Order, “biomass” means fuel used in a generating station where—

- (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 or algae (“relevant material”); and
- (b) if fossil fuel forms part of it—
  - (i) the fossil fuel is present following a process—
    - (aa) to which the 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) the fossil fuel is waste and was not added to it with a view to its 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;

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(27) 2003 c. 33. See sections 21 and 24 of that Act.

- (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) 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 plant matter, animal matter, fungi or algae.