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DRAFT STATUTORY INSTRUMENTS

2004 No.

ELECTRICITY, ENGLAND AND WALES

The Renewables Obligation (Amendment) Order 2004

Made - - - - *2004*
Coming into force - - *1st April 2004*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 32(9) of the Electricity Act 1989(1) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 32 to 32C of the Electricity Act 1989(2) and having consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, electricity suppliers to whom this order applies, generators of electricity from renewable sources and such other persons as she considers appropriate, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Renewables Obligation (Amendment) Order 2004 and shall come into force on 1st April, 2004.

(2) This Order extends to England and Wales only.

Amendment

2.—(1) The Renewables Obligation Order 2002(3) shall be amended as set out in the following paragraphs of this article.

(2) Article 2(1) shall be amended by substituting the words “an owner or operator of a generating station, or a party to a qualifying arrangement” for the words “an operator of a generating station”, in the definition of “connected person”.

(1) 1989 c. 29. Section 62 of the Utilities Act 2000 (c. 27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted.
(2) Sections 32A to 32C of the Electricity Act 1989 were inserted by sections 63 to 65 respectively of the Utilities Act 2000.
(3) S.I. 2002/914.

(3) Article 2(1) shall be amended by the deletion of the words “, in relation to a hydro generating station,” from the definition of “declared net capacity”.

(4) Article 2(1) shall be amended by the insertion of the following definition of “energy content” after the definition of “eligible renewable sources”—

““energy content” of a fuel means the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel;”.

(5) Article 2(1) shall be amended by replacing the definition of “micro hydro generating station” with the following definition—

““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 ever been a qualifying arrangement as defined in section 33 of the Act (as that section was originally enacted);”.

(6) Article 2(1) shall be amended by deleting the definition of “minimal fossil use generating station”.

(7) After article 2(4) there shall be inserted the following—

“(5) In the case of a generating station with a declared net capacity of 50 kilowatts or less the reference to “month” in each place where it occurs in articles 2(1) (definition of “biomass”), 3(4), 4, 5, 8 and 9 and Schedule 2 shall be taken to be a reference to “obligation period”, subject to the following exceptions—

- (a) in article 4(12)(a) the references to “the second month” and to “the said second month” shall remain unchanged;
- (b) in article 4(13) the words “of each month” shall be omitted, and the reference to “the end of the second month” shall remain unchanged; and
- (c) in paragraph 2(b)(i) of Schedule 2 the words “the month and year” shall be replaced by “the obligation period”.”.

(8) Article 3(4) shall be replaced with the following—

“(4) In respect of any obligation period which falls—

- (a) within the period from 1st April 2002 up to and including 31st March 2006, no more than 25 per cent;
- (b) within the period from 1st April 2006 up to and including 31st March 2011, no more than 10 per cent; and
- (c) within the period from 1st April 2011 up to and including 31st March 2016, no more than 5 per cent

of a designated electricity supplier’s renewables obligation may be satisfied by the production of certificates issued in respect of generating stations which, during the month to which a certificate relates, have been fuelled partly by fossil fuel (as defined in article 8) and partly by biomass (and by no other fuel).”.

(9) Article 4(10)(c) shall be amended by inserting, after the word “declaration”, the following—

“(which the Authority shall be entitled to accept as sufficient evidence of its contents).”

(10) Article 4(10)(c)(i) shall be amended by deleting the word “and”.

(11) Article 4(10)(c)(ii) shall be amended by inserting the word “and” at the end of that article.

(12) After head (ii) of article 4(10)(c) there shall be inserted the following sub-paragraph—

“(iii) he is not a person mentioned in article 8(2A)(b)(ii) or article 8(11)(b)(ii) .”.

(13) After article 4(10) there shall be inserted the following—

“(10A) Where a ROC, if issued, will be issued to an electricity supplier pursuant to paragraph (8)(a) or (b), the references in paragraph (10)(c) to the operator of the generating station shall be treated as references to that electricity supplier; but paragraph (10)(c)(iii) shall not apply.”.

(14) Article 5(1)(a) shall be amended by inserting, after the words “pursuant to article 4(10)(c)”, the words “or by the electricity supplier pursuant to article 4(10A)”.

(15) Article 8(2)(b) shall be amended by replacing the words “subject to paragraph (5)” with the words “subject to paragraphs (5) and (5A)”.

(16) Article 8(2)(c) shall be amended by inserting the word “and” at the end.

(17) Article 8(2)(d) shall be amended by deleting the word “and”.

(18) Article 8(2)(e) shall be deleted and the following shall be inserted after article 8(2)(d)—

“(2A) –

(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 Order 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 (11), in relation to a person who is a party to the applicable qualifying arrangement (“the first person”), another person (“the second person”) is a “linked person” where the second person has given or has arranged to give or has ensured or has arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location.

(e) The references in sub-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.”.

(19) Article 8(3) shall be replaced with the following—

“(3) 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.”.
- (20) Articles 8(4) and 8(5) shall each be amended by deleting the words “unless during that month it is a minimal fossil use generating station”.
- (21) After article 8(5) there shall be inserted the following—
- “(5A) 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) during no month (being a month after March 2004) after the first month during which it was fuelled wholly by biomass has the energy content of the fuel by which it was fuelled been derived as to more than 75 per cent from fossil fuel.”.
- (22) Article 8(6) shall be replaced by the following—
- “(6) –
- (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.”.
- (23) Article 8(7) shall be replaced by the following—
- “(7) 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).”.
- (24) Article 8(11) shall be replaced with the following—
- “(11) –
- (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 (as defined in paragraph (2A)(d)) 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.”.
- (25) Article 8(13)(b) shall be deleted.
- (26) Article 8(13)(c) shall be amended by adding the word “and” at the end.

(27) After article 8(13)(c) there shall be inserted the following—

“(d) “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.”.

(28) After article 8(13) there shall be inserted the following—

“(14) 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.

(15) For the purposes of this article and article 3(4), 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 energy sources by which it is fuelled.

(16) 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.”.

(29) Article 9(1) shall be amended by replacing the words “Subject to paragraph (2)” with “Subject to paragraphs (2) and (3A)”.

(30) After article 9(3) there shall be inserted the following—

“(3A) Where the operator of a generating station satisfies the Authority that in any month the input electricity of the generating station does not exceed 0.5 per cent of its gross output, no input electricity shall be deducted from the gross output in calculating the net output of the generating station for that month and, accordingly, the net output shall be equal to the gross output in that month.”.

(31) Article 9(4)(c) shall be replaced with the following—

“(c) “input electricity” means, in relation to any month, all the electricity used by a generating station in that month (whether or not it is generated by the generating station and whether or not it is used while the generating station is generating electricity) for a purpose directly relating to the operation of that generating station, including fuel handling, fuel preparation, maintenance and pumping water.”.

(32) Article 10 shall be amended by inserting the words “by an electricity supplier” after the word “supplied”.

(33) After article 12(3) there shall be added the following—

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

- (a) which is received by the Authority in respect of an obligation period (“the obligation period in question”) on or after the specified day relating to that obligation period; and
- (b) which, had it been so received before the specified day, would have been an amount received under article 7(1) in respect of the obligation period in question.

(5) The aggregate at any given time of the late payments received in respect of an obligation period (together with any interest received thereon by the Authority) is referred to in this article as the “late payment fund” for the obligation period in question.

(6) Not later than the 1st April immediately following the specified day for the obligation period in question, and at least once within every six month period thereafter, the Authority shall pay out the late payment fund for the obligation period in question in accordance with the system of allocation specified in paragraph (3), as if—

- (a) the references in that paragraph to “the buy-out fund” were references to that late payment fund; and
- (b) the references in that paragraph to a “relevant obligation period” were references to the obligation period in question.”.

(34) Paragraph 6(b) of Schedule 2 shall be replaced with the following—

- “(b) the Authority shall, in any September, within 10 banking days and in all other instances, within 5 banking days after the banking day on which it is first in receipt at the commencement of its working hours of requests which comply with paragraph 6(a) amend the particulars of the ROC recorded in the Register to show the substitute as the registered holder.”

Minister of State for Energy, E-commerce and
Postal Services,
Department for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the [Renewables Obligation Order 2002 \(2002 No. 914\)](#) (“the Renewables Obligation Order”), which imposes an obligation (“the renewables obligation”) on all electricity suppliers, which are licensed under the Electricity Act 1989 and which supply electricity in England and Wales, to supply to customers in Great Britain specified amounts of electricity generated by using renewable sources.

Article 2(7) provides for the issue of renewables obligation certificates (“ROCs”) to the operators of generating stations with a capacity of 50 kilowatts or less by enabling ROCs to be issued on the basis of annual rather than monthly output.

Article 2(8) establishes a timetable determining the extent to which electricity suppliers may satisfy their renewables obligation by producing ROCs issued in respect of generating stations fuelled partly by biomass and partly by fossil fuel.

Article 2(13) provides for electricity suppliers rather than generating station operators to make declarations to the Authority in certain circumstances.

Articles 2(18) and 2(24) determine the eligibility for ROCs of generating stations situated at locations subject to a Non-Fossil Fuel Obligation Order.

Article 2(22) establishes a timetable governing the percentage of energy content that must be derived from energy crops in biomass which is used to fuel stations that are also fuelled by fossil fuel.

Article 2(28) provides for the basis on which the fuel by which a generating station is fuelled is to be determined.

Article 2(33) provides for the receipt and distribution of “late” payments into the buyout fund established by article 12 of the Renewables Obligation Order (payments into the fund being an alternative means of compliance with the renewables obligation).

Regulatory Impact Assessments are available on DTI’s website under http://www.dti.gov.uk/energy/renewables/policy/closed_consultations.shtml Copies have been placed in the libraries of both Houses of Parliament.