
STATUTORY INSTRUMENTS

1999 No. 439 (S. 24)

ELECTRICITY

The Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999

<i>Made</i>	- - - -	<i>24th February 1999</i>
<i>Laid before Parliament</i>		<i>25th February 1999</i>
<i>Coming into force</i>	- -	<i>18th March 1999</i>

The Secretary of State, previous orders⁽¹⁾ under section 32 of the Electricity Act 1989⁽²⁾ having had effect in relation to each public electricity supplier in Scotland, in exercise of the powers conferred on him by section 32(1) and (2) of that Act and of all other powers enabling him in that behalf and after consultation in accordance with section 32(1), hereby makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999 and shall come into force on 18th March 1999.

(2) This Order does not apply to England and Wales.

Interpretation

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

“commissioning process” means the process consisting of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a non-fossil fuel generating station of any description specified in Schedule 1 in order—

(a) to demonstrate that such a non-fossil fuel generating station is—

(i) capable of commercial operation; or

(ii) in the case of a non-fossil fuel generating station which is the subject of relevant arrangements, capable of commercial operation for the purpose of such arrangements;

(1) S.I.1994/3275 and 1997/799.

(2) 1989 c. 29.

- (b) to establish the external physical conditions outside the control of the operator which are necessary for the operation of such station or which control the amount of electricity produced by the station; and
- (c) to establish the operating parameters within which such station, can be operated in accordance with practices, methods and procedures which are or should be adopted by a person exercising that degree of judgement, skill, diligence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of operating such a station lawfully;

“generating set” means a prime mover and alternator;

“industrial waste” includes food-processing waste;

“operator” means an operator of any relevant non-fossil fuel generating station;

“premium price arrangement” means an arrangement made before the day on which this Order is made under which a public electricity supplier or a person on behalf of a public electricity supplier agrees to purchase electricity generated by a non-fossil fuel generating station at any time in the period commencing on 21st July 1993 and ending on 31st March 2019 (whether or not the agreement covers other periods) for a fixed price per kilowatt-hour (kWh) and for this purpose any provision for adjustment of the price by reference to any measure of inflation shall be disregarded;

“relevant arrangements” means arrangements evidence of the making of which is produced to the Director in accordance with article 3(1);

“relevant non-fossil fuel generating station” means a generating station with an installed capacity not exceeding 15 megawatts, of a description specified in Schedule 1 and falling within the description of non-fossil fuel generating station specified in article 3(2);

“Scottish Power plc” means Scottish Power P.L.C., a company incorporated under the Companies Acts under Number 117120, having its registered office at 1 Atlantic Quay, Glasgow G3 8SP;

“Scottish and Southern Energy plc” means Scottish Hydro Electric P.L.C., a company incorporated under the Companies Act under Number 117119, having its registered office at 10 Dunkeld Road, Perth PH1 5WA; and

“waste to energy generating station” has the meaning given to it in paragraph 3(2) of Schedule 1.

(2) In Schedule 1–

- (a) where a definition refers to generating stations which are fuelled by a particular non-fossil fuel or fuels, this includes generating stations which use fossil fuel for one or more of the following purposes–

- (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;

provided that in any period shown in Tables A to F in Schedule 1, the energy content of the fossil fuel, that is to say the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel, used in the generating station does not exceed 10% of the energy content of all the fuel used; and

- (b) the specified amounts of generating capacity are expressed in megawatts.

(3) In this Order, unless the content otherwise requires, any reference–

- (a) to a numbered article is to the article bearing that number in this Order;

- (b) in an article to a numbered paragraph is to the paragraph bearing that number in that article; and
- (c) to a numbered Schedule is to the Schedule to this Order bearing that number.

Requirement to make arrangements etc.

3.—(1) Each public electricity supplier in Scotland shall before 1st May 1999 make, in so far as he has not already done so, and produce to the Director evidence showing that he has made such additional arrangements as will secure that for each period shown in tables A to F in Schedule 1 the aggregate amount of generating capacity available to him from the non-fossil fuel generating stations of the description specified in relation to each table and falling within the description of non-fossil fuel generating station specified in paragraph (2), will not be less than the amount specified in that table in relation to him for that period.

- (2) The description of non-fossil fuel generating station specified in this paragraph is either—
 - (a) a non-fossil fuel generating station, other than a waste to energy generating station which is fuelled as specified in sub-paragraph (a) of paragraph 3(2) of Schedule 1, and in respect of which—
 - (i) the commissioning process was not satisfactorily completed before 3rd December 1997;
 - (ii) there is not and has not been a premium price arrangement, other than a relevant arrangement, under which any payment has been or may be made in respect of electricity generated before 1st April 2019 by such station; and
 - (iii) the commissioning and operation would not reduce the declared net capacity of any other non-fossil fuel generating station existing at its planned commissioning date; or
 - (b) a waste to energy generating station which—
 - (i) is fuelled as specified in sub-paragraph (a) of paragraph 3(2) of Schedule 1; and
 - (ii) has new foundations;but which may use an existing gas collection system, provided that, during the period of the relevant arrangements entered into in relation to that generating station, it—
 - (a) will not adversely affect the supply of gas to another generating set which is connected to that system; and
 - (b) would not have adversely affected the supply of gas to another generating set which was connected to that system at 3rd December 1997 but is no longer so connected.

4.—(1) Where—

- (a) any relevant arrangements provide that the availability to a public electricity supplier of some or all of the generating capacity of a non-fossil fuel generating station is conditional upon the satisfaction of any requirement described in Schedule 2 (conditions precedent) whether the requirement is described in the terms of that Schedule or in terms to the like effect; and
- (b) on the first day of any specified period, some or all of that capacity is not available to the supplier, by reason of any such requirement not being satisfied as was then due, or had previously been due on or prior to such date, under those arrangements to have been satisfied;

then in relation to any day during that or any subsequent specified period ascertained in accordance with paragraph (3), this Order shall have effect as if the relevant aggregate amount specified in relation to that subsequent period were the amount specified in relation to that supplier for the period which includes that day in the table in question in Schedule 1 less (subject to the following proviso)

an amount equal to the sum of any capacity whose availability is at that time conditional upon the satisfaction of such requirement or requirements and any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events as are referred to in paragraph (2);

provided that the amount so specified shall not be reduced so as to be less than the relevant aggregate amount actually available to that supplier under the relevant arrangements during that specified period.

(2) Where—

- (a) any relevant arrangements provide that some or all of the generating capacity to be made available under those arrangements may reduce or cease to be available to a public electricity supplier following the occurrence of any event mentioned in Schedule 3 (termination events) whether the event is described in the terms of that Schedule or in terms to the like effect; and
- (b) some or all of that capacity is not available to the supplier, on a day during a specified period, because such an event has occurred;

the specified period shall forthwith terminate and, in relation to any day during any subsequent specified period ascertained in accordance with paragraph (3) this Order shall have effect as if the relevant aggregate amount specified in relation to that subsequent period were the amount specified in relation to that supplier for the period which includes that day in the table in question in Schedule 1, less an amount equal to the sum of any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events and any capacity whose availability is at that time conditional upon the satisfaction of any such requirement or requirements as are referred to in paragraph (1), but subject to the proviso contained in that paragraph.

(3) In this article “specified period” means, in relation to any public electricity supplier, a period commencing and ending on the dates specified in a table in Schedule 1 but so that—

- (a) on any such day as is mentioned in paragraph (1)(b) there shall be substituted, in place of any specified period that would otherwise have commenced on that day, a period commencing on such day and expiring (subject to sub-paragraphs (c) and (d) of this paragraph) on the day on which the requirement mentioned in paragraph (1)(b) above is satisfied either wholly or in part;
- (b) upon the expiry of any specified period ascertained in accordance with this sub-paragraph or with sub-paragraph (a) of this paragraph, the next specified period shall commence on the following day and shall continue, subject to sub-paragraphs (c) and (d) of this paragraph, until the day on which the requirement mentioned in paragraph (1)(b) is either wholly satisfied or further satisfied in part;
- (c) on any such day as is mentioned in paragraph (2)(b), the then current specified period shall forthwith terminate and shall be followed by a new period commencing immediately upon such termination; and
- (d) any specified period which is current on any of the period end dates specified in the table shall expire on that date.

Meridian Court Glasgow
24th February 1999

Gus Macdonald
Parliamentary Under Secretary of State, The
Scottish Office

SCHEDULE 1

Articles 2, 3 and 4

SPECIFIED AGGREGATE AMOUNTS OF GENERATING CAPACITY

Biomass generating stations

1.—(1) Table A below relates to biomass generating stations—

TABLE A

BIOMASS GENERATING STATIONS

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	—	—
1 April 2000 to 31 March 2001	—	—
1 April 2001 to 31 March 2002	6.047	2.016
1 April 2002 to 31 March 2003	9.675	3.225
1 April 2003 to 31 March 2004	9.675	3.225
1 April 2004 to 31 March 2005	9.675	3.225
1 April 2005 to 31 March 2006	9.675	3.225
1 April 2006 to 31 March 2007	9.675	3.225
1 April 2007 to 31 March 2008	9.675	3.225
1 April 2008 to 31 March 2009	9.675	3.225
1 April 2009 to 31 March 2010	9.675	3.225
1 April 2010 to 31 March 2011	9.675	3.225
1 April 2011 to 31 March 2012	9.675	3.225
1 April 2012 to 31 March 2013	9.675	3.225
1 April 2013 to 31 March 2014	9.675	3.225
1 April 2014 to 31 March 2015	9.675	3.225
1 April 2015 to 31 March 2016	9.675	3.225
1 April 2016 to 31 March 2017	3.268	1.209
1 April 2017 to 31 March 2018	—	—
1 April 2018 to 31 March 2019	—	—

(2) “Biomass generating stations” means generating stations which—

(a) are fuelled by one or more of the following—

- (i) crops grown for the purpose of providing a source of energy;
- (ii) forestry waste; and
- (iii) fuel derived from either or both of these materials,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

but excluding any such station as is fuelled by one or more of the following—

- (aa) gas derived from landfill sites of any description;
- (bb) municipal waste;
- (cc) industrial waste;
- (dd) agricultural waste;
- (ee) sewage matter or gas or waste derived therefrom; and
- (ff) fuel derived from one or more of the materials mentioned in heads (aa) to (ee) above; and

(b) are driven—

- (i) wholly by an internal-combustion engine or a gas turbine, using gaseous or liquid fuel produced by gasification-by-partial-combustion or by pyrolysis of the fuel allowed by sub-paragraph (a) above; or
- (ii) partly by an internal-combustion engine or a gas turbine, using such gaseous or liquid fuel and partly by any engine or any turbine, using steam produced from—
 - (aa) heat from the first engine or turbine; or
 - (bb) heat produced during the production of the gaseous or liquid fuel.

Hydro generating stations

2.—(1) Table B below relates to hydro generating stations—

TABLE B

HYDRO GENERATING STATIONS

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	—	—
1 April 2000 to 31 March 2001	1.188	0.396
1 April 2001 to 31 March 2002	2.555	0.852
1 April 2002 to 31 March 2003	2.930	0.977
1 April 2003 to 31 March 2004	2.930	0.977
1 April 2004 to 31 March 2005	2.930	0.977
1 April 2005 to 31 March 2006	2.930	0.977
1 April 2006 to 31 March 2007	2.930	0.977
1 April 2007 to 31 March 2008	2.930	0.977
1 April 2008 to 31 March 2009	2.930	0.977
1 April 2009 to 31 March 2010	2.930	0.977
1 April 2010 to 31 March 2011	2.930	0.977
1 April 2011 to 31 March 2012	2.930	0.977
1 April 2012 to 31 March 2013	2.930	0.977

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 2013 to 31 March 2014	2.930	0.977
1 April 2014 to 31 March 2015	2.930	0.977
1 April 2015 to 31 March 2016	1.742	0.581
1 April 2016 to 31 March 2017	0.375	0.125
1 April 2017 to 31 March 2018	–	–
1 April 2018 to 31 March 2019	–	–

(2) “Hydro generating stations” means generating stations which are driven by any form of water power other than–

- (a) tidal or wave power; or
- (b) power from water which has been elevated or whose pressure has been increased, except where this has been done, directly or indirectly, by power derived from a relevant non-fossil fuel generating station other than a generating station which is itself the subject either of a premium price arrangement or of relevant arrangements.

Waste to energy generating stations

3.—(1) Table C below relates to waste to energy generating stations–

TABLE C

WASTE TO ENERGY GENERATING STATIONS

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	0.380	0.127
1 April 2000 to 31 March 2001	13.127	4.376
1 April 2001 to 31 March 2002	20.750	6.917
1 April 2002 to 31 March 2003	23.115	7.705
1 April 2003 to 31 March 2004	33.964	11.321
1 April 2004 to 31 March 2005	37.739	12.580
1 April 2005 to 31 March 2006	37.528	12.509
1 April 2006 to 31 March 2007	36.679	12.226
1 April 2007 to 31 March 2008	36.621	12.207
1 April 2008 to 31 March 2009	36.621	12.207
1 April 2009 to 31 March 2010	35.891	11.964
1 April 2010 to 31 March 2011	35.657	11.886
1 April 2011 to 31 March 2012	35.657	11.886

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 2012 to 31 March 2013	35.657	11.886
1 April 2013 to 31 March 2014	35.207	11.736
1 April 2014 to 31 March 2015	34.827	11.609
1 April 2015 to 31 March 2016	21.701	7.234
1 April 2016 to 31 March 2017	16.244	5.415
1 April 2017 to 31 March 2018	13.879	4.626
1 April 2018 to 31 March 2019	3.225	1.075

(2) “Waste to energy generating stations” means generating stations which are fuelled by either—

(a) gas derived from landfill sites on which, at any time before 4th December 1997, activities were carried on in pursuance of a licence issued under section 5 of the Control of Pollution Act 1974⁽³⁾ or in accordance with conditions specified in a resolution passed by the relevant disposal authority under section 11(3)(e) of that Act but excluding any such station as is partially fuelled by one or more of the following:—

- (i) gas derived from landfill sites of any other description;
- (ii) municipal waste;
- (iii) industrial waste;
- (iv) fuel derived from municipal waste or industrial waste;
- (v) human sewage; and
- (vi) gas or waste from human sewage; or

(b) one or more of the following:—

- (i) municipal waste;
- (ii) industrial waste; and
- (iii) fuel derived from municipal waste or industrial waste,

but excluding any such station as is partially fuelled by one or more of the following:—

- (aa) human sewage;
- (bb) gas or waste in either case derived from human sewage; and
- (cc) gas derived from any landfill site.

Wind generating stations

4.—(1) Table D below relates to wind generating stations—

(3) 1974 c. 40; section 5 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 34, Part II and by The Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 31(1).

TABLE D**WIND GENERATING STATIONS**

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	1.556	0.519
1 April 2000 to 31 March 2001	8.775	2.925
1 April 2001 to 31 March 2002	26.359	8.786
1 April 2002 to 31 March 2003	42.095	14.032
1 April 2003 to 31 March 2004	47.622	15.874
1 April 2004 to 31 March 2005	47.622	15.874
1 April 2005 to 31 March 2006	47.622	15.874
1 April 2006 to 31 March 2007	47.622	15.874
1 April 2007 to 31 March 2008	47.622	15.874
1 April 2008 to 31 March 2009	47.622	15.874
1 April 2009 to 31 March 2010	47.622	15.874
1 April 2010 to 31 March 2011	47.622	15.874
1 April 2011 to 31 March 2012	47.622	15.874
1 April 2012 to 31 March 2013	47.622	15.874
1 April 2013 to 31 March 2014	47.622	15.874
1 April 2014 to 31 March 2015	46.066	15.355
1 April 2015 to 31 March 2016	38.847	12.949
1 April 2016 to 31 March 2017	21.263	7.088
1 April 2017 to 31 March 2018	5.527	1.842
1 April 2018 to 31 March 2019	—	—

(2) In this paragraph “wind generating stations” means generating stations which are driven by wind, having a generating capacity exceeding 1 megawatt.

Small wind generating stations

5.—(1) Table E below relates to small wind generating stations—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

TABLE E**SMALL WIND GENERATING STATIONS**

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	0.399	0.133
1 April 2000 to 31 March 2001	2.531	2.391
1 April 2001 to 31 March 2002	6.399	5.814
1 April 2002 to 31 March 2003	7.741	6.261
1 April 2003 to 31 March 2004	7.741	6.261
1 April 2004 to 31 March 2005	7.741	6.261
1 April 2005 to 31 March 2006	7.741	6.261
1 April 2006 to 31 March 2007	7.741	6.261
1 April 2007 to 31 March 2008	7.741	6.261
1 April 2008 to 31 March 2009	7.741	6.261
1 April 2009 to 31 March 2010	7.741	6.261
1 April 2010 to 31 March 2011	7.741	6.261
1 April 2011 to 31 March 2012	7.741	6.261
1 April 2012 to 31 March 2013	7.741	6.261
1 April 2013 to 31 March 2014	7.263	6.102
1 April 2014 to 31 March 2015	7.342	6.128
1 April 2015 to 31 March 2016	4.969	3.403
1 April 2016 to 31 March 2017	1.282	0.427
1 April 2017 to 31 March 2018	–	–
1 April 2018 to 31 March 2019	–	–

(2) In this paragraph “small wind generating stations” means generating stations which are driven by wind, having a generating capacity not exceeding 1 megawatt.

Wave generating stations

6.—(1) Table F below relates to wave generating stations—

TABLE F**WAVE GENERATING STATIONS**

<i>Period</i>	<i>Aggregate amount of generating capacity</i>	
	<i>Scottish Power plc</i>	<i>Scottish and Southern Energy plc</i>
1 April 1999 to 31 March 2000	0.013	0.004
1 April 2000 to 31 March 2001	0.032	0.238
1 April 2001 to 31 March 2002	0.187	0.557
1 April 2002 to 31 March 2003	0.218	0.568
1 April 2003 to 31 March 2004	0.305	0.597
1 April 2004 to 31 March 2005	0.305	0.597
1 April 2005 to 31 March 2006	0.305	0.597
1 April 2006 to 31 March 2007	0.305	0.597
1 April 2007 to 31 March 2008	0.305	0.597
1 April 2008 to 31 March 2009	0.305	0.597
1 April 2009 to 31 March 2010	0.305	0.597
1 April 2010 to 31 March 2011	0.305	0.597
1 April 2011 to 31 March 2012	0.305	0.597
1 April 2012 to 31 March 2013	0.305	0.597
1 April 2013 to 31 March 2014	0.305	0.597
1 April 2014 to 31 March 2015	0.255	0.580
1 April 2015 to 31 March 2016	0.186	0.330
1 April 2016 to 31 March 2017	0.031	0.010
1 April 2017 to 31 March 2018	–	–
1 April 2018 to 31 March 2019	–	–

(2) “Wave generating stations” means generating stations which are drive by any form of tidal or wave power.

SCHEDULE 2

Article 4(1)

CONDITIONS PRECEDENT

1.—(1) The requirements referred to in article 4(1)(a) are—

- (a) that planning permission and all necessary consents (including any necessary wayleave consents), servitudes and rights to enable any relevant non-fossil fuel generating station to be constructed and operated in accordance with and as contemplated by the terms of the relevant arrangements have been granted;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) that planning permission and all necessary consents (including any necessary wayleave consents), servitudes and rights to enable any public electricity supplier to whose electricity distribution system any relevant non-fossil fuel generating station is to be connected to comply with his obligations as contemplated by the terms of the relevant arrangements have been granted;
- (c) that the operator has entered into, and there has come into force, a connection agreement;
- (d) that the operator holds a licence or has the benefit of an exemption under Part I of the Act authorising him to generate electricity and to convey electricity from the place at which it is generated to the point of delivery for the purposes of the relevant arrangements; and
- (e) that the commissioning process has been satisfactorily completed.

2. In this Schedule, “connection agreement” means an agreement providing for the connection of any relevant non-fossil fuel generating station to a system of electric lines and electrical plant through which generating capacity will be made available to a public electricity supplier.

SCHEDULE 3

Article 4(2)

TERMINATION EVENTS

The events referred to in article 4(2)(a) are—

(1) The operator ceasing for any reason to be authorised by a licence or exemption granted under the Act to generate electricity for the purposes of giving a supply to any premises or enabling a supply to be given;

(2) the operator defaulting in the performance of any of his material obligations under the relevant arrangements and, in the case of a default which is, in the opinion of the relevant public electricity supplier acting reasonably, capable of remedy, the default continuing to be unremedied at the expiry of 28 days following the date on which the supplier shall have given notice thereof to the operator; and

(3) a binding order being made or an effective resolution being passed for the liquidation or winding up of the operator otherwise than for the purpose of reconstruction or amalgamation on terms previously approved in writing by the relevant public electricity supplier, whose approval shall not unreasonably be withheld, and within 28 days of his appointment the liquidator of the operator not having provided to the supplier a guarantee of performance of the obligations of the operator under the relevant arrangements in such form and amount as the supplier acting reasonably may require.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes on public electricity suppliers in Scotland obligations to make arrangements to secure the availability during specified periods of specified aggregate amounts of generating capacity from non-fossil fuel generating stations of particular descriptions. The arrangements must be made,

and evidence of their making must be produced to the Director General of Electricity Supply, before 1st May 1999.

Article 3, read with the tables in Schedule 1, imposes on the suppliers obligations to secure the availability during specified periods of specified amounts of capacity from non-fossil fuel generating stations (biomass, hydro, waste to energy, wind, small wind and wave) specified in Schedule 1, not exceeding 15 megawatts of installed capacity, and falling within the description of such stations specified in article 3(2). The amounts are specified in megawatts (one megawatt equals one million watts).

Article 4 provides a mechanism whereby, if certain conditions are not satisfied (see Schedule 2) or if certain events occur (see Schedule 3) the Order is to have effect as if the relevant period specified in the appropriate table in Schedule 1 were replaced by a different period and, as a consequence of that, as if the relevant amount of capacity specified in that table were a reduced amount, the amount of the reduction being the amount of capacity which has ceased to be available by reason of (as the case may be) the condition not having been satisfied or the event having occurred.