
STATUTORY INSTRUMENTS

2000 No. 2727

ELECTRICITY

**The Electricity from Non-Fossil Fuel
Sources Saving Arrangements Order 2000**

<i>Made</i>	- - - -	<i>4th October 2000</i>
<i>Laid before Parliament</i>		<i>5th October 2000</i>
<i>Coming into force</i>	- -	<i>27th October 2000</i>

The Secretary of State, in exercise of the powers conferred on him by section 67 of the Utilities Act 2000⁽¹⁾, hereby makes the following Order—

Citation, commencement and extent

1.—(1) This Order may be cited as the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 and shall come into force on 27th October 2000.

(2) Apart from articles 1, 2, 8, 9 and 11(1), which also extend to Scotland, this Order extends to England and Wales only.

Definitions

2.—(1) In this Order—

“adapted condition” has the meaning given in article 4(3);

“the Director” has the meaning given in section 1 of the Electricity Act 1989⁽²⁾;

“generator” means any operator of a non-fossil fuel generating station described in any of NFFO Orders 3,4&5 who, immediately before the commencement of the order period, was party to any original arrangements;

“licensed electricity suppliers” means persons authorised by a licence under the Electricity Act 1989 to supply electricity in England and Wales;

“new arrangements” means arrangements made by the nominated person which comply with all the requirements of article 4(1)(a), (b) and (e);

“NFFO Orders 3,4&5” means the following statutory instruments: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994 (as amended)⁽³⁾; the Electricity (Non-Fossil

⁽¹⁾ 2000 c. 27.

⁽²⁾ 1989 c. 29.

⁽³⁾ S.I.1994/3259, as amended by S.I. 1995/68.

Fuel Sources) (England and Wales) Order 1997(4); and the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998(5);

“NFFO 4 Order” means the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997;

“order period” means the period starting on the date when trading commences under the new electricity trading arrangements implemented pursuant to section 15A of the Electricity Act 1989 (as inserted by section 68 of the Utilities Act 2000) until 30th November 2018;

“original arrangements” means the additional arrangements referred to in section 32 of the Electricity Act 1989 which have been entered into by public electricity suppliers in compliance with their obligations under NFFO Orders 3,4&5;

“owner” means any person who either directly or indirectly owns or has any interest in the nominated person; and the term “ownership” shall be construed accordingly;

“public electricity supplier”, except in relation to article 9, means a public electricity supplier whose authorised area is wholly or mainly situated in England and Wales; and

“Requirements” means the requirements listed in article 4(1).

(2) Except where otherwise provided in this Order, expressions which are used both in this Order and in section 32 or 33 of the Electricity Act 1989 shall in relation to this Order have the meanings given to them in that Act.

Obligations of public electricity suppliers

3.—(1) Each public electricity supplier shall ensure that before the 30th day following the commencement of the order period it has produced evidence to the Director that it has made arrangements jointly with all other public electricity suppliers to secure that a person nominated by them (“the nominated person”) has made arrangements to secure the Requirements are complied with.

(2) Each public electricity supplier shall be under a duty at all times during the order period to secure that the Requirements are complied with and shall not by any act or omission of his prevent any new arrangements from securing the result mentioned in article 4(1)(b).

(3) Each public electricity supplier shall supply the Director with such information, or with information of a particular kind, requested by the Director and which in his opinion is relevant to the question whether the public electricity supplier (either acting individually or jointly with other public electricity suppliers) is discharging, or has discharged, his obligations in this Order.

(4) Information requested by the Director under paragraph (3) above must be given to him in whatever form he requires.

(5) No person shall be required by virtue of this article to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court.

The Requirements—duties of the nominated person

4.—(1) The Requirements are that—

(a) the nominated person must by the commencement of the order period have made arrangements (“the new arrangements”) which replace (in so far as it is necessary to comply with this Order) the original arrangements but with the nominated person replacing the relevant public electricity supplier as contracting party to those arrangements in each case;

(4) S.I. 1997/248.

(5) S.I. 1998/2353.

- (b) subject to paragraph (2) below, the new arrangements must secure that there is available to the nominated person from the non-fossil fuel generating stations described in NFFO Orders 3,4&5 the aggregate amount of generating capacity which, immediately before the commencement of the order period, was required by those Orders to have been available to public electricity suppliers during the order period;
- (c) having entered into the new arrangements, the nominated person must not by any act or omission of his prevent those arrangements made by him from securing the result mentioned in sub-paragraph (b) above;
- (d) the nominated person must produce evidence to the Director of having made the new arrangements within 30 days after the commencement of the order period;
- (e) the new arrangements must be on terms such that generators who are party to them are in substantially the same economic position as regards matters relating to contract price, indexation and term under those new arrangements as they had been in as party to the original arrangements;
- (f) all electricity made available to the nominated person under the new arrangements must be offered for sale to persons who shall include all licensed electricity suppliers;
- (g) the nominated person must use his reasonable endeavours to receive the best price reasonably attainable for such electricity;
- (h) the nominated person must conduct himself at all times in relation to his operations in general and in particular in relation to the selling of such electricity in a manner so as to ensure and satisfy the Director that he does not show any undue preference or exercise any undue discrimination in relation to any licensed electricity supplier or class of licensed electricity supplier; and
- (i) any owner must not gain any advantage from his ownership (save that expressly permitted under either this Order or regulations made under section 33 of the Electricity Act 1989) in relation to the purchase or sale by the nominated person of electricity which has been made available to him under the new arrangements and arrangements must be in place so as to ensure at all times that any owner does not gain such advantage.

(2) The amount of generating capacity required by article 4(1)(b) to be available to the nominated person shall be reduced in the same manner that article 4 of the NFFO 4 Order reduced the amount of generating capacity required to be made available to public electricity suppliers by that Order, but the reduction in generating capacity provided for in this paragraph shall be calculated by reference to any adapted conditions instead of by reference to the conditions precedent and termination events set out in Schedules 2 and 3 to the NFFO 4 Order.

(3) For the purposes of this article an “adapted condition” means a condition set out in the new arrangements which has broadly equivalent effect to a provision contained in Schedule 2 or 3 to the NFFO 4 Order taking into account the existence of any new electricity trading arrangements and the fact that it is the nominated person, not a public electricity supplier, who enters into the new arrangements.

(4) Any case of dispute as to whether a condition in the new arrangements is an “adapted condition” may be referred to and determined by the Secretary of State on application by either the nominated person or a generator who is party to those new arrangements.

The nominated person

5.—(1) A person may only become or continue to be a nominated person if that person is registered under the Companies Act 1985⁽⁶⁾ as a company limited by shares and is approved by the Secretary of State.

(6) 1985 c. 6.

(2) Without prejudice to article 10, if any of the Requirements are not being met at any time, the Secretary of State may withdraw his approval of the nominated person at any time on such notice as is reasonable in the circumstances. Where the Secretary of State withdraws his approval he may either himself nominate one or more persons to be the nominated person or he may request that the public electricity suppliers nominate a replacement.

(3) Where the Secretary of State has withdrawn his approval of the nominated person in accordance with paragraph (2) above, the public electricity suppliers shall jointly bear the administrative costs incurred as a result of this change in proportions to be determined by the Secretary of State.

(4) Where there is a change in the person who is nominated to be the nominated person (either at the instigation of the public electricity suppliers or the Secretary of State) the Secretary of State's approval of the person so nominated may be conditional on new arrangements having been entered into by a specified date. In such circumstances the dates referred to in articles 3, 4 and 6 shall be replaced with the dates specified by the Secretary of State.

(5) Where requested in writing to approve a person nominated for the purposes of this Order, the Secretary of State shall decide whether to so approve or not and shall notify the public electricity suppliers in writing of that decision within 30 days of receipt of such request.

Deemed imposition of new arrangements

6.—(1) If, by the commencement of the order period, any generator has not entered into the new arrangements with the nominated person the generator shall be deemed to—

- (a) have entered into an agreement with the nominated person on and with effect from the first day of the order period on those terms last offered to him in writing by the nominated person prior to the commencement of the order period, to the extent that those terms comply with all requirements of this Order in relation to new arrangements; and
- (b) have terminated the original arrangements to which he was a party (without prejudice to any rights or liabilities existing prior to such termination), with termination having effect immediately before he is deemed to have entered into the agreement referred to in this article.

(2) Where paragraph (1) above applies, the nominated person shall notify the generator in writing within 14 days after the commencement of the order period of the terms of the agreement which are deemed to apply to him.

(3) Any dispute as to whether the terms of the agreement referred to above comply with the requirements of this Order in relation to the new arrangements may be referred to and determined by the Secretary of State where application to the Secretary of State has been made in writing within two months after the commencement of the order period. In making his determination under this article the Secretary of State may give such directions to the nominated person or the generator as appear to him to be appropriate for varying the terms of the agreement so that they comply with the requirements of this Order in relation to the new arrangements.

Release from obligations under section 32

7.—(1) Within 45 days after the commencement of the order period (or at such later or additional dates as the Secretary of State may consider necessary) the Director shall report to the Secretary of State the extent to which he is satisfied that public electricity suppliers have complied with their obligation in article 3(1).

(2) When the Secretary of State has declared that he is satisfied that a public electricity supplier has complied with his obligation in article 3(1) the public electricity supplier shall thereupon be released from his obligations under section 32 of the Electricity Act 1989 and NFFO Orders 3,4&5

and the Secretary of State shall notify the public electricity supplier in writing of such declaration specifying the date (which may not be earlier than the commencement of the order period) on which such release took effect.

Modification of section 32

8. From the commencement of the order period section 32 of the Electricity Act 1989 shall have effect with the omission of subsections (3) and (4).

Enforcement of section 32

9. With effect from the commencement of the order period after subsection (2) of section 32 of the Electricity Act 1989 there shall be inserted the following—

“(2A) The following requirements shall be treated as relevant requirements for the purposes of Part I of this Act—

- (a) each public electricity supplier shall comply with an order under subsection (1) above; and
- (b) having complied with such an order, each public electricity supplier shall not by any act or omission of his prevent the arrangements made by him from securing the result mentioned in subsection (2) above.”.

Enforcement of this Order

10. From the commencement of the order period the obligations on each public electricity supplier set out in article 3 of this Order shall be treated as relevant requirements for the purposes of Part I of the Electricity Act 1989.

Continuation and modification of section 33

11.—(1) With effect on 21st November 2000 section 33 of the Electricity Act 1989 shall continue to have effect notwithstanding its repeal by section 66 of the Utilities Act 2000.

(2) From the commencement of the order period section 33 of the Electricity Act 1989 shall be modified as follows—

- (a) in subsection (1) replace the words from and including “Where” to “provide—” with “The Secretary of State may by regulations provide—”;
- (b) in subsection (1)(a) replace the words “such suppliers” with “public electricity suppliers”;
- (c) in subsection (1)(c) replace the words “such suppliers” with “the nominated person”;
- (d) delete subsections (3) and (4);
- (e) replace subsection (5) with the following—

“(5) The amount of any payment required to be made to the nominated person by regulations under this section shall be the difference between—

- (a) the total cost to the nominated person during the qualifying month of purchasing electricity which was generated in pursuance of qualifying arrangements; and
- (b) the amount received during the qualifying month by the nominated person for the sale of such electricity,

calculated (in each case) by such method as may be specified by regulations under this section and including such costs as are reasonably incurred by the nominated person

in relation to the sale and purchase of such electricity and any advance or deferred payments.”;

(f) after subsection (5) insert the following new subsection—

“(5A) Where the amount referred to in subsection (5)(b) is greater than the cost referred to in subsection (5)(a) the difference (after any deductions for the costs of the nominated person referred to in subsection (5) and any advance or deferred payments) shall be paid by the nominated person to the prescribed person referred to in subsection (1)(b), such sum being calculated by such method as may be specified by regulations under this section.”;

(g) in subsection (6)(a) after the words “meters or otherwise” insert “on the nominated person and”;

(h) in subsection (6)(b) replace the words “public electricity suppliers” with “or by the nominated person”;

(i) in subsection (7) replace the words “each public electricity supplier” with “the nominated person”;

(j) replace subsection (7A) with the following—

“(7A) In this section, references to qualifying arrangements in relation to the nominated person are to any arrangements in respect of which each of the following is the case—

(a) they are new arrangements, as defined in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(7);

and

(b) they satisfy such other requirements as may be specified in regulations made under this section.”;

(k) delete subsection (7B);

(l) in subsection (8) after the definition of “leviable electricity” insert the following—

““nominated person” has the meaning given in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000;”;

(m) in subsection (8) at the end of the definition of qualifying month insert the following words “and in relation to the nominated person the meaning shall be specified in regulations made under this section;”;

and

(n) after subsection (9) insert the following—

“(10) Regulations under this section may include transitional measures making provision for payments of levy to continue to be made to public electricity suppliers in relation to entitlement to payments accrued under this section before this subsection came into effect.”.

4th October 2000

Helen Liddell,
Minister for Energy and Competitiveness in
Europe,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the saving and modification of arrangements which have been made by public electricity suppliers in compliance with section 32 of the Electricity Act 1989 (“the Electricity Act”) to coincide with the commencement of trading under the new electricity trading arrangements (“NETA”). It also modifies section 32 and saves and modifies section 33 of the Electricity Act.

Articles 1 and 2 provide for the citation, commencement, extent and interpretation of the Order. Although the Order comes into force on 27th October 2000, a number of its provisions only have effect on the date that trading commences under NETA and article 11(1) comes into effect on 21st November 2000.

Articles 3 and 4 oblige public electricity suppliers in England and Wales to ensure that a person nominated by them makes arrangements which replace arrangements which were made in the past by them in compliance with section 32 of the Electricity Act and which secure the availability of a certain amount of generating capacity from non-fossil fuel generating stations. The amount of generating capacity which is to be made available to the nominated person is the same as that which was required to be made available to the public electricity suppliers. The arrangements made by the public electricity suppliers and the nominated person must be in place on the date on which trading commences under NETA. The nominated person is also obliged to offer for sale the electricity made available to him under the arrangements to all licensed electricity suppliers in England and Wales (without any undue discrimination) and to use his reasonable endeavours to receive the best price reasonably attainable for it. The owners of the nominated person or those with an interest in him, must not gain any advantage from such ownership.

Article 5 provides that the nominated person must be approved by the Secretary of State. There is also provision for withdrawal of the approval and changes in the identity of the nominated person.

Article 6 imposes agreements on operators of non-fossil fuel generating stations who had an arrangement making electricity available to public electricity suppliers in compliance with certain orders under section 32 of the Electricity Act, but who have not entered into replacement arrangements with the nominated person. There is provision for the Secretary of State to resolve disputes as to the terms of such imposed agreements.

Article 7 provides that where the Director General of Electricity Supply (“the Director”) considers that a public electricity supplier has complied with his obligations under article 3, then the Secretary of State may declare that he shall be released from his obligations under section 32 of the Electricity Act.

Article 8 amends section 32 of the Electricity Act to remove the criminal offence as a sanction for breaches of section 32. The article extends to England, Wales and Scotland and has effect from the date that trading commences under NETA.

Article 9 amends the Electricity Act with effect from the date that trading commences under NETA to replace the criminal sanction for breach of section 32 with a provision to the effect that compliance with section 32 of the Electricity Act is a relevant requirement for the purposes of Part I of the Electricity Act—thus enabling the Director to take enforcement action.

Article 10 of the Order provides that the obligations of public electricity suppliers in England and Wales in article 3 of the Order are relevant requirements for the purposes of Part I of the Electricity Act, thus enabling the Director to take enforcement action.

Article 11(1) applies to England, Wales and Scotland and provides that section 33 of the Electricity Act is to continue to have effect as from 21st November 2000 despite its repeal on that date.

Article 11(2) applies to England and Wales only and makes various amendments to section 33 of the Electricity Act with effect from the date when trading commences under NETA. The amendments to section 33 are largely to enable payments of fossil fuel levy to be paid to the nominated person instead of to public electricity suppliers. The method of calculating what is to be paid to the nominated person is also amended in order to reflect the abolition of the electricity pool. Provision is made for paying the reasonable costs of the nominated person. Should the nominated person make a profit on the sale of electricity made available to him under arrangements made in compliance with this Order, that profit is to be paid to the Director. Various consequential amendments are also made which largely replace references to public electricity suppliers with references to the nominated person. There is provision for regulations made under the amended section 33 of the Electricity Act to make transitional provision to allow for payments of fossil fuel levy to continue to be made to public electricity suppliers where they were entitled to such payments before the amendments to section 33 were made by this Order.