
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 92

ELECTRICITY

**The Electricity from Non-Fossil Fuel Sources
(Locational Flexibility) (Scotland) Order 2002**

<i>Made</i>	- - - -	<i>6th March 2002</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>7th March 2002</i>
<i>Coming into force</i>	- -	<i>31st March 2002</i>

The Scottish Ministers, in exercise of the powers conferred by section 67 of the Utilities Act 2000⁽¹⁾ and all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Electricity from Non-Fossil Fuel Sources (Locational Flexibility) (Scotland) Order 2002 and shall come into force on 31st March 2002.

(2) In this Order “Scotland” has the meaning given to it in section 126(1) of the Scotland Act 1998⁽²⁾.

(3) This Order extends to Scotland only.

Modification of section 33

2.—(1) Section 33 of the Electricity Act 1989⁽³⁾ shall be modified as set out in paragraph (2).

(2) Subsection (7A) shall be replaced with the following:—

“(7A) In this section, references to qualifying arrangements in relation to a supply successor company are to any arrangements which—

(a) are new arrangements, as defined in the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2001⁽⁴⁾ (“new arrangements”); or

(1) 2000 c. 27. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001 (S.I.2001/3504), article 2 and the Schedule.

(2) 1998 c. 46.

(3) 1989 c. 29. Notwithstanding its repeal by section 66 of the Utilities Act 2000, section 33 continues to have effect in Scotland by virtue of article 11(1) of S.I. 2000/2727. Section 33 has been amended by S.I. 1997/1185, the Fossil Fuel Levy Act 1998 (c. 5) section 1 and by S.I. 2001/3269.

(4) S.I. 2001/3269 as amended by S.S.I. 2002/ .

- (b) would be new arrangements but for the fact that the parties to them have modified the arrangements by changing the location of the generating station which is the subject of the arrangements (“modified new arrangements”), and satisfy the requirements specified in subsection (7B) below,

and which (in either case) satisfy such other requirements as may be specified in regulations made under this section.

(7B) The requirements mentioned in subsection (7A)(b) are that—

- (a) the new location of the generating station is anywhere within Scotland, including (unless the relevant SRO Order requires the generating station to be “on-shore”) any part of the territorial sea of the United Kingdom which is adjacent to Scotland;
- (b) planning permission and all necessary consents (including any necessary wayleave consents), servitudes and rights to enable the generating station to be constructed and operated at the new location in accordance with and as contemplated by the terms of the modified new arrangements have been obtained;
- (c) no generating station has been built pursuant to the arrangements prior to the change of location;
- (d) the modified new arrangements do not relate to a generating station built at the new location prior to the change of location; and
- (e) evidence of the modified new arrangements has been produced to the Authority.

(7C) For the purposes of subsection (7B)(a)—

- (a) the relevant SRO order is whichever of the Orders mentioned in subsection (7D) is the one pursuant to which the arrangements were first produced to the Director General of Electricity Supply (prior to the abolition of that office by section 1(3) of the Utilities Act 2000), in compliance with section 32 of this Act as originally enacted; and
- (b) the reference to the territorial sea of the United Kingdom which is adjacent to Scotland is to be construed in accordance with the Scotland Act 1998⁽⁵⁾.

(7D) The Orders referred to in subsection (7C)(a) are—

- (a) the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994⁽⁶⁾;
- (b) the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997⁽⁷⁾; or
- (c) the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999⁽⁸⁾.”.

St Andrew’s House,
Edinburgh
6th March 2002

ROSS FINNIE
A member of the Scottish Executive

⁽⁵⁾ See sections 126(1) and (2) and the Scotland Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

⁽⁶⁾ S.I. 1994/3275.

⁽⁷⁾ S.I. 1997/799.

⁽⁸⁾ S.I. 1999/439.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies section 33 of the Electricity Act 1989 as it has effect in Scotland. It relates to arrangements made by public electricity suppliers under section 32 of the Electricity Act 1989 (as originally enacted) relating to the securing of generating capacity from non-fossil fuel generating stations. The Order allows such arrangements to continue to attract the fossil fuel levy in circumstances where the location of the generating station has changed.

A regulatory impact assessment is available and can be obtained from the Energy Division, Scottish Executive, 2nd Floor, Meridian Court, 5 Cadogan Street, Glasgow, G2 6AT.