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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Renewables Obligation Order 2015**

**PART 1**

**Introductory provisions**

**Citation, commencement and extent**

- 1.—(1) This Order may be cited as the Renewables Obligation Order 2015.
- (2) Subject to paragraph (3), this Order comes into force on the first day of the month following that in which it is made.
- (3) Articles 45(4)(d) and (5)(a) and 48 come into force on the first day of the second month following that in which this Order is made.
- (4) Subject to paragraph (5), this Order extends to England and Wales only.
- (5) Article 97 also extends to Scotland.

**Interpretation**

- 2.—(1) In this Order—
- “the Act” means the Electricity Act 1989<sup>(1)</sup>;
- “2009 Order” means the Renewables Obligation Order 2009<sup>(2)</sup>;
- “2013/14 capacity” means—
- (a) in relation to a generating station accredited on or before 31st March 2013, any capacity which, in the Authority’s view—
- (i) forms part of the station from a date no earlier than 1st April 2013 and no later than 31st March 2014, and
- (ii) does not form part of the original capacity of the station,
- (b) in relation to a grace period generating station, any capacity which, in the Authority’s view—
- (i) forms part of the station from a date no later than 31st March 2014, and
- (ii) does not form part of the original capacity of the station,
- (c) in relation to a generating station which—
- (i) was not accredited on or before 31st March 2013,
- (ii) was accredited on or before 31st March 2014, and
- (iii) is not a grace period generating station,

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<sup>(1)</sup> 1989 c.29.

<sup>(2)</sup> S.I. 2009/785, amended by S.I. 2010/1107, 2011/984, 2011/988, 2013/768 and 2014/893.

the original capacity of the station, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2014;

"2013/15 capacity" means any capacity which is 2013/14 capacity or 2014/15 capacity;

"2014/15 capacity" means—

- (a) in relation to a generating station accredited on or before 31st March 2014, any capacity which, in the Authority's view—
  - (i) forms part of the station from a date no earlier than 1st April 2014 and no later than 31st March 2015, and
  - (ii) does not form part of the original capacity of the station,
- (b) in relation to a generating station which—
  - (i) was not accredited on or before 31st March 2014, and
  - (ii) was accredited on or before 31st March 2015,

the original capacity of the station, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2015;

"2015/16 capacity" means—

- (a) in relation to a generating station accredited on or before 31st March 2015, any capacity which, in the Authority's view—
  - (i) forms part of the station from a date no earlier than 1st April 2015 and no later than 31st March 2016, and
  - (ii) does not form part of the original capacity of the station,
- (b) in relation to a generating station which—
  - (i) was not accredited on or before 31st March 2015, and
  - (ii) was accredited on or before 31st March 2016,

the original capacity of the station, together with any additional capacity which, in the Authority's view, forms part of the station from a date no later than 31st March 2016;

"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 an accreditation granted before this Order came into force);

"accredited" is to be construed in accordance with the definition of "accreditation";

"advanced fuel" means a liquid or gaseous fuel which is produced directly or indirectly from the gasification or the pyrolysis of—

- (a) waste, or
- (b) biomass;

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

"ancillary purposes", in relation to fossil fuel or waste used in a combustion unit or by a generating station, means fossil fuel or waste which is used in that combustion unit or by the station for—

- (a) cleansing other fuels from the station's combustion system prior to using fossil fuel or waste to heat the combustion system to its normal temperature,
- (b) the heating of the station's combustion system to its normal operating temperature or the maintenance of that temperature,

- (c) the ignition of fuels of low or variable calorific value,
- (d) corrosion control,
- (e) emission control,
- (f) fouling reduction, or
- (g) standby generation or the testing of standby generation capacity (where “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);

“animal excreta” means excreta produced by animals and includes biomass wholly derived from excreta produced by animals;

“biomass” is to be construed in accordance with article 3, except for the purposes of article 95;

“biomaterial” means the biodegradable part of—

- (a) products, waste and residues of biological origin resulting from agriculture (including vegetal and animal substances), forestry and related industries (including fisheries and aquaculture), and
- (b) industrial, commercial and municipal waste;

“BS EN 15359:2011” means the document identified by Standard Number BS EN:15359:2011 and entitled “Solid recovered fuels. Specifications and classes” published by the British Standards Institution on 30th November 2011<sup>(3)</sup>;

“BS EN 15402:2011” means the document identified by Standard Number BS EN 15402:2011 and entitled “Solid recovered fuels. Determination of the content of volatile matter” published by the British Standards Institution on 31st March 2011<sup>(4)</sup>;

“BS EN 15415-1:2011” means the document identified by Standard Number BS EN 15415-1:2011 and entitled “Solid recovered fuels. Determination of particle size distribution. Screen method for small dimension particles” published by the British Standards Institution on 30th September 2011<sup>(5)</sup>;

“BS EN 15590:2011” means the document identified by Standard Number BS EN 15590:2011 and entitled “Solid recovered fuels. Determination of the current rate of aerobic microbial activity using the real dynamic respiration index” published by the British Standards Institution on 30th September 2011<sup>(6)</sup>;

“CFD” has the meaning given in section 6(2) of the Energy Act 2013<sup>(7)</sup>;

“CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 5 published by the Department of Energy and Climate Change in November 2013 and Guidance Note 44 (Use of CHPQA to obtain support for electrical output from renewable CHP under the renewables obligation), Issue 4, published by the Department of Energy and Climate Change in December 2013<sup>(8)</sup>;

“CHP 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

(3) ISBN 978 0 580 67493 8. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(4) ISBN 978 0 580 68165 3. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(5) ISBN 978 0 580 71118 3. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(6) ISBN 978 0 580 69390 8. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

(7) 2013 c.32.

(8) These documents can be obtained via the Department of Energy and Climate Change pages of the GOV.UK website at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/335471/CHPQASStandardIssue5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335471/CHPQASStandardIssue5.pdf) and [https://www.chpqa.com/guidance\\_notes/GUIDANCE\\_NOTE\\_44.pdf](https://www.chpqa.com/guidance_notes/GUIDANCE_NOTE_44.pdf).

(b) steam produced from, or air or water heated by, such heat;

“civil works”, in relation to a hydro generating station, means 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;

“combustion unit” means a boiler, turbine or engine;

“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 generating station in order to demonstrate that that generating 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 that owner, operator or party within the meaning of section 1122 of the Corporation Tax Act 2010<sup>(9)</sup>;

“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 station;

“delivery body” means—

- (a) the person operating the national transmission system for Great Britain (“the national system operator”), or
- (b) if the national system operator’s functions under Chapter 2 of Part 2 of the Energy Act 2013<sup>(10)</sup> have been transferred to an alternative delivery body, that body;

“designated electricity supplier” has the meaning given by article 7(1);

“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 Standard Institute on 28th June 1991<sup>(11)</sup>;

“energy crops” means—

- (a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than twenty years and which is one of the following—
  - (i) *Acer pseudoplatanus* (also known as sycamore),
  - (ii) *Alnus* (also known as alder),
  - (iii) *Betula* (also known as birch),
  - (iv) *Castanea sativa* (also known as sweet chestnut),
  - (v) *Corylus avellana* (also known as hazel),
  - (vi) *Fraxinus excelsior* (also known as ash),
  - (vii) *Populus* (also known as poplar),
  - (viii) *Salix* (also known as willow),
  - (ix) *Tilia cordata* (also known as small-leaved lime); or
- (b) a perennial crop which is one of the following—

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<sup>(9)</sup> 2010 c.4.

<sup>(10)</sup> 2013 c.32.

<sup>(11)</sup> ISBN 0580194825. Copies can be obtained from the British Standards Institution: [www.bsi-global.com/en/](http://www.bsi-global.com/en/).

- (i) *Arundo donax* (also known as giant reed),
- (ii) *Bambuseae*, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as fuel,
- (iii) *Miscanthus*,
- (iv) *Panicum*,
- (v) *Pennisetum* (other than *Pennisetum setaceum* (also known as fountain grass), *Pennisetum clandestinum* (also known as kikuyu grass) and *Pennisetum villosum* (also known as feathertop grass)),
- (vi) *Phalaris*;

“excluded capacity” has the meaning given in article 45;

“feed-in tariff scheme” means a scheme of financial incentives which the Secretary of State establishes, or for the administration of which the Secretary of State makes arrangements, in exercise of the power in section 41(1) of the Energy Act 2008<sup>(12)</sup>;

“fossil derived bioliquid” means bioliquid produced directly or indirectly from—

- (a) coal,
- (b) lignite,
- (c) natural gas (within the meaning of the Energy Act 1976<sup>(13)</sup>),
- (d) crude liquid petroleum, or
- (e) petroleum products (within the meaning of the Energy Act 1976);

“forest” means land of an area more than one hectare which includes trees providing a tree canopy cover of at least 20%;

“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;

“grace period generating station” has the meaning given by article 6;

“greenhouse gas criteria” means—

- (a) in the case of bioliquid, the criteria set out in Schedule 1,
- (b) in all other cases, the criteria set out in Part 1 of Schedule 2;

“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);

“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);

“investment contract” has the meaning given in paragraph 1 of Schedule 2 to the Energy Act 2013<sup>(14)</sup>;

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<sup>(12)</sup> 2008 c.32. Section 41 has been amended by section 146 of the Energy Act 2013 (c.32).

<sup>(13)</sup> 1976 c.76.

<sup>(14)</sup> 2013 c.32.

“ISAE 3000” means the International Standard on Assurance Engagements 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information<sup>(15)</sup> published by the International Federation of Accountants;

“land criteria” means the criteria set out in Schedule 3;

“landfill” has the meaning given by Article 2(g) of Council Directive 1999/31/EC on the landfill of waste<sup>(16)</sup>;

“landfill gas” means gas formed by the digestion of material in a landfill;

“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;

“municipal waste” has the same meaning as in section 21 of the Waste and Emissions Trading Act 2003<sup>(17)</sup>;

“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>(18)</sup>);

“NIRO Order” means any order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003<sup>(19)</sup>;

“Non-Fossil Fuel Order” means any of the following Orders—

- (a) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997<sup>(20)</sup>, and
- (b) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998<sup>(21)</sup>;

“Northern Ireland certificate” means a renewables obligation certificate issued by the Northern Ireland authority under the Energy (Northern Ireland) Order 2003 and pursuant to a NIRO Order;

“obligation period” means the period starting on 1st April 2016 and ending on 31st March 2017 or any subsequent period of 12 months (ending with the period of 12 months ending on 31st March 2037), except for the purposes of article 95;

“offshore”, in relation to a generating station which generates electricity from wind, means a generating station which—

- (a) has its wind turbines situated wholly in offshore waters, and
- (b) is not connected to dry land by means of a permanent structure which provides access to land above the mean low water mark;

“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

<sup>(15)</sup> 9th December 2013, ISBN 9781608151677. Copies can be obtained from the International Federation of Accountants: [www.ifac.org](http://www.ifac.org).

<sup>(16)</sup> OJ No L 182, 16.7.1999, p1.

<sup>(17)</sup> 2003 c.33. Section 21 has been amended by regulation 6 of S.I. 2011/2499.

<sup>(18)</sup> 2000 c.27. Section 67(1)(c) was amended by section 39 of the Energy Act 2008 (c.32).

<sup>(19)</sup> S.I. 2003/419 (N.I.6). Articles 52 to 55F were substituted by article 2 of the Energy (Amendment) Order (Northern Ireland) 2009 (S.R. (NI) 2009 No 35).

<sup>(20)</sup> S.I. 1997/248.

<sup>(21)</sup> S.I. 1998/2353.

- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964<sup>(22)</sup>;

“offshore wind turbine” means a wind turbine which forms part of a generating station which is offshore;

“on land”, in relation to the location of a generating station, means wholly or partly on land above mean high water level;

“original capacity”, in relation to a generating station, means the generating capacity of the station as accredited;

“permitted ancillary purposes” means—

- (a) in relation to fossil fuel or waste used in a combustion unit, the use of fossil fuel or waste—
  - (i) in the combustion unit for ancillary purposes, and
  - (ii) in a month in which the energy content of the fossil fuel or waste so used (or, where both are so used, their combined energy content) does not exceed 10% of the energy content of all the energy sources used in the combustion unit to generate electricity during that month,
- (b) in relation to fossil fuel or waste used by a generating station, the use of fossil fuel or waste—
  - (i) by the station for ancillary purposes, and
  - (ii) in a month in which the energy content of the fossil fuel or waste so used (or, where both are so used, their combined energy content) does not exceed 10% of the energy content of all the energy sources used by the station to generate electricity during that month;

“permitted termination event”, in relation to an investment contract, means—

- (a) a delay in the approval of the investment contract by the European Commission,
- (b) a refusal by the European Commission to approve the investment contract,
- (c) a condition attached by the European Commission to its approval of the investment contract, or
- (d) a judgment of the Court of Justice of the European Union that invalidates an approval of the investment contract by the European Commission;

“plant”, with reference to plant matter, includes shrubs and trees;

“post-2016 capacity” means—

- (a) in relation to a generating station accredited on or before 31st March 2016, any capacity which, in the Authority’s view—
  - (i) forms part of the station from a date no earlier than 1st April 2016, and
  - (ii) does not form part of the original capacity of the station,
- (b) in relation to a generating station which—
  - (i) is accredited, and
  - (ii) was not accredited on or before 31st March 2016,the original capacity of the station, together with any additional capacity which, in the Authority’s view, forms part of the station;

“pre-2013 capacity” means—

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(22) 1964 c.29.



(a) in relation to a generating station accredited on or before 31st March 2013, the original capacity of the station, together with any additional capacity, which in the Authority's view, forms part of the station from a date no later than 31st March 2013,

(b) in relation to a grace period generating station, the original capacity of the station;

"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 this Order came into force);

"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 CHP station" means a CHP station which has been certified under the CHPQA;

"qualifying power output", in relation to a qualifying CHP station, has the meaning given to it in the CHPQA;

"qualifying proportion", in relation to electricity generated by a qualifying CHP station, is the proportion which the qualifying power output of the station bears to its total power output;

"Register" has the meaning given to it in article 93(1);

"registered holder" has the meaning given to it in paragraph 3 of Schedule 4;

"Renewables Directive" means [Directive 2009/28/EC](#) of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, and in article 83 and Schedules 1 and 3 references to Annex 5 to the Renewables Directive are to Annex 5 as amended from time to time;

"renewables obligation" has the meaning given to it in article 7(1), except for the purposes of article 95;

"renewable waste" means waste of which not more than 90% is waste which is, or is derived from, fossil fuel;

"ROC" means a renewables obligation certificate issued by the Authority under this Order (or under the 2009 Order);

"RO capacity", in relation to a generating station, means the generating capacity of the station other than excluded capacity;

"RO eligible renewable output" is to be construed in accordance with articles 29 and 30;

"RO input electricity" has the meaning given to it in article 26;

"RO output electricity" has the meaning given to it in article 27;

"sewage gas" means gas formed by the anaerobic digestion of sewage (including sewage which has been treated or processed);

"Solid Recovered Fuel" means solid fuel which—

- (a) complies with the classification and specification requirements in BS EN:15359:2011,
- (b) is prepared from a waste which is not a hazardous waste (where hazardous waste has the meaning given in Article 3(2) of [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste(23)),
- (c) has a maximum rate of oxygen uptake 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 BS EN 15590:2011, and



- (d) when subject to a methodology for the determination of particle size in accordance with BS EN 15415-1:2011, is able to pass through an opening measuring no more than 150 millimetres in all dimensions;

“specified day”, in relation to an obligation period, means the 1st September immediately following it;

“total input electricity”, in relation to a generating station, means—

- (a) the total amount of electricity used by the station for purposes directly related to its operation (including for fuel handling, fuel preparation, maintenance and the pumping of water) whether or not that electricity is generated by the station or used while the station is generating electricity, and
- (b) where the station generates electricity wholly or partly from hydrogen (other than hydrogen that constitutes fossil fuel), any electricity—
- (i) in respect of which ROCs are or have been issued,
- (ii) in respect of which ROCs cannot be issued by virtue of any provision of Part 7, or
- (iii) which was not generated from renewable sources,
- and which is used in the production of that hydrogen (regardless of where or by whom the hydrogen is produced);

“total installed capacity”, in relation to a generating station or to generating capacity of any description, means the maximum capacity at which that generating station or generating capacity 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 output electricity”, in relation to a generating station, means the total amount of electricity generated by that station;

“total power output”, in relation to a qualifying CHP 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(24) or an equivalent system in Northern Ireland;

“UK ROC” means—

- (a) a ROC,
- (b) a renewables obligation certificate issued by the Authority under a renewables obligation order made by the Scottish Ministers, or
- (c) a Northern Ireland certificate;

“volatile solids” means any mass loss, corrected for moisture, when a solid is heated out of contact with air under the conditions specified, and using the methods, in BS EN 15402:2011; and

“waste” has the meaning given in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste(25) but—

- (a) also includes anything derived from waste, and
- (b) does not include landfill gas or sewage gas.

(2) Where biomass or waste is used in a generating station (whether alone or together or in combination with another fuel) and—

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(24) Section 4(4) contains the definition of “distribute” (which provides the definition of “distribution system”) and “transmission system”. The definition of “distribute” was inserted by section 28(1) and (3)(a) of the Utilities Act 2000 (c.27); the definition of “transmission system” was substituted by section 135(1) and (4) of the Energy Act 2004 (c.20).

(25) OJ No L 312, 22.11.2008, p3.

(a) a proportion of that biomass or waste is, or is derived from, fossil fuel, and  
(b) in any month during which that biomass or waste is used that proportion varies,  
references in this Order to the energy content of that biomass or waste and fossil fuel are references to the overall energy content of that biomass or waste and fossil fuel used to fuel the 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—

- (a) fossil derived bioliquid;
- (b) bioliquid (not being fossil derived bioliquid);
- (c) biomass (not being bioliquid);
- (d) renewable waste (not being bioliquid or biomass);
- (e) fossil fuel including waste (other than waste falling within sub-paragraphs (a) to (d)).

(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>.

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

3.—(1) In this Order, “biomass” means fuel which—

- (a) falls within paragraph (2),
- (b) falls within paragraph (3), or
- (c) is a fossil derived bioliquid.

(2) Fuel falls within this paragraph if—

- (a) at least 90% of its energy content is derived from relevant material, and
- (b) any fossil fuel forming part of the fuel is present following a process—
  - (i) to which the relevant material has been subject, and
  - (ii) 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.

(3) Fuel falls within this paragraph if—

- (a) at least 90% of its energy content is derived from relevant material,
- (b) it is waste, and
- (c) any fossil fuel forming part of it was not added to it with a view to the fossil fuel being used as a fuel.

(4) For the purposes of this Order except for articles 28, 63, 82 and 84, 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—

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(26) [S.R. \(NI\) 1992 No 231](#). There have been amendments which are not relevant.

- (a) the energy content of the fuel is derived in part from relevant material and in part from fossil fuel;
  - (b) either—
    - (i) the fossil fuel is present in it 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) 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% of the total energy content of the fuel and the biomass with which the fuel is used is derived from relevant material.
- (5) Accordingly, any reference in this Order to biomass, other than in articles 28, 63, 82 and 84, is to be construed as a reference to biomass or fuel which (by virtue of paragraph (4)) is to be treated as biomass.
- (6) Where biomass (not being waste or fossil derived bioliquid) 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.
- (7) For the purposes of this article, “relevant material” means material, other than fossil fuel, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi, algae or bacteria.

#### **Fossil derived bioliquid**

- 4.—(1) For the purposes of this Order, fossil derived bioliquid is to be treated as being in part composed of (or in part derived from) fossil fuel.
- (2) Where fossil derived bioliquid (not being waste) is used, whether on its own or not, to fuel a generating station, the proportion of the fossil derived bioliquid which is to be treated as being composed of (or 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 fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of the fossil derived bioliquid as a whole.

#### **Waste as a renewable source**

- 5.—(1) For the purposes of sections 32 to 32M of the Act and this Order, the term “renewable sources” includes renewable waste.
- (2) Subject to paragraph (3), where waste is being used to fuel a generating station, the proportion of the waste which is, or is derived from, fossil fuel—
- (a) is to be determined by the Authority, and
  - (b) is—
    - (i) for any waste that is a fossil derived bioliquid, the energy content of the fossil fuel from which the fossil derived bioliquid is directly or indirectly produced expressed as a percentage of the energy content of that fossil derived bioliquid as a whole,

- (ii) for all other waste, 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 that waste as a whole.

(3) 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%, 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%.

(4) Where—

- (a) municipal waste is used in a generating station and—
  - (i) the Authority is not satisfied as to the matters identified in paragraph (3), or
  - (ii) the operator of the station is claiming that the proportion of that waste which is, or is derived from, fossil fuel is less than 50%; 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.

(5) In this article—

“allocating authority” and “waste disposal authority” have the same meaning as in Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003(27);

“waste collection authority” has the same meaning as in Part 2 of the Environmental Protection Act 1990(28).

### **Grace period generating stations**

**6.—**(1) In this Order, “grace period generating station” means a generating station to which paragraph (2) applies.

(2) This paragraph applies to a generating station if—

- (a) it was registered by the Authority as a grace period generating station under article 58ZA(29) of the 2009 Order (before that article was revoked by this Order), and
- (b) the Authority has not withdrawn the registration in question.

(3) In circumstances where the Authority has reason to believe that the information on which its decision to register a generating station as a grace period generating station was based was incorrect in a material particular, and having regard to those circumstances the Authority considers it appropriate to do so, the Authority may withdraw the registration in question.

(27) 2003 c.33. See section 24 of the Waste and Emissions Trading Act 2003. Section 24 has been amended by S.I. 2013/141, regulations 3(1) and (4) and the Local Government and Public Involvement in Health Act 2007 (c.28), section 209(1).

(28) 1990 c.43. See section 30 of the Environmental Protection Act 1990. Section 30 has been amended by the Local Government (Wales) Act 1994 (c.19), section 66(8), Schedule 9, paragraph 17(3) and Schedule 18 and the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 167(3).

(29) Article 58ZA was inserted by article 22 of S.I. 2013/768 and amended by article 18(1)(2) and (3) of S.I. 2014/893.

(4) The Authority must notify the operator of the generating station in writing of any withdrawal of registration of the station as a grace period generating station.