

**2001 No. 3268**

**ELECTRICITY**

**The Electricity from Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001**

*Made - - - - - 28th September 2001*

*Laid before Parliament 28th September 2001*

*Coming into force - - - 1st October 2001*

The Secretary of State, in exercise of the powers conferred on her by section 67 of the Utilities Act 2000(a), 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 (Amendment) Order 2001 and shall come into force on 1st October 2001.

(2) Apart from articles 1, 2(1), 2(2), 2(3) and 2(12), which also extend to Scotland, this Order extends to England and Wales only.

**Amendment**

2.—(1) The Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(b) shall be amended as set out in the following paragraphs of this article.

(2) Article 1(2) shall be replaced with the following:

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

(3) In article 2:

(a) the expressions listed below and their associated definitions shall be replaced as follows:

““generator” means any operator of a non-fossil fuel generating station described in any of NFFO Orders 3, 4 & 5 who immediately before 27th March 2001 was party to any original arrangements;”;

““order period” means the period starting on 1st October 2001 and ending on 30th November 2018;”;

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

““public electricity supplier” means a person who, prior to 1st October 2001, was authorised by a licence to supply electricity under section 6(1)(c) of the Electricity Act 1989 (as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) and whose “authorised area” (as defined in section 6(9)

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(a) 2000 c. 27.  
(b) S.I. 2000/2727.

of the Electricity Act 1989 as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) was situated wholly or mainly in England and Wales;”;

(b) the following new definitions shall be inserted in the appropriate place:

“ “nominated person” means the person who was nominated by the public electricity suppliers in compliance with article 3 and approved by the Secretary of State under article 5 (as those articles had effect immediately before the coming into force of the amendments to this Order by the Electricity from Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001(a)) unless approval of that person has been withdrawn by the Secretary of State in which case it means the person approved by the Secretary of State under article 5;”;

“ “supply successor company” means a person who became the holder of a supply licence under section 6(1)(d) of the Electricity Act 1989 on 1st October 2001 by virtue of a licensing scheme made in relation to a public electricity supplier under Part II of Schedule 7 to the Utilities Act 2000 or such other person who has become a supply successor company by virtue of article 7(3).”;

(c) the definition of “licensed electricity suppliers” shall be replaced with the following:

“ “licensed electricity supplier” means any person falling within the definition of “electricity supplier” in section 6(9) of the Electricity Act 1989(b);”;

(d) article 2(2) shall be replaced with the following:

“(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 those sections.

(3) References in this Order to section 32 or 33 of the Electricity Act 1989 are references to those sections as they continue to have effect in England and Wales by virtue of this Order or any Order made under section 67 of the Utilities Act 2000 (notwithstanding the substitution of section 32 by section 62 of the Utilities Act 2000 and the repeal of section 33 by section 66 of that Act).”.

(4) In article 3:

(a) the heading of article 3 shall be replaced with “Obligations of supply successor companies”;

(b) all references to “public electricity supplier” and to “public electricity suppliers” shall be replaced respectively with references to “supply successor company” and “supply successor companies”;

(c) paragraph (1) shall be replaced with the following:

“(1) Each supply successor company shall ensure that before the 30th day following the commencement of the order period it has produced evidence to the Authority that it has made arrangements (or amendments to previously existing arrangements) jointly with all other supply successor companies to secure that the nominated person has made arrangements to secure (or which continue to secure) that the Requirements are complied with.”;

(d) after article 3(5) the following shall be inserted:

“(6) 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 Authority shall report to the Secretary of State the extent to which it is satisfied that the supply successor companies have complied with their obligation in article 3(1).”.

(5) Article 4(1)(b) shall be replaced with the following:

“(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 1st October 2001, would have been required by those Orders to have been available to public electricity suppliers from that date until the end of the order period, had the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 not been made;”.

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(a) S.I. 2001/3268.

(b) Section 6 of the Electricity Act 1989 (c. 29) was substituted for the section 6 originally enacted by section 30 of the Utilities Act 2000.

(6) Article 4(1)(d) shall be deleted.

(7) In paragraphs (2) and (3) of article 5 references to “public electricity suppliers” shall be replaced with references to “supply successor companies”.

(8) Paragraphs (4) and (5) of article 5 shall be replaced with the following:

“(4) If the supply successor companies wish to change the person who is to be the nominated person for the purposes of this Order they shall jointly nominate the person they wish to become the nominated person and request in writing that the Secretary of State both approve the person so nominated and withdraw approval of the then existing nominated person.

(5) Where there is a change in the person who is nominated to be the nominated person (either at the instigation of the supply successor companies 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 the new nominated person by a date specified by the Secretary of State.

(6) In the circumstances described in paragraph (5) the dates referred to in articles 3, 4 and 6 may be replaced with dates specified by the Secretary of State and the reference in article 6(1)(b) to the “original arrangements” shall be read as a reference to arrangements which replace those original arrangements to which the generator (or his successor) was party immediately prior to the date specified by the Secretary of State to be inserted into article 6(1)(a).

(7) 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 supply successor companies in writing of that decision within 30 days of receipt of such request.”.

(9) In article 6:

(a) in paragraphs (1) and (2) all references to “the commencement of the order period” shall be replaced with “27th March 2001” and the reference in article 6(1)(a) to “the first day of the order period” shall be replaced with “27th March 2001”; and

(b) in paragraph (3) the reference to “within two months after the commencement of the order period” shall be replaced with “ before 1st December 2001”.

(10) Article 7 shall be replaced with the following:

**“Replacement supply successor companies**

7.—(1) A supply successor company (referred to as “the Company” in this article) shall notify the Secretary of State in writing immediately upon the occurrence of any of the following events and such notification shall include the identity of any relevant third parties (as referred to in sub-paragraphs (f) and (h)):

- (a) the Company passes a resolution that it would be wound up;
- (b) a court makes an administration order or a winding up order in relation to the Company;
- (c) the Company makes a composition or arrangement with its creditors;
- (d) an administrative receiver, receiver or manager is appointed to the Company by a creditor or by a court;
- (e) the Company ceases to carry on business as an electricity supplier;
- (f) the Company makes arrangements to transfer its supply licence to a third party;
- (g) the Company has, or makes arrangements to have, its supply licence revoked or modified; or
- (h) the Company makes arrangements to transfer all or part of its electricity supply business to a third party.

(2) Where it appears to either the Secretary of State or to the Authority that in relation to the Company any of the events listed in paragraph (1) has taken or will take place, all or part of the obligations of the Company under this Order may be transferred by the Secretary of State to any third party (including any other existing supply successor company) who appears to the Secretary of State to have already or to be about to take over, continue or to have transferred to it all or part of the electricity supply business or the supply licence of the Company.

(3) In the circumstances described in paragraph (2) the Secretary of State shall notify the relevant third party and the Company in writing of the transfer of obligations under this Order and such third party shall, with effect from a date specified by the Secretary of State, become a supply successor company and shall take over all or part of the obligations of the Company under this Order, as specified by the Secretary of State.

(4) On making the written notification referred to in paragraph (3) the Secretary of State shall release the Company from all or the appropriate part of its obligations under this Order and shall notify the Company accordingly and specify the date on which such release is to take effect.”.

(11) After article 8 insert the following:

**“Saving of section 32 and NFFO Orders**

**8A.** In relation to England and Wales section 32 of the Electricity Act 1989 and NFFO Orders 3, 4 & 5 shall continue to have effect for the purposes of this Order notwithstanding the substitution of section 32 by section 62 of the Utilities Act 2000.”.

(12) Article 9 (which inserted subsection (2A) of section 32 of the Electricity Act 1989, as that provision has effect by virtue of an Order made under section 67 of the Utilities Act 2000 and notwithstanding the substitution of section 32 by section 62 of the Utilities Act 2000) shall be deleted; and accordingly that subsection shall cease to have effect.

(13) Article 10 shall be replaced with the following:

**“Enforcement of this Order**

**10.** The obligations of each supply successor company set out in this Order shall be treated as relevant requirements for the purposes of Part I of the Electricity Act 1989.”.

**Modifications to section 33**

**3.—(1)** Section 33 of the Electricity Act 1989<sup>(a)</sup> (as it continues to have effect in England and Wales by virtue of article 11 of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 and notwithstanding its repeal by section 66 of the Utilities Act 2000) shall be modified as set out in the following paragraphs of this article.

(2) In subsection (1) paragraphs (a) and (c) shall be replaced with the following—

“(a) for the imposition on electricity suppliers of a levy in respect of each qualifying month;”;

“(c) for the making of payments by that person to the nominated person, out of the payments so collected.”.

(3) Subsections (5), (5A) and (6) shall be replaced 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 incurred by the nominated person in purchasing electricity which was generated in pursuance of qualifying arrangements; and

(b) the total amount received by the nominated person in relation to the sale of such electricity or rights relating thereto,

calculated (in each case) by such method and with reference to such periods of time as may be specified by regulations under this section, and the total cost referred to in paragraph (a) shall include 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.

(5A) Where the amount referred to in subsection (5)(b) is greater than the cost referred to in subsection (5)(a) the difference shall be paid by the nominated person to the prescribed person referred to in subsection (1)(b), such difference being calculated by such method as may be specified by regulations under this section.

(6) Regulations under this section may—

(a) impose requirements (whether as to the furnishing of records or other information or the affording of facilities for the examination and testing of meters or otherwise) on the nominated person and on persons authorised by a licence to supply, transmit, distribute or generate electricity;

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(a) Section 33 has been amended by S.I. 1997/1185, the Fossil Fuel Levy Act 1998 (c. 5) and S.I. 2000/2727.

- (b) make provision as to the times at which payments falling to be made in pursuance of the regulations (whether payments by way of levy or payments to or by the nominated person) are to be so made;
  - (c) require the amount of any overpayment or underpayment which is made by or to any person (whether it arises because an estimate turns out to be wrong or otherwise) to be set off against or added to any subsequent liability or entitlement of that person; and
  - (d) make provision for a debt recovery procedure to be followed by the nominated person, including provision for the consequences for the nominated person of that procedure not being followed.”.
- (4) In subsection (7) the words “in respect of” shall be deleted.
- (5) Subsection (8) shall be replaced with the following—
- “(8) In this section—
- “advance payment” means any payment made or expense incurred in relation to a particular generating station before electricity is first generated by that station;
- “deferred payment” means any payment made or expense incurred in relation to a particular generating station after electricity ceases to be generated by that station;
- “fossil fuel generating station” means a generating station fuelled by a fossil fuel;
- “leviable electricity” means electricity which—
- (a) is generated by a fossil fuel generating station;
  - (b) is generated by a generating station fuelled by nuclear fuel; or
  - (c) is generated in pursuance of qualifying arrangements by a generating station fuelled or driven otherwise than by a fossil fuel or nuclear fuel;
- “nominated person” has the meaning given in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000;
- “public electricity supplier” means a person who, prior to 1st October 2001, was authorised by a licence to supply electricity under section 6(1)(c) of this Act (as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) and whose “authorised area” (as defined in section 6(9) of this Act as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) was situated wholly or mainly in England and Wales;
- “qualifying month” in relation to an electricity supplier or a public electricity supplier, means a month beginning on or after the day appointed by the first order under section 32 above (as that section was originally enacted) which has effect in relation to that supplier and in relation to the nominated person the meaning shall be specified in regulations made under this section;
- “supply successor company” has the meaning given in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000;
- and other expressions which are used in section 32 (as saved and modified by Order made under section 67 of the Utilities Act 2000 and extending to England and Wales) shall have the same meanings as in that section.”.
- (6) Subsection (10) shall be replaced by the following—
- “(10) Regulations under this section may include transitional measures making provision for payments of levy due to or from a public electricity supplier to be paid to or by the relevant supply successor company, where entitlement to such payments accrued under this section before 27th March 2001.”.

28th September 2001

*Brian Wilson,*  
Minister of State for Industry and Energy,  
Department of Trade and Industry

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 (“the Original Savings Order”) and makes certain modifications to section 33 of the Electricity Act 1989 as it has effect in England and Wales.

It makes provision for the saving of arrangements made by public electricity suppliers in compliance with their obligations under the Original Savings Order. On 1st October 2001 public electricity suppliers cease to exist and their obligations under the Original Savings Order are transferred under article 2(4) of this Order to “supply successor companies”.

Various amendments are also made to replace references in both the Original Savings Order and in section 33 of the Electricity Act 1989 to section 32 of the Electricity Act 1989, which is replaced by new section 32 following the commencement of sections 62 to 65 of the Utilities Act 2000 on 1st October 2001.

In article 2(8) of this Order provision is made for supply successor companies to be able to change the identity of the “nominated person” who enters into contracts with generators of electricity from non-fossil fuel generating stations.

In article 2(10) of this Order provision is made for the possibility that supply successor companies may reorganise their company structure or transfer their electricity supply business etc. In such circumstances the Secretary of State may transfer their obligations referred to in article 2(4) of this Order to a third party.

Article 2(11) provides that section 32 of the Electricity Act 1989 as it extends to England and Wales (as it had effect prior to 1st October 2001) and NFFO Orders 3, 4 & 5 (which are defined in the Original Savings Order) shall continue to have effect.

Various other consequential and minor amendments are also made to the Original Savings Order and to section 33 of the Electricity Act 1989.



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