Draft Order laid before the Scottish Parliament under section 32L(3) of the Electricity Act 1989, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

ELECTRICITY

The Renewables Obligation (Scotland) Amendment Order 2010

Made - - - -	*2010*
Coming into force - -	*1st April 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 32(1) and (2), 32A(1) and (2), 32C(1), (2), (7) and (8), 32D(1) and (2), 32G, 32J(3) and 32K(1) and (3) of the Electricity Act 1989(**a**) and all other powers enabling them to do so.

In accordance with section 32L(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 32D(4) of that Act the Scottish Ministers have had regard to the matters referred to in that section.

In accordance with section 32L(1) of that Act they have consulted the Gas and Electricity Markets Authority, the National Consumer Council(**b**), electricity suppliers to whom this Order applies, and such generators of electricity from renewable sources and other persons as they considered appropriate.

In accordance with section 32D(7) of that Act, they have carried out a review.

In accordance with section 32D(8)(b) of that Act, they are satisfied that the condition specified in article 33(3)(e) of the Renewables Obligation (Scotland) Order 2009 is satisfied.

Citation and commencement

1. This Order may be cited as the Renewables Obligation (Scotland) Amendment Order 2010 and comes into force on 1st April 2010.

(**a**) 1989 c.29; as substituted by section 37 of the Energy Act 2008 (c.32).
(**b**) Section 32L(1) refers to "the Council"; this is defined in section 111(1) as substituted by section 30(4)(b) of the Consumers, Estate Agents and Redress Act 2007 (c.17).

Renewables Obligation (Scotland) Order 2009

2. The Renewables Obligation (Scotland) Order 2009 ("the 2009 Order")(**a**) is amended by articles 3 to 16.

The renewables obligation

3. In article 5(3) (the renewables obligation) for "A, B and C" substitute "A and B".

Calculation B

4. In article 9 (calculation B) for paragraph (1) substitute—

"(1) Calculation B is the number of renewables obligation certificates likely to be issued in respect of renewable electricity for a particular obligation period, as estimated by the Secretary of State under article 9(2) of the Renewables Obligation Order 2009(**b**), increased by—

(a) in relation to the obligation period ending on 31st March 2011, 8 per cent and rounded up to the nearest whole number (one half being rounded upward); and

(b) in relation to any other obligation period, 10 per cent and rounded up to the nearest whole number (one half being rounded upward).".

Calculation C

5. Omit article 10 (calculation C).

Determining the total number of renewables obligation certificates to be produced in an obligation period

6. In article 11 (determining the total number of renewables obligation certificates to be produced in an obligation period)—

(a) in paragraph (1) omit "and having calculated calculation C for that period in accordance with article 10";

(b) in paragraph (3) omit "Subject to paragraph (4),"; and

(c) omit paragraph (4).

Determining the number of renewables obligation certificates to be produced by a designated electricity supplier in order to discharge its renewables obligation

7. Omit article 12(3) (determining the number of renewables obligation certificates to be produced by a designated electricity supplier in order to discharge its renewables obligation).

Cases and circumstances when a SROC must not be issued

8. After article 17 (excluded generating stations) insert—

"**Generating stations accredited for longer than 20 years**

17A.—(1) Subject to paragraphs (2) and (3), SROCs are not to be issued in respect of any electricity generated—

(a) by an existing generating station, after 31st March 2027;

(**a**) S.S.I. 2009/140, as amended by S.S.I. 2009/276.
(**b**) S.I. 2009/785.

(b) by a new generating station, on or after the 20th anniversary of the date on which it was accredited or 31st March 2037 (whichever is the earlier).

(2) Where, at the time it generates electricity, a generating station's total installed capacity is greater than its original capacity, paragraph (1) applies only in relation to SROCs which are to be issued in respect of electricity generated using the station's original capacity.

(3) In relation to the remainder of the electricity generated by the generating station, SROCs are not to be issued on or after the 20th anniversary of the date on which, in the Authority's view, the additional capacity first formed part of the station or 31st March 2037 (whichever is the earlier).

(4) Where electricity generated by a generating station using additional capacity added at a particular time ("relevant additional capacity") is not measured separately from—

(a) electricity generated by it using additional capacity (if any) which was added to it at a different time; or

(b) electricity generated by it using its original capacity,

the electricity generated by it which is to be treated (for the purposes of paragraph (3)) as having been generated using the relevant additional capacity is the relevant percentage (the relevant percentage for these purposes being the relevant additional capacity at the date of generation of the electricity expressed as a percentage of the station's total installed capacity at that date).

(5) In this article—

"existing generating station" means a generating station which was accredited as at 25th June 2008;

"new generating station" means a generating station which was accredited after 25th June 2008; and

"original capacity", in relation to a generating station, means—

(a) in the case of an existing generating station, the capacity of the station as accredited and any additional capacity which (in the Authority's view) formed part of the station by 25th June 2008;

(b) in the case of a new generating station, the capacity of the station as accredited.

Microgenerators in respect of which feed-in tariffs may be available

17B. SROCs are not to be issued in respect of any electricity generated on or after 1st April 2010 by a microgenerator—

(a) if that microgenerator is a hydro generating station; or

(b) if that electricity is generated—

(i) from gas formed by the anaerobic digestion of material which is neither sewage nor material in a landfill;

(ii) from the direct conversion of sunlight into electricity; or

(iii) from wind.

Generating stations (other than microgenerators) accredited before feed-in tariffs become available

17C.—(1) This article applies to a generating station (other than a microgenerator or a generating station whose electricity is sold pursuant to a NFFO arrangement) which is accredited on or after 15th July 2009 and at a time when no relevant financial scheme is in force.

(2) Where a relevant financial scheme ("the scheme") comes into force in relation to a generating station to which this article applies ("the station"), the operator of the station

("A") (or, where A is not entitled to receive financial incentives in respect of the station under the scheme, the person who is so entitled ("B")), must (if they have not done so beforehand) notify the Authority in writing within 5 months of the date on which the scheme comes into force whether support for electricity generated by the station should be given in the form of SROCs or in the form of financial incentives under the scheme.

(3) Where A or (as the case may be) B—

(a) notifies the Authority in writing that support should be given in the form of financial incentives under the scheme; and

(b) that notification is received by the Authority before or within 5 months of the date on which the scheme comes into force,

the notification (once it has been accepted by the Authority) cannot be withdrawn and paragraph (4) or (as the case may be) (5) applies.

(4) Where the notification was received by the Authority before 1st April 2010 and the scheme comes into force on that date, SROCs are not to be issued in respect of any electricity generated by the station to which the notification relates on or after that date.

(5) In any other case SROCs are not to be issued in respect of any electricity generated by the station to which the notification relates on or after 1st April of the obligation period immediately following the obligation period in which the notification was received by the Authority.

(6) Where written notification in relation to the station is not received by the Authority before or within 5 months of the date on which the scheme comes into force, support (if any) for electricity generated by the station will be given in the form of SROCs.

(7) In this article, "relevant financial scheme", in relation to a generating station, means a scheme of financial incentives—

(a) 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; and

(b) under which support may be given to encourage the generation of electricity by the station.

Generating stations (other than microgenerators) accredited after feed-in tariffs become available

17D.—(1) This article applies to a generating station (other than a microgenerator or a generating station whose electricity is sold pursuant to a NFFO arrangement) in respect of which an application for accreditation is made and determined at a time when a relevant financial scheme ("the scheme") is in force.

(2) The operator of a generating station to which this article applies ("A") (or, where A is not entitled to receive financial incentives in respect of that station under the scheme, the person who is so entitled ("B")), must notify the Authority in writing, before the application for accreditation is determined, whether support for electricity generated by that station should be given in the form of SROCs or in the form of financial incentives under the scheme.

(3) Where, before the application for accreditation is determined, A or (as the case may be) B notifies the Authority in writing that support for electricity generated by the generating station should be given in the form of financial incentives under the scheme, that notification (if the application for accreditation has been approved) cannot be withdrawn and SROCs must not be issued in respect of any electricity generated by that station.

(4) In this article, "relevant financial scheme" has the same meaning as in article 17C.

Articles 17C and 17D: supplemental

17E.—(1) This article applies to a generating station—

(a) to which article 17C applies; or

(b) to which article 17D has applied.

(2) Nothing in article 17C or 17D prevents the issue of SROCs in respect of electricity generated by a generating station to which this article applies if support which was formerly available under a financial scheme to encourage the generation of electricity by that station is no longer available by virtue of the size of that station's total installed capacity.

(3) In this article, "financial 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.".

Banding

9. After article 30 (generating stations which were accredited as at 11th July 2006) insert—

"**Offshore wind generating stations using relevant wind turbines**

30A.—(1) This article applies to a generating station—

(a) which is offshore;

(b) which generates electricity from wind; and

(c) which generates electricity in whole or in part using relevant wind turbines.

(2) Subject to paragraphs (3) to (5), the amount of electricity to be stated in each SROC issued in respect of electricity generated by a generating station to which this article applies is to be determined in accordance with article 27(4).

(3) Subject to paragraphs (4) and (5), the amount of electricity to be stated in each SROC issued in respect of electricity generated by a generating station to which both this article and article 30 apply is to be determined in accordance with article 30.

(4) Where electricity generated by a generating station to which this article applies is generated using relevant wind turbines, the amount of electricity to be stated in each SROC issued in respect of that electricity is 0.5 megawatt hours.

(5) Where the electricity generated by a generating station to which this article applies is generated in part using relevant wind turbines, but the amount of electricity so generated is not measured separately from electricity generated otherwise than by using those turbines, the percentage of the electricity which is to be treated (for the purposes of paragraph (4)) as having been generated using those turbines is the total installed capacity of those turbines at the date of generation of the electricity expressed as a percentage of the total installed capacity of the station at that date.

(6) For the purposes of this article a generating station is offshore if—

(a) its turbines are situated wholly in offshore waters; and

(b) it is not connected to dry land by means of a permanent structure which provides access to land above the mean low water mark.

(7) In this article—

"relevant wind turbine", in relation to a generating station, means a wind turbine which, in the Authority's view, forms part of the station from a date no earlier than 1st April 2010 and no later than 31st March 2014; and

"total installed capacity", in relation to a relevant wind turbine, means the maximum capacity at which the turbine could be operated for a sustained period without causing damage to it (assuming there was no interruption to the wind powering it).

(8) This article is subject to article 32.".

Refusing to issue and revoking SROCs

10. In Article 41 (refusing to issue and revoking SROCs)—

(a) in paragraph (2) for "must" substitute "may";

(b) for paragraph (3) substitute—

"(3) The Authority must revoke any SROC which it has issued where the SROC certifies the matters within section 32B(4) or (6) of the Act and the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in respect of which the SROC was issued has been supplied to customers in Northern Ireland.";

(c) in paragraph (4)(a) after "SROC" insert "is accurate or"; and

(d) after paragraph (6) insert—

"(7) This article is subject to article 41A(2) to (4).".

Refusing to issue and revoking SROCs: supplemental

11. After article 41 insert—

"**Where SROCs cannot be revoked**

41A.—(1) A SROC cannot be revoked where it has been produced to the Authority under article 5 (the renewables obligation).

(2) A SROC cannot be revoked by the Authority under article 41(2) or (4) more than six years after it has been issued.

(3) Where the Authority would have revoked a SROC ("the original SROC") under article 41(2) or (4) but for the fact that it has already been produced to it under article 5, the Authority must, subject to paragraph (4), refuse to issue a further SROC ("the further SROC") in respect of electricity generated by the generating station in relation to which the original SROC was issued.

(4) The Authority shall refuse to issue the further SROC under paragraph (3) only if the original SROC was—

(a) issued no more than six years previously; and

(b) not issued to an electricity supplier under article 34(2) to (4).".

Information to be provided to the Authority where electricity is generated from biomass

12. In article 54(1)(a) (information to be provided to the Authority where electricity is generated from biomass) after "biomass" insert "other than landfill gas or sewage gas".

Preliminary accreditation and accreditation of generating stations

13. In article 58(2)(a) (preliminary accreditation and accreditation of generating stations) after "article 17 (excluded generating stations)" insert "or article 17B (microgenerators in respect of which feed-in tariffs may be available)".

The 2009 Order: Schedule 1

14. In Schedule 1 (calculation of the SROC obligation) in the first column of the table (obligation period) for "2027" substitute "2037".

The 2009 Order: Schedule 2

15. In Part 1 (interpretation) of Schedule 2 (electricity to be stated in SROCs) at paragraph 1(1)—

(a) at the appropriate place insert ""dedicated biomass with CHP" means electricity generated from regular biomass by a qualifying combined heat and power generating station in a month in which the generating station generates electricity only from regular biomass or only from biomass;"; and

(b) at the appropriate place insert ""dedicated energy crops with CHP" means electricity generated from energy crops by a qualifying combined heat and power generating station in a month in which the generating station generates electricity only from energy crops or only from biomass;".

The 2009 Order: Schedule 3

16. In Schedule 3 (amount of relevant shortfall for the relevant obligation period) in the first column of the table (obligation period) for "2027" substitute "2037".

Transitionals

17.—(1) Nothing in this Order is to affect—

(a) the issue and revocation of a renewables obligation certificate in respect of electricity generated before 1st April 2010, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to such issue or revocation, under the 2009 Order;

(b) any obligations or requirements imposed on an operator of a generating station or some other person in respect of the obligation period ending on 31st March 2010, and anything which falls to be done or determined (whether by the generator or some other person) in relation to any such obligations and requirements, under the 2009 Order; and

(c) any obligations and functions of the Authority in respect of that obligation period, and anything which falls to be done or determined (whether by the Authority or some other person) in relation to it, under the 2009 Order.

(2) In this article "renewables obligation certificate" means a renewables obligation certificate issued by the Authority under the 2009 Order.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Renewables Obligation (Scotland) Order 2009 ("the 2009 Order") and makes transitional provision.

The 2009 Order imposes an obligation ("the renewables obligation") on all electricity suppliers which supply electricity in Scotland. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates (SROCs) in respect of each megawatt hour of electricity that each supplies during a specified period known as an obligation period (article 5 of the 2009 Order). The renewables obligation is administered by the Gas and Electricity Markets Authority ("the Authority") who issue SROCs to renewable electricity generators in respect of their renewable output. These certificates are sold to electricity suppliers with or without the associated renewable electricity.

The number of SROCs to be produced by a supplier (per megawatt hour of electricity supplied) is determined by the Scottish Ministers by reference to three calculations as set out in Part 2 of the 2009 Order. Articles 3 to 7 of this Order remove one of those calculations (calculation C) and amend calculation B.

Article 8 inserts provisions specifying additional situations in which SROCs are not to be issued by the Authority. New article 17A introduces a 20 year limit on support. Articles 17B to 17E specify when SROCs are not to be issued in light of the Secretary of State exercising the power in section 41(1) of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs) to make a financial scheme.

Article 9 inserts new article 30A into the 2009 Order which gives an increase in support where an offshore wind generating station uses relevant wind turbines.

Articles 10 and 11 amend article 41 of, and insert new article 41A into, the 2009 Order. Article 41A requires the Authority, in certain circumstances, to refuse to issue further SROCs to a generator.

Article 12 modifies article 54(1)(a) of the 2009 Order to exclude landfill gas and sewage gas from the sustainability reporting requirements in article 54 of the 2009 Order.

Article 13 is a consequential amendment to article 58(2)(a) of the 2009 Order to reflect the insertion of new article 17B into the 2009 Order by article 8 of this Order.

Article 14 amends Schedule 1 to the 2009 Order to extend the renewables obligation to 31st March 2037. Article 16 similarly extends the operation of Schedule 3 to the 2009 Order.

Article 15 inserts definitions into Part 1 of Schedule 2 to the 2009 Order for "dedicated biomass with CHP" and "dedicated energy crops with CHP".

Article 17 makes transitional provision in respect of the obligation period ending on 31st March 2010.

A full regulatory impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from the Scottish Government Renewables Policy Unit, Department of Enterprise, Energy and Tourism, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

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