2001 No. 3269 (S. 17)

ELECTRICITY

The Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements 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 (Scotland) Saving Arrangements Order 2001 and shall come into force on 1st October 2001.

(2) This Order extends to Scotland only.

Definitions

2.—(1) In this Order—

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

"the Authority" has the meaning given in section 1 of the Utilities Act 2000;

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

"generator" means any operator of a non-fossil fuel generating station described in any of SRO Orders 1, 2 and 3 who immediately before 1st October 2001 was party to any original arrangements;

"new arrangements" means arrangements made by the supply successor companies which comply with all the requirements of article 4(1)(a) and (b);

"order period" means the period starting on 1st October 2001 and ending on 31st March 2019;

"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 SRO Orders 1, 2 and 3;

"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) 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 Scotland;

"Requirements" means the requirements listed in article 4(1);

(**a**) 2000 c. 27.
(**b**) 1989 c. 29. Section 6 was replaced by section 30 of the Utilities Act 2000.

"SRO Orders 1, 2 and 3" means the following statutory instruments: the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994(**a**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997(**b**); the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1999(**c**);

"SRO Order 2" means the following statutory instrument: the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1997;

"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 became a supply successor company by virtue of article 6(3).

(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 Scotland 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 the Utilities Act 2000).

Obligations of supply successor companies

3.—(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 to secure that the Requirements are complied with.

(2) Each supply successor company 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 supply successor company shall supply the Authority with such information, or with information of a particular kind, requested by the Authority and which in its opinion is relevant to the question whether it is discharging, or has discharged, its obligations in this Order.

(4) Information requested by the Authority under paragraph (3) above must be given to it in whatever form it 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 Court of Session.

(6) Within 45 days after the commencement of the order period (or 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).

The Requirements - duties of the supply successor company

4.—(1) The Requirements are that—

(a) the supply successor company 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 supply successor company replacing the relevant public electricity supplier as contracting party to those arrangements in each case;

(b) subject to paragraph (2) below, the new arrangements must secure that there is available to the supply successor company from the non-fossil fuel generating stations described in SRO Orders 1, 2 and 3 the aggregate amount of generating capacity which, immediately before the commencement of the order period, was required by those SRO Orders 1, 2 and 3 to have been available to the relevant public electricity supplier during the order period;

(**a**) S.I. 1994/3275.
(**b**) S.I. 1997/799.
(**c**) S.I. 1999/439.

(c) having entered into the new arrangements, the supply successor company 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 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, timing and term under those new arrangements as they had been in as party to the original arrangements.

(2) The amount of generating capacity required by article 4(1)(b) to be available to the supply successor company shall be reduced in the same manner that article 4 of the SRO Order 2 reduced the amount of generating capacity required to be made available to the relevant public electricity supplier 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 SRO Order 2.

(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 SRO Order 2 taking into account the fact that it is the supply successor company, 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 supply successor company or a generator who is party to those new arrangements.

Deemed imposition of new arrangements

5.—(1) If, by the commencement of the order period, any generator has not entered into the new arrangements with the supply successor company the generator shall be deemed to—

(a) have entered into an agreement with the supply successor company on and with effect from the first day of the order period on those terms last offered to him in writing by the supply successor company 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 supply successor company 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 three 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 supply successor company 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.

Replacement supply successor companies

6.—(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 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 the Secretary of State may transfer all or part of the obligations of the Company under this Order to any third party (including any other existing supply successor company) who appears to the Secretary of State to have taken over, continued or to have had 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.

Saving of section 32 and SRO Orders

7. In relation to Scotland section 32 of the Electricity Act 1989 and SRO Orders 1, 2 and 3 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.

Enforcement of this Order

8. 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.

Modification of section 33

9.—(1) Section 33 of the Electricity Act 1989(**a**) (as it continues to have effect in Scotland by virtue of article 11 of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(**b**) 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) replace the words from and including "Where" to "provide" with "The Scottish Ministers may by regulations provide".

(3) 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 any supply successor company, out of the payments so collected.".

(4) Delete subsections (3) and (4).

(5) Subsections (5) and (6) shall be replaced with the following—

"(5) The amount of any payment required to be made to a supply successor company by regulations under this section shall be the difference between—

(a) the total cost incurred by the supply successor company in purchasing electricity which was generated in pursuance of qualifying arrangements; and

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

(b) what would have been the total cost of generating that electricity if it had been generated by a fossil fuel generating station,

calculated (in each case) by such method and with reference to such periods of time as may be specified by regulations under this section.

(5A) Where the cost referred to in subsection (5)(b) is greater than the cost referred to in subsection (5)(a) the difference shall be paid by the supply successor company 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.

(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 a supply successor company and on persons authorised by a licence to supply, transmit, distribute or generate electricity;

(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 a supply successor company) 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.".

(6) In subsection (7) replace the words "each public electricity supplier" with "the supply successor company".

(7) Replace subsection (7A) with the following—

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

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

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

(8) Delete subsection (7B).

(9) Subsection (8) shall be replaced with the following—

"(8) In this section—

"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;

"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 Scotland;

"qualifying month" in relation to an electricity supplier means a month beginning on or after the day appointed by the first order under section 32 above (as that provision was originally enacted) except that in relation to section 33(7) where a company is acting in its capacity as a supply successor company it shall mean a month beginning on or after 1st October 2001;

"supply successor company" means a person who became the holder of a supply licence under section 6(1)(d) of this Act 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 6(3) of the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2001.".

(10) After subsection (9) insert 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 1st October 2001.".

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

28th September 2001

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 licence split under the Utilities Act 2000. It also saves section 32 and modifies section 33 of the Electricity Act.

Articles 1 and 2 provide for the citation, commencement, extent and interpretation of the Order. The Order comes into force on 1st October 2001.

Articles 3 and 4 oblige the supply successor companies in Scotland to make arrangements which replace arrangements which were made in the past by public electricity suppliers 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 supply successor companies is the same as that which was required to be made available to the public electricity suppliers. The arrangements made by the supply successor companies must be in place by 1st October 2001.

Article 5 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 supply successor companies. There is a provision for the Secretary of State to resolve disputes as to the terms of such imposed agreements.

In article 6 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 under this Order to a third party.

Article 7 saves section 32 of the Electricity Act for the purposes of this Order.

Article 8 provides that the obligations of the supply successor companies under this Order are to be treated as relevant requirements for the purposes of Part I of the Electricity Act thus enabling the Gas and Electricity Markets Authority to take enforcement action.

Article 9 makes various amendments to section 33 of the Electricity Act with effect from 1st October 2001. The amendments to section 33 are largely to enable payments of fossil fuel levy to be paid to the supply successor companies instead of to public electricity suppliers. No changes are to be made to the way in which the payment of the fossil fuel levy is to be calculated. Various consequential amendments are also made which largely replace references to public electricity suppliers with references to the supply successor companies. There is provision for regulations made under 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.

STATUTORY INSTRUMENTS

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