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STATUTORY INSTRUMENTS

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**1994 No. 3275 (S.190)**

**ELECTRICITY**

**The Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994**

*Made - - - - 19th December 1994*  
*Laid before Parliament 20th December 1994*  
*Coming into force - - 21st December 1994*

The Secretary of State, in exercise of the powers conferred on him by section 32(1) and (2) of the Electricity Act 1989<sup>(1)</sup>, and of all other powers enabling him in that behalf, after consultation in accordance with the requirements of the said section 32(1), hereby makes the following Order:

**Citation, commencement, application and interpretation**

1.—(1) This Order may be cited as the Electricity (Non-Fossil Fuel Sources) (Scotland) Order 1994 and shall come into force on 21st December 1994.

(2) This Order does not apply to England or Wales.

(3) In this Order—

“the Act” means the Electricity Act 1989;

“biomass generating stations” means generating stations which are fuelled wholly or partially by any one or more of the following:—

- (a) crops grown for the purpose of providing a source of energy;
- (b) agricultural waste;
- (c) forestry waste; and
- (d) fuel derived from any one or more of the types of crop or waste mentioned in subparagraphs (a) to (c) above,

but excluding any such station as is partially fuelled by any one or more of the following:—

- (i) gas derived from landfill sites of any description;
- (ii) municipal waste;
- (iii) industrial waste;
- (iv) human sewage;

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(1) 1989 c. 29.

- (v) gas or waste in either case derived from human sewage; and
- (vi) fuel derived from either or both of municipal and industrial waste;

“commissioning process” means the process consisting of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a non-fossil fuel generating station of any description specified in the heading to any of Tables A to D in Schedule 1 (specified aggregate amounts of generating capacity) to this Order in order—

- (a) to demonstrate that such a non-fossil fuel generating station is capable—
  - (i) of commercial operation; or
  - (ii) in the case of a non-fossil fuel generating station which is the subject of relevant arrangements, of commercial operation for the purpose of such arrangements;
- (b) to establish the external physical conditions outside the control of the operator which are necessary for the operation of such station or which control the amount of electricity produced by the station; and
- (c) to establish the operating parameters within which such station can be operated in accordance with practices, methods and procedures which are or should be adopted by a person exercising that degree of judgement, skill, diligence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of operating such a station lawfully;

“connection agreement” means an agreement providing for the connection of any relevant non-fossil fuel generating station to a system of electric lines and electrical plant operated by the public electricity supplier in whose authorised area the station is or will be located;

“declared net capacity” means the declared net capacity ascertained—

- (a) in the case of a non-fossil fuel generating station of the description specified in the heading to either Table A or Table B in Schedule 1 to this Order, by the application to a station of such a description of the formula specified in subsection (8A) of section 32 of the Act as inserted by regulation 2 of the Electricity Act 1989 (Modifications of Section 32(5) to (8)) Regulations 1990(2); and
- (b) in the case of a non-fossil fuel generating station of the description specified in the heading to either Table C or D in Schedule 1 to this Order, in accordance with the meaning ascribed to that expression in section 32(8) of the Act;

“hydro generating stations” means generating stations which are driven by any form of water power other than tidal or wave power;

“operator” means an operator of any relevant non-fossil fuel generating station;

“premium price arrangement” means an arrangement made before the day on which this Order is made under which a public electricity supplier agrees to purchase electricity generated by a non-fossil fuel generating station at any time in the period commencing on 21st July 1993 and ending on 31st December 1998 (whether or not the agreement covers other periods) for a fixed price per kilowatt-hour (kWh) (and for this purpose any provision for adjustment of the price by reference to any measure of inflation shall be disregarded);

“relevant arrangements” means arrangements evidence of the making of which is produced to the Director in accordance with paragraph (1) of article 2 of this Order;

“relevant non-fossil fuel generating station” means a generating station of a description specified in the heading to any of Tables A to D in Schedule 1 to this Order and falling within the description of non-fossil fuel generating station specified in paragraph (2) of article 2 of this Order;

“waste-to-energy generating stations” means generating stations which are fuelled wholly or partially by either—

- (a) gas derived from landfill sites on which, at any time before 22nd July 1993, activities were carried on in pursuance of a licence issued under section 5 of the Control of Pollution Act 1974(3) or in accordance with conditions specified in a resolution passed by the relevant disposal authority pursuant to section 11(3)(e) of the said Act of 1974, but excluding any such station as is partially fuelled by any one or more of the following:—
  - (i) gas derived from landfill sites of any other description;
  - (ii) municipal waste;
  - (iii) industrial waste;
  - (iv) human sewage;
  - (v) gas or waste in either case derived from human sewage; and
  - (vi) fuel derived from either municipal waste or industrial waste or from both types of such waste; or
- (b) any one or more of the following:—
  - (i) municipal waste;
  - (ii) industrial waste; and
  - (iii) fuel derived from either municipal waste or industrial waste or from both types of such waste,

but excluding any such station as is partially fuelled by any one or more of the following:—

- (i) human sewage;
- (ii) gas or waste in either case derived from human sewage; and
- (iii) gas derived from any landfill site which was not a landfill site on which, at any time before 22nd July 1993, activities were carried on in pursuance of a licence issued under section 5 of the Control of Pollution Act 1974 or in accordance with conditions specified in a resolution passed by the relevant disposal authority pursuant to section 11(3)(e) of the said Act of 1974;

“wind generating stations” means generating stations which are driven by wind.

### **Requirement to make arrangements etc.**

2.—(1) Each public electricity supplier in Scotland shall, before 20th January 1995, make (in so far as he has not already done so) and produce to the Director evidence showing that he has made such arrangements as will secure that for each period shown in the Tables A to D in Schedule 1 to this Order the aggregate amount of generating capacity available to him from non-fossil fuel generating stations of the description specified in the heading to each particular Table and falling within the description of non-fossil fuel generating station specified in paragraph (2) of this article, will be not less than the amount specified in that Table in relation to him for that period.

(2) The description of non-fossil fuel generating station specified in this paragraph is a non-fossil fuel generating station—

- (a) in respect of which the commissioning process was not satisfactorily completed before 22nd July 1993;

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(3) 1974 c. 40; section 5 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 2, paragraph 8 and Schedule 34, Part II, by the Water Act 1989 (c. 15), Schedule 25, paragraph 48(3) and by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 31(1).

- (b) which has a declared net capacity not exceeding—
  - (i) in the case of a station of the description specified in the heading to Table A in Schedule 1 to this Order, 645 megawatts; and
  - (ii) in the case of a station of the description specified in the heading to any of Tables B to D in Schedule 1, 15 megawatts; and
- (c) in respect of which there is not and has not been a premium price arrangement (other than a relevant arrangement) under which any payment has been or may be made in respect of electricity generated before 1st January 1999 by such station.

**3.—(1) Where any relevant arrangements—**

- (a) provide that the availability to a public electricity supplier of some or all of the capacity of the non-fossil fuel generating station in question is conditional upon the satisfaction of any such requirement as is mentioned in Schedule 2 (conditions precedent) to this Order (whether the requirement in question is described in the terms of that Schedule or in terms to the like effect); and
- (b) result, on the first day of any specified period, in some or all of that capacity not being available to that supplier, by reason of any such requirement not being satisfied as was then due, or had previously been due on or prior to such date, under those arrangements to have been satisfied,

then, in relation to any day during that or any subsequent specified period ascertained in accordance with paragraph (3) of this article, this Order shall have effect as if the relevant aggregate amount specified in relation to that period were the amount specified in relation to that supplier for the period which includes that day in the Table in question in Schedule 1 to this Order, less (subject to the following proviso) an amount equal to the sum of any capacity whose availability is at that time conditional upon the satisfaction of such requirement or requirements and any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events as are referred to in paragraph (2) of this article:

Provided that the amount so specified shall not be reduced so as to be less than the relevant aggregate amount actually available to that supplier under the relevant arrangements during the period in question.

**(2) Where any relevant arrangements—**

- (a) provide that some or all of the generating capacity in question may reduce or cease to be available to a public electricity supplier following the occurrence of any such event as is mentioned in Schedule 3 (termination events) to this Order (whether the event in question is described in the terms of that Schedule or in terms to the like effect); and
- (b) result in some or all of that capacity not being available to that supplier, on any day during any specified period, by reason of the occurrence of any such event,

then the specified period then current shall forthwith terminate and, in relation to any day during any subsequent specified period ascertained in accordance with paragraph (3) of this article, this Order shall have effect as if the relevant aggregate amount specified in relation to that period were the amount specified in relation to that supplier for the period which includes that day in the Table in question in Schedule 1 to this Order, less an amount equal to the sum of any capacity which has ceased to be available at that time by reason of the occurrence of any such event or events and any capacity whose availability is at that time conditional upon the satisfaction of any such requirement or requirements as are referred to in paragraph (1) of this article, but subject to the proviso contained in that paragraph.

(3) In this article “specified period” means, in relation to any public electricity supplier, each successive period commencing and ending on the dates specified in a Table in Schedule 1 to this Order but so that—

- (a) the first such period shall commence on 16th August 1995 or, where all the arrangements made by the public electricity supplier make provision as mentioned in paragraph (1)(a) of this article, on the date on which all applicable requirements mentioned in paragraphs (a) to (e) of Schedule 2 to this Order have been satisfied in respect of any such arrangements;
- (b) on any such day as is mentioned in paragraph (1)(b) of this article there shall be substituted, in place of any specified period that would otherwise have commenced on that day, a period commencing on such day and expiring (subject to paragraphs (3)(d) and (3)(e) of this article) on the day on which the relevant requirement is satisfied either wholly or in part;
- (c) upon the expiry of any specified period ascertained in accordance with this sub-paragraph or with paragraph (3)(b) of this article, the next specified period shall commence on the following day and shall continue, subject to paragraphs (3)(d) and (3)(e) of this article, until the day on which the relevant requirement is either wholly satisfied or further satisfied in part;
- (d) on any such day as is mentioned in paragraph (2)(b) of this article, the then current specified period shall forthwith terminate and shall be followed by a new period commencing immediately upon such termination; and
- (e) any specified period which is current on any of the period end dates specified in the Table shall expire on that date.

St Andrew's House,  
Edinburgh  
19th December 1994

*J Allan Stewart*  
Parliamentary Under Secretary of State, Scottish  
Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE 1

Articles 1 and 2

## SPECIFIED AGGREGATE AMOUNTS OF GENERATING CAPACITY

**TABLE A**

## WIND GENERATING STATIONS

Period	Scottish Power plc	Scottish Hydro-Electric plc
1. 16th August 1995 to 31st March 1996	0.960	0.320
2. 1st April 1996 to 31st March 1997	0.960	0.320
3. 1st April 1997 to 31st March 1998	19.718	6.572
4. 1st April 1998 to 31st March 1999	34.200	11.400
5. 1st April to 31st March 2000	34.200	11.400
6. 1st April 2000 to 31st March 2009	34.200	11.400
7. 1st April 2009 to 31st March 2010	2.550	0.850
8. 1st April 2010 to 31st March 2011	0.960	0.320
9. 1st April 2011 to 31st March 2012	—	—

*Note:* Capacity amounts are expressed in megawatts (MW).

**TABLE B**

## HYDRO GENERATING STATIONS

Period	Scottish Power plc	Scottish Hydro-Electric plc
1. 16th August 1995 to 31st March 1996	—	—
2. 1st April 1996 to 31st March 1997	—	—
3. 1st April 1997 to 31st March 1998	3.737	1.246
4. 1st April 1998 to 31st March 1999	11.334	3.778
5. 1st April 1999 to 31st March 2000	12.909	4.303

*Note:* Capacity amounts are expressed in megawatts (MW).

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Period	Scottish Power plc	Scottish Hydro-Electric plc
6. 1st April 2000 to 31st March 2009	12.909	4.303
7. 1st April 2009 to 31st March 2010	9.172	3.057
8. 1st April 2010 to 31st March 2011	0.233	0.077
9. 1st April 2011 to 31st March 2012	0.060	0.020

*Note:* Capacity amounts are expressed in megawatts (MW).

**TABLE C**

WASTE-TO-ENERGY GENERATING STATIONS

Period	Scottish Power plc	Scottish Hydro-Electric plc
1. 16th August 195 to 31st March 1996	—	—
2. 1st April 1996 to 31st March 1997	—	—
3. 1st April 1997 to 31st March 1998	1.418	0.472
4. 1st April 1998 to 31st March 1999	2.850	0.945
5. 1st April 1999 to 31st March 2000	2.850	0.945
6. 1st April 2000 to 31st March 2009	2.850	0.945
7. 1st April 2009 to 31st March 2010	2.850	0.945
8. 1st April 2010 to 31st March 2011	1.418	0.472
9. 1st April 2011 to 31st March 2012	—	—

*Note:* Capacity amounts are expressed in megawatts (MW).

**TABLE D**

BIOMASS GENERATING STATIONS

Period	Scottish Power plc	Scottish Hydro-Electric plc
1. 16th August 1995 to 31st March 1996	—	—

*Note:* Capacity amounts are expressed in megawatts (MW).

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Period	Scottish Power plc	Scottish Hydro-Electric plc
2. 1st April 1996 to 31st March 1997	—	—
3. 1st April 1997 to 31st March 1998	—	—
4. 1st April 1998 to 31st March 1999	7.350	2.450
5. 1st April 1999 to 31st March 2000	7.350	2.450
6. 1st April 2000 to 31st March 2009	7.350	2.450
7. 1st April 2009 to 31st March 2010	—	—
8. 1st April 2010 to 31st March 2011	—	—
9. 1st April 2011 to 31st March 2012	—	—

*Note: Capacity amounts are expressed in megawatts (MW).*

## SCHEDULE 2

Article 3(1)(a)

### CONDITIONS PRECEDENT

The requirements referred to in article 3(1)(a) of this Order are—

- (a) that planning permission and all necessary consents (including any necessary wayleave consents), servitudes and rights to enable any relevant non-fossil fuel generating station to be constructed and operated in accordance with and as contemplated by the terms of the relevant arrangements have been granted;
- (b) that planning permission and all necessary consents (including any necessary wayleave consents), servitudes and rights to enable any public electricity supplier in whose authorised area any relevant non-fossil fuel generating station is to be located to comply with his obligations as contemplated by the terms of the relevant arrangements have been granted;
- (c) that the operator has entered into, and there has come into force, a connection agreement;
- (d) that the operator holds a licence or has the benefit of an exemption under Part I of the Act authorising him to generate electricity and to convey electricity from the place at which it is generated to the point of delivery for the purposes of the relevant arrangements; and
- (e) that the commissioning process has been satisfactorily completed.

## SCHEDULE 3

Article 3(2)(a)

### TERMINATION EVENTS

The events referred to in article 3(2)(a) of this Order are—

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- (a) the operator ceasing for any reason to be authorised by a licence or exemption granted under the Act to generate electricity for the purposes of giving a supply to any premises or enabling a supply to be given;
- (b) the operator defaulting in the performance of any of his material obligations under the relevant arrangements and in the case of a default which is, in the opinion of the relevant public electricity supplier (acting reasonably), capable of remedy continuing to be unremedied at the expiry of 28 days following the date on which the supplier shall have given notice thereof to the operator; and
- (c) a binding order being made or an effective resolution being passed for the winding up of the operator (otherwise than for the purposes of reconstruction or amalgamation on terms previously approved in writing by the relevant public electricity supplier (whose approval shall not unreasonably be withheld)) and within 28 days of his appointment the liquidator of the operator not having provided to the supplier a guarantee of performance of the obligations of the operator under the relevant arrangements in such form and amount as the supplier (acting reasonably) may require.

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## EXPLANATORY NOTE

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

This Order imposes on public electricity suppliers in Scotland obligations to make arrangements to secure the availability during specified periods of specified aggregate amounts of generating capacity from non-fossil fuel generating stations of particular descriptions. The arrangements must be made, and evidence of their making must be produced to the Director General of Electricity Supply, before 20th January 1995.

Article 2, read with Tables A to D in Schedule 1, imposes on the suppliers obligations to secure the availability during specified periods of specified amounts of capacity from non-fossil fuel generating stations of the descriptions (wind, hydro, waste-to-energy, or biomass) specified in the headings to the Tables and falling within the description of such stations specified in article 2(2). The amounts are specified in megawatts (one megawatt equals one million watts).

Article 3 provides a mechanism whereby, if certain conditions are not satisfied (*see* Schedule 2) or if certain events occur (*see* Schedule 3), the Order is to have effect as if the relevant period specified in the appropriate Table in Schedule 1 were replaced by a different period and, as a consequence of that, as if the relevant amount of capacity specified in that Table were a reduced amount, the amount of the reduction being the amount of capacity which has ceased to be available by reason of (as the case may be) the condition not having been satisfied or the event having occurred.