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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**The Renewables Obligation (Scotland) Order 2009**

**PART 8**

**Payments to discharge the renewables obligation, dealing with the buy-out and late payment funds, and mutualisation**

**Interpretation**

**42.—(1) In this Part—**

“buy-out fund” means the fund held by the Authority on the 1st September of the settlement period, being the aggregate of—

- (a) amounts received by the Authority under article 43 (those amounts relating to the renewables obligation in the relevant period);
- (b) amounts held by the Authority by virtue of articles 46(4)(b), 47(4), 51(5) and 52(6)(b); and
- (c) any interest earned on those amounts;

“compliant United Kingdom supplier” means a United Kingdom supplier which, at the end of the late payment period, has discharged or is treated as if it had discharged in full every UK renewables obligation imposed on it in respect of the relevant period;

“GBRO costs” means the costs which have been or are expected to be incurred by the Authority in connection with the performance of any of its functions conferred by or under sections 32 to 32M of the Act during the settlement period;

“instalment payment” is to be construed in accordance with article 49(5);

“late payment fund” is the fund held by the Authority on the 1st November of the settlement period, being the aggregate of—

- (a) amounts received by the Authority during that period under article 44 (those amounts relating to the renewables obligation in the relevant period); and
- (b) any interest earned on those amounts;

“late payment period” means the period beginning on the 1st September and concluding on the 31st October in the settlement period;

“mutualisation fund” means the aggregate at any given time of the amounts (excluding any amounts repaid under article 51(2)) received by the Authority under articles 49 and 51 (together with any interest earned on those amounts) in relation to the relevant period;

“mutualisation period” means the obligation period immediately following the settlement period;

“NIRO costs” means the costs which have been or are expected to be incurred by the Northern Ireland authority in connection with the performance of any of its functions conferred by or under Articles 52 to 55F of the Northern Ireland Energy Order during a period which, in any order made under those Articles, corresponds to the settlement period;

“non-compliant United Kingdom supplier” means a United Kingdom supplier which, at the end of the late payment period, has not discharged or is not treated as if it had discharged in full every UK renewables obligation imposed on it in respect of the relevant period;

“recalculated supplier payment” is to be construed in accordance with article 50(5);

“the relevant period” is to be construed in accordance with article 43(1);

“relevant shortfall” is to be construed in accordance with article 48(3);

“relevant supplier” means an electricity supplier which was a designated electricity supplier in the relevant period and which at the end of the late payment period had discharged or is treated as if it had discharged the whole or part of its renewables obligation for the relevant period;

“renewables obligation order” is to be construed in accordance with section 32(4) of the Act;

“shortfall” is to be construed in accordance with article 48(2);

“the settlement period” is to be construed in accordance with article 43(1);

“supplier payment” is to be construed in accordance with article 49(3);

“total mutualisation sum” is to be construed in accordance with article 48;

“total UK buy-out fund” means the fund existing on the 1st September of the settlement period, being the aggregate of—

- (a) the buy-out fund held on that date;
- (b) any fund provided for in a renewables obligation order made by the Secretary of State which corresponds to the buy-out fund held on that date; and
- (c) any fund provided for in an order made under Articles 52 to 55F of the Northern Ireland Energy Order which corresponds to the buy-out fund held on that date;

“UK renewables obligation” means—

- (a) the renewables obligation imposed by article 5 of this Order;
- (b) a renewables obligation imposed by a renewables obligation order made by the Secretary of State; or
- (c) a renewables obligation imposed on Northern Ireland suppliers in an order made under Articles 52 to 55F of the Northern Ireland Energy Order;

“United Kingdom supplier” means—

- (a) a designated electricity supplier;
- (b) any electricity supplier on which a UK renewables obligation is imposed under a renewables obligation order made by the Secretary of State; and
- (c) any designated electricity supplier within the meaning of Article 52(2) of the Northern Ireland Energy Order.

(2) In this Part, references to the late payment period, the mutualisation period, the relevant period and the settlement period, when used in the context of a United Kingdom supplier subject to a UK renewables obligation, are to be construed (where the United Kingdom supplier is not a designated electricity supplier)—

- (a) in the case of an electricity supplier on which a UK renewables obligation is imposed under a renewables obligation order made by the Secretary of State, as references to the period which corresponds to the late payment, mutualisation, relevant or (as the case may be) settlement period in that order;
- (b) in the case of an electricity supplier on which a UK renewables obligation is imposed under an order made under Articles 52 to 55F of the Northern Ireland Energy Order, as references to the period which corresponds to the late payment, mutualisation, relevant

or (as the case may be) settlement period in the order under which that UK renewables obligation is imposed.

(3) Any sum payable by suppliers under articles 43(1), 44, 49 or 51(1) is to be rounded to the nearest penny, with any half of a penny being rounded upwards.

### **Payments to discharge the renewables obligation**

**43.**—(1) A designated electricity supplier may (in whole or in part) discharge its renewables obligation for an obligation period (“the relevant period”) by making a payment to the Authority before the 1st September in the following obligation period (“the settlement period”).

(2) The payment referred to in paragraph (1) is an amount equal to  $\text{£}X \times (Y - Z)$  where—

- (a) X is the sum which corresponds to a renewables obligation certificate by virtue of paragraph (4);
- (b) Y is the number of renewables obligation certificates that the designated electricity supplier, if it makes no payment under paragraph (1), would have to produce to the Authority in order for it to discharge its renewables obligation for the relevant period in full; and
- (c) Z is the number of renewables obligation certificates that it has actually produced to the Authority for that period (or, where it has not produced any at all, zero).

(3) Where a designated electricity supplier makes a payment to the Authority which is less than the amount calculated under paragraph (2), its renewables obligation for the relevant period will be discharged by that payment to the extent of the appropriate number of renewables obligation certificates, which is the quotient obtained by dividing the payment made by the sum which corresponds to a renewables obligation certificate by virtue of paragraph (4).

(4) The sum which corresponds to a renewables obligation certificate (“the buy-out price”) is—

- (a) for the relevant period commencing on 1st April 2009, £37.19; and
- (b) for each obligation period thereafter, the buy-out price for the previous obligation period increased or, as the case may be, decreased by the percentage increase or decrease in the retail prices index over the 12 month period ending on the 31st December in the previous obligation period (the resulting figure being rounded to the nearest penny, with any half of a penny being rounded upwards).

### **Late payments to discharge the renewables obligation**

**44.**—(1) Where a designated electricity supplier fails (in whole or in part) to discharge its renewables obligation for the relevant period before the 1st September in the settlement period, the Authority must notify it of the extent of its default as soon as is reasonably practicable on or after that date.

(2) The extent of the designated electricity supplier’s default is an amount equal to the amount calculated under article 43(2) less any amount that the designated electricity supplier has actually paid to the Authority under article 43.

(3) Interest is payable on that amount (or, where all or part of it is paid to the Authority before the end of the late payment period, such part of that amount as remains unpaid) during the late payment period.

(4) That interest is to be calculated on a daily basis at 5 percentage points above the base rate charged by the Bank of England on the first day of the late payment period.

(5) Any payment made by a designated electricity supplier towards discharging its default under paragraph (2) will be applied first to any interest that is payable under paragraph (3).

(6) If, by the end of the late payment period, the designated electricity supplier has paid to the Authority under this article the amount referred to in paragraph (2) and all interest required to be paid on that amount under paragraph (3), it will be treated as having discharged its renewables obligation for the relevant period.

(7) The Authority must not, during the late payment period, impose a penalty under section 27A(1) of the Act<sup>(1)</sup> on any supplier in respect of that supplier's failure to discharge its renewables obligation in full before the 1st September in the settlement period.

#### **Dealing with the buy-out fund: payments into the Consolidated Fund and to the Northern Ireland authority**

**45.**—(1) Subject to paragraph (2), before the 1st November in the settlement period the Authority must pay—

- (a) into the Consolidated Fund the proportion of the buy-out fund which is equal to the proportion which the GBRO costs bear to the total UK buy-out fund; and
- (b) to the Northern Ireland authority the proportion of the buy-out fund which is equal to the proportion which the NIRO costs bear to the total UK buy-out fund.

(2) Where the aggregate of the amounts to be paid by the Authority under paragraph (1) would exceed the buy-out fund, before the 1st November of the settlement period the Authority must pay the buy-out fund into the Consolidated Fund and to the Northern Ireland authority in the same ratio as the GBRO costs bear to the NIRO costs.

(3) Where any amount to be paid under paragraph (1) or (2) is not a whole number when expressed in terms of pounds sterling, it is to be rounded down to the nearest pound sterling.

(4) Where the buy-out fund exceeds the aggregate of the amounts to be paid by the Authority under paragraph (1), the Authority must pay the balance of the buy-out fund to United Kingdom suppliers under and in accordance with article 47 by the 1st November in the settlement period.

#### **Dealing with the late payment fund: payments into the Consolidated Fund and to the Northern Ireland authority**

**46.**—(1) Subject to paragraph (2), where the buy-out fund has been paid into the Consolidated Fund and to the Northern Ireland authority under article 45(2), before the 1st January in the settlement period the Authority must pay from the late payment fund—

- (a) into the Consolidated Fund an amount which is equal to the difference between the amount that was paid into the Consolidated Fund under article 45(2) and the amount that would have been paid into it under article 45(1) had the aggregate of the amounts to be paid by the Authority under article 45(1) not exceeded the buy-out fund; and
- (b) to the Northern Ireland authority an amount which is equal to the difference between the amount that was paid to it under article 45(2) and the amount that would have been paid to it under article 45(1) had the aggregate of the amounts to be paid by the Authority under article 45(1) not exceeded the buy-out fund.

(2) Where the aggregate of the amounts to be paid by the Authority under paragraph (1) would exceed the late payment fund, before the 1st January of the settlement period the Authority must pay the late payment fund into the Consolidated Fund and to the Northern Ireland authority in the same ratio as the GBRO costs bear to the NIRO costs.

(3) Where any amount to be paid under paragraph (1) or (2) is not a whole number when expressed in terms of pounds sterling, it is to be rounded down to the nearest pound sterling.

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(1) Section 27A of the Act was inserted by section 59(1) of the Utilities Act 2000 (c. 27).

(4) Where, after any payments required to be made during the settlement period under paragraph (1) or (2) have been made, the Authority—

- (a) holds more than £50,000 in the late payment fund, the Authority must pay the late payment fund to United Kingdom suppliers under and in accordance with article 47 by the 1st January in the settlement period;
- (b) holds £50,000 or less in the late payment fund, the Authority must retain that money, which is to constitute part of the buy-out fund held in the obligation period immediately following the settlement period.

#### **Dealing with the buy-out and late payment funds: payments to United Kingdom suppliers**

47.—(1) Each United Kingdom supplier must be paid a proportion of the amount (if any) that the Authority is required to pay to United Kingdom suppliers by virtue of article 45(4) or 46(4)(a) by the dates in the settlement period specified in those articles.

(2) The proportion referred to in paragraph (1) is  $A \div$  where—

- (a) A is the number of renewables obligation certificates presented by the United Kingdom supplier to the Authority or Northern Ireland authority in order to discharge (in whole or in part) any UK renewables obligation to which it was subject in the relevant period; and
- (b) B is the total number of renewables obligation certificates presented by United Kingdom suppliers to the Authority and the Northern Ireland authority in order to discharge (in whole or in part) any UK renewables obligations to which they were subject in that period.

(3) Where any amount to be paid under this article is not a whole number when expressed in terms of pounds sterling, it is to be rounded down to the nearest pound sterling.

(4) Where by virtue of the operation of paragraph (3) the Authority continues to hold any sum which otherwise would have been paid out under this article that sum is to be retained by the Authority and is to constitute part of the buy-out fund held in the obligation period immediately following the settlement period.

#### **Shortfall in the buy-out and late payment funds: the total mutualisation sum**

48.—(1) As soon as reasonably practicable after the 31st October in the settlement period, the Authority must—

- (a) determine whether a shortfall (within the meaning of paragraph (2)) has occurred; and
- (b) where such a shortfall has occurred and is a relevant shortfall (within the meaning of paragraph (3)), calculate the total sum to be recovered from relevant suppliers (“the total mutualisation sum”).

(2) A shortfall occurs in relation to the relevant period where the amount referred to in subparagraph (a) is less than the amount referred to in subparagraph (b) and is the difference between the two—

- (a) the amount referred to in this sub-paragraph is the sum of—
  - (i) the amount held in the buy-out fund on 1st September in the settlement period; and
  - (ii) the amount held in the late payment fund on 31st October in that period (excluding from that amount any interest paid pursuant to article 44(3));
- (b) the amount referred to in this sub-paragraph is what the amount referred to in subparagraph (a) would have been if, on 31st October in the settlement period, each designated electricity supplier which, at the end of the late payment period, has not (and is not treated as having) discharged its renewables obligation in full were to pay to the Authority the amount notified to it by the Authority under article 44(1).

(3) A shortfall is a relevant shortfall if—

- (a) the relevant period in relation to which it has occurred is identified in the first column of Schedule 3; and
- (b) it is equal to, or in excess of, the amount which corresponds to that period in the second column of that Schedule.

(4) Subject to paragraphs 47(5) to 47(7), where a relevant shortfall has occurred in relation to the relevant period, the total mutualisation sum for that period is the amount of that shortfall.

(5) Where any non-compliant United Kingdom supplier has produced renewables obligation certificates to the Authority or the Northern Ireland authority in order to discharge, in part, any UK renewables obligation to which it was subject in the relevant period, the total mutualisation sum for that period is equal to

$$\frac{\text{figure set out in second column of Schedule 1 for that period} \times \text{calculation B for that period}}{\text{calculation A for that period}}$$

where—

- a R, subject to paragraphs 47(6) and 47(7), is the amount of the shortfall;
- b E is the number of renewables obligation certificates produced by non-compliant United Kingdom suppliers to the Authority or the Northern Ireland authority in order to discharge, in part, any UK renewables obligation to which they were subject in the relevant period; and
- c F is the total number of renewables obligation certificates produced by United Kingdom suppliers to the Authority or to the Northern Ireland authority in order to discharge, in whole or in part, any UK renewables obligation to which they were subject in the relevant period.

(6) If the total mutualisation sum for the relevant period has to be recalculated by virtue of article 50(5), for the purposes of that recalculation (whether under paragraph (4) or (5)) the amount of the shortfall is to be reduced by the sum of all payments mentioned in article 50(1)(b) received by United Kingdom suppliers.

(7) For the purposes of calculating or recalculating the total mutualisation sum for the relevant period, the amount (if any) by which the shortfall in relation to that period exceeds the mutualisation cap for that period is to be disregarded.

(8) The mutualisation cap for the relevant period depends on which obligation period constitutes the relevant period and is—

- (a) for the relevant period commencing on 1st April 2009, £22,400,000; and
- (b) for each obligation period thereafter, the mutualisation cap for the previous obligation period increased or, as the case may be, decreased by the percentage increase or decrease in the retail prices index over the 12 month period ending on the 31st December in the previous obligation period (the resulting figure being rounded to the nearest penny, with any half of a penny being rounded upwards).

### **Payments to be made by suppliers towards the total mutualisation sum**

**49.—**(1) Where a relevant shortfall has occurred in relation to the relevant period, as soon as reasonably practicable after the 31st October in the settlement period the Authority must notify each relevant supplier of—

- (a) the amount of the shortfall;
- (b) the total mutualisation sum; and

- (c) the payment which that supplier is required to make under paragraph (3).
- (2) Where the Authority notifies relevant suppliers under paragraph (1) it must publish a notice stating the amount of the shortfall in relation to the relevant period and the total mutualisation sum.
- (3) Where a relevant shortfall has occurred in relation to the relevant period, each relevant supplier must make a payment to the Authority (a “supplier payment”).
- (4) The supplier payment for each relevant supplier is equal to

$$\frac{\text{figure set out in second column of Schedule 1 for that period} \times \text{calculation B for that period}}{\text{calculation A for that period}}$$

where—

- a T is the total mutualisation sum;
- b C is the number of renewables obligation certificates that the supplier, if it had made no payments under article 43 or 44, would have had to produce to the Authority in order for it to have discharged its renewables obligation for the relevant period in full;
- c D is the total number of renewables obligation certificates that all relevant suppliers, if none of them had made payments under articles 43 or 44 would have had to produce in order for each of them to discharge their renewables obligation for the relevant period in full.

(5) Subject to article 50 each relevant supplier must make its supplier payment in the following instalments (“instalment payments”)—

- (a) 25 per cent of the supplier payment required must be paid to the Authority before 1st September in the mutualisation period;
- (b) 25 per cent of the supplier payment must be paid to the Authority before 1st December in that period;
- (c) 25 per cent of the supplier payment must be paid to the Authority before 1st March in that period; and
- (d) 25 per cent of the supplier payment must be paid to the Authority before 1st June immediately following that period.
- (6) Where a person required to make a supplier payment—
- (a) fails to make payment in full; and
- (b) at any time during or after the end of the relevant period ceases to hold a licence to supply electricity under section 6(1) of the Act<sup>(2)</sup>,

sections 25 to 28 of the Act are to apply in respect of that person in respect of the obligations imposed by this article, as if that person still held a licence to supply electricity.

### **Circumstances in which payments towards the total mutualisation sum are to be re calculated**

**50.**—(1) This article and article 51 apply where—

- (a) a relevant shortfall has occurred in relation to the relevant period; and
- (b) a designated electricity supplier which failed to discharge its renewables obligation for the relevant period makes a payment to other United Kingdom suppliers which, if it had been made to the Authority under article 43 or 44, would have increased the amounts that those

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(2) Section 6 of the Act was substituted by section 30 of the Utilities Act 2000 (c. 27).

suppliers would have received under article 47 from the buy-out and late payment funds, that payment being designed to compensate those suppliers for that loss.

(2) A designated electricity supplier which makes a payment mentioned in paragraph (1)(b) must, immediately after making the payment, notify the Authority—

- (a) of the United Kingdom suppliers to which the payment was made;
- (b) how much each United Kingdom supplier received; and
- (c) to which obligation period the payment relates.

(3) Any designated electricity supplier which receives a payment mentioned in paragraph (1)(b) must notify the Authority, immediately after receiving the payment, of the amount it received.

(4) Where a designated electricity supplier receives a payment from an electricity supplier supplying electricity in England and Wales in relation to the electricity supplier's failure to discharge in full any UK renewables obligation imposed on it by a renewables obligation order made by the Secretary of State, the designated electricity supplier must notify the Authority, immediately after receiving the payment, of the amount it received.

(5) Where, before 1st August in the obligation period immediately following the mutualisation period, the Authority receives a notification under paragraph (2) or (3), relevant suppliers shall cease to be required to make instalment payments in respect of dates specified in article 49(5) which have not yet passed and the Authority must, as soon as is reasonably practicable—

- (a) recalculate the total mutualisation sum (in relation to the relevant period);
- (b) recalculate the supplier payment (in relation to the relevant period) which each relevant supplier is required to make (to take account of the recalculated total mutualisation sum);
- (c) calculate, in accordance with article 51, the payments (if any) suppliers are required to make under that article;
- (d) notify each relevant supplier of—
  - (i) the recalculated total mutualisation sum;
  - (ii) its recalculated supplier payment; and
  - (iii) the payments (if any) the supplier is required to make under article 51; and
- (e) publish a notice stating the amount of the shortfall in relation to the relevant period and the total mutualisation sum as recalculated.

### **Re-calculated payments to be made by suppliers towards the total mutualisation sum and repayments by the Authority**

**51.**—(1) Where the sum of instalment payments already made by a relevant supplier is less than its recalculated supplier payment, the supplier must pay the difference between the two (“the outstanding amount”)—

- (a) where the only date mentioned in article 49(5) which has not yet passed is the final one, on that date;
- (b) where two or more of the dates mentioned in article 49(5) have not yet passed, in instalments on those dates (each instalment being equal to the outstanding amount divided by the number of dates which have not yet passed).

(2) Where the sum of instalment payments already made by a relevant supplier is more than the supplier's recalculated supplier payment and the Authority has received instalment payments, but has not yet paid out the mutualisation fund under article 52, the Authority must repay to the supplier from the mutualisation fund the difference between the amount that the supplier has paid (together with any interest earned on that amount) and the supplier's recalculated supplier payment.



(3) Where the Authority is required to repay sums to relevant suppliers in accordance with paragraph (2) and the mutualisation fund is insufficient to enable the Authority to repay each relevant supplier in full, the Authority must pay each relevant supplier an amount equal to

$$\frac{\text{figure set out in second column of Schedule 1 for that period} \times \text{calculation B for that period}}{\text{calculation A for that period}}$$

where—

- a G is the amount which the supplier would have received under paragraph (2) had the amount in the mutualisation fund been sufficient to enable the Authority to repay each relevant supplier in full;
- b H is the amount in the mutualisation fund; and
- c J is the sum of all payments that relevant suppliers would have received under paragraph (2) had the amount in the mutualisation fund been sufficient to enable the Authority to repay each relevant supplier in full.

(4) Where any amount to be paid under paragraph (2) or (3) is not a whole number when expressed in terms of pounds sterling, it is to be rounded down to the nearest pound sterling.

(5) Where by virtue of the operation of paragraph (4) the Authority continues to hold any sum which otherwise would have been paid out under this article that sum is to be retained by the Authority and is to constitute part of the buy-out fund held in the obligation period immediately following the mutualisation period.

### **Payments to be made to suppliers out of the mutualisation fund**

**52.**—(1) The Authority must pay out the mutualisation fund to compliant United Kingdom suppliers in accordance with paragraphs (2) to (6).

(2) When there is money in it, the mutualisation fund is to be paid out by—

- (a) 1st November in the mutualisation period;
- (b) 1st February in that period;
- (c) 1st May immediately following that period; and
- (d) 1st August immediately following that period.

(3) On each occasion the mutualisation fund is paid out, each compliant United Kingdom supplier must be paid a proportion of the mutualisation fund.

(4) The proportion referred to in paragraph (3) is  $A \div$  where—

- (a) A is the number of renewables obligation certificates presented by the compliant United Kingdom supplier to the Authority or Northern Ireland authority in order to discharge (in whole or in part) any UK renewables obligation to which it was subject in the relevant period; and
- (b) B is the total number of renewables obligation certificates presented by all compliant United Kingdom suppliers to the Authority or Northern Ireland authority in order to discharge (in whole or in part) any UK renewables obligation to which they were subject in that period.

(5) Where any amount to be paid under this article is not a whole number when expressed in terms of pounds sterling, it is to be rounded down to the nearest pound sterling.

(6) Where following the making of a payment to compliant United Kingdom suppliers the Authority continues, by virtue of the operation of paragraph (5), to hold any sum which otherwise would have been paid out under this article—

- (a) the Authority must pay out that sum along with the next payment to be made under this article in respect of the relevant period; or
- (b) where there are no further payments to be made under this article in respect of the relevant period that sum is to be retained by the Authority and is to constitute part of the buy-out fund held in the obligation period immediately following the mutualisation period.