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STATUTORY INSTRUMENTS

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**2009 No. 785**

**The Renewables Obligation Order 2009**

**PART 8**

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

**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 sub-paragraph (a) is less than the amount referred to in sub-paragraph (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 sub-paragraph (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 (5) to (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 
$$R - \left( R \times \frac{E}{F} \right)$$
 where—

- (a) R, subject to paragraphs (6) and (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, £224,000,000; 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).