
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

The Renewables Obligation (Scotland) Order 2007

PART 7

Additional Payments

Late payments

30.—(1) As soon as reasonably practicable after the specified day in relation to an obligation period (“the obligation period in question”), the Authority shall notify any designated electricity supplier that has not discharged its renewables obligation in full by the specified day (“defaulting supplier”) that it has not fully discharged its renewables obligation, and to what extent.

(2) If a defaulting supplier makes a late payment to the Authority before the end of the late payment period relating to the obligation period in question it shall be treated as having discharged its renewables obligation in full for that obligation period.

(3) If a defaulting supplier pays part of a late payment to the Authority before the end of the late payment period relating to the obligation period in question it shall be treated as having discharged the same proportion of the amount of its renewables obligation which was not discharged by the specified day as the proportion which the partial payment bears to the total late payment required in order for the supplier to be treated under paragraph (2) as having discharged its renewables obligation in full for the obligation period in question.

(4) The Authority shall pay out the late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in article 27(2) to (6), as if—

- (a) the references in paragraphs (2) and (6) of that article to “the buy-out fund” were references to that late payment fund; and
- (b) the references in paragraphs (2) to (6) of that article to a “relevant obligation period” were references to the obligation period in question.

(5) The Authority shall pay out the wave late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in article 28(2) to (4), as if—

- (a) the references in paragraphs (2) and (4) of that article to “the wave buy-out fund” were references to that wave late payment fund; and
- (b) the references in paragraphs (2) to (4) of that article to a “relevant obligation period” were references to the obligation period in question.

(6) The Authority shall pay out the tidal late payment fund by the 1st January immediately following the late payment period, in accordance with the system of allocation specified in article 29(2) to (4), as if—

- (a) the references in paragraphs (2) and (4) of that article to “the tidal buy-out fund” were references to that tidal late payment fund; and

- (b) the references in paragraphs (2) to (4) of that article to a “relevant obligation period” were references to the obligation period in question.”
- (7) The Authority shall not, during the late payment period, impose a penalty under section 27A(1)(1) of the Act on any defaulting supplier in respect of that supplier’s failure to discharge its renewables obligation in full before the specified day.
- (8) In this article—
- (a) “late payment” means the total of—
- (i) the amount, or additional amount that the defaulting supplier would have paid under article 11 to discharge its renewables obligation in full immediately before the specified day, taking into account any payments already made by the defaulting supplier under that article and any qualifying certificates produced by the supplier to the Authority; and
 - (ii) interest on the amount specified in paragraph (i) charged at the specified rate and calculated on a daily basis, from the specified day to the date on which payment is received by the Authority;
- (b) “the late payment fund” means the aggregate of the amounts received by the Authority under paragraphs (2) and (3) in respect of the obligation period in question (together with any interest received thereon by the Authority) less the amounts that constitute the wave late payment fund and the tidal late payment fund;
- (c) “the tidal late payment fund” means the aggregate of the amounts received by the Authority under paragraphs (2) and (3) in respect of the obligation period in question to the extent that any late payment is based on the amount that the defaulting supplier would have paid under article 11(6) to discharge the minimum tidal requirement of its renewables obligation (together with any interest received thereon by the Authority);
- (d) “the wave late payment fund” means the aggregate of the amounts received by the Authority under paragraphs (2) and (3) in respect of the obligation period in question to the extent that any late payment is based on the amount that the defaulting supplier would have paid under article 11(5) to discharge the minimum wave requirement of its renewables obligation (together with any interest received thereon by the Authority); and
- (e) “specified rate” means 5 percentage points above the base rate of the Bank of England as at the first day of the late payment period in relation to the obligation period.

Mutualisation: payments in

31.—(1) As soon as reasonably practicable after the end of the late payment period in relation to an obligation period, the Authority shall—

- (a) determine whether a relevant shortfall has occurred in relation to the obligation period; and
- (b) where a relevant shortfall has occurred, notify each relevant supplier of—
 - (i) the amount of the shortfall;
 - (ii) the amount to be recovered from all relevant suppliers in accordance with paragraph (3); and
 - (iii) the amount of the payment that the relevant supplier is required to make under paragraph (4).

(2) Where the Authority notifies relevant suppliers under paragraph (1)(b) it shall publish a notice stating—

- (a) the amount of the shortfall; and

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

(b) the amount to be recovered from all relevant suppliers in accordance with paragraph (3).

(3) Where a relevant shortfall has occurred, the specified amount shall be recovered from all relevant suppliers in accordance with paragraph (4).

(4) A relevant supplier shall make a payment to the Authority which is the same proportion of the sum to be recovered under paragraph (3) as the proportion which that supplier's renewables obligation for the shortfall period bears to the total of the renewables obligations of all the relevant suppliers for that shortfall period.

(5) When calculating the amount to be recovered from all relevant suppliers in accordance with paragraph (3), the Authority shall, where a non compliant United Kingdom supplier has complied in part with any renewables obligation imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order by producing qualifying certificates to the Authority or to the Northern Ireland Authority in respect of a shortfall period or any period contemporaneous with the shortfall period, reduce the specified amount in accordance with paragraph (6).

(6) Where paragraph (5) applies, the specified amount shall be reduced by a proportion which is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates produced by the non compliant United Kingdom supplier as mentioned in paragraph (5) bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority in respect of that shortfall period or any period contemporaneous with that shortfall period in discharge of any renewables obligation imposed in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order.

(7) Subject to article 33(3) and (4), a payment required under paragraph (4) shall be paid in the following instalments—

- (a) 25 per cent of the total payment required shall be paid to the Authority before 1st September in the mutualisation period;
- (b) 25 per cent of the total payment required shall be paid to the Authority before 1st December in the mutualisation period;
- (c) 25 per cent of the total payment required shall be paid to the Authority before 1st March in the mutualisation period; and
- (d) 25 per cent of the total payment required shall be paid to the Authority before 1st June in the obligation period immediately following the mutualisation period.

(8) Where a person required to make a payment under paragraph (4)—

- (a) fails to make payment in full in accordance with that paragraph, and
- (b) at any time during or after the end of the shortfall period in question, ceases to hold a licence to supply electricity under section 6(1) of the Act,

sections 25 to 28 of the Act 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.

Mutualisation: payments out

32.—(1) The Authority shall pay out the mutualisation fund in accordance with the system of allocation specified in paragraphs (2) to (6) by the following dates—

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

(2) The mutualisation fund relating to a shortfall period shall be divided amongst the compliant United Kingdom suppliers who meet one or more of the applicable conditions specified in paragraphs (3) to (5) so that each such compliant United Kingdom supplier receives a proportion of the mutualisation fund calculated in accordance with paragraph (6).

(3) The applicable condition for a designated electricity supplier is that, in respect of that shortfall period, it has complied (in whole or in part) with its renewables obligation by producing qualifying certificates to the Authority.

(4) The applicable condition for an electricity supplier supplying electricity in England and Wales is that, in respect of a period contemporaneous with the shortfall period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with section 32(1) of the Act by producing qualifying certificates to the Authority.

(5) The applicable condition for a Northern Ireland supplier is that, in respect of a period contemporaneous with the shortfall period, it has complied (in whole or in part) with any renewables obligation imposed on it in accordance with article 52 of the Northern Ireland Energy Order by producing qualifying certificates to the Northern Ireland Authority.

(6) The proportion of the mutualisation fund which each compliant United Kingdom supplier is entitled to receive under paragraph (2) is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates it has produced as mentioned in paragraphs (3) to (5) bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority in respect of the shortfall period, or any period contemporaneous with the shortfall period, in discharge of any renewables obligation imposed in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, excluding any qualifying certificates produced by non compliant United Kingdom suppliers.

Mutualisation: recalculations

33.—(1) Where a relevant shortfall has occurred, if a designated electricity supplier makes a payment to other United Kingdom suppliers in relation to its failure to discharge its renewables obligation in full in relation to the shortfall period (excluding any payments made by the first supplier in respect of mutualisation payments made by the other designated electricity suppliers)—

- (a) the designated electricity supplier who made such payment shall notify the Authority, immediately after making the payment, of the United Kingdom suppliers to which the payments were made, how much each supplier received and to which obligation period the payment relates; and
- (b) any designated electricity supplier who received such payment shall notify the Authority immediately after receiving the payment, of the amount it received.

(2) If the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period and, due to any recalculations required under paragraph (3), it is not reasonably practicable for it to pay out the mutualisation fund by the date required by article 32(1), the Authority shall pay out the mutualisation fund as soon as reasonably practicable after that date.

(3) Where, before the 1st August in the obligation period immediately following the mutualisation period, the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period, the Authority shall, as soon as reasonably practicable—

- (a) recalculate the amount to be recovered under article 31(3) by reducing the specified amount by the total amount received by the United Kingdom suppliers;
- (b) issue a revised notification to each relevant supplier detailing—

- (i) the recalculated amount to be recovered from all relevant suppliers in accordance with article 31(3); and
- (ii) the recalculated amount of the total payment the relevant supplier is required to make under article 31(4) (“recalculated supplier payment”) and a breakdown of any instalment payments required after the date of the notification in respect of the recalculated supplier payment in accordance with paragraph (4) (“future instalment payments”).

(4) Where the instalment payments already made by a relevant supplier are less than the recalculated supplier payment required from a relevant supplier, that supplier shall make future instalment payments on the dates mentioned in article 31(7) which have not yet passed, each instalment payment being equal to the outstanding amount divided by the number of future instalment payments.

(5) Where, following a recalculation under paragraph (3), a relevant supplier has paid more than the recalculated supplier payment, the Authority shall, where it has received instalment payments under article 31(7) but has not yet paid out the mutualisation fund, repay to each relevant supplier from the mutualisation fund the difference (together with any interest received thereon by the Authority) between the amount that the supplier has paid and the recalculated supplier payment.

(6) Where the Authority is required to repay sums to each relevant supplier in accordance with paragraph (5) and the mutualisation fund is insufficient to enable the Authority to repay each relevant supplier in full, the Authority shall reduce the sum to be paid to each supplier by a proportion equal to the proportion which that deficit bears to the amount that would have sufficed for that purpose; and the supplier shall not be entitled to any further payments from the Authority in this regard.

(7) Where, following a recalculation under paragraph (3), a relevant supplier has paid more than the recalculated supplier payment but there is no mutualisation fund to pay out, the supplier shall not be entitled to any repayment from the Authority.

(8) 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 renewables obligation imposed on it in accordance with section 32(1) of the Act, the designated electricity supplier shall notify the Authority, immediately after receiving the payment, of the amount it received.

Mutualisation: definitions and interpretation

34.—(1) In this Part—

- (a) “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 renewables obligation imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, in respect of the obligation period to which that late payment period relates, or any period contemporaneous with that obligation period;
- (b) “mutualisation fund” means the aggregate at any given time of the amounts (excluding any amounts repaid under article 33(5)) received by the Authority under articles 31 and 33 in respect of a shortfall period (together with any interest received thereon by the Authority);
- (c) “mutualisation payment” means a payment required under article 31(4);
- (d) “mutualisation period” means the second obligation period following a shortfall period;
- (e) “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 renewables obligation imposed on that supplier in accordance with section 32(1) of the Act or article 52 of the Northern Ireland Energy Order, in respect of the obligation

period to which that late payment period relates, or any period contemporaneous with that obligation period;

- (f) “outstanding amount” means the recalculated supplier payment less the total of any instalment payments already made by the relevant supplier in accordance with article 31(7);
- (g) “payment total” means the total of—
 - (i) the buy out fund in relation to the obligation period in question, immediately before it was paid out in accordance with article 26; and
 - (ii) the late payment fund in relation to the obligation period in question (less any sums paid to the Authority as referred to in article 30(6)(a)(ii)) immediately before it is paid out in accordance with article 30;
- (h) “recalculated supplier payment” has the meaning given by article 33(3)(b)(ii);
- (i) “relevant shortfall” means, in relation to any obligation period set out in the first column of Schedule 4, a shortfall which is equal to or greater than the corresponding amount set out in the second column of that Schedule;
- (j) “relevant supplier” means any designated electricity supplier with a renewables obligation for the shortfall period, which at the end of the late payment period in relation to the shortfall period, had discharged or is treated as if it had discharged the whole or part of, its renewables obligation;
- (k) “shortfall” means the difference between—
 - (i) the payment total; and
 - (ii) what the payment total would have been if all the designated electricity suppliers who, at the end of the late payment period in relation to an obligation period had not discharged or were not treated as if they had discharged their renewables obligation in full under article 30(2), had made a payment referred to in article 30(6)(a)(i);
- (l) “shortfall period” means an obligation period in respect of which a relevant shortfall occurs; and
- (m) “specified amount” means subject to paragraph (2) and articles 31(5) and (6) and 33(3) the whole of the relevant shortfall, except to the extent that it exceeds £20,640,000.

(2) If, in the case of the calendar year 2007 or any subsequent calendar year, the annual retail prices index for that year (“the later year”) is higher or lower than that for the previous year, the figure of £20,640,000 used in the definition of specified amount shall, in relation to the obligation period beginning on the 1st April immediately following the later year, be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year.

(3) Where the figure of £20,640,000 is modified under paragraph (2) the resulting figure shall be rounded to the nearest pound (with any exact amount of 50p being rounded upwards).