
DRAFT STATUTORY INSTRUMENTS

2015 No.

The Renewables Obligation Order 2015

PART 8

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

Interpretation

66.—(1) In this Part—

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

- (a) amounts received by the Authority under article 67 relating to the renewables obligation for the relevant period,
- (b) amounts held by the Authority by virtue of articles 70(4)(b), 71(4), 76(5) and 77(6)(b), and
- (c) any interest earned on those amounts;

“compliant UK supplier” means a UK 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 74(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 68 relating to the renewables obligation for the relevant period, and
- (b) any interest earned on those amounts;

“late payment period” means the period beginning with the 1st September and ending with 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 76(2)) received by the Authority under articles 74 and 76 (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 Energy (Northern Ireland) Order 2003 during a period which, in any order made under those Articles, corresponds to the settlement period;

“non-compliant UK supplier” means a UK 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 75(5);

“the relevant period” is to be construed in accordance with article 67(1);

“relevant shortfall” is to be construed in accordance with article 72(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;

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office of National Statistics, or
- (b) where the index is not published for a month, any substituted index or figures published by the Office of National Statistics;

“settlement period” is to be construed in accordance with article 67(1);

“shortfall” is to be construed in accordance with article 72(2);

“supplier payment” is to be construed in accordance with article 74(3);

“total mutualisation sum” is to be construed in accordance with article 73;

“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 Scottish Ministers 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 Energy (Northern Ireland) Order 2003 which corresponds to the buy-out fund held on that date;

“UK renewables obligation” means—

- (a) the renewables obligation imposed by article 7 of this Order,
- (b) a renewables obligation imposed by a renewables obligation order made by the Scottish Ministers, or
- (c) a renewables obligation imposed on Northern Ireland suppliers in an order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003;

“UK 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 Scottish Ministers, and
- (c) any designated electricity supplier within the meaning of Article 52(2) of the Energy (Northern Ireland) Order 2003.

(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 UK supplier subject to a UK renewables obligation, are to be construed (where the UK 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 Scottish Ministers, 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 Energy (Northern Ireland) Order 2003, 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 67(1), 68(6), 74 or 76(1) is to be rounded to the nearest penny, with any half of a penny being rounded upwards.

Payments to discharge the renewables obligation

67.—(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 UK ROC by virtue of paragraph (4);
- (b) Y is the number of UK ROCs 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 UK ROCs that it has produced to the Authority for that period (or, where it has not produced any, 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 UK ROCs, which is the quotient obtained by dividing the payment made by the sum which corresponds to a UK ROC by virtue of paragraph (4).

(4) The sum which corresponds to a UK ROC (“the buy-out price”) is—

- (a) for the relevant period commencing with 1st April 2016, £44.33 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 with 31st December 2015 (the resulting figure being rounded to the nearest penny, with any half of a penny being rounded upwards), 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 with 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

68.—(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 67(2) less any amount that the designated electricity supplier has paid to the Authority under article 67.

(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) If, by the end of the late payment period, the designated electricity supplier has not paid to the Authority the amount referred to in paragraph (2) and all interest required to be paid on that amount under paragraph (3), the supplier will not have discharged its renewables obligation for the relevant period.

(8) The Authority must not, during the late payment period, impose a penalty under section 27A(1) of the Act⁽¹⁾ 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.

(9) In paragraph (4) "base rate" means the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate.

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

69.—(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 UK suppliers under and in accordance with article 71 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

70.—(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 69(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 69(2) and the amount that would have been paid into it under article 69(1) had the aggregate of the amounts to be paid by the Authority under article 69(1) not exceeded the buy-out fund; and

(1) Section 27A of the Act was inserted by section 59(1) of the Utilities Act 2000 (c.27). Section 27A(1) has been amended by regulation 39 of S.I. 2011/2704 and article 9 of S.I. 2000/3343.

- (b) to the Northern Ireland authority an amount which is equal to the difference between the amount that was paid to it under article 69(2) and the amount that would have been paid to it under article 69(1) had the aggregate of the amounts to be paid by the Authority under article 69(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.
- (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 UK suppliers under and in accordance with article 71 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 UK suppliers

- 71.**—(1) Each UK supplier must be paid a proportion of the amount (if any) that the Authority is required to pay to UK suppliers by virtue of article 69(4) or 70(4)(a) by the dates in the settlement period specified in those articles.
- (2) The proportion referred to in paragraph (1) is $A \div B$ where—
 - (a) A is the number of UK ROCs produced by the UK 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 UK ROCs produced by UK suppliers to the Authority or to 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.

Determining whether a relevant shortfall has occurred

- 72.**—(1) As soon as reasonably practicable after the 31st October in the settlement period, the Authority must—
 - (a) determine whether a shortfall has occurred (within the meaning of paragraph (2)); 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 the 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 68(3)); and
 - (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 68(1).
- (3) A shortfall is a relevant shortfall if it is equal to, or in excess of, £15,400,000.

Calculating the total mutualisation sum in the case of a relevant shortfall

73.—(1) Subject to paragraphs (2) to (4), 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.

(2) Where any non-compliant UK supplier has produced UK ROCs 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

$$S - \left(S \times \frac{C}{D} \right) \text{ where—}$$

- (a) S, subject to paragraphs (3) and (4), is the amount of the shortfall;
 - (b) C is the number of UK ROCs produced by non-compliant UK 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) D is the total number of UK ROCs produced by UK 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.
- (3) If the total mutualisation sum for the relevant period has to be recalculated by virtue of article 75(5), for the purposes of that recalculation (whether under paragraph (1) or (2)) the amount of the shortfall is to be reduced by the sum of all payments mentioned in article 75(1)(b) received by UK suppliers.
- (4) 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.
- (5) The mutualisation cap for the relevant period depends on which obligation period constitutes the relevant period and is—

- (a) for the relevant period commencing with 1st April 2016, the 2015/16 mutualisation cap 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 31st December 2015 (the resulting figure being rounded to the nearest penny, with any half of a penny being rounded upwards); 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 with 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).

(6) In paragraph (5), the “2015/16 mutualisation cap” is £267,035,558.91.

Payments to be made by suppliers towards the total mutualisation sum

74.—(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 $T \times \frac{E}{F}$ where—

- (a) T is the total mutualisation sum,
- (b) E is the number of UK ROCs that the supplier, if it had made no payments under article 67 or 68, would have had to produce to the Authority in order for it to have discharged its renewables obligation for the relevant period in full, and
- (c) F is the total number of UK ROCs that all relevant suppliers, if none of them had made payments under articles 67 or 68 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 75, each relevant supplier must make its supplier payment in the following instalments (“instalment payments”)—

- (a) 25% of the supplier payment required must be paid to the Authority before 1st September in the mutualisation period;
- (b) 25% of the supplier payment must be paid to the Authority before 1st December in that period;
- (c) 25% of the supplier payment must be paid to the Authority before 1st March in that period; and
- (d) 25% 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(2),

sections 25 to 28 of the Act(3) 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.

(2) Section 6 of the Act was substituted by section 30 of the Utilities Act 2000 (c.27). Section 6(1) has been amended by section 136, section 145 and paragraph 1 of Schedule 23 to the Energy Act 2004 (c.20) and by article 6(2) and (3) of S.I. 2012/2400.

(3) Sections 27A to 27F were inserted by section 59 of the Utilities Act 2000 (c.27) and sections 27G to 27O were inserted by paragraph 2 of Schedule 14 to the Energy Act 2013 (c.32).

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

75.—(1) This article and article 76 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 UK suppliers which, if it had been made to the Authority under article 67 or 68, would have increased the amounts that those suppliers would have received under article 71 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 names of the UK suppliers to which the payment was made,
- (b) how much each UK 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 Scotland 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 Scottish Ministers, 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 74(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 76, the payments (if any) suppliers are required to make under that article, and
- (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 76.

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

76.—(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 74(5) which has not yet passed is the final one, on that date;
- (b) where two or more of the dates mentioned in article 74(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 77, 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

$$G - \left(G \times \frac{(H - J)}{H} \right) \text{ where—}$$

- (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 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, and
- (c) J is the amount in the mutualisation fund.

(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

77.—(1) The Authority must pay out the mutualisation fund to compliant UK 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 UK supplier must be paid a proportion of the mutualisation fund.

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

- (a) A is the number of UK ROCs produced by the compliant UK 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) K is the total number of UK ROCs produced by all compliant UK 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 UK 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.