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Draft Regulations laid before Parliament under section 105(3) of the Energy Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

ENERGY

The Green Gas Support Scheme (Amendment) Regulations 2023

Made - - - -

Coming into force - -

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 100 and 104(2) of the Energy Act 2008(a).

In accordance with section 105(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament(b).

In accordance with section 100(7) of that Act, the Secretary of State has obtained the consent of the Scottish Ministers to the making of these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Green Gas Support Scheme (Amendment) Regulations 2023 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales and Scotland.

Amendment of the Green Gas Support Scheme Regulations 2021

2. The Green Gas Support Scheme Regulations 2021(c) are amended as follows.

Amendment of regulation 2 (interpretation)

3. In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “date of registration” insert—

““de minimis amount” has the meaning given in regulation 43A(1);”;

(a) 2008 c. 32. Section 100 was amended by section 51 of the Infrastructure Act 2015 (c. 7) and by S.I. 2011/2195.

(b) Section 105 (parliamentary control of subordinate legislation) was amended by section 51 of the Infrastructure Act 2015 which inserted subsections (3A) to (3I) concerning provisions which require the affirmative resolution procedure.

(c) S.I. 2021/1335, to which there are amendments not relevant to these Regulations.

(b) after the definition of “existing credit cover” insert—

““final quarterly levy payment” has the meaning given in regulation 51(7)(a);”;

(c) after the definition of “injection” insert—

““in lieu amount” has the meaning given in regulation 51(7C)(b);”.

Amendment of regulation 39 (calculation and publication of the levy rate)

4. In regulation 39 (calculation and publication of the levy rate)—

(a) in paragraph (1)(c), in the formula, for “+I_{y-2}” substitute “-I_{y-2}”;

(b) after paragraph (6) insert—

“(6A) Where the Secretary of State reviews the maximum levy amount in accordance with paragraph (6)(b), the Secretary of State must calculate the new maximum levy amount in accordance with the formula set out in paragraph (6)(a) subject to the following modifications—

- (a) SB is the projected scheme expenditure for the scheme year with the largest projected scheme expenditure,
- (b) QL_{y+1} is the quarterly lag uplift, within the meaning given in paragraph (4)(f), in relation to the scheme year following that scheme year.”.

Amendment of regulation 41 (calculation of credit cover requirement)

5. In regulation 41 (calculation of credit cover requirement), in paragraph (2)(b)—

(a) in the words before paragraph (i), for the words from “following” to “first quarter” substitute “(the “second quarter”) following the first quarter and the quarter (the “third quarter”) following the second quarter”;

(b) for paragraph (ii) substitute—

“(ii) DQ is—

- (aa) in respect of the credit cover requirement for the second quarter, the number of days remaining in the first quarter from and including the date on which the supplier becomes a scheme supplier; or
- (bb) in respect of the credit cover requirement for the third quarter, the number of days in the first quarter.”.

Amendment of regulation 42 (levy credit payments)

6. In regulation 42 (levy credit payments)—

(a) in paragraph (1)(b), after “41(2)(b)” insert “or paragraph (3A)”;

(b) after paragraph (3) insert—

“(3A) The Authority must give a scheme supplier a new notification under paragraph (1) with an updated deficit amount where—

- (a) the Authority has previously given a notification to the supplier under paragraph (1) notifying them of their credit cover requirement for a quarter,
- (b) before the start of that quarter the supplier’s existing credit cover is reduced as a result of a draw down to pay the whole or any part of a mutualisation payment in accordance with regulation 55, and

- (c) as a result of the draw down, either—
 - (i) the deficit amount specified in the notification is no longer sufficient to ensure that the supplier’s credit cover for that quarter covers their credit cover requirement, or
 - (ii) the notification does not specify a deficit amount but the supplier’s existing credit cover is no longer sufficient to cover their credit cover requirement for that quarter.”;
- (c) in paragraph (5)(b), after “Authority” insert “and the excess amount would not be a de minimis amount if payable under regulation 45(2)(a)”;
- (d) after paragraph (5), insert—

“(5A) Paragraph (5) does not apply where regulation 43A(2)(b) applies in relation to a scheme supplier’s credit cover requirement and any excess amount would be a de minimis amount if payable under regulation 45(2)(a).”.

Insertion of regulation 43A

7. After regulation 43 (letters of credit) insert—

“De minimis

43A.—(1) A “de minimis amount” means—

- (a) an amount payable under these Regulations, or
- (b) a scheme supplier’s credit cover requirement for a quarter under regulation 41, which does not exceed the amount specified by the Secretary of State (the “de minimis threshold”) for the scheme year in which the amount becomes payable or the quarter referred to in sub-paragraph (b) falls.

(2) Where but for this paragraph an amount payable or a credit cover requirement under the following regulations would be a de minimis amount, no amount is payable or the credit cover requirement is £0 (as applicable)—

- (a) regulation 40(1),
- (b) regulation 41(1) or (2)(b),
- (c) regulation 44(1),
- (d) regulation 45(2)(a),
- (e) regulation 49(2),
- (f) regulation 51(8), (9), (9A)(a) or (b),
- (g) regulation 56(7),
- (h) regulation 56(10).

(3) For the purposes of determining under paragraph (2) whether an amount otherwise payable under a regulation would be a de minimis amount—

- (a) the amount payable to a scheme supplier under regulation 44(1) is deemed to be the sum of the amounts payable to the supplier under regulation 44(1) and regulation 45(2)(a),
- (b) the amount payable to a supplier under regulation 45(2)(a) is deemed to be the sum of the amounts payable to the supplier under regulation 44(1) and regulation 45(2)(a),

- (c) the amount payable to a former scheme supplier under regulation 51(9) is deemed to be the sum of the amounts payable to the supplier under regulation 51(9) and 51(9A)(a),
- (d) the amount payable to a former scheme supplier under regulation 51(9A)(a) is deemed to be the sum of the amounts payable to the supplier under regulation 51(9) and 51(9A)(a).

(4) Any sum which but for paragraph (2)(f) would have been paid by the Authority to a former scheme supplier must be treated by the Authority as if it had been paid to the Authority by the supplier in respect of a final quarterly levy payment.

(5) Where paragraph (2) applies in respect of an amount otherwise payable or a scheme supplier's credit cover requirement and but for this paragraph the Authority would be required to make a notification under the following regulations in respect of the amount or the credit cover requirement, the requirement to make a notification does not apply—

- (a) regulation 40(2),
- (b) except where regulation 42(5) applies, regulation 42(1),
- (c) regulation 49(2),
- (d) regulation 56(5)(b).

(6) Where paragraph (5) applies, the Authority may make such alternative notification as it considers appropriate.

(7) The Secretary of State must by notice publish the de minimis threshold for the scheme year beginning with 1st April 2024 and each subsequent scheme year.

(8) The de minimis threshold for a scheme year must not be more than the amount calculated in accordance with paragraph (9) (the “de minimis maximum”).

(9) The de minimis maximum for a scheme year is £200, adjusted by the percentage increase or decrease in the consumer prices index for the period beginning with 1st January 2024 and ending with 31st October immediately preceding the scheme year.

(10) A notice under paragraph (7) must be published by—

- (a) in relation to the de minimis threshold for the scheme year beginning with 1st April 2024, the later of the date falling 14 days after the Green Gas Support Scheme (Amendment) Regulations 2023 come into force and 31st December 2023,
- (b) in relation to the de minimis threshold for the scheme year beginning with 1st April 2025 and each subsequent scheme year, 31st December in the preceding scheme year.”.

Amendment of regulation 51 (former scheme suppliers)

8.—(1) In regulation 51 (former scheme suppliers)—

(a) in paragraph (7)—

- (i) in sub-paragraph (a), for “(“the final quarterly levy payment”)” substitute “(the “final quarterly levy payment”);”;
- (ii) in sub-paragraph (c)(i) omit “(the “excess amount”);”;

(iii) after sub-paragraph (c) insert—

“(ca) if the payments made by F by way of credit cover exceed the final quarterly levy payment, the excess amount (the “cash excess”),”;

(iv) omit sub-paragraphs (d) and (e);

(b) after paragraph (7), insert—

“(7A) Except where paragraph (7B) applies to F and provided that the final quarterly levy payment is greater than £0, the notice referred to in paragraph (7) must also specify—

- (a) the date on which F’s existing credit cover will be drawn down and the amount of that draw down,
- (b) whether the draw down will be against payments made, or a letter of credit provided, by F, or both.

(7B) This paragraph applies to F where—

- (a) F has complied with the obligations in paragraphs (2) and (3),
- (b) if this paragraph did not apply to F the Authority would draw down against a letter of credit provided by F in respect of the whole or part of the final quarterly levy payment, and
- (c) the letter of credit provided by F will remain an acceptable letter of credit until the date falling 28 days after the date on which the Authority serves a notice under paragraph (7).

(7C) Where paragraph (7B) applies to F, the notice referred to in paragraph (7) must also specify—

- (a) the date on which draw down will be made against payments made by F by way of credit cover and the amount of that draw down (if applicable),
- (b) the amount payable in lieu of draw down against F’s letter of credit (the “in lieu amount”), which is the amount that the Authority would draw down against the letter of credit if paragraph (7B) did not apply to F,
- (c) that provided F pays to the Authority the in lieu amount and any outstanding amount by the date referred to in paragraph (7)(f)(i), the Authority will not draw down against the letter of credit,
- (d) details of how any payment may be made,
- (e) that where the in lieu amount or outstanding amount, or both, are not paid in full by the date referred to in paragraph (7)(f)(i), the Authority will draw down against the letter of credit, as soon as is reasonably practicable, the amount required to discharge F’s final quarterly levy payment or, if the letter of credit is insufficient to discharge F’s final quarterly levy payment, the maximum amount specified in the letter of credit.

(7D) Where regulation 43A(2)(f) applies in respect of an amount otherwise payable by or to F under paragraph (8) or (9)—

- (a) paragraph (7)(f) (if otherwise applicable) does not apply;
- (b) the notice referred to in paragraph (7) must also specify that no amount is payable in respect of the cash excess or the outstanding amount,
- (c) this regulation applies as if—
 - (i) for paragraph (7C)(c) there were substituted—

“(c) that provided F pays to the Authority the in lieu amount by the date referred to in paragraph (7E), the Authority will not draw down against the letter of credit.”;
 - (ii) for paragraph (7C)(e) there were substituted—

“(e) that where the in lieu amount is not paid in full by the date referred to in paragraph (7E), the Authority will draw down against the letter

of credit, as soon as is reasonably practicable, an amount required to discharge the in lieu amount.”;

(7E) The date referred to in paragraph (7D)(c)(i) and (ii) is the date—

- (a) 14 days after the date of the notice, or
- (b) the next date on which quarterly levy payments are due under regulation 40, whichever is the earlier.”;

(c) for paragraph (9) substitute—

“(9) Where there is a cash excess, the Authority must pay the cash excess to F as soon as reasonably practicable after the date on which F’s existing credit cover is drawn down.”;

(d) after paragraph (9), insert—

“(9A) The Authority must pay to F any interest that has accrued on levy credit payments paid by F whilst in the bank account referred to in regulation 42(4) as soon as reasonably practicable after—

- (a) in relation to interest paid into the bank account before the date on which the Authority serves a notice under paragraph (7), the date on which the Authority serves a notice under paragraph (7),
- (b) in relation to interest paid into the account on or after the date on which the Authority serves a notice under paragraph (7), the date on which the interest is paid into the Authority’s bank account.

(9B) Where the final quarterly levy payment would be a de minimis amount if payable by F, the final quarterly levy payment is £0.”.

Amendment of regulation 55 (draw down of credit cover)

9. In regulation 55 (draw down of credit cover)—

(a) for paragraph (1)(b) substitute—

“(b) the Authority has served a notice under regulation 51(7) on a former scheme supplier (the “defaulting scheme supplier”) and the final quarterly levy payment specified in the notice is greater than £0.”;

(b) for paragraph (2) substitute—

“(2) The Authority must draw down the defaulting scheme supplier’s existing credit cover no earlier than—

- (a) where paragraph (1)(a) applies, the next working day after the day on which payment of the unpaid amount was due, or
- (b) where paragraph (1)(b) applies, the next working day after the date specified in the notice in accordance with regulation 51(7A)(a) or (7C)(a) or (e) (as applicable).”;

(c) after paragraph (2), insert—

“(2A) The Authority must not draw down against a letter of credit provided by the defaulting scheme supplier in relation to the defaulting scheme supplier’s final quarterly levy payment where—

- (a) regulation 51(7B) applies to the supplier, and
- (b) the defaulting scheme supplier has paid to the Authority by the date specified in the notice an amount required to discharge the defaulting scheme supplier’s final

quarterly levy payment or, where regulation 51(7D)(c)(ii) applies, the in lieu amount.

(2B) The Authority may also draw down the defaulting scheme supplier's existing credit cover in respect of any interest (calculated in accordance with regulation 54) due on the amount that the defaulting scheme supplier has failed to pay.”;

- (d) in paragraph (4), for the words “or mutualisation payment” substitute “, mutualisation payment, final quarterly levy payment or interest payment”;
- (e) in paragraph (5)(b), for the words “or mutualisation payment” substitute “, mutualisation payment, final quarterly levy payment or interest payment”.

Amendment of regulation 56 (mutualisation)

10. In regulation 56 (mutualisation), in paragraph (3)—

- (a) in sub-paragraph (a) omit “and”;
- (b) omit sub-paragraph (b).

Name
Parliamentary Under Secretary of State
Department for Energy Security and Net Zero

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Great Britain, amend the Green Gas Support Scheme Regulations 2021 (“the 2021 Regulations”), which established the Green Gas Support Scheme (“the GGSS”) and the Green Gas Levy (“the GGL”). The GGSS is a renewable heat incentive scheme to facilitate and encourage the production of biomethane by anaerobic digestion, for injection into the gas grid. The GGSS is funded by the GGL, which imposes a levy on licensed gas suppliers. These Regulations make amendments to the GGL only.

Regulation 4 corrects a drafting error in the formula used to calculate the levy rate: interest accrued on GGL funds held in Ofgem’s bank account should be deducted from (rather than added to) the annual collection target. It also makes amendments to the process by which the Secretary of State can amend the Maximum Levy Amount.

Regulations 5 and 6 make amendments in relation to credit cover. In particular, they amend the formula used to calculate the credit cover requirement for new suppliers joining the scheme. They also provide that the Gas and Electricity Markets Authority (the “Authority”) can re-issue a credit cover notice where a supplier’s credit cover has been drawn due prior to the start of a quarter due to a mutualisation event.

Regulation 7 provides for the Secretary of State to set a de minimis threshold in relation to each scheme year. The de minimis threshold applies to certain GGL payment obligations and a supplier’s credit cover requirement. Obligations to pay amounts below the de minimis threshold are automatically disappplied or reduced to £0.

Regulation 8 makes amendments to the procedure to be followed when a scheme supplier ceases to be a scheme supplier, other than by virtue of becoming an exempt supplier.

Regulation 9 provides that the Authority may draw down on a scheme supplier’s credit cover in relation to interest that has accrued on certain unpaid payments. It also makes other minor amendments to the credit cover draw down procedure.

Regulation 10 makes amendment to the conditions that must be satisfied for the mutualisation process to take place.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.

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