
STATUTORY INSTRUMENTS

2021 No. 1335

The Green Gas Support Scheme Regulations 2021

PART 10

Compliance and enforcement: scheme suppliers

Anticipated default notices

52.—(1) The Authority may serve a notice (an “anticipated default notice”) on a scheme supplier where the Authority reasonably believes it is likely that the scheme supplier will fail to pay—

- (a) a quarterly levy payment in accordance with regulation 40,
- (b) a levy credit payment in accordance with regulation 42,
- (c) any credit cover required in accordance with regulation 42(3)(b) or (c) (“additional credit cover”),
- (d) a backdated levy payment in accordance with regulation 49, or
- (e) a mutualisation payment in accordance with regulation 56.

(2) An anticipated default notice—

- (a) must specify—
 - (i) the amount of quarterly levy payment, levy credit payment, additional credit cover, backdated levy payment, or mutualisation payment, (the “relevant amount”), and the date on which payment of the relevant amount is due,
 - (ii) where applicable, how the relevant amount has been calculated, and
 - (iii) the grounds on which the Authority reasonably believes the scheme supplier is likely to fail to pay the relevant amount,
- (b) must include information about—
 - (i) the matters mentioned in paragraphs (3) to (7),
 - (ii) where appropriate, the matters mentioned in regulation 54 (interest on late payments), regulation 55 (draw down of credit cover), and regulation 56 (mutualisation), and
 - (iii) appeals under regulation 60, and
- (c) may include such other information as the Authority considers necessary.

(3) The Authority must publish an anticipated default notice, and any other notice served under paragraph (4), as soon as reasonably practicable after the date on which it is served.

(4) An anticipated default notice may be varied or revoked at any time by the Authority by serving a further notice, including a further anticipated default notice or an enforcement notice, on the scheme supplier.

(5) Where the scheme supplier pays all or part of the relevant amount after the service of the anticipated default notice, the Authority must publish—

- (a) the fact that the scheme supplier has paid all or part of the relevant amount (as the case may be),
- (b) where the scheme supplier has paid part of the relevant amount, the amount paid, and
- (c) the date of the payment.

(6) Any information published in accordance with paragraph (3) or (5) must be published for a minimum period of 12 months, and may be published for such longer period as the Authority may decide.

(7) Where—

- (a) the Authority has served an anticipated default notice, and
- (b) any part of the amount specified in that notice is not paid by the date on which payment of the amount is due (“the due date”),

on the day after the due date the anticipated default notice is deemed to be an enforcement notice served in accordance with regulation 53(1) in respect of such amount as remains outstanding.

Enforcement notices

53.—(1) The Authority may serve a notice (an “enforcement notice”) on a scheme supplier where—

- (a) the Authority is satisfied that the scheme supplier has failed to pay—
 - (i) a quarterly levy payment in accordance with regulation 40,
 - (ii) a levy credit payment in accordance with regulation 42,
 - (iii) any additional credit cover,
 - (iv) a backdated levy payment in accordance with regulation 49,
 - (v) a mutualisation payment in accordance with regulation 56, or
 - (vi) interest on a payment referred to in paragraph (i), (iv) or (v) due in accordance with regulation 54, or
- (b) the Authority reasonably believes that the scheme supplier has failed to comply with any other obligation imposed on scheme suppliers under Part 7, 8, or 9.

(2) An enforcement notice served in the circumstances referred to in paragraph (1)(a) must—

- (a) specify—
 - (i) the amount of quarterly levy payment, levy credit payment, additional credit cover, backdated levy payment, or mutualisation payment the scheme supplier has failed to pay (the “outstanding amount”),
 - (ii) where applicable, how the outstanding amount has been calculated,
 - (iii) where regulation 54 (interest on late payments) applies, any interest due on the outstanding amount at the date the enforcement notice is served and how that amount of interest has been calculated,
 - (iv) the sum of the outstanding amount and the interest due (“the total amount due”),
 - (v) the date by which the scheme supplier must pay the total amount due or, where the outstanding amount is a levy credit payment or additional credit cover, the date by which they must pay the total amount due or provide an acceptable letter of credit (or both) in respect of that amount, and
 - (vi) how the total amount due must be paid, and
- (b) include information about the matters mentioned in—
 - (i) regulation 55 (draw down of credit cover), and

(ii) regulation 56 (mutualisation).

(3) An enforcement notice served in the circumstances referred to in paragraph (1)(b) must specify—

- (a) the provision of these Regulations which the Authority believes has been breached,
- (b) the matters constituting the breach,
- (c) the steps the scheme supplier must take to remedy the breach, and
- (d) the date by which those steps must be taken.

(4) An enforcement notice must include information about appeals under regulation 60.

(5) The Authority must publish an enforcement notice, and any other notice served under paragraph (6), as soon as reasonably practicable after the date on which it is served.

(6) An enforcement notice may be varied or revoked at any time by the Authority by serving a further notice, including a further enforcement notice, on the scheme supplier.

(7) A scheme supplier on whom an enforcement notice is served must comply with the requirements of that enforcement notice.

(8) The duty imposed by paragraph (7) is enforceable in civil proceedings by the Authority for—

- (a) an injunction,
- (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988(1), or
- (c) any other appropriate relief.

Interest

54.—(1) Where—

- (a) a scheme supplier fails to pay the Authority all or any part of the following by the date on which it is due—
 - (i) a quarterly levy payment,
 - (ii) a backdated levy payment,
 - (iii) a mutualisation payment,
 - (iv) a financial penalty, or
 - (v) a backdated levy payment due in accordance with regulation 49(5), or
- (b) a former scheme supplier fails to pay the Authority all or any part of an outstanding amount due in accordance with regulation 51(8),

the Authority must require the scheme supplier, or the former scheme supplier (as the case may be) to pay interest, calculated in accordance with paragraph (2), on the amount which remains unpaid.

(2) The interest payable under paragraph (1) is simple interest calculated from day to day on the unpaid amount from the date by which payment of the amount is due until the date when payment is made, at a rate of 8 per cent per annum over the Bank of England base rate.

(3) For the purpose of this regulation the “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or

- (b) where an order under section 19 of the Bank of England Act 1998(2) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Draw down of credit cover

55.—(1) This regulation applies where—

- (a) a scheme supplier (the “defaulting scheme supplier”) fails to pay the whole or any part of—
- (i) a quarterly levy payment in accordance with regulation 40, or
 - (ii) a mutualisation payment required in accordance with regulation 56, or
- (b) a former scheme supplier (the “defaulting scheme supplier”) fails to pay the whole or any part of an outstanding amount in accordance with regulation 51(8).

(2) The Authority must draw down the defaulting scheme supplier’s existing credit cover no earlier than the next working day after the day on which payment of the unpaid amount was due.

(3) Where the Authority draws down a defaulting scheme supplier’s existing credit cover, the Authority must notify the defaulting scheme supplier of that draw down and the notification must specify—

- (a) the amount of the defaulting scheme supplier’s existing credit cover subject to the draw down, and
- (b) whether the draw down is against payments made, or a letter of credit provided, by the defaulting scheme supplier, or both.

(4) Where draw down is against payments made by the defaulting scheme supplier, the amount drawn down is treated as a payment by the defaulting scheme supplier in respect of their quarterly levy payment or mutualisation payment (as the case may be).

(5) Where draw down is against a letter of credit provided by the defaulting scheme supplier—

- (a) the Authority must take steps to demand payment from the person who provided the letter of credit for the lesser of—
- (i) the amount which can be demanded under that letter of credit, and
 - (ii) the unpaid amount, and
- (b) the amount which is paid to the Authority under that letter of credit is treated as a payment by the defaulting scheme supplier in respect of their quarterly levy payment or mutualisation payment (as the case may be), made at the time that amount is received by the Authority.

(6) The Authority may draw down against a letter of credit provided by a defaulting scheme supplier notwithstanding that the letter of credit has ceased to constitute an acceptable letter of credit.

Mutualisation

56.—(1) The Authority must carry out a process (a “mutualisation process”) in accordance with this regulation where—

- (a) the first condition or the second condition, or both of them, are satisfied, and
- (b) the third condition is satisfied.

(2) The first condition is that—

- (a) a scheme supplier (the “defaulting scheme supplier”) has failed to pay the whole or part of a quarterly levy payment in accordance with regulation 40, and

- (b) where draw down has occurred in accordance with regulation 55 in relation to that failure, the amount drawn down was less than the amount the defaulting scheme supplier had failed to pay.
- (3) The second condition is that—
 - (a) a former scheme supplier (the “defaulting scheme supplier”) has failed to pay the whole or part of an outstanding amount in accordance with regulation 51(8), and
 - (b) where draw down has occurred in accordance with regulation 55 in relation to that failure, the amount drawn down was less than the amount the defaulting scheme supplier had failed to pay.
- (4) The third condition is that, when notices are given under paragraph (5)(b), the total of any unpaid amounts to be recovered (the “total mutualisation amount”) exceeds the Authority’s estimated administrative costs of carrying out the mutualisation process.
- (5) Where the Authority carries out a mutualisation process, the Authority must—
 - (a) calculate—
 - (i) the total mutualisation amount,
 - (ii) the amount a scheme supplier other than a defaulting scheme supplier (a “non-defaulting scheme supplier”) is to pay, in accordance with paragraph (7), and
 - (b) give notice to each of the non-defaulting scheme suppliers (a “mutualisation notice”) specifying—
 - (i) that the non-defaulting scheme supplier is liable to make a payment of the amount apportioned to them, calculated in accordance with paragraph (7) (a “mutualisation payment”),
 - (ii) the date by which the mutualisation payment must be made, and
 - (iii) details of how the mutualisation payment must be made,and including information about the matters mentioned in regulation 55 (draw down of credit cover).
- (6) A mutualisation notice may not be given earlier than seven days after—
 - (a) the date on which payment of the quarterly levy payment or the outstanding amount (as the case may be) was due, or
 - (b) where the mutualisation process is carried out in relation to two or more unpaid amounts, the latest date on which any such amount was due.
- (7) A mutualisation payment payable by a non-defaulting scheme supplier is the amount given by—
$$TMA \times \left(\frac{MPS}{TMPS} \right)$$
where—
 - (a) TMA is the total mutualisation amount,
 - (b) MPS is the sum of the meter point data for that non-defaulting scheme supplier for each day of the quarter in relation to which the defaulting scheme supplier failed to pay, as notified or determined under regulation 48, and
 - (c) TMPS is the sum of the meter point data for all the non-defaulting scheme suppliers for each day of the quarter in relation to which the defaulting scheme suppliers failed to pay, as notified or determined under regulation 48.
- (8) A non-defaulting scheme supplier given a mutualisation notice under paragraph (5)(b) must pay the mutualisation payment to the Authority by the date specified in the notice.

(9) If the Authority receives the whole or part of an unpaid amount from a defaulting scheme supplier before the mutualisation notices are given to non-defaulting scheme suppliers the Authority must—

- (a) where necessary recalculate the amounts referred to in paragraph (5)(a), and
- (b) where a defaulting scheme supplier has paid the whole of the unpaid amount referred to in paragraph (2) or (3) (as the case may be), they are a non-defaulting scheme supplier for the purposes of paragraph (5).

(10) If the Authority receives an unpaid amount from a defaulting scheme supplier after giving mutualisation notices to non-defaulting scheme suppliers the Authority must, as soon as reasonably practicable after the date specified under paragraph (5)(b)(ii) in relation to that mutualisation, distribute the amount received, including any interest payment, from the defaulting scheme supplier among the non-defaulting scheme suppliers who have made mutualisation payments, as follows—

$$AD = \frac{SU}{AU} \times AR$$

where—

- (a) AD is the amount due to be paid to a non-defaulting scheme supplier,
- (b) SU is the mutualisation amount which the non-defaulting scheme supplier paid in respect of the relevant default,
- (c) AU is the total amount of mutualisation payments which were paid by all non-defaulting scheme suppliers in respect of the relevant default, and
- (d) AR is the total amount, including any interest payment, recovered from the defaulting scheme supplier.

Penalty notices

57.—(1) The Authority may serve a notice (a “penalty notice”) on a scheme supplier where the Authority is satisfied that the scheme supplier—

- (a) knowingly provided false or misleading information—
 - (i) to the Authority pursuant to regulation 38 (notification that a supplier is likely to be an exempt supplier), or regulation 46, 47, or 48 (obligations on scheme suppliers to provide information),
 - (ii) to a person instructed in accordance with regulation 38(4)(a),
- (b) has failed to comply with any other obligation imposed on scheme suppliers under Part 7, 8 or 9, or this Part.

(2) A penalty notice may impose a financial penalty on the scheme supplier of such amount as the Authority deems reasonable in all the circumstances of the case, provided that the amount may not exceed 10% of the scheme supplier’s relevant turnover.

(3) Before serving a penalty notice on a scheme supplier, the Authority must—

- (a) notify the scheme supplier that it proposes to impose a financial penalty, and the notification must specify—
 - (i) the amount of the financial penalty proposed to be imposed,
 - (ii) the Authority’s reason for proposing to impose the financial penalty,
 - (iii) the basis on which the Authority determined the amount of the proposed financial penalty,
 - (iv) a period of not less than 21 days beginning with the date on which the notification is served on the scheme supplier within which representations may be made to the Authority with respect to the proposed financial penalty,

- (b) publish the matters referred to in sub-paragraph (a) in such manner as the Authority considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by them,
 - (c) consider any representations which are made in accordance with sub-paragraph (a)(iv) and are not withdrawn, and
 - (d) determine whether to serve the penalty notice and, if so, whether to make any changes to the terms of the proposed penalty notice.
- (4) A penalty notice must—
- (a) specify—
 - (i) the amount of the financial penalty,
 - (ii) the Authority’s reason for imposing the financial penalty,
 - (iii) the basis on which the Authority determined the amount of the financial penalty,
 - (iv) the date by which the financial penalty must be paid, being a date not less than 42 days after the date the penalty notice is served on the scheme supplier, and
 - (v) how the payment must be made, and
 - (b) include information about—
 - (i) the matters mentioned in regulation 54 (interest on late payments), and
 - (ii) appeals under regulation 60.
- (5) Any monies received by the Authority pursuant to this regulation must be paid into the Consolidated Fund.
- (6) The Authority must publish a penalty notice as soon as reasonably practicable.
- (7) Where, at any time before a financial penalty is due to be paid, the Authority ceases to be satisfied that the scheme supplier is liable for that penalty, it must serve a further notice on the scheme supplier—
- (a) withdrawing the penalty notice, or
 - (b) modifying the penalty notice.
- (8) The Authority must—
- (a) determine and publish a statement of its policy with respect to the imposition of financial penalties under this regulation and the determination of their amount,
 - (b) keep the statement under review and, where the statement is revised or replaced as a result of such a review, publish the revised or replacement statement, and
 - (c) have regard to such statement as is published under this paragraph and in force at the time of the scheme supplier’s provision of false or misleading information or failure to comply with an obligation referred to in paragraph (1)(b) (as the case may be), in exercising, or deciding whether to exercise, its power under this regulation.
- (9) For the purposes of paragraph (2)—
- (a) “relevant turnover”, in relation to a scheme supplier, means—
 - (i) the scheme supplier’s turnover for the financial year preceding the financial year in which the penalty notice is served, or
 - (ii) where the scheme supplier has not published or prepared accounts in relation to the whole of that financial year, the scheme supplier’s turnover calculated as follows—

$$T \times \frac{DFY}{DA}$$

where—

- (aa) DFY is the number of days in the financial year,
 - (bb) DA is the number of days in the financial year for which the scheme supplier's accounts are available,
 - (cc) T is the scheme supplier's turnover in relation to the number of days referred to in sub-paragraph (bb), and
- (b) "turnover" has the meaning given in section 474(1) of the Companies Act 2006⁽³⁾.

Recovery of unpaid amounts as a civil debt

58. The following are recoverable, as a civil debt, by the Authority if not paid by the date on which they are due—

- (a) a quarterly levy payment,
- (b) a levy credit payment,
- (c) a payment of additional credit cover,
- (d) a backdated levy payment,
- (e) a mutualisation payment,
- (f) a financial penalty,
- (g) any interest due in accordance with regulation 54.

Default register

59.—(1) The Authority must publish and maintain a register containing the information described in paragraph (2) (a "default register"), and ensure, so far as practicable, that entries in the default register are accurate and up to date.

(2) Where a scheme supplier fails to pay a quarterly levy payment, a levy credit payment, a payment of additional credit cover, or a mutualisation payment by the date on which that payment is due, the Authority must publish the following information in relation to that scheme supplier in the default register as soon as reasonably practicable —

- (a) their name,
 - (b) whether they have failed—
 - (i) to pay a quarterly levy payment, a levy credit payment, a payment of additional credit cover, or a mutualisation payment,
 - (ii) to pay interest due in accordance with regulation 54,
 - (c) the dates on which any outstanding payments mentioned in sub-paragraph (b) were made,
 - (d) any financial penalty,
 - (e) any other information in relation to their compliance with these Regulations that the Authority considers appropriate.
- (3) Where—
- (a) the Authority publishes any information under paragraph (2) in relation to a failure by a scheme supplier to pay a quarterly levy payment, a levy credit payment, a payment of additional credit cover, or a mutualisation payment, and
 - (b) the Authority determines that they are an exempt supplier in relation to the scheme year in which the liability to make that payment arose,

(3) 2006 c. 46, to which there are amendments not relevant to these Regulations.

the Authority must amend the entry in the default register to record that they are an exempt supplier, and the date on which they were determined to be an exempt supplier.

(4) Any information published in accordance with paragraph (1) must be published for a minimum period of one year, or such longer period as the Authority determines.

Appeals

60.—(1) A scheme supplier served with an enforcement notice or a penalty notice may appeal to the relevant court—

- (a) in the case of an enforcement notice, on the grounds that—
 - (i) the decision to serve the notice was not within the power in regulation 53 or, in the case of an anticipated default notice which is deemed to be an enforcement notice by virtue of regulation 52(7), the decision to serve the anticipated default notice was not within the power in regulation 52,
 - (ii) a requirement of regulation 52 or regulation 53 (as the case may be) has not been complied with by the Authority in relation to the enforcement notice,
- (b) in the case of a penalty notice, on the grounds that—
 - (i) the decision to serve the notice was not within the power in regulation 57,
 - (ii) it was unreasonable of the Authority to require the financial penalty to be paid by the date specified in the notice,
 - (iii) a requirement of regulation 57 has not been complied with by the Authority in relation to the penalty notice.

(2) An appeal under paragraph (1) must be brought within 42 days of the date of service of the notice.

(3) A notice in respect of which an appeal is brought is suspended, pending determination of the appeal.

(4) For the purposes of paragraph (1), “the relevant court” means—

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session.

(5) On the hearing of an appeal the court may—

- (a) quash the notice,
- (b) affirm the notice, whether in its original form or with such modification as the court sees fit,
- (c) instruct the Authority to do, or not to do, any thing which is within the power of the Authority.

(6) The validity of an enforcement notice or a penalty notice may not be questioned by any legal proceedings on the grounds mentioned in paragraph (1)(a)(ii) or (b)(iii), other than as provided for by this regulation.

Application of this Part in relation to former scheme supplier

61. If a scheme supplier ceases to be a scheme supplier, the Authority may commence or continue compliance or enforcement action under this Part in relation to any breach of these Regulations by them which occurred in relation to any scheme year in which they were a scheme supplier, and they are a scheme supplier for the purposes of any such action.