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STATUTORY INSTRUMENTS

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**2021 No. 1335**

**The Green Gas Support Scheme Regulations 2021**

PART 7

The levy

CHAPTER 1

Introductory

**Scheme suppliers, provisionally exempt suppliers, and exempt suppliers**

**38.**—(1) Subject to the following paragraphs, a licensed gas supplier (“GS”) who is a fossil fuel supplier<sup>(1)</sup> is a scheme supplier.

(2) GS is not a scheme supplier in relation to the scheme year beginning with 1st April 2022, or a subsequent scheme year, where the Authority determines in accordance with paragraph (10) that at least 95% of the gas supplied by GS in the scheme year was certified biomethane and that they are an exempt supplier in relation to that scheme year.

(3) Where GS considers it is likely that they will be an exempt supplier in relation to a scheme year (the “relevant scheme year”), GS must—

- (a) notify the Authority of that fact—
    - (i) in relation to the scheme year beginning with 1st April 2022, by the tenth working day after the day on which these Regulations come into force,
    - (ii) in relation to the scheme year beginning with 1st April 2023 and any subsequent scheme year, by the relevant date specified in the scheme schedule,
  - (b) provide the Authority with such other information as the Authority may request in support of that notification, and
  - (c) provide written confirmation from a responsible officer of GS that the information provided in accordance with sub-paragraphs (a) and (b) is correct.
- (4) Where the Authority receives a notification referred to in paragraph (3)(a)—
- (a) it may instruct, or it may require GS to instruct, a person who is not a connected person in relation to GS to consider the information provided in accordance with paragraph (3)(a) and (b) and prepare a report (an “assurance report”),
  - (b) GS must provide to the Authority a copy of any assurance report prepared on their instruction, and the Authority must provide to GS a copy of any assurance report prepared on its instruction,
  - (c) having considered the information provided in accordance with paragraph (3)(a) and (b), and any assurance report prepared in accordance with sub-paragraph (a), it must determine whether it is likely that GS will be an exempt supplier in relation to the relevant scheme year, and notify GS of that determination—

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(1) See section 100(3) of the 2008 Act for the definitions of “fossil fuel supplier” and “fossil fuel”.

- (i) in relation to the scheme year beginning with 1st April 2022, by 1st March 2022,
  - (ii) in relation to the scheme year beginning with 1st April 2023 and subsequent scheme years, by 31st October preceding the start of the relevant scheme year.
- (5) An assurance report must comply with such requirements as the Authority may specify.
- (6) Where the Authority determines it is likely that GS will be an exempt supplier in relation to the relevant scheme year, GS is a provisionally exempt supplier in relation to that scheme year, and—
- (a) subject to paragraph (12), GS is not required to comply with the requirements on scheme suppliers set out in these Regulations, apart from this regulation and regulations 46 to 48 (additional obligations on scheme suppliers) in relation to the relevant scheme year,
  - (b) the Authority may not commence or continue compliance or enforcement action under Part 10 in relation to any breach of these Regulations by GS, apart from this regulation and regulations 46 to 48, which occurred in relation to the relevant scheme year,
  - (c) GS is treated as a scheme supplier for the purposes of regulations 46 to 48, and
  - (d) the notification required by paragraph (4)(c) must state that GS—
    - (i) is a provisionally exempt supplier in relation to the relevant scheme year, and
    - (ii) is not required to comply with the requirements on scheme suppliers set out in these Regulations in relation to the relevant scheme year, apart from this regulation and regulations 46 to 48.
- (7) Where the Authority determines it is not likely that GS will be an exempt supplier in relation to the relevant scheme year, the notification required by paragraph (4)(c) must state that GS is not a provisionally exempt supplier in relation to the relevant scheme year.
- (8) Where at least 95% of the gas supplied by GS in a scheme year was certified biomethane GS must by 1st July following the end of that scheme year—
- (a) notify the Authority of that fact,
  - (b) provide the Authority with evidence, supplied under an approved certification scheme, that at least 95% of the gas supplied by them in that scheme year was certified biomethane, and
  - (c) notify the Authority of the sum of their gas supply data for each day of that scheme year.
- (9) Where GS was a provisionally exempt supplier in relation to a scheme year and less than 95% of the gas supplied by them in that scheme year was certified biomethane GS must by 1st July following the end of that scheme year—
- (a) notify the Authority of that fact, and
  - (b) provide the Authority with such information in relation to the gas supplied by them in that scheme year as the Authority may request.
- (10) Where the Authority receives a notification and the information required by paragraph (8)—
- (a) it must determine, on the basis of that information, whether at least 95% of the gas supplied by GS in the scheme year was certified biomethane,
  - (b) it must notify GS of that determination by the relevant date specified in the scheme schedule,
  - (c) where the Authority determines that at least 95% of the gas supplied by GS in the scheme year was certified biomethane—
    - (i) GS is exempt from the requirements of these Regulations (an “exempt supplier”) in relation to that scheme year, and
    - (ii) the notification required by sub-paragraph (b) must state that GS is an exempt supplier in relation to that scheme year,

- (d) where the Authority determines that less than 95% of the gas supplied by GS in the scheme year was certified biomethane, the notification required by sub-paragraph (b) must state that GS is not an exempt supplier in relation to the scheme year.

(11) Where GS was a provisionally exempt supplier in relation to a scheme year and—

- (a) provides a notification required by paragraph (9), and
- (b) does not provide a notification and information in accordance with paragraph (8),

in relation to that scheme year, the Authority must notify GS that they are not an exempt supplier in relation to that scheme year by the relevant date specified in the scheme schedule.

(12) Where GS—

- (a) was a provisionally exempt supplier in relation to a scheme year, and
- (b) is notified in accordance with paragraph (10)(b) or (11) that they are not an exempt supplier in relation to that scheme year,

GS is not required to comply with the requirements on scheme suppliers set out in this Part, apart from this regulation, in relation to that scheme year.

(13) Where GS—

- (a) was not a provisionally exempt supplier in relation to a scheme year, and
- (b) is notified in accordance with paragraph (10)(b) that they are an exempt supplier in relation to that scheme year,

GS is treated, from the date of that notification, as an exempt supplier in relation to that scheme year.

(14) The Secretary of State must—

- (a) approve one or more certification schemes for the purposes of these Regulations,
- (b) publish the name of any certification scheme which is approved, and the date from which it is approved, and
- (c) where a certification scheme ceases to be approved, publish that fact together with the date on which the certification scheme ceased to be approved.

(15) For the purposes of this regulation—

- (a) “approved certification scheme” means a certification scheme which is approved by the Secretary of State in accordance with paragraph (14)(a),
- (b) “certification scheme” means a scheme for the purpose of certifying biomethane supply,
- (c) “certified biomethane”, in relation to gas supplied in a scheme year, means biomethane—
  - (i) injected in that scheme year, and
  - (ii) the supply of which is certified under an approved certification scheme,
- (d) “company” includes any body corporate,
- (e) “gas supply data”, in relation to a licensed gas supplier, means the volume of gas supplied by them on any given day,
- (f) “responsible officer”, in relation to a licensed gas supplier, means a person who is—
  - (i) a director of the licensed gas supplier within the meaning of section 250 of the Companies Act 2006(2), or
  - (ii) where there is no person falling within paragraph (i) in relation to the licensed gas supplier, a person exercising management control in relation to the licensed gas supplier.

**Calculation and publication of the levy rate**

**39.**—(1) The Secretary of State must calculate the levy rate for each scheme year, expressed in pence per meter point per day (“the levy rate”), as follows—

$$\frac{LS}{(M \times A) \times D}$$

where—

- (a) A is the adjustment factor, as determined by the Secretary of State, used to predict the likely change in the number of meter points over the next scheme year,
- (b) D is the number of days in that scheme year,
- (c) LS is the levy size for that scheme year, calculated as follows—

$$LS = SB_y + AA_y + TY_{y-2} + TD_{y-2} + QL_{y+1} + H_y + I_{y-2} - SD_{y-1}$$

where—

- (i)  $SB_y$  is the projected scheme expenditure for that scheme year, as determined by the Secretary of State,
- (ii)  $AA_y$  is the Authority’s forecasted administrative costs for that scheme year,
- (iii)  $TY_{y-2}$  is the difference between the forecasted year end surplus and the actual year end surplus for the scheme year before the previous scheme year (“Y-2”) but excluding any year end deficit for Y-2 (“the true-up”),
- (iv)  $TD_{y-2}$  is any year end deficit for Y-2,
- (v)  $QL_{y+1}$  is the quarterly lag uplift in relation to the following scheme year (“Y+1”), being 25% of the difference between the projected scheme expenditure for Y+1 and the previous scheme year,
- (vi)  $H_y$  is the headroom figure for that scheme year, published in accordance with paragraph (4)(g),
- (vii)  $I_{y-2}$  is the sum of interest—
  - (aa) accrued on money held in the bank account referred to in regulation 40(5),
  - (bb) paid in accordance with regulation 54(1)(a)(i), (ii) or (iii),
  - (cc) payable in any scheme year in accordance with regulation 54(1)(a)(i), (ii) or (iii) and recovered by the Authority under regulation 58(g),
 in Y-2,
- (viii)  $SD_{y-1}$  is the forecasted year end surplus from the previous scheme year, and if no surplus is forecasted, the value for  $SD_{y-1}$  is 0 (zero),
- (ix) the variables in paragraphs (i) to (viii) are expressed in pence,
- (x) in the calculation for the first scheme year, the value for  $QL_{y+1}$  is 0 (zero),
- (xi) in the calculation for the first scheme year, and the calculation for the scheme year beginning with 1st April 2022, the value for each of  $TY_{y-2}$ ,  $TD_{y-2}$ , and  $SD_{y-1}$ , is 0 (zero),
- (xii) in the calculation for the first scheme year, the value for  $SB_y$  is the projected scheme expenditure in relation to relevant producers (within the meaning given in regulation 17) for both the first scheme year and the first quarter of the scheme year beginning with 1st April 2022,
- (xiii) “year end surplus” and “year end deficit” mean the amount by which the sum of all amounts received by the Authority under this Part and Parts 9 and 10 excluding—
  - (aa) amounts received under regulation 42 (levy credit payments),

- (bb) interest accrued on money held in the bank account referred to in regulation 42(4) (interest on levy credit payments),
- (cc) amounts received under regulation 57 (penalty notices),
- (dd) amounts recovered under regulation 58(f) (recovery of unpaid financial penalties as a civil debt), and
- (ee) in the case of a forecast year end surplus or year end deficit, interest accrued on money held in the bank account referred to in regulation 40(5) (interest on quarterly levy payments),

exceeds, or is exceeded by (as the case may be), the sum of all amounts expended by the Authority under these Regulations in relation to that scheme year,

provided that LS may not exceed the maximum levy amount for that scheme year determined and published under paragraph (6),

(d) M—

- (i) in relation to the first scheme year, is the total number of meter points in the market on 31st May 2021,
- (ii) in relation to the scheme year beginning with 1st April 2022, is the total number of meter points in the market on 31st May 2021, but excluding any meter points served by a scheme supplier where the Secretary of State determines it is likely that at least 95% of the gas supplied by them in the scheme year beginning with 1st April 2022 will be certified biomethane, and
- (iii) in relation to the scheme year beginning with 1st April 2023 and each subsequent scheme year, is the total number of meter points in the market on 31st July preceding the start of that scheme year or such later date as the Secretary of State may determine, but excluding any meter points served by provisionally exempt suppliers in that scheme year.

(2) The Secretary of State must publish the levy rate—

- (a) for the first scheme year, by 30th November 2021,
- (b) for the scheme year beginning with 1st April 2022, by 30th November 2021,
- (c) for the scheme year beginning with 1st April 2023 and each subsequent scheme year, by 31st December in the preceding scheme year.

(3) The Secretary of State may review the levy rate—

- (a) for the first scheme year, and
- (b) for the scheme year beginning with 1st April 2022,

and, may, as a result of such a review, increase or decrease the levy rate provided that such increase or decrease must be published by the Secretary of State by 1st March 2022.

(4) Subject to paragraph (5), the Secretary of State must publish the following, in relation to the first scheme year and the scheme year beginning with 1st April 2022, by 30th November 2021, and in relation to the scheme year beginning with 1st April 2023 and each subsequent scheme year, by 31st December in the preceding scheme year—

- (a) the adjustment factor referred to in paragraph (1)(a),
- (b) the projected scheme expenditure referred to in paragraph (1)(c)(i),
- (c) the forecasted year end surplus from the previous scheme year,
- (d) the Authority's forecasted administrative costs, including its estimated administrative costs of carrying out a mutualisation process,

- (e) the true-up for the scheme year before the previous scheme year (“Y-2”), including any year end deficit for Y-2,
- (f) the quarterly lag uplift, being 25% of the difference between the projected scheme expenditure for that scheme year and the previous scheme year,
- (g) the amount which the Secretary of State determines is necessary to mitigate against uncertainties or unexpected events that would result in the funds available to the Authority for the purposes of the Scheme for that scheme year being less than the amount required by the Authority to make periodic support payments in relation to that scheme year (“the headroom figure”),

and where any value so published is increased or decreased as a result of a review carried out in accordance with paragraph (3), must publish the revised value by 1st March 2022.

- (5) The value of the following is 0 (zero)—
  - (a) the forecasted year end surplus from the previous scheme year, in relation to the first scheme year, and the scheme year beginning with 1st April 2022, and
  - (b) the true-up for the scheme year before the previous scheme year, in relation to the first scheme year, and the scheme years beginning with 1st April 2022 and 2023.
- (6) The Secretary of State—
  - (a) must, before 30th November 2021, determine and publish the maximum amount that can be collected under this Part in any one scheme year (“the maximum levy amount”), expressed in pounds (£) and calculated as follows—

$$SB + AA + H + QL_{y+1}$$

where—

- (i) SB is the projected scheme expenditure for the scheme year beginning with 1st April 2028,
- (ii) AA is the Authority’s forecasted administrative costs for that scheme year,
- (iii) H is the forecasted headroom figure for that scheme year,
- (iv)  $QL_{y+1}$  is the quarterly lag uplift, within the meaning given in paragraph (4)(f), in relation to the scheme year beginning with 1st April 2029,
- (b) may review the maximum levy amount at any time,
- (c) may, as a result of such a review, increase or decrease the maximum levy amount, provided that such increase or decrease—
  - (i) may only take effect at the start of a scheme year, and
  - (ii) must be published by the Secretary of State as soon as reasonably practicable.

(7) The Authority must provide to the Secretary of State, in such manner and form and by such date as the Secretary of State may request, such information as the Authority may hold and the Secretary of State may require for the purpose of calculating the levy rate and the maximum levy amount in accordance with this regulation.

(8) In this regulation references to the Authority’s administrative costs are references to the costs incurred by the Authority in connection with the performance of its functions under these Regulations.

## CHAPTER 2

### Quarterly levy payments and levy credit payments

#### Calculation and notification of quarterly levy payments

**40.**—(1) The Authority must calculate the quarterly levy payment payable by a scheme supplier (the “quarterly levy payment”), in relation to each quarter of the scheme year beginning with 1st April 2022 and subsequent scheme years, as follows—

*LR × M*

where—

- (a) LR is the levy rate for the scheme year in which the previous quarter fell,
- (b) M—
  - (i) in relation to the quarter beginning with 1st April 2022, is the sum of the meter point data for that scheme supplier for each day of the period beginning with 30th November 2021 and ending with 31st March 2022, as notified or determined under regulation 48,
  - (ii) in relation to the quarter beginning with 1st July 2022 and subsequent quarters, is the sum of the meter point data for that scheme supplier for each day of the previous quarter, as notified or determined under regulation 48.

(2) The Authority must notify a scheme supplier, by the relevant dates specified in the scheme schedule, of the quarterly levy payments payable by that supplier.

(3) The notification referred to in paragraph (2) must—

- (a) specify—
  - (i) the amount of the quarterly levy payment payable by the supplier,
  - (ii) the date by which the amount must be paid, being a date not less than 14 days after the date of the notification, and
  - (iii) details of how the payment must be made, and
- (b) include information about the matters mentioned in—
  - (i) regulation 54 (interest on late payments), and
  - (ii) regulation 55 (draw down of credit cover).

(4) A scheme supplier must pay quarterly levy payments to the Authority in accordance with any notification referred to in paragraph (2).

(5) Amounts paid to the Authority under this regulation must be paid into a bank account with the Authority as the beneficiary.

#### Calculation of credit cover requirement

**41.**—(1) Subject to paragraph (2), the Authority must calculate the credit cover requirement in relation to a scheme supplier, for each quarter of the scheme year beginning with 1st April 2022 and subsequent scheme years, as follows—

*LR × (M × 1.15)*

where—

- (a) LR is the levy rate for the scheme year in which the previous quarter fell,
- (b) M—

- (i) in relation to the quarter beginning with 1st April 2022, is the sum of the meter point data for that supplier for each day of the period beginning with 31st August 2021 and ending with 31st December 2021, as notified or determined under regulation 48,
  - (ii) in relation to the quarter beginning with 1st July 2022 and subsequent quarters, is the sum of the meter point data for that supplier for each day of the quarter beginning six months before the start of that quarter, as notified or determined under regulation 48.
- (2) Where a licensed gas supplier becomes a scheme supplier on or after 1st April 2022—
- (a) the Authority is not required to calculate the credit cover requirement in relation to that supplier for the quarter in which they become a scheme supplier (“the first quarter”), and
  - (b) the Authority must calculate the credit cover requirement in relation to that supplier, for the quarter following the first quarter, in accordance with paragraph (1) but with the modification that “M” is calculated as follows—

$$AM \times \frac{DQ}{DA}$$

where—

- (i) AM is the sum of the meter point data for that supplier which is available for the first quarter,
- (ii) DQ is the number of days in the first quarter,
- (iii) DA is the number of days in the first quarter for which meter point data for that supplier is available.

### **Levy credit payments**

**42.**—(1) In relation to the scheme year beginning with 1st April 2022 and subsequent scheme years, the Authority must notify a scheme supplier of that scheme supplier’s credit cover requirement for each quarter—

- (a) no later than 21 days before the start of that quarter, or
- (b) where regulation 41(2)(b) applies, as soon as reasonably practicable.

(2) Where a scheme supplier’s credit cover requirement for a quarter exceeds their existing credit cover, or where the scheme supplier has no existing credit cover, the notification referred to in paragraph (1) must—

- (a) specify—
    - (i) the amount (the “deficit amount”) by which the scheme supplier’s credit cover requirement for the quarter exceeds their existing credit cover,
    - (ii) the date by which the scheme supplier must pay the deficit amount to the Authority, being a date not less than 14 days after the date on which the notification referred to in paragraph (1) is given, and no later than seven days before the start of that quarter, and
    - (iii) details of how the payment (the “levy credit payment”) must be made, and
  - (b) include information about the matters mentioned in—
    - (i) regulation 43 (letters of credit), and
    - (ii) regulation 55 (draw down of credit cover).
- (3) Subject to regulation 43(1) and (2), a scheme supplier—
- (a) must pay any levy credit payment to the Authority in accordance with the notification referred to in paragraph (1),
  - (b) where—

- (i) they have provided an acceptable letter of credit in respect of all or part of their credit cover requirement for a quarter, and
  - (ii) that letter of credit ceases to constitute an acceptable letter of credit,
- must, within 14 days of the letter of credit ceasing to constitute an acceptable letter of credit, pay such amount to the Authority as is necessary so as to ensure that their existing credit cover for that quarter is no less than their credit cover requirement for that quarter,
- (c) where the amount of their 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 must, within 14 days of the date on which their existing credit cover is so reduced, pay such amount to the Authority as is necessary to ensure that their existing credit cover for the quarter in which the draw down took place is no less than their credit cover requirement for that quarter.
- (4) Amounts paid to the Authority under this regulation must be paid into a bank account with the Authority as the beneficiary.
- (5) Where a scheme supplier's existing credit cover exceeds their credit cover requirement, the notification referred to in paragraph (1) must—
- (a) specify the amount (“the excess amount”) by which the scheme supplier's existing credit cover exceeds their credit cover requirement, and
  - (b) where any part of the scheme supplier's existing credit cover has been paid to the Authority, include information about the matters mentioned in regulation 45 (repayment of levy credit payments).
- (6) For the purposes of this regulation, “existing credit cover”, in relation to a scheme supplier, means the total amount that supplier has—
- (a) paid to the Authority in accordance with this regulation, and which continues to be held by the Authority, and
  - (b) provided to the Authority in the form of a letter of credit in accordance with regulation 43, and which continues to be an acceptable letter of credit.

### **Letters of credit**

**43.**—(1) A scheme supplier may provide an acceptable letter of credit in respect of all or part of their credit cover requirement.

- (2) Where a scheme supplier—
- (a) provides an acceptable letter of credit by the date specified in the notice referred to in regulation 42(1), or
  - (b) provides an acceptable letter of credit in the circumstances described in regulation 42(3) (b) or (c),

the amount the scheme supplier must pay to the Authority in relation to their credit cover requirement under regulation 42(3)(a), (b) or (c) (as applicable) is reduced by the amount specified in the letter of credit whilst it constitutes an acceptable letter of credit.

- (3) A letter of credit is acceptable where it is—
- (a) issued by a person who holds a required credit rating,
  - (b) valid for at least the quarter to which it relates and the four weeks immediately following the end of that quarter,
  - (c) issued on such terms as the Authority determines are appropriate, and
  - (d) issued in such form as the Authority may specify.

(4) Where a scheme supplier has provided the Authority with a letter of credit issued by a person who ceases to hold a required credit rating, that letter of credit ceases to constitute an acceptable letter of credit from the 14th day after the day on which that person ceases to hold that rating.

(5) Subject to paragraph (7), a person holds a required credit rating if that person has been assessed by—

- (a) Fitch Ratings as having a short term debt rating of “F1” or better,
  - (b) Moody’s as having—
    - (i) a short term debt rating of “P-1”, or
    - (ii) a long term debt rating of “A3” or better, or
  - (c) Standard and Poor’s as having a short term debt rating of “A-1” or better.
- (6) For the purposes of paragraph (5)—
- (a) “Fitch Ratings” means Fitch Ratings Limited (registered company number 01316230),
  - (b) “Moody’s” means the corporation known as Moody’s Investors Service Inc. incorporated in the US State of Delaware with the file number 0577904,
  - (c) “Standard and Poor’s” means the corporation known as Standard & Poor’s Financial Services LLC. incorporated in the US State of Delaware with the file number 4621989.

(7) The Authority may at any time give a notice to scheme suppliers specifying such alternative required credit rating as it considers appropriate, and that notice remains in force until such time as it is withdrawn by the Authority.

## CHAPTER 3

### Payments to scheme suppliers

#### **Distribution of interest on levy credit payments**

**44.**—(1) Subject to paragraph (2), in March of each scheme year beginning with March 2023, the Authority must pay to a scheme supplier any interest that has accrued on levy credit payments paid by them whilst in the bank account referred to in regulation 42(4).

(2) The Authority is not required to pay to a scheme supplier all or part of the interest described in paragraph (1) unless it is satisfied that the scheme supplier is not in breach of—

- (a) regulation 40 (requirement to pay quarterly levy payments),
- (b) regulation 42 (requirement to pay levy credit payments),
- (c) regulation 49 (requirement to pay backdated levy payments),
- (d) regulation 56 (requirement to make mutualisation payments).

#### **Repayment of levy credit payments**

**45.**—(1) This regulation applies where a scheme supplier receives a notification referred to in regulation 42(5) (that the supplier’s credit cover requirement is less than their existing credit cover).

(2) Subject to paragraphs (3) and (4)—

- (a) where the notification is given in March of a scheme year the Authority must, by the relevant date specified in the scheme schedule, repay the excess amount to the supplier,
- (b) where the notification is given in June, September, or December of a scheme year—
  - (i) the supplier may, by the relevant date specified in the scheme schedule, request repayment from the Authority of all or part of the excess amount, and

- (ii) the Authority may, by the relevant date specified in the scheme schedule, repay the amount requested to the supplier.
- (3) The Authority may not repay—
  - (a) all or part of the excess amount unless it is satisfied that the scheme supplier is not in breach of—
    - (i) regulation 40 (requirement to pay quarterly levy payments),
    - (ii) regulation 42 (requirement to pay levy credit payments),
    - (iii) regulation 49 (requirement to pay backdated levy payments),
    - (iv) regulation 56 (requirement to make mutualisation payments),
  - (b) an amount which, if repaid, will result in the scheme supplier’s existing credit cover being less than their credit cover requirement.
- (4) The Authority may, instead of repaying the excess amount, repay such lesser amount as the Authority may determine is the amount by which the scheme supplier’s existing credit cover exceeds the scheme supplier’s credit cover requirement on the date that the repayment is made.
- (5) In this regulation “the excess amount” has the meaning given in regulation 42(5)(a).