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STATUTORY INSTRUMENTS

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**2021 No. 1335**

**The Green Gas Support Scheme Regulations 2021**

**PART 10**

**Compliance and enforcement: scheme suppliers**

**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- (c) consider any representations which are made in accordance with sub-paragraph (a)(iv) and are not withdrawn, and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(1).

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(1) 2006 c. 46, to which there are amendments not relevant to these Regulations.

