EXPLANATORY MEMORANDUM TO

THE GREEN GAS SUPPORT SCHEME (AMENDMENT) REGULATIONS 2023

2023 No. 1317

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Green Gas Support Scheme Regulations 2021 (2021 Regulations), which provide the legislative framework for the Green Gas Support Scheme (GGSS) and the Green Gas Levy (GGL).

2.2 These amendments are intended to improve the administration of the GGL, reduce administrative burdens for the Gas and Electricity Markets Authority (Ofgem) and the gas suppliers that pay it, and to ensure that regulations work in line with policy intent. The amendments include: (i) correcting the formula used to set the levy rate; (ii) providing that the Maximum Levy Amount can be set by reference to the scheme year with the largest projected scheme expenditure; and (iii) introducing a de minimis threshold below which certain payments are not due.

2.3 The instrument also makes five additional minor changes that will provide efficiency savings for Ofgem and gas suppliers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument contains provisions which ensure that the 2021 Regulations will work in line with policy intent, as set out below. Having consulted with the Statutory Instrument Registrar in accordance with paragraph 4.7.6 of the Statutory Instrument Practice, the Department will apply the free issue procedure.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 The Minister, Lord Callanan, has made the following statement regarding Human Rights:

5.2 “In my view, the Green Gas Support Scheme (Amendment) Regulations 2023 are compatible with the Convention Rights.”

6. Legislative Context

6.1 Section 100 of the Energy Act 2008 enables the Secretary of State to make regulations establishing schemes to encourage the renewable generation of heat and to provide for the administration of those schemes.

6.2 The 2021 Regulations, which were made under section 100 of the Energy Act 2008, established the GGSS and the GGL. The GGSS is a scheme to encourage production of biomethane by the anaerobic digestion of biomass, such as food waste, sewage and certain crops. This is intended to increase the amount of biomethane injected into the gas grid, thereby helping to decarbonise the UK’s gas supply. The GGSS is funded by the GGL, which is charged to licensed gas suppliers in Great Britain. The 2021 Regulations came into force on 30th November 2021.

7. Policy background

What is being done and why?

7.1 Changing the Green Gas Levy setting formula

7.2 The formula used to set the GGL rate, which is specified in regulation 39(1) of the 2021 Regulations, currently requires that the interest which accrues on GGL-collected funds held in Ofgem’s bank account or on late-paid levy, mutualisation or penalty amounts must be added to the total levy collection target for the financial year two years after the year in which the interest accrues. However, as these amounts are credits to the available funds in Ofgem’s accounts, they should be subtracted from the total amount that must be raised by the GGL.

7.3 This instrument will correct the formula so that the accrued interest is deducted rather than added to the collection target. This will ensure that the Levy is set to collect the correct total amount, thereby ensuring that it is not collecting a higher amount than required from gas suppliers. The first year for which this amount will be greater than zero will be 2024/25.

7.4 Changing the basis on which the Maximum Levy Amount is calculated

7.5 The Maximum Levy Amount (MLA) is the maximum amount that the total levy collection can be for any scheme year. The MLA, which is provided for in regulation 39(6) of the 2021 Regulations, is published by Government to provide transparency on the future levy rate. Currently, that regulation specifies that the MLA must be set at the expected levy collection amount for the 2028/29 scheme year. However, we now expect that funding requirements for the GGSS will increase in subsequent financial years due to inflation and the increase in biomethane production by plants registered on the scheme. We currently expect levy collection to peak in scheme year 2036/37.

7.6 This instrument will amend regulation 39 to provide that the Secretary of State can review and update the MLA by reference to the scheme year in which the Government expects levy collection to peak. Without this change, there would be a risk that the GGL would be unable to raise sufficient funds to finance the GGSS, which is its function, after 2028/29.

7.7 The Government has already highlighted that we expect funding requirements from the GGL to increase until financial year 2036/37 on the MLA page on gov.uk in December 2022.

7.8 Introducing a de minimis for payments to Ofgem under Levy provisions

7.9 This instrument introduces powers that permit the Secretary of State to set a de minimis threshold in relation to specified payment obligations and credit cover requirements under the 2021 Regulations. Obligations to make payments or provide credit cover of amounts below the de minimis threshold will automatically be disapplied. The amendment also suspends specified notification obligations relating to payments below the de minimis threshold. These amendments are being introduced as the administrative burden involved in making payments below the de minimis threshold is disproportionate to the value of the sums being paid. The de minimis will be subject to a statutory maximum level of £200, which will increase with Consumer Price Index inflation.

7.10 The de minimis will apply to: regulation 40(1), 41(1) or (2)(b), 44(1), 45(2)(a), 49(2), 51(8), (9), (9A)(a) or (b), 56(7) and regulation 56(10).

7.11 Increasing options for settling of final amounts owed by gas suppliers leaving the market

7.12 Where a licenced gas supplier leaves the market, it is no longer obligated to pay the GGL. The steps that Ofgem and the supplier are required to follow in this scenario are set out in regulation 51 of the 2021 Regulations.

7.13 Currently the 2021 Regulations require Ofgem to draw down a supplier's available credit cover to discharge the final payment that the supplier is required to make (the "final quarterly levy payment"). A supplier's credit cover consists of cash credit cover and/or a letter of credit. There would be administrative benefits both to suppliers and Ofgem if suppliers were to have the option of making a payment rather than having their letter of credit automatically drawn down in respect of the final quarterly levy payment.

7.14 This amendment sets out the conditions and procedure for this alternative way of settling the final quarterly levy payment. It also makes other minor amendments to the procedure to be followed when a supplier leaves the market.

7.15 Changing how credit cover is calculated for the second and third quarters that new suppliers are liable to pay the Green Gas Levy

7.16 Licenced gas suppliers are required to provide Ofgem with credit cover for any quarter that they are a scheme supplier in an amount equal to their expected liabilities under the levy in that quarter. The credit cover requirements for a new gas supplier are covered in regulation 41. This amendment will make changes to paragraph (2), which covers the requirement for new suppliers.

7.17 The first time that a supplier must provide credit cover is for their second quarter as a scheme supplier, covering their liability based on their meters served and the levy rate in their first quarter. Currently, regulations require that new suppliers post credit cover for their second quarter on the scheme that is equivalent to their liability had they been scheme suppliers for the whole of their first quarter. However, it is likely that a new supplier will have only become a scheme supplier part way through a quarter. To reflect that variability, this instrument provides that the amount of credit cover a new supplier must provide is proportional to the number of days of the first quarter for which it was a scheme supplier.

7.18 The instrument also provides that the second credit cover payment that a new supplier must provide, which is for their third quarter as a scheme supplier, must be calculated by reference to a full quarter, even if meter point data for the first quarter on the scheme, on which the calculation is based, is not available for each day.

7.19 Simplifying regulations concerning mutualisation of amounts owed by former suppliers

7.20 Regulation 56 specifies certain conditions that must be satisfied before Ofgem can carry out a mutualisation process. This amendment will remove the condition specified in regulation 56(3)(b), as it is redundant. This regulation provides that, where a former scheme supplier has failed to pay an outstanding amount, mutualisation can only take place if the draw down on the defaulting supplier's credit cover is insufficient to cover the outstanding amount. However, as the calculation of an outstanding amount under regulation 51 already takes into account available credit cover, this condition is redundant.

7.21 Allowing Ofgem to draw down interest owed on unpaid charges from credit cover

7.22 Regulation 55 of the 2021 Regs provides for Ofgem to draw down against a supplier's credit cover in respect of outstanding payments due from a supplier. This instrument amends regulation 55 to expressly provide that Ofgem can draw down against a supplier's credit cover in respect of interest payments that are due on outstanding amounts under regulation 54.

7.23 Ensuring that credit cover is topped up in all scenarios if drawn down to pay a missed mutualisation payment

7.24 Regulation 42 of the 2021 Regulations requires that Ofgem notify a scheme supplier of their credit cover requirement for the next quarter. It is possible that, after the date of Ofgem's credit cover notification, but before the start of the next quarter, a supplier's credit cover could be drawn down if the supplier fails to pay mutualisation amount as required by Regulation 56. In that scenario, the deficit amount specified in the credit cover notification, which refers to the amount by which the scheme supplier must top up their credit cover for the next quarter, will no longer be sufficient to ensure that a supplier's credit cover meets their requirement.

7.25 This amendment provides that, in such a scenario, Ofgem must give the scheme supplier a new notification with an updated deficit amount.

Explanations

What did any law do before the changes to be made by this instrument?

7.26 The 2021 Regulations established the GGSS and the GGL, which are intended to provide incentives for the injection of biomethane into the gas grid in Great Britain and for the funding of those incentives.

Why is it being changed?

7.27 The changes in this instrument will reduce the administrative burdens of the GGL for both Ofgem and the gas suppliers that pay it. They also ensure that the 2021 Regulations will work in line with policy intent.

What will it now do?

7.28 The amendments made by this instrument will affect the operation of the GGL. The amendments are described in detail above. The amendments do not reflect a change in the overall policy intent behind the GGSS and GGL and are not expected to significantly alter policy impacts. In particular, the application of the de minimis is not expected to impact the levy rate.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 In accordance with section 100(7) of the Energy Act 2008, the Secretary of State has obtained the consent of the Scottish Ministers to the making of these Regulations.

10.2 The Secretary of State has consulted the Welsh Ministers in relation to the making of these Regulations.

10.3 The Department has not consulted publicly because the changes made in this instrument are primarily administrative and do not significantly alter the workings of the GGL.

11. Guidance

11.1 Ofgem will develop guidance to explain these regulations in further detail for stakeholders.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment has not been produced to accompany this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

13.1 The legislation does not directly apply to activities that are undertaken by small businesses. We expect gas suppliers to pass the costs of the GGL on to customers, so small businesses are impacted by the levy. However, they will not be affected by any of these changes, which are not expected to impact the GGL rate in any year.

14. Monitoring & review

14.1 The Department is undertaking an evaluation of the Green Gas Support Scheme and Green Gas Levy. Interim reports will be published in early 2024 and early 2025 and a final report will be published by spring 2026. The evaluation will cover scheme impacts, processes and will provide an overall value for money assessment.

14.2 The instrument does not include a statutory review clause. The requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015 to make provision for review does not apply to this instrument as it falls within an exception in section 28(3) of that Act.

15. Contact

15.1 William Irwin at the Department for Energy Security and Net Zero Telephone: 07442998495 or email: William.Irwin@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ludo Tolu and Sam Massey, Deputy Directors for Biomethane and Heat Networks, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan, Minister for Energy Efficiency and Green Finance at the Department for Energy Security and Net Zero, can confirm that this Explanatory Memorandum meets the required standard.