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STATUTORY INSTRUMENTS

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**2021 No. 1335**

**The Green Gas Support Scheme Regulations 2021**

**PART 6**

**Compliance and enforcement: participants**

**Power to temporarily withhold periodic support payments to investigate alleged non-compliance**

**29.**—(1) Where the Authority has reasonable grounds to suspect that a participant—

- (a) has failed or is failing to comply with an ongoing participant obligation, or
- (b) has been registered as a result of the provision of information which was incorrect in a material particular,

and the Authority requires time to investigate, it may withhold all or part of that participant's periodic support payments pending the outcome of that investigation.

(2) Within 21 days of making a decision under paragraph (1) to withhold periodic support payments, the Authority must give a notice to the participant specifying—

- (a) the respect in which the Authority suspects the participant has failed or is failing to comply with an ongoing participant obligation, or a description of the information which the Authority suspects to be incorrect and upon which the registration was based,
- (b) the reason why periodic support payments are being withheld,
- (c) the date from which periodic support payments are being withheld,
- (d) the next steps in the investigation, and
- (e) details of the participant's right of review under regulation 62.

(3) The Authority's investigation must be commenced and completed as soon as is reasonably practicable.

(4) The Authority may—

- (a) request such information from the participant as it reasonably requires to enable it to carry out its investigation, and
- (b) withhold a participant's periodic support payments for a maximum period of six months beginning with the date specified in the notice in accordance with paragraph (2)(c).

(5) The Authority must review its decision to withhold a participant's periodic support payments every 30 days after the date of the notice required by paragraph (2).

(6) Following a review pursuant to paragraph (5), the Authority must give a notice to the participant providing an update on—

- (a) the progress of any investigation, and
- (b) whether the Authority intends to continue to withhold periodic support payments.

(7) For the purposes of calculating the period specified in paragraph (4)(b), no account is to be taken of any period attributable to the participant's delay in providing the information requested by the Authority under paragraph (4)(a).

(8) For the purposes of paragraph (7), a participant is not to be treated as having delayed in providing information if that participant provides the information within two weeks of a request from the Authority.

(9) Subject to paragraph (11), immediately upon conclusion of its investigation under this regulation, the Authority must give a notice to the participant specifying—

- (a) the outcome of the investigation,
- (b) the action the Authority proposes to take under this Part, and
- (c) details of the participant's right of review under regulation 62.

(10) Subject to paragraph (11), where the Authority concludes that there has been no breach of an ongoing participant obligation or no provision of incorrect information, it must resume payment of periodic support payments and pay to the participant any periodic support payments withheld during the course of its investigation.

(11) Within the period specified in paragraph (4)(b), the Authority must either resume payment of periodic support payments or give a notice to the participant under one or more of the following—

- (a) regulation 30 (power to withhold periodic support payments: further provisions),
- (b) regulation 31 (power to reduce a participant's periodic support payments),
- (c) regulation 32 (revocation of registration),
- (d) regulation 33 (power to correct the level of tariff being paid to a participant),
- (e) regulation 34 (overpayment notices and offsetting).

### **Power to withhold periodic support payments: further provisions**

**30.**—(1) Where the Authority—

- (a) is satisfied that a participant—
  - (i) has failed or is failing to comply with an ongoing participant obligation, or
  - (ii) has been registered as a result of the provision of information which was incorrect in a material particular, or
- (b) has reasonable grounds to suspect the matters in sub-paragraph (a)(i) or (ii), and is unable to conclude its investigation under regulation 29 within six months of the date specified in the notice in accordance with paragraph (2)(c) of that regulation as a result of the participant's delay in providing any information reasonably requested by it,

it may withhold all or part of that participant's periodic support payments.

(2) For the purposes of paragraph (1)(a)(i) and regulations 31(1) and 32(1)(a), the Authority is satisfied that a participant has failed or is failing to comply with a requirement referred to in—

- (a) regulation 9(13) (ongoing participant obligations in relation to digestate), or
- (b) regulation 10(1)(j) (ongoing participant obligations in relation to planning permission, environmental permits, etc.),

if it receives notification that the participant is in breach of that requirement from a court, a tribunal, or any other person responsible for enforcing the requirement.

(3) Within 21 days of making a decision under paragraph (1) to withhold periodic support payments, the Authority must give a notice to the participant specifying—

- (a) where there has been a failure to comply with an ongoing participant obligation, the respect in which the Authority is satisfied that the participant has failed or is failing to comply,
  - (b) where the participant was registered as a participant as a result of the provision of incorrect information, details of the respect in which the information was incorrect,
  - (c) where paragraph (1)(b) applies, details of the respect in which the participant delayed in providing information requested by the Authority,
  - (d) the amount of periodic support payments that the Authority intends to withhold in respect of each quarter,
  - (e) the date from which periodic support payments are being withheld,
  - (f) where applicable, the steps that the participant must take to satisfy the Authority that it is complying with the ongoing participant obligation,
  - (g) where applicable, the steps that the participant must take to satisfy the Authority that, notwithstanding the provision of incorrect information, the participant should continue to be registered,
  - (h) where applicable, the information the participant must provide to the Authority,
  - (i) the date by which the steps referred to in sub-paragraph (f) or (g) must be completed or the information mentioned in sub-paragraph (h) must be provided,
  - (j) the consequences of the participant failing to take the steps mentioned in sub-paragraph (f) or (g), or failing to provide the information mentioned in sub-paragraph (h), by the date specified, and
  - (k) details of the participant's right of review under regulation 62.
- (4) The Authority may extend the time specified under paragraph (3)(i) where it is satisfied that it is reasonable to do so.
- (5) Where the Authority is satisfied that the participant has—
- (a) taken the steps specified in the notice in accordance with paragraph (3)(f) or (g), whether on the basis of information provided by the participant or, in the case of a failure to comply with a requirement referred to in regulation 9(13) or 10(1)(j), on the basis of information provided by a person responsible for enforcing that requirement, or
  - (b) provided the information specified in the notice in accordance with paragraph (3)(h),
- as applicable, within the time specified, it must resume payment of the periodic support payments.
- (6) If, within six months of receipt by the participant of a notice sent under paragraph (3), the Authority is satisfied that the participant has taken the steps specified in that notice, the Authority may pay, within 28 days of being so satisfied, all periodic support payments withheld under this regulation.

### **Power to reduce a participant's periodic support payments**

**31.—**(1) Where the Authority is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing participant obligation during any quarter and the periodic support payment for that quarter has not been paid, the Authority may take one or more of the following actions—

- (a) reduce the participant's periodic support payment by an amount which corresponds to the proportion of that quarter during which the participant failed so to comply,
  - (b) reduce a participant's periodic support payment for that quarter or for the quarter immediately following.
- (2) Within 21 days of making a decision under paragraph (1) to reduce a periodic support payment, the Authority must give a notice to the participant specifying, as applicable—

- (a) the respect in which the participant has failed to comply with an ongoing participant obligation,
- (b) the period in respect of which any periodic support payment is to be reduced,
- (c) the level of any reduction, and
- (d) details of the participant's right of review under regulation 62.

(3) In reducing a periodic support payment in accordance with paragraph (1)(b), the Authority may determine the level of the reduction (taking into consideration all factors which it considers relevant) up to a maximum reduction of 10% of the periodic support payment in question.

### **Revocation of registration**

**32.**—(1) Where the Authority is satisfied—

- (a) that there has been a material or repeated failure by a participant to comply with an ongoing participant obligation,
- (b) a participant has been registered as a result of the provision of information which was incorrect in a material particular, or
- (c) there has been a failure to comply with a notice under regulation 30(3),

it may take either of the actions in paragraph (2).

(2) The actions in this paragraph are that the Authority may—

- (a) revoke that participant's registration, or
- (b) in the case of a producer of biomethane who is registered as a participant more than once, revoke all of their registrations.

(3) Before revoking a registration under this regulation, the Authority must give a notice to the participant specifying—

- (a) the reason for the intended revocation including details of the respect in which the participant has failed to comply or the information was incorrect,
- (b) an explanation of the effect of the revocation, and
- (c) details of the participant's right of review under regulation 62.

(4) Where a participant's registration has been revoked, the Authority—

- (a) must update the central register accordingly, and
- (b) may refuse to register that person or a connected person as a participant at any future date.

### **Power to correct the level of tariff being paid to a participant**

**33.**—(1) Where periodic support payments are being paid to a participant in accordance with a guaranteed tariff, if the Authority is satisfied that the information upon which the tariff guarantee was based was incorrect in a material particular it may—

- (a) revoke that participant's registration, or
- (b) reduce the level of periodic support payments to the level which would have applied had the tariff guarantee not been granted.

(2) Before revoking a registration or reducing the level of periodic support payments under this regulation, the Authority must give a notice to the participant specifying, as applicable—

- (a) the reason for the intended revocation or reduction including details of the respect in which the information upon which the tariff guarantee was based was incorrect,
- (b) an explanation of the effect of the revocation,

- (c) the level to which the participant's future periodic support payments will be reduced,
- (d) the basis on which those payments are calculated, and
- (e) details of the participant's right of review under regulation 62.

### **Overpayment notices and offsetting**

**34.**—(1) Where the Authority is satisfied that a participant has received periodic support payments which—

- (a) exceed that participant's entitlement,
- (b) were paid whilst there was a failure by that person to comply with an ongoing participant obligation, or following such a failure, or
- (c) were paid as a result of the provision of information which was incorrect in a material particular,

it may take one of the actions set out in paragraph (2).

(2) The actions in this paragraph are that the Authority may—

- (a) require a participant who has received periodic support payments to which paragraph (1) applies, to repay a specified sum in relation to some or all of those payments, or
- (b) offset a specified sum in relation to some or all of those payments against future periodic support payments.

(3) Before taking either of the actions set out in paragraph (2), the Authority must give a notice to the participant specifying—

- (a) the sum it is seeking to recover,
- (b) the basis on which that sum has been calculated,
- (c) whether the specified sum must be repaid or will be offset,
- (d) where applicable, the date by which the sum must be repaid,
- (e) where applicable, the amount which will be offset in each quarter and the time it will take for the sum to be recovered, and
- (f) details of the participant's right of review under regulation 62.

(4) Where a participant is required to repay a specified sum under this regulation and fails to make payment in full by the date specified under paragraph (3)(d), the Authority may recover any outstanding sum as a civil debt.

### **Revocation of sanctions**

**35.**—(1) The Authority may at any time revoke a sanction imposed in accordance with any of regulations 29 to 34 if it is satisfied that—

- (a) there was an error involved in the original imposition of the sanction, or
- (b) it is just and equitable in the particular circumstances of the case to do so.

(2) Within 21 days of a decision to revoke a sanction, the Authority must give a notice to the participant specifying—

- (a) the sanction which has been revoked,
- (b) the reason for the revocation,
- (c) what action if any the Authority proposes to take in relation to any loss reasonably incurred by the participant as a result of the imposition of the sanction including the time within which any action will be taken, and

- (d) details of someone within the Authority whom the participant may contact if they are not satisfied with the proposals made by the Authority under sub-paragraph (c).

### **Power to inspect equipment used to produce biomethane**

**36.**—(1) The Authority or its authorised agent may request access without notice at any reasonable hour to inspect equipment used to produce biomethane and its associated infrastructure to do any one or more of the following—

- (a) verify that the participant is complying with all applicable ongoing participant obligations,
- (b) verify meter readings,
- (c) take samples and remove them from the premises for analysis,
- (d) take photographs, measurements or video or audio recordings, and
- (e) ensure that there is no other contravention of these Regulations.

(2) Within 21 days of a request made under paragraph (1) being, in the opinion of the Authority, unreasonably refused the Authority must give a notice to the participant specifying—

- (a) the reason why the Authority considers the refusal to be unreasonable,
- (b) the consequences of the refusal, including potential sanctions for failing to comply with the ongoing participant obligation imposed by regulation 10(1)(f) (ongoing participant obligation to allow access), and
- (c) details of the participant’s right of review under regulation 62.

### **Application of this Part in relation to former participant**

**37.** Where a producer of biomethane (“P”) ceases to be a participant by virtue of the operation of regulation 16 (withdrawal of participant), or regulation 32 (revocation of registration), this Part applies to P as if P were still a participant, with the following modifications—

- (a) regulation 32 does not apply,
- (b) regulation 33 does not apply to the extent that it provides for the Authority to revoke a participant’s registration,
- (c) regulation 34 does not apply to the extent that it provides for the Authority to offset a specified sum against future periodic support payments,
- (d) regulation 36 applies, but as if—
  - (i) in paragraph (1)(a), for the words “is complying” there were substituted “had complied”, and
  - (ii) in paragraph (1)(e), for the word “is” there were substituted “was”.