EXPLANATORY MEMORANDUM TO

THE GREEN GAS SUPPORT SCHEME (AMENDMENT) REGULATIONS 2022

2022 No. 592

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to make amendments and corrections to the Green Gas Support Scheme 2021 (2021 Regulations), which established the Green Gas Support Scheme (GGSS). The instrument makes two amendments to regulation 4, both of which aim to correct drafting defects and bring the 2021 Regulations in line with original policy intent. First, an amendment to regulation 4(9) will modify the methodology for adjusting guaranteed tariffs to account for inflation. This will ensure consistency between the inflationary adjustments made to guaranteed tariffs, initial tariffs and subsequent tariffs.

2.2 Second, an amendment to regulation 4(17) will alter the methodology for calculating the estimated total budget commitment so that it better reflects expected future payments for additional biomethane capacity. This will enable the scheme administrator to allocate budget in a way that accurately reflects existing commitments.

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 correct errors in the 2021 Regulations as set out below. Having consulted 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2021 Regulations established the GGSS, which is a scheme to facilitate and encourage renewable generation by means of biomethane produced by the anaerobic

digestion of biomass such as food waste, sewage and certain crops. This supports biomethane injection into the gas grid, thereby helping to decarbonise our gas suppliers by increasing the proportion of "green" gas.

6.2 This instrument corrects specific errors that have been identified in the 2021 Regulations. The amendments made by this instrument relate to: (i) the inflationary adjustments made to tariff guarantees; and (ii) the methodology used to estimate future payments in respect of applications for additional biomethane capacity in the context of calculating available budget. Both amendments seek to better reflect original policy intent.

7. Policy background

What is being done and why?

7.1 Regulations 4(9) and 4(17) of the 2021 Regulations will be amended to ensure that the GGSS operates in line with the original policy intent. The amendment to regulation 4(9) will clarify the process by which guaranteed tariffs are adjusted to take account of inflation. This will ensure that there is consistency between the inflationary adjustments made to guaranteed tariffs, initial tariffs and subsequent tariffs.

7.2 The amendment to regulation 4(17) will better align the process for allocating budget for applications for additional biomethane capacity with the rules determining when support payments become payable in respect of additional biomethane capacity.

Explanations

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

7.3 Under the 2021 regulations as currently in force, applicants to the GGSS initially apply to be granted a guaranteed tariff. The guaranteed tariff is then adjusted by any change in the Consumer Price Index (CPI) up to the date of an applicant's registration as a participant on the GGSS (the CPI rate, published by the ONS, is at its most frequent published monthly). This is contrary to the policy intent, which was and is for the guaranteed tariff to be adjusted at the start of each financial year by the previous calendar year's CPI. That mirrors the way the 'initial' and 'subsequent' tariffs are adjusted for inflation. Without amendment, the 2021 scheme regulations would be inconsistent with regards to tariff rates, and difficult to administer.

7.4 Regarding regulation 4(17), applications for additional capacity are counted towards the 'estimated total budget commitment' according to the formula set out in regulation 4(17), which is in turn checked against the 'budget allocation' published by the Secretary of State to ensure that there is sufficient budget available in accordance with regulation 4(15). The estimated allocation for a given additional capacity application will be calculated from either when the additional biomethane injection began or when the participant expects it to begin. However, regulation 8(5)(a) restricts when payments for additional biomethane injection are payable, depending on whether the application was made before or after a cut-off date in a given financial year. This means that budget may be allocated in respect of an additional biomethane capacity application for a period in which payments will not be payable in respect of the additional biomethane.

Why is it being changed?

7.5 The amendment to regulation 4(9) of the 2021 Regulations will clarify that guaranteed tariffs are subject to an annual uplift every year on 1 April in line with the previous calendar year's inflation rate. Failure to make this clarification will lead to administrative complexity and inconsistency within the regulations, and could result in overcompensation to registered plants.

7.6 The second amendment to regulation 4(17) will adjust the methodology for calculating existing commitments for additional biomethane so that it takes account of the earliest date on which payments could begin for that additional biomethane, which is governed by regulation 8(5)(a).

What will it now do?

7.7 Guaranteed tariffs will be adjusted at the start of a financial year by the previous calendar year's inflation rate.

7.8 The second amendment (to regulation 4(17)) will better align the process for allocating budget for applications for additional biomethane capacity with when they may receive payment. This should then avoid any potential situation where budget has been allocated for an additional capacity application for a period in which payments in respect of that additional capacity cannot be made due to the restriction in regulation 8(5)(a).

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 No consolidation is proposed at present.

10. Consultation outcome

10.1 This SI is GB wide and under our Primary Powers, Section 100 of the Energy Act 2008, both Scottish and Welsh governments must be notified of any changes made to the regulations. Engagement with the Devolved Administrations have been continuous throughout the process. Scotland must consent to the amendments and Wales must be consulted.

10.2 As these amendments were simple, uncontroversial and in line with the original policy intent, the Scottish Government gave consent to the amendments.

10.3 The Welsh Government have been consulted on the amendments to the regulations.

11. Guidance

11.1 The Regulations require the Gas and Electricity Markets Authority, as administrator of the GGSS and GGL, to publish procedural guidance to applicants, participants, and scheme suppliers, which will include information on how Ofgem will administer the GGSS and associated GGL.

11.2 No guidance is required for this SI, however in line with the Green Gas Support Scheme 2021 regulations the Authority (Ofgem) has published guidance regarding their administration of the scheme.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Some biomethane producers will be small businesses and can expect to benefit from continued support offered by the GGSS through the tariff structure that is specifically designed to incentivise deployment and compensate for the higher capital and operational costs involved in biomethane production.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is as follows.

14.2 Given the high-profile nature and substantial spend of the GGSS, and bespoke nature of the GGL, there are a set of robust monitoring and evaluation metrics and questions in place.

14.3 Monitoring data will be collected by the GGSS and GGL administrator, Ofgem. For the GGSS, these metrics will cover application details to assess eligibility information required for annual tariff reviews and ongoing financial commitments to BEIS. For the GGL, these metrics will include gas supplier numbers, the amount of levy collected in relation to GGSS spend, and the enforcement and compliance measures.

14.4 Post implementation evaluation projects will provide further analysis of information not collected by the administrator. Questions will cover the effectiveness and efficiency of the GGSS and GGL; whether the scheme and levy have met their objectives; the impacts of both on stakeholders and carbon targets; and what lessons can be learnt.

14.5 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 Jane Lumb at the Department for Business, Energy, and Industrial Strategy Telephone: (tel: 020 7215 2161 or email: jane.lumb@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rebecca Vallance, Deputy Director in the Clean Heat Directorate, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.