
DRAFT STATUTORY INSTRUMENTS

2011 No.

The Renewable Heat Incentive Scheme Regulations 2011

PART 7

Enforcement

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

44.—(1) Where the Authority has reasonable grounds to suspect that a participant has failed or is failing to comply with an ongoing obligation and the Authority requires time to investigate, it may temporarily withhold all or part of that participant's periodic support payments.

(2) Within 21 days of a decision to withhold periodic support payments, the Authority must send a notice to the participant specifying—

- (a) the respect in which the Authority suspects the participant has failed or is failing so to comply;
- (b) the reason why periodic support payments are being withheld;
- (c) the date from which periodic support payments will be withheld;
- (d) the next steps in the investigation; and
- (e) details of the participant's right of review including any relevant time-limits.

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

(4) The Authority may withhold a participant's periodic support payments for a maximum period of 6 months commencing with the date specified in accordance with the notice required by paragraph (2)(c).

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

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

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

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

(8) For the purposes of paragraph (7), a participant is not to be deemed to have delayed in providing information if that participant responds within 2 weeks of a request from the Authority.

(9) On expiry of the period referred to in paragraph (4) or, if earlier, the conclusion of the investigation, the Authority must—

- (a) send the participant a notice specifying the outcome of the investigation or, where the investigation is not concluded, inform the participant accordingly; and
- (b) pay within 28 days of the date of that notice all periodic support payments temporarily withheld under this regulation, subject to any permanent withholding or reduction of any such payments under regulation 46.

(10) If, on conclusion of the investigation, the Authority is satisfied that a participant is failing or has failed to comply with an ongoing obligation it may impose one or more of the other sanctions set out in this Part.

Power to suspend periodic support payments where ongoing failure to comply

45.—(1) Where the Authority is satisfied that a participant is failing to comply with an ongoing obligation it may suspend that participant’s periodic support payments.

(2) Within 21 days of a decision to suspend periodic support payments the Authority must send a notice to the participant specifying—

- (a) the respect in which the Authority is satisfied that the participant is failing so to comply;
- (b) the reason why periodic support payments are being suspended;
- (c) the date from which the suspension is effective;
- (d) the steps that the participant must take to satisfy the Authority that it is complying with the ongoing obligation;
- (e) the consequences of the participant failing to take the steps required pursuant to subparagraph (d) including potential sanctions; and
- (f) details of the participant’s right of review including any relevant time-limits.

(3) Within 21 days of being satisfied that the participant is complying with the ongoing obligation the Authority must remove the suspension.

(4) If, within 6 months, the Authority is satisfied that the participant has taken the steps specified by notice under paragraph (2), the Authority may pay within 28 days of being so satisfied all periodic support payments withheld under this regulation.

(5) The maximum period for which the Authority may suspend a participant’s periodic support payments is 1 year.

(6) Subject to paragraph (4), a participant may not recover any periodic support payments suspended in accordance with this regulation.

Power to permanently withhold or reduce a participant’s periodic support payments

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

- (a) permanently withhold a proportion of the participant’s periodic support payment which corresponds to the proportion of that quarterly period during which the participant failed so to comply;
- (b) reduce a participant’s periodic support payment for that quarterly period or for the quarterly period immediately following.

(2) Within 21 days of a decision to permanently withhold or to reduce a periodic support payment, the Authority must send a notice to the participant specifying, as applicable—

- (a) the respect in which the participant has failed so to comply;

- (b) the reason why a periodic support payment is being withheld or reduced;
- (c) the period in respect of which any periodic support payment is to be withheld or reduced;
- (d) the level of any reduction; and
- (e) details of the participant's right of review including any relevant time-limits.

(3) Where 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 per cent of the periodic support payment in question.

Revocation of accreditation or registration

47.—(1) Where the Authority is satisfied that there has been a material or repeated failure by a participant to comply with an ongoing obligation it may take one or more of the following actions—

- (a) revoke accreditation for the accredited RHI installation in respect of which there has been a material or repeated failure;
- (b) revoke accreditation for any other accredited RHI installations owned by that participant; or
- (c) in relation to a participant who is a producer of biomethane for injection, revoke that participant's registration.

(2) Within 21 days of a decision to revoke accreditation or registration the Authority must send a notice to the participant specifying—

- (a) the reason for the revocation of accreditation or registration including, where applicable, details of the respect in which the participant has failed so to comply;
- (b) an explanation of the effect of the revocation; and
- (c) details of the participant's right of review including any relevant time limits.

(3) Where accreditation of an accredited RHI installation has been revoked, or a participant's registration has been revoked, the Authority may refuse to accredit any eligible installations owned by the same person or refuse to register that person as a producer of biomethane for injection at any future date.

Overpayment notices and offsetting

48.—(1) Where the Authority is satisfied that a participant has received a periodic support payment which exceeds that participant's entitlement or has received a periodic support payment whilst failing to comply with an ongoing obligation it may—

- (a) require the participant to repay the periodic support payment as a civil debt owed to the Authority; or
- (b) offset the periodic support payment against any future periodic support payments.

(2) Within 21 days of a decision to offset or require the participant to repay any periodic support payment the Authority must send the participant a notice specifying—

- (a) the periodic support payment which the Authority believes has been overpaid and the sum which it is seeking to recover from the participant;
- (b) whether the sum specified in sub-paragraph (a) will be recovered in accordance with paragraph (1)(a) or (1)(b);
- (c) where applicable, a date by which the sum specified in sub-paragraph (a) must be repaid;
- (d) the consequences of failing to make any repayments requested including potential sanctions or civil action; and

(e) details of the participant's right of review including any relevant time limits.