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## **THE GREEN GAS SUPPORT SCHEME (AMENDMENT) REGULATIONS 2023 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

The scope of this protocol covers secondary legislation to be made by UK Ministers that include provisions that are within devolved competence and relate to matters within the competence of the EU until immediately before IP completion day (31 December 2020 at 11pm). A provision is within devolved competence if it would be within paragraph 17 of schedule 2 of the EU Withdrawal Act 2018.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a notification which sets out the details of the SI which the UK Government has made and the reasons why I am content that Scottish devolved matters have been included in this SI.

I regret that I have been unable to issue this notification to the Committee prior to the coming into force of this SI in December. It has taken additional time to analyse the provisions within this SI in relation to matters within the competence of the EU. The EU was, in parallel, in the process of amending relevant EU law in this area (the recast Renewable Energy Directive (EU/2018/2001), as recast by Directive (EU/2023/2413). The original 2018 Directive came into force in December 2018 during the period of the EU Exit negotiations. We are not aware of any provisions having been made by the UK Government during the EU Exit period which directly transposed these provisions into UK law prior to Exit. Nevertheless the Green Gas

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Support Scheme to which this SI relates, may be said to in part relate to matters within the competence of the EU within this recast Directive.

The Green Gas Support Scheme which is the subject of this SI was established in 2021 and is a renewable heat incentive scheme to facilitate and encourage the production of biomethane by anaerobic digestion, for injection into the gas grid. It therefore supports the Scottish Government's wider objectives on heat decarbonisation to support our climate change targets, and in meeting the duty of the Scottish Ministers to promote renewable heat under s.61 of the Climate Change (Scotland) Act 2009.

Article 23 of the Renewable Energy Directive 2018 (as recast) requires EU member states to promote the use of renewable energy in the heating and cooling sector and is the relevant area of law within EU competence. In accordance with Article 194(1) of the Treaty on the Functioning of the European Union, promoting renewable forms of energy is one of the goals of the European Union.

The provisions of this instrument are partially relevant to the Scottish Government's policy to maintain alignment with the EU because they will continue to promote the use of renewable energy in heating and cooling.

The Scottish Government is considering the wider content of the recast Directive in relation to alignment with aspects of the Directive which would fall within devolved competence. The recast Directive is one of several which will make provisions relating to decarbonisation of heat in buildings which have recently been finalised by the EU institutions (the others being the amended EU Energy Efficiency Directive and the EU Energy Performance of Buildings Directive).

As set out in the attached notification, the amendments made by the UK Government under s.100 and s.104(2) in this SI are of a minor and administrative nature and are provisions which are clearly technical under Annex B to the protocol.

The amendments made by this SI support the decarbonisation of heat through the encouragement of the production of biomethane for injection into the gas grid and the Scottish Ministers support the wider objectives of the Green Gas Support Scheme. Given the minor and administrative nature of the amendments made by the SI, the Scottish Ministers were content to give their consent to the provisions made.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I would be grateful if the Committee could note the notification accompanying this letter.

**MAIRI MCALLAN**

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## NOTIFICATION TO THE SCOTTISH PARLIAMENT

### **Name of the SI(s) (if known) or a title describing the policy area**

The Green Gas Support Scheme (Amendment) Regulations 2023. The SI was made on the 30 Nov 2023 and came into force on the 1 December 2023 (see [The Green Gas Support Scheme \(Amendment\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)).

### **Is the notification Type 1 or Type 2**

Not applicable since this notification has been delayed. The provisions within the SI are clearly technical amendments to existing legislation.

### **A brief overview of the SI (including reserved provision).**

These Regulations, which apply in Great Britain, amend the Green Gas Support Scheme Regulations 2021 (“the 2021 Regulations”), which established the Green Gas Support Scheme (“the GGSS”) and the Green Gas Levy (“the GGL”).

As set out in the Explanatory Note to the Regulations, the GGSS is a renewable heat incentive scheme to facilitate and encourage the production of biomethane by anaerobic digestion, for injection into the gas grid. The GGSS is funded by the GGL, which imposes a levy on licensed gas suppliers.

As set out by the UK Government in its letter notifying the Scottish Ministers of its intention to lay the amendment Regulations:

“The GGL is a levy charged to gas suppliers in Great Britain and is used to fund the GGSS. It is charged quarterly to fund the GGSS, which provides financial incentives for eligible anaerobic digestion plants to produce and inject biomethane into the gas grid.

“The SI is intended to improve the administration of the GGL, reduce administrative burdens for Ofgem and the gas suppliers that pay it, and to correct four errors in the regulations. The amendments include: (i) changing the GGL setting formula so that interest accrued on levy funds is subtracted not added to the collection total before the 2024/25 rate is set, the first year for which the amount will be greater than zero; (ii) providing that the Maximum Levy Amount, which limits what the levy can be set at, can be set by reference to the scheme year with the largest projected scheme expenditure; and (iii) introducing a de minimis threshold below which specified payments are not due. The instrument also makes five additional minor changes that will provide efficiency savings for Ofgem and gas suppliers.

As set out in the Explanatory Note accompanying the regulations, “these Regulations make amendments to the GGL only”, which would likely relate to reserved matters, however since consent has been sought under section 100 of the Energy Act 2008, it would seem that the UK Government considers that they would relate to some extent to devolved areas of competence, such as to the manufacture of gas (which does not fall within the D2 reservation to the Scotland Act 1998), though also modifying the functions of the Gas & Electricity Markets Authority (Ofgem), which is reserved.

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The amendments in the regulations are minor and administrative in nature, and are clearly technical amendments relating to existing legislation.

Provisions within EU law relating to the supply of sources of renewable energy for heating and cooling such as biomethane, are contained within the Renewable Energy Directive 2018 (Directive (EU) 2018/2001). Article 23 of the Directive requires that each member state shall seek to increase the share of renewable energy in this sector over the period from 2020 to 2030. The GGSS therefore contributes towards supporting this broader requirement of EU law. The provisions of this instrument are partially relevant to the Scottish Government's policy to maintain alignment with the EU because they will continue to promote the use of renewable energy in heating and cooling as required by Article 23 of the Directive.

### **Details of the provisions that Scottish Ministers are being asked to consent to.**

#### **Summary of the proposals**

The purpose of the provisions are to improve the administration of the GGL and to introduce technical amendments to correct four errors in the regulations.

#### **Does the SI relate to a common framework or other scheme?**

There is no common framework covering the provisions made in these regulations, however the UK and Scottish Governments have had long-standing cooperation on regulations made under section 100 of the Energy Act 2008, such as the predecessor Renewable Heat Incentive scheme.

#### **Summary of stakeholder engagement/consultation**

The UK Government has led on stakeholder engagement and consultation on these Regulations. The Explanatory Memorandum accompanying the Regulations [The Green Gas Support Scheme \(Amendment\) Regulations 2023 - Explanatory Memorandum \(legislation.gov.uk\)](#) sets out that "There is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector. 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".

#### **A note of other impact assessments, (if available)**

As above, the UK Government Explanatory Memorandum concludes that no impact assessments have been produced to accompany the instrument.

### **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

The Scottish Ministers support the objectives of the Green Gas Support Scheme to support the decarbonisation of heat through the encouragement of the production of biomethane for injection into the gas grid, and, given the minor and administrative nature of the amendments made by the Regulations were content to give their consent to the provisions made. The provisions also support, in part, continued alignment with aspects of the EU Renewable Energy Directive 2018.

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**Intended laying date (if known) of instruments likely to arise.**

These Regulations were made by the UK Government on 30 November 2023 and came into force on 1 December 2023.

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

It has taken additional time to analyse the provisions within this SI in relation to matters within the competence of the EU. The EU was, in parallel, in the process of amending relevant EU law in this area (the recast Renewable Energy Directive (EU/2018/2001), as recast by Directive (EU/2023/2413). The original 2018 Directive came into force in December 2018 during the period of the EU Exit negotiations. We are not aware of any provisions having been made by the UK Government during the EU Exit period which directly transposed these provisions into UK law prior to Exit. Nevertheless the Green Gas Support Scheme to which this SI relates, may be said to in part relate to matters within the competence of the EU within this recast Directive.

**Information about any time dependency associated with the proposal**

N/A

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

Governance of the Green Gas Support Scheme remains the same as in the 2021 Regulations which created the scheme, with administration by the Gas & Electricity Markets Authority (Ofgem).

**Any significant financial implications?**

*None are foreseen for the Scottish Government given the GGSS is a UK-wide scheme administered at UK level.*

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# SUMMARY NOTIFICATION TO THE SCOTTISH PARLIAMENT

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b> <b>The Green Gas Support Scheme (Amendment) Regulations 2023</b>
<b>Proposed laying date at Westminster</b> 30 November 2023.
<b>Date by which Committee has been asked to respond</b> N/A.
<b>Power(s) under which SI is to be made</b> s.100 and s.104(2) of the Energy Act 2008
<b>Categorisation under SI Protocol</b> N/A given notification after laying, but proposal contains provision which is clearly technical as per Type 2 procedure.
<b>Purpose</b> To make minor and administrative amendments to the Green Gas Support Scheme, which is a renewable heat incentive scheme to facilitate and encourage the production of biomethane by anaerobic digestion, for injection into the gas grid
<b>Other information</b>
<b>SG Policy contact: Antonia Georgieva and Lorna Orr, Directorate of Energy &amp; Climate Change</b>

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