

Net Zero, Energy and Transport Committee

12th Meeting, 2024 (Session 6)

Tuesday, 26 March 2024

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to a proposed UK statutory instrument (SI) that would amend the Green Gas Support Scheme Regulations 2021 (SI 2021/1335).
2. The process for the Scottish Parliament's consideration of consent notifications is set out in the SI Protocol. Further details of this process are set out in **Annexe A**.

Green Gas Support Scheme Regulations 2021 (SI 2021/1335)

3. On 1 March, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights wrote to the Committee to notify the Scottish Government's proposal to consent to the UK SI. This correspondence is in **Annexe B**. The SI notification is available in **Annexe C** and the summary notification in **Annexe D**.
4. The proposed instrument is expected to be laid before the UK Parliament on 15 April. The Committee has therefore been asked to respond by **29 March**.
5. The proposed SI will amend the Green Gas Support Scheme Regulations 2021 (SI 2021/1335). The Green Gas Support Scheme is a scheme to facilitate and encourage the production of biomethane for injection by anaerobic digestion. It provides tariff-based support for biomethane produced using anaerobic digestion and injected into the gas grid in Great Britain, directly replacing natural gas. It opened for applications on 30 November 2021.
6. The proposed amendments have stemmed from a Mid-Scheme Review Consultation, and the SI notification describes them as "relatively minor and administrative or technical in nature". The amendments do two things—

- extend the period (from 30th Nov 2025 to 31st March 2028) within which biomethane producers that have been in receipt of the Green Gas Support Scheme (GGSS) have to inject the biomethane that they have produced into the National Gas Grid. This is to provide security to their business models; and
 - provide that heat supplied by heat pumps is not deducted from ‘eligible biomethane calculations’ in the way that heat that is provided by fossil fuel sources is. The logic is that heat supplied by heat pumps is low carbon. This relies on a decarbonised electricity grid and while the grid is not yet fully decarbonised it is government policy for this to happen in the next 10-15years. Heat pump use is encouraged by UK Government policy in various other areas, with the view that the grid will eventually be decarbonised.
7. The proposed SI will be made under section 100 of the Energy Act 2008. There is a statutory requirement, set out in section 100(7), that UK Ministers must obtain the consent of Scottish Ministers before making regulations which contain any provision which would be within the legislative competence of the Scottish Parliament. Accordingly, the UK Ministers cannot go ahead with including the devolved provision in the instrument unless the Scottish Ministers consent.

Next steps

8. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out any observations or concerns in its letter to the Scottish Government that it thinks are relevant.
9. If the Committee is not content with the proposal, however, it may make one of the following recommendations—
- i. That the Scottish Government should not give its consent to the provision being made in a UK SI and that the Scottish Government should instead produce an alternative Scottish legislative solution (though, since the particular powers being used are available only to UK Ministers, Scottish Ministers would need to find a different way to make this provision); or
 - ii. That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).
- 10. The Committee is invited to agree if it is content with the proposal and, if not, which recommendation it would like to make.**

Clerks
 Net Zero, Energy and Transport Committee

ANNEXE A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The process for the Scottish Parliament's consideration of consent notifications is set out in a [Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit](#).
2. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
3. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
4. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought *before* the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
5. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
6. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
7. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent (more detail on the options available to the Committee in relation to this particular notification is given below). In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
 - Agree. If so, the Scottish Ministers would then withhold their consent.
 - Not agree. If so, Parliament will debate the issue.
8. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UKSI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

**ANNEXE B: Correspondence from the Minister for Zero Carbon Buildings,
Active Travel and Tenants' Rights**

Edward Mountain MSP
Convener
Net Zero, Energy & Transport Committee
The Scottish Parliament
Edinburgh
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Copied to UKSIs@parliament.scot

1 March 2024

**SI 2021/1335 Green Gas Support Scheme Regulations 2021 (SI 2021/1335) -
PROTOCOL WITH SCOTTISH PARLIAMENT**

Dear Convener,

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.

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 Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SIs and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

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

I look forward to hearing from you by 29 March 2024.

Yours sincerely,

PATRICK HARVIE

ANNEXE C: NOTIFICATION TO THE SCOTTISH PARLIAMENT**SI 2021/1335 Green Gas Support Scheme Regulations 2021 (SI 2021/1335)****Is the notification Type 1 or Type 2 – Type 1****The Green Gas Support Scheme**

A scheme to be known as the Green Gas Support Scheme (GGSS), which is a scheme to facilitate and encourage the production of biomethane for injection by anaerobic digestion (“the Scheme”).

The GGSS provides tariff-based support for biomethane produced using anaerobic digestion (AD) and injected into the gas grid in Great Britain, directly replacing natural gas. It opened for applications on 30 November 2021. It 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.

The SI is being proposed via sections 100 and 104(2) of the Energy Act 2008. In accordance with section 100(7) of that Act, the Secretary of State must obtain the consent of the Scottish Ministers to the making of these Regulations. The scheme initially stated that a person may not make an application for a tariff guarantee in respect of the production of biomethane—

- (a) if the date on which they expect the injection of that biomethane to commence is later than 30th November 2025.

Following a Mid-Scheme Review (MSR) Consultation, DESNZ considered that the effectiveness of the scheme could be improved if the deadline for applying to the scheme and date at which they applicant expected to inject biomethane to the grid was extended until 31 March 2028.

This would provide certainty for industry and investors who are currently facing plant development timelines exceeding 24 months.

Securing food waste feedstock has also been a challenge and the additional time will allow developers to access feedstock as local authorities implement more food waste collections.

Extending the application period does not in itself change the overall cost of the scheme. If budgets are to be increased, this will be subject to separate, future agreement.

The MSR also consulted on proposals to exempt heat supplied by a heat pump from heat deductions in the calculation for eligible biomethane. DESNZ have now decided to proceed with the proposed changes to end deductions from eligible biomethane calculations for heat supplied by heat pumps. Once regulations are introduced, this will reward the use of eligible heat pumps in the production of

biomethane, in line with the existing biogas exemption. This will encourage the use of heat pumps as a lower carbon alternative to produce biomethane.

The Mid-Scheme Review Government Response considered the environmental impacts across the areas of the consultation. DESNZ do not expect the scheme extension or heat pump amendment will have negative impacts on the environment, and the existing regulations continue to manage environmental impacts.

The proposed instrument would still align with EU law.

The proposed instrument is expected to be laid before the UK Parliament on 15th April.

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

The scheme extension from 30 November 2025 to 31 March 2028.

The use of heat pumps in the production of biomethane, by ensuring that heat supplied by them is not deducted from the volume of biomethane eligible for GGSS payments (as happens with fossil fuel heating source).

Summary of the proposals

The purpose of the proposals are to allow the scheme to be more effective in delivering emissions reductions by allowing greater time to develop projects and to encourage the use of low carbon heat pumps.

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 MSR consultation received 24 responses in total. This consisted of 11 responses from the anaerobic digestion (AD) industry, including trade bodies, whose responses incorporated views from across their membership. We also received 6 responses from the wider renewable energy industry, including some responses from landfill gas and combined heat and power (CHP) operators. The remaining responses included a mixture of academics, consultants, and other organisations.

A note of other impact assessments, (if available)

Not applicable

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 decarbonise delivery of heat through the encouragement of the production of biomethane for injection into the gas grid. The proposed changes are relatively minor and administrative or technical in nature. The provisions also support, in part, continued alignment with aspects of the EU Renewable Energy Directive 2018.

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

15 April 2024

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

Not applicable.

Information about any time dependency associated with the proposal

Not applicable

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?

Not applicable

ANNEXE D: SI NOTIFICATION: SUMMARY

Title of Instrument
Proposed laying date at Westminster 15 April 2024
Date by which Committee has been asked to respond 29 March 2024
Power(s) under which SI is to be made Sections 100 and 104(2) of the Energy Act 2008. In accordance with section 100(7) of that Act, the Secretary of State must obtain the consent of the Scottish Ministers to the making of these Regulations.
Categorisation under SI Protocol Type 1
Purpose To make minor and administrative or technical 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. The changes will extend the date for applications until 31 March 2028 and encourage the use of heat pumps as a source of process heating.
Other information
SG Policy contact: Stephen Corrie, Onshore Renewables, Energy and Climate Change