

2023 No. 455

ENERGY

**The Energy Bills Discount Scheme Pass-through Requirement
(Heat Suppliers) Regulations 2023**

Approved by both Houses of Parliament

<i>Made</i>	- - - -	<i>24th April 2023</i>
<i>Laid before Parliament</i>		<i>25th April 2023</i>
<i>Coming into force</i>		<i>26th April 2023</i>

The Secretary of State, in exercise of the powers conferred by sections 19 and 26(2) of the Energy Prices Act 2022(a), makes these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.

(2) These Regulations come into force on 26th April 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland, subject as follows.

(4) Regulations 9 and 10 extend to England and Wales and Scotland.

(5) Regulation 11 extends to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Prices Act 2022;

“authorised person” means the Secretary of State, or in relation to a Scottish heat network the Scottish Ministers;

“bill” includes a demand for a qualifying payment within section 19(5)(a)(ii) or (c)(ii) of the Act in respect of heating or hot water;

“billing period”, in relation to a QHS supply contract, means a period in respect of which, under the terms of or applicable to the QHS supply contract, the heat supplier is obliged or entitled to send to a person an invoice or other statement of account;

“certified heat supplier” means a qualifying heat supplier in respect of whom a QHS certificate has been issued and not revoked;

“EBDS Regulations” means the Energy Bills Discount Scheme Regulations 2023(a);

“effect a pass-through” means pass on to an end user an amount calculated under regulation 6;

“end user”, in relation to an intermediary, means an end user who falls within section 19(3)(b) or (c) of the Act;

“heat network” means a network that, by distributing a liquid or a gas, enables the transfer of thermal energy for the purpose of supplying heating or hot water to a building or persons in that building;

“intermediary”, except in regulations 9 to 11, means a person—

(a) who is a heat supplier within the meaning of the Metering and Billing Regulations or who otherwise supplies and charges for the supply of heating or hot water to its end users through a heat network; or

(b) to whom an end user makes a qualifying payment within section 19(5)(a)(ii) or (c)(ii) of the Act in respect of the supply of heating or hot water through a heat network,

where that person has been provided with a scheme benefit in respect of the energy used to produce the heating or hot water;

“kWh” means kilowatt hours;

“Metering and Billing Regulations” means the Heat Network (Metering and Billing) Regulations 2014(b);

“NI EBDS Regulations” means the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023(c);

“pass-through amount” is an amount calculated under regulation 6;

“pass-through requirement” is the requirement set out in regulation 5;

“QHS certificate” means a certificate issued under regulation 17(1) of the EBDS Regulations or regulation 17(1) of the NI EBDS Regulations;

“QHS supply contract” means a single supply contract in respect of all energy supplied or otherwise made available to, or used to make available heat or hot water to, certified heat suppliers;

“qualifying heat supplier” has the meaning given in regulation 15(1) of the EBDS Regulations or regulation 15(1) of the NI EBDS Regulations;

“scheme benefit” has the meaning given in regulation 3 of these Regulations;

“SRE adjustment” means an amount in pounds sterling that represents an increase or decrease in the scheme benefit provided for a relevant period;

“supply redetermination event” or “SRE” has the meaning given in regulation 24 of the EBDS Regulations or regulation 25 of the NI EBDS Regulations.

(2) A network is not excluded from being a heat network only by reason of its being designed to rely wholly or in part on heat pumps particular to the buildings or premises served by the network.

(3) References to a scheme benefit or SRE adjustment being provided to an intermediary are to be construed in accordance with regulations 3(2) to (4).

(4) An end user can also be an intermediary in respect of a scheme benefit or SRE adjustment provided to that end user and vice versa.

(5) In these Regulations, any reference to a heat supplier within the meaning of the Metering and Billing Regulations must be read as if the words “cooling or” were omitted from the definition of that term.

(a) S.I. 2023/453.

(b) S.I. 2014/3120, amended by S.I. 2015/855 and 2020/1221.

(c) S.I. 2023/454

Meaning of “scheme benefit” etc.

3.—(1) In these Regulations, “scheme benefit” means—

- (a) the discount applied to the supply price under a QHS supply contract between an energy supplier and an intermediary in any billing period under regulation 29 of the EBDS Regulations or regulation 30(1)(b) of the NI EBDS Regulations, expressed as an amount in pounds sterling or in pounds sterling per kWh of energy; or
- (b) where the intermediary is also an end user, the pass-through amount provided to the end user under these Regulations,

and the amount of any scheme benefit excludes any SRE adjustment.

(2) A scheme benefit is provided to an intermediary—

- (a) when the energy supplier informs the intermediary under regulation 30(1)(d) of the EBDS Regulations of the discount that has been applied to the supply price under the QHS supply contract;
- (b) when the energy supplier informs the intermediary under regulation 31(1)(d) of the NI EBDS Regulations of the discount that has been applied to the supply price under the QHS supply contract; or
- (c) where the intermediary is also an end user, when a pass-through amount is provided to it under these Regulations.

(3) An SRE adjustment is provided to an intermediary—

- (i) when the energy supplier informs the intermediary of the SRE adjustment under regulation 24(2)(e) of the EBDS Regulations or the NI EBDS Regulations; or
- (ii) where the intermediary is also an end user, when a pass-through amount comprising the SRE adjustment is provided to it under these Regulations.

(4) A scheme benefit or an SRE adjustment that has been provided to an intermediary is not treated as having been provided to the extent that the intermediary has notified the energy supplier that the discount or SRE adjustment has been provided in error and the intermediary is taking reasonable steps to correct the error.

(5) In this regulation—

“energy supplier” means a licensed electricity supplier^(a) or a licensed gas supplier^(b); and

“supply price” has the meaning given in regulation 8 of the EBDS Regulations or regulation 8 of the NI EBDS Regulations.

Provision of information to end users

4.—(1) Within 30 days beginning with the day on which an intermediary is provided with a scheme benefit (or within 30 days beginning with the day on which these Regulations come into force, whichever is the later), the intermediary must notify each of its end users in writing that it has been provided with a scheme benefit.

(2) The notice must specify—

- (a) the amount of the scheme benefit and (if appropriate) any SRE adjustment;
- (b) the billing period in respect of which the scheme benefit and (if appropriate) any SRE adjustment has been provided;
- (c) details of the pass-through requirement;
- (d) when and how the intermediary will effect the pass-through;

(a) See section 10(2) of the Act for the meaning of this term in England and Wales and Scotland and section 12(2) of the Act for the meaning of this term in Northern Ireland.

(b) See section 10(6) of the Act for the meaning of this term in England and Wales and Scotland and section 12(5) of the Act for the meaning of this term in Northern Ireland.

- (e) details of how the end user may resolve any dispute with the intermediary about how the intermediary has complied with the pass-through requirement, including how the intermediary has calculated the pass-through amount;
 - (f) that a domestic end user or microbusiness end user may make a complaint to the Energy Ombudsman (in connection with a scheme benefit or SRE adjustment provided in England and Wales or Scotland) or the General Consumer Council (in connection with a scheme benefit or SRE adjustment provided in Northern Ireland) (as appropriate) on any of the following grounds—
 - (i) the intermediary has not notified the end user in writing that the intermediary has been provided with a scheme benefit or SRE adjustment;
 - (ii) the intermediary has not notified the end user in writing of when and how it will effect the pass-through;
 - (iii) the intermediary has not effected the pass-through within the timeframe specified in regulation 5;
 - (iv) the intermediary has not otherwise complied with the pass-through requirement;
 - (g) that if the pass-through amount to which an end user is entitled under these Regulations is not provided to the end user, it is entitled to recover it from the intermediary as a civil debt pursuant to regulation 8.
- (3) An intermediary has complied with the notification requirements in this regulation if and to the extent it has taken reasonable steps to notify an end user but is unable to do so.
- (4) In this regulation—
- “domestic end user”, in relation to an intermediary, means an end user who purchases heating or hot water for domestic use from the intermediary; and
- “microbusiness end user”, in relation to an intermediary, means an end user who purchases heating or hot water from the intermediary for use in a business which employs fewer than 10 employees and has an annual turnover or balance sheet total no greater than £2 million.

Pass-through requirement

- 5.**—(1) An intermediary must ensure that, as soon as reasonably practicable after it has been provided with a scheme benefit, it provides to each of its end users a pass-through amount in respect of the scheme benefit (“pass-through requirement”).
- (2) An intermediary must comply with the pass-through requirement no later than the day on which the intermediary issues the next bill to the end user.
- (3) An intermediary must comply with the requirements for bills and billing information under regulation 7 when it issues the next bill to an end user.
- (4) Without prejudice to paragraph (1), a pass-through can be effected by one or more of the following methods—
- (a) application of a credit in the next bill provided to the end user;
 - (b) a payment in cash or by any other means, including a bank transfer;
 - (c) adjusting the fixed and variable charges in the next bill provided to the end user;
 - (d) adjusting the amount of money taken by direct debit or the amount of a standing order;
 - (e) set off against an amount or part of an amount which was owed by the end user to the intermediary at the time the scheme benefit was provided to the intermediary.
- (5) If the contract between the intermediary and the end user expires or is terminated before the intermediary has effected a pass-through, the intermediary must effect a pass-through to reflect the end user’s entitlement (or remaining entitlement) under these Regulations as soon as reasonably practicable following such expiry or termination.
- (6) An intermediary has complied with the pass-through requirement if and to the extent it has taken reasonable steps to effect the pass-through but is unable to do so.

- (7) An intermediary has not complied with the pass-through requirement if—
- (a) in its capacity as customer under the EBDS Regulations or the NI EBDS Regulations, it serves an opt-out notice on a supplier for the purposes of regulation 4(4) of the EBDS Regulations or regulation 4(4) of the NI EBDS Regulations; or
 - (b) it fails to take all such reasonable steps as may be necessary to secure that it is provided with the scheme benefit to which it is entitled.
- (8) Where an end user is also an intermediary in respect of a scheme benefit provided to that end user, that end user must comply with the pass-through requirement.
- (9) In this regulation, “next bill” means—
- (a) in relation to the first scheme benefit provided to an intermediary, the later of—
 - (i) the first bill issued after 26th May 2023; and
 - (ii) the first bill issued after the end of the period of 30 days beginning with the day on which the scheme benefit is provided to the intermediary; or
 - (b) in relation to any subsequent scheme benefit provided to the intermediary, the first bill issued after the end of the period of 30 days beginning with the day on which the scheme benefit is provided to the intermediary.
- (10) Paragraphs (11) to (13) apply if the Secretary of State has determined and published an amount for the purposes of paragraph (14) and has not withdrawn such determination.
- (11) An intermediary is not required to provide to an end-user which is a domestic heat consumer a pass-through amount which is greater than the amount for which the condition in paragraph (12) is met.
- (12) The condition is that the amount determined as the charge made by the intermediary to the end-user for the provision of heating and hot water, net of the pass-through amount, is equal to the amount published by the Secretary of State under paragraph (14).
- (13) If the charge referred to in paragraph (12) is less than or equal to the amount published by the Secretary of State under paragraph (14), the intermediary is not required to provide any pass-through amount to the end user.
- (14) The Secretary of State may determine and publish the amount which the Secretary of State considers to be the typical cost, to a consumer that is supplied with gas, of heating and hot water, based on—
- (a) the energy price support provided under the EPG scheme document;
 - (b) an assumption made by the SoS as to the rate at which gas is converted to heating and hot water;
 - (c) such other assumptions as the Secretary of State considers appropriate.
- (15) If an intermediary has been provided with an SRE adjustment, the intermediary must take such SRE adjustment into account the next time it calculates a pass-through amount under regulation 6.
- (16) An intermediary must determine pass-through amounts consistently with any determination of the Secretary of State of which it has been given notice under regulation 69(2)(b) of the EBDS Regulations or regulation 74(2)(b) of the NI EBDS Regulations.
- (17) Paragraph (18) applies if an intermediary is given notice by the Secretary of State of a redetermination or a proposed redetermination of a regulation 22 matter.
- (18) The intermediary must take account of the interests of domestic heat consumers whose scheme benefits may be or are affected by the redetermination—
- (a) in deciding whether to make representations and what representations to make in respect of the proposed redetermination under regulation 69(3)(a)(iv) of the EBDS Regulations or regulation 74(3)(a)(iv) of the NI EBDS Regulations;
 - (b) in deciding—

- (i) whether to request a review of the redetermination under regulation 70(4) of the EBDS Regulations or regulation 75(4) of the NI EBDS Regulations and what representations to make in such request, or
 - (ii) if another person requests such a review, whether to make representations and what representations to make in respect of the determination under regulation 70(6)(b) of the EBDS Regulations or regulation 75(6)(b) of the NI EBDS Regulations.
- (19) In this regulation—
- (a) “consumer” has the meaning given in the EPG scheme document;
 - (b) “domestic heat consumer” has the meaning given in the EBDS Regulations or the NI EBDS Regulations;
 - (c) “EPG scheme document(a)” means—
 - (i) in England, Wales or Scotland, the Energy Price Guarantee for Domestic Gas Consumers in Great Britain Scheme Document, dated September 2022, as modified from time to time;
 - (ii) in Northern Ireland, the Energy Price Guarantee for Domestic Gas Consumers in Northern Ireland Scheme Document, dated October 2022, as modified from time to time;
 - (d) “regulation 22 matter” has the meaning given in the EBDS Regulations or the NI EBDS Regulations.

Calculation of pass-through amount

6.—(1) The amount which an intermediary must pass on to an end user under the pass-through requirement is an amount in pounds sterling or in pounds sterling per kWh of energy which comprises all of the scheme benefit, or if less than the amount of scheme benefit, a just and reasonable amount calculated in accordance with this regulation (“pass-through amount”).

(2) If the pass-through amount is less than the amount of scheme benefit, the intermediary must provide evidence to the end user showing what factors it took into account in determining that the pass-through amount was just and reasonable.

(3) In determining what is a just and reasonable pass-through amount, the intermediary may take account of—

- (a) the amount the intermediary paid for the energy in respect of which the scheme benefit was provided (“the input energy”);
- (b) other costs incurred by the intermediary in supplying heating or hot water to its end users in the period for which the scheme benefit was provided (“relevant period”);
- (c) any loss incurred where, as a result of a relevant change in the price of energy(b), the total amount charged to end users for the supply of heating and hot water in the relevant period is less than the amount paid for the total quantity of input energy; and
- (d) the extent to which its charges to end users reflect the increased costs of energy in response to the energy crisis.

(4) Subject to paragraph (3), a pass-through amount is just and reasonable where—

- (a) at the time the intermediary was provided with the scheme benefit, the intermediary was charging the end user either—
 - (i) based on the proportion of the total quantity of input energy which the end user’s usage represented; or

(a) Hard copies of the EPG scheme documents can be obtained from the Department for Energy Security and Net Zero, 1 Victoria Street, London, SW1H 0ET.

(b) See section 28(2) of the Act for the meaning of this term.

- (ii) based on the proportion of the total amount paid by the intermediary for energy in a period which the amount paid by the end user for the supply of heating and hot water in that period represented; and
 - (b) the intermediary calculates the pass-through amount for the end user on this basis.
- (5) If paragraph (4) does not apply, the intermediary in determining what is a just and reasonable pass-through amount—
 - (a) must apply the best available information to allocate the scheme benefit amongst end users; and
 - (b) may take into account the basis on which the intermediary was allocating charges amongst end users at the time the intermediary was provided with the scheme benefit.
- (6) The pass-through amount for a person who is an end user for part of a relevant period must be calculated only for that part of the relevant period for which they were an end user.
- (7) In calculating a pass-through amount—
 - (a) an intermediary is not required to pass on to its end users an aggregate amount that exceeds the amount of scheme benefit provided to the intermediary over the scheme period;
 - (b) an intermediary which is also an end user must not retain more of the scheme benefit for itself—
 - (i) than is proportionate to its own end user’s usage; or
 - (ii) than the proportion of the amount the intermediary paid for the total quantity of input energy that the intermediary itself bears (where it is not practicable to assess the quantity of its own end user’s usage); and
 - (c) an intermediary may include the quantity of heating or hot water supplied to common areas in a building as part of its own end user’s usage if the intermediary was not charging end users for this as part of the arrangements in place at the time the intermediary was provided with the scheme benefit.
- (8) Paragraph (9) or (10) apply where in a relevant period a scheme benefit has been provided to an intermediary and in the current period, as a result of a supply redetermination event, the intermediary is provided (under regulation 24 of the EBDS Regulations, or the NI EBDS Regulations or paragraph (9) or (10) of these Regulations) with an SRE adjustment.
- (9) If the SRE adjustment is an increase in the amount of scheme benefit in respect of the relevant period, the intermediary must adjust the pass-through amount calculated under this regulation 6 in respect of the current period to pass on such increase in the amount to the original end user.
- (10) If the SRE adjustment is a reduction in the amount of scheme benefit in respect of the relevant period, the intermediary may adjust the pass-through amount calculated under this regulation in respect of the current period by way of set-off to pass on such reduction in the amount to the original end user.
- (11) Any adjustment of a pass-through amount made under paragraph (9) or (10) must be just and reasonable and calculated in the same way as the pass-through amount was calculated for the original end user in the relevant period.
- (12) In this regulation—
 - “current period” means, in relation to a supply redetermination event, the billing period in which an intermediary is provided with an SRE adjustment;
 - “end user’s usage” means the total quantity of input energy in kWh used in a relevant period to supply heating and hot water to an end user in that period;
 - “original end user” means an end user to whom an intermediary effected a pass-through in respect of a relevant period;
 - “scheme period” has the meaning given in regulation 2 of the EBDS Regulations or the NI EBDS Regulations.

Provision of billing information to end users

- 7.—(1) This regulation applies to—
- (a) any bill issued to an end user for the supply of heating or hot water in respect of a period for which the intermediary has been provided a scheme benefit; and
 - (b) any billing information (as defined in regulation 2 of the Metering and Billing Regulations) provided with that bill.
- (2) The requirements in regulation 9 of the Metering and Billing Regulations apply in respect of the bill and billing information, subject to the following modifications.
- (3) That regulation is to be read as if—
- (a) a reference to a final customer is a reference to an end user;
 - (b) a reference to a heat supplier is a reference to an intermediary;
 - (c) paragraph (1) requires bills to be issued to every end user, whether or not meters or heat cost allocators are installed;
 - (d) where meters or heat cost allocators are not installed, subparagraphs (a) and (b) of paragraph (1) are omitted;
 - (e) paragraphs (2) and (3) are omitted;
 - (f) where meters or heat cost allocators are not installed, paragraph (4) provides that a bill may be based on an estimate of consumption;
 - (g) in paragraph (7)—
 - (i) after subparagraph (b), there is inserted—

“(ba) provide clear information about how the pass-through amount has been calculated, how the intermediary has determined that the pass-through amount is just and reasonable, and must state the final reduction amount; and

(bb) if applicable, provide clear information about any adjustment that the intermediary intends to make to the pass-through amount notified under paragraph (ba) to effect a pass-through of an SRE adjustment;”;
 - (ii) after subparagraph (c), there is inserted—

“(ca) the information contained in the bill must include the amount the intermediary paid for the energy in respect of which the scheme benefit was provided and the amount charged to the end user.”.
- (4) For the purposes of this regulation, Schedule 2 to the Metering and Billing Regulations applies, but is to be read as if paragraph 6 is omitted.

Enforcement of pass-through requirement

- 8.—(1) Where an intermediary fails to comply with the pass-through requirement, the end user may—
- (a) recover the pass-through amount from the intermediary as a civil debt; and
 - (b) claim interest to be paid by the intermediary on such amount at a rate of 2% per cent per annum over the Bank of England base rate from the date 60 days after the date on which the scheme benefit to which the pass-through requirement relates was provided to the intermediary.
- (2) For the purposes of this regulation, the “Bank of England base rate” means—
- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or

- (b) where an order under section 19 of the Bank of England Act 1998(a) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Establishment of consumer redress scheme: England and Wales and Scotland

9.—(1) For the purpose of section 19(10)(d) of the Act, Part 2 of the Consumers, Estate Agents and Redress Act 2007 applies to end users in England, Wales and Scotland, subject to the following modifications.

(2) Part 2 of that Act is to be read as if—

- (a) a reference to a regulated provider is a reference to an intermediary;
- (b) a reference to a relevant consumer is a reference to a microbusiness end user or a domestic end user;
- (c) any reference to a regulator or a relevant regulator is omitted;
- (d) the Secretary of State has made an order under section 47(1)(b) of that Act requiring all intermediaries with end users in England, Wales or Scotland to be members of a redress scheme administered by the Secretary of State (or a person appointed by the Secretary of State) and designated by the Secretary of State as an appropriate redress scheme in relation to them;
- (e) the order provides that the redress scheme is for the investigation of complaints made against an intermediary by or on behalf of a person in that person's capacity as a microbusiness end user or a domestic end user of the intermediary ("consumer complaints");
- (f) the redress scheme is a scheme under which consumer complaints may be made to, and investigated and determined by, the Energy Ombudsman;
- (g) the Energy Ombudsman may provide a microbusiness end user or a domestic end user with the following types of redress—
 - (i) providing an apology or explanation;
 - (ii) paying compensation; and
 - (iii) taking such other action in the interests of the end user as the Energy Ombudsman may specify;
- (h) section 52 of that Act provides for enforcement by civil sanctions under Schedule 4 to the Metering and Billing Regulations (as modified by regulation 10 of these Regulations) of the requirement for an intermediary to be a member of the redress scheme;
- (i) the order comes into force on the day on which these Regulations come into force.

(3) In this regulation—

"domestic end user", in relation to an intermediary, means an end user who purchases heating or hot water for domestic use from the intermediary;

"intermediary" means—

- (a) a heat supplier within the meaning of the Metering and Billing Regulations who supplies and charges for the supply of heating or hot water; or
- (b) a person who otherwise supplies and charges for the supply of heating or hot water to its end users through a heat network, where that person has been provided with a scheme benefit in accordance with regulation 3(2)(a) or (b) of these Regulations in respect of the energy used to produce the heating or hot water; and

"microbusiness end user" in relation to an intermediary, means an end user who purchases heating or hot water from the intermediary for use in a business which employs fewer than 10 employees and has an annual turnover or balance sheet total no greater than £2 million.

(a) 1998 c. 11.

Enforcement of requirement to be a member of redress scheme

10.—(1) An intermediary within the meaning of regulation 9 who does not comply with the requirement to be a member of the redress scheme in regulation 9(2)(d), is subject to civil enforcement action of the kind described in Schedule 4 to the Metering and Billing Regulations (save to the extent that civil enforcement action has or is being taken against the intermediary in connection with non-compliance with the requirement to become a member of the redress scheme referred to in regulation 9(1)(d) of the Energy Bills Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022).

(2) For the purpose of paragraph (1), that Schedule applies to intermediaries subject to the modifications set out in paragraphs (3) to (8).

(3) In paragraph 1—

- (a) omit the words “, an enforcement undertaking”;
- (b) insert at the end—

“Interpretation

1A. In this Schedule—

“authorised person” means the Secretary of State or in relation to a Scottish heat network the Scottish Ministers;

“EBDS Regulations” means the Energy Bills Discount Scheme Regulations 2023;

“intermediary” means—

- (a) a heat supplier; or
- (b) a person who otherwise supplies and charges for the supply of heating or hot water to its end users through a heat network, where that person has been provided with a scheme benefit in accordance with regulation 3(2)(a) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023;

“intermediary’s agent” means a person who has acted or is acting as agent for a qualifying heat supplier in connection with its application for a QHS certificate under regulation 17(4) of the EBDS Regulations, or who appears to an authorised person to have acted or to be acting in that capacity;

“QHS certificate” has the meaning given in the EBDS Regulations;

“qualifying heat supplier” has the meaning given in the EBDS Regulations.

PART 1A

Power to request information

Application of Part

1B. This Part applies where an authorised person has reasonable grounds to suspect that a person is—

- (a) an intermediary; or
- (b) in connection with the power to require the production of information in paragraph 1C only, an intermediary’s agent.

Power to require the production of information

1C. Before imposing a compliance notice on a person for failing to comply with the requirement in regulation 9(2)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023, the authorised person may give notice to

the person mentioned in paragraph 1B requiring that person to provide the authorised person with the information specified in the notice.

Procedure for notice under paragraph 1C

1D.—(1) A notice under paragraph 1C must be in writing and must specify that the information is required—

- (a) if the notice was served in reliance upon paragraph 1B(a), to determine if the person is an intermediary; or
- (b) if the notice was served in reliance upon paragraph 1B(b), to determine the identity of the qualifying heat supplier for whom that person is an intermediary’s agent.

(2) The notice may specify—

- (a) the time within which and the manner in which the person to whom it is given must comply with it; and
- (b) the form in which information must be provided.

(3) The notice may require—

- (a) the creation of documents, or documents of a description, specified in the notice; and
- (b) the provision of those documents to the authorised person.

(4) A requirement to provide information or create a document is a requirement to do so in a legible form.

(5) A notice under paragraph 1C does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(6) In sub-paragraph (5)(b), “communications” means—

- (a) communications between a professional legal adviser and the adviser’s client; or
- (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

Enforcement of requirement in paragraph 1C

1E.—(1) A person who does not comply with the requirement to provide the authorised person with the information specified in a notice under paragraph 1C is subject to civil enforcement action under this Schedule.”

(4) In paragraph 2—

- (a) for sub-paragraph (1) substitute—

“(1) This paragraph applies where an authorised person has reasonable grounds to believe that a person has failed to comply with—

- (a) a notice under paragraph 1C; or
- (b) the requirement in regulation 9(2)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023;”.

- (b) in subparagraph (2) for “offence does not continue or recur” substitute “the person complies with that duty”;

- (c) omit sub-paragraph (3).

(5) Omit paragraphs 8 to 13.

(6) In paragraph 14—

- (a) for sub-paragraph (1) substitute—

“(1) The authorised person may serve a notice imposing a monetary penalty (“a non-compliance penalty”) on a person who does not comply with—

- (a) a notice under paragraph 1C; or
 - (b) the requirement to be a member of the redress scheme referred to in regulation 9(1)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.”;
 - (b) in sub-paragraph (2) omit the words “or enforcement undertaking”;
 - (c) in sub-paragraph (2), for the words from “be a percentage” to the end substitute “not exceed £5,000 in respect of each non-compliance identified in a compliance notice and not exceed £5,000 in respect of failure to comply with a notice given under paragraph 1C”;
 - (d) omit sub-paragraphs (3) and (5);
 - (e) after sub-paragraph (7), insert—

“(8) A non-compliance penalty is recoverable by the authorised person as a civil debt.”
- (7) In paragraph 17 omit sub-paragraph (5).
- (8) In paragraph 19—
- (a) in sub-paragraph 1(a) omit “; and”;
 - (b) omit sub-paragraph (1)(b).

Investigation of complaints by the General Consumer Council for Northern Ireland

11.—(1) For the purpose of section 19(10)(d) of the Act, Articles 22 and 24 of the Energy (Northern Ireland) Order 2003(a) apply in relation to an end user in Northern Ireland as they apply in relation to a customer of, or user of electricity or gas supplied by, an authorised supplier, subject to the following modifications.

(2) Article 22 is modified as follows—

(a) for paragraph (1) substitute—

“(1) This Article applies to a complaint which a domestic end user or microbusiness end user (“complainant”) has against an intermediary who has failed to comply with the pass-through requirement in relation to the complainant or the requirement to provide information to that complainant.

(1A) The complaint may be based on one or more of the grounds of complaint to the Council set out in regulation 4(2)(f) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.”;

- (b) omit paragraphs (3) and (4);
- (c) in paragraph (5), omit subparagraphs (b) and (c);
- (d) omit paragraphs (7) to (9);
- (e) for paragraph (10) substitute—

“(10) In this Article—

 - (a) “domestic end user”, in relation to an intermediary, means a person who purchases heating or hot water for domestic use from the intermediary;
 - (b) “intermediary” means—
 - (i) a heat supplier within the meaning of the Heat Network (Metering and Billing) Regulations 2014 who supplies and charges for the supply of heating or hot water; or

(a) S.I. 2003/419 (N.I. 6).

- (ii) a person who otherwise supplies and charges for the supply of heating or hot water to its end users through a heat network, where that person has been provided with a scheme benefit in accordance with regulation 3(2)(b) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023 in respect of the energy used to produce the heating or hot water;
 - (c) “microbusiness end user”, in relation to an intermediary, means an end user who purchases heating or hot water from the intermediary for use in a business which employs fewer than 10 employees and has an annual turnover or balance sheet total no greater than £2 million;
 - (d) “pass-through requirement” has the meaning given in regulation 2(1) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.”.
- (3) Article 24 is modified as follows—
- (a) for paragraph (1) substitute—

“(1) The Council may direct an intermediary to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions under Article 22.

(1A) The information may include information about any of the matters specified in regulation 4(2)(a) to (g) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.”.
 - (b) in paragraph (3) for “Authority or licence holder” substitute “intermediary”;
 - (c) for paragraph (4) substitute—

“In this Article, “intermediary” has the same meaning as in Article 22.”.

Disapplication of requirement to consult

12. The requirement in paragraph 18 of Schedule 4 to the Metering and Billing Regulations does not apply to any guidance an authorised person intends to publish under paragraph 17 of that Schedule in connection with the use of civil sanctions under these Regulations.

24th April 2023

Amanda Solloway
Parliamentary Under Secretary of State
Department for Energy Security and Net Zero

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the pass-through requirement in relation to the Energy Bills Discount Scheme (EBDS) in England and Wales, Scotland and Northern Ireland. The pass-through requirement is imposed on a person who supplies and charges for the supply of heating or hot water to an end user through a heat network using energy in respect of which the person has been provided a scheme benefit (“intermediary”). It requires the intermediary to pass on the benefits of the EBDS to its end users. The Regulations also deal with adjustments to pass-through amounts which may be needed if a supply redetermination event occurs under the EBDS Regulations or the NI EBDS Regulations.

Regulation 3 makes provision about energy price support provided by the EBDS. This is defined as a “scheme benefit”.

Regulation 4 requires an intermediary who has been provided with a scheme benefit to notify each of its end users in writing that it has been provided with the benefit.

Regulation 5 imposes a requirement on an intermediary to secure that a scheme benefit provided to it is passed on to its end users as soon as reasonably practicable after it has been provided with the scheme benefit. If not all of the scheme benefit is being passed on to the end users, intermediaries are required to pass on a just and reasonable amount of the benefit to each of its end users.

Regulation 6 defines “pass-through amount” and provides for methods of calculating the amount and determining what is a just and reasonable pass-through amount.

Regulation 7 requires intermediaries to provide billing information to end users.

Regulation 8 provides for the end user to recover unpaid pass-through amounts from the intermediary as a civil debt.

Regulation 9 establishes a consumer redress scheme in England and Wales and Scotland for end users of intermediaries.

Regulation 10 provides for enforcement of the requirement to be a member of the redress scheme.

Regulation 11 provides for the investigation of complaints relating to the operation of these Regulations in Northern Ireland by the General Consumer Council of Northern Ireland.

Regulation 12 disapplies the requirement to consult on guidance on civil sanctions to be issued by an authorised person under the Heat Network (Metering and Billing) Regulations 2014.

A full impact assessment of the effect of EBDS, including the related pass-through requirements, will have on the costs of business and the voluntary sector is available from the Department for Energy Security and Net Zero, 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk

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